

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-12-0997-^{FOF}-MQA

FILED D. JUN 14 2012
Department of Health

By: *Angelo Sordani*
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

2012 JUN 15 P 1:16

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

vs.

DOH CASE NO.: 2011-11153
DOAH CASE NO.: 11-5163PL
LICENSE NO.: ME0092135

JOHN PETER CHRISTENSEN, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 1, 2012, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order (a copy of which is attached hereto as Exhibit A) in the above-styled cause. Petitioner was represented by Robert Milne, Assistant General Counsel. Respondent was not present but was represented by W. Grey Tesh, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order's paragraphs 31 through 41 and 48 through 51 are approved and adopted and incorporated herein by reference.

3. Paragraphs 42 through 47 are hereby rejected with the following modifications:

a. Paragraph 42 of the Recommended Order shall now read as follows:

"42. As concluded in the preceding section of this Recommended Order, Respondent did not act within the course of his professional practice - i.e., his conduct occurred outside the practice of medicine - on the occasions when he prescribed controlled substances to M.R., K.R., S.J., and L.J. In light of that determination, Respondent cannot be convicted, in connection with the same underlying behavior, of failing to practice medicine in accordance with the applicable standard of care. Accordingly, Counts I and III are dismissed."

b. Paragraph 43 of the Recommended Order shall now read as follows:

"43. The Board respectfully disagrees with ALJ's legal conclusion that Sections 458.331(1)(t) and 458.331(1)(q), Florida Statutes, are mutually exclusive and rejects the ALJ's reading of *Scheininger v. Department of Professional Regulations*, 443 So.2d 387 (Fla. 1st DCA 1983) and *Waters v. Department of Health*, 962 So.2d 1011 (Fla. 3d DCA 2007) as

supporting his conclusion. The ALJ cites to nothing other than his own reading of the cases to support his conclusion and ignores the Board's consistent position on this issue which was argued before the Third District Court of Appeal in the *Waters* case. If the Board's interpretation of the contemporaneous application of Sections 458.331(1)(t) and 458.331(1)(q), Florida Statutes, was clearly erroneous it would have been rejected by the *Waters* and *Scheininger* courts. Since it was not rejected, and the Board is charged with enforcing both statutory provisions, the Board's interpretation is entitled to great deference. *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906 (Fla. 2002); *Miles, Jr. v. Florida A and M University and the Board of Regents*, 813 So. 2d 242 (Fla. 1st DCA 2002). Given such, the Board believes that its conclusion of law is as reasonable or more reasonable than the ALJ's in this matter."

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay an administrative fine in the amount of \$20,000.00 to the Board within 30 days from the date this Final Order is filed. Said fine shall be paid by money order or cashier's check.

2. Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

RULING ON MOTION TO ASSESS COSTS

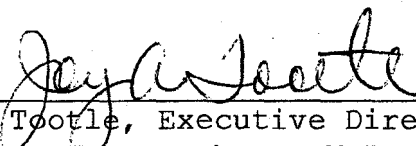
The Board waived all the costs associated with this matter.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

DONE AND ORDERED this 13th day of June,

2012.

BOARD OF MEDICINE



Joy A. Tootle, Executive Director
For Jason V. Rosenberg, M.D., Chair

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by **Certified Mail** to JOHN PETER CHRISTENSEN, M.D., 3001 Broadway, West Palm Beach, Florida 33407; to W. Grey Tesh, Esquire, 1610 Southern Boulevard, West Palm Beach, Florida 33406; to Edward T. Bauer, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee,

Florida 32399-3060; and by interoffice delivery to Veronica
Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-
65, Tallahassee, Florida 32399-3253 this 14th day of
June, 2012.

Angel Sanders

Deputy Agency Clerk

7011-2970-0003-1594-0731