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DEPARTMENT OF HEALTH
DIVISION OF ADMINISTRATIVE HEARINGS

**STATE OF FLORIDA
THE FLORIDA BOARD OF DENTISTRY**

DEPARTMENT OF HEALTH PETITIONER, JOSEPH GAETA, DDS, RESPONDENT.	CASE NO.: 2007-29044 DOAH CASE NO.: 11-5793PL LICENSE NO.: DN 11262
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FINAL ORDER

This cause came before the Board of Dentistry (Board), pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on August 17, 2012, in Orlando, Florida. The purpose of the cause was for consideration of the Honorable John G. Van Laningham's Recommended Order issued on June 12, 2012 (attached hereto as Exhibit "A"); Respondent's Exceptions that were timely filed (attached hereto as Exhibit "B"); and Petitioner's Response to Exceptions (attached hereto as Exhibit "C" and cited as Pet. Resp. Pg XX.). Petitioner was represented by Adrienne Rodgers, Assistant General Counsel. Respondent was present at the meeting and was represented by Max R. Price, Esquire.

APPEARANCES

For Petitioner: Adrienne Rodgers, Esquire
Assistant General Counsel
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Max. R. Price, Esquire
Law Office of Max R. Price, P.A.
6701 Sunset Drive, Suite 104
Miami, Florida 33143-4529

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

RULINGS ON EXCEPTIONS

1. Respondent's Exceptions Numbers 1 through 3: **DENIED**. The Respondent frames the exceptions as exceptions to conclusions of law. The record reveals that the conclusions of law made in Paragraph 46 of the recommended order are correct. The Board cannot find that there is a more reasonable interpretation than that which was made by the Administrative Law Judge in applying Section 466.028(1)(m), Florida Statutes, or Rule 64B5-17.002, *Florida Administrative Code*. The Board hereby adopts and incorporates the Petitioner's response to the exceptions. Pet. Resp. Pgs. 3-9;
2. Respondent's Exception Number 4: **DENIED**. The Respondent frames the exception as an exception to findings of fact. The record clearly reveals that the Administrative Law Judge's findings of fact in Paragraph 46 of the recommended order were clearly supported by competent substantial evidence. It would be inappropriate to reject the findings. §120.57(1)(l), Fla. Stat. The Board hereby adopts and incorporates the Petitioner's response to exception number 4. Pet. Resp. Pgs. 9-10;
3. Respondent's Exceptions Numbers 5 through 7: The exceptions are framed as exceptions to the disciplinary or penalty aspect of the Recommended Order. The exceptions are discussed below, *infra, Penalty*.

FINDINGS OF FACT

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
2. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated by reference as the Findings of Fact of the Board.

CONCLUSIONS OF LAWS

1. The Board has personal and subject matter jurisdiction of this cause pursuant to sections 120.569; 120.57(1); and Chapter 466, Florida Statutes.

2. The Board does not find a more reasonable interpretation of the law than that which was found by the Administrative Law Judge;
3. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

VIOLATION, PENALTY, AND COSTS

VIOLATION

Upon a complete review of the record in this case, the Findings of Facts and Conclusions of Law, the Administrative Law Judge's Recommendation is **ACCEPTED**.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that the Respondent is found in **VIOLATION** of Section 466.028(1)(m), Florida Statutes, as implemented by Rule 64B5-17.002, *Florida Administrative Code*. The violation pertains to failing to document the type and amount of local anesthetic administered as articulated in subparagraph 27 (l) of the Administrative Complaint. Accordingly, it is hereby further **ORDERED** and **ADJUDGED** that all subparagraphs, except sub paragraph 27(l), are hereby **DISMISSED**, and all of Count II is hereby **DISMISSED**.

PENALTY

Although framed as exceptions, the Board treated the exceptions as legal arguments made to support a deviation from, and mitigation to, the Administrative Law Judge's recommended penalty. The Department conceded that the recording keeping violation, although technically a third violation of section 466.028(1)(m), Florida Statutes, was not as egregious as a standard third recording keeping violation of section 466.028(1)(m), Florida Statutes, because this record

keeping violation took place within close proximity to the record keeping violation in Department of Health case number 2003-05087; Department of Health Final Order number DOH-09-1837-FOF-MQA (Aug. 27, 2009); and Division of Administrative Hearing's case number 07-1164PL. See Pet. Exhibit 1.

The actual record keeping violation in case 2003-05087 was not rendered until August 27, 2009, whereas the record keeping violation in this cause was alleged to have taken place January 26, 2006. Therefore, Respondent did not receive record keeping remediation in case 2003-05087 before committing the record keeping violation in this cause. Accordingly, based on the foregoing, the extent of the recidivism is lessened although not extinguished. With the Department's concession, the Board agrees there is a basis to deviate within the record from the Administrative Law Judge's recommended penalty.

WHEREFORE, is is hereby **ORDERED** and **ADJUDGED**, that the Respondent shall hereby:

1. Be placed on probation to run concurrent with the probation in case number 2003-05087 and shall terminate with the termination of the probation in case number 2003-05087:
The probation in this cause is concurrent and conterminous with the probation in case number 2003-05087. A condition of probation shall be to complete the record keeping course already being taken in case number 2003-05087.
2. Be suspended for a period of three (3) months. The suspension is stayed;
3. Pay an administrative fine in the amount of \$2,500 within one (1) year of the effective date of this Final Order.

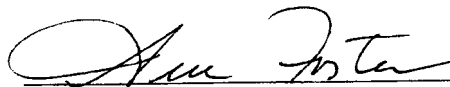
MOTION TO ASSESS COSTS

Upon a complete review of the Petitioner's Motion to Access Costs and the Respondent's Objections to Assess Costs, with all attachments and material submissions, it is hereby **ORDERED** and **ADJUDGED**, that the Motion to Access Costs is hereby **DENIED** and **DISMISSED**, with prejudice. Accordingly, Respondent shall not be assessed any costs in the above styled cause.

DONE AND ORDERED this 5 day of SEPTEMBER, 2012.

THIS FINAL ORDER shall become effective upon being filed with the Clerk for the Florida Department of Health.

BOARD OF DENTISTRY



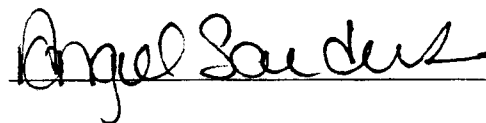
Sue Foster
Executive Director *on behalf of*
Wade Winker, DDS, CHAIR

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 has been furnished by U.S. Mail to **Joseph Gaeta, DDS**, 522 Avenida Navarra, Sarasota, Florida 24242 ; **Max R. Price, Esquire**, Law Offices of Max R. Price, P.A., 6701 Sunset Drive, Suite 104, Miami, FL 33143; Honorable John G. Van Laningham, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to **Adrienne Rodgers**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265; and by electronic mail to **David D. Flynn**, Assistant Attorney General, david.flynn@myfloridalegal.com this 5th day of September, 2012.



Deputy Agency Clerk