

FILED DATE - DEC 13 2012  
Department of Health

By: Ornel Saunders  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

**FILED**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

2012 DEC 19 PM 12 05

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DOH CASE NO.: 2006-38711

DOAH CASE NO.: 12-0666PL

LICENSE NO.: ME0059800

NEELAM UPPAL, 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 November 30, 2012, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Yolanda Green, Assistant General Counsel. Respondent was present and represented by George F. Indest, III, 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.

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF MEDICINE**

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HEARINGS

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**DOAH CASE NO.: 12-0666PL  
DOH CASE NO.: 2006-38711**

**NEELAM T. UPPAL, M.D.,**

**Respondent.**

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**MOTION TO BIFURCATE AND RETAIN JURISDICTION  
TO ASSESS COSTS IN ACCORDANCE WITH  
SECTION 456.072, FLORIDA STATUTES (2011)**

The Department of Health, by and through undersigned counsel requests that the Board of Medicine enter an Order bifurcating the issue of costs and retaining jurisdiction to assess costs, against Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2011). Petitioner states the following in support of this Motion:

1. At its next regularly scheduled meeting, the Board of Medicine will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Pursuant to Section 120.569(2)(1), Florida Statutes (2011), the Final Order in a proceeding heard by an administrative law judge, which affects a party's substantial interest, must be rendered within ninety (90) days after a Recommended Order is submitted to an agency, unless the ninety (90) days is waived by the Respondent.

3. The Administrative Law Judge's Recommended Order was submitted to the department on or about September 4, 2012; and ninety (90) days from that date is on or about December 3, 2012.

4. Section 456.072(4), Florida Statutes (2011), states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its

consideration of an affidavit of itemized costs and any written objections thereto . . . (emphasis added)

5. In the event Respondent's license is revoked, Respondent will not be able to practice medicine in the State of Florida.

6. In order for the Board to assess costs against the Respondent, under the current case law, the Department is required to obtain an outside expert attorney's opinion verifying the reasonableness of the time spent by the Department's attorneys on this matter or the amount of fees sought. *Georges v. Department of Health*, 75 So. 3d 759 (Fla, 2nd DCA 2011).

7. In order for the Board to assess costs against the Respondent, under the current case law, the Department is also required to verify attorney's time spent on the case and prepare supporting affidavits for the amount of attorney's time sought to be recovered. *Georges v. Department of Health*, 75 So. 3d 759 (Fla, 2nd DCA 2011).

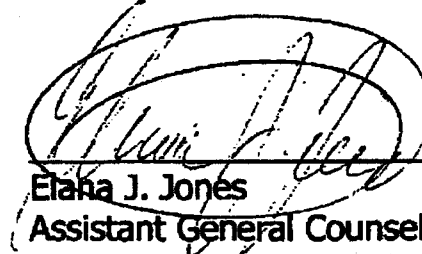
8. There is insufficient time for the Department to verify its attorneys' time spent on the case; prepare supporting affidavits for the amount of attorneys' time sought to be recovered; and obtain an outside expert attorney's opinion verifying the reasonableness of the time spent by the Department's attorneys on this matter or the amount of fees sought.

9. The bifurcation of the issue of cost recovery by the Department and its postponement to a later date will not cause any undo hardship to the Respondent as it will delay, rather than expedite, the date at which a Final Order on the assessment of cost would be entered against Respondent, and thus delay the date upon which any payment for costs would be due and owing.

10. Petitioner requests that the Board grant this motion, bifurcate the issue of assessment of costs and retain jurisdiction to assess costs against Respondent once the Department has obtained an outside expert attorney's opinion verifying the reasonableness of the time spent by the Department's attorneys on this matter or the amount of fees sought, obtains supporting affidavits for the amount of attorney's time sought to be recovered and brings a motion to assess costs before the Board of Medicine.

WHEREFORE, the Department of Health requests that the Board of Medicine enter an Order bifurcating the issue of cost assessment and retaining jurisdiction to assess costs against Respondent.

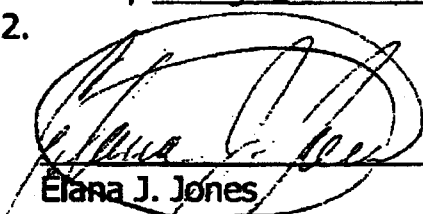
Respectfully submitted,



Elana J. Jones  
Assistant General Counsel  
Florida Bar No. 0078999  
DOH Prosecution Services Unit  
4052 Bald Cypress Way Bin-C-65  
Tallahassee, Florida 32399-3265  
(850) 245-4640 Telephone  
(850) 245-4681 Fax

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Bifurcate and Retain Jurisdiction to Assess Costs has been furnished via Electronic Mail to Counsels for Respondent, George F. Indest, III, Esquire, and Danielle Murray, Esquire, The Health Law Firm, 1101 Douglas Avenue, Altamonte Springs, Florida 32714, email [gindest@thehealthlawfirm.com](mailto:gindest@thehealthlawfirm.com) and [dmurray@thehealthlawfirm.com](mailto:dmurray@thehealthlawfirm.com) and Michael D'Lugo, Esquire, Wicker, Smith, O'Hara, McCoy and Ford, P.A., Post Office Box 2753, Orlando, Florida 32802, [mdlugo@wickersmith.com](mailto:mdlugo@wickersmith.com), this 2nd day of October, 2012.



Elana J. Jones  
Assistant General Counsel

### RULING ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. The Respondent's exception number 1 to paragraph 17 of the Recommended Order is rejected because there is competent substantial evidence in the record to support the Administrative Law Judge's findings and based upon reasons written and stated orally by the Petitioner.

2. The Respondent's exception number 2 to paragraph 38 of the Recommended Order regarding the applicability of the Doctrine of Laches to the circumstances presented in this case is rejected because there is competent substantial evidence in the record to support the Administrative Law Judge's findings and based upon reasons written and stated orally by the Petitioner.

3. The Respondent's exception number 3 regarding Respondent's right to due process is rejected for the reasons both written and stated by the Petitioner.

4. The Respondent's exception number 4 regarding the Administrative Law Judge's recommendation is rejected for the reasons both written and stated by the Petitioner.

### 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 are approved and adopted and incorporated herein by reference.

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 \$1,000.00 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 shall be and is hereby issued a letter of concern by the Board.

RULING ON MOTION TO BIFURCATE AND RETAIN JURISDICTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Bifurcate and Retain Jurisdiction to Assess Costs granted the Motion.

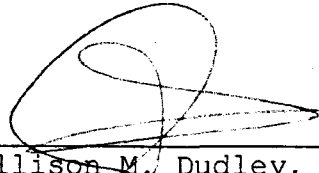


(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

DONE AND ORDERED this 12th day of December

2012.

BOARD OF MEDICINE

  
Allison M. Dudley, J.D., Executive Director  
For Jason J. 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 U.S. Mail to NEELAM UPPAL, M.D., Post Office Box 60357, St. Petersburg, Florida 33784; George F. Indest, III, Esquire, The Health Law Firm, 1101 Douglas Avenue, Altamonte Springs, Florida 32414; to J. Lawrence Johnston, Administrative Law Judge, Division of Administrative

Hearings, The DeSoto Building, 1230 Apalachee Parkway,  
Tallahassee, Florida 32399-3060; and by interoffice delivery to  
Sharmin Hibbert, Department of Health, 4052 Bald Cypress Way,  
Bin #C-65, Tallahassee, Florida 32399-3253 this 13<sup>th</sup> day of  
December, 2012.

Angel Sanders

**Deputy Agency Clerk**