

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-12-2308-**FOF**-MQA  
FILED DATE - **10-26-12**  
Department of Health  
By: *[Signature]*  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2008-28160  
DOAH CASE NO.: 12-1177PL  
LICENSE NO.: ME0066823

ROBERT DEAN MARSHALL, M.D.,

Respondent.

FINAL ORDER

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

2012 OCT 26 AM 11:46

FILED

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 12, 2012, in Deerfield Beach, 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 Veronica Donnelly, Assistant General Counsel. Respondent was not present and was not represented by counsel.

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

with the following modification: The Board reject the Finding of Fact in Paragraph 7 of the Recommended Order in which the Administrative Law Judge finds by "not participating in any manner in the hearing he requested to dispute the Administrative Complaint, Respondent effectively abandoned his license to practice medicine in Florida." While there is competent substantial evidence that Respondent did not participate in the hearing he requested there is nothing in the record that supports the conclusion that because Respondent chose not to defend against the Department's allegation he abandoned his license in Florida.

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

#### 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 with the following modification: The Board rejects the sentence in Paragraph 11 of the Recommended Order stating "Finally, Respondent has essentially abandoned his license by disappearing and not facing the charge of medical malpractice alleged by DOH." This legal conclusion, which is based on a

factual finding rejected by the Board, is not supported by any evidence or law. The ALJ has failed to cite to anything that supports his conclusion that a physician that chooses not to defend allegations brought by the Department of Health has, as a matter of law, abandoned his license to practice medicine. He also failed to cite to any law that provides that a licensee has any duty to defend against allegations made by the Department. The Board rejects this legal conclusion and finds that it reasonable to conclude that a licensee has not abandoned his license simply because he or she chose not to defend him or herself against allegations made by the Department of Health.

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's license to practice medicine in the State of Florida is hereby **REVOKED**.
  2. Respondent shall pay an administrative fine in the amount of \$10,000.00 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.
-

RULING ON MOTION TO BIFURCATE AND RETAIN JURISDICTION TO ASSESS COSTS

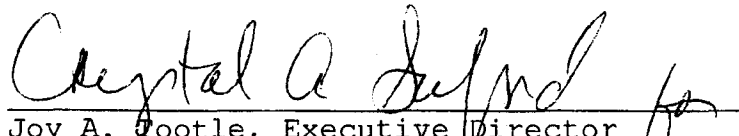
The Board reviewed the Petitioner's Motion to Bifurcate and Retain Jurisdiction To Assess Costs and upon Petitioner's Motion to waive the costs in this matter the Board voted to waive the costs.

(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 24<sup>th</sup> day of October,

2012.

BOARD OF MEDICINE

  
Joy A. Tootle, 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 **Certified Mail** to ROBERT DEAN MARSHALL, M.D., 400 E. Colonial Drive, Unit 310, Orlando, Florida 32803; and 5987 Southwest Moore Street, Palm City, Florida 34990; 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 25<sup>th</sup> day of October, 2012.

Angel Sanders

400 E. Colonial Dr., Unit 310  
Orlando, FL 32803

**Deputy Agency Clerk**

7012 1640 0000 3561 0642

5987 SW Moore St.

7012 1640 0000 3561 0659