STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,	)	
Petitioner,	)	
vs.	)	Case No. 12-1989PL
BARRY L. MIGICOVSKY, M.D.,	)	
Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 7, 2012, in Tallahassee Florida, before Edward T. Bauer, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jonathan R. Zachem, Esquire
Andre Ourso, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 South Monroe Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent committed the allegations contained in the Administrative Complaint, and if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On April 30, 2012, Petitioner, Department of Health, Board of Medicine, filed a one-count Administrative Complaint ("Complaint") against Respondent, Dr. Barry L. Migicovsky. Specifically, it is alleged that on February 4, 2011, Respondent committed an unauthorized procedure on patient V.C. in violation of section 456.072(1)(bb), Florida Statutes.[1/]

Respondent timely requested a formal hearing to contest the allegations, and, on June 5, 2012, the matter was referred to the Division of Administrative Hearings ("DOAH") and assigned to Administrative Law Judge John G. Van Laningham. On August 6, 2012, Judge Van Laningham transferred the instant matter to the undersigned.

As noted above, the final hearing in this matter was held on August 6, 2012, during which Petitioner presented the testimony of Respondent. Petitioner introduced nine exhibits into evidence, numbered 1-9, which included the deposition transcripts of patient V.C. and Ian Wooding, M.D. Respondent called no witnesses during the final hearing, but introduced one exhibit: the deposition transcript of Rene Mendoza.[2/]

The final hearing transcript was filed with DOAH on August 23, 2012. Both parties submitted proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. Petitioner Department of Health has regulatory jurisdiction over licensed physicians such as Respondent. In particular, Petitioner is authorized to file and prosecute an administrative complaint, as it has done in this instance, when a panel of the Board of Medicine has found probable cause exists to suspect that the physician has committed one or more disciplinable offenses.

2. At all times relevant to this proceeding, Respondent was a physician licensed in the State of Florida, having been issued license number ME 47469. Respondent's address of record is Gastroenterology Consultants, 4700-M Sheridan Street, Hollywood, Florida 33021.

3. Respondent, who has practiced medicine in the State of Florida since 1984 and is board-certified in the specialty of gastroenterology, has not been the subject of prior disciplinary action by the Board of Medicine.

4. At all times pertinent to this matter, Respondent enjoyed surgical privileges at Memorial Hospital West in Pembroke Pines, Florida.

B. The Allegations

5. On December 2, 2010, patient V.C., a 59-year-old registered nurse, presented to Respondent's medical office to seek treatment for gastrointestinal issues.

6. During the appointment, Respondent recommended that V.C. undergo a colonoscopy (for routine screening purposes), as well as an esophagogastroduodenoscopy——an upper endoscopy, or "EGD"——to address her symptoms of indigestion. Following a discussion of the risks and benefits of both procedures, V.C. provided informed, oral consent for Respondent to perform both procedures on a subsequent date.

7. As is customary in the medical field, Respondent delegates scheduling tasks to one or more of his employees.[3/] Consistent with this practice, a member of Respondent's staff scheduled V.C.'s colonoscopy and EGD for February 4, 2011, at Memorial Hospital West.

8. Several weeks before the scheduled procedures, one of Respondent's assistants telephoned V.C. and informed her (V.C.) that her health insurance carrier would not pay for the EGD because she had yet to exceed her $5,000 annual deductible.[4/] (V.C.'s insurer was, however, willing to assume the cost of the

colonoscopy). In response, V.C. advised Respondent's staff member, during the same telephone conversation, that she no longer wanted the EGD on February 4, 2011, and wished to delay that particular procedure until later in the year——at which time, presumably, V.C.'s deductible would be satisfied. Unfortunately, and for reasons that are not apparent from the record, Respondent's assistant never informed him of V.C.'s instruction to cancel the EGD.

9. On February 4, 2011, V.C. appeared at Memorial West Hospital to undergo her scheduled colonoscopy. At 1:30 p.m., a hospital nurse presented V.C. with a two-page document, which V.C. agreed to sign, titled "Consent to Surgery / Procedure." The pre-printed section of the consent form provided, in relevant part:

> I hereby authorize the physician(s) listed below and such assistants (which may include, without limitation, surgical resident and medical assistants employed by Memorial HealthCare System) as may be selected by him/her to perform the procedure known as . . . .

On the first page of the document, immediately below the above-quoted language, "colonoscopy" was handwritten in prominent (and legible) block script; no other procedures were listed.

10. At approximately 4:15 p.m., a member of the hospital staff presented Respondent with a copy of V.C.'s consent to surgery form. Consistent with his normal routine, Respondent

signed, but did not examine, the consent document; as a consequence, Respondent did not notice the conspicuous absence of the EGD procedure from the form.[5/]

11. Fifteen minutes later, V.C., who lay on a gurney and had yet to be placed under anesthesia, was moved to the surgical suite. Thereafter, at 4:48 p.m., while V.C. was still fully conscious, Respondent conducted a "timeout." That is, Respondent announced, to the members of his team, the identity of the patient, her date of birth, any allergies the patient may have had, and the procedures he intended to perform: a colonoscopy and an EGD. No member of the team objected, and, for reasons that are unclear, V.C.——who, by that time, had been fasting for more than 16 hours and has no recollection of what occurred during the "timeout"——remained silent.

12. Following the "timeout," a gastroenterology assistant, Rene Mendoza, instructed V.C. to open her mouth so that a bite block could be placed between her upper and lower teeth. Mr. Mendoza also informed V.C. that the bite block was intended to protect her teeth from the endoscope. V.C., although cooperative with the request, made no affirmative response to Mr. Mendoza's statements.

13. Moments later, general anesthesia was administered to V.C., at which point Respondent performed a colonoscopy and an EGD. Soon after the procedures were completed, Respondent

examined V.C.'s consent document and noticed that an EGD had not been listed. In lieu of an investigation into the matter (Respondent had not spoken personally with V.C. since the initial appointment on December 2, 2010), Respondent's immediate reaction was to add "upper endoscopy" next to "colonoscopy" on V.C.'s consent document. Wisely, however, Respondent quickly changed his mind and crossed through the added language.

14. Shortly thereafter, and prompted by the content of the consent document, Respondent learned for the first time of V.C.'s decision to delay the EGD. In a subsequent letter to Memorial West, Respondent chalked the incident up to a miscommunication between himself and one of his staff:

> From what I know at this present time, the insurance company . . . would not cover for an upper endoscopy, however this is the fact that I learned after the procedures had been performed on 2/4/11 . . . . Following the procedure I did look at the consent form and asked why only colonoscopy was written and why an endoscopy was not included. <u>There was miscommunication between my medical assistant and myself initially not knowing this above information</u> . . . . Unfortunately, due to the multiple areas of miscommunication despite our time-outs, things were missed and we will place better constraints to verify this does not happen again.

(emphasis added).

15. On or about February 9, 2011, Respondent made contact with V.C. and advised that he would waive all costs associated

with the EGD. With her financial concerns alleviated, V.C. is, at present, satisfied with Respondent's services, and, in retrospect, grateful that the EGD was performed.

C. Summary of Evidence / Findings of Ultimate Fact

16. Notwithstanding V.C.'s satisfaction with the final outcome, Respondent lacked V.C.'s authorization to conduct an EGD at the time it was performed——a fact of which Respondent should have been aware when the procedures were carried out. As detailed above, V.C. decided, based upon financial circumstances, to proceed only with the colonoscopy; this decision was communicated to one of Respondent's employees several weeks in advance of February 4, 2011, and reflected in the consent document that Respondent had in his possession before the EGD was performed.

17. It is determined, as a matter of ultimate fact, that Respondent performed an unauthorized procedure (an EGD), and is therefore in violation of section 456.072(1)(bb), Florida Statutes.

CONCLUSIONS OF LAW

A. Jurisdiction

18. DOAH has jurisdiction over the parties and subject matter of this cause, pursuant to section 120.57(1), Florida Statutes.

B. The Burden and Standard of Proof

19. This is a disciplinary proceeding in which Petitioner seeks to discipline Respondent's license to practice medicine. Accordingly, Petitioner must prove the allegations contained in Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin., Div. of Secs. & Investor Prot. v. Osborne Sterne, Inc., 670 So. 2d 932, 935 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292, 294 (Fla. 1987). Clear and convincing evidence:

> [R]equires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

C. The Charge Against Respondent

20. Petitioner alleges in the Administrative Complaint that Respondent performed an EGD upon V.C. without her consent, and is therefore in violation of section 456.072(1)(bb), which provides that a physician is subject to discipline for:

> Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or

> medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.

(emphasis added).

21. Before proceeding further, the undersigned would note the absence of any dispute that V.C., during her December 2010 office appointment with Respondent, provided informed consent to undergo both a colonoscopy and an EGD. What is contested, however, is: whether V.C.'s initial consent to an EGD was revoked by operation of her statements to Respondent's employee and/or by Respondent's receipt (prior to the EGD) of a written consent form that listed a colonoscopy as the only authorized procedure; and, if so, whether the EGD was authorized by virtue of V.C.'s silence during the "timeout" and the subsequent placement of a bite plate.

22. Beginning with the first issue, it is axiomatic that V.C.'s initial consent to undergo the EGD cannot be deemed withdrawn unless Respondent was provided with adequate notice of V.C.'s subsequent decision to delay the procedure. See generally United States v. McMullin, 576 F.3d 810, 818 (8th Cir. 2009)(holding that once consent is given, it may be withdrawn, but only by an unequivocal act or statement). With that in mind, Petitioner contends that V.C.'s instruction to Respondent's assistant——during a telephone call initiated by the

assistant to discuss insurance coverage issues with the EGD——to postpone the EGD until a later date was sufficient to revoke V.C.'s consent. The undersigned agrees, as it is well-settled that the knowledge of an agent, Respondent's assistant in this instance, is presumptively imputed to the agent's principal.[6/] Davies v. Owens-Illinois, Inc., 632 So. 2d 1065, 1066 (Fla. 3d DCA 1994)("Whatever knowledge an agent acquires within the scope of his authority is imputed to his or her principal"); Anderson v. Walthal, 468 So. 2d 291, 294 (Fla. 1st DCA 1985)(same as Davies); Yorston v. Pennell, 153 A.2d 255, 259-62 (Pa. 1959) (holding physician was liable for patient's injuries that resulted from administration of penicillin, to which the patient was allergic, where physician's agents were informed of the allergy but neglected to record the information in the patient's chart).

23. Assuming arguendo that V.C.'s statement to Respondent's assistant cannot be imputed to him, Respondent's receipt of the written consent document——prior to the procedures——placed him on inquiry notice (i.e., implied actual notice) of V.C.'s intent to proceed only with a colonoscopy; that Respondent chose not read the form until after the procedures were completed does not insulate him from responsibility. As the Supreme Court of Florida has explained:

> The principle applied in cases of alleged implied actual notice is that a person has no right to shut his eyes or ears to avoid information, and then say that he has no notice; that it will not suffice the law to remain willfull[y] ignorant of a thing readily ascertainable by whatever party puts him on inquiry, when the means of knowledge is at hand.

Sapp v. Warner, 141 So. 124, 255 (Fla. 1932); Tarin v. Sniezek, 942 So. 2d 458, 461 (Fla. 4th DCA 2006)(holding that appellant had implied actual notice of his property's boundaries; "When Tarin received the survey upon purchase of his property, he was charged with notice of its true boundaries. His assertion that he did not understand or did not read the survey does not serve as a defense"); Crown Gen. Stores v. Ultra Meat Mkt. Inc., 843 So. 2d 287, 289-90 (Fla. 3d DCA 2003)(holding that assignee had implied actual notice of a pre-existing interest in a leasehold; "[T]he information giving rise to inquiry notice does not have to be as precise as appellee would have this court hold . . . . Contrary to [appellee's] contentions, the document did not have to specifically mention that the debt was owed to Crown nor lead the purchaser to a recorded document evidencing the debt. The circumstances may reasonably suggest the necessity of inquiry"); Belcher v. Ferrara, 511 So. 2d 1089, 1090 (Fla. 3d DCA 1987) ("Belcher contended that he had no knowledge of [his] attorney's withdrawal or the trial date. Notice is imputed to him however because he failed to open his mail").

24. As explained above, V.C.'s authorization to proceed with an EGD was revoked, at the very latest, upon Respondent's receipt of the consent document.[7/] Respondent suggests, however, that V.C.'s silence during the subsequent timeout period——when Respondent announced to his medical team that a colonoscopy and EGD would be performed——and the placement of a bite block provided implied consent to proceed with the EGD. This contention is unavailing, however, as Florida courts adhere to the view that a patient's consent to a medical procedure can be implied only in cases of emergency, a factual scenario not presented here:

> [A]ppellee argues that Mrs. Pino's consent for treatment was implied under the circumstances. This is wrong. As we have seen, a competent individual who needs immediate, lifesaving treatment has the right to refuse it. And the legal definition of an "emergency" . . . which we are bound to follow, is one in which the situation calls for immediate medical treatment and it is not feasible to obtain consent from one legally permitted to provide it. Only when this latter situation exists is a patient's consent for treatment implied.

Rodriguez v. Pino, 634 So. 2d 681, 687 (Fla. 3d DCA 1994) (emphasis added)(internal citations omitted); see also Allore v. Flower Hosp., 699 N.E.2d 560, 564 (Ohio Ct. App. 1997)(observing that a physician's "acts are lawful when the patient expressly consents prior to medical treatment. Medical treatment will

also be lawful under the doctrine of implied consent when a medical emergency requires immediate action to preserve the health or life of the patient")(internal citation omitted); Tisdale v. Pruitt, 394 S.E.2d 857, 858-60 (S.C. Ct. App. 1990) (holding that patient's silence did not provide physician with implied consent to perform a dilation and curettage, a non-emergency procedure); Schloendorff v. Soc'y of N.Y. Hosp., 105 N.E. 92, 93 (N.Y. 1914)(Cardozo, J.)(cited with approval in Rodriguez, 634 So. 2d at 687; "[A] surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable . . . . This is true except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent is obtained.").

25. Even assuming that consent can be implied in the context of a non-emergency, Respondent's silence cannot be reasonably interpreted as consent under the circumstances presented. First, Respondent's announcement during the "timeout" was not directed specifically to V.C.; rather, the comments (e.g., V.C.'s name, allergies, date of birth, and the procedures to be conducted) were, as required by rule, a communication to the medical team as the final line of defense against the performance of a wrong patient/site procedure.[8/] In other words, the comments were not intended to confirm the patient's assent to the procedures, for if they were, it makes

little sense that Respondent proceeded with the EGD in the face of V.C.'s silence. Further, there is an absence of evidence that V.C. (who, albeit conscious, had not consumed food or water for at least 16 hours when the "timeout" occurred) heard or comprehended Respondent's announcement. Finally, it is not reasonable, regardless of V.C.'s professional background, to expect her to object——while lying vulnerably on the procedure table——to the instructions of a member of the medical team just moments before the administration of anesthesia.

26. For the reasons detailed above, Respondent lacked V.C.'s consent to proceed with an EGD at the time it was performed. Accordingly, Respondent is in violation of section 456.072(1)(bb).

D. Penalty

27. In determining the appropriate punitive action to recommend in this case, it is necessary to consult the Board of Medicine's disciplinary guidelines, which impose restrictions and limitations on the exercise of the Board's disciplinary authority under section 458.331. See Parrot Heads, Inc. v. Dep't of Bus. & Prof'l Reg., 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999).

28. The Board's guidelines for a violation of section 458.331 are enumerated in Florida Administrative Code Rule 64B8-8.001. With respect to Respondent's violation of section

456.072(1)(bb), a first offense, rule 64B8-8.001(2)(ss) provides the following penalty range:

> From a $1,000 fine, a letter of concern, a minimum of five hours of risk management education, and one hour lecture on wrong-site surgery in the State of Florida to a $10,000 fine, a letter of concern, a minimum of five hours of risk management education, 50 to 100 hours of community service, undergo a risk management assessment, a one hour lecture on wrong-site surgery, and suspension to be followed by a term of probation.

29. Rule 64B8-8.001(3) provides that, in applying the penalty guidelines, the following aggravating and mitigation circumstances may be taken into account:

> (a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;
>
> (b) Legal status at the time of the offense: no restraints, or legal constraints;
>
> (c) The number of counts or separate offenses established;
>
> (d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;
>
> (e) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;
>
> (f) Pecuniary benefit or self-gain inuring to the applicant or licensee;
>
> (g) The involvement in any violation of Section 458.331, F.S., of the provision of controlled substances for trade, barter or

> sale, by a licensee. In such cases, the Board will deviate from the penalties recommended above and impose suspension or revocation of licensure.
>
> (h) Where a licensee has been charged with violating the standard of care pursuant to Section 458.331(1)(t), F.S., but the licensee, who is also the records owner pursuant to Section 456.057(1), F.S., fails to keep and/or produce the medical records.
>
> (i) Any other relevant mitigating factors.

30. In its Proposed Recommended Order, Petitioner concedes that four mitigating factors are present: Respondent's lack of prior discipline over his 24 years of practice; the commission of only one violation of law; the absence of any pecuniary benefit; and the lack of exposure of the patient (or the public) to physical harm. In light of these mitigators, Petitioner seeks a letter of concern, a fine of $5,000, five hours of risk management education, and a one-hour lecture on wrong-site surgeries.

31. The undersigned is in agreement with Petitioner's recommendation, with one exception: a fine of $750.00, which falls just below the bottom end of the penalty range, is more appropriate in light of the multiple factors that support mitigation and Respondent's commendable decision to assume the cost of the EGD. It is also evident that Respondent has learned from this incident and, as a consequence, is unlikely to violate section 456.072(1)(bb) in the future.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Board of Medicine:

1. Finding that Respondent violated section 456.072(1)(bb), Florida Statutes, as charged in Count I of the Complaint;

2. Issuing Respondent a letter of concern;

3. Imposing a fine of $750.00;

4. Ordering Respondent to complete five hours of risk management education; and

5. Ordering Respondent to attend a one-hour lecture on wrong-site surgeries.

DONE AND ENTERED this 21st day of September, 2012, in Tallahassee, Leon County, Florida.

EDWARD T. BAUER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of September, 2012.

ENDNOTES

[1/] Unless noted otherwise, all references to the Florida Statutes are to the 2011 version.

[2/] The deposition transcripts introduced by Petitioner and Respondent have been received in lieu of the witnesses' live testimony.

[3/] See Final Hearing Transcript, pp. 48-49.

[4/] See Petitioner's Exhibit 5, pp. 11-12.

[5/] Respondent explained during his final hearing testimony that he prefers to rely upon his own records, as opposed to those of the hospital.

[6/] The undersigned finds distinguishable the case of Pic N' Save, Inc., v. Department of Business Regulation, 601 So. 2d 245 (Fla. 1st DCA 1992). In Pic N' Save, the court held that the holder of a beverage license could not be punished for the unlawful actions of its employees (the sale of alcoholic beverages to minors) in the absence of evidence that the "employees acted in a 'persistent and practiced manner' when making the illegal sales." 601 So. 2d at 254. In the present matter, by contrast, there is no attempt to punish Respondent for the unlawful conduct of an employee; indeed, the failure of Respondent's employee to inform him of V.C.'s decision to delay the EGD, although an error, was in no manner illicit. The legal principle at issue in this cause, which Pic N' Save does not address, is whether the information conveyed by V.C. to Respondent's employee (within the scope of employment) should be imputed to Respondent, thereby rendering Respondent's own conduct——the performance of the EGD——punishable.

The undersigned also rejects Respondent's suggestion that Petitioner seeks to punish him for an offense not charged in the Complaint. Although the Complaint arguably could have included additional factual detail, it was sufficiently specific to provide Respondent "reasonable notice of the charge[] against which [he] was ultimately expected to defend"——i.e., the performance of an EGD without the patient's consent. Wood v. Dep't of Transp., 325 So. 2d 25, 28 (Fla. 4th DCA 1976).

[7/] This conclusion does not run afoul of the result in Department of Health, Board of Medicine v. Sharma, Case No. 10-2416 (Fla. DOAH Feb. 16, 2011; DOH Apr. 11, 2011). In Sharma, the patient provided (during an office visit) oral consent to

undergo an EGD and a colonoscopy, both of which were to be performed at a hospital on subsequent (and separate) dates. On the day of the colonoscopy, the first procedure scheduled, the patient signed a "Consent for Operative and Invasive Procedures" form that authorized the physician to perform a colonoscopy. Approximately one hour before the procedure, however, the patient complained of nausea, vomiting, and abdominal pain, symptoms which led the physician to recommend to the patient that they proceed on that day with the EGD instead of the colonoscopy. After a thorough discussion, the patient agreed with the recommendation and provided oral consent to conduct an EGD. Although the EGD was completed without incident, the physician was later charged with performing a wrong procedure, in violation of 456.072(1)(bb), based upon the fact that the hospital consent form had not been amended to reflect the change of plans. In finding the physician not guilty, the ALJ concluded that written consent was unnecessary and that the patient's oral consent was sufficient.

While the reasoning of Sharma is sound, the facts of the instant case are distinguishable. First, Petitioner neither contests the validity of V.C.'s oral consent to undergo an EGD, nor does it argue that Respondent was obligated to obtain written consent for an EGD at any time. Further, in contrast to Sharma, where the patient got exactly what she expected, V.C. did not desire an EGD at the time Respondent performed it. Finally, unlike Sharma, which involved the (unsuccessful) theory that written consent is required, the consent document in the present case is relevant only to the extent that it provided a vehicle by which Respondent was placed on inquiry notice that V.C.'s consent to an EGD had been revoked.

To be clear, Respondent is not being convicted of performing an unauthorized procedure simply because the consent document did not list an EGD; indeed, from a licensure standpoint, no consent form was required at all. Instead, Respondent's guilt is predicated upon his performance of a procedure for which consent had been revoked, a fact of which he should have been aware.

[8/] Florida Administrative Code Rule 64B8-9.007(2)(b) describes the "timeout" process as follows:

> Except in life-threatening emergencies requiring immediate resuscitative measures, once the patient has been prepared for the

> elective surgery/procedure and the team has been gathered and immediately prior to the initiation of any procedure, the team will pause and the physician(s) performing the procedure will verbally confirm the patient's identification, the intended procedure and the correct surgical/procedure site. The operating physician shall not make any incision or perform any surgery or procedure prior to performing this required confirmation. The medical record shall specifically reflect when this confirmation procedure was completed and which personnel on the team confirmed each item. This requirement for confirmation applies to physicians performing procedures either in office settings or facilities licensed pursuant to Chapter 395, F.S., and shall be in addition to any other requirements that may be required by the office or facility.

(emphasis added).

COPIES FURNISHED:

Brian A. Newman, Esquire
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
215 South Monroe Street, Suite 200
Tallahassee, Florida 32301

Jonathan R. Zachem, Esquire
Andre Ourso, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

Jennifer A. Tschetter, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1701

Joy Tootle, Executive Director
Board of Medicine
Department of Health
4052 Bald Cypress Way
Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.