

STATE OF FLORIDA  
BOARD OF MEDICINE

FILED DATE DEC 17 2012  
Department of Health

By: [Signature]  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2011-16915  
DOAH CASE NO.: 12-1989PL  
LICENSE NO.: ME0047469

BARRY L. MIGICOVSKY, M.D.,

Respondent.

2012 DEC 18 AM 10 58  
FILED  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

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, and Exceptions to the Recommended Order, (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Diane Kiesling, Assistant General Counsel. Respondent was represented by Brian Newman, 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.

## RULING ON EXCEPTIONS

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

1. Respondent's exception number 1 to paragraph 10 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 orally stated by the Petitioner.

2. Respondent's exception number 2 to paragraph 11 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 orally stated by the Petitioner.

3. Respondent's exception number 3 to paragraph 12 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 orally stated by the Petitioner.

4. Respondent's exception number 4 to paragraph 16 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 orally stated by the Petitioner.

5. Respondent's exception number 5 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 orally stated by the Petitioner.

6. Respondent's exception number 6 to paragraph 22 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 orally stated by the Petitioner.

7. Respondent's exception number 7 to paragraphs 23 - 26 of the Recommended Order is rejected based upon the reasons orally stated by the Petitioner.

8. Respondent's exception number 8 to the recommended penalty in the Recommended Order is rejected because there is competent substantial evidence in the record to support the Administrative Law Judge's recommended penalty and based upon reasons orally 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 \$750.00 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 document the completion of five (5) hours of continuing medical education (CME) in the area of risk management within one (1) year from the date this Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Unless otherwise approved by the Board or the Chairperson of the Probation

Committee, said continuing education courses shall consist of a formal live lecture format.

3. Within one (1) year from the date this Final Order is filed, Respondent shall **attend** a one hour lecture which addresses the subject of wrong site surgery. Documentation of completion of said lecture shall be provided to the Board's Probation Committee.

4. 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

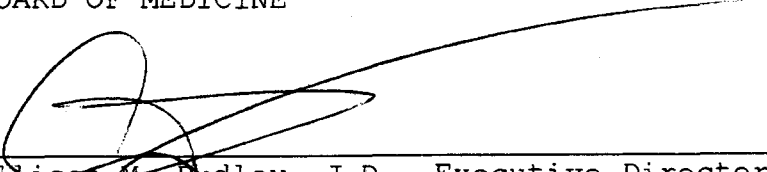
The Board reviewed the Petitioner's Motion to Bifurcate and Retain Jurisdiction to Assess Costs granted the Motion.

**(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 14<sup>th</sup> 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 BARRY L. MIGICOVSKY, M.D., Gastroenterology Consultants, 4700-M Sheridan Street, Suite M, Hollywood, Florida 33021; to Brian A. Newman, Esquire, 215 S. Monroe Street, Suite 200, Tallahassee, Florida 32301; 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 Sharmin Hibbert, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 17<sup>th</sup> day of December, 2012.

Angel Sanders

**Deputy Agency Clerk**