

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 12-2391PL
)
R. GEORGE FARHAT, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On August 29, 2012, an administrative hearing was held in this case in Tampa, Florida. The Administrative Law Judge (ALJ), J. Lawrence Johnston, participated telephonically.

APPEARANCES

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

For Respondent: R. George Farhat, M.D., pro se
411 Cleveland Street
Clearwater, Florida 33755

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent should be disciplined for being terminated from a treatment program for impaired practitioners by the Physician's Resource Network.

PRELIMINARY STATEMENT

Petitioner, the Department of Health (DOH), filed an Administrative Complaint (DOH Case 2009-21209) against Respondent on April 23, 2012. Respondent disputed the facts and requested an administrative hearing. The matter was referred to the Division of Administrative Hearings for assignment of the ALJ, who scheduled the case for a hearing on August 28 and 29 (later changed to August 29 only) in Tampa. When it appeared that Respondent might not attend the hearing and that DOH's only other witness would be testifying by telephone, the ALJ arranged to participate telephonically. On August 24, certain facts were deemed admitted for failure to timely respond to DOH's request for admissions.

Respondent appeared for the final hearing and was allowed to amend the facts admitted. DOH then called Debra Troupe and Respondent to testify and had Petitioner's Exhibits 1, 2, and 3 admitted in evidence. Respondent testified in his own behalf.

The Transcript of the final hearing was filed on September 18. DOH filed a Proposed Recommended Order, which has been considered. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Respondent, R. George Farhat, M.D., is licensed as a medical doctor in Florida, holding license ME 69982.

2. In March 2005, Respondent entered into a chemical dependency monitoring contract with Professional Resources Network (PRN), an approved treatment provider for impaired practitioners.

3. In February 2009, Respondent tested positive for alcohol on a urine screen. In March 2009, PRN referred Respondent for psychiatric evaluation because of the test result.

4. Respondent did not cooperate with the evaluation. Specifically, Respondent did not sign the release for the psychiatrist to forward his evaluation to PRN. In addition, the evaluating psychiatrist required that Respondent undergo a psychological evaluation. Respondent did not cooperate and did not undergo psychological evaluation, as required by the PRN psychiatrist. As a result, the PRN psychiatrist was unable to complete his evaluation and was unwilling to opine that it would be safe for Respondent to return to the practice of medicine.

5. After receiving the psychiatrist's report, PRN terminated Respondent for violation of the terms of his monitoring contract by failing to obtain the required evaluation. As a result, PRN referred Respondent back to DOH for appropriate action.

6. Respondent did not have good cause for not complying with the terms of his monitoring contract.

7. During the time period at least from the end of August 2012 through the date of the final hearing, Respondent has been in a treatment program at a hospital in Clearwater called Windmoor. No evidence was presented as to the reason for or nature of the treatment.

8. Other findings proposed by Petitioner were not supported by competent, substantial evidence but rather only by hearsay evidence that would not be admissible over objection in civil actions. See Conclusion 10, infra.

CONCLUSIONS OF LAW

9. Section 456.072(1)(hh), Florida Statutes (2009), subjects a physician to discipline for being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in section 456.076, for failure to comply, without good cause, with terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

10. Because it seeks to impose license discipline, DOH has the burden to prove its allegations by clear and convincing evidence. See Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). This "entails both a qualitative and quantitative standard. The evidence must be credible; the

memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy." In re Davey, 645 So. 2d 398, 404 (Fla. 1994). See also Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). "Although this standard of proof may be met where the evidence is in conflict, . . . it seems to preclude evidence that is ambiguous." Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc., 590 So. 2d 986, 988 (Fla. 1st DCA 1991). DOH met its burden of proof as to the allegations in the Administrative Complaint. The burden was not met as to findings proposed by Petitioner that were supported only by hearsay evidence that would not be admissible over objection in civil actions. See § 120.57(1)(c), Fla. Stat. (2012). Unlike in Avalon's Assisted Living, LLC v. Ag. for Health Care Admin., 80 So. 3d 347, 351 (Fla. 1st DCA 2011), Respondent did not object on grounds of hearsay. Nonetheless, the hearsay evidence would not support a finding. See Yost v. Unemployment Appeals Comm'n, 848 So. 2d 1235, 1237-38 (Fla. 2d DCA 2003); Harris v. Game & Fresh Water Fish Comm'n, 495 So. 2d 806, 808 (Fla. 1st DCA 1986).

11. Petitioner incorrectly proposes that discipline should be imposed under Florida Administrative Code Rule 64B8-8.001(2)(hh) (Revised Feb. 2009) for improperly interfering with an investigation or a disciplinary proceeding in violation of

section 458.331(1)(hh). The correct disciplinary guideline is rule 64B8-8.001(2)(vv), under which the recommended penalty for the first violation of section 456.072(1)(hh) is: suspension until compliance with all terms of the monitoring or treatment contract and demonstration of ability to practice with reasonable skill and safety to be followed by a term of probation; and a fine of \$1,000 to \$2,500. (The rule cites to paragraph (gg) of the statute, but it is clear from the word description in the rule that paragraph (hh) was intended.) In this case, a \$2,000 fine is appropriate to accomplish the purpose of penalizing offending licensees, which includes punishing them for their violations and deterring them and other licensees from committing future violations. Fla. Admin. Code R. 64B8-8.001(2). Consideration of the aggravating and mitigating factors in paragraph (3) of the rule would not alter the appropriate penalty.

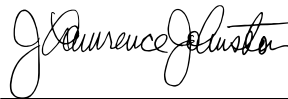
12. Under section 456.072(4), the Board of Medicine in its final order shall assess costs related to the investigation and prosecution of the case. Costs to be assessed under the statute include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Medicine enter a final order: finding Respondent guilty as charged; suspending his license until he complies with all terms of his monitoring contract and demonstrates his ability to practice with reasonable skill and safety, to be followed by a term of probation as determined by the Board of Medicine to be appropriate when the suspension is lifted; fining him \$2,000; and assessing the costs of the investigation and prosecution of the case.

DONE AND ENTERED this 9th day of October, 2012, in Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of October, 2012.

COPIES FURNISHED:

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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.