

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 12-2629PL  
 )  
RAMON A. PICHARDO, M.D., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Edward T. Bauer, an Administrative Law Judge of the Division of Administrative Hearings, on December 6, 2012, by video teleconference at sites in Tallahassee and Miami, Florida.

APPEARANCES

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

For Respondent: Ramon A. Pichardo, M.D., pro se  
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Miami, Florida 33194

STATEMENT OF THE ISSUES

Whether Respondent committed the allegations contained in the Administrative Complaint, and if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On March 30, 2009, the Department of Health, Board of Medicine ("Petitioner"), filed a one-count Administrative Complaint ("Complaint") against Respondent, Ramon A. Pichardo. In the Complaint, Petitioner alleges that Respondent entered a plea to a crime that directly relates to the practice of medicine or the ability to practice medicine, contrary to section 458.331(1)(c), Florida Statutes. After a period of delay, Respondent's request for a formal hearing was referred to the Division of Administrative Hearings ("DOAH") on August 8, 2012. Thereafter, on December 5, 2012, Administrative Law Judge John G. Van Laningham transferred the instant matter to the undersigned to conduct further proceedings.

As noted above, the final hearing in this matter was held on December 6, 2012, during which Petitioner introduced five exhibits, numbered 1-5. Respondent testified on his own behalf and introduced 13 exhibits, labeled 1-8, 10-11, and 13-15.

The final hearing Transcript was filed with DOAH on December 26, 2012. Subsequently, on December 31, 2012, the undersigned granted Petitioner's unopposed request to extend the deadline for the submission of proposed recommended orders to January 18, 2013. Both parties timely submitted proposed recommended orders, which have been considered in the preparation of this Recommended Order.<sup>1/</sup>

## 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. In or around 2002, Petitioner issued Respondent a restricted medical license that was thereafter converted, on June 19, 2004, to an unrestricted license to practice medicine in the State of Florida (number ME 90680).

### B. Instant Allegations

3. On May 22, 2008, Respondent was indicted in the United States District Court for the Southern District of Florida with nine criminal charges, all but one of which were ultimately dismissed.

4. Count Two of the indictment—to which a guilty plea was later entered—alleged that Respondent, in violation of 18 U.S.C. § 1349, conspired with a fellow physician to commit

health care fraud, an offense prohibited by 18 U.S.C. § 1347.

In relevant part, Count Two provided:

COUNT 2

Conspiracy to Commit Health Care Fraud  
(18 U.S.C. § 1349)

1. Paragraphs 1 through 9 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around November 2002, through in or around April 2004. . . the defendants,

CARLOS CONTRERAS  
and  
RAMON PICHARDO,

did knowingly and willfully combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program . . . by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for CARLOS CONTRERAS, RAMON PICHARDO, and their co-conspirators to unlawfully enrich themselves by, among other things, (a) submitting false and fraudulent claims to Medicare; (b) offering and paying cash kickbacks and bribes to Medicare beneficiaries for the purpose of such beneficiaries arranging for the use of their

Medicare beneficiary numbers by the conspirators as the bases of claims filed for HIV infusion therapy; (c) concealing the submission of false and fraudulent claims to Medicare, the receipt and transfer of the proceeds from the fraud, the payment of kickbacks; and (d) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

MANNER AND MEANS

4. The allegations in paragraphs 4 through 10 of the Manner and Means Section of Count 1 of this Indictment are incorporated as though fully set forth herein as a description of the Manner and Means of this conspiracy.

All in violation of Title 18, United States Code, Section 1349.

(emphasis added).

5. As indicated above, Count Two of the indictment incorporated the general allegations contained in paragraphs one through nine of the charging instrument, as well as paragraphs four through ten of the "Manner and Means" section of Count One. Those incorporated paragraphs alleged, in relevant part:

General Allegations

At all times relevant to this Indictment:

1. The Medicare Program was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS") . . . .

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

3. "Part B" of the Medicare program paid Medicare providers and suppliers for covered goods and services, including medically necessary Human Immunodeficiency Virus ("HIV") infusion therapy, that were provided and ordered by physicians, clinics, and other qualified health care providers. . . .

4. Payments under the Medicare program were often made directly to a provider of the goods or services, rather than the beneficiary. This occurred when the provider accepted assignment of the right to payment from the beneficiary. In that case, the provider submitted the claim to Medicare for payment, either directly or through a billing company.

5. Physicians, clinics, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a "provider number." A health care provider who was issued a Medicare provider number was able to file claims . . . to obtain reimbursement for services provided to beneficiaries. . . .

6. C.N.C. Medical Corp. ("CNC Medical") was a Florida corporation, purportedly doing business . . . [in] Miami, Florida. . . . CNC Medical was a medical clinic that purported to specialize in treating patients with HIV by providing infusion therapy. From in or around November 2002 through in or around April 2004, approximately \$6.8 million in claims were submitted to the Medicare program for HIV infusion services allegedly rendered at CNC Medical.

7. Defendant Contreras, a resident of Miami-Dade County, was a medical doctor who purported to order and provide HIV infusion services to Medicare beneficiaries at CNC

Medical. Contreras was also the president, director, and registered agent of CNC Medical.

8. Defendant RAMON PICHARDO, a resident of Miami-Dade County, was a medical doctor who purported to order and provide HIV infusion services to Medicare beneficiaries at CNC Medical.

9. From in or around November 2002 through April 2004, CNC Medical submitted claims to Medicare under the provider number of [Respondent's co-defendant], which was 03813.

\* \* \*

MANNER AND MEANS

The manner and means by which Carlos Contreras, Ramon Pichardo, and their co-conspirators . . . sought to accomplish the objects and purpose of the conspiracy included, among other things as follows:

4. CARLOS CONTRERAS would cause the establishment and incorporation of CNC Medical in the State of Florida and serve as president, director, and registered agent of CNC Medical.

5. CARLOS CONTRERAS would work as a physician at CNC Medical, and be an authorized signer on the CNC Medical bank accounts.

6. RAMON PICHARDO would work as a physician at CNC Medical.

7. CARLOS CONTRERAS, RAMON PICHARDO, and their co-conspirators . . . would cause unnecessary tests to be ordered, medical forms to be signed, and treatments to be authorized to make it appear that legitimate services were being provided to Medicare beneficiaries at CNC Medical.

8. CARLOS CONTRERAS, RAMON PICHARDO, and their co-conspirators . . . would cause the payment of cash kickbacks to Medicare beneficiaries in exchange for the patients signing documents at CNC Medical stating that they had received the treatments that were billed to Medicare, when those treatments were not provided and were not medically necessary.

9. CARLOS CONTRERAS, RAMON PICHARDO, and their co-conspirators . . . would cause the submission of approximately \$6.8 million in claims to the Medicare program under the provider number of CNC Medical, for services that were never provided and services that were not medically necessary.

10. After reimbursements from Medicare were deposited into CNC Medical's bank accounts, CARLOS CONTRERAS and his co-conspirators . . . would cause to transfer approximately \$1.7 million to sham management, marketing and investment companies owned and operated by their co-conspirators, and approximately \$244,000 to other fraudulent HIV infusion clinics owned and operated by their co-conspirators.

6. On or about September 11, 2008, Respondent entered into a plea bargain whereby he agreed to plead guilty to Count Two of the indictment; in return, the government agreed to dismiss Respondent's 11 remaining charges at the conclusion of the sentencing process. Attached to the written plea agreement is a two-page statement signed by Respondent that, by its terms, was made "knowingly and voluntarily and because [Respondent is] in fact guilty of the crimes charged." Consistent with the allegations contained in the indictment, Respondent admitted



credibly in the statement, among other things, that he: willfully conspired to commit health care fraud with Dr. Contreras and other individuals; approved costly and medically unnecessary HIV infusion treatments in furtherance of the conspiracy; signed documents that contained false information about treatments purportedly provided to beneficiaries; and approved, in conjunction with Dr. Contreras, fraudulent medical bills totaling approximately \$6.8 million. Finally, Respondent acknowledges in the statement that approximately \$4.2 million in fraudulent claims were ultimately paid to CNC Medical by the Medicare Program.

7. Subsequently, on November 20, 2008, was adjudicated guilty of Count Two of the indictment and sentenced to a 48-month prison term, to be followed by three years of supervised release. In addition, Respondent was ordered to pay restitution in the amount of \$4.2 million.

#### CONCLUSIONS OF LAW

##### A. Jurisdiction

8. 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

9. This is a disciplinary proceeding in which Petitioner seeks to discipline Respondent's professional license.

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).

10. 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. Petitioner's Authority to Impose Discipline; The Charge Against Respondent

11. Section 458.331(1), Florida Statutes, authorizes the Board of Medicine to impose penalties ranging from the issuance of a letter of concern to revocation of a physician's license to practice medicine in Florida if a physician commits one or more acts specified therein.

12. In the Complaint, Petitioner alleges that Respondent is in violation of section 458.331(1)(c), Florida Statutes, which provides:

(1) The following acts constitute grounds for . . . disciplinary action, as specified in s. 456.072(2):

\* \* \*

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

(emphasis added).

13. Pursuant to the findings of fact contained herein, Petitioner has adduced clear and convincing evidence that Respondent pleaded guilty to, and was ultimately convicted of, one count of conspiracy to commit health care fraud. To determine whether this conviction renders Respondent subject to discipline, the undersigned need look no further than Doll v. Department of Health, 969 So. 2d 1103 (Fla. 1st DCA 2007), wherein the court held that a chiropractor's guilty plea to conspiracy to defraud a health beneficiary program related to the practice of medicine or the ability to practice medicine. The First District explained:

Several cases demonstrate that, although the statutory definition of a particular profession does not specifically refer to acts involved in the crime committed, the crime may nevertheless relate to the profession. In *Greenwald v. Department of Professional Regulation*, the court affirmed the revocation of a medical doctor's license after the doctor was convicted of solicitation to commit first-degree murder. 501 So. 2d 740 (Fla. 3d DCA 1987). The Fifth District Court of Appeal has held that although an accountant's fraudulent acts

involving gambling did not relate to his technical ability to practice public accounting, the acts did justify revocation of the accountant's license for being convicted of a crime that directly relates to the practice of public accounting. *Ashe v. Dep't of Prof'l Regulation, Bd. of Accountancy*, 467 So. 2d 814 (Fla. 5th DCA 1985). We held in *Rush v. Department of Professional Regulation, Board of Podiatry*, that a conviction for conspiracy to import marijuana is directly related to the practice or ability to practice podiatry. 448 So. 2d 26 (Fla. 1st DCA 1984). These cases demonstrate, in our view, that appellee did not err by concluding Doll's conviction was "related to" the practice of chiropractic medicine or the ability to practice chiropractic medicine. We therefore affirm appellee's actions finding appellant in violation of section 456.072(1)(c) and revoking appellant's license.

969 So. 2d at 1006; see also Dep't of Health v. Zamora, Case No. 07-1454PL, 2007 Fla. Div. Adm. Hear. LEXIS 405, \*24 (Fla. DOAH July 20, 2007; Fla. DOH Oct. 19, 2007) (concluding that physician's conviction for conspiracy to commit health care fraud related to the practice of medicine or the ability to practice medicine).

14. It is concluded, pursuant to the reasoning expressed in Doll, that Respondent's crime—a scheme to defraud the Medicare Program of millions of dollars through the approval of unnecessary treatments and the submission of fraudulent claims—relates to the practice of medicine or the ability to practice medicine. Accordingly, Petitioner is guilty of

violating section 458.331(1)(c), as charged in Count One of the Complaint.<sup>2/</sup>

D. Penalty

15. 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).

16. Florida Administrative Code Rule 64B8-8.001(2)(c)1. calls for the revocation of a physician's license (as well as the imposition of a \$10,000 fine) where, as in the instant case, the licensee is guilty of a crime that relates to health care fraud "in dollar amounts in excess of \$5,000." See also Dep't of Health v. Zamora, Case No. 07-1454PL, 2007 Fla. Div. Adm. Hear. LEXIS 405 (Fla. DOAH July 20, 2007; Fla. DOH Oct. 19, 2007) (applying rule 64B8-8.001(2)(c)1. where physician was convicted of conspiracy to commit health care fraud and the amount of loss exceeded \$5,000).

17. Rule 64B8-8.001(3) provides that, in applying the penalty guidelines, the following aggravating and mitigating 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.

18. Notwithstanding Respondent's lack of disciplinary history and the apparent absence of legal constraints at the time of the offense, the revocation of his medical license (and the imposition of a \$10,000 fine) is the only appropriate penalty in light of the alarming breath and scope of the criminal conspiracy in which he participated.

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 458.331(1)(c), Florida Statutes, as charged in Count One of the Complaint;
2. Revoking Respondent's license to practice medicine; and
3. Imposing a fine of \$10,000.

DONE AND ENTERED this 25th day of January, 2013, in Tallahassee, Leon County, Florida.



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EDWARD T. BAUER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of January, 2013.

ENDNOTES

<sup>1/</sup> Unless otherwise noted, all statutory and rule citations are to the versions in effect on the date of Respondent's criminal conviction.

<sup>2/</sup> In urging the undersigned to recommend the dismissal of the Complaint, Respondent argues: (1) that his conviction falls outside the ambit of section 458.331(1)(c) because he pleaded guilty to conspiracy to commit health care fraud, as opposed to health care fraud; (2) that the Complaint is untimely pursuant to section 95.11, Florida Statutes, because it was filed more than two years after his conviction; and (3) that the doctrine of laches and/or the time limitations contained in section 456.073, Florida Statutes, bar Petitioner from proceeding with this cause. The first argument is, of course, a nonstarter in light of the First District's holding in Doll. Respondent's second contention is likewise without merit, as courts have repeatedly held that the criminal or civil limitations periods, such as those found in section 95.11, are inapplicable in administrative license revocation proceedings. Hames v. City of Miami Firefighters' & Police Officers' Trust, 980 So. 2d 1112, 1116 (Fla. 3d DCA 2008) ("Florida courts, however, have consistently refused to apply the limitations periods contained in chapter 95 to administrative disciplinary proceedings."). Finally, while the defense of laches does not apply in administrative licensure matters, see Farzad v. Department of Professional Regulation, 443 So. 2d 373, 375-376 (Fla. 1st DCA 1983), a procedural delay contrary to statute (e.g., section 456.073) can, under limited circumstances, warrant the dismissal of a disciplinary action. See Carter v. Dep't of Prof'l Reg., 633 So. 2d 3, 5 (Fla. 1994) ("[T]o obtain dismissal a licensee must show (1) a violation of the time limits in section 455.225, and (2) that the resulting delay may have impaired the fairness of the proceedings or the correctness of the action and may have prejudiced the licensee."). Even assuming, arguendo, that Petitioner violated the time requirements of section 456.073, Respondent has failed to demonstrate how his defense has been impaired in any fashion. Accordingly, any improper procedural delay is harmless under the circumstances. Id. at 6 ("[C]ourts have consistently applied the harmless error rule when reviewing agency action resulting from a procedural error.").



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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 must be filed with the agency that will issue the final order in this case.