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DIVISION OF
ADMINISTRATIVE HEARINGS

Final Order No. DOH-14-2159 **FD** -MQA

FILED DATE **DEC 31 2014**

Department of Health

By *Angela Sanders*
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE**

DEPARTMENT OF HEALTH

Petitioner,

vs.

DOH Case No: 2012-00680
DOAH Case No.: 13-4756PL
License No.: OS 4930

DAVID SIMON, D.O.,

Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Osteopathic Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on November 14, 2014, in Tampa, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exception to Penalty and Motion to Increase to Penalty, and Respondent's Response to Petitioner's Exception to Penalty in the above-styled cause. Petitioner was represented by Yolonda Green, Assistant General Counsel. Respondent was not present and was represented by David Spicer, 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.

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 459, Florida Statutes.
2. The Conclusions of Law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

RULINGS ON EXCEPTION TO PENALTY

The Board reviewed and considered the Petitioner's Exception to Penalty and Motion to Increase Penalty (Petitioner's Exception to Penalty), the Respondent's Response to Petitioner's Exception to Penalty and Motion to Increase Penalty (Respondent's Response), and ruled as follows:

Petitioner's Exception to Penalty is rejected, because the Board finds that the Administrative Law Judge already considered specific mitigating or aggravating factors when he set the penalty and for the reasons set forth by the Respondent's Response.

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. Fine. Respondent shall pay an administrative fine of \$10,000.00 to the Board within six (6) months from the date this Final Order is filed. Said fine shall be paid by money order or cashier's check to the Board of Osteopathic Medicine and mailed to: DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Osteopathic Medicine Compliance Officer.

2. Probation – Indirect Supervision. The Respondent’s license shall be placed on probation for TWO (2) YEARS subject to the following terms and conditions:
- A. Chaperone. Respondent shall not examine or treat any female patients without a female employee who is a health care practitioner licensed by the Department of Health present. The chaperone is required to be present any time the Respondent is with a female patient and is required to be present for the entire time the Respondent is with the patient. The Respondent is required to maintain a log of his examination and treatment of female patients, and the chaperone is required to state in the log that the chaperone was present with the patient during the entire physician-patient encounter. The chaperone is required to be approved by the Board. The Board delegates authority to the Chair to approve the chaperone. For continuity of practice, multiple chaperones may be approved at any time.
- B. PRN Evaluation and Compliance. Within six (6) months of the date of this Final Order, the Respondent is required to be evaluated by the Professionals Resource Network, Inc., (PRN) and comply with its recommendations, if any.
- C. Indirect Supervision. Respondent shall practice only under the indirect supervision of a Board-approved osteopathic or allopathic physician, hereinafter referred to as the “monitor.” Indirect supervision by a monitoring physician does not require that the monitor practice on the same premises as the Respondent; however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles and shall be readily available for consultation. The Respondent shall provide the

monitor with a copy of the Administrative Complaint, Final Order, and other relevant orders. Respondent shall allow the monitor access to Respondent's medical records, calendar, patient logs, or other documents necessary to monitor Respondent as detailed below.

a. Approval of Monitoring Physician.

1. Respondent shall not practice except under the indirect supervision of a BOARD CERTIFIED physician fully licensed under Chapter 458 or Chapter 459, Florida Statutes, to be approved by the Board as directed below. The monitor must be in good standing, in active status, without restriction or limitation on his or her license, must be qualified by training and experience, and must not have any conflicts of interest, including business relationships or sharing of office space, that would prohibit him or her from impartially performing his or her duties as a monitor. Specific grounds for rejecting a proposed monitor by the Board or its designee shall include but are not limited to the following:
 - a) the proposed monitor has previously been subject to disciplinary action against his or her medical license in any jurisdiction;
 - b) the proposed monitor is currently under investigation or is the subject of pending disciplinary action;
 - c) the proposed monitor is not actively engaged in the same or similar specialty; and
 - d) the proposed monitor is a relative or employee of the Respondent.

b. Temporary Approval. The Board confers authority on the Chair to temporarily approve Respondent's monitor. To obtain temporary approval,

Respondent shall submit to the Chair the name and curriculum vitae of the proposed monitor, and the proposed supervisor is required to submit a letter stating the he or she received and reviewed the Final Order in this case. Temporary approval shall remain only in effect until the next meeting of the Board. Respondent shall not practice medicine without an approved monitor.

c. Formal Approval. Respondent shall have the monitor with the Respondent at the Respondent's first appearance before the Board of Osteopathic Medicine after commencement of probation. Respondent shall submit a current curriculum vita and a description of current practice from the proposed monitor to the Board office no later than thirty (30) days before Respondent's first scheduled probation appearance. Respondent and Respondent's monitor shall also appear before the Board at such other times directed by the Board. It shall be the Respondent's responsibility to ensure the appearance of the monitor as directed.

d. Respondent shall not practice medicine without an approved monitoring physician unless otherwise ordered by the Board.

e. Appearances. The Respondent and his proposed monitor shall appear before the Board at the first meeting after probation commences, and at other such times requested by the Board. In addition, the Respondent is required to appear annually before the Board, and at the last Board meeting preceding termination of probation. Respondent shall be noticed by the Board staff of the date, time, and place of the Board's meeting whereat Respondent's appearance is required. Failure of the Respondent

to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action.

f. After the meeting of the Board at which the monitor is approved and after the probation period has started, the Respondent shall practice only under the supervision of an approved monitor as specified by this Order. If for any reason the approved monitor is unwilling or unable to serve, the Respondent and monitor shall immediately notify the Executive Director of the Board. Respondent shall not practice medicine pending approval of this temporary monitor by the Chair of the Board. Respondent shall make arrangements with his temporary monitor to appear before the Board at its next regularly scheduled meeting for consideration of the monitor by the Board. Respondent shall practice only under the auspices of the temporary monitor (approved by the Board Chair) until the next regularly scheduled meeting of the Board at which the issue of the Board's approval of Respondent's new monitor shall be addressed.

g. The monitor shall:

1. Review the log of the female patient chaperones. The monitor also shall review 25% percent of Respondent's patient charts selected on a random basis at least once every month for the purpose ascertaining whether Respondent provided proper medical care, and maintained appropriate medical records. To comply with this responsibility of random review, the monitor shall be responsible for making the random selection of the records to be reviewed.
2. Submit quarterly reports, in affidavit form, which shall include:

- a. A brief statement of why Respondent is on probation;
 - b. A description of Respondent's practice (type and composition);
 - c. A statement addressing Respondent's compliance with the terms of probation;
 - d. A brief description of the monitor relationship with Respondent;
 - e. A statement advising the Board of any problems which have arisen; and
 - f. A summary of the dates on which the monitor reviewed the Respondent's records, the number of records reviewed, and a statement related to the overall quality of the records reviewed.
3. Immediately report to the Board any violations by Respondent of Chapters 456 or 459, Florida Statutes, and the rules promulgated thereto.
- h. Respondent shall submit quarterly reports, in affidavit form, which shall include:
- a. A brief statement of why Respondent is being monitored;
 - b. A description of practice location;
 - c. A description of current practice (type and composition);
 - d. A brief statement of compliance with probationary terms;
 - e. A description of the relationship with the monitoring physician;
 - f. A statement advising the Board of any problems which have arisen; and
 - g. A statement addressing compliance with any restrictions or requirements imposed.

i. Continuity of Practice.

a. Tolling Provisions. In the event that Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then the following provisions of monitoring shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida: 1) the time period of monitoring shall be tolled; and 2) the provisions regarding the indirect monitoring by another physician and the required quarterly reports from the monitor shall be tolled.

b. Active Practice. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Board may require the Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

j. Compliance Address. All reports, correspondence, and inquiries shall be sent to DOH, Compliance Management Unit, Bin #C76, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3251, Attn: Osteopathic Medicine Compliance Officer.

RULING ON ORAL MOTION TO BIFURCATE
AND RETAIN JURISDICTION TO ASSESS COSTS

The Board considered the Petitioner's Motion to Bifurcate and Retain Jurisdiction to Assess Costs in Accordance with Section 456.072, Florida Statutes, and granted the Motion, and hereby retains jurisdiction to assess costs.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 30 day of December, 2014.

BOARD OF OSTEOPATHIC MEDICINE



Christy Robinson, Executive Director
on behalf of Joel Rose, D.O., 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 Florida 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 has been furnished by U.S. Mail to **David Simon, D.O.**, 101 S. Federal Hwy., Lake Worth, FL 33460-4228; and **David Spicer, Esq.**, 11000 Prosperity Farms Road, Suite 104, Palm Beach Gardens, FL 33410; **John G. Van Laningham**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; **Penny Ziegler, M.D.**, Medical Director, Professionals Resource Network, Inc., P.O. Box 1020, Fernandina Beach, FL 32035-1020; and by interoffice mail to **Donna C. McNulty**, Senior Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and **Yolonda Y. Green**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, this 31st day of December 2014.

David Simon, D.O.

Angel Sanders

Deputy Agency Clerk

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David Spicer, Esq.

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