

**FILED**  
2015 JAN -2 AM 10:46  
DIVISION OF  
ADMINISTRATIVE HEARINGS

Final Order No. DOH-14-2158-**FOF** -MQA

FILED DATE **DEC 31 2014**  
Department of Health

*Angela Sanders*  
Deputy Agency Clerk

**STATE OF FLORIDA  
BOARD OF OSTEOPATHIC MEDICINE**

**DEPARTMENT OF HEALTH**

Petitioner,  
vs.

DOH Case No: 2012-10809  
DOAH Case No.: 14-1077PL  
License No.: OS 10658

**JOSEPH MILLER, D.O.,**

Respondent.  
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**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, Respondent's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions to the Recommended Order in the above-styled cause. Petitioner was represented by Candace Rochester, Assistant General Counsel. Respondent was present and was represented by Anna F. Small, 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 set forth below. The Board was advised by its counsel

not to consider attachments to the Respondent's Exceptions that have not been entered into the record at the Division of Administrative Hearings.

1. The Respondent's exception number 1 regarding the finding of probable cause is rejected based upon reasons written and stated orally by the Petitioner and because the Board does not have substantive jurisdiction over the evidentiary matters and legal issues raised.

2. The Respondent's exception number 2 regarding the Petitioner's failure to conduct an adequate investigation is rejected based upon reasons written and stated orally by the Petitioner.

3. The Respondent's exception number 3 pertaining to the offering of a settlement agreement is rejected based upon reasons written and stated orally by the Petitioner, and because nothing in Section 456.073, Florida Statutes, prohibits a party, either Petitioner or Respondent, from withdrawing from a proposed settlement agreement before it is presented to a board.

4. The Respondent's exception number 4 regarding Respondent's right to effective assistance of counsel is rejected based upon reasons written and stated orally by the Petitioner.

5. The Respondent's exception number 5 regarding Respondent's ability to mount a defense due to a pending parallel criminal matter is rejected based upon reasons written and stated orally by the Petitioner.

6. The Respondent's exception number 6 regarding the decision of the Administrative Law Judge not to admit the deposition transcripts of TS in the parallel criminal case is rejected based upon reasons written and stated orally by the Petitioner,

and because the Board does not have substantive jurisdiction over evidentiary matters, and therefore, does not have the authority to change factual or legal findings which involve the admissibility of evidence into an evidentiary hearing.

7. The Respondent's exception number 7 regarding the assertion that Respondent was not permitted to adequately cross examine TS is rejected based upon reasons written and stated orally by the Petitioner, and because the Board does not have substantive jurisdiction over evidentiary matters, and therefore, does not have the authority to change factual or legal findings which involve the admissibility of evidence into an evidentiary hearing.

8. The Respondent's exception number 8 regarding the Administrative Law Judge's ruling that the exclusionary rule does not apply in administrative proceedings is rejected based upon reasons written and stated orally by the Petitioner, and because the Board does not have substantive jurisdiction over evidentiary matters, and therefore, does not have the authority to change factual or legal findings which involve the admissibility of evidence into an evidentiary hearing.

#### 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.

PENALTY

The Board reviewed and considered the Respondent's Motion for Downward Deviation, filed October 31, 2014. The Recommended Order in this cause was issued July 30, 2014. Respondent's exceptions were filed August 14, 2014, and Petitioner's responses to those exceptions were filed August 25, 2014. The Board finds that the Respondent's Motion for Downward Deviation was untimely filed; however, the Board also allowed Respondent to make an oral presentation to the Board and allowed the Petitioner to make an oral response.

Upon a complete review of the record in this case, including Respondent's arguments regarding mitigation, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED:

1. Revocation. Respondent's license to practice osteopathic medicine in the State of Florida is REVOKED; and
2. Fine. Respondent shall pay an administrative fine of \$10,000.00 to the Board within thirty (30) days 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.

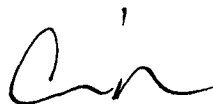
RULING ON MOTION TO ASSESS COSTS

The Board granted the Petitioner's oral motion to waive costs in this matter.

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



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Christy Robinson, Executive Director  
*on behalf of Joel Rose, D.O., CHAIR*

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

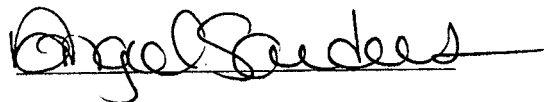
A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk 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 **Certified U.S. Mail** to **Joseph Miller, D.O.**, 11521 W. Emerald Oaks Drive, Crystal River, FL 34428; and **Anna Small, Esq.**, 202 S. Rome Avenue, Suite 100, Tampa, FL 33606; **Edward T. Bauer**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, FL 32399-3060; and by interoffice mail to **Donna C. McNulty**, Senior Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and **Candace Rochester**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, this 31<sup>st</sup> day of December, 2014.

Joseph Miller

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**Deputy Agency Clerk**

Anna Small, Esq.

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