

FILED DATE FEB 17 2015

Department of Health

By: Maxel Sander
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

FILED

DEPARTMENT OF HEALTH,

Petitioner,

2015 FEB 18 AM 11 35

vs.

DIVISION OF
ADMINISTRATIVE
HEARINGS

DOH CASE NO.: 2011-19645
2013-01147
2013-05174
2013-05884
DOAH CASE NO.: 14-1342PL
14-1343PL
14-2488PL
LICENSE NO.: ME0097134

ALBERT ESMAILZADEH, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on February 6, 2015, in Stuart, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Daniel Hernandez, Assistant General Counsel. Respondent was present and represented by Gregory Eisenmenger, 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 rejected the Respondent's Exceptions for the following reasons:

i. The Respondent failed to cite to either pages or paragraphs of the Recommended Order when making exceptions to the final order as required by Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code;

ii. The Respondent asked the Board to overturn factual findings made by the Administrative Law Judge that were based on competent and substantial evidence; and

iii. The Respondent asked the Board to make evidentiary rulings inconsistent with those of the Administrative Law Judge.

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:

Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

The Administrative Law Judge recommended the imposition of costs in his Recommended Order. The Board rejected the assessment of costs because the Administrative Law Judge does not have jurisdiction to assess costs.


RULING ON MOTION TO STAY PENALTY

Respondent made an ore tenus motion to stay the penalty in this matter. The Board denied the motion.

DONE AND ORDERED this 16th day of February,

2015.

BOARD OF MEDICINE



André Ourso, J.D., M.P.H., Executive Director
For James Orr, Jr., 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 **Certified Mail** to ALBERT ESMAILZADEH, M.D., 4419 Chimming Lane, Viera, Florida 32955; to Gregory W. Eisenmenger, Esquire, Eisenmenger, Berry & Peters, P.A., 5450 Village Drive, Viera, Florida 32955; to Bruce McKibbon, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 17th day of February, 2015.

A. Esmailzadeh, M.D.

Angel Sanders
Deputy Agency Clerk

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Gregory W. Eisenmenger, Esq.

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