

FILED DATE **MAY 01 2015**  
Department of Health

By: *Carol Sanders*  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

FILED

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DEPARTMENT OF HEALTH,

Petitioner,

vs.

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DOH CASE NO.: 2008-16514  
DOAH CASE NO.: 14-3507PL  
LICENSE NO.: ME0093957

PAUL M. GOLDBERG, M.D.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 10, 2015, in Deerfield Beach, 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 Carol Gregg, Assistant General Counsel. Respondent was present and was represented by Diran V. Seropian, 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 Petitioner's Exception to the Recommended Order and ruled as follows:

1. Respondent's Exception 1 to Paragraph 7 of the Recommended Order is denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions.

2. Respondent's Exception 2 to Paragraph 58 and 59 of the Recommended Order is denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions.

3. Respondent's Exception 3 to Paragraph 63 of the Recommended Order is denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions.

4. Respondent's Exception 4 to Paragraph 64-66 of the Recommended Order is denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions and because the mitigating circumstances presented to the Board are not part of the record or presented to the Administrative Law Judge below.

5. Respondent's Exception 5 to Paragraph 1 of the Administrative Law Judge's Recommendation on page 35 of the Recommended Order is denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions.

6. Respondent's Exception 6 to the recommended penalties set forth on pages 35-36 of the Recommended Order are denied based upon the reasons set forth in the Petitioner's response to Respondent's Exceptions.

7. Petitioner's Exception to the Conclusion of Law set forth in Paragraph 41 of the Recommended Order is accepted in part and rejected in part. It is accepted to the extent that the Board rejects the ALJ's reading and application of Section 458.331(1)(q), Florida Statutes, but rejects the Petitioner's requests that the Board find the Respondent in violation of Section 458.331(1)(q), Florida Statutes.

In this matter the ALJ concluded that because the physician Respondent was treating patient M.A. when he prescribed him controlled substances in excessive or inappropriate amounts, he cannot be found to have violated of Section 458.331(1)(q), Florida Statutes. In other words, the ALJ abides by the belief that a violation of Section 458.331(1)(q) cannot be found when the physician inappropriately or excessively prescribes drugs to patients within the physician's practice. The Board rejects this reading of Section 458.331(1)(q), Florida Statutes.

All that needs to be shown is that the physician Respondent inappropriately or excessively prescribed drugs to a patient. Whenever a physician prescribes drugs to patients he or she will always be doing so within his or her practice of medicine

because the prescribing of drugs is the practice of medicine.<sup>1</sup> The fact that the Respondent was treating patient M.A. when the excessive prescribing took place does not excuse his behavior.

The Board has clearly and consistently endorsed this reading of Section 458.331(1)(q), Florida Statutes, and this reading has been upheld by Florida courts in *Scheininger v. Department of Professional Regulations*, 443 So.2d 387 (Fla. 1<sup>st</sup> DCA 1983) and *Waters v. Department of Health*, 962 So.2d 1011 (Fla. 3d DCA 2007).

In addition, since the Board is the agency charged with enforcing both statutory provisions, the Board's interpretation is entitled to great deference. *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906 (Fla. 2002); *Miles, Jr. v. Florida A and M University and the Board of Regents*, 813 So. 2d 242 (Fla. 1<sup>st</sup> DCA 2002). Given such, the Board believes that its conclusion of law is as reasonable or more reasonable than the ALJ's in this matter and hereby grants the Petitioner's exception.<sup>2</sup>

#### FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

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<sup>1</sup> Section 458.305(3), F.S., defines the practice of medicine as, "the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition."

<sup>2</sup> In order to avoid any further delay in the resolution of this matter, the Board chooses not to remand this case to the division so that the ALJ may make additional findings consistent with Board's ruling on Petitioner's exception.

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 as modified above.

#### PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge shall be modified. The findings set forth in Paragraphs 57 and 59 of the Recommended Order which find that Respondent did not continually evaluate Patient M.A.'s oxygenation, ventilation, circulation, and temperature, during the procedure and the fact that Respondent performed surgical procedures in an office setting without having a transfer agreement demonstrate the need for mandated compliance with any recommendations made pursuant to the ordered Florida Cares evaluation and that a possible term of probation be tailored to such recommendations.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay an administrative fine in the amount of \$20,000.00 to the Board within 30 days from the date the Final Order is filed. Said fine shall be paid by money order or cashier's check.

2. Respondent shall document completion of the Laws and Rules course sponsored by the Florida Medical Association (FMA) within one year from the date the Final Order is filed.

3. Respondent's license to practice medicine shall be **SUSPENDED** until such time as he undergoes an evaluation by Florida CARES, or a board-approved equivalent evaluator, and personally appears before the Board (Probation Committee) with said evaluation; the evaluator's recommendations; and documentation of compliance with the recommendations. If the evaluator recommends that Respondent undergo further evaluation for a possible impairment issue, such evaluation must be done under the auspices of the Professionals Resource Network (PRN). Upon review of the evaluation, the Board shall determine the conditions for reinstatement, if appropriate, and may impose additional terms and conditions on Respondent's practice such as a period of probation with terms and conditions to be set at the time of reinstatement.

4. Respondent shall be and hereby is REPRIMANDED by the Board.


RULING ON COSTS

Upon the Petitioner's Motion to Bifurcate Costs and Retain Jurisdiction, the Board voted to retain jurisdiction on the imposition of costs until a later date.

**(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)**

DONE AND ORDERED this 29 day of April,  
2015.

BOARD OF MEDICINE

  
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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 PAUL M. GOLDBERG, M.D., 2665 Executive Park Drive, Weston, Florida 33331; to Diran V. Seropian, Esquire, Shendell & Pollock, P.L., 2700 N. Military Trail, Suite 150, Boca Raton, Florida 33431-1809; to Todd Resavage, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Yolonda Green, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 1<sup>st</sup> day of May, 2015.

*Angel Sanders*

**Deputy Agency Clerk**

*Paul M. Goldberg*

7014 2120 0004 1125 3261

*Diran V. Seropian, Esq.*

7014 2120 0004 1125 3278