STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,
BOARD OF MEDICINE,

Petitioner,

vs. Case No. 14-5649PL

MARK T. RAMSEY, M.D.,

Respondent.
_____/

RECOMMENDED ORDER

On February 3, 2015, a final administrative hearing was held in this case in Tallahassee, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lauren Ashley Leikam, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Board of Medicine should discipline and fine the Respondent for an alleged

violation of section 456.072(1)(hh), Florida Statutes (2010),[1/] for being terminated from a treatment program for impaired practitioners being overseen by an impaired practitioner consultant, as described in section 456.076.

PRELIMINARY STATEMENT

The Petitioner, Department of Health (DOH), filed an Amended Administrative Complaint against the Respondent in July 2014. In November 2014, the Respondent disputed the charges and requested a hearing, and DOH referred the matter to the Division of Administrative Hearings.

At the final hearing, the evidence was presented through the introduction of Exhibits 1, 2, 4, 7 through 9, and 11 through 16 by DOH. Exhibits 2, 4, 7, and 14 through 16 are the deposition transcripts (offered in lieu of live testimony) of: Kelly Brady, a licensed mental health counselor; Delena Torrence, a compliance manager; the Respondent, Mark T. Ramsey, M.D.; Penelope P. Ziegler, M.D.; Barry Lubin, M.D.; and Judy Rivenbark, M.D. Exhibits 2, 8, 9, and 11 through 16 were admitted during the hearing. Objections to portions of Exhibit 1 (the exhibit summary on pages 1 through 7 and the pages added to divide the exhibit in sections by year) and to Exhibits 3, 5, and 6 were sustained, and those documents were excluded from evidence. Ruling was reserved on objections to other portions of Exhibit 1, to Exhibit 4, and to Exhibit 7.

The objection to Exhibit 4 is now sustained, and that exhibit is excluded from evidence. The other reserved objections are overruled. The business records exception applies to any hearsay in Exhibit 1 or Exhibit 7 being used to support a finding of fact. See §§ 120.57(1)(c) and 90.803(6), Fla. Stat. (2014). The evidence reflecting earlier timeframes is relevant to paragraphs 5 and 6 of the Amended Administrative Complaint, the nature of the PRN program, and the penalty guideline's aggravating and mitigating factors. By agreement of the parties, all of Exhibit 1 and the excerpts from it that are attached to the deposition transcripts are being treated as sealed and confidential information.

A Transcript of the final hearing was filed on February 12, 2015. The parties filed proposed recommended orders that have been considered in the preparation of this Recommended Order. The Respondent seeks attorney's fees and costs under several provisions of the Florida Statutes.

FINDINGS OF FACT

1. The Respondent, Mark T. Ramsey, M.D., held Florida medical doctor license ME76559 beginning on August 21, 1998. The license expired on January 31, 2012, and its current status is "null and void."

2. In 2002, the Respondent was referred to the Professional Resources Network (PRN), which was and still is designated as the State of Florida's impaired practitioners program for physicians.

3. PRN is one of two such programs (the other being the Intervention Project for Nurses or IPN). The purpose of the program is to ensure the public health and safety by assisting practitioners who may suffer from chemical dependency; psychiatric illness; psychosexual illness, including boundary violations; neurological/cognitive impairment; physical illness; HIV infection/AIDS; and behavior disorders.

4. The following services are provided by PRN: confidential reporting of impaired practitioners; investigating incoming referrals and determining appropriate action; conducting interventions on impaired practitioners; arranging for evaluations or treatment of impaired practitioners; coordinating treatment discharge with PRN monitoring; coordinating monitoring between state regional areas and PRN office; proving advocacy for participants who progress satisfactorily; monitoring compliance through a random urine call system; conducting monitoring phone calls with participants; overseeing monitored practitioner support groups; detecting relapses and providing a format for intervention of a relapse at the earliest possible stage; reporting non-compliance of participants to licensing

authorities; and performing daily case management of new referrals and actively monitored participants.

5. PRN participants are responsible for complying with the recommendations of the evaluator and/or treatment provider in consultation with the PRN medical director, complying with the terms of the PRN monitoring contract, and meeting financial obligations to care providers, including toxicology testing and PRN facilitator group fees.

6. Witnesses did not characterize PRN as a treatment program because PRN itself does not provide treatment directly. However, their testimony is not controlling on the question of whether PRN is a treatment program for impaired physicians under the Florida Statutes.

7. The Respondent's 2002 contract required him to abstain from mood-altering substances unless ordered by his primary physician, submit to random drug screenings, obtain psychiatric treatment, obtain psychotherapy treatment, and attend PRN's monitored professional support group meetings.

8. In July 2005, the Respondent was admitted to Shands Healthcare and diagnosed with opiate withdrawal syndrome and opiate dependence. Due to this relapse, the Respondent entered into a second monitoring contract with PRN in November 2005. The 2005 contract required the Respondent to abstain from mood-altering substances unless ordered by his primary physician,

submit to random drug screenings, obtain psychiatric treatment, obtain psychotherapy treatment, and attend PRN's monitored professional support group meetings.

9. Due to his positive urine drug screen, the Respondent signed a third monitoring contract with PRN in September 2006. The 2006 contract required the Respondent to abstain from mood-altering substances unless ordered by his primary physician, submit to random drug screenings, obtain psychiatric treatment, obtain psychotherapy treatment, and attend PRN's monitored professional support group meetings.

10. In October 2006, the Respondent tested positive for Darvocet[2/] on a PRN-ordered urine drug screen. The Respondent did not have a valid prescription for Darvocet at the time he submitted to the urine drug screen. As a result of his positive urine drug screen, the Respondent was required to submit to an evaluation by Dr. Barbara Krantz.

11. Dr. Krantz diagnosed the Respondent with alcohol dependency, cocaine dependency, and opiate dependency. However, Dr. Krantz found the Respondent safe to practice medicine, provided that he limit his working hours to approximately 45 hours per week and continue close monitoring with a psychiatrist and psychologist.

12. From about January through July 2007, the Respondent was prescribed Percocet for pain. Percocet is the brand name for

a drug that contains oxycodone and is prescribed to treat pain. According to section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

13. In May 2007, PRN directed the Respondent to either stop taking Percocet or refrain from the practice of medicine. He did neither.

14. The Respondent failed to submit to drug testing during June 2007.

15. On or about July 17, 2007, PRN required the Respondent to voluntarily withdraw from practice.

16. On or about July 30, 2007, the Respondent submitted to a second PRN-ordered evaluation by Dr. Krantz. Dr. Krantz diagnosed the Respondent with opiate dependency episodic, alcohol dependency in remission, and cocaine dependency in remission. Dr. Krantz opined that the Respondent was not able to practice medicine with reasonable skill and safety and recommended that the Respondent enter a customized outpatient treatment program.

17. On or about July 30, 2007, the Respondent began outpatient treatment at the Hanley Center.

18. On or about August 22, 2007, PRN held a staff meeting to discuss the Respondent's case. Rather than dismissing the Respondent from PRN for violating his monitoring contracts, the clinical team opted to require the Respondent to enter six months of residential treatment.

19. On or about September 5, 2007, the Respondent left the Hanley Center "voluntarily to pursue more involved treatment recommended by PRN."

20. The Respondent did not enter into a six-month residential treatment program, as recommended by PRN.

21. On or about September 25, 2007, the Respondent advised PRN that he could not enter a six-month residential treatment program because the Respondent was responsible for paying the living expenses of his brother, who lived in North Carolina. The Respondent indicated that if he were unable to send money to provide for his brother, his brother would be forced to move into a nursing home.

22. In October 2007, the Respondent entered into a fourth monitoring contract with PRN. The 2007 monitoring contract required the Respondent to abstain from mood-altering substances unless ordered by his primary physician, submit to random drug screenings, obtain psychiatric treatment, obtain psychotherapy treatment, and attend PRN's monitored professional support group meetings. Additionally, the Respondent agreed not to be

re-evaluated for at least one year (until October 2008) and to refrain from practice until the Department of Health and/or the Board of Medicine rescinded the Voluntary Withdraw from Practice.

23. In March 2008, the Respondent relocated to Wisconsin. In May 2008, the Respondent signed a revised version of the October 2007 contract due to his relocation to Wisconsin. The revised contract's substantive requirements were the same.

24. For approximately a year and a half, while he lived in Wisconsin, the Respondent did not obtain psychiatric treatment or psychotherapy treatment, as required by the revised monitoring contract, because he could not afford it.

25. In 2009, the Respondent requested that he be re-evaluated by a PRN-approved evaluator.

26. The Respondent submitted to an evaluation with Dr. Bayez, who recommended that the Respondent complete an intensive outpatient program.

27. In May 2009, the clinical team of PRN held a staff meeting and decided to require the Respondent to attend an intensive outpatient program, as recommended by Dr. Bayez, and demonstrate one year of complete compliance with his PRN monitoring contract, including obtaining psychiatric and psychotherapy treatment for one year, before PRN would advocate on his behalf before the Board of Medicine.

28. In June 2009, the Respondent signed an addendum to his current monitoring contract which required him to: enroll in an intensive outpatient program (at least three times per week for six weeks) within 90 days (by August 8, 2009); and have one year of complete compliance with his PRN contract before requesting re-evaluation for PRN advocacy with the Board of Medicine.

29. The Respondent completed an intensive outpatient treatment program in June or July 2009.

30. In March 2010, the Respondent signed a revised version of the October 2007 contract due to his relocation from Wisconsin to Florida. The revised contract included the same requirements as the original October 2007 contract, with the exception of addresses and the names of providers.

31. On or about November 23, 2010, the Respondent was selected for a PRN-ordered urine drug screen. The Respondent failed to submit to the urine drug screen.

32. The Respondent advised PRN that he could not submit to the test because he was in North Carolina, and there were no collection sites open near him. The Respondent indicated that he had traveled to North Carolina due to a medical emergency involving his brother. However, the Respondent notified his group facilitator approximately one week before November 23, 2010, that he would be traveling out of state. The Respondent failed to notify PRN that he would be traveling on November 23,

2010. The Respondent was aware that he was required to notify both his group facilitator and PRN of any out-of-state travel.

33. Due to his failure to submit to the urine drug screen, PRN required the Respondent to submit to a hair drug screen upon his return to Florida.

34. On or about November 29, 2010, the Respondent's group facilitator, Ms. Brady, notified him that he was required to submit to the hair drug screen within two weeks. The Respondent did not submit to the required hair drug screen.

35. In 2010, PRN had a loan fund available for doctoral level participants to assist participants with the cost of obtaining evaluations and paying for certain treatment programs. PRN also had an arrangement with a hair drug screen lab, as well as one for urine drug screening with Affinity Online Solutions (Affinity), which oversaw the selection process and compliance with random urine drug screening, and could request that a participant be permitted to test for free, if the participant was unable to afford a drug screening. The Respondent did not request financial assistance from PRN for completing the hair drug screen.

36. Affinity offered a "self-test" feature that allowed participants to create and submit to a urine drug screen on their own initiative in order to document sobriety. The PRN handbook informed PRN participants of this option. The Respondent did not

submit to a self-test urine drug screen in lieu of submitting to the hair drug screen.

37. On or about December 1, 2010, the Respondent again failed to submit to a random urine drug screen.

38. On or about December 13, 2010, the Respondent failed to check in to Affinity to determine whether he had been selected for drug testing.

39. On or about January 4, 2011, the Respondent notified his group facilitator that he could not submit to the hair drug screen because he could not afford it.

40. On or about January 5, 2011, PRN held a staff meeting regarding the Respondent's case. During the meeting, the medical director, Dr. Judy Rivenbark, decided to dismiss the Respondent from the PRN because she believed him to be "unmonitorable," based on his recent non-compliance in 2010 and his history of non-compliance with previous PRN contracts.

41. On or about January 6, 2011, Dr. Rivenbark sent a letter to the Respondent notifying him that his case had been referred to the Florida Board of Medicine for appropriate action based on his "continued incidences of non-compliance" with his PRN Dual Diagnosis Monitoring Contract.

42. On or about January 31, 2011, Dr. Rivenbark sent a letter notifying DOH that the Respondent had been terminated from

PRN due to the Respondent's continued non-compliance with his Dual Diagnosis Monitoring Contract.

CONCLUSIONS OF LAW

43. The Respondent contends that DOH has no jurisdiction because the license is "null and void." Section 456.036(5), Florida Statutes (2010), provided that if a licensee did not apply to renew a license by its expiration date, the license would become delinquent in the license cycle following the expiration. Under section 456.036(6), a delinquent license is rendered null if the licensee does not apply for active or inactive status by the expiration of the "current licensure cycle." In this case, the Respondent's license expired on January 31, 2012. Medical licenses are biennial. § 458.319(2), Fla. Stat. For that reason, the Respondent's license was rendered null and void on February 1, 2014.

44. The evidence is unclear when DOH initially brought these charges against the Respondent. Probable cause was determined on December 22, 2011, before the Respondent's license became null. The date of the Administrative Complaint is not in the record. The Amended Administrative Complaint was filed on July 7, 2014.

45. Under section 456.072(2), the licensing board may impose a penalty on any person who is guilty of any ground for discipline set out in section 456.072(1). The Respondent

contends that means any person who is a licensee, which he no longer is. To the contrary, under section 456.072(2), the Board of Medicine has jurisdiction to impose discipline on the Respondent, who was a licensee at the time of the alleged violation. See Boedy v. Dep't of Prof. Reg., 433 So. 2d 544 (Fla. 1st DCA 1983) (licensee alleged to have violated the practice act cannot defeat the board's jurisdiction by deactivating license, which could be reactivated later); Haggerty v. Dep't of Bus. & Prof. Reg., 716 So. 2d 873 (Fla. 1st DCA 1998) (board had no jurisdiction over a person no longer licensed, where statute listed grounds for imposing discipline on licensees only, unlike the statute in this case).

46. The Respondent argues that section 456.072(2) would be unconstitutional if construed to give the Board jurisdiction over "any person," even if not licensed, using the hypothetical of an attempt to impose discipline on a physician licensed in another state, but not Florida, for a violation of section 456.072(1)(f) for "having a license . . . acted against . . . by the licensing authority of any jurisdiction." The Respondent's hypothetical is inapposite. The statute is not unconstitutional as applied in this case.

47. DOH argues that the Board's jurisdiction to bring this charge and impose discipline against the Respondent is necessary to prevent him from re-applying and obtaining a new license by

manipulation, dishonesty, or dissembling in the re-application process. That eventuality seems highly unlikely. In any event, the Board's jurisdiction does not depend on the success of this argument.

48. Section 456.072(1)(hh) made it a ground for discipline for a physician to be "terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program."

49. DOH must prove its charge that the Respondent violated section 456.072(1)(hh) by clear and convincing evidence. See Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The evidence is clear and convincing, and actually not vigorously disputed, that the Respondent was terminated by PRN for failure to comply, without good cause, with the terms of his monitoring or treatment contract with PRN, or for not successfully completing the drug treatment or alcohol treatment program being overseen by PRN. The Respondent's primary defense to the charge is that termination from PRN is not a violation because PRN is not a treatment program.

50. Section 456.076(1) provides that treatment programs for impaired practitioners are either named in the profession's practice act or designated by DOH rule. DOH may adopt rules with appropriate criteria for approval of treatment providers. The rules may specify: the manner in which the consultant retained by DOH works with DOH in intervention; requirements for evaluating and treating a professional; requirements for continued care of impaired professionals by approved treatment providers; continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care; and requirements related to the consultant's expulsion of professionals from the program.

51. While PRN itself does not provide treatment to impaired practitioners, the program overseen by PRN is the treatment program for impaired physicians described in section 456.072(1)(hh). The Respondent's termination from the PRN program was a violation of section 456.072(1)(hh).

52. It does not appear that the Board of Medicine has entered a final order deciding the issue of whether PRN is the treatment program described in section 456.072(1)(hh). However, the preceding Conclusion of Law is consistent with the Board's past practice in cases where the issue was not squarely presented. See Dep't of Health, Bd. of Med. v. R. George Farhat, M.D., Case No. 12-2391PL (DOAH Oct. 9, 2012; DOH Dec. 7, 2012);

and Dep't of Health, Bd. of Med. v. Lawrence A. Mishlove, M.D., Case No. 11-4398PL (DOAH Mar. 30, 2012; DOH June 13, 2012). See also Dep't of Health, Bd. of Nursing v. Nancy Ellen Cunningham, R.N., Case No. 09-0611PL (DOAH June 9, 2009; DOH Jan. 15, 2010); and Dep't of Health, Bd. of Nursing v. Darline Sue Peguero, R.N., Case No. 14-0004PL (DOAH Apr. 8, 2014; DOH July 1 & 7, 2014).

53. The promulgated penalty guideline for the first violation of section 456.072(1)(hh) is suspension until the licensee demonstrates compliance with the terms of monitoring or treatment program and the ability to practice with reasonable skill and safety, followed by probation, and a fine between $1,000 and $2,500, to revocation. Fla. Admin. Code R. 64B8-8.0001(1)(ww) (Rev. Jul. 27, 2010).

54. Deviation from the recommended penalty can be justified by consideration of the factors set out in rule 64B8-8.0001(3). Factors (a), (c), (d), and (f) favor mitigation of the recommended penalty. Factors (b) and (e) favor aggravation of the recommended penalty. The other factors are not applicable. Overall, consideration of the mitigating and aggravating factors does not justify a deviation from the recommended penalty, but it does suggest a penalty at the lower end of the range.

55. Since the Respondent's license is now null and void, suspending or revoking it is moot. See § 456.036(6), Fla. Stat. ("Any subsequent licensure shall be as a result of applying for

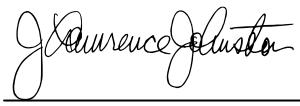
and meeting all requirements imposed on an applicant for new licensure."). A $1,000 fine is appropriate.

56. The Respondent is not entitled to attorney's fees or costs.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Medicine find the Respondent guilty as charged and fine him $1,000.

DONE AND ENTERED this 4th day of March, 2015, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2015.

ENDNOTES

[1/] Unless otherwise indicated, all statutory references are to the 2010 codification of the Florida Statutes, which is the version in effect at the time of the alleged violation.

[2/] Darvocet is the brand name for a drug that contains propoxyphene and is prescribed to treat pain. According to section 893.03(4), Florida Statutes, propoxyphene is a Schedule IV controlled substance

that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III.

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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 should be filed with the agency that will issue the Final Order in this case.