

FILED DATE - 12-23-15
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: Amy L. Caraway
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2014-12284
DOAH CASE NO.: 15-0429PL
LICENSE NO.: ME0082839

CHRISTINA B. PAYLAN, M.D.,

Respondent.

FILED
2015 DEC 28 AM 11:52
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on December 4, 2015, in Jacksonville, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Petitioner's Exceptions to Conclusions of Law and Penalty Recommendation in Recommended Order, Respondent's Response to Petitioner's Exceptions, Respondent's Exception to Recommended Order, and Petitioner's Response to Respondent's Exceptions (copies of which are attached hereto as Exhibits A, B, C, D, and E respectively) in the above-styled cause. Petitioner was represented by Louise Wilhite-St. Laurent, Assistant General Counsel. Respondent appeared pro se.

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 Petitioner's Exceptions and the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. Respondent's exception to the preliminary statement in the Recommended Order is denied because the Board does not have substantive jurisdiction over evidentiary matters.

2. Section 120.57(1)(k), Florida Statutes, reads as follows:

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but ***an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.*** (emphasis added)

Respondent's second exception to the Findings of Fact is rejected because the Respondent failed to clearly identify the disputed portion of the recommended order by page number or

paragraph, did not include appropriate and specific citations to the record, and for the reasons set forth within Petitioner's response to Respondent's exceptions.

3. Respondent's third exception to the Conclusions of Law is rejected because the Respondent failed to clearly identify the disputed portion of the recommended order by page number or paragraph, did not include appropriate and specific citations to the record, and for the reasons set forth within Petitioner's response to Respondent's exceptions.

4. Respondent's exception to the penalty and recommendation is rejected for the reasons set forth within Petitioner's response to Respondent's exception.

5. Petitioner's exception to paragraph 25 and 30 of the Conclusions of Law and its exception to recommended penalty are hereby rejected.

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:

1. Respondent shall pay an administrative fine in the amount of \$5,000.00 to the Board within 30 days from the date the Respondent's license to practice medicine is reinstated. Said fine shall be paid by money order or cashier's check.

2. Respondent's license to practice medicine in the State of Florida is hereby SUSPENDED for a period of two (2) years with credit for the time Respondent served under the emergency suspension order.

3. Following the period of suspension, Respondent shall be placed on probation for a period of 1 year. The Board retains jurisdiction in this matter to set the terms and conditions of Respondent's probation at the time Respondent's license to practice medicine is reinstated.

4. In the Recommended Order, the Administrative Law Judge (ALJ) recommended that the Board impose "appropriate continuing education." While the Board accepted the ALJ's recommended

penalty in its entirety, it failed to set specific subjects and hours for continuing education courses to be taken by the Respondent and appropriate deadlines. The Board retains jurisdiction to make such determinations at a subsequent Board meeting to be scheduled upon providing proper notice to the Respondent.

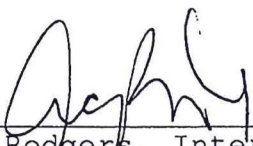
RULING ON MOTION TO BIFURCATE AND
RETAIN JURISDICTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Bifurcate and Retain Jurisdiction to Assess Costs and voted to GRANT the Petitioner's Motion and retain jurisdiction to assess costs at 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 22 day of Dec,
2015.

BOARD OF MEDICINE



Adrienne Rodgers, Interim Executive Director
For Bernardo Fernandez, 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 CHRISTINA B. PAYLAN, M.D., 3801 South MacDill Avenue, Tampa, Florida 33611; to J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by email to Yolonda Green, Assistant General Counsel, Department of Health, at Yolonda.Green@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 23rd day of December, 2015.

Amy L. Conway

Deputy Agency Clerk

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