

FILED DATE - **APR 18 2017**

Department of Health

By: *Amal Saebes*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-17616
2015-18000
2015-19442
2015-20428
DOAH CASE NO.: 16-3127PL
LICENSE NO.: MEO09916

OSAKATUKEI O. OMULEPU, 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 April 7, 2017, in Fort Lauderdale, 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 John Wilson, Assistant General Counsel. Respondent was represented by Monica Felder Rodriguez, Esquire.

FILED
2017 APR 20 AM 10:12
DIVISION OF
ADMINISTRATIVE HEARINGS

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 MOTION TO RELINQUISH JURISDICTION FOR EXTRAORDINARY CIRCUMSTANCES

The Board reviewed the Respondent's Motion to Relinquish Jurisdiction for Extraordinary Circumstances and DENIED Respondent's Motion.

RULING ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. Respondent's Exception 1 to Paragraphs 16 and 25 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

2. Respondent's Exception 2 to Paragraphs 49 and 86 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

3. Respondent's Exception 3 to Paragraph 52 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

4. Respondent's Exception 4 to Paragraph 53 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, for the reasons stated orally by the Petitioner, and because the Board does not have the necessary substantive jurisdiction to address the Fifth Amendment self-incrimination issue and evidentiary issues raised by Respondent.

5. Respondent's Exception 5 to Paragraph 54 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

6. Respondent's Exception 6 to Paragraph 56 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

7. Respondent's Exception 7 to Paragraph 57 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

8. Respondent's Exception 8 to Paragraph 58 of the Recommended Order is denied for the reasons set forth in the

Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

9. Respondent's Exception 9 to Paragraphs 59 and 60 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

10. Respondent's Exception 10 to Paragraphs 63, 64, 87, 88, and 89 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner, and because the Board does not have the necessary substantive jurisdiction to address the Fifth Amendment self-incrimination issue raised by Respondent.

11. Respondent's Exception 11 to Paragraph 84 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

12. Respondent's Exception 12 to Paragraph 85 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

13. Respondent's Exception 13 to Paragraphs 69, 92 and 93 of the Recommended Order is denied for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and for the reasons stated orally by the Petitioner.

14. Respondent's Exception 13 to Paragraph 100 of the Recommended Order is granted for the reasons set forth in Respondent's written exceptions and the reference to the finding of aggravated factors as set forth in Rule 64B8-8.001(3)(h), Florida Administrative Code, is stricken.

RULING ON PETITIONER'S EXCEPTIONS AND RESPONDENT'S MOTION
TO STRIKE EXCEPTIONS

The Board reviewed the Petitioner's Exceptions and the Respondent's Motion to Strike Petitioner's Exceptions and voted to GRANT the Respondent's Motion to Strike Petitioner's Exceptions.

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 and, as amended in paragraph 14 on the ruling on the exceptions in this order, are approved, 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 REJECTED. The Board finds that the following facts justify an increase in the severity of Respondent's penalty:

1. This matter involved similar injuries to two different patients that occurred within the span of a single day that both required hospitalization. (Recommended Order Findings of Fact paragraphs 18-29)
2. The severe nature of injuries to patient D.M. involving multiple perforations of her liver. (Recommended Order Findings of Fact paragraph 29)

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

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

RULING ON MOTION TO BIFURCATE AND RETAIN JURISDICTION TO ASSESS COSTS

Upon review of the Petitioner's Motion to Bifurcate and Retain Jurisdiction to Assess Costs, the Board GRANTED the Petitioner's Motion and will consider a Motion to Assess Costs at a future meeting.


(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.)

RULING ON MOTION TO STAY PENALTY

At the hearing in this matter, counsel for Respondent made an *ore tenus* Motion to Stay the penalty in this matter. The Board denied the Respondent's Motion.

DONE AND ORDERED this 18th day of April, 2017.

BOARD OF MEDICINE



Claudia Kemp, J.D., Executive Director
For Magdalena Averhoff, 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 OSAKATUKEI O. OMULEPU, M.D., 19311 SW 31st Court, Miramar, Florida 33029; to Monica Felder Rodriguez, Esquire, Rodriguez & Perry, P.A., 7301 Wiles Road, Suite 107, Coral Springs, Florida 33067; to Mary Li Creasy, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by email to Louise Wilhite-St. Laurent, Deputy General Counsel, Department of Health, at Louise.Stlaurent@flhealth.gov; and by email to Edward

A. Tellechea, Chief Assistant Attorney General, at
Ed.Tellechea@myfloridalegal.com this 18th day of

April, 2017.

Bryel Sanders

Deputy Agency Clerk

C. Dmuleper

7014 2120 0003 8706 8951

Monica Felder Rodriguez, ESA

7014 2120 0003 8706 9149

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

Celeste Philip, MD, MPH
Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

MEMORANDUM

DATE: April 18, 2017

TO: Adrienne C. Rodgers, J.D. Bureau Chief
Bureau of Health Care Practitioner Regulation

FROM: Claudia J. Kemp
Executive Director, Board of Medicine

SUBJECT: Delegation of Authority

This is to advise you that while I am out of the office April 18, 2017 the following Program Operations Administrator is delegated to serve as Acting Executive Director for the Board of Medicine.

Crystal Sanford Program Operations Administrator (850) 245-4132

CK/rh
cc:

Sylvia Sanders
Staff, Board of Medicine
Board and Council Chairs