

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
MEDICINE,

Petitioner,

vs.

Case No. 16-4348PL

DOUGLAS M. BURKS, M.D.,

Respondent.

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SUPPLEMENT TO RECOMMENDED ORDER ON REMAND

A Recommended Order was entered in this case on December 20, 2016. An Order of Remand was filed on February 23, 2017, which requested a written statement of the mitigating circumstances justifying the recommended penalty below the guidelines in Florida Administrative Code Rule 64B8-8.001(2)(a) (Rev. June 21, 2011). For this purpose, the Transcript of the final hearing and the hearing exhibits were re-filed at the Division of Administrative Hearings on March 9.

Section (3) of the rule provided the aggravating and mitigating factors to consider for a deviation from the typical penalty range in the guidelines. They are:

(a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;

(b) Legal status at the time of the offense: no restraints, or legal constraints;

(c) The number of counts or separate offenses established;

(d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;

(e) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;

(f) Pecuniary benefit or self-gain inuring to the applicant or licensee;

(g) The involvement in any violation of Section 458.331, F.S., of the provision of controlled substances for trade, barter or sale, by a licensee. In such cases, the Board will deviate from the penalties recommended above and impose suspension or revocation of licensure.

(h) Where a licensee has been charged with violating the standard of care pursuant to Section 458.331(1)(t), F.S., but the licensee, who is also the records owner pursuant to Section 456.057(1), F.S., fails to keep and/or produce the medical records.

(i) Any other relevant mitigating factors.

The Recommended Order addressed several of the section (3) aggravating and mitigating factors, as reflected in the supplemental findings, below:

(a) Finding of Fact 12. Neutral or slightly mitigating.

(b) Finding of Fact 1. The Respondent was under no restraints or legal constraints. Neutral or slightly mitigating.

(c) Findings of Fact and Conclusions of Law. (One count was established.) Neutral or slightly mitigating.

(d) Finding of Fact 2. There was no previous offense. Mitigating.

(e) Finding of Fact 1. There was no evidence that the Respondent has a disciplinary history in any jurisdiction. He has been in medical practice as an anesthesiologist since December 1984. Mitigating.

(f) Finding of Fact 14. The Respondent received no special pecuniary benefit or self-gain, except through his compensation arrangement at Jouvence. Neutral or slightly mitigating.

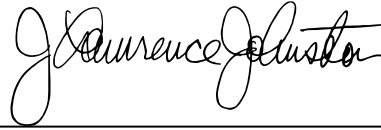
(g) Findings of Fact and Conclusions of Law. The Respondent was not involved in any violation of section 458.331, Florida Statutes, by providing controlled substances for trade, barter or sale. Neutral or slightly mitigating.

(h) There was no evidence that the Respondent was an owner of medical records, or failed to keep and/or produce the medical records. Neutral or slightly mitigating.

(i) Another mitigating factor is that the Respondent was motivated by a genuine desire to try to help his patient. Cf. Findings of Fact 2 and 3. Also, he stopped doing the procedure in question because he decided the small chance of benefits did not outweigh the risk of infection. Finding of Fact 15.

Consideration of these factors justify the recommended penalty below the guidelines in the rule.

DONE AND ENTERED this 16th day of March, 2017, in
Tallahassee, Leon County, Florida.



J. LAWRENCE JOHNSTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2017.

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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 Supplement to Recommended Order on Remand. Any exceptions to this Supplement to Recommended Order on Remand should be filed with the agency that will issue the Final Order in this case.