

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
MEDICINE,

Petitioner,

vs.

Case No. 16-6488PL

SAMY F. BISHAI, M.D.,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Tampa and Tallahassee, Florida, on March 14 and 15, 2017, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Corynn Colleen Alberto, Esquire
Allison M. Dudley, Esquire
Florida Department of Health
Prosecution Services Unit
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For Respondent: Michael L. Smith, Esquire
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Altamonte Springs, Florida 32714

STATEMENT OF THE ISSUES

Whether Respondent violated section 456.072(1)(v), Florida Statutes (2012-2013), as alleged in the Amended Administrative Complaint; and, if so, what penalty should be imposed for his conduct.

PRELIMINARY STATEMENT

On June 26, 2015, Petitioner, Department of Health, Board of Medicine (DOH or the Department), filed a four-count Amended Administrative Complaint against Respondent, Samy F. Bishai, M.D., alleging that Respondent committed sexual misconduct with respect to four patients, A.P., J.T., E.S., and L.P. On September 23, 2016, Respondent disputed the allegations in the Amended Administrative Complaint and requested a hearing pursuant to section 120.57(1), Florida Statutes (2016). On November 4, 2016, the matter was referred to the Division of Administrative Hearings for the assignment of an administrative law judge.

The disputed-fact hearing in this case was initially scheduled for February 8 through 10, 2017. On January 9, 2017, Respondent filed his Unopposed Motion for Continuance. By notice issued January 12, 2017, the case was rescheduled for March 14 through 16, 2017.

Petitioner presented five witnesses, three of whom (patients E.S., A.P. and J.T.) testified in person at the hearing. The testimony of patient L.P. and Petitioner's expert witness,

Kevin Nowicki, M.D., was received in the form of deposition transcripts. Respondent also presented four witnesses, two of whom (patients C.W. and S.L.) testified in person at the hearing. The testimony of patients G.T. and E.C. was received in the form of deposition transcripts.

Petitioner's Exhibits 1 through 6, 8 and 9 were admitted into evidence. Respondent's Exhibits 5 and 6 were admitted into evidence, subject to the limitation that any character evidence would not be considered, and Respondent's Exhibits 11, 12, 13, and 20 were also admitted into evidence. Petitioner's Exhibit 7 and Respondent's Exhibit 2 were admitted as Joint Exhibit 1.

Official recognition was taken of a prior citation by the Board of Medicine against Respondent's license in DOH case number 1992-14986, which was identified as Petitioner's Exhibit 10. At the request of Respondent, official recognition was taken of: Department of Health v. Deshon A. Davis, C.N.A., Case No. 15-1868PL (Fla. DOAH Sept. 11, 2015), rejected in part, Case No. 2014-06796 (Fla. DOH Jan. 4, 2016); Department of Health v. Steven Read, D.C., Case No. 16-2313PL (Fla. DOAH Sept. 29, 2016; Fla. DOH Dec. 12, 2016); United States of America v. Perez, Case No. 8:15-cr-175-T-30EAJ (M.D. Fla. 2016); and United States of America v. Luis, Case No. 8:15-cr-175-T-30EAJ (M.D. Fla. 2016). At the request of Petitioner, official recognition was taken of: Florida Administrative Code Rules 64B8-8.001 and 64B-9.008;

Department of Health v. Robert Dehgan, M.D., Case No. 16-1595PL (Fla. DOAH Aug. 31, 2016; Fla. DOH Dec. 9, 2016); and Department of Health v. Edwardo Williams, M.D., Case No. 15-5528PL (Fla. DOAH Mar. 4, 2016; Fla. DOH Apr. 26, 2017).

The two-volume Transcript of the proceedings was filed with DOAH on April 5, 2017. Petitioner and Respondent each filed a proposed recommended order, and the same have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of medicine pursuant to section 20.43 and chapters 456 and 458, Florida Statutes. The Board of Medicine is the professional licensing board charged with final agency action with respect to physicians licensed pursuant to chapter 458.

2. At all times relevant to the instant proceedings, Respondent has been a licensed physician in the State of Florida, and holds license number ME 17784.

3. At all times relevant to the instant proceeding, Respondent was employed by AmeriMed Diagnostic Services, Inc. (AmeriMed), 500 West Martin Luther King Jr. Boulevard, Tampa, Florida.

A. Patient A.P.

4. A.P., a male patient, presented to Respondent at AmeriMed on September 11, 2013, and April 8, 2014, for medical evaluation

related to an ongoing workers' compensation claim. During both appointments, A.P. complained of severe lower back pain and pain radiating down his left leg. A.P. did not complain of a hernia or pain in his genitals.

5. Respondent performed a physical examination on A.P. on September 11, 2013. During the examination, Respondent instructed A.P. to undress down to his underwear and lie on his back on an examining table. Respondent removed A.P.'s underwear while A.P. was lying on the examining table. Respondent moved A.P.'s legs back and forth and then touched the area in between A.P.'s legs underneath his testicles. While doing this, Respondent "lifted" A.P.'s penis and moved it back and forth. After several minutes of Respondent touching A.P. in this manner, A.P. ejaculated. A.P. tried to remove himself from the examining table, but Respondent pressed on A.P.'s stomach and told him to "just relax." Respondent then cleaned the semen off of A.P. and told him to get dressed. After the appointment, A.P. felt embarrassed and ashamed and believed that what happened during the examination was his fault because he had not "been with a woman in quite some time."

6. On April 8, 2014, A.P. presented to Respondent for a second examination. During the examination, Respondent instructed A.P. to undress down to his underwear and lie on his back on the examining table. While A.P. was on the examining table, Respondent removed A.P.'s underwear and used his fingers to

manipulate A.P.'s penis "back and forth," which eventually caused A.P. to ejaculate. A.P. tried to remove himself from the examining table but Respondent, like before, told him to "relax," and reminded A.P. that he needed the examination for his workers' compensation case. After A.P. ejaculated, Respondent "cleaned up" and instructed A.P. to get off the table. Respondent then told A.P. to walk back and forth across the examination room, and A.P. complied with Respondent's directive. A.P. was naked when he walked back and forth across the room.

7. After the second appointment, A.P. believed that what happened to him while being examined by Respondent was not his fault, and he believed that Respondent's examination was sexual in nature. A.P. testified that he was sexually molested as a child and knew the difference between an appropriate medical examination and molestation. As a result of these incidents with Respondent, A.P. has reservations about being examined by another physician in Florida.

8. Respondent's patient examination notes for the September 11, 2013, and April 8, 2014, appointments with A.P. do not document a genital or hernia examination.

9. After leaving the appointment on April 8, 2014, A.P. was upset about what Respondent had done to him so he called his girlfriend who suggested that he report the matter to the police.

A.P. subsequently went to the police department and reported Respondent's conduct.

10. A.P. testified that he reported the incident to the police on April 8, 2014. Respondent attempted to challenge A.P.'s credibility by presenting A.P. with a copy of the police report which identified April 14, 2014, as the date the police report was made. The police report was not admitted into evidence and there was no testimony from the author of the report; therefore, it is unclear whether the date in the report refers to when A.P. reported the incident or when the police department generated the report. Regardless, A.P. is certain that on April 8, 2014, he reported the incident to the police department and his testimony in this regard is credible.

11. On cross-examination, Respondent attempted to further discredit A.P.'s testimony by noting that A.P. stated that he did not remember seeing any of the other physicians at AmeriMed until after his first visit with Respondent.

12. Patient A.P.'s records document that he did see another physician before being evaluated by Respondent. However, this fact does not contradict or confuse his testimony about what occurred during his two appointments with Respondent. Additionally, in light of the fact that these appointments occurred more than three years ago, it is not unreasonable to

believe that A.P. might not remember clearly which physician he initially saw at AmeriMed.

13. Respondent also attempted to impeach A.P. by asking him about his history with pain medications. A.P. originally testified that he was taking hydrocodone at the time he first saw Respondent. After Respondent's counsel presented A.P. an excerpt from A.P.'s medical records from AmeriMed, A.P. remembered that he was also taking morphine. Respondent suggests that A.P. concealed that he was taking morphine, and should therefore not be believed, but A.P. explained that he believed morphine was a "non-narcotic" and admitted that he is not familiar with medications.

14. A.P. testified that his medications did not impact his ability to observe or perceive the events that happened during his appointments with Respondent.

15. With regard to the incidents that occurred while he was being examined by Respondent, A.P.'s testimony was precise, lacking in confusion, and credible.

B. Patient J.T.

16. J.T., a male patient, presented to Respondent at AmeriMed for medical appointments on February 11, and March 20, 2014. At both appointments J.T. complained of lower back pain, pain radiating down his legs, and numbness and tingling in his feet. J.T. did not complain of a hernia or pain in his genitals.

17. J.T. presented to Respondent at AmeriMed because he was told that Respondent could assist him with his federal workers' compensation claim.

18. During the appointment on February 11, 2014, Respondent performed a physical examination on J.T. Prior to the examination, Respondent told J.T. to remove all of his clothes, except for his underwear, and lie on his back on the examination table. J.T. complied with Respondent's directive, and while J.T. was lying on his back, Respondent removed J.T.'s underwear and told J.T. that he needed to "check his hips." With his hands, Respondent pushed into J.T.'s inner thigh area near his groin. Respondent then told J.T. that he was going to "check for sensation." Respondent touched a small plastic instrument with a wheel on it to J.T.'s feet and legs. Respondent moved the instrument up to J.T.'s inner thigh and then grabbed J.T.'s penis and "pulled it up." Respondent rolled the instrument on each side of J.T.'s penis and asked J.T. where he felt it more. Respondent also touched the instrument on the sides of J.T.'s scrotum. Respondent did this for four to five minutes.

19. At one point, while Respondent was using the instrument on J.T.'s genitals, Respondent told J.T. that he was "checking for a hernia." Next, Respondent instructed J.T. to stand up and walk back and forth across the exam room on his tiptoes and heels. J.T. complied while Respondent observed him. After walking back

and forth, Respondent told J.T. to stand in front of him so he could again "check for a hernia." While Respondent sat on a stool and J.T. stood naked in front of him, Respondent grabbed J.T.'s scrotum and used his hands to manipulate J.T.'s testicles. J.T. described Respondent's touching of his scrotum as "fondling" rather than a touching that resembled a legitimate hernia examination.

20. J.T. testified that he had been checked for a hernia previously by other physicians and described those examinations as "very different" from Respondent's examination. According to J.T., in previous exams, he was required by other physicians to stand up as the doctor felt either side of his testicles and instructed him to turn his head and cough. J.T. explained that the "legitimate" hernia examinations lasted seconds, and the doctor did not move his testicles around in the way that Respondent had.

21. Respondent's patient examination note for the February 11, 2014, appointment with J.T. does not document a genital or hernia examination.

22. J.T. testified that following his appointment with Respondent on February 11, 2014, he felt "weird" because he had never experienced an examination like the one Respondent performed.

23. J.T. presented to Respondent for a second time on March 20, 2014, to obtain additional information requested by the office of workers' compensation. During the appointment on March 20, 2014, Respondent told J.T. that he needed to do another examination because he needed to make sure he "didn't miss anything."

24. On March 20, 2014, Respondent performed a second physical examination on J.T. Respondent instructed J.T. to undress down to his underwear, and to lie on his back on the examining table. While on the examining table, Respondent removed J.T.'s underwear and used the same plastic instrument as before on each of J.T.'s legs, penis and scrotum.

25. Respondent then instructed J.T. to get off the table and walk back and forth across the room. J.T. complied with Respondent's directive and did so while completely undressed.

26. After walking back and forth, Respondent asked J.T. to stand in front of him as Respondent sat on a stool. Respondent squeezed one side of J.T.'s scrotum and then the other. Respondent took about 45 seconds squeezing each side of J.T.'s scrotum and advised J.T. that he believed he had a "slight hernia." J.T. described the way Respondent squeezed his scrotum as "fondling."

27. Respondent did not document that he examined J.T.'s genitals or checked for a hernia in his patient examination note for the appointment on March 20, 2014.

28. J.T. filed a police report against Respondent on August 26, 2014. J.T. also filed a formal complaint with the Department shortly thereafter.

29. The incidents with Respondent have negatively affected J.T. and have caused him to be hypercautious and guarded when seeing other doctors.

30. When questioned about his reason for waiting nearly four months to file a complaint with the Department, J.T. credibly testified that he was confused and embarrassed by the incidents. According to J.T., it was not until he found out that there were other patients with similar experiences that he knew something was inappropriate about the way that Respondent had examined him, and it was then that he decided to file a complaint. Patient J.T.'s explanation was clearly stated and is credible.

31. When asked about communications he had with staff and patients at AmeriMed, J.T. credibly testified that he was never told to file a complaint against Respondent, and that he did not conspire with any other patients to make up false allegations against Respondent.

32. With regard to the incidents that occurred while he was being examined by Respondent, J.T.'s testimony was precise, lacking in confusion, and is credible.

C. Patient E.S.

33. Between January 2013 and June 2013, E.S., a male patient, presented multiple times to Respondent for medical evaluation related to his federal workers' compensation claim. E.S.'s complaints included pain in both feet, flattened arches of both feet, plantar fasciitis, and severe pain on standing and/or walking. E.S. did not complain of a hernia or pain in his genitals.

34. On January 14, 2013, E.S. arrived at AmeriMed for an initial visit with Respondent. Respondent performed a physical examination of E.S. and during the course of the examination Respondent told E.S. to take off all of his clothes. During the examination, while E.S. sat on the examining table, Respondent grabbed E.S.'s penis and moved it around with his hands. Respondent then instructed E.S. to get off of the table and walk back and forth across the examination room. E.S. did so, while still completely undressed. After walking back and forth, Respondent told E.S. to stand in front of him. E.S. complied with Respondent's directive, and while doing so Respondent held E.S.'s penis and asked him to turn his head to the left and to the right.

35. E.S. presented to Respondent on February 15, 2013, at which time Respondent performed a physical examination. Respondent told E.S. to take off all of his clothes and to lie on the examining table. During the examination, while E.S. was on the table naked, Respondent touched and pulled on E.S.'s penis. E.S. described the touching as "stroking." Respondent instructed E.S. to walk back and forth across the room, and E.S. complied. E.S. then stood naked in front of Respondent, and while doing so Respondent held E.S.'s penis and asked him if he felt pain. While holding E.S.'s penis, Respondent told E.S. to turn his head and cough. Respondent did not touch E.S.'s testicles or the area underneath E.S.'s testicles during the examination.

36. E.S. testified that during each of his three subsequent visits with Respondent, he was required to completely undress, and that Respondent touched or in some way manipulated his penis. E.S. testified that the manner in which Respondent touched his penis was not the same on every appointment. For instance, during one of the visits, E.S. testified that Respondent tried to "open" his penis by pulling down on the top of it.

37. E.S. was treated by other physicians for his feet and back pain prior to being evaluated by Respondent. While being examined by the other physicians, E.S. testified that he was not naked, and the physicians did not touch his penis. Additionally, E.S. testified that his current physician, who is also treating

him for pain in his feet and back, does not ask him to undress completely and does not touch his penis during examinations.

38. Patient E.S. has had hernia examinations by other physicians in the past, and during those examinations he had to remove his pants for a short period of time to allow the physician to push up on his testicles, while he turned his head to the right and the left and coughed. E.S. testified that Respondent's exam was different because E.S. was naked and Respondent "held" his penis, which no other doctors have done.

39. Respondent did not document that he examined E.S.'s genitals or checked for a hernia in any of his patient examination notes for appointments between January 2013 and June 2013.

40. E.S. was vulnerable when he presented to Respondent for medical evaluation. E.S. had spent years dealing with his workers' compensation claim, a process which he described as difficult. He was assured that Respondent could help him with his claim. During the first examination, E.S. "blanked" while Respondent touched him inappropriately because he assumed Respondent had to "check everything" and would "write a really good report." After the second and third appointments, E.S. became concerned about the way that he was being examined by Respondent. Nevertheless, E.S. returned to Respondent for a fourth and fifth appointment because he needed the examinations in order to comply with the requirements for his workers' compensation claim.

41. With regard to the incidents that occurred while he was being examined by Respondent, E.S.'s testimony was precise, lacking in confusion, and credible.

D. Patient L.P.

42. L.P., a male patient, presented to Respondent at AmeriMed multiple times for medical appointments between August 2012 and April 2014. L.P.'s complaints included lower back pain, pain in his hips, and pain radiating down the right leg. L.P. did not complain of a hernia or pain in his genitals.

43. During each appointment, L.P. was examined by Respondent and instructed to take off all his clothes, including his underwear. L.P. was also instructed by Respondent to lie on the examining table. While on the table, Respondent rubbed a plastic instrument up and down L.P.'s legs, between his legs, and on his penis. According to L.P., Respondent would also pull the foreskin back on L.P.'s penis, manipulate L.P.'s penis with his hands, and touch L.P.'s testicles. During the examinations, Respondent instructed L.P. to walk naked back and forth across the examination room. Respondent also had L.P. stand in front of him so that Respondent could purportedly "check for a hernia." In "checking for a hernia," Respondent held L.P.'s penis in one hand and then felt in between L.P.'s legs with the other hand. L.P. testified that Respondent did all of these things at every

appointment and that Respondent spent the majority of the examination touching the instrument on L.P.'s penis.

44. L.P. testified that he has been checked for a hernia before but Respondent's purported hernia examination was "totally different."

45. Respondent did not document that he examined L.P.'s genitals or checked for a hernia in any of his patient examination notes.

46. L.P. described a long history of back pain, which resulted from two work-related accidents, and noted that he had seen other physicians for his back pain before presenting to Respondent at AmeriMed. According to L.P., none of his other physicians required him to undress completely for an examination, touched his genitals, or had him walk back and forth while naked. Additionally, L.P.'s current physician does not require him to undress for examinations.

47. L.P. explained why he never told anyone about the inappropriate examinations until after Respondent stopped working at AmeriMed. L.P. testified that Respondent's examinations made him feel uncomfortable, but he continued to see Respondent because he was the only doctor he had. L.P. explained that he wanted to say something about the inappropriate examinations but he remained silent because he did not want to lose his workers' compensation doctor. L.P. described the process of finding a doctor who

treated federal workers' compensation claim patients as difficult, which is why he drove 138 miles from Ft. Myers to Tampa for his appointments with Respondent.

48. Respondent, in an attempt to impeach L.P., suggests that there was collusion between L.P., the staff and other patients at AmeriMed to make false accusations against Respondent. L.P. testified credibly that he was never asked by AmeriMed staff or anyone else to fabricate allegations against Respondent.

49. With regard to the incidents that occurred while he was being examined by Respondent, L.P.'s testimony was precise, lacking in confusion, and credible.

E. Respondent's witnesses

50. Respondent presented four witnesses: C.W.; S.L.; G.T.; and E.C. These individuals are all former U.S. Air Marshals and were workers' compensation patients treated by Respondent at AmeriMed. Patients C.W., S.L., G.T. and E.C. all know each other through the U.S. Air Marshal Service.

51. Through his witnesses' testimony, Respondent seeks to prove that AmeriMed staff solicited complaints against him, and that the patients involved in this case had ulterior motives in making the allegations against Respondent. None of Respondent's witnesses testified, however, that they were solicited by anyone to make a complaint against Respondent, and their testimony was based largely on rumor and speculation. Additionally, Respondent

presented no evidence showing that any of the patients in this case had an incentive, financial or otherwise, to fabricate the allegations against Respondent.

F. Expert testimony

52. Dr. Kevin Nowicki, M.D., testified as a medical expert for Petitioner. Dr. Nowicki is a licensed medical doctor in the State of Florida and is board-certified in orthopedic surgery. Dr. Nowicki performs similar examinations on patients with orthopedic pain, including workers' compensation patients.

53. Dr. Nowicki testified that a physical examination, within the professional scope of practice, on a patient with complaints of lower back pain, pain radiating down the legs, or numbness and tingling in the feet, does not require the patient's underwear to be removed. A physical examination, within the professional scope of practice, on a patient with complaints of pain in both feet, flattened arches in both feet, plantar fasciitis, and pain on standing and/or walking would be limited to the area of the body below the knee, and the patient does not need to be naked. Additionally, according to Dr. Nowicki, it is unnecessary and medically unjustified to squeeze the scrotum, pull on the penis, use an instrument to touch the sides of the penis, or require a patient to walk back and forth across the room naked for an orthopedic examination.

54. Dr. Nowicki also testified that when checking for a hernia, there may occasionally be a need to touch the patient's scrotum, but such touching should take five to ten seconds and does not require any touching of the patient's penis.

55. Dr. Nowicki's medical opinions with regard to orthopedic examinations and hernia examinations are accepted. His testimony is found to be credible and uncontroverted.

56. Respondent did not offer the testimony of an expert witness to counter Dr. Nowicki's testimony. Furthermore, Respondent chose not to testify at the hearing and invoked his Fifth Amendment privilege against self-incrimination.

CONCLUSIONS OF LAW

57. DOAH has jurisdiction of the subject matter and the parties to this action pursuant to sections 120.569 and 120.57(1).

58. This is a proceeding whereby the Department seeks to revoke Respondent's license to practice medicine. The Department has the burden to prove the allegations in the Amended Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 595 So. 2d 292 (Fla. 1987). As stated by the Supreme Court of Florida,

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the

facts at issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

59. Counts I through IV of the Amended Administrative Complaint charge Respondent with violating section 456.072(1)(v), by engaging in sexual misconduct as defined and prohibited in section 456.063(1). The 2012 and 2013 codifications of the statutory references, which are identical, provide in pertinent part:

456.063 Sexual misconduct; disqualification for license, certificate, or registration.

(1) Sexual misconduct in the practice of a health care profession means violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession. Sexual misconduct in the practice of a health care profession is prohibited.

456.072 Grounds for discipline; penalties; enforcement.

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

* * *

(v) Engaging or attempting to engage in sexual misconduct as defined and prohibited in s.456.063(1).

60. Regarding the inappropriate examinations Respondent performed on patients A.P., J.T., E.S., and L.P., Petitioner proved by clear and convincing evidence that Respondent violated section 456.072(1)(v), by engaging in, or attempting to engage in, sexual misconduct with each patient as defined and prohibited in section 456.063(1), and as alleged in each count of the Amended Administrative Complaint. Patients A.P., J.T., E.S. and L.P. testified clearly and convincingly about the events that occurred during their examinations by Respondent. Each patient sought out the treatment of Respondent for various work-related injuries. Each patient needed treatment and required assistance with a workers' compensation claim. Respondent took advantage of the vulnerabilities of the patients and the trust they placed in Respondent by inappropriately fondling and touching each patient's genitalia. Respondent further abused the physician-patient relationship by requiring each patient to unnecessarily remove all clothing and instructing them to walk around the room while naked.

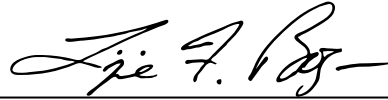
There is no evidence that Respondent's actions during the examinations were medically justified or were within the course of a normal orthopedic examination, including a hernia examination.

61. The Board of Medicine has adopted Disciplinary Guidelines to place licensees and members of the public on notice of the range of penalties normally imposed for violations of chapters 456 and 458, as well as the rules adopted pursuant thereto. Fla. Admin. Code R. 64B8-8.001. For a violation of section 456.092(1)(v), the guideline penalty, as it existed when these violations took place, is from one-year suspension, followed by a period of probation and a reprimand, and an administrative fine of \$5,000, to revocation or denial of licensure and an administrative fine of \$10,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Board of Medicine issue a final order finding that Respondent, Samy F. Bishai, M.D., violated section 456.072(1)(v) as alleged in Counts I through IV of the Amended Administrative Complaint. It is further RECOMMENDED that the Board revoke Respondent's license to practice medicine, impose an administrative fine in the amount of \$40,000, and impose costs of investigation and prosecution.

DONE AND ENTERED this 5th day of May, 2017, in Tallahassee,
Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2017.

COPIES FURNISHED:

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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.