

FILED DATE MAR 02 2018

Department of Health

By: Amber Greene  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-15828  
DOAH CASE NO.: 17-2565PL  
LICENSE NO.: ME0096703

MYRDALIS DIAZ-RAMIREZ, 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 February 2, 2018, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, Petitioner's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions to the Recommended Order and Response to Petitioner's Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, C, D, and E respectively) in the above-styled cause. Petitioner was represented by Christopher Dierlam, Assistant General Counsel. Respondent was present and represented by Jon Pellett, Esquire

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

1. Respondent's Exception Number 1 is denied for the reasons set forth by the Petitioner in its written response and as stated orally at the hearing.

2. Respondent's Exception Number 2 is denied for the reasons set forth by the Petitioner in its written response and as stated orally at the hearing.

3. Respondent's Exception Number 3 is denied because the Board does not have substantive jurisdiction over evidentiary issues.

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

4. Petitioner's Exception Number 1 is granted for the reasons set forth by the Petitioner in its exceptions and as stated orally at the hearing. *The Department of Health v. Robert Burns, M.D.*, DOAH Case No. 10-7289PL (Fla. DOAH Dec., 29, 2010; Fla. DOAH Feb., 16, 2011) reflects a final order of the Board of Medicine. As such, the Board does indeed have

substantive jurisdiction over interpretation and application of its own Final Orders.

5. Petitioner's Exception Number 2 is denied for the reasons set forth by the Respondent in the written response and as stated orally at the hearing.

6. Petitioner's Exception Number 3 is granted for the reasons stated by the Petitioner in the written response and as stated orally at the hearing.

7. Petitioner's Exception Number 4 is denied for the reasons set forth by the Respondent in the written response and as stated orally at the hearing.

#### 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 in paragraphs 14-18 of the Recommended Order are approved and adopted and incorporated herein by reference.

3. The conclusions of law set forth in paragraph 19 is amended as follows:

19. Obviously, the Respondent injected numbing agent on the wrong site (side), where it was not authorized or medically necessary or related to the patient's diagnosis or medical condition. She did not inject the wrong patient. The administration of a numbing agent, an anesthetic agent, is indeed a medical procedure. Nonetheless, it was not required to be reported as an adverse incident under either section 395.0197(5) or section 458.351, Florida Statutes, which address surgical procedures. See also Fla. Admin. Code R. 64B8-9.001(1)(a) (Mar. 9, 2000). Similarly, rule 64B8-9.007(2)(a) (Jan. 29, 2013) required a "time-out" or "pause" to help prevent wrong patient/wrong side/wrong site surgeries and certain other procedures, but did not require one for minor surgeries/procedures, such as a trochanter bursa injection, not requiring the administration of anesthesia or an anesthetic agent.

The Board is of the opinion that the findings set forth in paragraph 19 of the Recommended Order are mixed findings of fact and law. The Board also believes that the finding asserting that the administration of an anesthetic agent into a patient does not constitute a medical procedure involves a matter infused with overriding policy considerations of such a nature that would support giving less deference to the factual findings made by the Administrative Law Judge. To assert that the administration of an anesthetic agent, no matter how minor it may appear, does not constitute a medical procedure has wide ranging policy implications. While it was not the main surgical procedure that was to be performed on the patient, it was

nonetheless a medical procedure as contemplated in Section 456.072(1)(bb), Florida Statutes, and it was administered on the patient's wrong side. Therefore, based on the foregoing the Board believes that it was legally justified and authorized in substituting the Administrative Law Judge's finding with its finding as set forth above in the above-quoted substitute paragraph 19 and to the extent that it was that the finding is a conclusion of law, the Board believes that its reading and application of Section 456.072(1)(bb), Florida Statutes, is more reasonable than that of the Administrative Law Judge.

#### DISPOSITION

Based upon the foregoing and a complete review of the record in this case, the Board determines that the actions of the Respondent are of a de minimus nature and do not merit disciplinary action. Accordingly, the Board accepts the Administrative Law Judge's recommendation that the Board enter a final order finding the Respondent not guilty of violating Section 456.072(1)(bb) and dismissing the Second Amended Administrative Complaint.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The Second Administrative Complaint filed in this matter is hereby DISMISSED.

DONE AND ORDERED this

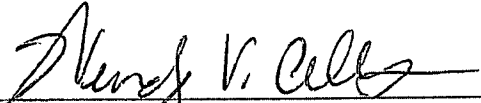
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BOARD OF MEDICINE

  
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Claudia Kemp, J.D., Executive Director *for*  
For Jorge J. Lopez, 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 U.S. Mail to MYRDALIS DIAZ-RAMIREZ, M.D., Post Office Box 39, Sarasota, Florida 34230; by email to Jon M. Pellett, Esquire, The Doctors Company, [jpellett@thedoctors.com](mailto:jpellett@thedoctors.com); to J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by email to Allison Dudley, Assistant General Counsel,

Department of Health, at Allison.Dudley@flhealth.gov; and by  
email to Edward A. Tellechea, Chief Assistant Attorney General,  
at Ed.Tellechea@myfloridalegal.com this 2<sup>nd</sup> day of  
March, 2018.

*Amber Greene*

Deputy Agency Clerk