

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF
OSTEOPATHIC MEDICINE,

Petitioner,

Case No. 20-0971PL

vs.

ADAM PATRICK HALL, D.O.,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on August 4, 2020, Administrative Law Judge Elizabeth W. McArthur of the Division of Administrative Hearings (DOAH) conducted a disputed-fact evidentiary hearing by Zoom conference from Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael Jovane Williams, Esquire
Jamal Burke, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399

For Respondent: Lauren Ashley Leikam, Esquire
Ronald W. Chapman, Esquire
Chapman Law Group
6841 Energy Court
Sarasota, Florida 34240

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent's license or authority to practice osteopathic medicine was acted against by the licensing authority of another jurisdiction, in violation of section 459.015(1)(b), Florida Statutes (2016)¹; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 9, 2018, the Department of Health (Department or Petitioner) filed a Second Amended Administrative Complaint (Complaint) before the Board of Osteopathic Medicine (Board) against Adam Patrick Hall, D.O. (Respondent). The Complaint alleged that on or about December 14, 2016, the State Medical Board of Ohio (Ohio Board) permanently revoked Respondent's license to practice osteopathic medicine and surgery in the State of Ohio, in violation of section 459.015(1)(b). Respondent elected a disputed-fact hearing and on February 20, 2020, the case was transmitted to DOAH for assignment of an administrative law judge to conduct the requested hearing.

The hearing was initially set for May 4, 2020, but was rescheduled twice following joint motions for continuance that raised complications in hearing preparation due to the coronavirus pandemic. The hearing format was also changed from video teleconference at two fixed hearing locations to Zoom conference at Petitioner's request, which was not opposed by Respondent.

Prior to the hearing, the parties filed an Amended Joint Pre-hearing Stipulation in which they stipulated to a number of facts. The relevant stipulated facts have been incorporated in the findings below.

¹ References herein to substantive statutes and rules are to the 2016 versions, unless otherwise provided.

At the final hearing, Respondent testified both for Petitioner in its case and on his own behalf in his case. Petitioner's Exhibits A through C and E through M were admitted without objection. Petitioner's Exhibit D was admitted over Respondent's hearsay objection, but subject to the restrictions on using hearsay in section 120.57(1)(c), Florida Statutes, and Florida Administrative Code Rule 28-106.213(3). Respondent's Exhibits E and F were admitted into evidence.²

At the conclusion of the hearing, the parties were informed of the ten-day deadline provided by rule for filing proposed recommended orders (PROs) after the final hearing transcript is filed with DOAH. Petitioner asked for an extended 30-day deadline, with Respondent's agreement, which was allowed.³

The final hearing Transcript was filed on August 17, 2020. Petitioner and Respondent timely filed their PROs on September 16, 2020, and both PROs 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 osteopathic medicine and prosecuting disciplinary actions on the Board's behalf, pursuant to section 20.43 and chapters 456 and 459, Florida Statutes.

² Respondent's Exhibits A through D were also initially offered into evidence and admitted. However, during the hearing, the parties noted that Respondent's Exhibits A through D duplicated Petitioner's Exhibits A, B, J, and M, except that Petitioner's versions of these exhibits contained redactions. After the hearing, the parties filed a joint motion to allow Respondent to adopt Petitioner's Exhibits A, B, J, and M and withdraw Respondent's Exhibits A through D. The joint motion was granted. Accordingly, the record does not include Respondent's withdrawn Exhibits A through D.

³ By agreeing to an extended deadline of more than ten days after the filing of the transcript for filing PROs, the parties waived the 30-day time period for issuing the Recommended Order. *See Fla. Admin. Code R. 28-106.216.*

2. Respondent is licensed to practice osteopathic medicine in Florida, having been issued license number OS 10315 on or about March 4, 2008. Although Respondent has been licensed to practice osteopathic medicine in Florida since 2008, including at all times relevant to the Complaint, he testified that he did not practice osteopathic medicine in Florida until sometime after December 14, 2016.

3. Currently, Respondent does not hold any other active licenses to practice osteopathic medicine in other states. Previously, he held licenses in Ohio, Missouri, and Kansas.

4. The factual allegation in the Complaint that is the predicate for the charge against Respondent is as follows:

On or about December 14, 2016, the State Medical Board of Ohio issued an Entry of Order permanently revoking the license of Respondent to practice osteopathic medicine and surgery in the State of Ohio. (Complaint at 2, ¶ 5).

5. The parties stipulated that the Ohio Board is the licensing authority of the practice of osteopathic medicine in the state of Ohio. The parties also stipulated to the following:

On December 14, 2016, in case number 16-CRF-0055 and in accordance with chapter 119, Ohio Revised Code, the State Medical Board of Ohio entered an order which permanently revoked Respondent's certificate to practice osteopathic medicine and surgery in Ohio. (Amended Jt. Pre-hrg. Stip. Part E (Stipulated Facts), ¶ 10).

6. Respondent disputed the Complaint's allegation quoted above, notwithstanding the stipulations, based on the argument that the word "license" in the Complaint is different from the word "certificate" in the stipulation. Respondent attempted to argue that the "certificate" that was permanently revoked was not a form of authority to practice osteopathic medicine and surgery.

7. Respondent offered various possibilities, such as that the permanently revoked "certificate" must have been the "training certificate" that he believed he was given in 2004 to participate in a training program before licensure, or that it was some other kind of "certificate." Respondent's argument is not credible, is inconsistent with the words following "certificate"—"to practice osteopathic medicine and surgery"—and is wholly unsupported by the evidence.

Ohio Licensure History

8. In late December 2003, Respondent applied for osteopathic medical licensure in Ohio via an application for a Certificate to Practice Osteopathic Medicine and Surgery (Ohio Application) submitted to the Ohio Board.⁴ The application was not deemed officially received for processing until January 29, 2004, because Respondent's initial submission was not accompanied by the required \$335.00 fee and he did not pay the fee until January 29, 2004. *See* Pet. Ex. 1, Bates p. 28, 3, and 18.

9. The Ohio Application form asked whether the applicant was, or intended to be, in an accredited training program in Ohio. Respondent answered that he intended to be in an accredited training program. He identified the training program as Doctor's Hospital/Anesthesiology in Columbus, Ohio, with a planned start date of June 30, 2004.

10. On January 30, 2004, the Ohio Board sent Respondent its "Acknowledgement of Application for Certificate to Practice Medicine and Surgery or Osteopathic Medicine and Surgery" (Acknowledgement), notifying Respondent that his application for a certificate to practice osteopathic medicine and surgery was received by the Board on January 29, 2004. The Acknowledgement also notified Respondent that he was authorized to

⁴ Respondent's entire licensure file, certified as complete by the Ohio Board, is in evidence, with Bates page numbers added in red. It is apparent that the pages representing Respondent's application for licensure to practice osteopathic medicine and surgery are not in order, perhaps because his initial submission in late December 2003 was incomplete and supplemented with various revised answers and additional documentation between 2004 and early 2005.

participate in the training program identified in his application: "Please be advised that you are hereby authorized to begin participation in the training program to which you have been appointed ... while your application is being processed." (Pet. Ex. 1, Bates p. 18).

11. Respondent claimed that the Acknowledgement notified him that he was granted a "training certificate" so he could participate in the residency program while his application for a license to practice osteopathic medicine and surgery was being processed. The Acknowledgement says no such thing. Respondent's argument to the contrary is rejected. No evidence was offered to prove that a training certificate was ever issued to Respondent.

12. Respondent's "training certificate" argument was part of his broader attempt to argue that in Ohio, the terms "certificate" and "license" refer to distinct items, and that a "license" is the form of authority to practice osteopathic medicine and surgery. Here too, Respondent's argument is contradicted by the record evidence and by Ohio law.

13. Beginning with Respondent's initial submission, date-stamped by the Ohio Board on December 23, 2003, it is clear that the specific phrase used to describe the form of authority to practice osteopathic medicine and surgery in Ohio was a "certificate to practice osteopathic medicine and surgery," although the umbrella term "license" was frequently used interchangeably with "certificate."⁵ The interchangeable use of "license" and "certificate," prefacing the phrase "to practice osteopathic medicine and surgery," is replete throughout Respondent's Ohio licensure file. The interchangeable use of these terms is evident perhaps nowhere more clearly than in the Ohio Board's form "Affidavit and Release of Applicant [-] Medicine or Osteopathic

⁵ Pursuant to the Ohio Administrative Procedure Act, just as under the Florida Administrative Procedure Act, "license" is an umbrella term defined to mean "any license, permit, certificate, commission, or charter issued by any agency." § 119.01(b), Ohio Rev. Code; *compare* § 120.52(10), Fla. Stat. (defining "license" as "a franchise, permit, certification, registration, charger, or similar form of authorization required by law[.]").

Medicine"⁶ executed by Respondent and submitted as part of the Ohio Application bearing the Ohio Board's "received" stamp dated December 26, 2003. By the executed affidavit, Respondent certified under oath:

that I am the person named *in this application for a license to practice medicine or osteopathic medicine in the State of Ohio* ... and that all documents, forms or copies thereof furnished or to be furnished with respect to my application are strictly true in every respect. ... I further understand that *the issuance of a certificate to practice medicine or osteopathic medicine in Ohio* will be considered based on the truth of the statements and documents contained herein or to be furnished[.] (Pet. Ex. 1, Bates p. 26, emphasis added).

14. Respondent's Ohio Application contained multiple deficiencies and required several rounds of requests for omitted information/documentation followed by submissions that attempted to respond to the requests. This process, documented in Respondent's complete Ohio licensure file in evidence, spanned from early 2004 through early 2005.

15. On April 13, 2005, the Ohio Board gave Respondent notice that it intended to determine whether to refuse to grant his certificate to practice osteopathic medicine and surgery, for reasons set forth in a detailed three-page letter. The gist of the reasons was that Respondent allegedly made false, fraudulent, deceptive, or misleading statements to the Acting Director of Medical Education for Respondent's residency program in Missouri pertaining to Respondent's failure to appear or respond to pages when he was on call. Respondent was informed of his right to a hearing.

16. Respondent requested a hearing, which was held before a hearing examiner for the Ohio Board on August 24, 2005. The hearing examiner's report and recommendation in evidence sets forth a summary of the evidence

⁶ The title of this form is on two lines: the first line is "Affidavit and Release of Applicant"; the second line, immediately below the first, is "Medicine or Osteopathic Medicine." The dash has been inserted to denote separation between the two lines of the title, for clarity.

(including Respondent's testimony at the hearing), findings of fact, and conclusions of law. (Pet. Ex. B, Bates p. 71-80).

17. The findings were that Respondent had failed to report to work when he was scheduled to be the resident on call, and failed to respond to several pages from the emergency department. He met with the Acting Director, and after the meeting, a determination was made to terminate Respondent from the residency program for "grievous dereliction of duty and subsequent imminent risk to quality patient care." (Pet. Ex. B, Bates p. 77). Respondent appealed the termination. Shortly thereafter, upon questioning by the Acting Director, Respondent falsely reported that he had been at the hospital, on duty that night, and received no pages. Respondent said that he had been in the hospital library and had used the computer. The Acting Director asked Respondent three times if he had used the computer at the library, and Respondent said yes. But the Acting Director verified with library staff that the computers had remained inactive during the time in question. Caught in the lie, Respondent ultimately admitted to the Acting Director that he had failed to report to duty. Instead, he had taken cold medicine and slept the entire night at home. Respondent "admitted that he had used very poor judgment and had been dishonest." (Pet. Ex. B, Bates p. 77). Respondent's termination from the residency program was upheld on appeal.

18. The hearing examiner concluded that Respondent's conduct violated section 4731.22(B)(5), Ohio Revised Code (making false, fraudulent, deceptive, or misleading statements in relation to the practice of osteopathic medicine and surgery), but did not demonstrate a current failure to prove good moral character. The hearing examiner elaborated on these conclusions:

Dr. Hall issued a series of deceitful and self-serving misstatements during the course of his practice. Such conduct would justify permanent denial of his *certificate to practice* in this state. Nevertheless, Dr. Hall admitted his misconduct and deceit within a short time of their occurrence. Moreover, Dr. Hall was forthcoming in his application for *licensure* in

Ohio. Therefore the evidence suggests that Dr. Hall has learned from his mistakes and will be more cautious and forthcoming in the future. (Pet. Ex. B, Bates p. 78, emphasis added).

19. Based on the hearing examiner's findings and conclusions, her proposed order was that Respondent's application "for a *certificate to practice osteopathic medicine and surgery*" in Ohio be granted, "provided that he otherwise meets all statutory and regulatory requirements." If so, the "certificate" should be issued on the effective date of the order. However, the "certificate" should be immediately suspended for 30 days, then reinstated subject to a number of probationary terms for a period of at least two years. The hearing examiner's proposed order concluded with a provision addressing when the order would become effective: "This Order shall become effective thirty days after mailing of notification of approval by the Board." (Pet. Ex. B, Bates p. 78-80, emphasis added).

20. At a meeting of the Ohio Board on December 14, 2005, the hearing examiner's proposed findings of fact, conclusions, and order were approved. A letter dated December 14, 2005, notifying Respondent that the Ohio Board had approved the hearing examiner's recommendations, bears a notation that it was mailed December 16, 2005.

21. Respondent was required to update certain components of his licensure application. By letter dated December 29, 2005, Respondent was given notice as "a follow-up to your application for Ohio *licensure*" that he had to update his resume of activities from July 2004 forward; update the listing of licensure activity in other states; and execute another notarized Affidavit and Release of Applicant. (Pet. Ex. A, Bates p. 89, emphasis added). Respondent executed another Affidavit and Release on January 13, 2006; the form appears unchanged from the one he signed in 2003, continuing to use the terms "certificate" and "license" to practice osteopathic medicine and surgery interchangeably (Pet. Ex. A, Bates p. 25). Other updates to his

application also were submitted on or shortly after January 13, 2006, including a letter from Doctors Hospital verifying that Respondent was in the anesthesia residency program, having begun February 2, 2004, and was anticipated to complete the program February 1, 2007.

22. The submission of the required update items on or shortly after January 13, 2006, resulted in Respondent's certificate (a/k/a license) to practice osteopathic medicine and surgery being issued on January 17, 2006, two days after it otherwise could have been consistent with the provisions of the hearing examiner's proposed order.

23. Also in accordance with the hearing examiner's proposed order, approved by the Ohio Board, Respondent's certificate to practice osteopathic medicine and surgery was immediately suspended for 30 days, which included the day that the certificate was issued. The 30-day suspension ran from January 17, 2006, through February 15, 2006. Respondent was permitted to practice osteopathic medicine pursuant to his certificate beginning February 16, 2006, subject to the terms of probation for at least two years.

24. Less than six months after Respondent's first suspension was over, Respondent self-reported to the Ohio Board that he was terminated from the anesthesia residency program for diverting a drug he had prescribed to a patient for his own use. One month after the self-report, on August 30, 2006, Respondent signed a Step I Consent Agreement (Step I Agreement) with the Ohio Board. The Step I Agreement included the following stipulations and admissions:

E. Dr. Hall admits that the Board ordered him to submit to a three-day examination at The Woods at Parkside [Parkside], a Board-approved treatment provider in Columbus Ohio, on or about July 31, 2006, based upon his self-report that he was terminated from his anesthesia residency program with Doctors Hospital in Columbus, Ohio, because he diverted for self-use Celestone, a corticosteroid,

that he prescribed for a patient; and that he had diverted Kenalog, another corticosteroid, in the past. Dr. Hall further admits that during this examination, he was diagnosed with substance abuse and Bipolar Disorder with mixed anxiety and that he entered Parkside for further treatment, including 28-day residential treatment.

F. Dr. Hall further admits that due to his substance abuse he currently is impaired in his ability to practice osteopathic medicine and surgery according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice and an inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills, due to his Bipolar Disorder with mixed anxiety. (Pet. Ex. B, Bates p. 57).

25. The Step I Agreement provided that, based on the stipulations and admissions, Respondent's certificate to practice osteopathic medicine and surgery was suspended indefinitely. A series of requirements and conditions were imposed, which had to be met before the Ohio Board would "consider reinstatement of Dr. Hall's certificate to practice osteopathic medicine and surgery." (Pet. Ex. B, Bates p. 60). The Step I Agreement took effect September 13, 2006, when signed on behalf of the Ohio Board. (Pet. Ex. B, Bates p. 63).

26. Six months later, on March 14, 2007, Respondent and the Ohio Board entered into the Step II Consent Agreement (Step II Agreement). Pursuant to the Step II Agreement, the indefinite suspension was lifted and Respondent's certificate to practice osteopathic medicine and surgery was conditionally reinstated under new probationary terms set forth in the Step II Agreement.

27. The Step II Agreement contained additional stipulations and admissions agreed to by Respondent, including:

C. Dr. Hall is applying for reinstatement of his license to practice osteopathic medicine and surgery in the state of Ohio, which was indefinitely suspended pursuant to the terms of the [Step I Agreement].

* * *

E. Dr. Hall admits that he initially entered inpatient treatment for cortical steroid abuse, at the Woods at Parkside [Parkside], a Board-approved treatment provider in Columbus, Ohio, on or about July 31, 2006, that he transitioned to outpatient treatment on or about August 28, 2006, and that he was subsequently discharged, treatment complete, on or about September 5, 2006. Dr. Hall further admits that in addition to his abuse of corticosteroids, in the past he also self-medicated with Elavil and Ultram, and excessively consumed alcohol to the point of having blackout events. Dr. Hall further admits that during his treatment at Parkside, he received an additional diagnosis of Bipolar Disorder for which he was prescribed medication.

* * *

G. ... Dr. Hall states ... that Victoria Sanelli, M.D., a psychiatrist who was approved by the Board to provide an assessment of Dr. Hall, evaluated Dr. Hall and submitted a report to the Board ... in which she stated that Dr. Hall's diagnoses include steroid dependence in early sustained remission, and that although Dr. Hall has been recently diagnosed with possible Bipolar Disorder, it was Dr. Sanelli's opinion as an addiction psychiatrist that it is extremely difficult to assign an Axis I diagnosis to someone who has recently been involved in substance abuse. ... Dr. Sanelli further opined that Dr. Hall has a Mood Disorder, which may be depressed mood or Bipolar Disorder, and that Dr. Hall's ability to practice osteopathic medicine and surgery has been assessed, and he is capable of practicing according to acceptable and

prevailing standards of care so long as certain treatment and monitoring requirements are in place.

28. The Step II Agreement provided that reinstatement of Respondent's license would be subject to a probationary term of at least five years from March 14, 2007, with numerous conditions and limitations imposed, including the treatment and monitoring requirements deemed necessary to ensure Respondent remained capable of practicing according to acceptable standards of care. The terms of Respondent's probation included random drug and alcohol tests, evaluations, restrictions on travel outside the state, use of a monitoring physician to monitor Respondent's practice of osteopathic medicine and surgery, and submission of quarterly reports to the Ohio Board in which Respondent attested under oath to full compliance with all conditions of the Step II Agreement.

29. Respondent testified that, at the beginning, he complied with the probationary terms he agreed to. For example, with regard to the travel restrictions, in 2007, when Respondent decided on the spur of the moment to travel to Alabama to visit a friend, he requested and obtained last-minute permission from the Ohio Board for the trip with the proviso that he continue to be subject to random screenings and go to meetings there.

30. However, in or about September 2008, after the Step II Agreement had been in place for only a year and a half, Respondent decided he could no longer comply with the agreement he entered into. When his brothers, who lived in Florida, asked him to travel with them to Italy and Lebanon for a vacation, for which the brothers would pay, Respondent agreed. The brothers coordinated the travel dates to work with Respondent's schedule. Respondent testified that he could not recall how long the trip was, but it was more than one week and possibly less than two weeks.

31. Even though this longer trip was planned, rather than spontaneous like the Alabama trip for which Respondent had obtained Ohio Board

approval, this time Respondent did not request approval. This was no accident. Instead, Respondent schemed to leave "clean" urine samples and slips filled out to submit with the samples to the lab, and left them behind with an employee who kept the samples in a freezer and submitted one or more samples while Respondent was out of the country. Respondent devised this scheme to cover up his unauthorized travel, and to give the impression that the samples were being given contemporaneously with their submission to the lab. Instead, Respondent went unmonitored during his unauthorized trip abroad. This was a blatant and devious affront to the terms of the Step II Agreement Respondent promised to abide by.

32. At the hearing, Respondent attempted to explain several different times why he carried out a scheme to circumvent the Step II Agreement's monitoring requirements and cover up his unauthorized travel:

Because I had no control in my life. I was doing everything that the board had asked; I had gone to meetings, two, three, sometimes four times a week as required; I was doing random urine drug screens for almost two years; and I had done everything that was asked, and I felt I had no control of my life. I wasn't getting anywhere with this board program. I felt that they were completely inflexible and had a total lack of understanding. And I thought that the suspension—I'm sorry; the impairment diagnosis for basically prednisone, which is an anti-inflammatory drug, was cruel. ... [W]hen the program in Ohio said that I had an [impairment], based on the use of drug that in literature is used for inflammatory conditions, it blew my mind. I was still being required to test like a drug addict for over two years and I was labeled a drug addict for two-plus years at that point, and the board didn't want to listen to my protest or my concerns. And there was just a total lack of understanding on the part of the board. And I—and I got—I got overwhelmed emotionally. And just said I had enough of being controlled by somebody who didn't—who didn't have any of my interests at heart. They only wanted to punish. (Tr. 135-136).

* * *

I was put in a vice like a grape and crushed.
(Tr. 142).

* * *

I don't know that I thought it was okay [to circumvent the Step Two Agreement]. ... At the time, like I said, I was under the impairment agreement; I was hoping there would be some benefits to asking for help for mental health issues, and like I said, rolling in the drug portion. But as time went on, there was no positive affect on my life. I couldn't travel to see family. Family is important. Family is who we turn to in times of stress. I couldn't see them without the board's approval. I couldn't find work because of the scarlet letter that was on me. I couldn't find work because I didn't finish the residency. You know, I think when we tell patients by the way, we have a treatment for your problem, but it's going to kill you, most people would say, well, screw that, I'm not going to do it. And you know, I don't think any of the downside was anticipated by me. (Tr. 144).

I didn't foresee all of the negative repercussions that would come through in my life. And I was—I was adhering to everything they that they asked of me, meetings, urine drug screens. This—you know, when you have to do a urine drug screen, you have to basically strip for them and someone has to look at you. And it's intrusive. And I was doing that. I was more than willing to work within their system, and do back flips and front flips. If they said, you know, stand on one leg, I would have said yes, sir, for how long, sir? But at the same time, you could only get beaten and put into a corner for so long and say what in the hell is this program designed to do except excommunicate people from a profession? ... And so I broke. After a certain amount of time, I broke. It was too much. I—I know I did something stupid. I know I did. And I regret it every day of my life. And I look at it and kick

myself and wish I would have never done it. But all I can say is I'm sorry. ... So, you know, that's all I can say. I know I screwed up and I took the punishment for it, and I'm here today to say, I am not that person from 12 years ago. (Tr. 145-146).

* * *

In 2008, like I said, I had been compliant with the board's ruling since '06, since August of '06. I think it was August of '06. And now we're looking at two years later and despite having done everything the board asked, I'm getting—I'm getting nowhere. I'm just feeling like I'm spinning my wheels and there's no end in sight to this—to this situation. And so I threw my hands up. (Tr. 149).

33. No evidence was offered to substantiate Respondent's dramatic claims that the Ohio Board showed inflexibility, a lack of understanding, or an unwillingness to consider any protests or concerns submitted by Respondent. No evidence was offered to show that the Ohio Board ever denied a request by Respondent to travel; the only evidence was that Respondent's single last-minute request was granted and Respondent was allowed to meet his monitoring and treatment requirements while traveling.

34. As Respondent acknowledged, the Step II Agreement that he signed was for a minimum of five years, beginning March 2007. Before March 2007, Respondent was subject to the Step I Agreement, which he also signed. These agreements included stipulations and admissions agreed to by Respondent, and imposed terms and conditions that he accepted. Respondent's characterization at the hearing of the terms he had agreed to as cruel, and his explanation at the hearing that he could not abide by the Step II Agreement because he decided he needed to take back control, after less than one-third of the five-year minimum term had passed, are very troubling current-day admissions.

35. Respondent attempted to refute his admissions in the Step I and Step II Agreements, disputing the substance abuse characterizations and claiming that he admitted to them as a means to have his license reinstated. Without any evidentiary basis to contradict his own admissions in the Step I and Step II Agreements, it is sufficient for purposes of this proceeding to simply point out that Respondent's admissions speak for themselves, and Respondent is not painted in a favorable light, whether he admitted to facts he did not believe as a means to the end of having his suspended license reinstated or whether he admitted to facts that were true.

36. Respondent's claims of oppression and torture (i.e., being put in a vice like a grape and crushed) to explain the backdrop to the Ohio Board's action permanently revoking his certificate to practice osteopathic medicine cause concern. Respondent overly dramatizes the simple fact that he chose to enter into the Step I and Step II Agreements, regardless of his rationalizations for having done so.

37. Also of concern is that for all of his dramatic expressions at the hearing, Respondent ignored a troubling series of admissions. In the Step II Agreement, Respondent admitted to diverting the hospital's prescription medication that he had prescribed for a patient for his own use, and he also admitted to having diverted other medication for his own use in the past. His diversion of hospital medication that he prescribed for a patient for his own use instead was essentially theft, resulting in his termination from the hospital's residency program. Respondent admitted to drug diversion on more than one occasion, in addition to self-medicating, and those admissions were predicates for the conditions imposed by the Step II Agreement. At the hearing, Respondent never addressed this dishonest conduct. That makes Respondent's attempted explanation for why he could no longer abide by the Step II Agreement, with three and a half years left to the agreement he entered into, wholly unsatisfactory. Respondent seemingly has not recognized that these underlying dishonest dealings in medication played a part in his

being "painted with a scarlet letter." Whether he recognized it or not, he certainly expressed no remorse.

38. Respondent's scheme to violate the Step II Agreement and cover up his violation succeeded, initially, and for several years thereafter. Respondent made it to the end of his five-year probation, falsely representing under oath to the Ohio Board in quarterly reports that he complied with the terms the entire time. Respondent's probation was lifted under false pretenses, based on the false impression given by Respondent to the Ohio Board that as of March 14, 2012, he had complied with the Step II Agreement for the five-year probationary term. From then until April 1, 2013, Respondent's certificate to practice was active and unrestricted for the first time since it was issued.

39. Respondent's scheme came to light after Respondent fired an employee and reported to police that the employee was discovered forging prescriptions to obtain prescription drugs. The employee reciprocated by reporting to the Ohio Board that Respondent had falsified his urine samples to cover up an unauthorized jaunt abroad, during which he evaded the required monitoring.

40. Once again, Respondent's certificate to practice osteopathic medicine in Ohio was immediately and indefinitely suspended by the Ohio Board on April 1, 2013. Criminal charges were brought against Respondent in the fall of 2014, based on his scheme to have an employee submit "clean" urine samples that were kept in a freezer, with slips Respondent filled out ahead of time, to give the appearance that he was providing those samples while he was on his overseas trip.

41. Respondent's Ohio certificate to practice osteopathic medicine was still under indefinite suspension when it came up for biennial renewal in 2014. Respondent chose not to renew the license, so the license became inactive on October 1, 2014, but remained under suspension. Respondent did not surrender his license/certificate to practice osteopathic medicine in 2014 or at any time thereafter.

42. On March 2, 2016, Respondent pled guilty to, and was found guilty of, two felonies: attempted tampering with evidence, a fourth degree felony; and possession of criminal tools, a fifth degree felony.

43. After the felony convictions, on April 13, 2016, the Ohio Board both vacated the summary suspension of his certificate and initiated the disciplinary action against Respondent's certificate, designated case number 16-CRF-0055, notwithstanding that Respondent's certificate was inactive.

44. The notice mailed to Respondent on April 14, 2016, informed Respondent that the Ohio Board "intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation" for reasons enumerated in the notice. The reasons included the two felony convictions, Respondent's falsification of his quarterly reports to the Ohio Board attesting to full compliance with the Step II Agreement, and Respondent's violations of the limits placed on his certificate to practice pursuant to the terms of the Step II Agreement. Respondent was informed of his right to a hearing.

45. Respondent asked for a hearing regarding the proposed disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. Respondent testified at the hearing in this case that he pursued a hearing before the Ohio Board in the hope that he and his attorneys could persuade the Ohio Board to reinstate his inactive license. In his view, he had been punished enough and deserved something less than the most draconian punishment of permanent revocation. He believed that reinstating his license, likely subject to more conditions, was a possible outcome of the proceeding.

46. Instead, the decision following an evidentiary hearing was to permanently revoke Respondent's certificate to practice osteopathic medicine and surgery in Ohio. The written decision reflects that the basis for the permanent revocation was, in part, Respondent's lack of remorse,

downplaying his past crimes for which he pled guilty, and dishonesty displayed at the hearing.

47. After setting forth proposed findings of fact and conclusions of law, the hearing examiner provided a summary to explain why the proposed order recommended permanent revocation:

Dr. Hall was dismissed from a residency program at the University of Health Sciences in Independence, Missouri, for sleeping through a shift, then lied about his whereabouts in an effort to regain his position. Before this Board, he testified that he learned his lesson and had come to understand the importance of telling the truth. Yet while working at Doctors Hospital in Columbus, Ohio, he created a false patient record in order to obtain corticosteroids to treat his own pain. Then, in 2008, Dr. Hall devised and employed a scheme to deceive the Board that he remained in Ohio when in fact he was abroad, because he feared his request to travel might be refused. He caused specimens, provided in different times than he had indicated, to be submitted for drug testing, as part of that scheme. He has been under Board supervision his entire tenure in Ohio, up to 2012.

It is indeed true that several years have passed since the 2008 conduct at issue in this hearing, and that there have been no proven instances of misconduct or non-compliance with monitoring for the five years between 2008 and 2013, when Dr. Hall's license was summarily suspended, or since early 2016 when Dr. Hall resumed practice in Florida. But his career up to that point in 2008 had consisted of a nearly unbroken chain of deceitful conduct, and for four of the five following years, Dr. Hall had remained under Board supervision on pain of revocation of his license. So the question now is whether Dr. Hall's pattern of lying "under pressure" was situational, caused by pain, depression, and perhaps frustration, the causes of which are largely in his past, or whether this conduct reflects an ingrained character trait.

Given his history, if Dr. Hall wished to regain the Board's "trust" and demonstrate a character trait for truthfulness, it was incumbent upon Dr. Hall to testify with complete candor in the proceedings before this Hearing Examiner. This Hearing Examiner did not, however, find Dr. Hall's testimony to be particularly credible as a general matter, based on his demeanor and testimony. Three factors stand out in particular:

- Dr. Hall attempted to minimize his deceit to [the Acting Director of his Missouri residency program] But the Board's prior finding was that Dr. Hall's lie was premeditated; ...
- Dr. Hall repeatedly attempted to minimize the character of his scheme to conceal from the Board his travel outside Ohio, and to submit urine specimens not given at the times indicated
- ... Dr. Hall repeatedly resorted to pat phrases to describe, and in all likelihood exaggerate, the level of discomfort he experienced

The evidence that Dr. Hall's persistent lack of candor is merely a result of past causes, no longer at play in his life, is less than convincing. Accordingly, this Hearing Examiner does not believe that the record reflects mitigating circumstances sufficient to support providing a pathway for Dr. Hall to regain licensure by this Board.^[7] (Pet. Ex. B, Bates p. 27-28).

⁷ The hearing examiner's observation regarding whether mitigating circumstances supported providing a pathway for Respondent to regain licensure confirms Respondent's testimony that the reason he invested time and resources in this hearing was in the hope that the Ohio Board would consider mitigating circumstances, with the possibility of having his license reinstated subject to conditions. This would have been similar to the approach of the Step I and Step II Agreements, whereby in Step I, Respondent's certificate to practice was suspended, and would be considered for reinstatement only after Respondent complied with a series of requirements, followed by Step II, which was treated as an application for reinstatement, and was granted subject to limitations and conditions. This time, Respondent failed to convince the hearing examiner or the Ohio Board to allow another similar pathway.

48. The Ohio Board entered an Order on December 14, 2016, attaching and incorporating the hearing examiner's report and recommendation and ordering as follows: "The certificate of Adam Patrick Hall, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be permanently revoked." (Pet. Ex. B, Bates p. 3).

49. Just as Respondent's candor was found lacking in the Ohio proceeding, so, too, at the hearing in this case, Respondent was not credible, based on his demeanor and testimony. Instead, he was evasive, dramatizing his personal tribulations to which he attributed his past mistakes, while downplaying the extent and significance of his past wrongdoing.

50. Several months after the Ohio Board permanently revoked Respondent's certificate to practice osteopathic medicine, Respondent's counsel, who had represented him since the Ohio proceedings in 2016, and worked with local Ohio counsel in the 2016 disciplinary proceeding, wrote the following on his behalf as a "self-report" to the Department on April 3, 2017:

Please be advised that Adam Hall is represented by Chapman Law Group before the Florida Department of Health ("Department") and Board of Osteopathic Medicine ("Board"). ... In November 2016, Dr. Hall submitted his response to the Department's Administrative Complaint. Subsequently, the Ohio Board of Osteopathic Medicine *took action against his license.*

To wit, on December 15, 2016, by an order of the Board, *Dr. Halls'* [sic] *Osteopathic medical license was permanently revoked.* Such an order was based on convictions in the Court of Common Pleas of Lawrence County, Ohio in which Dr. Hall pled guilty to Attempted Tampering of Evidence, a fourth degree felony and Possession of Criminal Tools, a fifth degree felony. ...

Dr. Hall knows that pursuant to Florida Statute, his Ohio Board action constitutes grounds for disciplinary action, as specified in s. 456.072(2). To wit s. 456.015 [sic; 459.015(1)(b)] reads that:

Having a license or the authority to practice osteopathic medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of license, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of administrative charges against the physician shall be construed as action against the physician's license.

Chapman Law Group respectfully submits that no action is needed on the part of either the Department or Board, because Dr. Hall reported this incident to the Department as required by law. (Pet. Ex. E, emphasis added).

The letter was submitted on Respondent's behalf by attorneys Steven D. Brownlee and Ronald W. Chapman for the firm.

Other Relevant Facts

51. Respondent had a license to practice osteopathic medicine in Missouri at one time. He testified that "Missouri followed the action of Ohio, and I lost my license to practice in Missouri." (Tr. 148). Respondent did not provide specific details regarding the basis for the Missouri action to take away Respondent's license to practice in Missouri.

52. Respondent had a license to practice osteopathic medicine in Kansas at one time. Respondent did not provide details regarding what happened to the Kansas license he held at one time.

53. Respondent's Ohio licensure file contains a Kansas license verification form submitted as part of Respondent's application for a license (certificate) to practice osteopathic medicine and surgery in Ohio. The Kansas license verification form dated April 15, 2004, reports that Respondent's "original license date" was April 26, 2003; and the "expiration date" was September 30,

2003. The license status was reported as "cancelled." (Pet. Ex. A, Bates p. 31). No other evidence was offered regarding Respondent's Kansas licensure history, the reason for the short duration of his license, or why his license was "cancelled."

54. As previously noted, Respondent has also been licensed to practice osteopathic medicine in Florida since 2008. However, he testified that he did not begin practicing in Florida until after the Ohio proceedings concluded with the Ohio Board's order of permanent revocation. There is no evidence of any blemishes on his track record practicing in Florida, but the tenure has been relatively short—three and a half years at the time of the hearing.⁸

55. Respondent is married, with three children. At the time of his hearing in Ohio that resulted in permanent revocation of his certificate to practice osteopathic medicine, his now-wife was his fiancée and they had a one-month-old child. Respondent testified that his wife is a lawyer. He credited her with coming up with the argument that the permanent revocation of his "certificate" to practice osteopathic medicine in Ohio was arguably something different than a permanent revocation of a "license" to practice osteopathic medicine in Ohio. Respondent noted that she raised this question before the Ohio disciplinary hearing, but the argument was not pursued there.

CONCLUSIONS OF LAW

56. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto. §§ 120.569 and 120.57(1), Fla. Stat. (2019).

57. By its Complaint, Petitioner charged Respondent with violating section 459.015(1)(b), which provides:

⁸ Respondent's PRO offered the following proposed finding: "Respondent has been practicing in Florida since 2008 and has never had his Florida licensed disciplined. (Tr. 136-137)." Resp. PRO at 7, ¶ 31. That proposed finding is contrary to the evidence. The testimony on the cited pages was that Respondent has been *licensed* (not practicing) in Florida since 2008, with no other disciplinary complaints besides this one. Earlier in the hearing, Respondent testified that he has *not* been practicing in Florida since 2008; he said that he did not start practicing in Florida until 2016, after his Ohio certificate was revoked. (Tr. 16).

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(b) Having a license or the authority to practice osteopathic medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of license, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of administrative charges against the physician shall be construed as action against the physician's license.

58. A proceeding to suspend or revoke a license, or to impose other discipline upon a licensee, is penal in nature. *State ex rel. Vining v. Fla. Real Estate Comm'n*, 281 So. 2d 487, 491 (Fla. 1973). Petitioner therefore bears the burden of proving the charges against Respondent by clear and convincing evidence, as the parties acknowledged at the outset of the hearing. *Fox v. Dep't of Health*, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996)).

59. As stated by the Florida Supreme Court:

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 explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such 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*, 492 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., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

60. Disciplinary statutes and rules "must be construed strictly, in favor of the one against whom the penalty would be imposed." *Griffis v. Fish & Wildlife Conser. Comm'n*, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); *Munch v. Dep't of Prof'l Reg., Div. of Real Estate*, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); *McClung v. Crim. Just. Stds. & Training Comm'n*, 458 So. 2d 887, 888 (Fla. 5th DCA 1984).

61. Respondent may not be found guilty of an offense that was not charged in the Complaint. *See, e.g., Trevisani v. Dep't of Health*, 908 So. 2d 1108 (Fla. 1st DCA 2005) (administrative complaint charged physician with a failure to create medical records; proof of a failure to retain medical records cannot support a finding of guilt). Furthermore, due process prohibits the Department from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instrument, unless those matters have been tried by consent. *See Delk v. Dep't of Prof'l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

62. In this case, the Department proved by clear and convincing evidence that Respondent violated section 459.015(1)(b) when his license to practice osteopathic medicine was permanently revoked by the licensing authority in Ohio in December 2016. Indeed, this proof was largely provided by the following stipulation of fact:

On December 14, 2016, in case number 16-CRF-0055 and in accordance with chapter 119, Ohio Revised Code, the State Medical Board of Ohio entered an order which permanently revoked Respondent's certificate to practice osteopathic medicine and surgery in Ohio. (Amended Jt. Pre-hrg. Stip., Part E (Stipulated Facts), ¶ 10).

63. Despite this stipulation, Respondent argued that he could not have had his license to practice osteopathic medicine permanently revoked because he had let his license to practice osteopathic medicine lapse while it was suspended in 2014.

64. Respondent argued that the "certificate to practice osteopathic medicine and surgery" that was permanently revoked was something different than a license to practice osteopathic medicine and surgery. Respondent sought to make something out of the fact that the words "certificate" and "license" are different. Respondent attempted to manufacture uncertainty by arguing that perhaps the Ohio Board only revoked his training certificate, or some other kind of certificate, even though the Ohio Board's Order permanently revoked Respondent's certificate "to practice osteopathic medicine and surgery," and not a training certificate or any other kind of certificate. Respondent cannot so easily evade the language of the Ohio Board's Order or the parties' stipulation, to which he is bound.

65. Respondent's attempted word game is contrived and disingenuous. Like Florida's Administrative Procedure Act, the Ohio Administrative Procedure Act defines "license" as an umbrella term that means "any license, permit, certificate, commission, or charter issued by any agency." § 119.01(B), Ohio Rev. Code; *compare* § 120.52(10), Fla. Stat. (defining "license" as "a franchise, permit, certification, registration, charter, or similar form of authorization required by law[.]"). Thus, as a matter of law, in the context presented, the words "certificate" and "license" are interchangeable.

66. Where Respondent's argument goes wrong is by focusing exclusively on the word "certificate," ignoring completely the words that follow in the Ohio Board's Order and in the parties' stipulation—"to practice osteopathic medicine and surgery." The Ohio Board permanently revoked Respondent's certificate (i.e., his license) to practice osteopathic medicine and surgery.

67. Respondent's argument is also refuted by an entire licensure file full of documents demonstrating, as found above, that the form of authority to

practice osteopathic medicine and surgery is referred to as either and both a "license" and "certificate." Those terms were used interchangeably by the Ohio Board and by Respondent himself in their communications.

68. Respondent argues in this proceeding that his license (a/k/a certificate) to practice osteopathic medicine could not be permanently revoked under Ohio law because it was inactive. However, he did not make that argument in the proceedings leading up to the permanent revocation Order, nor did he appeal that Order to argue that the Ohio Board lacked authority to permanently revoke his license to practice osteopathic medicine and surgery.

69. Indeed, such an argument could not have been fairly made under Ohio law, which is very clear on this point. The statute authorizing disciplinary actions under which the Ohio Board expressly acted to revoke Respondent's license to practice osteopathic medicine and surgery provides:

Failure by an individual to renew a license or certificate to practice in accordance with this chapter ... shall not remove or limit the board's jurisdiction to take any disciplinary action under this section against the individual.

§ 4731.22(M)(3), Ohio Rev. Code.⁹

70. Taking a different tack, Respondent's PRO argued that because Respondent's license in Ohio was inactive, it was essentially a worthless piece of paper that was permanently revoked by the Ohio Board. From there, Respondent asserts that it was not the Florida Legislature's intent "to discipline physicians for revocation of a worthless piece of paper. It is to protect the public. There is no danger presented to the public by a physician having disciplinary action taken against him in a jurisdiction where he had no authority to practice in the first place." (Resp. PRO at 13).

⁹ For ease of reference, the above quote is from the current version available through Westlaw and other legal research tools. However, researching prior versions of the statute on Westlaw shows that essentially the same provision has been in section 4731.22(M)(3) throughout the entire time that Respondent had a certificate to practice osteopathic medicine in Ohio.

71. Respondent's policy argument has been rejected in Florida cases considering whether Florida professional boards have a legitimate interest in taking disciplinary action against non-practicing physicians with inactive licenses. The response to this policy argument is as follows:

[T]o suggest that physicians should be able to immunize themselves from prosecution by simply going inactive suggests a form of self-regulation of the medical profession which was obviously rejected by the Legislature when it chose to enact Chapter 458, Florida Statutes. To permit a licensee to indefinitely hide behind an inactive status while evidence is lost, witnesses disappear and memory is eradicated serves no useful public purpose.

Boedy v. Dep't of Prof'l Reg., 433 So. 2d 544 (Fla. 1st DCA 1983).¹⁰

72. Finally, Respondent's argument that section 459.015(1)(b) requires that the action taken in another jurisdiction must be against an active license to practice osteopathic medicine is refuted by the statute itself, which imposes no such requirement. Indeed, section 459.015(1)(b) authorizes disciplinary action when another jurisdiction's action against one's authority to practice osteopathic medicine is by "denial of licensure." This conclusively demonstrates that an active current license is not a required element of this statute. One can have "a license or the authority to practice osteopathic medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction" without holding an active license to practice osteopathic medicine.

73. As applied to the circumstances here, it is plain that the Ohio Board pursued action against Respondent's authority to practice osteopathic medicine in Ohio to impose the emphatic sanction of permanent revocation.

¹⁰ In *Boedy*, the court also considered whether the Florida Board of Medicine had jurisdiction to take disciplinary action against a physician with an inactive license, and concluded that it did have jurisdiction. Here, there is no question that the Ohio Board had jurisdiction to take disciplinary action against Respondent after he chose to let his license lapse, because that authority is expressly provided in the disciplinary action statute, section 4731.22(M)(3), Ohio Revised Code.

The Ohio Board exercised its authority to impose severe disciplinary consequences for Respondent's violations. The Ohio Board had every right to do so, and Respondent accepted the consequences by not appealing the order of permanent revocation. The Ohio Board's permanent revocation of Respondent's certificate to practice osteopathic medicine in Ohio is grounds to discipline Respondent under section 459.015(1)(b).

Appropriate Penalty

74. Florida Administrative Code Rule 64B15-19.002 sets forth disciplinary guidelines and directs that the Board "shall impose a penalty within the range corresponding to" specific violations. Rule 64B15-19.002(2) provides the penalty range for a violation of section 459.015(1)(b). For a first offense, as here, the low end of the penalty range is:

Imposition of discipline comparable to discipline that would have been imposed in Florida if the substantive violation occurred in Florida *to suspension* or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was original taken, *and an administrative fine* ranging from \$1,000.00 to \$5,000.00. (emphasis added).

The high end of the penalty range for a first offense is:

Imposition of discipline comparable to discipline that would have been imposed in Florida if the substantive violation occurred in Florida *to revocation* or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, *and an administrative fine* ranging from \$5,000.00 to \$10,000.00. (emphasis added).

75. The disciplinary action taken by the Ohio Board was predicated on violating conditions of limitation placed by the Ohio Board on Respondent's certificate to practice (via the Step II Agreement); submitting false, fraudulent, and deceptive statements to the Ohio Board relating to the

practice of osteopathic medicine (quarterly reports falsely attesting to full compliance with the Step II Agreement); and committing felonies to evade the Step II Agreement's terms and monitoring requirements. These violations found by the Ohio Board were comparable to at least the following grounds for discipline: section 459.015(1)(c) (being found guilty of a crime directly related to the practice or ability to practice osteopathic medicine); and section 459.015(1)(bb) (violation of an order) or section 459.015(1)(pp) (violation of a provision of chapter 456 or 459, or rules adopted pursuant to those chapters).

76. Discipline that would have been imposed in Florida if these substantive violations occurred here most likely would have been license revocation, considering the context in which the violations occurred, as laid out in the Ohio Board hearing examiner's report and recommendation.

77. Using the alternative measure in the penalty guidelines for a first offense also supports revocation as the appropriate penalty.

78. In addition to revocation, the penalty guidelines rule dictates a fine ranging from \$1,000.00 to \$10,000.00.

79. Rule 64B15-19.003 allows for consideration of aggravating or mitigating circumstances that are proved by clear and convincing evidence, to deviate from the penalty guidelines. Mitigating factors relevant to this case are: (2) The length of time since the violations; (3) The number of times the licensee has been previously disciplined by the Board; and (7) The effect of the penalty upon the licensee's livelihood. Relevant aggravating factors include: (9) The actual knowledge of the licensee pertaining to the violation; (10) Attempts by the licensee to correct or stop violations or refusal by the licensee to correct or stop violations; and (11) Related violations against the licensee in another state.

80. The undersigned concludes that consideration of the aggravating and mitigating factors with regard to the appropriate penalty against Respondent's license does not support deviation from the penalty range to

impose a sanction less than revocation. If anything, the aggravating circumstances outweigh the mitigating circumstances.

81. However, with revocation as the undersigned's recommended penalty, consideration of the impact on the licensee's livelihood mitigates against also imposing a monetary fine as the penalty guidelines rule provides, and to that extent, a deviation is warranted. That is particularly so because there is no discretion in requiring an assessment of the costs in investigating and prosecuting this action. § 456.072(4), Fla. Stat.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Health, Board of Osteopathic Medicine, enter a final order revoking Respondent, Adam Patrick Hall, D.O.'s, license to practice osteopathic medicine and assessing costs against him for the investigation and prosecution of this matter.

DONE AND ENTERED this 15th day of October, 2020, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of October, 2020.

COPIES FURNISHED:

Michael Jovane Williams, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399
(eServed)

Ronald W. Chapman, Esquire
Chapman Law Group
6841 Energy Court
Sarasota, Florida 34240
(eServed)

Lauren Ashley Leikam, Esquire
Chapman Law Group
6841 Energy Court
Sarasota, Florida 34240
(eServed)

Jamal Burk, Esquire
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
(eServed)

Kama Monroe, Executive Director
Board of Osteopathic Medicine
Department of Health
Bin C-06
4052 Bald Cypress Way
Tallahassee, Florida 32399-3257
(eServed)

Louise St. Laurent, General Counsel
Department of Health
Bin C-65
4052 Bald Cypress Way
Tallahassee, Florida 32399-3265
(eServed)

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.