

**Department of Health
Florida Board of Medicine Meeting
Renaissance Orlando Hotel
5445 Forbes Place
Orlando, FL 32812
(407) 240-1000**

August 6-7, 2010

1 **Friday, August 6, 2010**

2
3 **8:00 a.m. ROLL CALL**

4
5 **Members Present:**

6 Onelia Lage, M.D., Chair
7 Michael Chizner, M.D., Vice-Chair
8 H. Frank Farmer, Jr., M.D.
9 Trina Espinola, M.D.
10 Robert Nuss, M.D.
11 Fred Bearison, M.D.
12 Tully Patrowicz, M.D.
13 George Thomas, M.D.
14 Steven Rosenberg, M.D.
15 Gary Winchester, M.D.
16 Brigitte Rivera Goersch, Consumer Member
17 Elisabeth Tucker, M.D.

18
19 **Staff Present:**

20 Larry McPherson, Jr., Executive Director
21 Ed Tellechea, Board Counsel
22 Donna McNulty, Board Counsel
23 Nancy Murphy, Paralegal
24 Crystal Sanford, Program Operations Administrator
25 Chandra Prine, Program Operations Administrator
26 Whitney Bowen, Board Staff
27 Eulinda Smith, Public Information Officer

28
29 **Prosecuting Attorney's Present:**

30 Veronica Donnelly, J.D., Medical Section Chief
31 Shirley Bates, J.D.
32 Yolonda Green, J.D.
33 Robert Milne, J.D.
34 Diane Kiesling, J.D.

5 **Members Absent:**

Jason Rosenberg, M.D. excused
Donald Mullins, Consumer Member, excused
Bradley Levine, Consumer Member, excused

19 **Others Present:**

American Court Reporting
Judy Rivenbark, Director, PRN

36 Mr. McPherson provided a description of the types of hearing scheduled for the audience.

37
38 Ms. Sanford read the Settlement Agreement List for the members to determine which cases they
39 would be hearing during the day.

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1
2 **DISCIPLINARY CASE SCHEDULE:**

3
4 **Jesus Alfredo Martinez, Jr., M.D., Amelia, VA, Settlement Agreement.....3**

5
6 Dr. S. Rosenberg was recused due to participation on the probable cause panel.

7
8 Allegations of the Administrative Complaint: Violation of s. 458.331(1)(g)(2008) – Failing to
9 perform any statutory or legal obligation placed upon a licensed physician.

10
11 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

12
13 **Penalty imposed:** letter of concern, \$2,500 fine, costs, laws and rules course, update profile, submit
14 delinquent CME

15
16 **Autumn Leigh Asbell, P.A., Gainesville, FL, Settlement Agreement14**

17
18 Dr. S. Rosenberg was recused due to participation on the probable cause panel.

19 Allegations of the Administrative Complaint: Violation of Florida Statute s. 456.072(1)(a)(2009) –
20 Making misleading, deceptive, or fraudulent representations in or related to the practice of the
21 licensee's profession; violation of Florida Statute s. 458.331(1)(r)(2009) – Prescribing, dispensing, or
22 administering any medicinal drug appearing on any schedule set forth in chapter 893 by the
23 physician to himself or herself, except one prescribed, dispensed, or administered to the physician by
24 another practitioner authorized to prescribe, dispense, or administer medicinal drugs; and violation
25 of Florida Statute s. 458.331(1)(nn)(2009) - Violating any provision of this chapter or chapter 456,
26 or any rules adopted pursuant thereto.

27 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

28 **Penalty imposed:** letter of concern, \$5000 fine, costs, laws and rules course, USF drug course, 50
29 hours community service, probation concurrent with PRN, indirect supervision, 50% review of all
30 prescriptions written, quarterly reports

31 **Randall G. Lorenz, M.D., Oro Valley, AZ, Settlement Agreement.....19**

32
33 Dr. Thomas was recused due to participation on the probable cause panel.

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1 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2004) -
2 Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and
3 treatment which is recognized by a reasonably prudent similar physician as being acceptable under
4 similar conditions and circumstances.

5
6 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

7
8 **Penalty imposed:** \$5,000 fine, costs, agrees to never reapply for licensure in Florida

9
10 **Gregory Frank Saric, M.D., Kissimmee, FL, Settlement Agreement.....20**

11
12 Dr. Bearison was recused due to participation on the probable cause panel.

13
14 Allegations of the Administrative Complaint; Violation of Florida Statute s. 458.331(1)(s)(2009) -
15 Being unable to practice medicine with reasonable skill and safety to patients by reason of illness or
16 use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental
17 or physical condition.

18
19 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

20
21 **Penalty imposed:** letter of concern, \$5000 fine, costs, suspension until appears and demonstrates
22 ability to practice with skill and safety including a PRN evaluation; jurisdiction retained to impose
23 additional penalties at time of reinstatement

24
25 **Travis Michael Harris, M.D., San Francisco, CA, Settlement Agreement.....24**

26
27 Dr. Thomas was recused due to participation on the probable cause panel.

28 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2006) –
29 Notwithstanding s. 456.072(2) but as specified in s. 456.50(2): 1. Committing medical malpractice
30 as defined in s. 456.50. The board shall give great weight to the provisions of s. 766.102 when
31 enforcing this paragraph. Medical malpractice shall not be construed to require more than one
32 instance, event, or act. 2. Committing gross medical malpractice. 3. Committing repeated medical
33 malpractice as defined in s. 456.50. A person found by the board to have committed repeated
34 medical malpractice based on s. 456.50 may not be licensed or continue to be licensed by this state
35 to provide health care services as a medical doctor in this state. Nothing in this paragraph shall be
36 construed to require that a physician be incompetent to practice medicine in order to be disciplined
37 pursuant to this paragraph. A recommended order by an administrative law judge or a final order of
38 the board finding a violation under this paragraph shall specify whether the licensee was found to

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1 have committed "gross medical malpractice," "repeated medical malpractice," or "medical
2 malpractice," or any combination thereof, and any publication by the board must so specify.

3 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

4
5 **Penalty imposed:** letter of concern, \$10,000 fine, costs, 25 hours community service, 5 hours CME
6 in risk management

7

8 **Lawrence Scott Halperin, M.D., Boca Raton, FL, Settlement Agreement.....1**

9

10 Dr. Halperin was present and represented by Mark Dresnick, Esquire.

11

12 No present members were recused due to participation on the probable cause panel.

13

14 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
15 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(bb) - 2008 Performing or
16 attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong
17 procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise
18 unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph,
19 performing or attempting to perform health care services includes the preparation of the patient and
20 violation of Florida Statute s. 458.331(1)(g) – 2008 failing to perform any statutory or legal
21 obligation placed upon a licensed physician.

22

23 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

24

25 **Penalty imposed:** letter of concern, \$5,000 fine, costs, dismissal of count II (g), 25 hours
26 community service, lecture

27

28 **Ricardo Jose Sabates, M.D., Delray Beach, FL, Settlement Agreement2**

29

30 Dr. Sabates was present and represented by Sean Ellsworth, Esquire.

31

32 No present members were recused due to participation on the probable cause panel.

33

34 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
35 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(m) 2005-2009 - Failing to keep
36 legible, as defined by department rule in consultation with the board, medical records that identify
37 the licensed physician or the physician extender and supervising physician by name and professional
38 title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or

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1 treatment procedure and that justify the course of treatment of the patient, including, but not limited
2 to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or
3 administered; and reports of consultations and hospitalizations; violation of Florida Statute s.
4 458.331(1)(q) 2006-2009 - Prescribing, dispensing, administering, mixing, or otherwise preparing a
5 legend drug, including any controlled substance, other than in the course of the physician's
6 professional practice. For the purposes of this paragraph, it shall be legally presumed that
7 prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all
8 controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best
9 interest of the patient and is not in the course of the physician's professional practice, without regard
10 to his or her intent; and violation of Florida Statute s. 458.331(1)(t) 2006-2009 - Notwithstanding s.
11 456.072(2) but as specified in s. 456.50(2): 1. Committing medical malpractice as defined in s.
12 456.50. The board shall give great weight to the provisions of s. 766.102 when enforcing this
13 paragraph. Medical malpractice shall not be construed to require more than one instance, event, or
14 act. 2. Committing gross medical malpractice. 3. Committing repeated medical malpractice as
15 defined in s. 456.50. A person found by the board to have committed repeated medical malpractice
16 based on s. 456.50 may not be licensed or continue to be licensed by this state to provide health care
17 services as a medical doctor in this state. Nothing in this paragraph shall be construed to require that
18 a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.
19 A recommended order by an administrative law judge or a final order of the board finding a
20 violation under this paragraph shall specify whether the licensee was found to have committed
21 "gross medical malpractice," "repeated medical malpractice," or "medical malpractice," or any
22 combination thereof, and any publication by the board must so specify.

23
24 A motion was made, seconded and carried unanimously to reject the Settlement Agreement.

25
26 A motion was made, seconded and carried unanimously to offer a counter proposal to impose
27 revocation.

28
29 The Respondent rejected the counter proposal.

30
31 **Action taken:** Settlement Agreement rejected; counter offer rejected

32
33 **Lori Joseph Fresh, E.O., Palm Harbor, FL, Settlement Agreement.....5**

34
35 Ms. Fresh was not present. Dr. Rivenbark was present and addressed the Board.

36
37 Mr. McPherson advised the Board received a late request to waive her appearance at this hearing.

38
39 Dr. Rivenbark advised Ms. Fresh has financial difficulties.

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1
2 A motion was made, seconded and carried unanimously to table this hearing until the October Board
3 Meeting at which time Ms. Fresh is required to appear for the settlement agreement.

4
5 **Action taken:** tabled; required to appear at October meeting

6
7 **Carlos Lubin Fleming, M.D., Port Saint Joe, FL, Settlement Agreement.....6**

8 Dr. Fleming submitted a continuance prior to the meeting and the continuance was granted to the
9 October 2010 meeting .

10
11 **Valentine A. Duruibe, M.D., Miami, FL, Settlement Agreement.....7**

12
13 Dr. Duruibe was present, but not represented by counsel.

14
15 No present members were recused due to participation on the probable cause panel.

16
17 Ms. Green represented the Department and presented the case to the Board. Allegations of the
18 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(jj)(2009) - Failing to remit the
19 sum owed to the state for an overpayment from the Medicaid program pursuant to a final order,
20 judgment, or stipulation or settlement.

21
22 A motion was made and seconded to accept the Settlement Agreement.

23
24 Mr. Tellechea stated there was a problem with the probation language.

25
26 A motion was made, seconded and carried unanimously to reject the Settlement Agreement.

27
28 A motion was made, seconded and carried unanimously to offer a counter proposal to include the
29 same requirements in the original Settlement Agreement except the probation language which is
30 changed to state the Respondent will remain on probation until all payments have been made, first
31 and last appearances at the probation committee, and the Respondent must enter into a payment
32 agreement within 30 days and comply with that agreement.

33
34 The Respondent took 7 days to accept or reject the counter offer.

35
36 **Action taken:** Settlement Agreement rejected; counter offer to include the same requirements in the
37 original Settlement Agreement except the probation language which is changed to state he will
38 remain on probation until all payments have been made, first and last appearances, must enter into a

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1 payment agreement within 30 days and comply with agreement; letter of concern, \$5000 fine, costs,
2 100 hours community service

3
4 **Leonor Corea, P.A., Miami, FL, Determination of Waiver8**

5
6 Ms. Corea was not present nor was she represented by counsel.

7
8 No present members were recused due to participation on the probable cause panel.

9
10 Ms. Bates represented the Department and represented the case to the Board. Allegations of the
11 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(x)(2009) – Failing to report to
12 the board, or the department if there is no board, in writing within 30 days after the licensee has been
13 convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a
14 crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the
15 enactment of this paragraph must be reported in writing to the board, or department if there is no
16 board, on or before October 1, 1999 and violation of Florida Statute s. 458.331(1)(c)(2009) - Being
17 convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a
18 crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice
19 medicine.

20
21 A motion was made, seconded and carried unanimously to find the Respondent has waived her right
22 to a hearing.

23
24 A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

25
26 A motion was made, seconded and carried unanimously to adopt the Conclusions of Law.

27
28 A motion was made, seconded and carried unanimously to find the Respondent has violated Florida
29 Statutes as charged in the Administrative Complaint.

30
31 It was determined a new motion has been filed and the Respondent did not have enough time to
32 respond.

33
34 A motion was made, seconded and carried unanimously to table this hearing until the October Board
35 meeting.

36
37 **Action taken:** tabled until October

38
39 **Anthony T. Rosa, M.D., Haines City, FL, Hearing Not Involving Disputed Issues of**

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Material Fact.....9

Dr. Rosa was present and represented by Michael D’Lugo, Esquire.

Dr. Tucker was recused due to participation on the probable cause panel.

Ms. Bates represented the Department and represented the case to the Board. Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(x)(2007) – Violating a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

A motion was made, seconded and carried unanimously to adopt the Conclusions of Law.

A motion was made, seconded and carried unanimously to find the Respondent has violated Florida Statutes as charged in the Administrative Complaint.

A motion was made, seconded and carried unanimously to impose a letter of concern, the laws and rules course, and a \$5,000 fine.

A motion was made, seconded and carried unanimously to assess costs at \$8,349.91.

Penalty imposed: letter of concern, the laws and rules course, \$5,000 fine, \$8,349.91 costs

**Isaac L. Merenfeld, M.D., Miami, FL, Hearing Not Involving Disputed Issues of
Material Fact.....10**

Dr. Merenfeld was present, but not represented by counsel.

No current members were recused due to participation on the probable cause panel.

Ms. Bates represented the Department and represented the case to the Board. Allegations of the Administrative Complaint: Violation of Florida Statute s. 456.072(1)(hh)92006) – Being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program and violation of Florida Statute s. 458.331(1)(s)(2006) - Being unable to practice medicine with reasonable skill and safety to patients

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1 by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as
2 a result of any mental or physical condition.

3
4 A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

5
6 A motion was made, seconded and carried unanimously to adopt the Conclusions of Law.

7
8 A motion was made, seconded and carried unanimously to find the Respondent has violated Florida
9 Statutes as charged in the Administrative Complaint.

10
11 A motion was made, seconded and carried 9-3 to revoke the Respondent's license.

12
13 A motion was made, seconded and carried unanimously to assess costs at \$8,349.91.

14
15 **Penalty imposed:** revocation, \$8,349.91 costs

16
17 **Federation of State Medical Boards (FSMB) Presentation: Martin Crane, M.D. – Maintenance**
18 **of Licensure**

19
20 Dr. Crane, immediate past Chair of the Board of Directors of the FSMB, provided a presentation
21 regarding FSMB position and activities regarding maintenance of licensure. He noted the
22 recommendations are not required by the states boards but serve as models and options for states to
23 use.

24
25 Mr. Tellechea reminded the Board it would take legislative action to adopt the FSMB
26 recommendations regarding maintenance of licensure.

27
28 Dr. S. Rosenberg asked for a status update regarding the national licensure application.

29
30 Dr. Crane explained the FSMB is recommending a uniform application, not a national license
31 application. He stated FSMB believes individual boards have the best authority to assess an
32 applicant's qualifications for licensure. He said 17 states currently use the uniform application.

33
34 Mr. McPherson advised Florida is not currently using the uniform application, but does accept
35 Federation Credentialing Verification System (FCVS).

36
37 **Action taken:** none necessary

38
39 **Venu Gopal Menon, M.D., Troy, OH, Determination of Waiver.....12**

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1
2 Dr. Menon was not present nor was he represented by counsel.

3
4 Dr. S. Rosenberg was recused due to participation on the probable cause panel.

5
6 Mr. Milne represented the Department and presented the case to the Board. Allegations of the
7 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(b)(2007) – Having a license or
8 the authority to practice medicine revoked, suspended, or otherwise acted against, including the
9 denial of licensure, by the licensing authority of any jurisdiction, including its agencies or
10 subdivisions and violation of Florida Statute s. 458.331(1)(kk)(2007) - Failing to report to the board,
11 in writing, within 30 days if action as defined in paragraph (b) has been taken against one's license to
12 practice medicine in another state, territory, or country.

13
14 A motion was made, seconded and carried unanimously to find the Respondent has waived her right
15 to a hearing.

16
17 A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

18
19 A motion was made, seconded and carried unanimously to adopt the Conclusions of Law.

20
21 A motion was made, seconded and carried unanimously to find the Respondent has violated Florida
22 Statutes as charged in the Administrative Complaint.

23
24 A motion was made, seconded and carried unanimously to revoke the Respondent's license.

25
26 A motion was made, seconded and carried unanimously to assess costs at \$2,358.43.

27
28 **Penalty imposed:** revocation; \$2,358.43 costs

29
30 **Michael Patrick Graham, M.D., Orlando, FL, Settlement Agreement13**

31 This hearing was continued until the October Board Meeting.

32
33 **Mark James Cuffe, M.D., Tallahassee, FL, Settlement Agreement15**

34
35 Dr. Cuffe was present and represented by Allen Grossman, Esquire.

36
37 Dr. Thomas was recused.

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1 Mr. Milne represented the Department and presented the case to the Board. Allegations of the
2 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(bb)(2007) – Performing or
3 attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong
4 procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise
5 unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph,
6 performing or attempting to perform health care services includes the preparation of the patient.

7 A motion was made, seconded and carried unanimously to reject the Settlement Agreement.

8 After discussion, a motion was made and seconded to offer a counter proposal to impose the same
9 terms in the original Settlement Agreement but no CME and to add a 1-hour lecture.

10 An amendment was offered to ensure he includes, in the lecture, to advise the patient of known
11 complications. This amendment was rejected.

12 Another amendment was offered to have the Respondent specifically discuss his case, lessons he
13 learned and changes he has made. This amendment was accepted.

14 The motion carried unanimously and the Respondent accepted the counter offer.

15 **Penalty imposed:** reprimand, \$10,000 fine, costs, 50 hours community service, QA assessment, 1-
16 hour lecture including specifically discussing his case, lessons he learned and changes he has made

17 **Michael Joseph Zappa, M.D., West Palm Beach, FL, Settlement Agreement.....16**

18

19 Dr. Zappa was present and represented by Rosemarie Antonacci-Pollock, Esquire.

20

21 Dr. Chizner and Dr. Tucker were recused. Dr. Nuss advised he knows the physician, but could be
22 objective when voting.

23 Mr. Milne represented the Department and presented the case to the Board. Allegations of the
24 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2004) – Gross or repeated
25 malpractice or the failure to practice medicine with that level of care, skill, and treatment which is
26 recognized by a reasonably prudent similar physician as being acceptable under similar conditions
27 and circumstances and violation of Florida Statute s. 458.331(1)(m)(2004) - Failing to keep legible,
28 as defined by department rule in consultation with the board, medical records that identify the
29 licensed physician or the physician extender and supervising physician by name and professional
30 title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or
31 treatment procedure and that justify the course of treatment of the patient, including, but not limited

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1 to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or
2 administered; and reports of consultations and hospitalizations.

3 The wife of the deceased was present and spoke regarding this case including the Respondent's
4 candor.

5 After a thorough discussion of the facts of this case, a motion was made seconded and carried with 2
6 opposed to reject the Settlement Agreement.

7 The Respondent agreed to waive attorney fees and costs if the case was dismissed.

8 A motion was made, seconded and carried 7-3 to dismiss the Administrative Complaint.

9 **Action taken:** case dismissed

10 **Lunch 12: 25 – 2:00 pm**

11
12 **OFFICE OF DRUG CONTROL PRESENTATION: Bruce Grant, Director – Prescription**
13 **Drug Monitoring Program35**

14
15 Mr. Grant and Scott Teitelbaum, MD, FAAP, addressed the Board.

16
17 Mr. Grant discussed the issue of deaths from overdose of prescription drugs as the number one threat
18 to public health and safety. He said 7 people die each day as a result and Florida has become a
19 “source” state for controlled substances. Mr. Grant commended the partnership between the
20 Department and local enforcement and asked the Board to encourage physicians to use the
21 prescription drug monitoring database when it becomes effective December 1, 2010.

22
23 Dr. Teitelbaum, President of the Florida Society of Addiction Medicine discussed the rapid increase
24 in the use of prescription drugs.

25
26 Dr. Lage stated she will include this topic and the use of the database in the next several issues of the
27 *Message from the Chair*.

28
29 The Board offered to partner with Mr. Grant and Dr. Teitelbaum in writing letters to the medical
30 school deans and requested they let the Board know what they can do to assist.

31
32 **Action taken:** none necessary

33

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Carlos S. Contreras, M.D., Miami, FL, Recommended Order17

Dr. Contreras was not present, nor was he represented by counsel.

Dr. Espinola was recused. Ms. Goersch was not present during this hearing.

Dr. Lage read the Recommended Order remarks and confirmed all participating members had read the complete record.

Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(c)(2008) - Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

A motion was made, seconded and carried unanimously to adopt the Conclusions of Law.

A motion was made, seconded and carried unanimously to adopt the Recommended Order.

A motion was made, seconded and carried unanimously to assess costs at \$6,254.92.

Penalty imposed: revocation, \$10,000 fine, \$6,254.92 costs

Carlos S. Contreras, M.D., Miami, FL, Determination of Waiver18

Dr. Contreras was not present, nor was he represented by counsel.

Dr. Tucker was recused.

Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: Violation of Florida Statute s. 456.072(1)(g)(2008) –failing to perform legal obligation and violation of Florida Statute s. 458.331(1)(nn)(2008) - Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

A motion was made, seconded and carried unanimously to impose a suspension until the Respondent documents completion of the required CME and \$10,000 fine.

A motion was made, seconded and carried unanimously to assess costs at \$1,128.26.

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1
2 **Penalty imposed:** suspension until the Respondent documents completion of the required CME,
3 \$10,000 fine, \$1,128.26 costs

4
5 **Thomas Lyn Bass, M.D., Hollywood, FL, Settlement Agreement.....22**

6
7 Dr. Bass was present and represented by Gregory Chaires, Esquire.

8
9 Dr. Winchester was recused.

10
11 Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the
12 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(cc)(2008) - Leaving a foreign
13 body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia
14 commonly used in surgical, examination, or other diagnostic procedures. For the purposes of this
15 paragraph, it shall be legally presumed that retention of a foreign body is not in the best interest of
16 the patient and is not within the standard of care of the profession, regardless of the intent of the
17 professional.

18
19 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

20
21 Penalty imposed: reprimand, \$10,000 fine, costs, 50 hours community service, 5 hours CME in risk
22 management, 1 hour lecture

23
24 **Jose Vicente Coba, M.D., Sunrise, FL, Hearing Not Involving Disputed Issues of**
25 **Material Fact23**

26 A motion for a continuance from Respondent's counsel was granted and this hearing was continued
27 until the October Board Meeting.

28
29 **Robert J. Bowles, M.D., Longwood, FL, Settlement Agreement.....4**

30
31 Dr. Bowles was present and represented by Richard Womble, Esquire. The patient was present, but
32 did not address the Board.

33
34 Dr. S. Rosenberg was recused.

35
36 Ms. Green represented the Department and presented the case to the Board. Allegations of the
37 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2000, 2001) - Gross or
38 repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment

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1 which is recognized by a reasonably prudent similar physician as being acceptable under similar
2 conditions and circumstances.

3
4 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

5
6 **Penalty imposed:** letter of concern, \$5,000 fine, costs, 4 hours CME in surgical issues in OB/GYN,
7 5 hours CME in risk management

8
9 **VOLUNTARY RELINQUISHMENTS:**

10
11 **Marta Gaston Lagueruela, N.D., Coral Gables, FL26**

12
13 Ms. Lagueruela was not present nor was she represented by counsel.

14
15 Probable Cause was waived.

16
17 Allegations of the Administrative Complaint: Violation of Florida Statute s. 468.517(1)(d)(2009) –
18 Give false or forged evidence to the board or a member thereof and violation of Florida Statute s.
19 468.517(1)(c)(2009) - Present as his or her own the license of another.

20
21 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

22
23 **Penalty imposed:** voluntarily relinquished

24
25 **Miguel Francisco Hernandez, M.D., Miami, FL27**

26
27 Dr. Hernandez was not present nor was he represented by counsel.

28
29 Dr. S. Rosenberg was recused.

30
31 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(c)(2008) -
32 Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of
33 adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the
34 ability to practice medicine.

35
36 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

37
38 **Penalty imposed:** voluntarily relinquished

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Suzanne Marie Fuller, N.D., Tampa, FL28

Ms. Fuller was not present nor was she represented by counsel.

Probable cause was waived.

Allegations of the Administrative Complaint: Violation of Florida Statute s. 468.517(1)(d)(2009) – Give false or forged evidence to the board or a member thereof and violation of Florida Statute s. 468.518(1)(c)(2009) - Attempting to procure or procuring a license to practice dietetics and nutrition or nutrition counseling by fraud or material misrepresentation of material fact.

A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

Penalty imposed: voluntarily relinquished

Robert David, M.D., Fairfield, IA29

Dr. David was not present nor was he represented by counsel.

No present members were recused due to participation on the probable cause panel.

Allegations of the Amended administrative Complaint: Violation of Florida Statute s. 458.331(1)(h)(1997-2001) – Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician; violation of Florida Statute s. 458.331(1)(i)(1997-2001) – Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies; violation of Florida Statute s. 458.331(1)(k)(1997-2001) – Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine; violation of Florida Statute s. 458.331(1)(m)(1997-2001) – Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of

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1 consultations and hospitalizations; violation of Florida Statute s. 458.331(1)(n)(1997-2001) –
2 Exercising influence on the patient or client in such a manner as to exploit the patient or client for
3 financial gain of the licensee or of a third party, which shall include, but not be limited to, the
4 promoting or selling of services, goods, appliances, or drugs; and violation of Florida Statute s.
5 458.331(1)(c)(2009) - Being convicted or found guilty of, or entering a plea of nolo contendere to,
6 regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of
7 medicine or to the ability to practice medicine.
8

9 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

10
11 **Penalty imposed:** voluntarily relinquished

12
13 **Lewis Barry Chaikin, M.D., Fort Myers, FL30**

14
15 Dr. Chaikin was not present nor was he represented by counsel.

16
17 Dr. Tucker was recused.

18
19 Allegations of the Administrative Complaint: Violation of Florida Statute s. 456.072(1)(k)(2007-
20 2009) – Failing to perform any statutory or legal obligation placed upon a licensee; violation of
21 Florida Statute s. 456.072(1)(hh)(2007) – Being terminated from a treatment program for impaired
22 practitioners, which is overseen by an impaired practitioner consultant as described in s. [456.076](#), for
23 failure to comply, without good cause, with the terms of the monitoring or treatment contract entered
24 into by the licensee, or for not successfully completing any drug treatment or alcohol treatment
25 program; violation of Florida Statute s. 456.072(1)(c)(2009) – Being convicted or found guilty of, or
26 entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction
27 which relates to the practice of, or the ability to practice, a licensee's profession; and violation of
28 Florida Statute s. 458.331(1)(nn)(2007-2009) - Violating any provision of this chapter or chapter
29 456, or any rules adopted pursuant thereto.
30

31 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

32
33 **Penalty imposed:** voluntarily relinquished

34
35 **Jose L. Vivo, M.D., Miami, FL31**

36
37 Dr. Vivo was not present, nor was he represented by counsel.

38
39 No present members were recused due to participation on the probable cause panel.

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1
2 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(m)(1991-
3 2004) – Failing to keep legible, as defined by department rule in consultation with the board,
4 medical records that identify the licensed physician or the physician extender and supervising
5 physician by name and professional title who is or are responsible for rendering, ordering,
6 supervising, or billing for each diagnostic or treatment procedure and that justify the course of
7 treatment of the patient, including, but not limited to, patient histories; examination results; test
8 results; records of drugs prescribed, dispensed, or administered; and reports of consultations and
9 hospitalizations and violation of Florida Statute s. 458.331(1)(t)(1991-2004) - Gross or repeated
10 malpractice or the failure to practice medicine with that level of care, skill, and treatment which is
11 recognized by a reasonably prudent similar physician as being acceptable under similar conditions
12 and circumstances.

13
14 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

15
16 **Penalty imposed:** voluntarily relinquished

17
18 **Robert Edmond Neger, M.D., Burlingame, CA.....33**

19
20 Dr. Neger was not present, nor was he represented by counsel.

21
22 Probable cause was waived.

23
24 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(b)(2009) -
25 Having a license or the authority to practice medicine revoked, suspended, or otherwise acted
26 against, including the denial of licensure, by the licensing authority of any jurisdiction, including its
27 agencies or subdivisions.

28
29 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

30
31 **Penalty imposed:** voluntarily relinquished

32
33 **Ramona P. Abed, M.D., Miami, FL34**

34
35 Dr. Abed was not present nor was he represented by counsel.

36
37 Dr. Tucker was recused.

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1 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(g)(2008) -
2 Failing to perform any statutory or legal obligation placed upon a licensed physician.

3
4 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

5
6 **Penalty imposed:** voluntarily relinquished

7
8 **Troy Arthur Wubbena, P.A., Tampa, FL32**

9
10 Mr. Wubbena was not present nor was he represented by counsel.

11
12 Dr. Lage was recused. Dr. Chizner chaired this hearing.

13
14 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(q)(2008) –
15 Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any
16 controlled substance, other than in the course of the physician's professional practice and violation of
17 Florida Statute s. 458.331(1)(v)(2008) - Practicing or offering to practice beyond the scope permitted
18 by law or accepting and performing professional responsibilities which the licensee knows or has
19 reason to know that he or she is not competent to perform.

20
21 A motion was made, seconded and carried unanimously to accept the voluntary relinquishment

22
23 **Penalty imposed:** voluntarily relinquished

24
25 **FINAL ORDER COMPLIANCE ISSUES:**

26
27 **Gerardo Del Valle, M.D. – Motion to Vacate Non-Disciplinary Citation.....36**

28
29 Dr. Del Valle was not present nor was he represented by counsel.

30
31 A non-disciplinary citation was issued against Dr. Del Valle; however, the citation was not properly
32 served. The Department was requesting the citation be vacated.

33
34 A motion was made, seconded and carried unanimously to vacate the citation.

35
36 **Action taken:** citation vacated

37
38 **Sanjeev Grover, M.D. – Request for Reinstatement.....54**

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1 Dr. Grover was present but not represented by counsel.

2
3 After discussion, a motion was made and seconded to make reinstatement contingent upon Dr.
4 Grover providing proof that the patients received their medical records, requiring his appearance at
5 the next Probation Committee Meeting and the Committee will impose additional terms at that time.

6
7 An amendment was offered to suggest he sends the records via certified mail and copy the Probation
8 Committee on what was sent with patient names redacted. The amendment was accepted.

9
10 The motion carried unanimously.

11
12 **Action taken:** reinstatement contingent upon providing medical records to patients via certified mail
13 with a copy to the Probation Committee; appearance at the next Probation Committee Meeting to
14 discuss additional penalties

15
16 **Enock Joseph, M.D. Request for Reconsideration.....Addendum tab 59**

17
18 Dr. Joseph was not present nor was he represented by counsel.

19
20 A motion was made, seconded and carried unanimously to deny the request for reconsideration.

21
22 **Action taken:** request denied

23
24 **Silvia Nunez, ND- Request to Waive Fines.....Addendum tab 60**

25
26 Ms. Nunez was not present nor was she represented by counsel.

27
28 A motion was made, seconded and carried unanimously to deny the request to waive fines.

29
30 **Action taken:** request denied

31
32 **LICENSURE;**

33
34 **Edward Tobnick, M.D. – Endorsement.....37**

35
36 Dr. Tobnick was present and represented by Monica Rodriguez, Esquire.

37
38 Dr. Thomas summarized this issue and stated the Credentials Committee referred the matter to the
39 Board for a decision regarding licensure.

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1
2 After discussion, a motion was made, seconded and carried with two (2) opposed to grant licensure.

3
4 **FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT:**

5
6 **U.S. Healthworks Medical Group of Florida, Inc.....38**

7
8 Mr. Tellechea stated this was the draft Final Order on the Petition for Declaratory Statement for the
9 Board's review and approval.

10
11 A motion was made, seconded and carried unanimously to approve the Final Order.

12
13 **Action taken:** Draft Final Order approved

14
15 **BOARD CHAIR'S REMARKS**

16
17 Dr. Lage discussed a survey being prepared for physicians with the next *Message from the Chair*,
18 regarding maintenance of certification and licensure.

19
20 Dr. Lage then discussed the telemedicine rule. It was determined this discussion be set for the next
21 meeting and in the meantime the Telemedicine Report be placed on CD and sent to the members to
22 review.

23
24 Dr. Lage thanked Dr. Patrowicz for representing the Board at the FSMB where she knows he is
25 highly respected.

26
27 Dr. Lage talked about an assistant who came to the last meeting and learned a great deal. She is
28 currently writing an essay regarding the meeting. Dr. Lage thanked Ms. Sanford for providing
29 information and said she was working toward medical schools including attendance at a Board
30 Meeting in the medical curriculum.

31
32 Dr. Lage thanked PSU for their work. She went on to thank staff, who have had health issues and
33 have been short staffed, but still managed to get all the work done. She also thanked the Board
34 Members for their hard work and dedication.

35
36 **ANNUAL REPORT**

37
38 Mr. McPherson introduced the annual report and urged the members to read about the tremendous
39 work of the board, staff, and the attorney general's office.

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1
2 **BOARD COUNSEL’S REMARKS.....No tab**
3

4 Mr. Tellechea advised the non-rule policy challenge in the case of Isabella Sharpe vs. Board of
5 Medicine, Department of Health, which had to do with costs imposed as a result of disciplinary
6 action. He said the Department’s Motion to Dismiss was granted with prejudice which means they
7 are out of the suit. The Board’s Motion to Dismiss was granted with leave for Dr. Sharpe to amend
8 the challenge.
9

10 Dr. Lage thanked Mr. Tellechea and his team for their hard work.
11

12 **COMMITTEE REPORTS:**
13

14 **Pain Clinic Standards of Practice Joint Committee**
15

16 Dr. Bearison gave the report for the meeting held July 24, 2010. He thanked the Committee for their
17 work and the staff for setting up the meeting and providing the materials.
18

19 A motion was made, seconded and carried unanimously for the Chair to draft a letter to the sponsors
20 of SB 2272 as outlined in the minutes.
21

22 A motion was made, seconded and carried unanimously to approve the minutes.
23

24 **Action taken:** Chair to draft letter to the sponsors of SB 2272, minutes approved
25

26 **Credentials Committee Meeting**
27

28 Dr. Thomas provided the report for the meeting held August 5, 2010. He advised the Committee
29 recommends not submitting legislative licensure proposals this year since the language needs to be
30 updated.
31

32 A motion was made, seconded and carried unanimously to approve the minutes.
33

34 **Action taken:** minutes approved
35

36 **COUNCIL ON PHYSICIAN ASSISTANTS:**
37

38 Dr. S. Rosenberg provided the report for the meeting held August 5, 2010.
39

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1 A motion was made, seconded and carried unanimously to approve the minutes.

2

3 **Action taken:** minutes approved

4

5 **Surgical Care/Quality Assurance Committee**

6

7 Dr. Espinola provided the report for the meeting held August 5, 2010.

8

9 A motion was made, seconded and carried unanimously to approve the minutes.

10

11 **Action taken:** minutes approved

12

13 **Rules/Legislative Committee Meeting**

14

15 Dr. S. Rosenberg provided the report for the meeting held August 5, 2010.

16

17 A motion was made, seconded and carried unanimously to approve the minutes.

18

19 **Action taken:** minutes approved

20

21 **Dietetics/Nutrition & Electrolysis Committee**

22

23 The August 5, 2010 meeting was cancelled due to a lack of quorum.

24

25 **Action taken:** meeting cancelled

26

27 **Expert Witness Committee**

28

29 Dr. Tucker provided the report for the meeting held August 5, 2010.

30

31 A motion was made, seconded and carried unanimously to approve the minutes.

32

33 A motion was made, seconded and carried unanimously to drop the requirement for letters of
34 recommendations.

35

36 Dr. Tucker advised Mr. Tellechea will meet with Ms. Lake to discuss the criteria for PA certification
37 as an expert witness.

38

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1 Dr. Tucker asked whether department experts that the Board had concerns with would be coming
2 back to the Committee for review.

3
4 Ms. Kielsing advised the prosecuting attorneys no longer use such experts for case reviews rather
5 than sending them back to the Committee.

6
7 Dr. Patrowicz asked if we recognized those department experts who serve pro bono.

8
9 Dr. Tucker advised they received CME credit.

10
11 Ms. Kielsing advised she would get a list of pro bono experts for the next meeting that have actually
12 served as an expert for the Department.

13
14 **Action taken:** minutes approved; letters of recommendation no longer required; Mr. Tellechea will
15 meet with Ms. Lake regarding PA criteria for expert witnesses

16
17 **Finance & Statistics Committee Conference Call**

18
19 Approval of the minutes for the July 16, 2010 meeting was tabled until the October Board Meeting.

20
21 **Action taken:** approval tabled until October Board Meeting

22
23 **APPROVAL OF MEETING MINUTES:**

24
25 **June 4-5, 2010 Meeting50**

26
27 A motion was made, seconded and carried unanimously to approve the minutes.

28
29 **Action taken:** minutes approved

30
31 **RATIFICATION OF APPLICANTS PURSUANT TO CHAPTER 458, F.S.51**

32
33 A motion was made, seconded and carried unanimously to ratify the licensure lists.

34
35 **Action taken:** lists ratified

36
37 **PRESENTATIONS:**

38
39 **Slideshow of pictures from Dr. Jason Rosenberg's trip to Haiti.....52**

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21
22

This matter was postponed until the October Board meeting.

Action taken: postponed until October Board meeting

Dr. S. Rosenberg’s ethics presentation53

Dr. Rosenberg explained the Society of Dermatology and Dermatological Surgery held an interactive ethics presentation for the first time. He said approximately 400 physicians were in attendance. He said it was interesting to see the diversity of answers to posed questions.

Action taken: none necessary

DISCUSSIONS:

Filing complaints against Limited Licenses for failing to complete CME..... No tab

Mr. McPherson explained a Board Member asked about this topic at a prior meeting. He explained that CME was required statutorily and therefore, limited licensees were required to keep current on CME.

The meeting adjourned at 4:31 p.m.

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1 **Saturday, August 7, 2010**

2
3 **9:48 a.m. ROLL CALL**

4
5 **Members Present:**

6 Michael Chizner, M.D., Vice-Chair
7 Elisabeth Tucker, M.D.
8 H. Frank Farmer, Jr., M.D.
9 Trina Espinola, M.D.
10 Robert Nuss, M.D.
11 Fred Bearison, M.D.
12 Tully Patrowicz, M.D.
13 George Thomas, M.D.
14 Steven Rosenberg, M.D.
15 Gary Winchester, M.D.
16 Brigitte Rivera Goersch, Consumer Member

17
18 **Staff Present:**

19 Larry McPherson, Jr., Executive Director
20 Ed Tellechea, Board Counsel
21 Donna McNulty, Board Counsel
22 Nancy Murphy, Paralegal
23 Crystal Sanford, Program Operations Administrator
24 Chandra Prine, Program Operations Administrator
25 Whitney Bowen, Board Staff
26 Eulinda Smith, Public Information Officer

27
28 **Prosecuting Attorney's Present:**

29 Veronica Donnelly, J.D., Medical Section Chief
30 Shirley Bates, J.D.
31 Yolonda Green, J.D.
32 Diane Kiesling, J.D.

33
34 **Members Absent:**

35 Jason Rosenberg, M.D., excused
36 Donald Mullins, Consumer Member, excused
37 Bradley Levine, Consumer Member, excused
38 Onelia Lage, M.D., Chair , excused

39
Others Present:

American Court Reporting
Judy Rivenbark, Director, PRN

34 As Dr. Lage was excused from the meeting, Dr. Chizner was Acting Chair and provided opening
35 remarks for the audience.

36
37 Dr. McPherson introduced Lucy Gee, Director, Medical Quality Assurance, who updated the Board
38 regarding the prescription drug monitoring program (PDMP).

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1 Ms. Gee thanked the Board for their incredible work on SB 462 and 2272. She also thanked Mr.
2 Tellechea and Ms. McNulty for their guidance and expertise. She said the PDMP now has a name:
3 FL PRIME. She said it stands for Prescription Reporting Information Monitoring Evaluation and the
4 website "FLPRIME.com" will be live next week. She said the Department has started the bid
5 process for maintenance of the web site. She said the Department obtained a \$400,000 grant in 2009
6 that has brought them to this point in the process. They will receive the same grant amount next
7 month. She said the Department also received 2 private grants totally approximately \$26,000 and
8 has also raised approximately \$100,000 to support this system. She said they have obtained office
9 space, equipment, furniture, etc and are now advertising for a Program Manager position with a
10 pharmacy background preferred. She said they would also be advertising for a Program
11 Administrator position to handle invoices, grant writing, etc.

12
13 Dr. Patrowicz asked for the average cost annually to support the system.

14
15 Ms. Gee advised \$800,000.

16
17 Dr. Tucker suggested they move towards a COMPACT with our bordering states (Alabama and
18 Georgia) since patients will cross state lines to obtain controlled substances.

19
20 Ms. Gee advised there is federal legislation to make this information nationwide, but Florida cannot
21 currently share the information.

22
23 Dr. Winchester asked when the system will be running.

24
25 Ms. Gee advised December 1, 2010 and training is anticipated by October, 2010.

26
27 Dr. Winchester offered his office for testing of the system, if needed.

28
29 Dr. Patrowicz asked if the FSMB was involved in this process.

30
31 Ms. Gee was unsure, but advised she would check.

32
33 Mr. Tellechea reminded the Board legislative authority is necessary for this program, so he was not
34 sure what involvement the FSMB would have in the process.

35
36 **Action taken:** none necessary

37
38 Mr. McPherson provided a description of the types of hearing scheduled for the audience.

39

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1 Dr. Chizner read the Settlement Agreement List for the members to determine which cases they
2 would be hearing during the day.

3
4 **DISCIPLINARY CASE SCHEDULE CONTINUED:**

5
6 **Jennifer Kitzel, M.D., St. Petersburg, FL, Settlement Agreement.....41**

7
8 Dr. Thomas was recused.

9
10 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2008) -
11 Committing medical malpractice as defined in s. 456.50.and violation of Florida Statute s.
12 458.331(1)(m)(2008) - Failing to keep legible, as defined by department rule in consultation with the
13 board, medical records that identify the licensed physician or the physician extender and supervising
14 physician by name and professional title who is or are responsible for rendering, ordering,
15 supervising, or billing for each diagnostic or treatment procedure and that justify the course of
16 treatment of the patient, including, but not limited to, patient histories; examination results; test
17 results; records of drugs prescribed, dispensed, or administered; and reports of consultations and
18 hospitalizations.

19
20 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

21
22 **Penalty imposed:** letter of concern, \$7500 fine, costs, 25 hours community service, 10 hours CME
23 in alternative airway management techniques, 6 hours CME in record keeping, 5 hours risk
24 management CME

25
26 **Carmen Judith Pagan, M.D., Weslaco, TX, Settlement Agreement45**

27
28 Dr. S. Rosenberg was recused.

29
30 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(b)(2008) -
31 Having a license or the authority to practice medicine revoked, suspended, or otherwise acted
32 against, including the denial of licensure, by the licensing authority of any jurisdiction, including its
33 agencies or subdivisions and violation of Florida Statute s. 458.331(1)(kk)(2008) - Failing to report
34 to the board, in writing, within 30 days if action as defined in paragraph (b) has been taken against
35 one's license to practice medicine in another state, territory, or country.

36
37 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

38
39 **Penalty imposed:** \$2,000 fine, costs

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1
2 **Virendra Kumar Agarwal, M.D., Gainesville, TX, Settlement Agreement47**
3

4 No present members were recused due to participation on the probable cause panel.

5
6 Allegations of the Administrative Complaint: Violation of Florida Statute s. 458.331(1)(b)(2008) –
7 Having a license or the authority to practice medicine revoked, suspended, or otherwise acted
8 against, including the denial of licensure, by the licensing authority of any jurisdiction, including its
9 agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of a
10 license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the
11 filing of administrative charges against the physician's license, shall be construed as action against
12 the physician's license; violation of Florida Statute s. 458.331(1)(kk)(2008) – Failing to report to the
13 board, in writing, within 30 days if action as defined in paragraph (b) has been taken against one's
14 license to practice medicine in another state, territory, or country; and violation of Florida Statute s.
15 456.072(1)(w)(2008) – Failing to comply with the requirements for profiling and credentialing,
16 including, failing to timely provide updated information.

17
18 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

19
20 **Penalty imposed:** letter of concern, \$1500 fine, costs, laws and rule course
21

22 **James Scott Pendergraft, IV, M.D., Orlando, FL, Recommended Order21**
23

24 Dr. Pendergraft was not present, but he was represented by Kenneth Metzger, Esquire.

25
26 No current members were recused due to participation on the probable cause panel.

27
28 Dr. Chizner read the Recommended Order remarks and confirmed all members had read the
29 complete record.

30
31 Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the
32 Amended Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(1996-1999) –
33 Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and
34 treatment which is recognized by a reasonably prudent similar physician as being acceptable under
35 similar conditions and circumstances; violation of Florida Statute s. 458.331(1)(m)(1996-1999) –
36 Failing to keep legible medical records that justify the course of treatment of the patient, including,
37 but not limited to, patient histories; examination results; test results; records of drugs prescribed,
38 dispensed, or administered; and reports of consultations and hospitalizations; violation of Florida
39 Statute s. 458.331(1)(w)(1996-1999) – Delegating professional responsibilities to a person when the

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1 licensee delegating such responsibilities knows or has reason to know that such person is not
2 qualified by training, experience, or licensure to perform them; and violation of Florida Statute s.
3 458.331(1)(q)(1996-1999) – Prescribing, dispensing, administering, mixing, or otherwise preparing a
4 legend drug, including any controlled substance, other than in the course of the physician's
5 professional practice.

6
7 The ALJ found that the charges, except for the charge alleging a violation of s. 458.331(1)(w), F.S.,
8 were proven.

9
10 A motion was made, seconded and carried unanimously to deny the Respondent's first Exception to
11 the Findings of Fact based on the Department and Mr. Tellechea's comments.

12
13 A motion was made, seconded and carried unanimously to deny the Respondent's second Exception
14 to the Findings of Fact based on the Department's presentation.

15
16 A motion was made, seconded and carried unanimously to deny the Respondent's third Exception to
17 the Findings of Fact based on the Department's presentation.

18
19 A motion was made, seconded and carried unanimously to deny the Respondent's fourth Exception
20 to the Findings of Fact based on the Department's presentation.

21
22 A motion was made, seconded and carried unanimously to deny the Respondent's fifth Exception to
23 the Findings of Fact based on the Department's presentation.

24
25 A motion was made, seconded and carried unanimously to deny the Respondent's sixth Exception to
26 the Findings of Fact based on the Department's presentation.

27
28 A motion was made, seconded and carried unanimously to deny the Respondent's seventh Exception
29 to the Findings of Fact based on the Department's presentation.

30
31 A motion was made, seconded and carried unanimously to deny the Respondent's eighth Exception
32 to the Findings of Fact based on the Department's analysis and the record.

33
34 A motion was made, seconded and carried unanimously to deny the Respondent's ninth Exception to
35 the Findings of Fact based on the Department's presentation.

36
37 A motion was made, seconded and carried unanimously to deny the Respondent's first Exception to
38 the Conclusions of Law based on the Department's presentation.

39

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1 A motion was made, seconded and carried unanimously to deny the Respondent's second Exception
2 to the Conclusions of Law based on the Department's presentation.

3
4 Mr. Tellechea recommended changing the language in paragraph 59 of the Recommended Order to
5 state the Board does not have to find illicit violation in order to make this charge.

6
7 A motion was made, seconded and carried unanimously to deny the Respondent's third Exception to
8 the Conclusions of Law based on the Department's presentation and to adopt the revised language.

9
10 A motion was made, seconded and carried unanimously to deny the Respondent's fourth Exception
11 to the Conclusions of Law based on the Department's testimony.

12
13 A motion was made, seconded and carried unanimously to deny the Respondent's fifth Exception to
14 the Conclusions of Law based on the Department's response and the fact that the Findings of Fact
15 support the Conclusions of Law.

16
17 Mr. Metzger withdrew his exception to the penalty; however, he was standing on his exceptions to
18 the Findings of Fact and Conclusions of Law.

19
20 A motion was made, seconded and carried unanimously to adopt the Findings of Fact.

21
22 A motion was made, seconded and carried unanimously to adopt the Conclusions of Law with the
23 exception of paragraph 59.

24
25 A motion was made, seconded and carried unanimously to reject paragraph 59 of the Conclusions of
26 Law and to replace it with Mr. Tellechea's proposed language.

27
28 A motion was made, seconded and carried unanimously to adopt the Conclusions of Law as
29 amended in paragraph 59 based.

30
31 A motion was made, seconded and carried unanimously to find the Respondent has violated Florida
32 Statutes.

33
34 A motion was made, seconded and carried unanimously to adopt the Recommended Order with
35 probation terms that include quarterly appearances and reports and 25% chart review by a direct
36 supervisor.

37

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1 Dr. Winchester asked if the ALJ's finding of a medical record violation supports adding the FMA
2 recordkeeping course and the USF course because of the steroid prescribing contrary to the standard
3 of care.

4
5 Mr. Tellechea stated it did.

6
7 A motion was made, seconded and carried unanimously to require the Respondent to attend the USF
8 drug course and the FMA recordkeeping course.

9
10 Dr. Patrowicz asked if a reprimand could be included since this was the second offense.

11
12 Mr. Tellechea stated no.

13
14 The motion carried unanimously.

15
16 A motion was made, seconded and carried unanimously to require the CME be completed within one
17 (1) year.

18
19 Penalty imposed: one (1) year suspension, 3 years probation, \$10,000 fine, USF course, FMA
20 recordkeeping course, probation terms include quarterly appearances and reports, 25% chart review
21 by a direct supervisor

22
23 **Jeffrey Adam Deren, M.D., Winter Park, FL, Settlement Agreement39**

24
25 Dr. Deren was present and represented by Brian Newman, Esquire.

26
27 Dr. Thomas was recused.

28
29 Ms. Green represented the Department and presented the case to the Board. Allegations of the
30 Administrative Complaint: Violation of Florida Statute s. 456.072(1)(bb)(2008) - Performing or
31 attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong
32 procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise
33 unrelated to the patient's diagnosis or medical condition.

34
35 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

36
37 **Penalty imposed:** letter of concern, \$2500 fine, costs, 25 hours community service, 5 hours risk
38 management CME, lecture

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1 **Joseph Scott Parise, M.D., Trinity, FL, Settlement Agreement40**

2
3 Dr. Parise was present and represented by Randy Collette, Esquire.

4
5 Dr. S. Rosenberg was recused.

6
7 Ms. Green represented the Department and presented the case to the Board. Allegations of the
8 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2005) – Committing medical
9 malpractice as defined in s. 456.50.

10
11 A motion was made and seconded to accept the Settlement Agreement.

12
13 A motion was made and seconded to table the hearing until the actual X-rays could be shown. The
14 motion failed 4-6.

15
16 A motion was made, seconded and carried 6-4 to accept the Settlement Agreement.

17
18 **Penalty imposed:** letter of concern, \$3500 fine, costs, 25 hrs community service, 5 hours risk
19 management CME

20
21 **Yves Nemours Jean-Baptiste, M.D., Tampa, FL, Settlement Agreement42**

22
23 Dr. Jean-Baptiste was present and represented by Jon Pellet, Esquire.

24
25 No present members were recused due to participation on the probable cause panel.

26
27 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
28 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(m)(2009) - Failing to keep
29 legible, as defined by department rule in consultation with the board, medical records that identify
30 the licensed physician or the physician extender and supervising physician by name and professional
31 title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or
32 treatment procedure and that justify the course of treatment of the patient, including, but not limited
33 to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or
34 administered; and reports of consultations and hospitalizations; violation of Florida Statute s.
35 458.331(1)(t)(2009) - Gross or repeated malpractice or the failure to practice medicine with that
36 level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as
37 being acceptable under similar conditions and circumstances; violation of Florida Statute s.
38 458.331(1)(f)(2009) - Aiding, assisting, procuring, or advising any unlicensed person to practice
39 medicine contrary to this chapter or to a rule of the department or the board; violation of Florida

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1 Statute s. 458.331(1)(w)(2009) - Delegating professional responsibilities to a person when the
2 licensee delegating such responsibilities knows or has reason to know that such person is not
3 qualified by training, experience, or licensure to perform them; and violation of Florida Statute s.
4 458.331(1)(nn)(2009) - Violating any provision of this chapter or chapter 456, or any rules adopted
5 pursuant thereto.

6
7 The Board discussed the type of supervision should be required since Dr. Jean-Baptiste is a family
8 practitioner who performs cosmetic surgery.

9
10 A motion was made, seconded and carried unanimously to reject the Settlement Agreement.

11
12 A motion was made and seconded to offer a counter proposal to impose the same terms in the
13 original agreement, but to increase the fine to \$50,000 and to require a monitor for his family
14 practice and another monitor for his cosmetic surgery practice, but to allow him to petition for
15 indirect supervision after six (6) months.

16
17 An amendment was offered to require the FL CARES evaluation and compliance prior to doing any
18 cosmetic surgery. The amendment was accepted.

19
20 Another amendment was offered to reduce the fine to \$30,000. This amendment was rejected.

21
22 The motion carried 9-2. The Respondent took 7 days to accept or reject the counter offer.

23
24 **Action taken:** Settlement Agreement rejected; counter offer to impose reprimand, \$50,000 fine,
25 costs of \$9,400, probation for 3 years with a board certified family practice or internal medicine
26 monitor while practicing family medicine, records course, 100 hours community service, 20 hours
27 CME in general surgery, ethics course, Quality Assurance/Risk Management assessment, restriction:
28 cannot perform cosmetic surgery until he has undergone a FL CARES evaluation and complies with
29 recommendations

30
31 **Jorge Enrique Gutierrez, P.A., Miami, FL, Settlement Agreement43**

32
33 Mr. Gutierrez was present and represented by Allen Grossman, Esquire.

34
35 Dr. Tucker was recused.

36
37 Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the
38 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(nn)(2008) – Violating any
39 provision of this chapter or chapter 456, or any rules adopted pursuant thereto; violation of Florida

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1 Statute s. 458.331(1)(d)(2008) – False, deceptive, or misleading advertising; and violation of Florida
2 Statute s. 458.331(1)(g)(2008) – Failing to perform any statutory or legal obligation placed upon a
3 licensed physician.

4
5 Following a thorough discussion of the facts of this case, the Respondent agreed to waive attorney
6 fees and costs if the case is dismissed.

7
8 A motion was made, seconded and carried unanimously to dismiss the Administrative Complaint.

9
10 **Action taken:** case dismissed

11
12 **Enid Fay Burnett, M.D., Daytona Beach, FL, Settlement Agreement.....44**

13
14 Dr. Burnett was present and represented by Gregory Chaires, Esquire.

15
16 Dr. S. Rosenberg was recused.

17
18 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
19 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(m)(2006) – Failing to keep
20 legible, as defined by department rule in consultation with the board, medical records that identify
21 the licensed physician or the physician extender and supervising physician by name and professional
22 title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or
23 treatment procedure and that justify the course of treatment of the patient, including, but not limited
24 to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or
25 administered; and reports of consultations and hospitalizations.

26
27 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.

28
29 **Penalty imposed:** letter of concern, \$5000 fine, costs, records course

30
31 **Recognition**

32
33 Dr. Coto, a former member of the Board present in the audience, was recognized by the Board.

34
35 **Return to disciplinary agenda:**

36
37 **Fabian Hector Oscar Rossi, M.D., Orlando, FL, Settlement Agreement46**

38
39 Dr. Rossi was present and represented by Gregory Chaires, Esquire.

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1
2 No present members were recused due to participation on the probable cause panel.
3

4 Ms. Kiesling represented the Department and presented the case to the Board. Allegations of the
5 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2004) – failure to practice
6 medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent
7 similar physician as being acceptable under similar conditions and circumstances and violation of
8 Florida Statute s. 458.331(1)(m)(2004) – Failing to keep legible, as defined by department rule in
9 consultation with the board, medical records that identify the licensed physician or the physician
10 extender and supervising physician by name and professional title who is or are responsible for
11 rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify
12 the course of treatment of the patient, including, but not limited to, patient histories; examination
13 results; test results; records of drugs prescribed, dispensed, or administered; and reports of
14 consultations and hospitalizations.
15

16 A motion was made, seconded and carried unanimously to accept the Settlement Agreement.
17

18 **Penalty imposed:** letter of concern, \$10,000 fine, costs, records course, 50 hours community
19 service, 5 hours risk management CME
20

21 **Richard Weaver Maloney, M.D., Naples, FL, Settlement Agreement.....48**
22

23 Dr. Maloney was present and represented by Jon Pellet, Esquire.
24

25 Dr. Winchester was recused and left at 12:45 p.m.
26

27 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
28 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2006) – Committing
29 repeated medical malpractice as defined in s. 456.50.
30

31 A motion was made and seconded to reject the Settlement Agreement. The motion failed 4-6.
32

33 A motion was made and seconded to accept the Settlement Agreement. The motion passed.
34

35 **Penalty imposed:** letter of concern, \$5000 fine, costs, 5 hours risk management CME, 50 hours
36 community service, 1 hour lecture on risks of performing surgery in proximity to preexisting
37 conditions
38

39 **Michael Henry Link, M.D., Settlement Agreement.....11**

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1
2 Dr. Link was present and represented by Terese Latham, Esquire. The complainant also addressed
3 the Board.

4
5 Dr. Thomas was recused.

6
7 Ms. Bates represented the Department and presented the case to the Board. Allegations of the
8 Administrative Complaint: Violation of Florida Statute s. 458.331(1)(t)(2006) – Committing
9 repeated medical malpractice as defined in s. 456.50.

10
11 A family member addressed the Board regarding this case.

12
13 A motion was made, seconded and carried unanimously to reject the Settlement Agreement.

14
15 A motion was made and seconded to offer a counter proposal to include a \$5,000 fine, costs,
16 reprimand, 100 hours community service within 1 year and the 3 hours of CME in metastatic disease
17 is to be taken within 90 days and the CME in risk management is to be taken within 6 months.

18
19 An amendment was offered to require a risk management assessment within 6 months including
20 compliance with recommendations. The amendment was accepted.

21
22 Dr. Link apologized to the patient's daughter and wife.

23
24 Counsel for Dr. Link also addressed Dr. Tucker and the family member that she did not intend that
25 her comments should be considered questioning the statements of the family member.

26
27 The motion carried unanimously. The Respondent took 7 days to accept or reject the counter offer.

28
29 **Action taken:** Settlement Agreement rejected; counter offer to impose reprimand, \$5000 fine, costs,
30 100 hours community service, 3 hours CME in identifying & treating metastatic disease within 90
31 days, 5 hours risk management CME within 6 months, risk management assessment and compliance
32 with recommendations

33
34 **DEPARTMENT REMARKS:**

35
36 Ms. Donnelly addressed the Board regarding their concerns of how PSU handles subpoenas. She
37 also advised the Board regarding the actions of PSU regarding pill mills including training and
38 having an on call attorney to answer questions from the field. She stated she has three (3) new
39 attorneys and will be fully staffed as of October 2nd. She fully expects to bring more cases to the

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1 Board after that time. Ms. Donnelly advised she heard the Board's direction regarding X-rays and
2 will act accordingly.

3
4 **OTHER BUSINESS:**

5
6 Mr. Tellechea explained the Board does not normally change a rule during a rule hearing, but since
7 the Board did this time, he asked the Board to make a motion regarding the revised rule.

8
9 A motion was made, seconded and carried unanimously to adopt the proposed draft rule as amended
10 during the rule hearing.

11
12 Dr. S. Rosenberg provided documentation that supports psychiatry does include a component of
13 intractable pain in the curriculum.

14
15 A motion was made, seconded and carried within one (1) opposed to including psychiatry in the
16 proposed draft rule for pain-management clinics.

17
18 **Action taken:** draft rule approved as amended; include psychiatry

19
20 Dr. Chizner stated that he was proud and humbled to be surrounded by the present board and staff.
21 He thanked the Department for their time and dedication. He commended Mr. Tellechea, Ms.
22 McNulty, Ms. Murphy, Ms. Sanford, Ms. Prine and Mr. McPherson for their time and efforts.

23
24 Dr. Patrowicz thanked the Board for their support during his recent illness and said support is the
25 best medication.

26
27 The meeting adjourned at 1:50 p.m.