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Final Order No. DOH-01-1502-~~FoF~~-MOA

FILED DATE - 9/5/01

Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: [Signature]
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

AT

vs.

DOH CASE NO.: 1997-15802
DOAH CASE NO.: 00-0023
LICENSE NO.: ME0056777

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DIVISION OF
ADMINISTRATIVE
HEARINGS

DAVID IRA MINKOFF, M.D.,

Respondent.

WFQ-CWS

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 3, 2001, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner was represented by Larry G. McPherson, Jr., Chief Attorney. Respondent was present and represented by Bruce D. Lamb, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the exceptions filed by the Respondent and rejected the exceptions for the reasons set forth in the Petitioner's response.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.
2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.
3. There is competent substantial evidence to support the conclusions of law.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$10,000 to the Board.

2. Respondent's license to practice medicine in the State of Florida is hereby suspended for a period of one year.

3. Following the one year suspension set forth above, Respondent shall be placed on probation for a period of two (2) years subject to the following terms and conditions:

a. Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 456, 458, 893, Florida Statutes, and Rule 64B8, Florida Administrative Code.

b. Respondent shall appear before the Probationer's Committee at the first meeting after said probation commences, at the last meeting of the Probationer's Committee preceding termination of probation, quarterly, and at such other times requested by the committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probationer's Committee whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action.

c. In the event the Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of said probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the

State of Florida. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

d. In the event that Respondent leaves the active practice of medicine in this state for a period of thirty days or more, the following provisions of probation shall be tolled:

- (1) The time period of probation shall be tolled.
- (2) The provisions regarding supervision, whether direct or indirect by another physician.
- (3) The provisions preparation of investigative reports detailing compliance with this Stipulation.
- (4) The community service requirements detailed below.

e. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probationer's Committee may require Respondent to appear before the Probationer's Committee and demonstrate the ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

f. Respondent shall not practice except under the direct supervision of a physician fully licensed under Chapter 458 who has been approved by the Probationer's Committee. The supervisory physician shall share offices with Respondent. Absent provision for

and compliance with the terms regarding temporary approval of a supervising physician set forth below, Respondent shall cease practice and not practice until the Probationer's Committee approves a supervising physician. Respondent shall have the supervising physician appear at the first probation appearance before the Probationer's Committee. Prior to approval of the supervising physician by the committee, the Respondent shall provide to the supervising physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the supervising physician to appear at the scheduled probation meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the supervising physician by the committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice of the proposed supervising physician. Said materials shall be received in the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. The attached definition of a supervising physician is incorporated herein. The responsibilities of a supervising physician shall include:

- (A) Submit quarterly reports, in affidavit form, which shall include:
 - (1) Brief statement of why physician is on probation.
 - (2) Description of probationer's practice.
 - (3) Brief statement of probationer's compliance with terms of probation.

- (4) Brief description of probationer's relationship with supervising physician.
- (5) Detail any problems which may have arisen with probationer.
- (B) Review 50 percent of Respondent's patient records selected on a random basis at least once every month.
- (C) Receive and review copies of all Schedule controlled substances in order to determine the appropriateness of Respondent's prescribing of controlled substances.
- (D) Report to the Board any violation by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

g. The Board shall confer authority on the Chairperson of the Board's Probationer's Committee to temporarily approve Respondent's supervisory/monitoring physician. In order to obtain this temporary approval, Respondent shall submit to the Chairperson of the Probationer's Committee the name and curriculum vitae of the proposed supervising/monitoring physician. This information shall be furnished to the Chairperson of the Probationer's Committee by way of the Board of Medicine's Executive Director, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Board of Medicine at (850) 488-9325, or may be sent by overnight mail to the Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3253. In order to provide time for Respondent's proposed supervisory/monitoring physician to be

approved or disapproved by the Chairperson of the Probationer's Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved.

h. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervising/monitoring physician who shall be approved by Probationer's Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician during those periods of time which Respondent's monitoring/supervising physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternate supervising physician, Respondent shall

so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which Respondent shall practice under the supervision of the alternate monitoring/supervising physician. Respondent shall not practice unless Respondent is under the supervision of either the approved supervising/monitoring physician or the approved alternate.

i. Respondent shall submit quarterly reports in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

- (1) Brief statement of why physician is on probation.
- (2) Practice location.
- (3) Describe current practice (type and composition).
- (4) Brief statement of compliance with probationary terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Board of any problems.

j. During the period of suspension, Respondent shall attend the USF drug course, the FMA medical records course and document the completion of five (5) hours of risk management Category I Continuing Medical Education. Respondent shall submit a written plan to the Chairperson of the Probationer's Committee for approval prior to the completion of said courses. The Board confers authority on the Chairperson of the Probationer's Committee to approve or disapprove said continuing education courses. In addition, Respondent shall submit documentation of completion of these continuing medical

education courses in each report. These hours shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

k. During the probationary period Respondent shall perform 50 hours of community service at a rate of 25 hours per year. Community service shall consist of the delivery of medical services directly to patients, without fee or cost to the patient, for the good of the people of the State of Florida. Such community service shall be performed outside the physician's regular practice setting.

Respondent shall submit a written plan for performance and completion of the community service to the Probationer's Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board quarterly.

l. Respondent understands that during this period of probation, semi-annual investigative reports will be compiled with the Department of Health concerning compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

m. Respondent shall comply with the terms and conditions of any criminal probation.

n. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this proceeding. Such costs

include, but are not limited to, the costs of preparation of the investigative reports detailing compliance with the terms of this proceeding, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

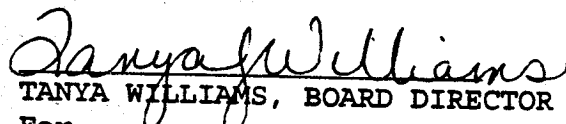
RULING ON MOTION TO STAY SUSPENSION

The Board considered the Respondent's oral Motion to Stay the suspension required by this Final Order and determined that a stay of the suspension is GRANTED provided Respondent complies with the terms of probation set forth in Paragraph 3 above.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 29th day of August,
2001.

BOARD OF MEDICINE


TANYA WILLIAMS, BOARD DIRECTOR
For
GASTON ACOSTA-RUA, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to David Ira Minkoff, M.D., 129 Garden Avenue North, Clearwater, Florida 33755; to Bruce Lamb, Esquire, Ruden, McClosky, et al., 401 East Jackson Street, 27th Floor, Tampa, Florida 33602; to William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Nancy M. Snurkowski, Chief Medical Attorney, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this 5th day of September, 2001.

