



Florida Board of Medicine

**Crowne Plaza Jacksonville Airport Hotel
14670 Duval Road
Jacksonville, Florida 32218-2460**

November 3, 2016

MEETING MINUTES

Roll call 2:34 p.m.

Members Present:

Sarvam TerKonda, M.D., Chair
Bernardo Fernandez, M.D.
Magdalena Averhoff, M.D.
Steven Rosenberg, M.D.
Brigitte Goersch, Consumer Member
James W. Orr, Jr., M.D.
Nicholas Romanello, Esquire Consumer Member
Jorge Lopez, M.D.
Gary Dolin, M.D.
Merle P. Stringer, M.D.
Joy A. Tootle, J.D., Consumer Member

Members Absent:

Enrique Ginzburg, M.D., Vice-Chair
Zachariah P. Zachariah, M.D.
Seela Ramesh, M.D.
Hector Vila, M.D.

Staff Present:

Claudia Kemp, J.D., Executive Director
Edward Tellechea, Esquire, Board Counsel
Donna McNulty, Esquire, Board Counsel
Nancy Murphy, Certified Paralegal
Crystal Sanford, CPM, Program Operations Administrator
Wendy Alls, Program Operations Administrator
Rebecca Hewett, Regulatory Specialist III
Sara Revels, Public Information Officer

Others Present:

Esquire Deposition Services
Debbie Baker
(904) 355-8416

Prosecuting Attorneys Present:

Louise St. Laurent, Esquire, Deputy General Counsel
Allison Dudley, Esquire, Medical Section Lead
Kristin Summers, Esquire

Petition for Wavier or Variance:

Abbey Folsom, MS, CNS.....43

Ms. Folsom was present but not represented by counsel. She was requesting waiver of Rule 64B8-42.002, FAC which requires proof of 900 hours of planned and continuous

supervised practice and proof the supervisor is equivalent to a Florida licensed dietician/nutritionist.

Mr. Tellechea explained Ms. Folsom’s application was considered by the Dietetics Council and the application was granted pending the Board approving her petition for waiver of the rule. He said she has submitted the required hours; however, she completed the hours under the supervision of a physician trained in nutrition.

A motion was made, seconded and carried unanimously to grant the petition for waiver of the rule.

Action taken: petition granted

Disciplinary Case Schedule:

Kenneth Woliner, M.D. – Recommended Order41

Dr. Woliner was present and represented by George Indest, III, Esquire, Lance O. Leider, Esquire and Bennett Miller, Esquire.

Dr. TerKonda read the Recommended Order Remarks and confirmed all participating members had read the complete record.

Dr. Stringer and Ms. Goersch were recused due to participation on the probable cause panel.

Ms. Summers and Ms. St. Laurent represented the Department and presented the case to the Board. Allegations of the Administrative Complaint: violation of s. 458.331(1)(t), FS (2010-2012) - Notwithstanding s. 456.072(2) but as specified in s. 456.50(2): 1. Committing medical malpractice as defined in s. 456.50. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. Medical malpractice shall not be construed to require more than one instance, event, or act. 2. Committing gross medical malpractice. 3. Committing repeated medical malpractice as defined in s. 456.50. A person found by the board to have committed repeated medical malpractice based on s. 456.50 may not be licensed or continue to be licensed by this state to provide health care services as a medical doctor in this state. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed “gross medical malpractice,” “repeated medical malpractice,” or “medical malpractice,” or any combination thereof, and any publication by the board must so specify; s. 458.331(1)(n), FS (2010-2012) - Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs; s. 458.331(1)(m), FS (2010-2012) - 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 consultations and hospitalizations; and s. 456.072(1)(o), FS (2010-2012) - Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

Each part made opening remarks and then the Respondent's exceptions were presented to the Board.

A motion was made, seconded and carried unanimously to reject Respondent's Exception B on the basis that the Board has no jurisdiction to rule on evidentiary issues.

A motion was made, seconded and carried unanimously to reject Respondent's Exception A on the basis that the Board has no jurisdiction to rule on evidentiary issues.

A motion was made, seconded and carried unanimously to reject Respondent's specific objection to the Administrative Law Judges (ALJ's) Findings of Fact (Exception III) on the basis of the mother's testimony.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph five of the Recommended Order based on the Department's oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph nine of the Recommended Order on the basis the Board has no jurisdiction on evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph twenty two of the Recommended Order based on the reasons set forth by the Department.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph twenty eight of the Recommended Order based on the Department's comments.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph thirty two of the Recommended Order on the basis it is inappropriate for the Board to reweigh evidence and there is substantial evidence to support the ALJ's finding.

A motion was made, seconded and carried with one opposed to deny Respondent's exception to paragraph forty three of the Recommended Order based on the Department's oral argument and there is evidence to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph forty five of the Recommended Order on the basis the Board cannot reweigh evidence and there is evidence to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph forty seven of the Recommended Order based on the Department's remarks and there is evidence to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph forty nine of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph eighty four of the Recommended Order on the basis the Board has no authority over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraphs eighty six through eighty eight of the Recommended Order based on the Department's written response and oral argument and there is evidence in the record to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph ninety of the Recommended Order based on the Department's oral argument and evidence in the record to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph ninety three of the Recommended Order based on the Department's oral argument and evidence in the record to support the finding.

Mr. Tellechea pointed out an exception had been overlooked and the Board heard that exception.

A motion was made, seconded and carried unanimously to deny Respondent's exception that the records were not authenticated based on hearsay because the Board has not authority over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph ninety five of the Recommended Order on the basis the Board has no jurisdiction to reweigh evidence.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph ninety six (miss numbered as 97) of the Recommended Order based on the Department's remarks.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph ninety eight of the Recommended Order based on the Department's remarks and on the basis the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 100 of the Recommended Order based on the Department's remarks and on the basis the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 104 of the Recommended Order based on the Department's remarks and on the basis the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 105 of the Recommended Order based on the Department's remarks and on the basis the Board has no jurisdiction over evidentiary issues.

Mr. Indest stated he noticed members not voting and asked the Chairman to wait to allow members to respond with nah votes.

The Chairman said he would allow enough time for objections.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 106 of the Recommended Order based on the Department's remarks and on the basis the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 107 of the Recommended Order based on the Department's remarks.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 108 of the Recommended Order based on the Department's written and oral responses.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 109 of the Recommended Order based on the Department's written response.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 111 of the Recommended Order based on the Department's oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 113 of the Recommended Order based on the Department's remarks.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 116 of the Recommended Order based on the Department's comments.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 117 of the Recommended Order based on Ms. Summer's oral arguments and the Department's written response.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 119 of the Recommended Order based on Ms. Summer's oral arguments and the Department's written response.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 120 of the Recommended Order on the basis the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 122 of the Recommended Order based on the Department's written response.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 123 of the Recommended Order.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 125 of the Recommended Order based on the Department's written response and the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 126 of the Recommended Order based on the Department's written response and the Board has no jurisdiction over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 127 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 131 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 132 of the Recommended Order based on the Department's oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 133 of the Recommended Order.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 136 of the Recommended Order.

A motion was made, seconded and carried with one opposed to deny Respondent's exception to paragraphs 138-141 of the Recommended Order based on the Department's

written response and oral argument and the Board has no authority over evidentiary issues.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 143 of the Recommended Order.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 144 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried with one opposed to the scope of practice portion of Respondent's exception to paragraph 145 of the Recommended Order on the basis the physicians are educated and trained to practice medicine.

A motion was made, seconded and carried with one opposed to the rest of Respondent's exception to paragraph 145 because there is competent substantial evidence to support the finding.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraphs 149-153 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 155 of the Recommended Order.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraphs 163-164 of the Recommended Order.

A motion was made, seconded and carried with two opposed to reject Respondent's exception to paragraph 166 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 168 of the Recommended Order based on the Department's oral argument.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 169 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 170 of the Recommended Order based on the Department's oral argument.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 171 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 172 of the Recommended Order based on the Department's written response and oral argument.

A motion was made, seconded and carried unanimously to deny Respondent's exception to paragraph 173 of the Recommended Order.

A motion was made, seconded and carried unanimously to grant the Respondent's exception to paragraphs 175-178 but any evidentiary issues are rejected.

A motion was made, seconded and carried with four opposed to reject Respondent's exception to paragraph 180 of the Recommended Order based on the Department's written response and oral presentation.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 182 of the Recommended Order based on the Department's written response and oral presentation.

A motion was made, seconded and carried unanimously to reject Respondent's exception to paragraph 183 of the Recommended Order based on the Department's written response.

A motion was made, seconded and carried unanimously to grant the Respondent's exception to paragraph 184 of the Recommended Order on the basis the Respondent did not practice beyond his scope of practice and to substitute the Respondent's Conclusion of Law, but to reject the rest of the Respondent's exceptions.

A motion was made, seconded and carried unanimously to accept the Findings of Fact as amended by the exceptions.

A motion was made, seconded and carried unanimously to accept the Conclusions of Law as amended by the exceptions.

A motion was made, seconded and carried 5-4 to accept the Recommended Order with the exception of s. 458.331(1)(m), FS.

The Respondent's counsel objected.

The Respondent presented an oral argument and requested a stay of the revocation.

A motion was made, seconded and failed with a vote of 4-5 to deny the request.

A motion was made and seconded to grant the request.

The Petitioner suggested a restriction could be placed on the Respondent prohibiting him from treating patients with a malignancy or malignancy diagnosis.

The Respondent's counsel objected.

An amendment was made to prohibit the Respondent from managing patients that have a current diagnosis of a malignancy or being treated for a malignancy.

After discussion, the amendment was withdrawn.

A motion was made, seconded and carried 7-2 to deny the request for a stay of the penalty.

A motion was made, seconded and carried unanimously to bifurcate costs and bring back at another meeting and the Board retained jurisdiction to assess costs at that time.

Mr. Tellechea advised the Board Members not to discuss the cases among each other or with either party until the appellate case has been resolved.

Penalty imposed: revocation, \$16,000 fine, repayment of \$2,990 to MS estate; request for stay denied.