



## Florida Board of Medicine

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

November 4, 2016

### MEETING MINUTES

Pledge of allegiance

8:00 a.m. Roll call

#### **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

#### **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

#### **Prosecuting Attorneys Present:**

Louise St. Laurent, Esquire, Deputy General Counsel  
Allison Dudley, Esquire, Medical Section Lead  
Chad Dunn, Esquire

#### **Disciplinary Case Schedule:**

Ms. Kemp read the opening remarks and explained the various hearings scheduled before the Board.

Ms. Sanford read through the list of Settlement Agreements and the Board approved several. The rest were heard according to the agenda.

#### **Members Absent:**

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

#### **Others Present:**

Esquire Deposition Services  
Debbie Baker  
(904) 355-8416

**John Lentz, M.D. - Recommended Order .....31**

Dr. Lentz was present and represented by Mia Mckown, Esquire.

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

Mr. Dunn represented the Department and presented the cases to the Board.

**Case number 2011-15106**

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

Allegations of the Administrative Complaint: violation of Florida’s Statutes s. 458.331(1)(t) (2010-2011) – 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.

Case number 2011-18613

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

Allegations of the Administrative Complaint: violation of Florida’s Statutes s. 458.331(1)(t) (2010-2011) – 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)(m) (2010-2011) - 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. 458.331(1)(g) (2010-2011) – Failing to perform any statutory or legal obligation placed upon a licensed physician.

Case number 2012-01987

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

Allegations of the Administrative Complaint: violation of Florida’s Statutes s. 458.331(1)(t) (2010-2011) – 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)(m) (2010-2011) - 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. 458.331(1)(g) (2010-2011) – Failing to perform any statutory or legal obligation placed upon a licensed physician.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception I based on Mr. Dunn’s comments and the board has no jurisdiction over evidence.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception II based on the Department’s comments as well as Board counsel’s comments.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception IV based on the Department’s comments and written record.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception V based on the Department’s oral arguments in the written record which is closed and the Board has no authority to accept new documents.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception VI based on the Department’s oral arguments and the Board cannot re-weigh evidence.

A motion was made, seconded and carried with one opposed to deny the Respondent’s Exception VI based on the record in the comments of the Petitioner.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception VII (page 30) based on the Department’s comments and written record.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception VII (page 35) based on the Department’s comments and the Board cannot reweigh evidence.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception VIII based on the Department’s comments and the Board cannot reweigh evidence.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception IX based on the Department’s comments and the Board cannot reweigh evidence.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception X based on the Department’s comments and written response and the Board has no jurisdiction over evidence.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception XI based on the Department’s comments and written response.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XII based on the Department's comments and written response and the Board cannot reweigh evidence.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XIII based on the Department's comments and the entire record.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XIV based on the Department's comments and written response.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XV based on the Department's comments and written response.

A motion was made, seconded and carried with one opposed to reject the Respondent's Exception XVI based on the Department's comments and written response.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XVII based on the documents and Mr. Dunn's previous testimony.

A motion was made, seconded and carried unanimously to reject the Respondent's Exception XVIII based on Mr. Dunn's oral arguments.

Mr. Tellechea confirmed with the Respondent's counsel that Exceptions II A and B were addressed in the motion on Exception II.

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 revoke the respondent's license.

A motion was made and seconded to not impose the \$30,000 fine. However, the motion failed 3-5.

A motion was made and seconded to reconsider the previous motion on the fine on the basis that it does not serve the public purpose and he is not gainfully employed due to the revocation of his Florida medical license. The motion carried with one opposed.

A motion was made and seconded to table assessment of costs. However, the motion failed 3-5.

A motion was made and seconded to waive the costs.

Mr. Dunn objected.

The motion failed because all members were opposed.

A motion was made, seconded and carried unanimously to table assessment of costs.

A motion was made, seconded and carried unanimously to bifurcate the costs and bring back at a later date.

The Respondent requested a stay of the revocation pending the outcome of the appeal.

Mr. Dunn objected.

A motion was made, seconded and carried with one opposed to deny the request to stay the revocation pending appeal.

**Penalty imposed:** revocation, \$30,000 fine, request for stay denied

**Robert Dehgan, M.D. – Recommended Order .....42**

Dr. Dehgan was present and represented by Thomas R Brown, Esquire.

Dr. TerKonda read the Recommended Order remarks and confirm that all participating members had read the complete record.

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

Mr. Dunn represented the Department and presented the case to the Board. Allegations of the Amended Administrative Complaint: violation of Florida Statutes s. 456.072(1)(v) (2012-2014) – Engaging or attempting to engage in sexual misconduct as defined and prohibited in s. 456.063(1) and s. 458.331(1)(j) (2012-2014) - Exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his or her physician.

A motion was made, seconded and carried unanimously to refrain from ruling on the Respondent’s Exceptions 1-3 because there are no citations to the Recommended Order as required.

A motion was made, seconded and carried unanimously to reject the Respondent’s Exception four based on the departments written response and oral argument.

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 and seconded to adopt the Recommended Order.

An amendment was offered to require that the Respondent appear at the conclusion of the suspension and the Board retains jurisdiction to set probation terms at that time. This amendment was accepted.

Another amendment was offered to require the ethics course include a component on boundaries and to prohibit the Respondent from treating female patients at all because the record shows the Respondent demonstrated a violation of sexual misconduct with three patients. In addition, both patients CT and AS testified that due to this case they are unable to trust male physicians. These testimonies can be found on pages 179-180 and on page 95 of the transcripts. This amendment was accepted.

The motion carried unanimously.

A motion was made, seconded and carried unanimously to bifurcate costs and present a later date.

**Penalty imposed:** reprimand, suspension for three years, probation for five years with terms to be set at reinstatement, Respondent must appear for reinstatement, Board retains jurisdiction to impose additional probationary terms at reinstatement, permanent restriction from treating female patients, ethics course with a component on patient boundaries, \$30,000 fine, costs bifurcated