

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-17-2226-FDI -MQA

FILED DATE **DEC 13 2017**  
Department of Health

By: *Bogal Sanders*

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-28395

LICENSE NO.: ME0008859

RANDALL B. WHITNEY, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on December 1, 2017, in Orlando, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause pursuant to Respondent's Election of Rights. At the hearing, Petitioner was represented by Allison Dudley, Assistant General Counsel. Respondent was present but was not represented by counsel. The facts are not in dispute.

Upon consideration, it is ORDERED:

1. The allegations of fact set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the findings of fact by the Board.

2. The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and

incorporated herein by reference as the conclusions of law by the Board.

3. The violations set forth warrant disciplinary action by the Board.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's license to practice medicine is hereby **SUSPENDED** until such time as he undergoes an evaluation by Florida CARES, or a board-approved equivalent evaluator, and personally appears before the Board (Probation Committee) with said evaluation and the evaluator's recommendations. If the evaluator recommends that Respondent undergo further evaluation for an impairment issue, such evaluation must be done under the auspices of the Professionals Resource Network (PRN). Upon review of the evaluation, the Board shall determine the conditions for reinstatement, if appropriate, and may impose additional terms and conditions on Respondent's practice such as a period of probation with terms and conditions to be set at the time of reinstatement.

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$3,613.33. The Board will determine the time frame for payment of the costs at the time of reinstatement of Respondent's license.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 12<sup>th</sup> day of December, 2017.

BOARD OF MEDICINE

Claudia Kemp  
Claudia Kemp, J.D., Executive Director  
For Magdalena Averhoff, M.D., Chair

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 **Certified Mail** to RANDALL B. WHITNEY, M.D., P.O. Box 290489, Port Orange, Florida



**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2015-28395**

**RANDALL WHITNEY, M.D.,**

**RESPONDENT.**

\_\_\_\_\_ /

**MOTION TO ASSESS COSTS**  
**IN ACCORDANCE WITH SECTION 456.072(4)**

The Department of Health, by and through counsel, moves the Board of Medicine for entry of a Final Order assessing costs against Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes. As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Medicine will take up for consideration the above-styled disciplinary action and will enter a Final Order.

2. Section 456.072(4), Florida Statutes, states, in pertinent part, as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is no board, shall assess costs related to the investigation and prosecution of the case. The costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto....

3. As evidenced in the attached affidavit (Exhibit A), the investigation and prosecution of this case has resulted in costs in the total amount of \$3,613.33, based on the following itemized statement of costs:

- a. Total costs for Complaints \$262.35
- b. Total costs for Investigations \$901.88
- c. Total costs for Legal \$2,398.40
- d. Total costs for expenses \$50.70

4. The attached outside attorney affidavit (Exhibit B) indicates a review of the file and a finding that the Department's attorney time in this case is reasonable and justifiable in the amount of \$2,398.40.

5. Upon review of the file, the Department contends that the costs associated with attorney time spent on this case are reasonable and justifiable.

6. Should Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which objections are made, Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

7. Petitioner requests that the Board grant this motion and assess costs in the amount of \$3,613.33 as supported by competent, substantial evidence. This assessment of costs is in addition to any other discipline imposed by the Board and is in accordance with Section 456.072(4), Florida Statutes.

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against Respondent in the amount of \$3,613.33.

*[signatures appear on the following page]*

Respectfully submitted,

*/s/ Natalia S. Thomas*

Natalia S. Thomas, Esq.  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 0083826  
(P) (850) 558-9907  
(F) (850) 245-4684  
(E) Natalia.Thomas@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided to William M. Furlow, Esq., at Grossman, Furlow, & Bayó, LLC, 2022-2 Raymond Diehl Road, Tallahassee, Florida 32308 by U.S. Certified Mail and via electronic mail at [w.furlow@gfblawfirm.com](mailto:w.furlow@gfblawfirm.com) this 29<sup>th</sup> day of September, 2017.

*/s/ Natalia S. Thomas*

Natalia S. Thomas, Esq.  
Assistant General Counsel



## AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA  
COUNTY OF LEON:

**BEFORE ME**, the undersigned authority, personally appeared **SHANE WALTERS** who was sworn and states as follows:

- 1) My name is Shane Walters.
- 2) I am over the age of 18, competent to testify, and make this affidavit upon my own personal knowledge and after review of the records at the Florida Department of Health (DOH).
- 3) I am the Senior Management Analyst II (SMAII) for the Consumer Services and Compliance Management Unit for DOH. The Consumer Services Unit is where all complaints against Florida health care licensees (e.g., medical doctors, dentists, nurses, respiratory therapists) are officially filed. I have been in my current job position for more than one year. My business address is 4052 Bald Cypress Way, Bin C-75 Tallahassee, Florida 32399-3275.
- 4) As SMAII of the Consumer Services and Compliance Management Unit, my job duties include reviewing data in the Time Tracking System and verifying that the amounts correspond. The Time Tracking System is a computer program which records and tracks DOH's costs regarding the investigation and prosecution of cases against Florida health care licensees.
- 5) As of today, DOH's total costs for investigating and prosecuting DOH case number(s) **2015-28395** (Department of Health v **Randall B. Whitney, M.D.**) are **THREE THOUSAND SIX HUNDRED THIRTEEN DOLLARS AND THIRTY-THREE CENTS (\$3,613.33)**.
- 6) The costs for DOH case numbers **2015-28395** (Department of Health v. **Randall B. Whitney, M.D.**) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers **2015-28395** (Department of Health v. **Randall B. Whitney, M.D.**) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators

and lawyers). A designated DOH employee in the Consumer Services Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

- 9) Shane Walters, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Shane Walters  
Shane Walters, Affiant

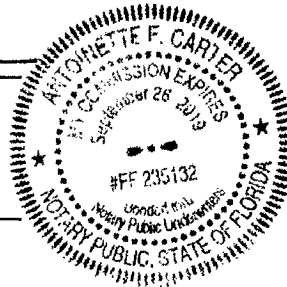
State of Florida  
County of Leon

Sworn to and subscribed before me this 29 day of August, 2017,  
by Shane Walters, who is personally known to me.

[Signature]  
Notary Signature

\_\_\_\_\_  
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



## Complaint Cost Summary

Complaint Number: 201528395

Subject's Name: WHITNEY, RANDALL B

	<b>***** Cost to Date *****</b>	
	<b>Hours</b>	<b>Costs</b>
<b>Complaint:</b>	<b>4.80</b>	<b>\$262.35</b>
<b>Investigation:</b>	<b>13.70</b>	<b>\$901.88</b>
<b>Legal:</b>	<b>22.00</b>	<b>\$2,398.40</b>
<b>Compliance:</b>	<b>0.00</b>	<b>\$0.00</b>
	<b>*****</b>	<b>*****</b>
<b>Sub Total:</b>	<b>40.50</b>	<b>\$3,562.63</b>
<b>Expenses to Date:</b>		<b>\$50.70</b>
<b>Prior Amount:</b>		<b>\$0.00</b>
<b>Total Costs to Date:</b>		<b>\$3,613.33</b>



Time Tracking System  
Itemized Cost by Complaint

Complaint 201528395

Report Date 08/29/2017

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
<b>CONSUMER SERVICES UNIT</b>						
HA151	0.30	\$54.65	\$16.40	10/30/2015	78	INITIAL REVIEW AND ANALYSIS OF COMPLAIN
HA151	0.10	\$54.65	\$5.47	11/06/2015	25	REVIEW CASE FILE
HA151	0.30	\$54.65	\$16.40	01/07/2016	25	REVIEW CASE FILE
HA151	0.40	\$54.65	\$21.86	02/04/2016	25	REVIEW CASE FILE
HA151	0.20	\$54.65	\$10.93	02/18/2016	25	REVIEW CASE FILE
HA151	0.20	\$54.65	\$10.93	04/06/2016	25	REVIEW CASE FILE
HA151	0.40	\$54.65	\$21.86	05/04/2016	60	MISCELLANEOUS
HA151	0.30	\$54.65	\$16.40	06/22/2016	25	REVIEW CASE FILE
HA151	1.30	\$54.65	\$71.05	07/13/2016	60	MISCELLANEOUS
HA151	0.60	\$54.65	\$32.79	08/26/2016	25	REVIEW CASE FILE
HA151	0.20	\$54.65	\$10.93	08/26/2016	60	MISCELLANEOUS
HA78	0.10	\$54.65	\$5.47	08/26/2016	25	REVIEW CASE FILE
HA151	0.20	\$54.65	\$10.93	08/31/2016	25	REVIEW CASE FILE
HA151	0.20	\$54.65	\$10.93	08/31/2016	25	REVIEW CASE FILE
<b>Sub Total</b>	<b>4.80</b>		<b>\$262.35</b>			

<b>INVESTIGATIVE SERVICES UNIT</b>						
J196	0.20	\$65.83	\$13.17	08/26/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.20	\$65.83	\$13.17	08/31/2016	176	REPORT PREPARATION
J196	0.30	\$65.83	\$19.75	08/31/2016	4	ROUTINE INVESTIGATIVE WORK
J196	2.10	\$65.83	\$138.24	09/29/2016	4	ROUTINE INVESTIGATIVE WORK
J196	2.10	\$65.83	\$138.24	09/30/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.40	\$65.83	\$26.33	10/03/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.40	\$65.83	\$26.33	10/05/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.50	\$65.83	\$32.92	10/11/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.30	\$65.83	\$19.75	10/17/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.10	\$65.83	\$6.58	11/04/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.30	\$65.83	\$19.75	11/15/2016	176	REPORT PREPARATION



**Time Tracking System  
Itemized Cost by Complaint**

Complaint 201528395

Report Date 08/29/2017

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
J196	3.20	\$65.83	\$210.66	11/15/2016	76	REPORT WRITING
J196	0.10	\$65.83	\$6.58	11/15/2016	4	ROUTINE INVESTIGATIVE WORK
J196	2.60	\$65.83	\$171.16	11/16/2016	76	REPORT WRITING
J196	0.60	\$65.83	\$39.50	11/22/2016	4	ROUTINE INVESTIGATIVE WORK
J196	0.30	\$65.83	\$19.75	11/22/2016	176	REPORT PREPARATION
<b>Sub Total</b>	<b>13.70</b>		<b>\$901.88</b>			

**PROSECUTION SERVICES UNIT**

HLL122A	0.10	\$109.02	\$10.90	07/15/2016	60	MISCELLANEOUS
HLL122A	0.20	\$109.02	\$21.80	07/18/2016	60	MISCELLANEOUS
HLL122A	0.30	\$109.02	\$32.71	07/22/2016	60	MISCELLANEOUS
HLL102B	0.10	\$109.02	\$10.90	08/19/2016	63	PRESENTATION OF CASES TO PROBABLE CAUS
HLL102B	0.10	\$109.02	\$10.90	08/19/2016	25	REVIEW CASE FILE
HLL133B	0.10	\$109.02	\$10.90	08/29/2016	25	REVIEW CASE FILE
HLL133B	0.10	\$109.02	\$10.90	10/05/2016	115	CONTACT WITH INVESTIGATORS
HLL102B	0.30	\$109.02	\$32.71	10/05/2016	115	CONTACT WITH INVESTIGATORS
HLL131B	0.30	\$109.02	\$32.71	11/23/2016	25	REVIEW CASE FILE
HLL131B	0.10	\$109.02	\$10.90	12/05/2016	61	GENERAL INTAKE
HLL118B	0.90	\$109.02	\$98.12	01/11/2017	25	REVIEW CASE FILE
HLL118B	0.20	\$109.02	\$21.80	01/11/2017	35	TELEPHONE CALLS
HLL118B	1.20	\$109.02	\$130.82	01/18/2017	25	REVIEW CASE FILE
HLL118B	0.50	\$109.02	\$54.51	01/19/2017	114	CONTACT WITH EXPERTS
HLL118B	0.10	\$109.02	\$10.90	01/19/2017	35	TELEPHONE CALLS
HLL118B	0.90	\$109.02	\$98.12	02/01/2017	102	REVIEW EXPERT WITNESS REPORT
HLL118B	1.60	\$109.02	\$174.43	02/01/2017	25	REVIEW CASE FILE
HLL118B	1.30	\$109.02	\$141.73	02/01/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPL
HLL118B	0.30	\$109.02	\$32.71	02/02/2017	102	REVIEW EXPERT WITNESS REPORT
HLL118B	3.20	\$109.02	\$348.86	02/02/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPL
HLL118B	0.30	\$109.02	\$32.71	02/02/2017	102	REVIEW EXPERT WITNESS REPORT
HLL118B	3.20	\$109.02	\$348.86	02/02/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPL
UL129B	0.20	\$109.02	\$21.80	02/03/2017	29	REVIEW ADMINISTRATIVE COMPLAINT



**Time Tracking System  
Itemized Cost by Complaint**

Complaint 201528395

Report Date 08/29/2017

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL118B	0.50	\$109.02	\$54.51	02/06/2017	35	TELEPHONE CALLS
HLL118B	0.70	\$109.02	\$76.31	02/06/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPL
HLL118B	0.30	\$109.02	\$32.71	02/17/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPL
HLL118B	0.10	\$109.02	\$10.90	03/08/2017	25	REVIEW CASE FILE
HLL118B	0.10	\$109.02	\$10.90	03/28/2017	25	REVIEW CASE FILE
HLL118B	0.20	\$109.02	\$21.80	03/29/2017	25	REVIEW CASE FILE
HLL118B	0.10	\$109.02	\$10.90	03/30/2017	25	REVIEW CASE FILE
HLL118B	0.20	\$109.02	\$21.80	03/31/2017	25	REVIEW CASE FILE
HLL118B	0.60	\$109.02	\$65.41	05/03/2017	89	PROBABLE CAUSE PREPARATION
HLL118B	0.10	\$109.02	\$10.90	05/12/2017	25	REVIEW CASE FILE
HLL118B	0.10	\$109.02	\$10.90	05/12/2017	63	PRESENTATION OF CASES TO PROBABLE CAUS
HLL118B	0.10	\$109.02	\$10.90	05/12/2017	90	POST PROBABLE CAUSE PROCESSING
HLL124B	0.20	\$109.02	\$21.80	05/12/2017	89	PROBABLE CAUSE PREPARATION
HLL118B	0.40	\$109.02	\$43.61	05/16/2017	90	POST PROBABLE CAUSE PROCESSING
HLL118B	0.20	\$109.02	\$21.80	05/22/2017	25	REVIEW CASE FILE
HLL118B	0.80	\$109.02	\$87.22	06/01/2017	25	REVIEW CASE FILE
HLL118B	0.10	\$109.02	\$10.90	06/16/2017	25	REVIEW CASE FILE
HLL118B	0.10	\$109.02	\$10.90	06/23/2017	35	TELEPHONE CALLS
HLL118B	0.10	\$109.02	\$10.90	07/24/2017	35	TELEPHONE CALLS
HLL118B	0.30	\$109.02	\$32.71	07/27/2017	35	TELEPHONE CALLS
HLL118B	0.30	\$109.02	\$32.71	07/31/2017	35	TELEPHONE CALLS
HLL118B	0.30	\$109.02	\$32.71	07/31/2017	25	REVIEW CASE FILE
HLL118B	0.20	\$109.02	\$21.80	08/03/2017	35	TELEPHONE CALLS
HLL118B	0.20	\$109.02	\$21.80	08/07/2017	35	TELEPHONE CALLS
HLL118B	0.10	\$109.02	\$10.90	08/18/2017	25	REVIEW CASE FILE
<b>Sub Total</b>	<b>22.00</b>		<b>\$2,398.40</b>			

<b>Total Cost</b>	<b>\$3,562.63</b>
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Report Date 08/29/2017

\*\*\* CONFIDENTIAL \*\*\*

**Time Tracking System  
Itemized Cost by Complaint**

Complaint 201528395

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Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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**Time Tracking System  
Itemized Expense by Complaint**

Complaint                      201528395

Report Date: 08/30/2017

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
<b>INVESTIGATIVE SERVICES UNIT</b>				
J196	10/20/2016	\$50.70	461006	PAYMENT FOR INFORMATION AND EVIDENCE
	<b>Sub Total</b>	<b>\$50.70</b>		
	<b>Total Expenses</b>	<b>\$50.70</b>		



STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2015-28395

RANDALL WHITNEY, M.D.,

Respondent.

AFFIDAVIT OF OUTSIDE ATTORNEY REGARDING COSTS

Daniel R. Russell, being duly sworn on oath, deposes and says:

1. I am an attorney at law duly authorized to practice in the State of Florida and have been active in the practice of law in Florida since March 21, 2009. My Curriculum Vitae is attached as Exhibit 1 hereto.
2. I am personally familiar with the fees usually and customarily awarded to attorneys for legal services in administrative proceedings of the kind and nature of the captioned case.
3. I am familiar with Rule 4-1.5(b) of the Rules Regulating the Florida Bar, and have taken such into consideration in forming my opinion in this matter, the factors set forth therein for the determination of reasonable attorney's fees.

**EXHIBIT B**

4. I am also familiar with, and have considered in forming my opinion in this matter, the Florida Supreme Court in the case of *Florida Patient's Compensation Fund vs. Rowe*, 472 So.2d 1145 (Fla. 1985) relating to the determination of reasonable attorney's fees.

5. I have reviewed the file of the Department of Health (the Department) in relation to this case.

6. I have reviewed the Department's "Time Tracking System Itemized Cost by Complaint" for the case referenced herein, which is among the attachments to the Motion to Assess Costs. I have only reviewed and analyzed the time entries for the Prosecution Services Unit.

7. Based on my review of these documents, it is my understanding that the Department is seeking to recover \$2,398.40 for its attorney time and other costs related to the prosecution of this case.

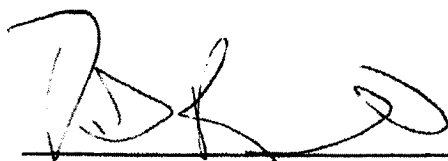
8. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the hourly rates for the Department's prosecuting attorneys used in this case are within or below the reasonable and customary range for attorney time spent on cases of this type.

9. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the total number of attorney hours for which the Department of Health seeks recovery in this case is within the range of time customarily spent on cases of this type and is a reasonable total number of attorney hours for this case.

10. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the total amount of costs sought to be recovered for attorney time and other costs of prosecution in this case is a reasonable amount in a case of this type.

11. It is my understanding that the Department is moving to recover a total of \$2,398.40 of attorney time and costs in relation to this this case.

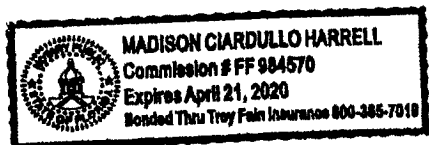
12. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that items of expense are reasonable for a case of this type, and that the total amount of expenses sought to be recovered in this case is a reasonable amount for a case of this type.


  
\_\_\_\_\_  
Daniel R. Russell

STATE OF FLORIDA  
COUNTY OF LEON

Before me, personally appeared Daniel R. Russell, who is personally known to me and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 28th day of September, 2017.



  
\_\_\_\_\_  
Notary Public, State of Florida  
Printed Name: Madison Ciardullo Harrell  
Commission No.: FF984570  
Commission Expires: 04/21/2020

## **Daniel Ryan Russell**

292 Thornberg Drive, Tallahassee, FL 32312  
(850) 425-7804 drussell@joneswalker.com

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### **Experience:**

#### **Jones Walker LLP, Special Counsel**

- Primary areas of practice focuses on civil and administrative litigation, government relations, healthcare regulation and gaming law.

#### **State of Florida, Department of the Lottery, General Counsel**

- Responsible for all legal and regulatory affairs of the Florida Lottery, which employed approximately 500 people and generated nearly \$5.5 billion in annual gross revenue.
- In accordance with the Department's emergency rulemaking authority, managed the drafting and publication of new rules for each lottery game, of which around six are published each month.
- Responsible for personally handling bid protests, administrative, state and federal litigation, and all other legal matters for the Department.
- Spearheaded the Department's "Retailer Integrity Program" and supervised ten sworn law enforcement officers.

#### **Jones Walker LLP, Associate**

- Primary areas of practice include gaming and pari-mutuel law in the civil and administrative courts with a primary focus on administrative litigation, real estate and condominium law, labor and employment law, and legislative affairs for various industries.

#### **Pennington, Moore, Wilkinson, Bell & Dunbar, Associate**

- Primary areas of practice included gaming and pari-mutuel law, real estate, and employment law.
- Gaming practice included regulatory representation of multiple slot machine manufacturers and a Florida-based pari-mutuel facility with horse racing, slot machine and cardroom operations before the Florida Department of Business and Professional Regulation (DBPR) and Florida Legislature.

#### **Gulfstream Park Racing & Casino, General Counsel**

- Responsible for the legal, compliance, regulatory and risk management operations at Gulfstream's horse racing, cardroom and slot machine facility. Part of a management team that oversaw a \$20 million revenue growth over two years.
- Managed more than 100 pieces of active litigation and the distribution of an annual political and government affairs budget of approximately \$200,000.
- Advised Gulfstream through a year-long bankruptcy proceeding and worked with multiple vendors, including independent contractors, on matters of contract re-negotiations and collections.
- Completed collective bargaining agreements with Gulfstream's two active unions.
- Managed workers' compensation claims and day-to-day labor relations issues for more than 800 employees.

**Education:** Florida State University College of Law, Juris Doctorate

University of Florida, Bachelor of Science, Journalism

**Licenses:** Florida Bar, member in good standing and admitted to practice law in the State of Florida.

**Publications:**

"Misprinted Lottery Tickets and the Disappointment of a Non-Winning Ticket," American Gaming Lawyer, Fall 2015.

"Fraud and Ticket Brokering: A Dilemma for Public Lotteries," American Gaming Lawyer, Spring 2015.

"Frequent Jackpot Winners: Lucky Players or Scammers?," Casino Lawyer Magazine, Fall 2014.

"The Legal Status of Gambling in America's Senior Communities," Marquette Elder's Advisor: Vol. 8: Iss. 2, Article 5.

"The History of Internet Cafes and the Current Approach to Their Regulation" UNLV Gaming Law Journal: Vol. 3: Iss. 2, Article 5.

**Lectures:** "State Actions to Prevent/Cease Illegal Gambling," February 2016, ABA Gaming Law Minefield.

"Florida Lottery: What's Next?," January 2016, Florida Gaming Congress.

"Lotteries Seeking Growth Opportunities," January 2016, National Council of Legislators from Gaming States

**State Law Resources**, Featured Presenter, Fall 2012, Discussed the nationwide expansion of the Internet café industry at the State Law Resources annual conference before attorneys from more than 40 jurisdictions around the U.S.

**Florida Gaming Summit**, Panelist, Spring 2012, Discussed Florida's Public Policy as it relates to gaming and pari-mutuels.

**Florida State University College of Law**, Guest Lecturer, Fall 2010 - 2012, Gambling and Pari-Mutuel Law course. Presented information related to State and Federal gaming law issues.

**Keiser University**, Guest Lecturer, Fall 2009, White Collar Crimes course. Provided a detailed legal history of fraud and white collar crimes in Florida.

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2015-28395**

**RANDALL B. WHITNEY, M.D.,**

**RESPONDENT.**

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**ADMINISTRATIVE COMPLAINT**

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Randall B. Whitney, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Administrative Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 8859.

3. Respondent's address of record is P.O. Box 290489, Port Orange, Florida 32129.

4. At all times material to this Administrative Complaint, Respondent was a physician at the Family Planning Center, located in Daytona Beach, Florida.

5. At all times material to this Administrative Complaint, K.S., a thirty-one (31) year-old male, was a patient of Respondent.

6. On or about January 14, 2014, June 3, 2014, and August 19, 2014, Respondent prescribed K.S. 31 Alprazolam<sup>1</sup> 2 mg pills.

7. On or about February 10, 2015, Respondent prescribed K.S. 60 Norco<sup>2</sup> 10/325 pills.

8. On or about March 16, 2015, and April 17, 2015, Respondent prescribed K.S. 60 MS Contin<sup>3</sup> 30 mg pills.

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<sup>1</sup> Alprazolam is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III.

<sup>2</sup> Norco is a brand name for Hydrocodone/APAP. Hydrocodone/APAP contains hydrocodone and acetaminophen, or Tylenol and is prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in hydrocodone/APAP is a Schedule III controlled substance that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

<sup>3</sup> MS Contin is the brand name for a drug that contains morphine and is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, morphine is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of morphine may lead to severe psychological or physical dependence.



9. During the course of K.S.'s treatment:
- a. Respondent failed to perform or failed to document performing a patient history and/or physical exams;
  - b. Respondent failed to address or failed to document addressing lab testing;
  - c. Respondent failed to provide or failed to document providing a diagnosis in some progress notes;
  - d. Respondent completed progress notes which were illegible;
  - e. Respondent failed to address or failed to document addressing K.S.'s compliance with and/or responses to medications prescribed; and/or
  - f. Respondent failed to provide or failed to document a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence.

10. On or about August 11, 2015, Respondent submitted a prescription for K.S. via telephone for Alprazolam and Promethazine syrup<sup>4</sup> to a Target Pharmacy.

11. The pharmacist at the Target Pharmacy refused to fill the prescription because it was not written. Respondent then presented to the Target Pharmacy and wrote a prescription for K.S.'s Alprazolam and Promethazine syrup.

12. On or about August 11, 2015, K.S. filled the written prescription at another pharmacy and received the medications.

13. On or about August 11, 2015, at approximately 6:10 p.m., K.S. was found unconscious in a Walmart store in possession of a bag containing Alprazolam pills and a bottle of Promethazine syrup approximately one quarter empty.

14. Respondent failed to conduct and/or failed to document conducting an office visit for K.S. on or about August 11, 2015.

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<sup>4</sup> Promethazine VC contains codeine and is prescribed to treat the symptoms of an upper respiratory infection, such as cough. According to Section 893.03(5), Florida Statutes, codeine, in the dosages found in Promethazine VC is a Schedule V controlled substance that has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

15. Respondent failed to document conducting a telephone encounter with the Target Pharmacy for K.S. on or about August 11, 2015.

16. At all times relevant to this case, the prevailing professional standard of care required that, when dealing with patients such as K.S., a physician should complete medical records that justify the course of treatment utilized in the care of the patient to include history, examination, diagnosis, and a treatment plan to include medications prescribed. The physician should provide a clear delineated treatment plan to include accounting for the risk of opioid abuse.

#### **COUNT ONE**

17. Petitioner realleges and incorporates paragraphs one through sixteen (16) as if fully set forth herein.

18. Section 458.331(1)(t)1., Florida Statutes (2015), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes. Section 456.50(1)(g), Florida Statutes (2015), states that medical malpractice means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes (2015), provides that the prevailing standard of care for a given

healthcare provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

19. At all times relevant to this case, Respondent failed to meet the prevailing professional standard of care in his treatment of K.S. in one or more of the following ways:

- a. By failing to perform a patient history and/or physical exams;
- b. By failing to provide diagnoses;
- c. By failing to address K.S.'s compliance and/or responses to medications prescribed;
- d. By failing to provide a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence; and/or
- e. By failing to conduct an office visit with K.S. on or about August 11, 2015.

20. Based on the foregoing, Respondent violated Section 458.331(1)(t)1., Florida Statutes (2015), by committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes.

## **COUNT TWO**

21. Petitioner realleges and incorporates paragraphs one through sixteen (16) as if fully set forth herein.

22. Section 458.331(1)(m), Florida Statutes (2015), subjects a licensee to discipline for 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.

23. Section 458.331(1)(nn), Florida Statutes (2015), subjects a licensee to discipline for violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

24. Rule 64B8-9.003, Florida Administrative Code, is an administrative rule adopted pursuant to Chapter 458, Florida Statutes, which outlines the standards of the adequacy of medical records.

25. Rule 64B8-9.003(1), Florida Administrative Code, provides that medical records are maintained for the following purposes:

- a. To serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment.
- b. To furnish documentary evidence of the course of the patient's medical evaluation, treatment, and change in condition.
- c. To document communication between the practitioner responsible for the patient and any other health care professional who contributes to the patient's care.
- d. To assist in protecting the legal interest of the patient, the hospital, and the practitioner responsible for the patient.

26. Rule 64B8-9.003(3), Florida Administrative Code (2015), provides that medical records shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and

hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient.

27. Respondent failed to create, keep, and/or maintain medical records that justify the course of treatment of K.S. in one or more of the following ways:

- a. By failing to create, keep, and/or maintain records of performing a patient history and/or physical exams;
- b. By failing to create, keep, and/or maintain records of addressing lab testing;
- c. By failing to create, keep, and/or maintain records of providing diagnoses;
- d. By creating, keeping, and/or maintaining illegible progress notes;
- e. By failing create, keep, and/or maintain records of addressing K.S.'s compliance with and/or responses to medications prescribed;

- f. By failing to create, keep, and/or maintain a clear plan of treatment for K.S. to include managing the risk for continued opioid and benzodiazepine abuse and dependence;
- g. By failing to create, keep, and/or maintain a record of an office visit for K.S. on or about August 11, 2015; and/or
- h. By failing to create, keep, and/or maintain a record of conducting a telephone encounter with the Target Pharmacy for K.S. on or about August 11, 2015.

28. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2015) and/or Section 458.331(1)(nn), Florida Statutes (2015), through a violation of Rule 64B8-9.003, Florida Administrative Code.

*{Signature appears on the following page}*



WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 12<sup>th</sup> day of May, 2017.

Celeste Philip, M.D., M.P.H.  
Surgeon General and Secretary



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**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: *Amal Chandler*  
DATE: **MAY 15 2017**

NST/rr

PCP Date: May 12, 2017

PCP Members: Dr. Mark Avila, Dr. Enrique Ginzburg, Mr. Donald Mullins

## **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.**

**A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.**

**Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.**

## **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.**