

FILED DATE **APR 19 2013**

Department of Health

By: *Angela B. ...*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2010-04621
LICENSE NO.: ME0059702

JAMES SCOTT PENDERGRAFT IV, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on April 5, 2013, in Deerfield Beach, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$1,130.22.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

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

DONE AND ORDERED this 17th day of April, 2013.

BOARD OF MEDICINE

Crystal A. Sufak for
Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by **Certified Mail** to JAMES SCOTT PENDERGRAFT IV, M.D., 1103 Lucerne Terrace, Orlando, Florida 32806; to Kenneth J. Metzger, Esquire, 1637 Metropolitan Boulevard, Suite C-2, Tallahassee, Florida 32308; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 19th day of April, 2013.

J.S. Pendergraft

7012 1010 0002 2383 3285

Kenneth J. Metzger

7012 1010 0002 2383 3278

Brygel Sanders

Deputy Agency Clerk

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

INTEROFFICE MEMORANDUM

DATE: April 16, 2013

TO: Cassandra Pasley, Bureau Chief
Health Care Practitioner Regulation

FROM: Allison Dudley, Executive Director
Board of Medicine

SUBJECT: Delegation of Authority

This is to advise that I will be out of the office, Monday afternoon through Friday afternoon, April 15th through 19th, 2013, attending a court case in Bartow, Florida and then flying to Boston, Massachusetts for the AIM and FSMB Annual Conference Meeting. Chandra Prine is delegated to serve as acting Executive Director for the Board of Medicine for Monday afternoon, April 15th. Crystal Sanford is delegated to serve as acting Executive Director for the Board of Medicine for Tuesday morning, Wednesday, Thursday and Friday. Gloria Nelson is delegated to serve as acting Executive Director for the Board of Medicine for Tuesday afternoon. Mrs. Prine can be reached at (850) 245-4135. Mrs. Sanford can be reached at (850) 245-4132. Mrs. Nelson can be reached at (850) 245-4516. I will return to the office on Monday, April 22nd, 2013.

Florida Department of Health

Division of Medical Quality Assurance • Bureau of Health Care Practitioner Regulation
4052 Bald Cypress Way, Bin C-03 • Tallahassee, FL 32399-3256
PHONE: 850/245-4131 • FAX 850/488-0596

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YOUTUBE: fldoh

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2010-04621

JAMES SCOTT PENDERGRAFT, M.D.,

Respondent.

SETTLEMENT AGREEMENT

James Scott Pendergraft, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

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

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 59702.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 458,

Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Medicine shall impose an administrative fine of **ten thousand dollars (\$10,000.00)**, against the license of Respondent, to be paid by Respondent to Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. **All fines shall be paid by cashiers check or money order.** The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. Reimbursement of Costs - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case is currently *one thousand one hundred thirty dollars and two cents (\$1,130.02)*, but shall not exceed *two thousand six hundred thirty dollars and two cents (\$2,630.02)*. Respondent will pay costs to Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order in this cause. All costs shall be paid by cashiers check or money order. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Suspension Language** - Respondent's Florida medical license shall be indefinitely suspended until such time as Respondent complies with the following outstanding terms in the Final Order (DOH-10-0208-FOF-MQA) issued in Case Number 2006-05930:

- a. **Respondent must pay the outstanding fine in the amount of nineteen thousand (\$19,000.00) dollars;**
- b. **Respondent must pay costs in the amount of one-hundred two thousand three hundred and three dollars and twenty-one cents (\$102,303.21).**

Prior to the suspension being lifted, Respondent must present evidence of his compliance with these terms to the Board's Compliance Officer or staff immediately after completing the requirements. Upon confirmation by the Board's Compliance Officer or staff of full satisfaction with these payment terms, Respondent shall present

to the next available meeting of the Probation Committee to demonstrate his compliance with the terms of the Final Order that will be issued in this matter. Respondent shall be noticed of the date, time and place of the Board's next Probation Committee meeting whereat Respondent's appearance is required by the board staff. This order neither modifies nor replaces any other terms placed upon Respondent in the Final Order DOH-10-0208-FOF-MQA issued in Case 2006-05930. Respondent is still required to satisfy any other obligations set forth within the previously entered Final Order in accordance to the methods provided for within that order.

STANDARD PROVISIONS

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.
2. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.
3. **Continuing Medical Education** - Unless otherwise provided in this written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing

of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all Investigative

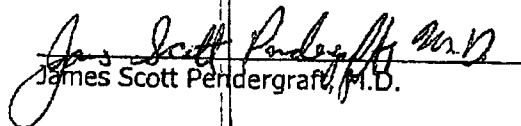
file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

8. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

9. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

10. Waiver of further procedural steps - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 15th day of February, 2013.


James Scott Pendergraft, M.D.

STATE OF FLORIDA
COUNTY OF ORANGE

Before me, personally appeared James Scott Pendergraft IV, whose identity is known to me or by personally known (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 15 day of February, 2013.

Mary E. Spielvogel
NOTARY PUBLIC

My Commission Expires:



MARY E. SPIELVOGEL
MY COMMISSION # EE 117697
EXPIRES: September 26, 2015
Bonded Thru Budget Notary Services

APPROVED this 15th day of February, 2013.

John H. Armstrong, MD
State Surgeon General
Department of Health

By: Sharrin R. Hibbert
Assistant General Counsel
Department of Health

DOH v. James Scott Pendergraft, M.D.
Case Number: 2010-04621

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2010-04621

JAMES SCOTT PENDERGRAFT, IV, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health (Department), by and through its undersigned counsel, hereby files this Administrative Complaint before the Board of Medicine against Respondent, James Scott Pendergraft, IV, M.D., and in support thereof alleges:

1. Petitioner is the state department 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 Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 59702.

3. Respondent's last known address of record is 1103 Lucerne Terrace, Orlando, Florida 32806.

4. On or about January 26, 2010, the Florida Board of Medicine (Board) filed a Final Order (DOH-10-0208-FOF-MQA) in Case Number 2006-05930, which required Respondent to pay a fine of \$20,000.00 plus costs of \$102,303.21, for a total of \$122,303.21, to the Department within 30 days of the date of filing of the Final Order.

5. On or about March 31, 2010, the Department of Health/Compliance Management Unit filed a complaint alleging that Respondent had violated a Final Order of the Board, by failing to pay the fine and costs totaling \$121, 303.21 by February 26, 2010, 30 days from the date of the filing of the Final Order.

6. On or about August 30, 2010, the Department received a letter from Respondent wherein he requested a detailed extension/payment arrangement. Respondent also submitted a check for \$1,000.00 under separate correspondence.

7. Respondent's request for an extension/payment arrangement was denied since it was made after the case was referred for non-compliance.

8. As of this date, Respondent has failed to pay the fine and costs totaling \$121,303.21, required by the Final Order filed on or about January 26, 2010.

9. Section 458.331(1)(x), Florida Statutes (2009), provides that 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 constitutes grounds for discipline by the Board.

10. As of March 13, 2012, Respondent has failed to comply with the Final Order (DOH-10-0208-FOF-MQA) in Case Number 2006-05930, which required Respondent to pay a fine and costs totaling \$121,303.21, to the Department within 30 days of the date of filing of the Final Order.


11. Based on the foregoing, Respondent has violated Section 458.331(1)(x), Florida Statutes (2009), by violating a lawful order of the Board previously entered in a disciplinary hearing.

DOH v. James Pendergraft, IV., M.D., Case No: 2010-04621

WHEREFORE, the 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 20th day of April 2012.

Steven L. Harris, M.D., M.Sc.
Interim State Surgeon General



Sharmin R. Hibbert
Assistant General Counsel
DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar No. 032569
Telephone: (850) 245-4640
Facsimile: (850) 245-4681

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE APR 24 2012

SRH/crv

PCP Date:
PCP Members:

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.

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.