

## MEMORANDUM

**TO:** Compliance Tracking File

**FROM:** Compliance Management Unit

**DATE:** June 23, 2006

**SUBJECT:** Closing Document

Due to the history and age of this file, it is apparent that it should have been closed; however, no closing order or notice of completion was entered into this file during the normal course of business. In the absence of this documentation, this memorandum will serve as the official closing document and terminates compliance tracking activities for the attached Final Order.

BEFORE THE BOARD OF MEDICAL EXAMINERS

**FILED**

Department of Professional Regulation  
BOARD CLERK

DEPARTMENT OF PROFESSIONAL  
REGULATION,

CLERK *George Morgan*

Petitioner,

DATE 6-26-85

vs.

EX: Legal  
*Bard*

ALI A. AZIMA, M.D.,

DPR CASE NO.  
DOAH CASE NO. 84-2536  
LICENSE NO. ME 0020485

Respondent.

FINAL ORDER OF THE  
BOARD OF MEDICAL EXAMINERS

This cause came before the Board of Medical Examiners (Board) pursuant to Section 120.57(1)(b)(9), Florida Statutes, on June 1, 1985, in Palm Beach, Florida for the purpose of considering the hearing officer's Recommended Order (a copy of which is attached hereto) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Cecilia Bradley, Esquire; Respondent was present and represented by Bernard H. Dempsey, Jr. Esquire.

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

FINDINGS OF FACT

1. The hearing officer's findings of fact are approved and adopted in toto and are incorporated by reference herein.

2. There is competent substantial evidence in the record to support the Board's findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to

Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The exceptions to the conclusions of law in the recommended order filed by Respondent are rejected. The Board accepts the hearing officer's analysis in the conclusions of law.

3. The hearing officer's conclusions of law are approved and adopted in toto and are incorporated by reference herein.

4. There is competent substantial evidence in the record to support the Board's conclusions of law.

DISPOSITION

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the hearing officer be accepted. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that:

Respondent's license to practice medicine in Florida be suspended for six months, said suspension to run concurrently with the suspension previously imposed by the Board of Medical Examiners for his treatment of patient ~~\_\_\_\_\_~~ <sup>H S</sup> See DPR Case Nos. 0034574, 0014227, 0014657, 0014312, 0018786, DOAH Case Nos. 83-1205, 83-2589.

This Order takes effect upon filing.

Pursuant to Section 120.59, Florida Statutes, the parties are hereby notified that they may appeal this final order by filing one copy of a notice of appeal with the clerk of the agency and by filing the filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this order is filed, as provided in Chapter 120, Florida Statutes, and the Florida Rules of Appellate Procedure.

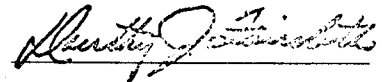
DONE AND ORDERED this 21 day of June, 1985

BOARD OF MEDICAL EXAMINERS

J. Darrell Shea  
J. Darrell Shea, M.D.  
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to Ali A. Azima, M.D. 542 Olean Boulevard, Port Charlotte, Florida 33952 and Bernard H. Dempsey, Jr., Esquire, 605 East Robinson Street, Suite 500, Orlando, Florida 32801; by regular United States mail to R. L. Caleen, Jr., Hearing Officer, Division of Administrative Hearings, Oakland Building, 2009 Apalachee Parkway, Tallahassee, Florida, 32301; and by hand delivery to Cecilia Bradley, Esquire, Department of Professional Regulation, 130 North Monroe Street, Tallahassee, Florida 32301, at 5:00 PM this 26 day of June, 1985.

  
\_\_\_\_\_

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL )  
REGULATION, BOARD OF MEDICAL )  
EXAMINERS, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ALI AZIMA, )  
 )  
Respondent. )  
 )  
 )

CASE NO. 84-2536

RECOMMENDED ORDER

This case was heard on January 17, 1985, by R. L. Caleen, Jr., hearing officer with the Division of Administrative Hearings, in Fort Myers, Florida. The parties were represented by counsel:

APPEARANCES

For Petitioner: J. Riley Davis, Esquire  
225 South Adams Street,  
Suite 250  
Tallahassee, Florida 32301

For Respondent: Bernard H. Dempsey, Jr., Esquire  
Richard Lee Barrett, Esquire  
605 E. Robinson Street  
Orlando, Florida 32802

ISSUE

Whether Respondent's medical license should be revoked, suspended, or otherwise disciplined on charges that he was convicted or found guilty of a crime directly relating to the practice of medicine or his ability to practice medicine, in violation of Section 458.331(1)(c), Florida Statutes.

BACKGROUND

By administrative complaint dated June 18, 1984, the Department of Professional Regulation, Board of Medical Examiners

(Department), charged Ali Azima, M.D. (Respondent), with violating Section 458.331(1)(c), Florida Statutes, by having been convicted or found guilty of a crime directly relating to the practice of medicine or his ability to practice medicine. Respondent disputed the charges and requested a hearing. The Department then forwarded this case to the Division of Administrative Hearings for assignment of a hearing officer.

The parties filed a prehearing stipulation and, at hearing on January 17, 1985, moved Joint Exhibit Nos. 1 through 10 and relevant portions of No. 11 into evidence. No witnesses were called by either party.

The transcript of hearing was filed on January 31, 1985. The parties filed proposed findings of fact and conclusions of law, including reply briefs, by March 18, 1985. Each proposed finding has been ruled on either directly, or indirectly, in this recommended order, except where such proposed findings have been rejected as subordinate, cumulative, immaterial, or necessary.

Based on the prehearing stipulation and the evidence adduced at hearing, the following facts are determined:

#### FINDINGS OF FACT

1. At all times material to the charge, Respondent was a licensed medical doctor in the State of Florida, having been issued license No. ME 0020485.

#### I. Prior Disciplinary Action Against Respondent

2. The Respondent has been the subject of prior disciplinary proceedings instituted by the Department. On February 7 and 8, 1984, an administrative hearing was conducted by Diane Tremor, hearing officer with the Division of Administrative Hearings, in Fort Myers, Florida. The issue for determination was whether his license as a medical doctor should be revoked, suspended, or otherwise disciplined for the medical treat-

ment he provided to five named patients, one of whom was [REDACTED] <sup>A</sup>

<sup>S</sup> On July 24, 1984, the hearing officer submitted her recommended order to the Board of Medical Examiners. With regard to patient <sup>S</sup>, the hearing officer found that Respondent inserted an intrauterine contraceptive device without taking adequate precautions to insure that the patient was not pregnant at the time of insertion, and concluded that his treatment of patient <sup>S</sup> fell below an acceptable standard of care, skill and treatment, in violation of Section 458.331(1)(t), Florida Statutes.

3. On January 9, 1985, the Board of Medical Examiners adopted the hearing officer's Findings of Fact and Conclusions of Law, but modified her recommended penalty of a one year suspension by providing that he could petition for reinstatement after serving six months of the suspension.

## II.

### Criminal Proceedings Against Respondent

4. In the meantime, Respondent was the subject of a criminal proceeding arising out of his treatment of patient H [REDACTED] S [REDACTED]. On October 28, 1981, the Assistant State Attorney of the Twentieth Judicial Circuit filed an information charging Respondent with Culpable Negligence, a misdemeanor violation of Section 784.05, Florida Statutes. The information alleged that between February 1, 1981 and March 30, 1981, Respondent "exposed H [REDACTED] S [REDACTED] to personal injury through culpable negligence." (Joint Exhibit 6).

5. On March 23, 1984, in the County Court of Lee County, Florida (Case No. 81MM6984), a jury found Respondent guilty as charged. (Joint Exhibit 4).<sup>1/</sup>

6. On June 18, 1984, County Judge Radford R. Sturgis, the presiding judge, entered an order (1) reciting that Respon-

<sup>1/</sup>In their prehearing stipulation, the parties stipulated that, to their knowledge, "patient H [REDACTED] S [REDACTED] has never suffered any serious or permanent harm as a result of her treatment by [Respondent]."



dent had been found guilty (by the verdict of a jury) of culpable negligence; (2) withholding adjudication of guilt; and (3) placing him on probation for a period of six months. The order also reflects that the Court was satisfied that Respondent was "not likely again to engage in a criminal course of conduct, and that the ends of justice and the welfare of society do not require that [he] should presently be adjudged guilty and suffer the penalty authorized by law." (Joint Exhibit 5). Respondent was ordered to serve 50 hours of Community Service, pay a \$500 fine, and serve 59 days of jail time (49 days were suspended and 10 were to be served on weekends).

7. The crime, of which Respondent was found guilty, related to the practice of medicine.

8. In their prehearing stipulation, the parties agree that "[t]here is an identity of underlying facts supporting both [the] criminal conviction . . . and the current suspension of [Respondent's] license by the Board of Medical Examiners based upon the [prior hearing officer's] Recommended Order. . . .

9. Respondent timely appealed the jury's verdict (finding him guilty of Culpable Negligence) to the Circuit Court of the Twentieth Judicial Circuit of Florida, which appeal is still pending.

#### CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Section 120.57(1), Fla. Stat. (1983).

2. Section 458.331(1)(c), Florida Statutes, authorizes the Board of Medical Examiners to discipline the license of a physician for, among other things:

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

3. Respondent was not "convicted" within meaning of this statute, since a judgment of guilt was not entered by the court. See, Delta Truck Brokers, Inc. v. King, 142 So.2d 273, 275 (Fla. 1962):

The term "conviction" has an accepted meaning in applying statutes of this nature. It simply means a determination of guilt and judgment of guilt by a court of competent jurisdiction in a criminal proceeding. [Citations omitted].

Also, 9 Fla. Jur., Sec. 11, p. 34.

It is evident, however, that he was found guilty by a jury of committing a crime directly relating to the practice of medicine. Respondent argues that the statute should be construed to require, as a prerequisite, that the conviction or finding of guilt be final and that any appellate remedy pursued must first be exhausted. Such a construction would engraft a new requirement on the statute, one not expressed or necessarily implied. In Delta Truck Brokers, Inc., supra, the Court's definition of "conviction," as used in licensing statutes, made no mention of finality or the need for appellate remedies to be exhausted.

In Page v. State Board of Medical Examiners, 193 So. 82, 83 (Fla. 1940), the Court addressed the meaning of a similar provision in the statute regulating physicians:

The cancellation of a certificate on the ground that a practitioner had been convicted of a felony contemplated that the morally unfit, or those wanting an integrity, or those having lost sight of the high standards required or demands of practitioners of medicine by violating criminal standards, should not be permitted to continue in the practice. The Legislature, in protecting the health and general welfare of the people, has a right to prescribe reasonable rules and regulations that shall control the practice of medicine. In the medical profession are found men of the highest character, integrity and those who are well educated in medicine and skilled in surgery, and to permit or allow men convicted of a crime to hold themselves out to the public as equally qualified with the leaders of the medical profession was never contemplated by this Act.

When an accused is convicted or found guilty of a crime in a trial court, the "robe of innocence" is stripped from him. See, State ex. Inf. Peach v. Goins, 576 S.W. 2d 175 (Mo. 1978). Section 458.331(1)(c) proscribes the fact of a conviction, or the fact of a finding of guilt, regardless of its ultimate veracity. Such fact is not negated or annulled by an appeal, taken either directly or collaterally. Cf., 3 Fla. Jur. 2d, Sec. 129, p. 179. The enforcement of the statute would be frustrated if Respondent's argument is given its logical effect: The Department would be prevented from disciplining a licensee during the years it may take to exhaust all available direct and collateral appeals. It is concluded, therefore, that Respondent violated Section 458.331(1)(c), Florida Statutes, in that he was found guilty of a crime directly relating to the practice of medicine.

4. Respondent next argues that he may not be penalized for the jury's verdict because the Department, by prior order of the Board of Medical Examiners, has already penalized him for the same conduct. Cf., Department of Corrections v. Duncan, 382 So.2d 135 (Fla. 1st DCA, 1980); Department of Transportation v. Career Service Commission, 366 So.2d 473 (Fla. 1st DCA 1979). But the earlier disciplinary action against him was based on a violation of Section 458.331(1)(t), Florida Statutes, where the hearing officer and, subsequently, the Board found that his treatment of patient ~~\_\_\_\_\_~~ failed to meet an acceptable level of care, skill, and treatment. That violation, statutorily defined, is separate and distinct from that created by Section 458.331(1)(c), which has a fundamentally different element: a conviction, or finding of guilt, of a crime directly relating to the practice of medicine. Hence, contrary to Respondent's argument, he is not now being prosecuted for the same violation.

5. As already mentioned, Respondent has previously been disciplined by the Board of Medical Examiners for his sub-standard treatment of patient ~~\_\_\_\_\_~~<sup>S</sup> which treatment also formed the basis of the criminal proceeding. Moreover, the criminal court, in its order withholding adjudication of guilt, was satisfied that Respondent was not likely again to engage in a criminal course of conduct. The parties have also agreed that the patient was not seriously or permanently harmed by Respondent's actions. No evidence of aggravating circumstances has been presented. Accordingly, it is concluded that the appropriate penalty for Respondent's violation of Section 458.331(1)(c), Florida Statutes, is the suspension of his medical license for six months, which suspension should run concurrently with the suspension already imposed by the Board of Medical Examiners for his treatment of the patient.

RECOMMENDATION

Based on the foregoing, it is

RECOMMENDED:

That Respondent's medical license be suspended for a period of six months, such suspension to run concurrently with the suspension previously imposed by the Board of Medical Examiners for his treatment of patient ~~\_\_\_\_\_~~<sup>HS</sup>.

DONE and ORDERED this 15<sup>th</sup> day of April, 1985, in Tallahassee, Florida.

R. L. Calleen, Jr.  
R. L. CALEEN, JR.  
Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, FL 32301  
(904-488-9675)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 15<sup>th</sup> day of April, 1985.

STATE OF FLORIDA  
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL  
REGULATION,

Petitioner,

ALI AZIMA,

Respondent.

CASE NO. 0046470

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner", and files this Administrative Complaint before the Board of Medical Examiners against Ali Azima, hereinafter referred to as "Respondent", and alleges:

1. Petitioner, Department of Professional Regulation is, the state agency charged with regulating the practice of licensed physicians pursuant to Section 20.30, Florida Statutes, Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes.

2. Respondent is, and has been at all times material hereto, a licensed physician in the State of Florida, having been issued license number ME 0020485. Respondent's last known address is % Southwest Florida Women's Clinic, 6522 Northside Circle, Ft. Myers, Florida 33904.

3. On or about March 23, 1984, Respondent was found guilty of the crime of culpable negligence for inserting a contraceptive device (I.U.D.) in a pregnant woman, in February 1981.

4. Based upon the foregoing, the Respondent has violated Section 458.331(1)(c), Florida Statutes, by being convicted or found guilty regardless of adjudication of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

WHEREFORE, Petitioner respectfully requests the Board of Medical Examiners to enter an Order imposing one or more of the

following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 18<sup>th</sup> day of June, 1984.

Fred Roche  
FRED ROCHE, Secretary  
Department of Professional Regulation

COUNSEL FOR PETITIONER:  
William M. Furlow  
Senior Attorney  
Department of Professional Regulation  
130 North Monroe Street  
Tallahassee, Florida 32301  
(904) 488-0062

PCP: 6/14/84 RWJ/WFB

WMF/klm  
5/4/84

**FILED**  
DEPARTMENT OF PROFESSIONAL REGULATION  
William H. Wagner  
CLERK  
DATE June 19, 1984