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Final Order No. DOH-08-2953-⁵-MOA
FILED DATE - 12-22-08
Department of Health
By: Raculita
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2007-11954
LICENSE NO.: ME0039966

NEIL A. AHNER, 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 June 6, 2008, in Orlando, 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 full advised in the premises, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which Respondent was given 7 days to accept. By email dated June 27, 2008, Respondent accepted the Board's Counter Settlement Agreement. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

1. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$5,649.69.

2. The community service set forth in Paragraph 6 of the Stipulated Disposition shall be amended to require 100 hours of community service.

3. Respondent's license to practice medicine in the State of Florida shall be SUSPENDED until such time as he submits to the Florida CARES or a Board-approved equivalent evaluation and documents compliance with said evaluation. Respondent shall have six (6) months from the date of entry of the Final Order to submit to the Florida CARES evaluation.

4. The Board reserve jurisdiction in this matter to impose additional terms in the event that such terms are recommended by Florida CARES or the Board finds them appropriate. Respondent shall be required to appear before the Board's Probation Committee with the Florida CARES evaluation and the Probation Committee will set the terms and conditions at that time.

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 amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as amended.

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

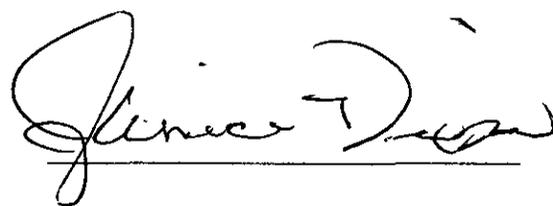
DONE AND ORDERED this 19 day of DECEMBER 2008.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
For Robert Cline, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to NEIL A. AHNER, M.D., 10333-A North Military Trail, Palm Beach Gardens, Florida 33410; to Stephen W. Schwed, Esquire, Schwed Cartwright, 7108 Fairway Drive, Suite 150, Palm Beach Gardens, Florida 33418; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 22 day of December, 2008.


Deputy Agency Clerk

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO: 2007-11954

NEIL A. AHNER, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against the Respondent, Neil A. Ahner, 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 39966.

3. Respondent's current address of record is 10333-A North Military Trail, Palm Beach Gardens, Florida 33410.

4. On or about January 19, 2007, Patient A.P., a seventy-one (71) year old male, presented to the Respondent for a medical exam and blood tests. Patient A.P. complained of decreased energy and inability to lose weight despite persistent dieting and exercise. Patient A.P. advised the Respondent he had a history of myocardial infarction in 2003 with the placement of four coronary stents. Patient A.P. also had an evaluation of a thyroid nodule in 2002. An aspiration of the nodule concluded it was benign. Patient A.P. had taken 75 mcg. Synthroid daily since 2000.

5. On or about February 9, 2007, the Respondent met with Patient A.P. to review the results of Patient A.P.'s blood tests. Patient A.P.'s Thyroid-Stimulating hormone, free T3 and free T4 levels were all normal.

6. Thyroid-stimulating hormone (also known as TSH or thyrotropin) is a hormone which regulates the endocrine function of the thyroid gland. Triiodothyronine is an active iodine compound involved in controlling the rate of metabolism. Unbound triiodothyronine (Free T3) is a thyroid hormone that circulates in the blood unbound to transport proteins and correlates reliably to physiologically active triiodothyronine

levels. Free Thyroxine (Free T4) is a thyroid hormone similar in purpose and structure to Free T3 with the addition of an extra iodine atom.

7. Despite the normal thyroid hormone results, the records indicate Patient A.P. was taken off Synthroid and put on Armour Thyroid with the dosage initially prescribed for at least 60 mg. a day. Because the records are difficult to read, it is uncertain if the Respondent diagnosed Patient A.P. with hypothyroidism. Hypothyroidism is a condition where a person's thyroid gland is not producing enough thyroid hormones.

8. The Respondent had concerns about Patient A.P.'s thyroid function; however, Patient A.P. was not referred to a specialist in endocrinology for a more thorough evaluation.

9. On or about February 26, 2007, Patient A.P. called the Respondent complaining of continued fatigue. The Respondent then advised Patient A.P. to increase the dosage of Armour Thyroid to 90 mg.

10. On or about March 16, 2007, Patient A.P. met with Respondent. Patient A.P. complained of greater fatigue than before and no loss of weight. Patient A.P. was ordered by the Respondent to continue on Armour Thyroid. No additional blood tests were ordered.

11. On or about March 26, 2007, Patient A.P. experienced an elevated heart rate while exercising at a gym. A physician who was present at the gym palpated Patient A.P.'s carotid artery and warned Patient A.P. he was in atrial fibrillation. Patient A.P. discontinued exercise and immediately contacted the Respondent. Patient A.P. was taking 120 mg. of Armour Thyroid. The Respondent could not be reached directly, but the Respondent's nurse indicated to Patient A.P. to hold the Armour Thyroid for one day and then decrease the dose to 90 mg. a day.

12. On or about March 27, 2007, Patient A.P. saw a cardiologist. The cardiologist concluded Patient A.P. was in atrial fibrillation. Patient A.P. was admitted to the hospital and placed on Coumadin and Heparin anticoagulation. Patient A.P. had no prior history of atrial fibrillation before March 27, 2007.

13. On or about February 9, 2007, the Respondent inappropriately switched Patient A.P. from Sythroid to Armour Thyroid despite Patient A.P.'s age, his history of significant coronary disease, and his normal thyroid function tests.

14. On or about February 9, 2007, despite the Respondent's apparent concerns about Patient A.P.'s thyroid function, the Respondent failed to refer Patient A.P. to an endocrinologist.

15. On or about February 26, 2007, despite Patient A.P.'s complaint regarding continued and/or greater fatigue, the Respondent raised Patient A.P.'s dose of Armour Thyroid without evaluating the patient for excess thyroid levels.

16. On or about March 16, 2007, despite Patient A.P.'s complaint regarding continued and/or greater fatigue, the Respondent maintained and/or raised Patient A.P.'s dose of Armour Thyroid without evaluating the patient for excess thyroid levels.

17. At all times material to this complaint, the Respondent failed to adequately document in Patient A.P.'s medical records and/or address the cause or origin of Patient A.P.'s fatigue.

18. At all times material to this complaint, the Respondent repeatedly prescribed Patient A.P. medications without documenting and/or having adequate medical justification.

19. At all times material to this complaint, the Respondent failed to adequately document and/or identify a reasonable treatment plan for

Patient A.P., particularly concerning the prescribing of medications to Patient A.P.

COUNT I

20. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth herein.

21. Section 458.331(1)(t), Florida Statutes (2006), subjects a physician to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2006) defines medical malpractice as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Level of care, skill, and treatment recognized in general law related to health care licensure means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes (2006) defines the standard of care to mean ". . . . The prevailing professional standard of care for a given health care 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. . . ."

22. The Respondent committed medical malpractice as defined in Section 456.50 and/or failed to practice medicine in accordance with the 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 in one or more of the following ways: by switching Patient A.P. from Synthroid to Armour Thyroid despite Patient A.P.'s normal thyroid function tests, age, and significant history of coronary disease; by failing to refer Patient A.P. to an endocrinologist; by repeatedly increasing Patient A.P.'s dosage of Armour Thyroid to treat his fatigue without evaluating the patient for excess thyroid hormone.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2006), by committing medical malpractice as defined in Section 456.50 and/or by failing to practice medicine in accordance with the 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.

COUNT II

24. Petitioner realleges and incorporates paragraphs one (1) through eighteen (18) as if fully set forth herein.

25. Section 458.331(1)(m), Florida Statutes (2006), provides 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 constitutes grounds for disciplinary action by the Board of Medicine.

26. Respondent failed to keep adequate medical records in one or more of the following ways:

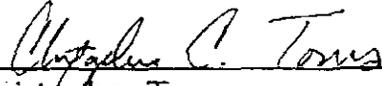
- a) By failing to adequately document the etiology of Patient A.P.'s fatigue;
- b) By prescribing a legend drug, Armour Thyroid, to Patient A.P. without documenting an adequate medical justification;
- c) By failing to adequately document a reasonable treatment plan for Patient A.P., particularly concerning the prescribing of legend drugs;

27. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2006) by failing to maintain adequate medical records.

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 21 day of DECEMBER, 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General



Christopher Torres
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0479209
(850) 245-4640 ext. 8135 – phone
(850) 245-4680 – fax

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: 
DATE: 12.21.07

CCT/tgc

PCP: December 21, 2007

PCP Members: El-Bahri & Winchester

DOH vs. Neil A. Ahner, M.D.

Case No. 2007-11954

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 any other discipline imposed.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case Number 2007-11954

NEIL ALLEN AHNER, M.D.,

Respondent,

SETTLEMENT AGREEMENT

Neil Allen Ahner, 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 39966.
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.

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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. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of Five Thousand dollars (\$5,000.00) against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by 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/HER 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 administrative 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 includes but shall not exceed Five thousand Six hundred forty-nine dollars and sixty-nine cents (\$5,649.69). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the date of filing of the Final Order in this cause. 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/HER 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. **Continuing Medical Education – "Risk Management"** -

Respondent shall complete five (5) hours of Continuing Medical Education in "Risk Management" within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

5. **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

6. **Community Service** - Respondent shall perform thirty-five (35) hours of community service, within one year of the date of filing of the Final Order.

Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

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. **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.
4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

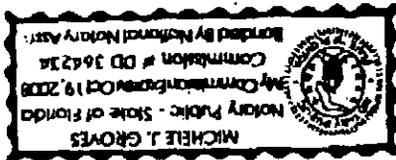
9. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board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

SIGNED this 27th day of February, 2008.

Neil Allen Ahner, M.D.

Before me, personally appeared Neil Allen Ahner, whose identity is known to me by personally (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 27th day of February, 2008.



Michelle J. Groves
NOTARY PUBLIC

My Commission Expires:

APPROVED this 27 day of FEBRUARY, 2008.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health

By: Christopher C. Torres
Christopher C. Torres
Assistant General Counsel
Department of Health

CCT/tgc