

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-09-2718 ^{FD} ^{MQA}
FILED DATE - 12/18/09
Department of Health
By: Angele Baiton
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2008-23336
LICENSE NO.: ME0092590

EMANUEL JOHN FALCONE, 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 4, 2009, 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 Shirley Bates, Assistant General Counsel. Respondent was present and represented by A.S. Weekley, Esquire. 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 in the State of Florida is hereby REVOKED.

RULING ON MOTION TO STAY PENALTY

Counsel for Respondent made an ore tenus motion to stay the revocation of Respondent's license until the Board's next meeting where at such time the Respondent would present mitigating evidence. The Board denied the motion to stay the revocation.

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 \$943.88. Said costs are to be paid within 30 days from the date this Final Order is filed.

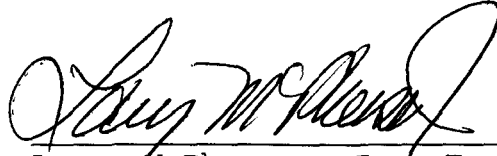
(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 17 day of DECEMBER,

2009.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
For Fred Bearison, 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 EMANUEL JOHN FALCONE, M.D., 11124 Sea Tropic Lane, Fort Myers, Florida 33908; to A. S. Weekley, Esquire, Weekley, Schulte & Valdes, 1635 North Tampa Street, Suite 100, Tampa, Florida 33602; and by interoffice delivery to Kathryn Price, Department

of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee,
Florida 32399-3253 this 18 day of December, 2009.

Angele Barton

Deputy Agency Clerk

7004 2510 0000 9661 7417

U.S. Postal Service	
CERTIFIED MAILTM RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent to: <i>Manuel J. Falcone</i>	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
<i>2008-23336</i>	
Form 3800 June 2002 see Reverse for Instructions	

A-UD
SB

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,
PETITIONER,**

v.

CASE NO. 2008-23336

**EMANUEL JOHN FALCONE, 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 Respondent, Emanuel John Falcone, 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 92590.

3. Respondent's address of record is 11124 Sea Tropic Lane, Fort Meyers, Florida 33908.

4. Respondent is board certified by the American Board of Psychiatry and Neurology in psychiatry and Child and Adolescent Psychiatry.

5. The State Board for Professional Medical Conduct, Department of Health, State of New York (hereinafter "New York Board") is the licensing authority regulating the practice of medicine in the State of New York.

6. On or about September 25, 2008, the New York Board issued a Determination and Order which revoked the Respondent's license to practice medicine in the State of New York.

7. Section 458.331(1)(b), Florida Statutes (2008), provides that having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction constitutes grounds for disciplinary action by the Board of Medicine.

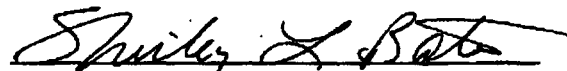
8. The Determination and Order issued by the New York Board on or about September 25, 2008, constitutes disciplinary action against the Respondent's license to practice medicine.

9. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2008), by having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, by the licensing authority of any jurisdiction.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing the following penalties: permanent revocation or suspension of Respondent's license and/or any other relief that the Board deems appropriate.

Signed this 24th day of April, 2009.

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



Shirley L. Bates
Assistant General Counsel
Florida Bar #946311
DOH Prosecution Services Unit
4052 Bald Cypress Way, BIN C-65
Tallahassee, FL 32399-3265
(850) 245-4640 VOICE
(850) 245-4681 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Rachel Brooks
DATE 4-27-09

SB
PCP: April 24, 2009
PCP Members: El-Bahri, J. Rosenberg, Levine

DOH v. Emanuel John Falcone, M.D. Case Number 2008-23336

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angele Bacter*
DATE *10/16/09*

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2008-23336

EMANUEL JOHN FALCONE, M.D.

Respondent.

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

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Medicine for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2003). 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 therein.

2. Section 456.072(4), Florida Statutes (2003),¹ states as follows:

¹ Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, pursuant to 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 not board, shall assess costs related to the investigation and prosecution of the case. Such 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. . . . (emphasis added)

3. The investigation and prosecution of this case has resulted in costs in the total amount of \$943.88, based on the following itemized statement of costs:

- a. Total costs for Complaints \$166.21
- b. Total costs for Investigations \$61.55
- c. Total costs for Legal \$716.12
- d. Total costs for expenses \$0.00

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$943.88, as evidenced in the attached affidavit. (Exhibit A).

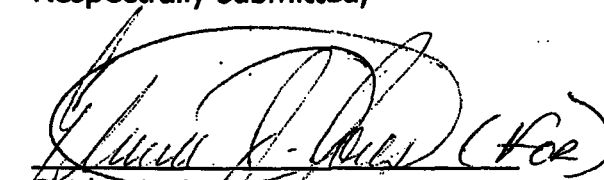
4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount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

5. Petitioner requests that the Board grant this motion and assess costs in the amount of \$943.88 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 (2003).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against the Respondent in the amount of \$943.88.

DATED this 6th day of October, 2009

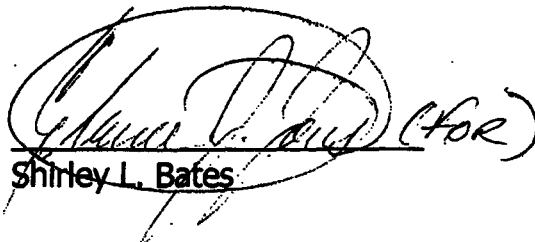
Respectfully submitted,



Shirley L. Bates
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 946311
(850) 245-4640
(850) 245-4681 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided by U.S. Mail to A.S. "Gus" Weekley, Jr., M.D. Weekley, Schulten & Valdes, L.L.C., 1635 North Tampa Street, Suite 100, Tampa, Florida 33602, this 6th day of October, 2009.



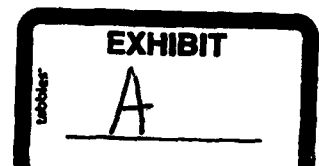
Shirley L. Bates

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **JULIE M. WEEKS** who was sworn and states as follows:

- 1) My name is Julie M. Weeks.
- 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 Operations and Management Consultant Manager (OMCM) 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 OMCM 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) **2008-23336** (Department of Health v. **Emanuel John Falcone, M.D.**) are **NINE HUNDRED FORTY-THREE DOLLARS AND EIGHTY-EIGHT CENTS (\$943.88)**.
- 6) The costs for DOH case numbers **2008-23336** (Department of Health v. **Emanuel John Falcone, 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 **2008-23336** (Department of Health v. **Emanuel John Falcone, 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) Julie M. Weeks, first being duly sworn, states that she has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of her knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

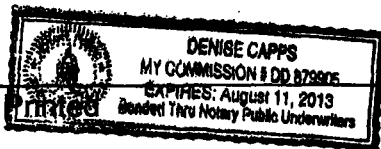
Julie M. Weeks
Julie M. Weeks, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 28 day of October, 2009,
by Julie M. Weeks, who is personally known to me.

Denise Capps
Notary Signature

Name of Notary



Stamp Commissioned Name of Notary Public:

Complaint Cost Summary

Complaint Number: 200823336

Complainant's Name: FLORIDA BOARD OF
 MEDICINE/BOARD ACTION R
 Subject's Name: FALCONE, EMANUEL JOHN

	***** Cost to Date *****	
	Hours	Costs
Complaint:	2.70	\$166.21
Investigation:	1.00	\$61.55
Legal:	6.30	\$716.12
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	10.00	\$943.88
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$943.88



*** CONFIDENTIAL ***
Time Tracking System
Itemized Cost by Complaint

Complaint 200823336

Report Date 10/01/2009

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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CONSUMER SERVICES UNIT

HA123	0.70	\$61.55	\$43.09	10/24/2008	25	REVIEW CASE FILE
HA123	0.50	\$61.55	\$30.78	12/02/2008	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA123	0.50	\$61.55	\$30.78	12/12/2008	25	REVIEW CASE FILE
HA123	0.30	\$61.55	\$18.47	12/15/2008	25	REVIEW CASE FILE
HA123	0.30	\$61.55	\$18.47	01/15/2009	25	REVIEW CASE FILE
HA123	0.40	\$61.55	\$24.62	02/02/2009	25	REVIEW CASE FILE
HA123	0.20	\$61.55	\$12.31	02/11/2009	4	ROUTINE INVESTIGATIVE WORK
HA123	0.80	\$61.55	\$49.24	02/18/2009	77	PREPARATION OF DESK INVESTIGATION SYNOPSIS
Sub Total	3.70		\$227.76			

PROSECUTION SERVICES UNIT

HLL61B	0.50	\$111.56	\$55.78	03/20/2009	25	REVIEW CASE FILE
HLL61B	0.50	\$111.56	\$55.78	03/20/2009	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL61B	0.50	\$114.59	\$57.30	03/23/2009	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL61B	0.30	\$114.59	\$34.38	04/23/2009	62	REVIEW OF CASES FOR PROBABLE CAUSE PANEL
HLL61B	0.30	\$114.59	\$34.38	04/24/2009	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
HLL61B	0.10	\$114.59	\$11.46	05/04/2009	37	REVIEW LETTER
HLL61B	0.20	\$114.59	\$22.92	05/07/2009	35	TELEPHONE CALLS
HLL61B	0.50	\$114.59	\$57.30	05/28/2009	60	MISCELLANEOUS
HLL61B	1.00	\$114.59	\$114.59	07/08/2009	79	STIPULATION
HLL61B	0.30	\$114.59	\$34.38	07/08/2009	35	TELEPHONE CALLS
HLL61B	0.40	\$114.59	\$45.84	07/08/2009	70	CONFERENCES WITH LAWYERS
HLL61B	0.10	\$114.59	\$11.46	08/18/2009	88	PROOFING AND SIGNING LETTERS
HLL61B	0.30	\$114.59	\$34.38	08/18/2009	79	STIPULATION
HLL61B	0.60	\$112.43	\$67.46	09/14/2009	91	BOARD MEETING PREPARATION
HLL61B	0.50	\$112.43	\$56.22	09/15/2009	91	BOARD MEETING PREPARATION
HLL61B	0.20	\$112.43	\$22.49	09/23/2009	35	TELEPHONE CALLS

Report Date 10/01/2009

Page 2 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
	6.30		\$716.12			
Sub Total						
Total Cost			\$943.88			

***** CONFIDENTIAL *****
Time Tracking System
Itemized Expense by Complaint
Complaint

Report Date: 10/01/2009

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
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SubTotal

Total Expenses