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Final Order No. DOH-07-0613- S-MQA
FILED DATE - 4-17-07
Department of Health
By: Rae Ann Orde
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2003-26295
LICENSE NO.: ME0005174

JO ANN WHITAKER, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) on March 30, 2007, in Miami, Florida, for the purpose of considering Respondent's offer to voluntarily relinquish her license to practice medicine in the State of Florida. (Attached hereto as Exhibit A.) Said written offer of relinquishment specifically provides that Respondent agrees never again to apply for licensure as a physician in the State of Florida.

Upon consideration of the written offer of voluntary relinquishment, the charges, and the other documents of record, and being otherwise fully advised in the premises,

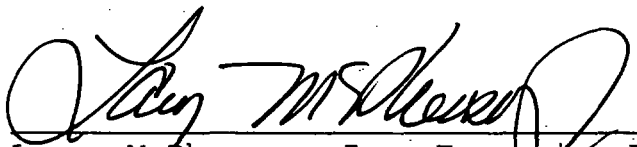
IT IS HEREBY ORDERED that Respondent's Voluntary Relinquishment of her license to practice medicine in the State of Florida is hereby ACCEPTED, and shall constitute discipline upon Respondent's license.

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

DONE AND ORDERED this 16 day of APRIL,

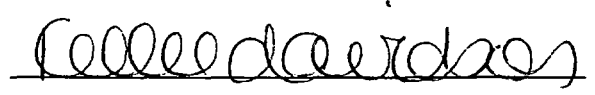
2007.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for H. FRANK FARMER, JR., 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 JO ANN WHITAKER, M.D., 1200 S. Pinellas Avenue, Units 11 & 12, Tarpon Springs, Florida 34689; to Douglas A. Lockwood III, Esquire, Peterson & Myers, P.A., P.O. Drawer 7608, 141 5th Street NW, Winter Haven, Florida 33881; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 17 day of April, 2007.



Deputy Agency Clerk

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2003-26295

JO ANN WHITAKER, 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, Jo Ann Whitaker, 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.

4-25-03

2. At all times material to this Complaint Respondent was a licensed physician within the State of Florida, having been issued license number ME 5174.

3. Respondent's last known address is 1200 South Pinellas Avenue, Units 11 and 12, Tarpon Springs, Florida 34689.

4. At all times relevant to this complaint, Respondent was President and Director of Research for Bowen Testing & Training Institute, Inc. ("Bowen") in Tarpon Springs, Florida.

5. At all times relevant to this complaint, Respondent, in her role as President and Director of Research for Bowen, either performed or supervised the performance by others of laboratory testing intended to determine the presence of Lyme disease in blood samples.

6. On or about April 17, 2001, Bowen was licensed by the Florida Agency for Health Care Administration ("AHCA") to operate a clinical laboratory specializing in Hematology.

7. Under Section 483.091, Florida Statutes (2002), "A person may not conduct, maintain, or operate a clinical laboratory in this state, except

a laboratory that is exempt under s. 483.031, unless the clinical laboratory has obtained a license from [AHCA]."

8. Section 483.031, Florida Statutes (2002), provides an exception to the licensure requirement described in paragraph seven (7) above, only if a clinical laboratory is "operated and maintained exclusively for research and teaching purposes that do not involve patient or public health service."

9. On or about March 19, 2002, Respondent, in her role as Bowen's President and Director of Research, voluntarily relinquished Bowen's license to operate as a clinical laboratory.

10. On or about June 24, 2003, Respondent, in her role as President and Director of Research for Bowen, either conducted or supervised others conducting diagnostic clinical laboratory testing for Patient B.T. or his physician, David Perlmutter, M.D., which was not done exclusively for research and teaching purposes and which involved patient health service, in violation of Section 483.091, Florida Statutes (2002).

11. On or about February 4, 2004, Respondent, in her role as President and Director of Research for Bowen, either conducted or supervised others conducting diagnostic clinical laboratory testing for

Patient W.S. or her physician, a Dr. Weiss, which was not done exclusively for research and teaching purposes and which involved patient health service, in violation of Section 483.091, Florida Statutes (2003).

12. Bowen maintains an internet website that can be accessed by the public without restriction, located on or about June 14, 2006 at <http://www.bowen.org>. On or about June 14, 2006, the message posted at this URL read as follows:

The second project that we do at our facility is a test (Q-RiBb - (Quantitative Rapid Identification of Borrelia Burgdorferi) for Lyme disease. This test is used by the physician/practitioner along with the clinical symptoms to determine if the patient truly has Lyme disease. . . . Patients pro-actively seeking an answer to their continued symptoms and suffering eventually learn about the Bowen Q-RiBb test. A positive result with the Bowen test helps these people finally get a proper diagnosis and get properly treated for Lyme disease and co-infections.

13. On or about June 14, 2006, Respondent identified herself on Bowen's website as its President and Director of Research, at URL <http://www.bowen.org/site/whitaker.html>.

14. Section 458.331(1)(v), Florida Statutes, provides that practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows,

or has reason to know, the licensee is not competent to perform is grounds for discipline by the Board of Medicine.

15. Respondent, in her role as President and Director of Research at Bowen, practiced or offered to practice beyond the scope permitted by law in one or more of the following ways:

a). On or about June 24, 2003 by either conducting or supervising others conducting diagnostic clinical laboratory testing for Patient B.T. or his physician, David Perlmutter, M.D., which was not done exclusively for research and teaching purposes and which involved patient health service, in violation of Section 483.091, Florida Statutes (2002)

b). On or about February 4, 2004, by either conducting or supervising others conducting diagnostic clinical laboratory testing for Patient W.S. or her physician, a Dr. Weiss, which was not done exclusively for research and teaching purposes and which involved patient health service, in violation of Section 483.091, Florida Statutes (2003)

c). On or about June 14, 2006, by advertising and/or offering to perform diagnostic clinical laboratory testing services to patients and/or doctors which are not exclusively for research and teaching purposes and

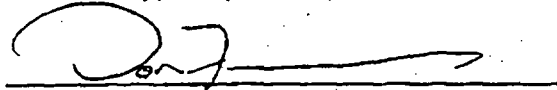
which involve patient health service, beyond the scope permitted under Section 483.091, Florida Statutes (2006).

17. Based on the foregoing, Respondent has violated Section 458.331(1)(v), Florida Statutes.

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 22nd day of September, 2006.

M. Rony Francois, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health



Don Freeman
Assistant General Counsel
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C65
Tallahassee, Florida 32399-3265
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(850) 414-8126
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Alicia Steffen
DATE 9-25-06

PCP: September 22, 2006

PCP Members: Ashkar, Bearison, and Beebe

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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.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,
Petitioner,

v.

DOH Case No. 2003-26295

JO ANN WHITAKER, M.D.,
Respondent.

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent Jo Ann Whitaker, M.D., license number ME 5174, hereby voluntarily relinquishes Respondent's license to practice medicine in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of Medicine (hereinafter the Board) of this Voluntary Relinquishment shall be construed as action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes.

2. Respondent agrees to never reapply for licensure as a physician in the State of Florida.

3. Respondent agrees to voluntarily cease practicing medicine immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the practice of medicine until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

4. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby

waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public. Section 456.073(10) Florida Statutes

5. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

6. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

7. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

DATED this 11th day of January, 2007.

Jo Anne Whitaker M.D.
Jo Ann Whitaker, M.D.

STATE OF FLORIDA
COUNTY OF:

Before me, personally appeared Dr Jo Anne Whitaker, whose identity is known to me by _____ (type of identification) and who, under oath, acknowledges that his signature appears above. Sworn to and subscribed before me this 11th day of January, 2007.

[Signature]
NOTARY PUBLIC

My Commission Expires:

