

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-06-1591-FOJMOA

FILED DATE - 8/31/06

Department of Health

By: Sally Beeler
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-34929

LICENSE NO.: ME0083417

GERALD ETIEMOWEI DARIAH, 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 August 11, 2006, in St. Petersburg Beach, 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 Warren Pearson, Assistant General Counsel. Respondent was present but was not represented by counsel. 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:

1. Respondent shall be and hereby is REPRIMANDED by the Board.

2. Respondent shall pay an administrative fine in the amount of \$10,000.00 to the Board within 30 days from the date this Final Order is filed.

3. Respondent's license to practice medicine in the State of Florida is hereby SUSPENDED for a minimum of two (2) years and until such time as he personally appears before the Board and demonstrates the ability to practice medicine with skill and safety. The Board retains jurisdiction in this matter to impose additional restrictions on Respondent's license at the time of reinstatement of licensure which may include probation and an evaluation from the Professionals Resource Network (PRN).

4. Within one (1) year from the date this Final Order is filed, Respondent shall document the completion of 50 hours of community service. Community service shall be provided without fee or cost to the person or entity benefitting from the service, for the good of the people of the State of Florida. A community service plan must be pre-approved by the Board's Probationer's Committee. Affidavits detailing the completion of community

service requirements shall be filed with the Board's Probationer's Committee.

5. Respondent shall document the completion of five (5) hours of continuing medical education (CME) in the area of medical ethics and five (5) hours of CME in the area of risk management within one year from the date this Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

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 \$1,063.21. Said costs are to be paid within 30 days from the date this Final Order is filed.

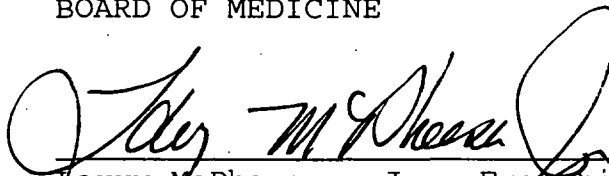
(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 30 day of AUGUST,

2006.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for MAMMEN P. ZACHARIAH, 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 U.S. Mail to GERALD ETIEMOWEI DARIAH, M.D., 1112 North Madison Street, Albany, Georgia 31701; and 141 Rumuogba Estate Road, Port Harcourt, Rivers, Nigeria; and by interoffice delivery to John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65,

Tallahassee, Florida 32399-3265 this 31 day of
August, 2006.


Deputy Agency Clerk

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-34929

GERALD ETIEMOWEI DARIAH, 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, Gerald E. Dariah, 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 0083417.

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3. Respondent's address of record is 1112 North Madison Street, Albany, GA 31701.

4. The State of Georgia Composite Board of Medical Examiners ("Georgia State Board") is the licensing authority regulating the practice of medicine in the State of Georgia.

5. On or about January 8, 2004, the Georgia State Board entered an Order of Suspension suspending the Respondent's license to practice medicine because he failed to comply with a Georgia Child Support Order.

6. On or about September 21, 2004, the Georgia State Board entered another Order of Summary Suspension suspending the Respondent's license to practice medicine because Respondent inappropriately prescribed controlled substances to patients by leaving pre-signed blank prescriptions forms at his office; allowed his staff to fill out such pre-signed blank prescription forms in the Respondent's absence; and charged his patients extra fees for pain medication prescriptions.

7. The January 8, 2004, and the September 21, 2004, Orders entered by the Georgia State Board constitute disciplinary actions against Respondent's license to practice medicine in the State of Georgia.

9. Respondent failed to report, in writing, to the Florida Board of Medicine within thirty (30) days, the January 8, 2004 and September 21, 2004 disciplinary actions taken by the Georgia State Board.

COUNT ONE

10. Petitioner re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

11. Section 458.331(1)(b), Florida Statutes (2004), provides that having a license or the authority to practice medicine revoked, suspended, or otherwise acted against by licensing authority of any jurisdiction constitutes grounds for disciplinary action by the Board of Medicine.

12. The January 8, 2004 and the September 21, 2004 Orders of Suspension issued by the Georgia State Board which suspended Respondent's license to practice medicine constitute disciplinary actions against Respondent's Georgia medical license.

13. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2004), by 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.

COUNT TWO

14. Petitioner re-alleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

15. Section 458.331(1)(kk), Florida Statutes (2004), provides that failing to report to the board, in writing, within thirty (30) days if action as defined in Section 458.331(1)(b), Florida Statutes, has been taken against one's license to practice medicine in another state, territory or country constitutes grounds for disciplinary action by the Board of Medicine.

16. Respondent failed to report, in writing, to the Florida Board of Medicine within thirty (30) days the January 8, 2004 and September 21, 2004 disciplinary actions taken against his license by the Georgia State Board.

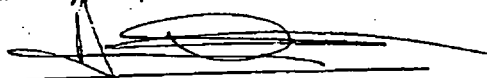
17. Based on the foregoing, Respondent has violated Section 458.331(1)(kk), Florida Statutes (2004), by failing to report to the board, in writing, within thirty (30) days if any action as defined in Section 458.331(1)(b), Florida Statutes, has been taken against one's license to practice medicine in another state, territory or country.

WHEREFORE, 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 18th day of July, 2005.

John O. Agwunobi, M.D., M.B.A. M.P.H.
Secretary, Department of Health



Obinna Chukwuanu
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 663298
(850) 414-8126
(850) 414-1989 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK Neetha Coleman

DATE 7-19-05

/OC

PCP: July 15, 2005
PCP Members: Gustavo Leon, M.D. (Chairperson), Nabil El Sanadi, M.D., and John Beebe

Reviewed and approved by: CS (initials) 7/19/05 (date)

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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Jessica McCona*
DATE 6-21-06

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2004-34929

GERALD E. DARIAH, 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:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001,

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.

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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. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of \$1,063.21, based on the following itemized statement of costs:

- a. Total soft costs for Complaints \$23.87
- b. Total soft costs for Investigations \$0.00
- c. Total soft costs for Legal \$1,039.34
- d. Total expenses \$0.00

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$1,063.21, 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

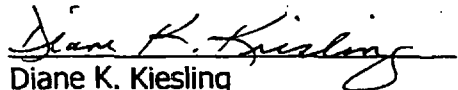
costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of \$1,063.21 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 \$1,063.21.

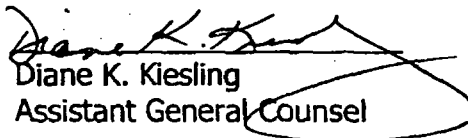
DATED this 21st day of June, 2006.

Respectfully submitted,


Diane K. Kiesling
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 233285
(850) 245-4640 Business
(850) 245-4681 Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided to Respondent, Gerald Dariah, M.D., 1112 North Madison Street, Albany Georgia 31701 and 141 Rumogba Estate Road, Port-Harcourt, Rivers, Nigera by U.S. Mail this 22nd day of June 2006.


Diane K. Kiesling
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

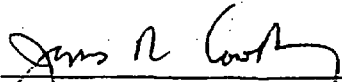
BEFORE ME, the undersigned authority, personally appeared **JAMES R. COOKSEY**, who was sworn and states as follows:

- 1) My name is James R. Cooksey.
- 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 a Operations Management Consultant for the Consumer Services 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 a Operations Management Consultant, 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 2004-34929 (Department of Health v. Gerald Dariah, M.D.) are one thousand sixty three dollars and twenty-one cents (\$1,063.21).
- 6) The costs for DOH case number 2004-34929 (Department of Health v. Gerald Dariah, 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 number 2004-34929 (Department of Health v. Gerald Dariah, 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) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.


FURTHER AFFIANT SAYETH NOT.



James R. Cooksey, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 19 day of June, 2006,
by James R. Cooksey, who is personally known to me.



Notary Signature

MIRABEL DAVIS

Name of Notary Printed



Mirabel Davis
MY COMMISSION # DD221102 EXPIRES
September 7, 2007
BONDED THRU TROY FAIR INSURANCE, INC

Stamp Commissioned Name of Notary Public:

Complaint Cost Summary

Complaint Number: 200434929

Complainant's Name: GEORGIA BOARD OF MEDICINE
 Subject's Name: GERALD DARIAH

***** Cost to Date *****		
	Hours	Costs
Complaint:	0.50	\$23.87
Investigation:	0.00	\$0.00
Legal:	11.05	\$1,039.34
	*****	*****
Sub Total:	11.55	\$1,063.21
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$1,063.21



Time Tracking Report
Itemized Cost by Complaint
Complaint 200434929

Report Date: 06/19/2006

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
BUREAU OF CONSUMER COMPLAINTS						
HA13	0.50	\$47.73	\$23.87	01/10/2005	25	REVIEW CASE FILE
Sub Total			\$23.87			
BUREAU OF LEGAL SERVICES						
HLL34A	2.00	\$63.80	\$127.60	04/19/2005	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL34A	2.00	\$63.80	\$127.60	04/20/2005	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL34A	0.75	\$63.80	\$47.85	04/21/2005	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL22B	0.40	\$73.40	\$29.36	04/25/2005	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL34A	0.20	\$63.80	\$12.76	07/25/2005	79	STIPULATION
HLL34A	0.50	\$63.80	\$31.90	08/17/2005	25	REVIEW CASE FILE
HLL34A	0.20	\$63.80	\$12.76	08/26/2005	25	REVIEW CASE FILE
HLL34A	0.30	\$63.80	\$19.14	08/29/2005	36	PREPARATION OR REVISION OF LETTER
HLL40B	0.80	\$122.84	\$98.27	01/25/2006	25	REVIEW CASE FILE
HLL40B	0.50	\$122.84	\$61.42	01/25/2006	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFFI
HLL40B	0.20	\$122.84	\$24.57	01/25/2006	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFFI
HLL40B	0.30	\$122.84	\$36.85	02/21/2006	25	REVIEW CASE FILE
HL58B	0.30	\$141.12	\$42.34	04/26/2006	70	CONFERENCES WITH LAWYERS
HL58B	0.30	\$141.12	\$42.34	04/26/2006	25	REVIEW CASE FILE
HL58B	0.20	\$141.12	\$28.22	05/11/2006	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFFI
HL58B	0.60	\$141.12	\$84.67	05/12/2006	25	REVIEW CASE FILE
HL58B	0.60	\$141.12	\$84.67	05/12/2006	36	PREPARATION OR REVISION OF LETTER
HL58B	0.30	\$141.12	\$42.34	05/15/2006	36	PREPARATION OR REVISION OF LETTER
HL58B	0.30	\$141.12	\$42.34	05/15/2006	79	STIPULATION
HL58B	0.30	\$141.12	\$42.34	06/06/2006	36	PREPARATION OR REVISION OF LETTER

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Time Tracking Report
 Itemized Cost by Complaint
 Complaint 200434929

Report Date: 06/19/2006

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
	11.05		\$1,039.34			
Total Cost	11.55		\$1,063.21			

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Time Tracking Report
Itemized Expense by Complaint
Complaint

Report Date: 06/19/2006

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
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SubTotal
Total Expenses