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Final Order No. DH-10-0744-S-MQA
FILED DATE: 8-18-10
Department of Health

By: Angel Sardes
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE**

DEPARTMENT OF HEALTH

Petitioner,

vs.

Case No: 2009-01398

License No.: OS 8700

DAVID HOWARD FLAHERTY, D.O.

Respondent.

_____ /

FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

This matter appeared before the Board of Osteopathic Medicine (hereinafter "Board") pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a duly-noticed public meeting on February 27, 2010, in Bradenton, Florida, for consideration of a Settlement Agreement (attached hereto as Exhibit "A") entered into between the parties in this cause and incorporated by reference into this Final Order. The Department of Health (hereinafter "Petitioner") was represented by Tobey Schultz, Assistant General Counsel, with the Department of Health. David Howard Flaherty, D.O. (hereinafter "Respondent") was not present and was not represented by Counsel.

The Petitioner filed an Administrative Complaint against the Respondent on August 19, 2009 (attached hereto as Exhibit "B") and incorporated by reference into this Final Order.

Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties and otherwise being advised in the premises, the Board accepted the Settlement Agreement. Costs are assessed in the amount of seven

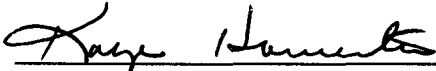
hundred thirty-five dollars and twenty-eight cents (\$735.28) and payable within thirty (30) days from the filing date of this Final Order.

WHEREFORE, the Board hereby accepts the Settlement Agreement, settling all matters in this case consistent with the terms of the agreement between the parties, and Respondent is hereby ORDERED to abide by the terms of the Settlement Agreement. This Final Order shall be placed in and made part of the Respondent's official records.

This Final Order shall become effective upon filing with the Clerk for the Department of Health.

DONE AND ORDERED this 17 day of March, 2010.

BOARD OF OSTEOPATHIC MEDICINE



Kaye Howerton, Executive Director
on behalf of Allan Escher, D.O., CHAIR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **Certified U.S. Mail** to **David Howard Flaherty, D.O.**, 8201 SW 15 Street, Apt. #1322, Plantation, FL 33324 and at 7481 West Oakland Park Blvd., 1st Floor, Lauderhill, FL 33319; and by interoffice mail to **Donna C. McNulty**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and **Tobey Schultz, D.O.**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, this 18th day of March 2010.

7009 3410 0002 1924 1144

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Certified Fee	
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
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Sent To: David Flaherty
 Street, Apt. No. or PO Box No.: 8201 SW 15th St Apt 1322
 City, State, ZIP+4: Plantation FL 33324

Angela Barton

Deputy Agency Clerk

7009 3410 0002 1924 1151

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To: David Flaherty
 Street, Apt. No. or PO Box No.: 81 W. Oakland PK Blvd 1st floor
 City, State, ZIP+4: Lauderhill FL 33319

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

PROFESSIONAL REGULATION
LEGAL

2009 NOV 23 AM 11:27

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2009-01398

DAVID HOWARD FLAHERTY, D.O.,

Respondent,

SETTLEMENT AGREEMENT

David Howard Flaherty, D.O., 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 Osteopathic 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 osteopathic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed osteopathic physician in the State of Florida having been issued license number OS 8700.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapters 456 and/or 459, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

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/her capacity as a licensed osteopathic physician, he/she is subject to the provisions of Chapters 456 and 459, 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 Chapters 456 and/or 459, 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 with regard to this incident.

2. **Fine** - The Board of Osteopathic Medicine shall impose an administrative fine of \$3,450 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 Osteopathic 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 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. Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic 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 Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend 23 hours of Continuing Education administered by Florida Osteopathic Medical Association. Respondent shall take courses in the following subjects: 20 hours of AOA Category 1-A, 1 hour in Florida laws and rules, 1 hour in risk management, and 1 hour regarding the laws and rules regarding controlled substances. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as recognition awards, documenting completion of this course within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to: the Department of Health Compliance Management Unit, 4052 Bald Cypress Way, Bin CO1, Tallahassee, Florida 32399-3251, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing education course shall consist of a formal, live lecture format.

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. **Continuing Medical Education** - Unless otherwise provided in this written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Osteopathic Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **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.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 459 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 Osteopathic Medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 459 and 893 and the Rules of the Board of Medicine, at Chapter 64B15 Florida Administrative Code.

6. **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 459, Florida Statutes.

7. **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.

8. **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.

9. **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.

10. **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 17 day of November, 2009.

David Howard Flaherty


, D.O.

Before me, personally appeared DAVID HOWARD FLAHERTY,
whose identity is known to me by DAVID HOWARD FLAHERTY (type of ^{FL} ^{LC}
identification) and who, under oath, acknowledges that his/her signature
appears above.

Sworn to and subscribed before me this 17 day of
NOVEMBER, 2009.

Detaram T. Punjabi
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC - STATE OF FLORIDA
 Detaram T. Punjabi
Commission # DD514220
Expires: FEB. 02, 2010
Bonded Thru Atlantic Bonding Co., Inc.

APPROVED this 15th day of December, 2009.

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

Tobey Schultz
By: Tobey Schultz
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-01398

DAVID HOWARD FLAHERTY, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Osteopathic Medicine against Respondent, David Howard Flaherty, D.O., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 8700.

3. Respondent's address of record is 8201 S.W. 15th Street, Apt. 1322, Plantation, Florida 33324.

4. Section 459.008(4), Florida Statutes (2006-2008), provides that "the board shall, by rule, prescribe continuing education programs and courses, not to exceed 40 hours biennially, as a condition for renewal of a license."

5. Rule 64B15-13.001, Florida Administrative Code ("F.A.C."), provides in pertinent part that:

(1)(a) Every person licensed pursuant to Chapter 459, F.S., except those licensed as physician assistants pursuant to Section 459.022, F.S., shall be required to complete forty (40) hours of continuing medical education courses approved by the Board in the twenty-four (24) months preceding each biennial renewal period as established by the Department. Five of the continuing medical education hours for renewal shall include a one hour Risk Management Course, one hour Florida Laws and Rules, one hour on the laws regarding the use and abuses of controlled substances, and two hours Prevention of Medical Errors Course. Beginning in the 2010-2012 licensure biennium, five of the continuing medical hours for renewal shall include one hour of professional and medical ethics education, one hour Florida Laws and Rules, one hour on the federal and state laws related to the prescribing of controlled substances, and a two hour Prevention of Medical Errors Course. . . .

(2) At least twenty (20) of the forty (40) hours of the continuing medical education required under this rule shall be American Osteopathic Association approved Category I-A continuing education related to the practice of osteopathic medicine or under osteopathic auspices.

6. Rule 64B15-13.003, F.A.C., authorizes the Board to conduct random audits to ensure compliance with the above-mentioned continuing education requirements.

7. Pursuant to Rule 64B15-13.003, F.A.C., Respondent was selected for a random audit regarding the amount of continuing education he received during the April 1, 2006 through March 31, 2008 biennium.

8. Respondent failed to provide proof that the following continuing education classes were completed during the licensure audit biennium: twenty (20) hours of American Osteopathic Association Category, one (1) hour of Risk Management, one (1) hour of Florida Laws and Rules, and one (1) hour of Laws Regarding the Use and Abuses of Controlled Substances. Therefore, Respondent did not complete and/or provide proof of completion for the number of hours of continuing education or the subject types required by Rule 64B15-13.001, F.A.C.

9. Florida Administrative Code Rule 64B15-13.001 and Rule 64B15-13.003 were adopted pursuant to Chapters 456 and/or 459, Florida Statutes.

10. Section 459.015(1)(g), Florida Statutes (2006)-(2008), subjects an osteopathic physician to discipline for failing to comply with any statutory or legal obligation.

11. Section 459.015(1)(pp), Florida Statutes (2006)-(2008), provides that violating any provision of Chapter 459 or Chapter 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Osteopathic Medicine.

12. Respondent failed to complete and/or provide proof of completion of the required continuing education courses as required by Rules 64B15-13.001 and 64B15-13.003, F.A.C.

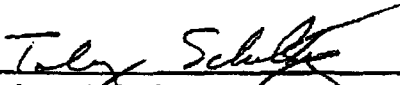
12. Based on the foregoing, Respondent has violated Section 459.015(1)(g), Florida Statutes (2006)-(2008) and/or Section 459.015(1)(pp), Florida Statutes (2006)-(2008), by violating Rule 64B15-13.001 and/or Rule 64B15-13.003, F.A.C.

WHEREFORE, Petitioner respectfully requests that the Board of Osteopathic 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 17th day of August, 2009.

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



Tobey Schultz
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 0542131
(850) 245-4640 x. 8176
(850) 245-4684 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Angela Barton*
DATE 8/19/09

PCP: 8/13/09 Andriole & St. Louis

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.