

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-11-3002-⁵ -MQA
FILED DATE - 12-13-11
Department of Health

By: Wanda Sanders
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2011-03055
LICENSE NO.: ME0022101

ALAN A. GUMER, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) on December 3, 2011, in Orlando, Florida, for the purpose of considering Respondent's offer to voluntarily relinquish his 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 his 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 12th day of December 2011.

BOARD OF MEDICINE

Joy A. Tootle
Joy A. Tootle, Executive Director
For GEORGE THOMAS, 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 ALAN A. GUMER, M.D., P.O. Box 450729, Sunrise, Florida 33345-0729; to William Pearson, Esquire, P.O. Box 1076, Miami, Florida 33149; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 13th day of December, 2011.

Ornel Sanders

Deputy Agency Clerk




Rick Scott
Governor

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General

INTEROFFICE MEMORANDUM

DATE: December 9, 2011

TO: Cassandra Pasley, BSN, J.D., Bureau Chief
Health Care Practitioner Regulation

FROM: Joy A. Tootle, Executive Director
Board of Medicine 

SUBJECT: Delegation of Authority

This is to advise you that while I am out of the office on Monday December 12, 2011, Crystal Sanford is delegated to serve as acting Executive Director for the Board of Medicine. Ms. Sanford can be reached at (850) 245-4132.

JAT

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE OCT 20 2011

DEPARTMENT OF HEALTH,
Petitioner,

v.

DOH Case No. 2011-03055

ALAN A GUMER, M.D.,
Respondent.

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent Alan A. Gumer, M.D., license No. ME 22101, 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 disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes.
2. Respondent agrees to never reapply for licensure as a medical doctor 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 Oct 18th day of October, 2011.

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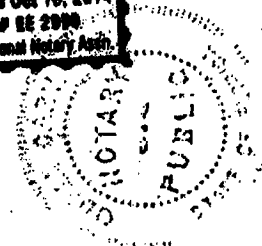
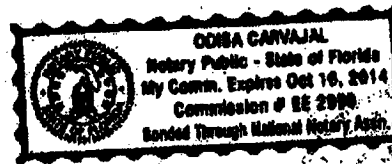
Alan A. Gumer, M.D.
Alan A. Gumer, M.D.

STATE OF FLORIDA
COUNTY OF:

Before me, personally appeared Alan Austin Gumer, whose identity is known to me by FL Drivers License (type of identification) and who, under oath, acknowledges that his signature appears above. Sworn to and subscribed before me this 18th day of October, 2011.

Odisa Carvajal
NOTARY PUBLIC

My Commission Expires:



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2011-03055

ALAN A. GUMER, 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, Alan A. Gumer, 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 22101.

3. Respondent's address of record is Post Office Box 450729, Sunrise, Florida 33345.

4. At all times material to this Complaint, Respondent held Medicare provider number 91991. He continues to hold that number as of September 9, 2011.

5. At all times material to this Complaint, Respondent practiced psychiatry, but was not board certified in any specialty.

6. From approximately September 2004 through about October 21, 2010, Dr. Gumer served as a Medical Director for American Therapeutic Corporation (ATC). At various times throughout this eight year period, ATC operated seven locations throughout Florida.

7. Shortly after he became the Medical Director at ATC, Dr. Gumer learned that ATC was billing the Medicare program for providing treatments to patients that were not medically indicated by the patients' medical conditions or that were not actually provided to the patients. Nonetheless, Dr. Gumer signed patient evaluations and notes that were manipulated to conceal ATC's inappropriate treatment of patients from Medicare, accreditation organizations and law enforcement.

8. Along with other ATC employees and owners, Dr. Gumer

engaged in an eight-year conspiracy to fraudulently bill over \$200,000,000.00 to Medicare. Dr. Gumer was responsible for billing approximately \$19,300,000.00 of the \$200,000,000.00 that ATC fraudulently billed to Medicare over the eight-year period.

9. Dr. Gumer submitted false and fraudulent claims to Medicare for partial hospitalization program (PHP) services that were not medically necessary for patients or not actually provided to patients.

10. PHPs are programs for the treatment of mental illness which resemble short-term hospitalization programs, but consist of less than 24-hour daily care and are designed to treat qualified individuals outside the hospital setting. Medicare covers the following services as part of PHP benefits: (1) individual and group therapy with physicians or psychologists; (2) occupational therapy; (3) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients; (4) drugs and biologicals furnished for therapeutic purposes that cannot be self-administered; (5) individualized activity therapies that are not mainly recreational; (6) family counseling as part of treatment of the patient's condition; (7) patient training and education; and (8) diagnostic services.

11. Dr. Gumer and his co-conspirators paid bribes or kickbacks to

Medicare beneficiaries (beneficiaries) who were not eligible to receive the PHP treatment billed to Medicare or who did not actually receive the services billed to Medicare. Dr. Gumer and his co-conspirators also paid bribes or kickbacks to owners and operators of assisted living facilities (ALFs) and halfway houses (HHs) in exchange for the owners and operators of the ALFs and HHs bringing the residents of their facilities to ATC locations for treatment that they did not need or did not receive.

12. Dr. Gumer and his co-conspirators then created and approved patient records that established the appearance that these beneficiaries were eligible to receive the treatment that PHP was to provide when they were, in fact, not eligible. Dr. Gumer knew that the beneficiaries for whom ATC billed Medicare were not eligible for the services billed. He also knew that the beneficiaries did not have acute psychiatric illnesses that would warrant PHP treatment or other hospitalization. Furthermore, Dr. Gumer, knew or should have known, that the beneficiaries either received incorrect diagnoses of mental illness or were experiencing non-acute phases of diagnosed illnesses.

13. Dr. Gumer did not consult on treatment plans, did not evaluate individual patients, and signed treatment plans and other documents

placed in patient files without examining patients and without reading the documents he was signing.

14. Dr. Gumer prescribed psychiatric medications to beneficiaries who did not need them so he could make it appear to Medicare that the beneficiaries qualified for PHP treatment.

15. Part B of the Medicare program also covers diagnostic sleep studies completed at sleep disorder clinics. To further defraud Medicare, Dr. Gumer referred beneficiaries who did not need sleep studies to the American Sleep Institute.

16. On or about February 8, 2011, Dr. Gumer was indicted in the United States District Court, Southern District of Florida, in Case Number 11-20100-CR-SEITZ, with one Count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. Section 1349 and four Counts of Health Care Fraud in violation of 18 U.S.C. Sections 1347 and 2. Each of these counts carried a maximum penalty of ten years in prison.

17. On or about June 30, 2011, Dr. Gumer signed a Plea Agreement in the above-styled case in which he agreed to plead guilty to Count I of the Indictment, which charged him with knowingly and willfully combining, conspiring, confederating, and agreeing with others to violate

18 U.S.C. Section 1347, by executing a scheme and artifice to defraud a health care benefit program affecting commerce, namely Medicare. More specifically, Dr. Gumer executed a scheme to defraud Medicare to obtain, by means of materially false and fraudulent representations, money and property owned by, and under the custody and control of Medicare, in violation of 18 U.S.C. Section 1349.

18. Dr. Gumer also signed an Agreed Factual Basis for Guilty Plea which reads in pertinent part:

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for my guilty plea to the charges against me....I make this statement knowingly and voluntarily and because I am in fact guilty of the crimes charged.

19. Dr. Gumer's sentencing for the crime to which he pled guilty is scheduled for January 19, 2012. Dr. Gumer currently remains free on bond pending that sentencing.

20. Section 458.331(1)(c), Florida Statutes (2010-2011), provides that being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice

medicine constitutes grounds for disciplinary action by the Board of Medicine.

21. Respondent's guilty plea to one count of executing a scheme to defraud Medicare to obtain, by means of materially false and fraudulent representations, money and property owned by, and under the custody and control of Medicare, in violation of 18 U.S.C. Section 1349, directly relates to his practice of medicine and/or to his ability to practice medicine in that she could not have engaged in the conduct to which he pleaded guilty without a license to practice medicine.

22. Based on the foregoing, Respondent has violated Section 458.331(1)(c), Florida Statutes (2010-2011), by being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, crimes in any jurisdiction which directly relate to the practice of medicine or to the ability to practice medicine.

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 23rd day of September, 2011.

H. Frank Farmer, Jr., M.D., Ph.D.
State Surgeon General



Jennifer L. Friedberg
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No.: 21640
(850) 245-4640 x8141
(850) 245-4681 Facsimile

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE SEP 26 2011

JLF/

PCP Date: September 23, 2011
PCP Members: El-Bahri, Rosenberg & Goersch

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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.