STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION,	)	
Petitioner,	)	
vs.	)	CASE NO. 0015036
VALARIA A. ALSINA, M.D.,	)	
Respondent.	)	

AMENDED
ADMINISTRATIVE COMPLAINT

COMES NOW the Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Amended Administrative Complaint against Valaria A. Alsina, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner seeks to revoke, suspend or take other disciplinary action against Respondent as licensee and against her license to practice medicine under the laws of the State of Florida.

2. Respondent is a licensed medical physician having been issued license number ME 0028378.

3. The last known address of Respondent is 3729 Southwest 8th Street, Miami, Florida 33145.

COUNT ONE

4. During the dates of at least August 1980 and February 1981, Respondent was engaged in the practice of medicine in the State of Florida, diagnosing and treating patients utilizing medical consultations, medical examinations and laboratory studies for care and treatment.

5. Respondent's patients referenced in paragraph 4 above have included, but are not limited to, the following patients treated during at least the following time periods:

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL REGULATION, BOARD OF MEDICAL EXAMINERS, Petitioner,	)	
vs.	)	CASE NO. 83-2965
VALARIA A. ALSINA, M.D., Respondent.	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, K. N. Ayers, held a public hearing in the above-styled case on December 2, 1983, at Miami, Florida.

APPEARANCES

For Petitioner: Joseph W. Lawrence, II, Esq.
Department of Professional Regulation
130 North Monroe Street
Tallahassee, Florida 32301

For Respondent: Stephen Marc Slepin, Esq.
Paul Watson Lambert, Esq.
1114 East Park Avenue
Tallahassee, Florida 32301

By Amended Administrative Complaint filed August 2, 1983, the Department of Professional Regulation, Board of Medical Examiners, Petitioner, seeks to revoke, suspend, or otherwise discipline the license of Valaria Alsina as a medical doctor. As grounds therefor it is alleged that Respondent performed medical treatment on N[redacted], E[redacted], and J[redacted] T[redacted] for which the charges are grossly excessive; and further, the medical services performed for these patients were performed with unreasonable and inadequate medical justification, or no medical justification; and thereby made deceptive and

fraudulent representations in the practice of medicine or employed [illegible] or where such trick or scheme failed to conform to the generally prevailing standards of treatment; that Respondent exploited her patients for financial gain; that Respondent filed false reports; and that Respondent failed to practice medicine with reasonable skill.

According to the charges, the alleged violations of the Medical Practices Act occurred between August, 1980, and February, 1981; however, the evidence was limited to the treatment of N[redacted] T[redacted] and her mother, L[redacted] T[redacted], on August 19, 1980; and to the treatment of J[redacted] T[redacted], the father of N[redacted] T[redacted], on February 4, 1981. Findings are limited to those specific patients and those specific dates. Respondent stipulated that Dr. Alsina is licensed as alleged and that the bills submitted to potential insurance companies for the medical services provided to the T[redacted] billed for each blood test and other laboratory tests as individual tests to denote the tests were done manually, as opposed to automatically in a commercial medical laboratory.

At the hearing two expert witnesses were called by Petitioner, the Respondent and her husband testified on behalf of Respondent, and 14 exhibits were admitted into evidence.

Proposed findings submitted by the parties which are incorporated herein are adopted; otherwise, they are rejected as not supported by the evidence, immaterial, or unnecessary to the results reached.

FINDINGS OF FACT

1. Valaria Alsina has been licensed as a medical physician in Florida since 1976 and was so licensed at all times here relevant.

2. On August 19, 1980, E[redacted] T[redacted] and her daughter N[redacted], age 12, visited the office of Respondent for treatment.

as a SMAC-22 neither physical nor financial harm resulted to the patient from the unnecessary blood tests conducted. The SMAC-22 could have been performed as cheaply as or cheaper than two manual and individual tests. Since Petitioner's expert witnesses both agreed that some of the tests conducted on this patient were indicated from the symptoms presented, the only fault they found was in Respondent's performing, and charging the patient for, individual and manual blood tests for which there was no medical justification.

J. [redacted] was seen by Respondent on August 19, 1980. For this visit Respondent billed Prudential Insurance Company $262.50. Clinical data prepared by Respondent for N[redacted] shows usual childhood diseases, tonsillectomy, adenoidectomy, fever, sore throat accompanied by ear pains and swelling, patient complaining of weakness, history of anemia, poor appetite, burning sensation when voiding, dark urine, and a skin rash on right leg. Patient's weight was recorded as 70 pounds, but neither height nor temperature was recorded. In addition to a complete physical examination, a urinalysis, skin culture, and sensitivity test were done, and blood chemistry tests included complete blood count, calcium, glucose, BUN, creatinine, albumin, bilirubin, total protein, and SGPT. These blood tests, all of which (except the cbc) are included in a SMAC-22, were billed as having been performed as individual tests at costs ranging from $10.00 to $17.50 each. Treatment prescribed for N[redacted] consisted of aspirin suppositories. Respondent testified that N[redacted] was under weight, although her height was not measured, and that she took N[redacted]'s temperature but failed to record it.

5. J[redacted] was seen by Respondent on February 4, 1981, as a patient. Clinical data recorded by Respondent on this visit (Exhibit 3) include ". . . history of diverticulitis of colon, states that have diet but feels like some abdominal

discomfort accompanied by diarrhea and feels weak. Patient with history of admission in the hospital, admission Palmetto General Hospital. Some lower discomfort abdomen and dark urine." For this visit Prudential Insurance Company was billed $340 for complete physical examination (genital exam omitted); complete blood count; urinalysis; blood tests including glucose, BUN, creatinine, calcium, phosphorus, uric acid, electrolytes (including sodium, potassium, chlorides, and carbon dioxide), total protein, cholesterol, triglycerides, SGOT, SGPT, and alkaline phosphates; urine culture, sensitivity test; and collection and handling. The blood tests were all included in a SMAC-22 but were billed as individual and manually performed tests with costs ranging from $10.00 to $20.00 each.

6. Petitioner's expert witnesses both testified that some of the tests performed on these three patients were indicated by the symptoms and complaints described. Other tests conducted were not appropriate for the symptoms given. They also agreed that had these tests been conducted and billed as a SMAC-22 they would not consider that that could be a violation of the Medical Practices Act because, even though some of these tests were not medically indicated, they "come with the package" and would not increase the cost to the patient. However, when conducted manually and individually and so billed, the practice of conducting blood tests for which there is no medical justification does not conform to the generally prevailing standards in the medical community. Because of the findings below, it is unnecessary to denote those tests performed on each of the T[redacted]s for which there was no medical justification.

7. Although billed to Prudential Insurance Company as manually and individually performed, the blood tests on the three patients above-named were conducted as a SMAC-22 and were not performed manually and individually as testified to by Respondent. This determination is based on the following facts, circumstances, and rationalizations:

a. Respondent sent the blood samples from these three patients to Central Medical Laboratory, Inc., for a SMAC-22 test.

b. Respondent testified that she performed each of the series of 10 to 15 tests on the blood samples of these patients in 20 to 30 minutes; however, other medical witnesses testified it took a trained technician 20 minutes to perform one of these blood tests manually. The latter testimony is deemed more credible.

c. Many of these tests have subjective characteristics, such as color comparisons, and identical results from the same blood sample tested by two technicians or run through the same automated process would be rare. The odds against a technician performing individual and manual tests on 16 blood samples and obtaining the identical result on all tests that is obtained from a commercial laboratory SMAC test is astronomical. Yet, the one report obtained from Central Medical Laboratory for the SMAC-22 conducted on the blood sample from J[redacted] T[redacted] (Exhibit 7) is identical to the "manual and individual" test report maintained by Respondent for the same blood sample in Exhibit 3--with one exception. The laboratory found the triglyceride test to be 254 MG/DL, well outside the 30-175 range for this test. On Exhibit 3 Respondent recorded 175 for this test. She testified she sent blood samples from the three T[redacted] to the laboratory to have a check on her tests but did not ask the laboratory to do a recheck on the triglycerides test on T[redacted] or recheck her test for triglycerides after receiving the laboratory report.

d. Only a small amount of blood (5 or 10 cc) is required for an automated procedure for up to 40 different tests, whereas at least three times this amount of serum would be required for 10 tests conducted manually or individually.

Accordingly, manual testing would require the drawing of a lot more blood than would be required for automated testing in a commercial lab. Respondent testified that she sent one-half of the blood sample taken on each [redacted] to the laboratory and kept the other one-half to test in her office.

e. Commercial medical laboratories are licensed by the state; are checked for compliance with proper procedures; equipment used is checked for proper calibration at frequent intervals; reagents used in the testing is frequently replaced; and, when compared to the equipment, procedures, calibration, and reagents used in a physician's office which are subject to no regulation, the former should provide the more reliable test in a much shorter time.

f. The equipment in Respondent's office is capable of being used to conduct all of the tests on these three patients for which Respondent billed Prudential Insurance Company.

g. No rational explanation was provided to justify having a SMAC-22 performed and duplicating these tests manually. Respondent's testimony that the SMAC-22 was ordered to check the results of the manual tests she performed is not credible. If a check on the manual tests conducted on blood samples of [redacted] for the August 17, 1980, visit was desired, it would appear appropriate to check the office procedures by doing a SMAC-22 on only one of those blood samples, rather than have both of these samples checked as was done here. Repeating this "check" on the sample taken from [redacted] on February 4, 1981, does not make sense. Either the laboratory test is trusted or it is not. The same applies to the individual tests conducted manually in the office. If confident of the procedures, there would be no reason for Respondent to check the manual tests conducted in the office by sending one-half of the serum to a commercial laboratory. Respondent testified that Central Medical Laboratory

picks up blood samples at her office daily. This suggests that some tests are routinely ordered by Respondent and conducted by the laboratory, and no evidence was presented to rebut such a conclusion. On the other hand, Petitioner presented no evidence of the volume of tests conducted by Central Medical Laboratory for Respondent which would solidify this conclusion. Nor did Petitioner submit the SMAC-22 results obtained by Central Medical Laboratory for the blood test conducted on the serum taken from [redacted] and [redacted] on August 17, 1980, to see if they too were identical to the results shown in Exhibit 3.

h. The only rational explanation for having SMAC-22 tests performed in a commercial laboratory and reporting these tests as done individually and manually in Respondent's office is the amount the insurance company will pay for the latter is nearly ten times what they will pay for the former. Laboratory tests billed for [redacted] for the February 4, 1981, visit amount to nearly $250. Charges submitted for these tests reported on the SMAC-22 (Exhibit 7) amount to $187. Respondent testified she paid for the SMAC-22 tests she ordered and did not bill the insurance company for these tests because "they won't pay for both" SMAC and manual tests performed on the same sample. Since the lab charged Respondent only $10-$12 for the SMAC-22 tests conducted, the insurance company would not pay $187 if these tests were charged as automated tests.

8. Considerable evidence was submitted that there was no medical justification for certain of the tests performed on [redacted], [redacted], and [redacted]. For [redacted], these unnecessary tests included tests for calcium, glucose, BUN, creatinine, albumin, bilirubin, total protein, and SGPT. For [redacted], these unnecessary tests were calcium, phosphorus, uric acid, total protein, bilirubin, with either BUN or creatinine justified, but not both. For [redacted], no medical justification

was shown for manually performed tests for glucose, calcium, phosphorus, electrolytes, SGOT and SGNT. In view of the finding above, that these tests were not manually done but were performed as a SMAC-22, the fact that they are not medically justified if done manually becomes immaterial.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

Respondent is charged with violations of Section 458.331(1)(i), (l), and (t) which constitute grounds for which penalties authorized may be imposed. These sections provide:

> (i) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.
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> * * *
>
> (l) Making deceptive, untrue, or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community.
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> * * *
>
> (t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The board shall give great weight to the provisions of s. 768.45 when enforcing this paragraph.

Subsection (i) above-quoted refers to reports and, when the entire subsection is read in pare materia, it is clear that the offense intended relates to official documents

or reports, which are to be filed by the physician with some governmental or regulatory agency and not a bill presented for services rendered. Without belaboring the point with canons of statutory construction leading to this conclusion, it is sufficient to say the acts of Respondent, as alleged, do not constitute a violation of this subsection.

Submitting a statement for services rendered which included billing for blood tests manually performed when these tests were not manually performed but were done solely by Central Medical Laboratory as part of a SMAC-22 test constitutes a violation of Subsection (1). With respect to Subsection (t) above-quoted, the evidence was uncontradicted that if the various blood tests done on [redacted], [redacted], and [redacted] were done as part of a SMAC package, the ordering and performing of these tests were fully in accord with accepted medical practices and is in conformity with community standards.

Here, the burden is upon Petitioner to prove the charges alleged. Balino v. Department of Health and Rehabilitative Services, 348 So.2d 349 (Fla. 1st DCA 1977). The quality of the evidence required to sustain this burden has been variously described before and after the present Administrative Procedures Act was passed. In Reid v. Florida Real Estate Commission, 188 So.2d 846 (Fla. 2d DCA 1966) the court concluded that an action to revoke a license was penal in nature and that penal sanctions should be directed only towards those who by their conduct have forfeited their right to the privilege (of licensure) and then only upon clear and convincing proof of substantial causes justifying the forfeiture of license. Accord, Lewis v. Planned Financial Services, 340 So.2d 941 (Fla. 4th DCA 1976).

In Florida Department of Health and Rehabilitative Services v. Career Service System, 289 So.2d 412 (Fla. 4th DCA 1974), the court held that an administrative tribunal

measures proof presented to it by the preponderance of the evidence standard. That case involved the quantum of evidence required to discharge an employee for cause. This case and others of similar input seriously undercut Reid, supra.

Florida Department of Transportation v. JWC Corporation and Department of Environmental Regulation, 396 So.2d 778 (Fla. 1st DCA 1981) involved the burden of proof in a petition by the Department of Transportation for a permit from DER to construct a complex source of air pollution. In this case the court upheld the standards established by Rule 17-1.59, Florida Administrative Code, for permit proceedings involving DER which provides "The person requesting the hearing, variance, license, or other relief, shall have the burden of proof to establish, by a preponderance of the evidence, entitlement to the requested license, variance, or other relief."

Bowling v. Department of Insurance, 394 So.2d 165 (Fla. 1st DCA 1981) involved a proceeding to revoke the license of an insurance agent. In retreating from the preponderance of the evidence standard without adopting the clear and convincing evidence standard, the court stated at p. 171-2:

> Although the APA does not in terms descend to such particulars, we have recognized the Act's implication that evidence 'appropriate in form' may differ from one proceeding to another depending on the 'nature of the issues involved.' Now we recognize also that in both form and persuasiveness evidence may 'substantially' support some types of agency action, yet be wanting as a record foundation for critical findings in a license revocation. So holding, we need not attempt to resurrect the pre-APA 'clear and convincing proof' standard for license revocation proceedings. Rather, we glean a requirement for more substantial evidence from the very nature of the licensee discipline proceedings: when the standards of conduct to be enforced are not explicitly fixed by a statute or rule, but depend upon such debatable expressions as 'in the applicable regular

> course of business'; when the conduct to be assessed is past, beyond the act. 's power to conform it to agency standards announced prospectively; and when the proceedings may result in the loss of a valuable business or professional license, the critical matters in issue must be shown by evidence which is indubitably as 'substantial' as the consequences.

The United States Supreme Court has approached the burden of proof standards as a constitutional due process issue.

Addington v. Texas, 441 U.S. 426, 99 S.Ct. 1804 (1979) involved the standard of proof required to commit an individual involuntarily for an indefinite period to a state mental hospital. The court stated at p. 1808:

> The function of standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks it should have in the correctness of factual conclusions for a particular type of adjudication.' In re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 1076, 25 L.Ed. 2d 368 (1970) (J. Harlan concurring). The standards serve to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.
>
> Generally speaking, the evolution of this area of the law has produced [illegible] a continuum three standards or levels of proof for different types of cases. At one end of the spectrum is the typical civil case involving a monetary dispute between private parties. Since society has a minimum concern with the outcome of such private suits, plaintiff's burden of proof is a mere preponderance of the evidence. The litigants thus share the risk of error in roughly equal fashion.
>
> In a criminal case, on the other hand, the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment. In the administration of criminal justice, our society

> imposes almost the entire risk of error upon itself. This is accomplished by requiring under the Due Process Clause that the state prove the guilt of an accused beyond a reasonable doubt. In re Winship, supra.
>
> The intermediate standard, which usually employs some combination of the words 'clear,' 'cogent,' 'unequivocal,' and 'convincing,' is less commonly used, but nonetheless is 'no stranger to the civil law.' Woodby v. INS, 385 U.S. 276, 285, 87 S.Ct. 483, 488, 17 L.Ed. 362 (1966). See also, McCormick, Evidence §320 (1954); 9 J. Wigmore, Evidence §2498 (3rd ed. 1940). One typical use of the standard is in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant. The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having reputation tarnished erroneously by increasing the plaintiff's burden of proof. Similarly, this Court has used the 'clear, unequivocal and convincing' standard of proof to protect particularly important individual interests in various civil cases. See, e.g., Woodby v. INS, supra, at 285, 87 S.Ct. at 487 (deportation); Chaunt v. United States, 364 U.S. 350, 353, 81 S.Ct. 147, 149, 5 L.Ed. 2d 120 (1960) (denaturalization); Schneiderman v. United States, 320 U.S. 118, 125, 159, 63 S.Ct. 1333, 1336, 1357, 87 L.Ed. 1796 (1943) (denaturalization).

After noting the function of the legal process is to minimize the risk of erroneous decisions; that commitment for mental illness constitutes a significant deprivation that requires due process protection; that the state has a legitimate interest in providing care to its citizens unable because of emotional disorders to care for themselves; and that the state also has the authority under its police powers to protect the community from dangerous tendencies of the mentally ill, the court in Addington v. Texas, supra, concluded the middle ground between preponderance of the evidence and beyond a reasonable doubt, viz, "clear and convincing" evidence was required to meet the due process guarantees. Similarly, in Williams v. Williams, 424 So.2d 159 (Fla. 1st DCA 1983) the court held the standard of proof in proceedings for noncriminal involuntary confinement is clear and convincing evidence.

Santosky v. Kramer, 102 S.Ct. 1388 (1982) involved severing the rights of parents to their children upon a finding of permanent neglect. While holding that, before the state may sever completely and irrevocably rights of parents in their natural child, due process requires that the state support its allegation by at least clear and convincing evidence, the court stated at p. 1397:

> The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.' Goldberg v. Kelly, 397 U.S. 254, 262-263, quoting Joint Anti-Facist Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951) (Frankfurter, J. concurring). Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss.

License revocation cases are clearly penal in nature. Vining v. Florida Real Estate Commission, 281 So.2d 487 (Fla. 1973). Furthermore, the consequences of these proceedings can result in the loss of an occupational or professional license for which the licensee has devoted many years to acquire. This is much more than a "money judgment." In an action to revoke a professional license the risk of error from using the preponderance standard is substantial; and the countervailing state interest favoring that standard is comparatively slight. The language in Bowling, supra, above-quoted, that "when the proceeding may result in the loss of a valuable business or professional license, the critical matter in issue must be shown by evidence which is indubitably as 'substantial' as the consequences" is another way of saying what was earlier

stated in Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976), that both the risk of erroneous deprivation of private interests resulting from use of a "fair preponderance" standard and the likelihood that a higher evidentiary standard would reduce the risk must be considered, and, when so considered, the standard of proof that by its very terms demands consideration of the quantity, rather than the quality, of the evidence, may misdirect the factfinder in the marginal case. Santosky v. Kramer, supra.

The reviewing court measures the correctness of the administrative orders under review by competent and substantial evidence standard. Florida Department of Health and Rehabilitative Services v. Career Service System, supra. While that appellate standard does not change, the court in Bowling, supra, has raised the evidentiary standard at the trial level in license revocation proceedings by saying competent and substantial evidence in license revocation proceedings requires more than a preponderance of the evidence.

Addington v. Texas, supra, tells us the law has developed three standards or levels of proof for different type cases depending on the magnitude of the risk of error. Bowling holds that in license revocation proceedings "more substantial evidence" is required. Presumably, this connotes a higher standard than a mere preponderance of the evidence and less than beyond a reasonable doubt. Prior to Bowling, the only standard between these extremes that has received serious judicial attention is the "clear," "cogent," "unequivocal," and "convincing" standard. Bowling holds more substantial evidence is required in license revocation proceedings when (1) the standards of conduct to be enforced are not explicitly fixed by statute or rule, (2) when the conduct to be assessed is past, and (3) when the proceedings may

result in the loss of a valuable business or professional license. In license revocation proceedings (2) and (3) are invariably present. The finding made in this case that Respondent made deceptive, untrue, or fraudulent representations in the practice of medicine is a standard expressly fixed by statute and the Bowling test may not be applicable. Absent more judicial guidelines expanding on the meaning of the phrase "evidence which is indubitably as 'substantial' as the consequences" leaves us to wonder, as did Alice at the Mad Tea Party, whether the words used by the court mean what they say or say what they mean. From a reading of the entire case, it is concluded a standard comparable to the clear and convincing standard of proof was adopted.

However, the allegations here involve fraud and even in civil cases involving allegations of fraud, Addington, supra, stands for the proposition that due process requires a clear and convincing standard of proof. It is accordingly concluded that in this case Petitioner has the burden of proving the charges against Respondent by clear and convincing evidence.

From the foregoing it is concluded that Petitioner has proved by clear and convincing evidence that Respondent violated the provisions of Section 458.331(1)(t), Florida Statutes, as alleged and has failed to prove Respondent violated the provisions of Section 458.331(1)(i) and (t), Florida Statutes. It is

RECOMMENDED the Board of Medical Examiners enter a Final Order finding Respondent guilty of making false and fraudulent representations in the practice of medicine and that the license of Valeria A. Alsina be suspended for six (6) months.

CASE No. 83-2966

ENTERED this 17th day of January, 1984, at Tallahassee, Florida.

W. W. AYERS
Hearing Officer
Division of Administrative Hearings
Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
904/488-9675

FILED with the Clerk of the Division of Administrative Hearings this 17th day of January, 1984.

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P122

FILED
Department of Professional Regulation
BOARD CLERK
CLERK Joyce Morgan
DATE 3-14-84
EX: Legal Board

BEFORE THE BOARD OF MEDICAL EXAMINERS

DEPARTMENT OF PROFESSIONAL REGULATION,

Petitioner,

vs.

VALARIA A. ALSINA, M.D.,
License No. 18378

Respondent.

CASE NO. 83-2965

FINAL ORDER OF
THE BOARD OF MEDICAL EXAMINERS

This matter came before the Board of Medical Examiners (Board hereinafter) pursuant to Section 120.57(1)(b)9., Florida Statutes, on February 11, 1984, in Tampa, Florida, for the purpose of considering the hearing officer's Recommended Order (a copy of which is attached hereto) in the above-styled matter and the exceptions thereto filed by the Respondent. The Petitioner was represented by Joseph W. Lawrence, II, Esq. The Respondent was represented by Paul W. Lambert, Esq. After review of the Recommended Order, the Respondent's exceptions, the argument of the parties, and after a review of the complete record in this matter, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The hearing officer's findings of fact are approved and adopted in toto and are incorporated herein by reference.

2. In paragraphs number 1, 2 and 3 of her exceptions, the Respondent suggests that the hearing officer's finding that Respondent violated Section 458.331(1)(1), Florida

Statutes, is not supported by the requisite evidence and is contrary to Respondent's own testimony. Having reviewed the complete record in this matter, the Board finds competent, substantial evidence to support the hearing officer's findings. Respondent's suggestion that the Board reweigh the evidence and credibility of the witnesses is inappropriate. See, Department of Professional Regulation v. Wagner, 405 So.2d 471 (Fla. 1st DCA 1981)

3. There is competent, substantial evidence to support the Board's findings of fact.

FINDINGS OF FACT

1. The hearing officer's conclusions of law are approved and adopted in toto and are incorporated herein by reference.

2. The Petitioner maintains that the hearing officer inadvertently failed to make a recommendation as to whether Respondent violated Section 458.331(1)(o), Florida Statutes, as charged in the Amended Administrative Complaint and argues that the factual findings support the determination that Respondent is guilty of the charges. Having reviewed the complete record, the Board concludes that the findings of fact demonstrate that Petitioner did violate Section 458.331(1)(o), Florida Statutes, as charged in the Amended Administrative Complaint.

3. Paragraph 4 of Respondent's exceptions is rejected as being without merit.

4. There is competent, substantial evidence to support the Board's conclusions of law.

5. The hearing officer's recommendation is accepted in part and rejected in part.

WHEREFORE, it is ORDERED AND ADJUDGED that the Respondent is found guilty of violating Section 458.331(1)(l) and (o), Florida Statutes, as charged in the Amended Administrative

Complaint. The Respondent is reprimanded and she is assessed an administrative fine in the amount of two thousand dollars ($2,000.00). The Respondent is placed on probation for a period of five (5) years, beginning the effective date of this Order, and her probation is subject to the following terms and conditions:

a. Successful completion of fifty (50) hours of AMA Category I continuing medical education during each year of her probation.

b. One hundred (100) hours of community medical services to be provided at community or charitable institutions within the first two (2) years of her probation.

c. Semi-annual appearances before the Board.[1/]

This Order becomes effective upon filing.

DONE AND ORDERED this 14th day of March, 1984.

J. Darrell Shea MD

Darrell J. Shea, M.D.
Vice-Chairman
Board of Medical Examiners

cc: All Counsel of Record
Valaria A. Alsina, M.D.

1/ In the presence of her counsel Respondent knowingly and voluntarily waived confidentiality, as to the Board only, of any investigative reports prepared during the term of her probation.