

DA

Final Order No. DOH-05-1356-FOI-MOA
FILED DATE - 8-22-05

STATE OF FLORIDA
BOARD OF MEDICINE

Department of Health
By: Shirish McKinnon
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-10214

LICENSE NO.: ME0048943

ALFRED E. AVERY, 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 5, 2005, in Jacksonville, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. The matter was originally referred to the Division of Administrative Hearings (DOAH) at Respondent's request for a hearing pursuant to Section 120.57(1), Florida Statutes. Upon a finding by the Administrative Law Judge (ALJ) that there were no remaining issues of fact to be determined, DOAH relinquished jurisdiction to the Board and this matter was heard pursuant to the provisions of Section 120.57(2), Florida Statutes. At the hearing, Petitioner was represented by Irving Levine, Assistant General Counsel. Respondent was not present and 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:

Respondent's license to practice medicine in the State of Florida is hereby REVOKED.

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 \$3,243.00. Said costs are to be paid within 30 days from the date this Final Order is filed.

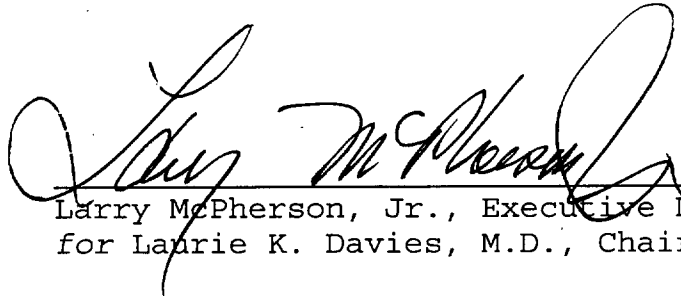
(NOTE: SEE ATTACHMENT "A" FOR STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE STANDARD TERMS SET FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

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

DONE AND ORDERED this 19 day of AUGUST,

2005.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Laurie K. Davies, 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 ALFRED E. AVERY, M.D., 2900 12th Avenue North, Suite 340, Billings, Montana 59101; or 3530 Timberline Drive, Billings, Montana 59102; to the State of Montana, Board of Medical Examiners, c/o Jeannie Worsch, Executive Director, P.O. Box 200513, Helena, Montana 59620-0513; and by interoffice delivery to Denise O'Brien and

Dana Baird, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 22 day of August, 2005.

Sarah Ashery

F:\Users\ADMIN\NANCY\MED\ORD\August-2005\AveryINF.wpd

Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-10214

ALFRED E. AVERY, 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, Alfred E. Avery, 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 48943.

3. Respondent's address of record is 2900 – 12th Avenue North, #340, Billings, Montana 59101.

4. Respondent is board certified in psychiatry.

5. The Professionals Recovery Network (PRN) is the impaired practitioners program for the Board of Medicine, pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care, and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between the treatment providers, PRN, and the Department for the protection of the public.

6. The Medical Director of PRN is a Board-certified psychiatrist and addictionologist, and is charged with responsibility for the oversight of the program and documentation of compliance and noncompliance with PRN monitoring contracts.

7. In or about March of 2000, co-workers at Fisherman's Hospital in Marathon, Florida reported to PRN that Respondent appeared confused and glassy-eyed, that he regularly disappeared from his department for 20-30 minutes at a time, and that on several instances Respondent's department could not account for some Demerol.

8. Demerol, which contains meperidine hydrochloride, is a schedule II controlled substance pursuant to Chapter 893, Florida Statutes. A substance in schedule II has a high potential for abuse and has a currently accepted, but severely restricted medical use in treatment. Abuse of a schedule II controlled substance may lead to severe psychological or physical dependence. Demerol is used for the relief of moderate to severe pain.

9. Respondent agreed to submit to a PRN approved evaluation by a board-approved psychiatrist.

10. During the evaluation, Respondent admitted to self-injecting Demerol on two (2) occasions, and to occasional use of OxyContin. Respondent was diagnosed with substance abuse. During the evaluation, Respondent was asked to undergo a hair drug screen test but he refused. The evaluator recommended that Respondent enter into an intensive outpatient treatment program and a monitoring agreement with PRN.

11. On or about May 4, 2000, Respondent entered into a five-year monitoring contract with PRN in which he agreed to submit to periodic drug tests, regularly attend Alcoholics Anonymous meetings and obtain outpatient treatment. In November of 2000, Respondent completed the

outpatient treatment.

12. According to PRN, Respondent's compliance with his PRN contract between May 2000 and January 2002 was marginal in that he regularly failed to return PRN telephone calls and failed to attend several mandatory PRN group sessions.

13. Between August of 1999 and September of 2001, Respondent's privileges at Fisherman's Hospital were suspended on several occasions due to Respondent's repeated delay in preparing medical records, failure to document required patient visits, and failure to timely complete progress notes. Except for the September 2001 suspension that was permanent, each previous time that the hospital suspended Respondent's privileges, he was subsequently reinstated.

14. In January 2002, Respondent indicated to his PRN group facilitator that he would be moving to Montana. Respondent did not provide PRN with a forwarding address and did not coordinate with PRN to obtain replacement monitoring in Montana. Following this, PRN lost contact with Respondent. PRN's several telephone calls and letters to Respondent during this timeframe went unanswered.

15. Unknown to PRN, in September of 2001, Respondent applied

for a medical license in Oklahoma. The Application for Licensure in Oklahoma asked Respondent, "Have you ever been denied, or had removed or suspended, hospital or staff privileges?" Respondent answered the question, "No." On September 14, 2001, Respondent signed and submitted the above-described application for licensure in Oklahoma.

16. In December of 2001, Respondent was granted a temporary license to practice medicine in Oklahoma and on or about March 24, 2002, Respondent was granted a full license to practice medicine based on the information provided by Respondent in his application.

17. In January of 2002, Respondent began working for Hillcrest Medical Center in Tulsa, Oklahoma.

18. In September of 2002, staff at the Hillcrest Medical Center raised concerns about Respondent's possible diversion of Demerol, Fentanyl, and Versed. The Center conducted an audit of patient charts and hospital pharmacy records and found that eleven 50-mg. vials of Demerol had been checked out by Respondent but not documented as administered to a patient. The audit also revealed that twelve 100 mcg. Fentanyl ampoules had been checked out by Respondent's nurse for administration by him, but were not documented as administered to a patient, and that in

four instances Respondent administered Versed without properly documenting that he disposed of or wasted unused amounts of the drug.

19. Fentanyl is listed as a schedule II controlled substance in Chapter 893, Florida Statutes. Fentanyl is a potent opioid analgesic and is used as a sedative during surgery or to treat moderate to severe pain. A substance in schedule II has a high potential for abuse and may lead to severe psychological or physical dependence similar to morphine.

20. Versed (midazolam) is a benzodiazepine and is listed as a schedule IV controlled substance in Chapter 893, Florida Statutes. Versed is a short-acting central nervous system (CNS) depressant and is used intravenously or intramuscularly as a pre-operative sedative.

21. In September of 2002, an employee at a clinic affiliated with Hillcrest Medical Center accused Respondent of diverting drugs. In response to the accusation, the administrator of the clinic asked Respondent to submit to a drug test, which Respondent refused. Thereupon, Hillcrest Medical Center revoked Respondent's staff membership and clinical privileges.

22. In February of 2003, the Oklahoma State Board of Medical Licensure and Supervision filed a Complaint against Respondent and

charged him with unprofessional conduct in that he habitually used habit forming drugs in violation of state law, engaged in dishonorable or immoral conduct which was likely to deceive, defraud, or harm the public, was unable to practice with reasonable skill and safety to patients, purchased or prescribed a regulated substance for the physician's personal use, failed to keep accurate records of purchase and disposal of controlled drugs, engaged in fraud or misrepresentation in applying for and procuring a medical license, and violated state and federal laws relating to controlled substances.

23. On or about November 20, 2003, the Oklahoma State Board of Medical Licensure and Supervision entered a Final Order of Revocation of Respondent's license to practice medicine in Oklahoma. As of this date, Respondent has not reported the disciplinary action taken against his Oklahoma license by the Oklahoma Board of Medicine to the Florida Board of Medicine.

COUNT ONE

24. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

25. Section 458.331(1)(b), Florida Statutes (2003), subjects a physician to discipline for 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, including its agencies or subdivisions.

26. Respondent is subject to discipline because in November of 2003, the Oklahoma Board of Medical Licensure and Supervision revoked Respondent's license to practice medicine in the state of Oklahoma.

27. Based on the foregoing, Respondent has violated Section 458.331(1)(b), Florida Statutes (2003), for 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, including its agencies or subdivisions.

COUNT TWO

28. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

29. Section 458.331(1)(kk), Florida Statutes (2003), subjects a physician to discipline for failing to report to the Florida Board of Medicine,

in writing, within 30 days if action as defined in paragraph 458.331(1)(b) has been taken against one's license to practice medicine in another state, territory, or country.

30. Respondent failed to report to the Florida Board of Medicine, in writing, within 30 days that in November of 2003, the Oklahoma Board of Medical Licensure and Supervision revoked Respondent's license to practice medicine in the state of Oklahoma.

31. Based on the foregoing, Respondent has violated Section 458.331(1)(kk), Florida Statutes (2003), for failing to report to the Florida Board of Medicine, in writing, within 30 days if action as defined in paragraph 458.331(1)(b) has been taken against one's license to practice medicine in another state, territory, or country.

COUNT THREE

32. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

33. Section 458.331(1)(s), Florida Statutes (2003), sets forth grounds for disciplinary action by the Board of Medicine for being unable to practice medicine with reasonable skill and safety to patients by reason of

illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

34. Respondent is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition, in one or more of the following ways: a) by co-workers reporting to PRN that Respondent appeared confused and glassy-eyed, that he regularly disappeared from his department for 20-30 minutes at a time, and that on several instances Respondent's department could not account for some Demerol, b) by failing to or inadequately complying with the requirements set forth by the PRN contract, c) by admitting to self-injecting Demerol on two (2) occasions, and to occasional use of OxyContin, d) by moving to Montana and not providing PRN with a forwarding address, not coordinating with PRN to obtain replacement monitoring in Montana and not responding to PRN's several telephone calls and letters, and/or e) by diverting Demerol, Fentanyl, and Versed from the Hillcrest Medical Center and refusing to submit to a drug test.

35. Based on the foregoing, Respondent has violated Section 458.331(1)(s), Florida Statutes (2003), by being unable to practice medicine

with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

COUNT FOUR

36. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

37. Section 458.331(1)(q), Florida Statutes (2003), provides that prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice constitutes grounds for disciplinary action by the Board of Medicine. For the purposes of paragraph 458.331(1)(q), it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and not in the course of the physician's professional practice, without regard to his or her intent.

38. Respondent prescribed, dispensed, administered, mixed, or otherwise prepared a legend drug, including any controlled substance, other than in the course of the physician's professional practice in one or more of

the following ways: a) by admitting to self-injecting Demerol on two (2) occasions, and to occasional use of OxyContin, and/or b) by diverting Demerol, Fentanyl, and Versed from the Hillcrest Medical Center and refusing to submit to a drug test.

39. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2003), by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

COUNT FIVE

40. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

41. Section 458.331(1)(r), Florida Statutes (2003), subjects a physician to discipline for prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the prescribing physician to himself.

42. Respondent prescribed, dispensed, or administered medicinal drug appearing on any schedule set forth in chapter 893 to himself in one or more of the following ways; a) by admitting to self-injecting Demerol on two

(2) occasions, and to occasional use of OxyContin, and/or b) by diverting Demerol, Fentanyl, and Versed from the Hillcrest Medical Center and refusing to submit to a drug test.

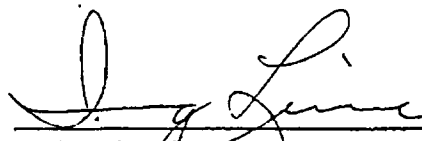
43. Based on the foregoing, Respondent violated Section 458.331(1)(r), Florida Statutes (2003), by prescribing, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893 by the prescribing physician to himself.

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 25th day of May, 2004.

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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Heather Coleman*
DATE 5-26-04


Irving Levine
Assistant General Counsel
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar # 0822957
(850) 414-8126
(850) 414-1989 fax

Reviewed and approved by: mi (initials) 5/4/04 (date)

PCP: May 21, 2004

PCP Members: El-Bahri, Miguel

Dr. Avery, Case 2004-10214

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 *Neetha Coleman*
DATE 6-13-05

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2004-10214

ALFRED E. AVERY, 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), states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, 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 \$3,243.00. Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$3,243.00, 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 \$3,243.00 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 \$3,243.00.

DATED this 13th day of June, 2005.

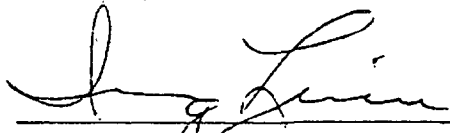
Respectfully submitted,



Irving Levine
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0822957
(850) 414-8126
(850) 488-7723 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via: postage-paid U.S. Mail, Hand-Delivery, E-mail and/or Facsimile Transmission to Alfred E. Avery, M.D. at 3530 Timberline Drive, Billings, Montana 59102, this 13th day of June, 2005.



Irving Levine
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 1580 Waldo Palmer Lane, Tallahassee, Florida 32308.
- 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 2004-10214 (Department of Health v. Alfred E. Avery, M.D.) are Three thousand two hundred forty-three dollars and zero cents (\$3,243.00).
- 6) The costs for DOH case number 2004-10214 (Department of Health v. Alfred E. Avery, 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 2004-10214 (Department of Health v. Alfred E. Avery, 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
James R. Cooksey, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 10 day of June, 2005,
by James R. Cooksey, who is personally known to me.

Mary R. Wilson
Notary Signature



MARY R. WILSON
MY COMMISSION # DD 313854
EXPIRES: June 7, 2008
Providing The Highest Quality Notary Services

Name of Notary Printed

Stamp Commissioned Name of Notary Public:

Complaint Cost Summary

Complaint Number: 200410214

Complainant's Name: AMERICAN MEDICAL ASSOC.
Subject's Name: AVERY, ALFRED ESTIN

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.50	\$24.83
Investigation:	2.10	\$103.91
Legal:	37.00	\$3,104.36
	*****	*****
Sub Total:	39.60	\$3,233.10
Expenses to Date:		\$9.90
Prior Amount:		\$0.00
Total Costs to Date:		\$3,243.00



Time Tracking Report

Itemized Cost by Complaint

Complaint 200410214

Report Date: 06/09/2005

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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BUREAU OF CONSUMER COMPLAINTS

HA38	0.30	\$49.66	\$14.90	03/18/2004	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA38	0.20	\$49.66	\$9.93	03/18/2004	36	PREPARATION OR REVISION OF LETTER
HA38	0.30	\$49.66	\$14.90	03/26/2004	4	ROUTINE INVESTIGATIVE WORK
HA38	0.60	\$49.66	\$29.80	04/13/2004	4	ROUTINE INVESTIGATIVE WORK
HA38	1.00	\$49.66	\$49.66	04/15/2004	77	PREPARATION OF DESK INVESTIGATION SYNOPSIS
HA31	0.20	\$47.73	\$9.55	06/07/2004	4	ROUTINE INVESTIGATIVE WORK
Sub Total	2.60		\$128.74			

BUREAU OF LEGAL SERVICES

HLL12A	3.00	\$100.00	\$300.00	04/21/2004	25	REVIEW CASE FILE
HLL12A	2.50	\$100.00	\$250.00	04/22/2004	85	MEDIATING COMPLAINT
HLL12A	0.30	\$100.00	\$30.00	04/22/2004	35	TELEPHONE CALLS
HLL12A	2.50	\$100.00	\$250.00	04/26/2004	85	MEDIATING COMPLAINT
HLL18A	0.80	\$70.83	\$56.66	04/27/2004	81	ESO/ERO
HLL10A	0.50	\$76.76	\$38.38	05/03/2004	25	REVIEW CASE FILE
HLL10A	0.80	\$76.76	\$61.41	05/03/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL10A	2.50	\$76.76	\$191.90	05/04/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL10A	0.20	\$76.76	\$15.35	07/06/2004	41	REVIEW PLEADING
HLL10A	0.20	\$76.76	\$15.35	07/07/2004	41	REVIEW PLEADING
HLL10A	0.20	\$76.76	\$15.35	08/09/2004	35	TELEPHONE CALLS
HLL10A	0.20	\$76.76	\$15.35	10/28/2004	35	TELEPHONE CALLS
HLL10A	0.40	\$76.76	\$30.70	10/28/2004	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN O
HLL10A	0.40	\$76.76	\$30.70	11/18/2004	36	PREPARATION OR REVISION OF LETTER
HLL10A	0.20	\$76.76	\$15.35	12/29/2004	35	TELEPHONE CALLS



Time Tracking Report

Itemized Cost by Complaint

Complaint 200410214

Report Date: 06/09/2005

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL10A	0.40	\$76.76	\$30.70	01/18/2005	36	PREPARATION OR REVISION OF LETTER
HLL10A	0.40	\$80.81	\$32.32	02/22/2005	36	PREPARATION OR REVISION OF LETTER
HLL22B	0.80	\$73.40	\$58.72	02/24/2005	25	REVIEW CASE FILE
HLL22B	0.60	\$73.40	\$44.04	02/24/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN O
HLL22B	0.30	\$73.40	\$22.02	02/24/2005	26	PREPARE OR REVISE MEMORANDUM
HLL10A	1.20	\$80.81	\$96.97	02/25/2005	47	TRIAL PREPARATION
HLL10A	1.30	\$80.81	\$105.05	02/28/2005	47	TRIAL PREPARATION
HLL10A	0.70	\$80.81	\$56.57	03/01/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	03/02/2005	47	TRIAL PREPARATION
HLL10A	0.30	\$80.81	\$24.24	03/03/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN O
HLL10A	0.20	\$80.81	\$16.16	03/03/2005	47	TRIAL PREPARATION
HLL10A	0.20	\$80.81	\$16.16	03/04/2005	47	TRIAL PREPARATION
HLL10A	0.30	\$80.81	\$24.24	03/11/2005	47	TRIAL PREPARATION
HLL10A	0.30	\$80.81	\$24.24	03/14/2005	47	TRIAL PREPARATION
HLL10A	0.30	\$80.81	\$24.24	04/04/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	04/13/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	04/19/2005	45	PREHEARING MOTION/CONFERENCE CALL
HLL10A	0.50	\$80.81	\$40.41	04/19/2005	47	TRIAL PREPARATION
HLL10A	1.20	\$80.81	\$96.97	04/20/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	04/28/2005	36	PREPARATION OR REVISION OF LETTER
HLL10A	0.50	\$80.81	\$40.41	04/28/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN O
HLL10A	0.60	\$80.81	\$48.49	05/02/2005	46	LEGAL RESEARCH
HLL10A	0.30	\$80.81	\$24.24	05/02/2005	47	TRIAL PREPARATION
HLL10A	1.30	\$80.81	\$105.05	05/06/2005	47	TRIAL PREPARATION
HLL10A	2.30	\$80.81	\$185.86	05/09/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL10A	2.20	\$80.81	\$177.78	05/23/2005	47	TRIAL PREPARATION
HLL10A	0.30	\$80.81	\$24.24	05/26/2005	35	TELEPHONE CALLS



Time Tracking Report
Itemized Cost by Complaint
Complaint 200410214

Report Date: 06/09/2005

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL10A	0.20	\$80.81	\$16.16	05/26/2005	41	REVIEW PLEADING
HLL10A	0.50	\$80.81	\$40.41	05/27/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	05/27/2005	35	TELEPHONE CALLS
HLL10A	0.50	\$80.81	\$40.41	05/31/2005	47	TRIAL PREPARATION
HLL10A	0.50	\$80.81	\$40.41	06/06/2005	47	TRIAL PREPARATION
HLL10A	1.60	\$80.81	\$129.30	06/06/2005	40	PREPARATION OF OR REVISION OF A PLEADING
Sub Total	37.00		\$3,104.36			

Total Cost	39.60	\$3,233.10
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Time Tracking Report
Itemized Expense by Complaint
Complaint 200410214

Report Date: 06/09/2005

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
BUREAU OF LEGAL SERVICES				
HLJ.5A	05/24/2004	\$9.90	133104	ADVERTISING - LEGAL
	SubTotal	\$9.90		
	Total Expenses	\$9.90		

ATTACHMENT A
STANDARD TERMS APPLICABLE TO ALL FINAL ORDERS

The following are the standard terms applicable to all Final Orders, including supervision and monitoring provisions applicable to licensees on probation.

A. COMPLIANCE WITH STATE AND FEDERAL LAWS AND RULES.

Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 456, 458, 893, Florida Statutes, and Rule Chapter 64B8, Florida Administrative Code. If Respondent is subject to criminal probation, Respondent shall comply with all terms and conditions of said criminal probation.

B. PAYMENT OF FINES AND COSTS. Unless otherwise directed by Final Order, all fines and costs shall be paid by check or money order made payable to the Board and sent to DOH/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, **WITHIN 30 DAYS OF THE FILING OF THE FINAL ORDER.** The Board/Compliance office does NOT have the authority to change the terms of payment of any fine imposed by the Board.

C. ADDRESSES. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Compliance Office, **in writing, within 10 days** of any changes of those addresses. Furthermore, if the Respondent's license is on probation, the Respondent

shall notify the Compliance Office **within 10 days** in the event that Respondent leaves the active practice of medicine in Florida.

D. COMPLIANCE ADDRESS. Unless otherwise directed, all reports, correspondence and inquiries shall be sent to: **DOH, Client Services Unit, 4052 Bald Cypress Way, Bin #C01, Tallahassee, Florida 32399-3251, Attn: Medical Compliance Officer.**

E. CONTINUITY OF PRACTICE

1. TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of the requirements in the Final Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida. **Respondent shall notify the Compliance Officer 10 days prior to his/her return to practice in the State of Florida.** Unless otherwise set forth in the Final Order, **the following requirements and only the following requirements** shall be tolled until the Respondent returns to active practice:

- a.** The time period of probation shall be tolled.
- b.** The provisions regarding supervision whether direct or indirect by the monitor/supervisor, and required reports from the monitor/supervisor shall be tolled.
- c.** The requirement for quality assurance review of Respondent's practice shall be tolled.

d. Any provisions regarding community service shall be tolled.

e. Any requirements regarding lectures on the subject of wrong-site surgery.

2. ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Respondent may be required to appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety to patients prior to resuming the practice of medicine in the State of Florida.**F.**

COMMUNITY SERVICE AND CONTINUING EDUCATION UNITS.

Unless otherwise directed by Final Order, all community service requirements, continuing education units/courses must be completed, and documentation of such completion submitted to DOH/Client Services, at the address set forth in paragraph D., **WITHIN ONE YEAR OF THE DATE OF THE FINAL ORDER.**

1. DEFINITION OF COMMUNITY SERVICE. "Community service" shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services to an entity which is exempt from federal taxation under 26 U.S.C. s. 501(c)(3), without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting.

2. CONTINUING EDUCATION. Continuing education imposed by Final Order shall be in addition to those hours required for biennial renewal of licensure. Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

G. PROBATION TERMS. If probation was imposed by the Final Order, the following provisions are applicable.

1. DEFINITIONS:

a. INDIRECT SUPERVISION is supervision by a monitoring physician (monitor), as set forth in the Final Order, whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as the Respondent. However, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise approved by the Board and shall be readily available for consultation. The monitor shall be board-certified in the Respondent's specialty area unless otherwise approved by the Board or its designee.

b. DIRECT SUPERVISION is supervision by a supervising physician (supervisor), as set forth in the Final Order, whose responsibilities are set by the Board. Direct supervision requires that the supervisor and Respondent work in the same office. The supervisor shall be board-certified in the Respondent's specialty area unless otherwise approved by the Board or its

designee.

c. PROBATION COMMITTEE or "Committee" are members of the Board of Medicine designated by the Chair of the Board to serve as the Probation Committee.

2. REQUIRED SUPERVISION.

a. If the terms of the Final Order include indirect monitoring of the licensee's practice (monitoring) or direct monitoring of the licensee's practice (supervision), the **Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Final Order, unless otherwise ordered by the Board.**

b. The monitor/supervisor must be licensed under Chapter 458, Florida Statutes, in good standing, and without restriction or limitation on his/her license. In addition, the Board or Committee may reject any proposed monitor/supervisor on the basis that he/she has previously been subject to any disciplinary action against his/her medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise approved by the Board or Committee and be practicing within a reasonable distance of the Respondent's practice, a distance of no more than 20 miles unless otherwise specifically provided for in the Final Order. The monitor/supervisor must not be a relative

or employee of the Respondent. The Board, Committee or designee may also reject any proposed monitor/supervisor for good cause shown.

3. TEMPORARY APPROVAL. The Board confers authority on the Chair of the Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Compliance Officer the name and curriculum vitae of the proposed monitor/supervisor. This information shall be furnished to the Chair of the Probation Committee by way of the Compliance Officer, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Compliance Officer at (850) 414-0864, or may be sent by overnight mail to the Compliance address as set forth in paragraph D. above. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chair of the Probation Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then

Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.

4. FORMAL APPROVAL. Respondent shall have the monitor/supervisor with him/her at the first probation appearance before the Probation Committee. Prior to consideration of the monitor/supervisor by the Committee, the Respondent shall provide the monitor/supervisor a copy of the Administrative Complaint and the Final Order in this case.

Respondent shall submit a current curriculum vitae, a description of current practice, and a letter agreeing to serve from the proposed monitor/supervisor to the Compliance Officer no later than 21 ~~fourteen~~ days before the Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such times as directed by the Committee. It shall be the Respondent's responsibility to ensure the appearance of his/her monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a violation of the terms of the Final Order

and may subject the Respondent to additional disciplinary action.

5. CHANGE IN MONITOR/SUPERVISOR. In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill his/her responsibilities as a monitor/supervisor as described above, the Respondent shall immediately advise the Compliance Office of this fact. Respondent shall immediately submit to the Compliance Office the name of a temporary monitor/supervisor for consideration. **Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chair of the Probation Committee.** Furthermore, Respondent shall make arrangements with his/her temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Committee. Respondent shall only practice under the supervision of the temporary monitor/supervisor (approved by the Chair) until the next regularly scheduled meeting of the Probation Committee whereat the issue of the Committee's approval of the Respondent's new monitor/supervisor shall be addressed.

6. REPORTS.

a. If directed by Final Order, probation reports, in affidavit form, shall be submitted by the Respondent and shall contain the following:

- (1) Brief statement of why physician is on probation.

- (2) Practice location.
- (3) Describe current practice (type and composition).
- (4) Brief statement of compliance with probationary terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Compliance Officer of any problems including office incident reports filed; loss or restriction of hospital staff privileges; loss or restriction of DEA registration; or any Medicare/Medicaid program exclusions, restrictions or limitations.

b. MONITOR/SUPERVISOR REPORTS. If directed by Final Order, monitor/supervisor reports, in affidavit form shall include the following:

- (1) Brief statement of why physician is on probation.
- (2) Description of probationer's practice.
- (3) Brief statement of probationer's compliance with terms of probation.
- (4) Brief description of probationer's relationship with monitoring physician.
- (5) Detail any problems which may have arisen with probationer.

7. INVESTIGATIVE REPORTS. Respondent understands that during the period of probation, at a minimum, semi-annual investigative reports will be compiled with the Department of Health concerning compliance with the terms and conditions of probation and the

license shall apply. Renewal of a suspended license during the period of suspension shall not affect the suspension of the license and the suspension shall continue until all requirements for reinstatement have been met.

- I. **RETURN OF LICENSE.** Any Final Order which suspends a license, revokes a license, or accepts a Respondent's offer to voluntarily relinquish his/her license shall require the Respondent to **return the license to the Department within 30 days from the date the Final Order is filed.** This shall not apply to instances where the Board or a court has granted the Respondent a stay of the suspension.

REVISED 5/05

rules and statutes regulating the practice of medicine.

8. COSTS OF COMPLIANCE. Respondent shall pay all costs necessary to comply with the terms of the Final Order. Such costs include, but are not limited to, the costs of preparation of the investigative reports detailing compliance with the terms of the Final Order, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

9. SUPERVISION OF PHYSICIAN ASSISTANTS AND/OR

ANESTHESIOLOGIST ASSISTANTS. Respondent is required to notify, in writing, any physician assistant and/or anesthesiologist assistant which the Probationer supervises, of his or her probationary status. A copy of said written notification(s) shall be submitted to the Board's Compliance Officer **within 10 days of entry of the Final Order.**

H. SUSPENSION. In the event that a Respondent's license expires during the period that the license is suspended, this action shall not relieve the Respondent of the responsibility to renew the license at the end of each licensure period. If the Respondent fails to renew the license at the end of any licensure period, all normal conditions and consequences imposed by statute or rule of the Board for failure to timely and properly renew a