

DEPARTMENT OF HEALTH, BOARD OF MEDICINE

FINAL ORDER FACT SHEET

1. Respondent's/Petitioner's/Applicant's Name: JAMES P. WEINER, M.D.
2. License Number: ME0076902
3. Profession Type: Physician
4. Type of Order: X Discipline Licensure Declaratory Statement
5. DOH Case Number: 2004-11974
6. DOAH Case Numbers: 05-2648PL
7. Statutory reference for Violations/Reasons for Denial: 456.072(1)(aa), F.S.
8. Violation Codes: 100
9. Penalties Imposed: \$1,000 fine; 25 hours community service; 5 hours CME in risk management; letter of concern.
10. Costs Imposed: \$12,379.89
11. Closure code: 4050
12. Exhibits to be Attached to Final Order:
 - a. Administrative Complaint X ✓
 - b. Consent Agreement/Stipulation
 - c. Recommended Order X ✓
Exceptions: Petitioner's Respondent's X ✓
Resp. To Exceptions: Petitioner's X ✓ Respondent's
 - d. Motions (Specify) Motion to Assess Costs ✓
 - e. Other (Specify) _____
13. Special Handling Instructions _____
14. Fact Sheet Prepared By: Nancy Murphy
15. Codes Added to Fact Sheet By: Alan Weiner
16. Exhibits Attached to Final Order By: Alan Weiner

By: Theresa Melton
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-11974

DOAH CASE NO.: 05-2648PL

LICENSE NO.: ME0076902

JAMES P. WEINER, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on June 2, 2006, in Orlando, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Exceptions to the Recommended Order, and (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by John Terrel, Assistant General Counsel. Respondent was present and was represented by Sean Ellsworth, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

RULINGS ON EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions and the Petitioner's Response to the Respondent's Exceptions and denied the Exceptions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be REJECTED. The Board finds mitigating circumstances in this matter; specifically: this is a first-time offense for this physician; Respondent has demonstrated a distinguished medical career; Respondent is Board-certified; and has a demonstrated a distinguished medical career.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent shall pay an administrative fine in the amount of \$1,000 to the Board within 30 days from the date this Final Order is filed.

2. Within one (1) year from the date this Final Order is filed, Respondent shall document the completion of 25 hours of community service. Community service shall be provided without fee or cost to the person or entity benefitting from the service, for the good of the people of the State of Florida. A community service plan must be pre-approved by the Board's Probationer's Committee. Affidavits detailing the completion of community service requirements shall be filed with the Board's Probationer's Committee.

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

4. Respondent shall be and is hereby issued a letter of concern by the Board.

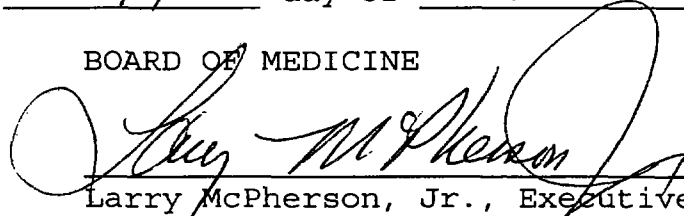
RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$12,379.89. Said costs are to be paid within 30 days from the date this Final Order is filed.

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

DONE AND ORDERED this 19 day of JUNE, 2006.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for MAMMEN P. ZACHARIAH, M.D., Chair

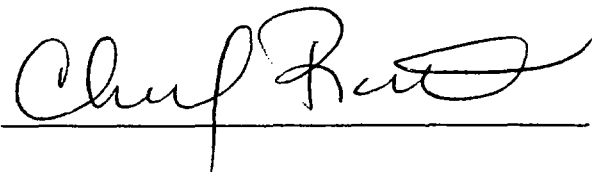
NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JAMES P. WEINER, M.D., 12700 Creekside Lane, #301, Ft. Myers, Florida 33919; to Sean Ellsworth, Esquire, 404 Washington Avenue, Suite 750, Miami Beach, Florida 33139; to Susan B. Harrell, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; 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 30th day of
June, 2006.



Deputy Agency Clerk

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-11974

JAMES P. WEINER, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, James P. Weiner, 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 ME76902.

3. Respondent's address of record is 12700 Creekside Lane, # 101, Ft. Myers, Florida 33919.

4. Respondent is board certified in Anesthesiology.

5. On or about January 29, 2004, Patient S.M., a fifty-nine (59) year old male presented to Respondent for a regular office visit for his chronic low back pain.

6. Patient S.M. reported to Respondent that he had been doing very well with increased mobility and reduced pain until the day before the appointment when S.M. twisted his back and suffered weakness in his left leg.

7. Respondent recommended that Patient S.M. undergo a radiofrequency ablation of the left L4, L5, S1 and S2.

8. Radiofrequency ablation uses high frequency, temperature controlled destruction of specific nerve(s) to relieve pain.

9. Respondent's office arranged for the treatment to be on February 19, 2004 at the Center for Digestive Health and Pain Management (hereinafter Center).

10. On or about February 19, 2004, Respondent arrived at the Center prior to any of his scheduled patients to review the procedures for that day.

11. Respondent reviewed Patient S.M.'s scheduled procedure along with the consent form and the procedure dictation templates placed at the Center.

12. Patient S.M. arrived at the Center and discussed the procedure with Respondent.

13. Patient S.M. signed a consent form at the Center authorizing Respondent to perform a "FLUOROSCOPIC EPIDURAL STEROID INJECTION, RACZ TECHNIQUE, CAUDAL APPROACH."

14. The Epidural Steroid Injection, Racz Technique uses a caudal or transforaminal approach, a catheter is placed and medication is injected to break up scar tissue.

15. Patient S.M. was prepped and given the appropriate anesthesia.

16. Respondent inserted an epidural needle into the anesthetized area and confirmed its proper placement through fluoroscopy. A catheter was then attached.

17. Respondent stopped the procedure and ordered Patient S.M.'s full medical records be brought to the Center.

18. Respondent then reviewed S.M.'s medical records and discovered that S.M. was scheduled for a RACZ procedure by the administrative staff.

19. Respondent removed the needle from Patient S.M., placed a band-aid on the site, transferred S.M. to the recovery room, and later advised S.M. of the sequence of events.

20. Section 456.072(1)(aa) Florida Statutes (2003), subjects a licensee to discipline for performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition

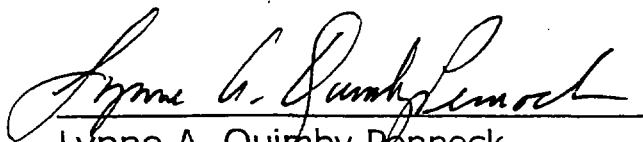
21. Respondent performed the wrong procedure on Patient S.M. when he inserted the epidural needle into Patient S.M.

22. Based on the foregoing, Respondent has violated Section 456.072 (1)(aa), Florida Statutes (2003), by performing the wrong surgical procedure on Patient S.M.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of 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 26th day of April, 2005.

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



Lynne A. Quimby-Pennock
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0394572
850.410.0623
850.488.7723 FAX

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE 4-27-05

LAQP

Reviewed and approved by: cy (initials) 2/15/05 (date)

PCP: April 22, 2005

PCP Members: El-Bahri, Patrowicz, Dyches

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
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 05-2648PL
)
JAMES P. WEINER, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 11, 2006, via video teleconference with sites in Fort Myers and Tallahassee, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lynne A. Quimby-Pennock, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Sean M. Ellsworth, Esquire
Ellsworth Law Firm, P.A.
404 Washington Avenue, Suite 750
Miami Beach, Florida 33139

STATEMENT OF THE ISSUES

Whether Respondent violated Subsection 456.072(1)(aa), Florida Statutes (2003),¹ and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On April 26, 2005, Petitioner, Department of Health, Board of Medicine (Department), filed an Administrative Complaint against Respondent, James P. Weiner, M.D. (Dr. Weiner), alleging that he violated Subsection 456.072(1)(aa), Florida Statutes. Dr. Weiner requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 26, 2005, for assignment to an administrative law judge.

On September 6, 2005, Dr. Weiner filed Dr. Weiner's Motion for Brief Continuance, which was granted by order dated September 8, 2005. On October 13, 2005, Dr. Weiner filed Dr. Weiner's Motion for Continuance, which was granted by order dated October 14, 2005. The final hearing date was rescheduled for January 11, 2006.

Prior to the final hearing, the parties submitted a Joint Pre-Hearing Stipulation, which contained facts to which the parties agreed. Those facts which are contained in Section E of the Joint Pre-hearing Stipulation are incorporated into this Recommended Order to the extent relevant.

At the final hearing, the Department called S.M. and Dr. Weiner as its witnesses. Petitioner's Exhibits 1 through 5 were admitted in evidence. Dr. Weiner testified on his own behalf and called Dagmar Walker, R.N., as his witness. Dr. Weiner did not offer any exhibits into evidence.

The Transcript was filed on January 30, 2006. The parties filed their Proposed Recommended Orders on February 9, 2006. The parties' Proposed Recommended Orders have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with the regulation of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes.

2. Dr. Weiner, is and was at all times material to this proceeding, a licensed physician in the State of Florida, having been issued license number ME76902. He has been practicing medicine for 23 years and has not previously been the subject of a disciplinary proceeding. Dr. Weiner is board-certified in anesthesiology.

3. S.M. has been a patient of Dr. Weiner since 1999. S.M. sought treatment from Dr. Weiner for his lower back pain that he suffered as a result of a golf cart injury. Over the course of his care under Dr. Weiner up until the date of the

incident, S.M. received numerous treatments for his back pain, including radiofrequency ablation and epidural steroids.

4. Radiofrequency ablation uses a specific frequency of radio waves to help put specific pain nerves that go to the joints of the spine to sleep for a period of time. In this procedure a steroid is deposited inside the epidural space outside the spine. The procedure can help to treat back pain as well as pain extending down the legs of the patient.

5. On January 29, 2005, S.M. presented to Dr. Weiner with complaints of lower back pain. After examining S.M., Dr. Weiner recommended that S.M. undergo a radiofrequency ablation procedure.

6. Dr. Weiner ordered the radiofrequency ablation procedure and instructed his office to coordinate with the Center for Digestive Health and Pain Management (Center), to have the procedure scheduled. The Center, which is a separate facility from Dr. Weiner's office, scheduled S.M.'s treatment for February 19, 2004. The Center scheduled S.M. for a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, rather than the radiofrequency ablation procedure.

7. A Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, involves placing a needle down near the tailbone. A catheter is inserted through the needle into the space around the spine. A steroid medication is injected

through the catheter. The purpose of the procedure is to decrease irritation and inflammation of the nerves as well as the discs. S.M. could have derived some benefit from the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach.

8. Patient charts at the Center are separate from the patient charts at Dr. Weiner's office. The Center's charts are made up by the Center staff and consist of forms for the specific procedure; a template of the procedure for the specific procedure, the nursing notes, billing sheets, and other administrative paperwork. When the Center erroneously scheduled S.M. for a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, the Center prepared paperwork necessary for the provision of that technique, including consent forms.

9. On February 19, 2004, S.M. went to the Center with the belief that he was going to receive the radiofrequency ablation procedure. During this visit, S.M. was in a lot of pain and was eager to receive treatment for his back.

10. Upon arrival to the Center, S.M. signed a consent form that referenced a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach procedure. The nurse then confirmed with S.M., the technician, and Dr. Weiner that S.M. understood this procedure. Dr. Weiner also explained the Fluoroscopic

Epidural Steroid Injection, RACZ Technique, caudal approach, to S.M before administering the treatment and also told S.M. that this was the first time he had undergone this procedure while under Dr. Weiner's care.

11. Subsequent to signing the consent form, S.M. got undressed and was hooked up to an IV. He was then moved to another bed, and Dr. Weiner started to perform the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, on S.M. Dr. Weiner administered a local anesthesia and began to insert the tip of a needle into S.M.'s back.

12. After partially inserting the needle in S.M.'s back, Dr. Weiner stopped the procedure and reviewed S.M.'s chart. He requested that S.M.'s chart that was in Dr. Weiner's office be brought to the Center. The chart revealed that the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, was not the procedure that was originally ordered at S.M.'s appointment on January 29, 2004.

13. Once he realized the discrepancy, Dr. Weiner apologized to S.M. and explained that he began to do the wrong procedure. S.M. was then taken to the recovery room, and Dr. Weiner ordered the radiofrequency ablation procedure for a later date.

14. S.M. did not receive the complete Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, procedure on February 19, 2005.

15. In or about March 2004, S.M. returned to the Center and had the radiofrequency ablation procedure completed.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2005).

17. The Department has the burden to establish by clear and convincing evidence the allegations in the Administrative Complaint. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). The Department has alleged that Dr. Weiner violated Subsection 456.072(1)(aa), Florida Statutes, which provides that the following acts constitute grounds for disciplinary action:

Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes preparation of the patient.

18. The Department alleged that Dr. Weiner violated Subsection 456.072(1)(aa), Florida Statutes, by "performing the

wrong surgical procedure on Patient S.M." The Department has established this allegation by clear and convincing evidence. Dr. Weiner ordered that S.M. undergo radiofrequency ablation during a regular office visit. When S.M. went to the Center for this procedure at a later date, Dr. Weiner received consent and started to perform the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, but then halted the process. Dr. Weiner testified that the patient was originally scheduled for the radiofrequency ablation and that the wrong procedure was attempted on S.M. at the Center. Nonetheless, Dr. Weiner argues that he was authorized to perform the treatment because the patient signed a consent form and verbalized an understanding of the procedure. However, the Department is only alleging that Dr. Weiner performed the "wrong procedure," rather than focusing on whether valid consent was obtained. Therefore, it is irrelevant that S.M. consented to the treatment before the procedure was initiated; the wrong procedure was attempted on S.M. regardless.

19. The disciplinary guidelines of the Board of Medicine found at Florida Administrative Code Rule 64B8-8.001 provide a range of penalties for a violation of Section 456.072, Florida Statutes.

20. The penalty for a violation of Subsection 456.072(1)(aa), Florida Statutes, ranges from a \$10,000 fine,

a letter of concern, a minimum of five hours of risk management education, a minimum of 50 hours of community service, and one-hour lecture on wrong-site surgery in the State of Florida to revocation for a first-time offense.

21. Florida Administrative Code Rule 64B8-8.001 provides that the Board of Medicine may deviate from the penalty guidelines based on the following aggravating or mitigating factors:

- (a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;
- (b) Legal status at the time of the offense: no restraints or legal constraints;
- (c) The number of counts or separate offenses established;
- (d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;
- (e) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;
- (f) The pecuniary benefit or self-gain inuring to the applicant or licensee;
- (g) The involvement in any violation of Section 458.331, F.S., of the provision of controlled substances for trade, barter or sale, by a licensee. In such cases, the Board will deviate from the penalties recommended above and impose suspension or revocation of licensure.
- (h) Where a licensee has been charged with violating the standard of care pursuant to Section 458.331(1)(t), F.S., but the licensee, who is also the records owner pursuant to Section 456.057(1), F.S., fails to keep or produce the records.
- (i) Any other relevant mitigating factors.

22. There are mitigating circumstances which would allow for deviation from the penalty guidelines. There has been no other disciplinary action taken against Dr. Weiner during his entire healthcare career; Dr. Weiner stopped the procedure once he realized it was the wrong treatment; Dr. Weiner ordered the correct procedure, and the Center scheduled the wrong procedure; S.M. signed a consent form after the procedure was thoroughly explained to him; S.M. had undergone other steroid treatment before this incident; and the treatment may have provided some temporary relief to S.M.'s pain.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that James P. Weiner, M.D., violated Subsection 456.072(1)(aa), Florida Statutes; issuing a reprimand; imposing a \$1,000 fine; requiring 25 hours of community service; and requiring five hours of risk management education.

DONE AND ENTERED this 31st day of March, 2006, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2006.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida
Statutes are to the 2003 version.

COPIES FURNISHED:

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Tallahassee, Florida 32399-1701

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA 2006 APR 17 AM 11:53
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
BOARD OF MEDICINE,)
)
)
Petitioner,)
)
vs.)
)
JAMES P. WEINER, M.D.,)
)
Respondent.)
_____)

CASE NO. 05-2648PL
2004-11974

COPY

**RESPONDENT JAMES P. WEINER, M.D.'S
EXCEPTIONS TO RECOMMENDED ORDER¹**

Respondent, James P. Weiner, M.D., pursuant to Section 28-106.217, Florida Administrative Code, submits his Exceptions to the Findings of Fact and Conclusions of Law set forth in the Administrative Law Judge's Recommended Order in this cause, which was entered on March 31, 2006, and states:

Introduction

1. Dr. James Weiner is a Board certified anesthesiologist, and has never previously been the subject of a disciplinary proceeding, nor has he even been the subject of a civil medical malpractice case in his entire twenty-three (23) years as a physician. Dr. Weiner has served this Country honorably in the United States Navy from 1978 through 1991. During his distinguished military service, Dr. Weiner was awarded:

¹ Dr. Weiner reserves the right to challenge any legal ruling that would be beyond the Board's jurisdiction to consider.

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- (1) the Navy Commendation Medal;
- (2) the Navy Achievement Medal;
- (3) a Presidential Citation;
- (4) a Combat Action Ribbon;
- (5) and the Purple Heart.

2. It is respectfully argued to this Board, that the facts as determined by the Administrative Law Judge do not establish any wrongdoing on the part of Dr. Weiner. The Administrative Law Judge unequivocally determined that the surgical center, and not Dr. Weiner, scheduled the wrong procedure. The Administrative Law Judge further found that Dr. Weiner undertook the procedure that was scheduled by the surgical center, and was consented to by the patient.

3. Even the patient was very clear that he consented to the performance of the procedure that was initiated. Nowhere in the Administrative Judges Recommended Order does she specify what Dr. Weiner did wrong, or what he should have done differently. Dr. Weiner's license and reputation should not be called into question for an error made by the surgical center.

4. Dr. Weiner initiated the procedure that the surgical center scheduled and to which the patient consented.

EXCEPTION 1

5. There was no competent substantial evidence to support the finding that Dr. Weiner violated Section 456.072 (1)(aa), Florida Statutes, by performing a "wrong procedure." (We note that there is no definition of what a "wrong

procedure” is.) The facts, as determined by the Administrative Law Judge, do not establish a violation of Section 458.331(1)(aa), Florida Statutes. Specifically, the Administrative Law Judge found:

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a. “Dr. Weiner ordered the correct procedure and the [surgical] Center scheduled the wrong procedure.” (Recommended Order at page 10, paragraph 18).

b. “The Center, which is a separate facility from Dr. Weiner’s office, scheduled [the patient’s] treatment for February 19, 2004.” (Recommended Order page 4, paragraph 6).

c. “The Center scheduled [the patient] for a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, rather than a radiofrequency ablation procedure.”

d. “When the Center erroneously scheduled [the patient] for a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, the Center prepared the paperwork necessary for the provision of that technique, including consent forms.” (Recommended Order at page 5, paragraph 8).

e. “[the patient] signed a consent form after the procedure was thoroughly explained to him.” (Recommended Order at page 10, paragraph 18).

f. “Patient charts at the Center are separate from the patient charts at Dr. Weiner’s office.” (Recommended Order at page 5, paragraph 8).

g. “The Center’s charts are made up by the Center staff and consist of forms for the specific procedure, a template of the procedure for the specific

procedure, the nursing notes, billing sheets, and other administrative paperwork.”

(Recommended Order at page 5, paragraph 8).

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h. “Upon arrival to the Center, [the patient] signed a consent form that referenced a Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach procedure.” (Recommended Order at page 5, paragraph 10).

i. “The nurse then confirmed with [the patient], the technician, and Dr. Weiner, that [the patient] understood the procedure.” (Recommended Order at page 5, paragraph 10)

j. Dr Weiner also explained the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, to [the patient] before administering the treatment and also told [the patient] that this was the first time he had undergone this procedure while under Dr. Weiner’s care.” (Recommended Order at page 6, paragraph 10).

6. The present case has some similarities with another case that this Board dismissed. In the recent case of *Department of Health v. Douglas Eiland, M.D.*, Final Order No. DOH-05-13465-MQA (Filed August 22, 2005), Dr. Eiland was charged in a one count Administrative Complaint alleging a violation of §456.022(1)(aa), Florida Statutes. The crux of the Department’s Administrative Complaint was similar to the charge currently levied against Dr. Weiner. In the *Eiland* case, the Administrative Complaint alleged:

Respondent did not review patient B.G.’s chart and/or otherwise verify that a physician’s order for this procedure existed prior to inserting the PICC line. He relied solely on a computer generated order which, due

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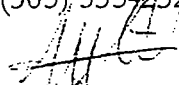
to staff error, incorrectly indicated that patient B.G. and not the intended patient was scheduled for this procedure.

7. Just as in *Eiland*, the patient signed a consent form for the procedure he subsequently underwent. Unique to this case is the fact that Dr. Weiner did in fact review the chart and the consent, and made sure the patient understood the procedure. It was the surgical center that provided Dr. Weiner with the wrong chart and the wrong consent. Dr. Weiner should not be held vicariously liable for the mistake made by the surgical center, it is unjust, and contrary to well settled Florida law.

WHEREFORE, James Weiner, M.D., respectfully requests this Florida Board of Medicine to adopt his Exceptions and to dismiss the one count Administrative Case filed against his medical license.

Respectfully submitted,

ELLSWORTH LAW FIRM, P.A.
404 Washington Avenue, Suite 750
Miami Beach, FL 33139
(305) 535-2529

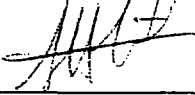
 (305) 535-2529
FC2

Sean M. Ellsworth, Esq.
Florida Bar No. 39845

CERTIFICATE OF SERVICE

COPY

WE HEREBY CERTIFY that the above and foregoing was sent on April 13, 2006, via Federal Express Overnight Delivery to: Larry McPherson, Executive Director, Board of Medicine, 4052 Bald Cypress Way, Tallahassee, FL 32399 and a true and correct copy by U.S. mail to: Lynne A. Quimby-Pennock, Assistant General Counsel, Florida Department of Health, 4052 Bald Cypress Way, Bin C-65, Tallahassee, FL 32399.

 (545741)
FCZ

Sean M. Ellsworth, Esq.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK
DATE

Kelli Dwyer
4/24/05

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOAH Case No. 2005-2648PL
DOH Case No.: 2004-11974

JAMES P. WEINER, M.D.,

Respondent.

PETITIONER'S RESPONSES TO
RESPONDENT'S EXCEPTIONS
TO THE RECOMMENDED ORDER

COMES NOW the Department of Health, Petitioner, pursuant to Rule 28-106.217, Florida Administrative Code (FAC), and files this its Responses to Respondent's Exceptions to the Recommended Order, and states:

INTRODUCTION

On April 27, 2005, the Department of Health filed an Administrative Complaint against the Respondent alleging a violation of Section 456.072(1)(aa), Florida Statutes, in that it subjects a licensee to discipline for performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong

procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. Specifically, the Department alleged Respondent performed the wrong surgical procedure on Patient S.M.

On May 19, 2005, Respondent filed a request for formal hearing which disputed the allegations of the administrative complaint. On July 25, 2006, the case was forwarded to the Division of Administrative Hearings ("DOAH"), and Administrative Law Judge (ALJ) Susan B. Harrell was assigned by Initial Order dated July 26, 2005.

At the formal hearing conducted via tele-video conferencing in Ft. Myers and Tallahassee, Florida on January 11, 2006, ALJ Harrell, presided as the trier of fact. Both Petitioner and Respondent filed the Proposed Recommended Orders on February 9, 2006.

In her Recommended Order issued on March 31, 2006, ALJ Harrell determined that:

The Department has established this allegation by clear and convincing evidence. Dr. Weiner ordered that S.M. undergo radiofrequency ablation during a regular office visit. When S.M. went to the Center for this procedure at a later date, Dr. Weiner received consent and started to

perform the Fluoroscopic Epidural Steroid Injection, RACZ Technique, caudal approach, but then halted the process. Dr. Weiner testified that the patient was originally scheduled for the radiofrequency ablation and that the wrong procedure was attempted on S.M. at the Center. Nonetheless, Dr. Weiner argues that he was authorized to perform the treatment because the patient signed a consent form and verbalized an understanding of the procedure. However, the Department is only alleging that Dr. Weiner performed the "wrong procedure," rather than focusing on whether valid consent was obtained. Therefore, it is irrelevant that S.M. consented to the treatment before the procedure was initiated; the wrong procedure was attempted on S.M. regardless. (Emphasis added)

On April 13, 2006, Respondent filed exceptions to ALJ Harrell's Recommended Order. Respondent takes an exception to a number of findings of fact by ALJ Harrell.

For the reasons which follow, Respondent's exception should be **denied.**

STANDARD OF REVIEW

1. Florida's Administrative Procedure Act relies upon an Administrative Law Judge to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence and reach ultimate findings of fact based upon competent substantial evidence. If the evidence presented

supports two inconsistent findings, it is the Administrative Law Judge's role to decide the issue one way or the other. Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985).

2. Section 120.57(1)(k), Florida Statutes, authorizes the submission of exceptions to a recommended order. The purpose of filing exceptions is to permit a party to alert the agency to any perceived defects in the Administrative Law Judge's factual findings or conclusions of law. Florida Department of Corrections v. Bradley, 510 So.2d 1122 (Fla. 1st DCA 1987).

3. A reviewing agency may not reweigh the evidence, resolve the conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of the ALJ as the finder of the facts. Martuccio v. Department of Professional Regulation, Bd. of Optometry, 622 So.2d 607, 609 (Fla. 1st DCA 1993); Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985).

An agency reviewing a recommended order is not authorized to re-evaluate the quantity and quality of the evidence presented at DOAH final hearing beyond a determination of whether the evidence is competent and substantial. Brogan v. Carter, 671 So.2d 822, 823

(Fla. 1st DCA 1996). "Substantial" evidence has been defined as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion...." Perdue v. TL Palm Associates, Ltd., 755 So.2d 660 (Fla. 4th DCA 1999) quoting DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957). "Competent" evidence means evidence that is both relevant and material. Id.

4. Finally, the agency may not reject or modify conclusions of law unless it states with particularity its reasons for doing so and makes a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. Section 120.57(1)(I), Florida Statutes (F.S.).

EXCEPTION TO FINDINGS OF FACT

5. Respondent takes exception to ALJ's finding of fact in Paragraph 18 (twice) of the Recommended Order. The Administrative Law Judge's finding of fact is based upon competent substantial evidence and this Board should not disturb it. The issue here is that Respondent detailed in his records a procedure that he would perform on Patient S.M. It wasn't until after he initiated the wrong procedure

that he checked his office chart, this is error. Respondent's exception should be denied.

6. Respondent takes exception to ALJ's finding of fact in Paragraph 6 of the Recommended Order. The Administrative Law Judge's finding of fact is based upon competent substantial evidence and this Board should not disturb it. Respondent's exception should be denied.

7. Respondent takes exception to ALJ's finding of fact in Paragraph 8 (three times) of the Recommended Order. The Administrative Law Judge's finding of fact is based upon competent substantial evidence and this Board should not disturb it. Respondent's exception should be denied.

8. Respondent takes exception to ALJ's finding of fact in Paragraph 10 of the Recommended Order. The Administrative Law Judge's finding of fact is based upon competent substantial evidence and this Board should not disturb it. Respondent's exception should be denied.

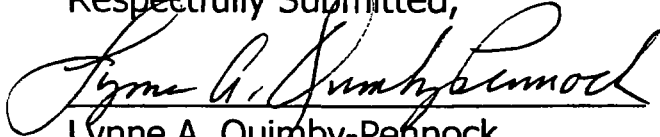
DISCUSSION

It is apparent from ALJ's Harrell's Recommended Order that she took into consideration Respondent's proposed Recommended Order that included his recitation of his distinguished military and medical career. The ALJ also based her ruling on the specific facts of this case. Respondent reviewed his office chart after he had initiated the wrong procedure. ALJ Harrell comments on the mitigating circumstances in this case, and issues a recommended penalty that reflects those considerations.

CONCLUSION

Based upon the foregoing, the Board of Medicine should enter a Final Order denying Respondent's exception, and adopting the Recommended Order.

Respectfully Submitted,



Lynne A. Quimby-Pennock

Fla. Bar. No.0394572

Attorney for Petitioner

Department of Health-PSU

4052 Bald Cypress Way, Bin #C-65

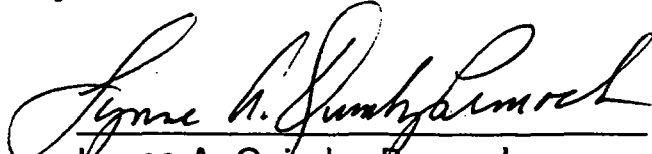
Tallahassee, FL 32399-3265

Tel: 850.245.4640 ext. 8154

Fax: 850.245.4681

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of PETITIONER'S RESPONSES TO RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER was served via United States Mail, to Sean M. Ellsworth, Esquire, Attorney for Respondent, 404 Washington Avenue, Suite 750, Miami Beach, FL 33139-6606, on this _24th_ day of April 2006.


Lynne A. Quimby-Pennock

**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Sharon McKern*
DATE 5-1-06

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2004-11974

JAMES P. WEINER, M.D.,

Respondent.

**MOTION TO ASSESS COSTS
IN ACCORDANCE WITH SECTION 456.072(4)**

Petitioner, Department of Health, moves for the entry of a Final Order of the Board of Medicine assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2001). As grounds therefore, the Petitioner states the following:

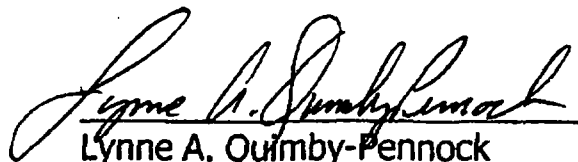
1. At its next regularly scheduled meeting, the Board of Medicine will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2001), 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 a board, shall assess costs related to the investigation and prosecution of the case.

3. The investigation and prosecution of this case has resulted in costs in the total amount of twelve thousand three hundred seventy-nine dollars and eighty-nine cents (\$12,379.89), as set forth on the attached summary of costs (Exhibit A), that is based on the attached affidavit, printouts of time records and receipts (Exhibit B).

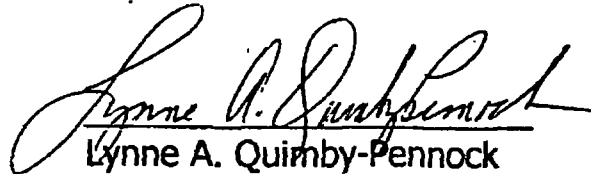
WHEREFORE, the Department of Health, requests that the Board of Medicine enter a Final Order assessing costs against the Respondent as mandated by Section 456.072(4), Florida Statutes (2001) in the amount of \$12,379.89.



Lynne A. Quimby-Pennock
Assistant General Counsel
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar # 0394572
850.245.4640, ext. 8144
850.245.4681 Fax

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished to Sean M. Ellsworth, Esquire, Ellsworth Law Firm, P.A., 404 Washington Avenue, Suite 750, Miami Beach, FL 33139, by U.S. Mail this 3^d day of May 2006.



Lynne A. Quimby-Pennock
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

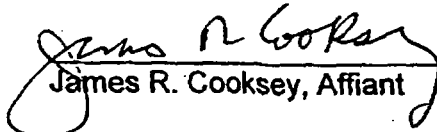
BEFORE ME, the undersigned authority, personally appeared **JAMES R. COOKSEY**, who was sworn and states as follows:

- 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 five years. My business address is 4250 Bald Cypress Way, Bin C-75, Tallahassee, Florida 32399-3280.
- 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 2004-11974 (Department of Health v. James P. Weiner, M.D.) are twelve thousand three hundred seventy-nine dollars and eighty-nine cents (\$12,379.89).
- 6) The costs for DOH case number 2004-11974 (Department of Health v. James P. Weiner, 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 2004-11974 (Department of Health v. James P. Weiner, M.D.) are detailed in Exhibit 2 (Itemized Cost Report and Itemized Expense Report and receipts), which is attached to this document.
- 8) The itemized costs as reflected in Exhibit 2 are determined by the following method: DOH employees who work on cases daily are to keep track of their time in six-minute increments (e.g., investigators and lawyers). A designated DOH employee in the Consumer Services

Unit, Legal Department, and in each area office, inputs the time worked and expenses spent into the Time Tracking System. Time and expenses are charged against a state health care Board (e.g., Florida Board of Medicine, Florida Board of Dentistry, Florida Board of Osteopathic Medicine), and/or a case. If no Board or case can be charged, then the time and expenses are charged as administrative time. The hourly rate of each employee is calculated by formulas established by the Department. (See the Itemized Cost Report)

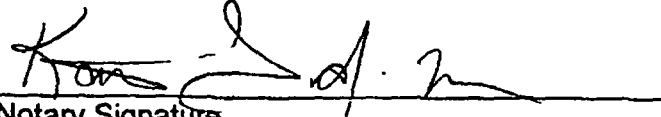
- 9) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


James R. Cooksey, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 2nd day of April, 2006,
by James R. Cooksey, who is personally known to me.


Notary Signature

Kathryn S. Strickland-Therrien
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



6808



Time Tracking Report
Itemized Expense by Complaint

Complaint 200411974

Report Date: 04/27/2006

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
BUREAU OF LEGAL SERVICES				
HL34B	09/02/2005	\$375.00	131630	EXPERT WITNESS
HLL5B	01/13/2006	\$275.24	261010	TRAVEL - EMLOYEE - IN FLA
HLL5B	01/27/2006	\$398.97	131400	COURT REPORTING
	SubTotal	\$1,049.21		
	Total Expenses	\$1,049.21		

6809



Time Tracking Report
Itemized Cost by Complaint
Complaint 200411974

Report Date: 04/27/2006

Staff Code Activity Hours Staff Rate Activity Date Activity Code Activity Description

BUREAU OF CONSUMER COMPLAINTS

HA78	0.40	\$50.18	\$20.07	04/22/2004	82	MQA REPORT ENTRY
HA78	0.10	\$51.61	\$5.16	04/30/2004	5	ROUTINE INSPECTION
HA78	0.50	\$51.61	\$25.81	06/18/2004	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
Sub Total	1.00		\$51.04			

BUREAU OF INVESTIGATIVE SERVICES

F162	1.50	\$55.04	\$82.56	07/08/2004	58	TRAVEL TIME
F162	2.00	\$55.04	\$110.08	07/08/2004	4	ROUTINE INVESTIGATIVE WORK
F162	1.00	\$55.04	\$55.04	07/19/2004	4	ROUTINE INVESTIGATIVE WORK
F162	0.50	\$55.04	\$27.52	07/21/2004	4	ROUTINE INVESTIGATIVE WORK
F162	1.50	\$55.04	\$82.56	07/27/2004	4	ROUTINE INVESTIGATIVE WORK
F162	1.00	\$55.04	\$55.04	09/07/2004	4	ROUTINE INVESTIGATIVE WORK
F162	1.00	\$55.04	\$55.04	09/07/2004	76	REPORT PREPARATION
F162	4.00	\$55.04	\$220.16	09/08/2004	76	REPORT PREPARATION
F162	2.00	\$55.04	\$110.08	09/09/2004	76	REPORT PREPARATION
F162	3.00	\$55.04	\$165.12	09/10/2004	76	REPORT PREPARATION
F162	3.00	\$55.04	\$165.12	09/10/2004	76	REPORT PREPARATION
F162	1.50	\$55.04	\$82.56	08/26/2005	6	SUPPLEMENTAL INVESTIGATION
F162	2.00	\$55.04	\$110.08	08/31/2005	6	SUPPLEMENTAL INVESTIGATION
F162	0.50	\$55.04	\$27.52	09/01/2005	6	SUPPLEMENTAL INVESTIGATION
F162	1.00	\$55.04	\$55.04	09/02/2005	58	TRAVEL TIME
F162	0.50	\$55.04	\$27.52	09/02/2005	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CE.
F162	1.00	\$55.04	\$55.04	09/02/2005	6	SUPPLEMENTAL INVESTIGATION
F162	1.00	\$55.04	\$55.04	09/06/2005	6	SUPPLEMENTAL INVESTIGATION



Time Tracking Report

Itemized Cost by Complaint

Complaint 200411974

Report Date: 04/27/2006

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
F162	2.00	\$55.04	\$110.08	09/08/2005	58	TRAVEL TIME
F162	3.00	\$55.04	\$165.12	09/08/2005	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CE.
F162	1.50	\$55.04	\$82.56	09/09/2005	58	TRAVEL TIME
F162	1.00	\$55.04	\$55.04	09/09/2005	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CE.
F162	1.50	\$55.04	\$82.56	09/12/2005	4	ROUTINE INVESTIGATIVE WORK
F162	1.00	\$55.04	\$55.04	09/12/2005	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CE.
F162	1.00	\$55.04	\$55.04	09/14/2005	58	TRAVEL TIME
F162	0.50	\$55.04	\$27.52	09/14/2005	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CE.
Sub Total	39.50		\$2,174.08			

BUREAU OF LEGAL SERVICES

HLL5B	0.40	\$82.62	\$33.05	09/30/2004	25	REVIEW CASE FILE
HLL5B	0.20	\$82.62	\$16.52	09/30/2004	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/30/2004	26	PREPARE OR REVISE MEMORANDUM
HLL5B	0.20	\$82.62	\$16.52	10/01/2004	37	REVIEW LETTER
HLL5B	1.40	\$82.62	\$115.67	10/01/2004	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL5B	0.20	\$82.62	\$16.52	10/05/2004	37	REVIEW LETTER
HLL5B	0.20	\$82.62	\$16.52	10/25/2004	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	10/26/2004	25	REVIEW CASE FILE
HLL5B	0.50	\$82.62	\$41.31	10/26/2004	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	10/26/2004	35	TELEPHONE CALLS
HLL5B	0.40	\$82.62	\$33.05	10/26/2004	41	REVIEW PLEADING
HLL5B	0.90	\$137.48	\$123.73	01/03/2005	47	TRIAL PREPARATION
HLL5B	0.20	\$137.48	\$27.50	01/03/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	01/31/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	02/11/2005	37	REVIEW LETTER

6810



6811

Time Tracking Report
 Itemized Cost by Complaint
 Complaint 200411974

Report Date: 04/27/2006

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL5B	0.30	\$82.62	\$24.79	02/11/2005	25	REVIEW CASE FILE
HLL5B	0.10	\$82.62	\$8.26	04/26/2005	88	PROOFING AND SIGNING LETTERS
HLL5B	0.20	\$82.62	\$16.52	04/29/2005	25	REVIEW CASE FILE
HLL5B	0.10	\$82.62	\$8.26	05/04/2005	88	PROOFING AND SIGNING LETTERS
HLL5B	0.20	\$82.62	\$16.52	05/10/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	05/19/2005	37	REVIEW LETTER
HLL5B	0.50	\$82.62	\$41.31	05/23/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.30	\$82.62	\$24.79	05/23/2005	25	REVIEW CASE FILE
HLL5B	0.20	\$82.62	\$16.52	05/23/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	07/05/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	07/13/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	07/18/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	07/18/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	07/22/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	07/22/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.70	\$82.62	\$57.83	07/22/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.20	\$82.62	\$16.52	08/02/2005	88	PROOFING AND SIGNING LETTERS
HLL5B	0.20	\$82.62	\$16.52	08/22/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	08/23/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	08/24/2005	35	TELEPHONE CALLS
HLL5B	0.10	\$82.62	\$8.26	08/25/2005	88	PROOFING AND SIGNING LETTERS
HLL37B	0.30	\$71.52	\$21.46	08/30/2005	70	CONFERENCES WITH LAWYERS
HLL37B	0.10	\$71.52	\$7.15	08/30/2005	25	REVIEW CASE FILE
HLL37B	0.20	\$71.52	\$14.30	08/30/2005	39	PREPARE/RESPOND TO DISCOVERY
HLL37B	0.30	\$71.52	\$21.46	08/30/2005	70	CONFERENCES WITH LAWYERS
HLL37B	0.20	\$71.52	\$14.30	08/30/2005	38	REVIEW DISCOVERY REQUESTS/RESPONSES
HLL37B	0.30	\$71.52	\$21.46	08/30/2005	60	MISCELLANEOUS



Time Tracking Report

Itemized Cost by Complaint

Complaint 200411974

Report Date: 04/27/2006

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL37B	0.10	\$71.52	\$7.15	08/30/2005	38	REVIEW DISCOVERY REQUESTS/RESPONSES
HLL5B	0.10	\$82.62	\$8.26	08/31/2005	35	TELEPHONE CALLS
HLL37B	0.20	\$71.52	\$14.30	08/31/2005	70	CONFERENCES WITH LAWYERS
HLL5B	0.60	\$82.62	\$49.57	09/02/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.50	\$82.62	\$41.31	09/02/2005	35	TELEPHONE CALLS
HLL16A	0.50	\$74.29	\$37.15	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.20	\$74.29	\$14.86	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.50	\$74.29	\$37.15	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.20	\$82.62	\$16.52	09/06/2005	41	REVIEW PLEADING
HLL5B	0.50	\$82.62	\$41.31	09/06/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.40	\$82.62	\$33.05	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.30	\$82.62	\$24.79	09/06/2005	35	TELEPHONE CALLS
HLL16A	0.50	\$74.29	\$37.15	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.20	\$74.29	\$14.86	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.50	\$74.29	\$37.15	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL10A	0.30	\$80.81	\$24.24	09/06/2005	25	REVIEW CASE FILE
HLL10A	0.50	\$80.81	\$40.41	09/06/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.30	\$82.62	\$24.79	09/07/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.30	\$82.62	\$24.79	09/07/2005	35	TELEPHONE CALLS
HLL16A	0.40	\$74.29	\$29.72	09/09/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.20	\$82.62	\$16.52	09/09/2005	41	REVIEW PLEADING
HLL5B	0.50	\$82.62	\$41.31	09/09/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	09/12/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	09/12/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/12/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/14/2005	41	REVIEW PLEADING



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HLL5B	0.20	\$82.62	\$16.52	09/14/2005	26	PREPARE OR REVISE MEMORANDUM
HLL5B	0.20	\$82.62	\$16.52	09/14/2005	37	REVIEW LETTER
HLL5B	0.20	\$82.62	\$16.52	09/14/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/14/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	09/15/2005	41	REVIEW PLEADING
HLL5B	0.30	\$82.62	\$24.79	09/15/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/15/2005	35	TELEPHONE CALLS
HLL5B	0.30	\$82.62	\$24.79	09/19/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	09/20/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL16A	1.10	\$74.29	\$81.72	09/23/2005	25	REVIEW CASE FILE
HLL5B	0.20	\$82.62	\$16.52	09/23/2005	25	REVIEW CASE FILE
HLL5B	0.30	\$82.62	\$24.79	09/26/2005	36	PREPARATION OR REVISION OF LETTER
HLL16A	1.40	\$74.29	\$104.01	09/26/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	09/26/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HL96A	0.20	\$86.54	\$17.31	09/26/2005	70	CONFERENCES WITH LAWYERS
HLL16A	0.20	\$74.29	\$14.86	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.10	\$74.29	\$7.43	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	09/27/2005	72	PERSONNEL ACTIONS
HLL16A	0.20	\$74.29	\$14.86	09/27/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.20	\$74.29	\$14.86	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.10	\$74.29	\$7.43	09/27/2005	72	PERSONNEL ACTIONS
HLL16A	0.40	\$74.29	\$29.72	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.30	\$74.29	\$22.29	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	09/27/2005	74	MEETINGS WITH DEPARTMENT STAFF
HLL16A	0.40	\$74.29	\$29.72	09/27/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.10	\$74.29	\$7.43	09/27/2005	35	TELEPHONE CALLS
HLL16A	0.60	\$74.29	\$44.57	09/27/2005	35	TELEPHONE CALLS



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HLL16A	0.20	\$74.29	\$14.86	09/28/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	09/28/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.30	\$74.29	\$22.29	09/28/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL16A	0.20	\$74.29	\$14.86	09/29/2005	35	TELEPHONE CALLS
HLL16A	0.50	\$74.29	\$37.15	09/29/2005	46	LEGAL RESEARCH
HLL16A	0.20	\$74.29	\$14.86	09/29/2005	72	PERSONNEL ACTIONS
HLL16A	0.20	\$74.29	\$14.86	09/29/2005	70	CONFERENCES WITH LAWYERS
HL58B	0.20	\$120.23	\$24.05	09/29/2005	70	CONFERENCES WITH LAWYERS
HLL16A	0.40	\$74.29	\$29.72	10/03/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	10/03/2005	35	TELEPHONE CALLS
HLL16A	0.40	\$74.29	\$29.72	10/03/2005	35	TELEPHONE CALLS
HLL16A	0.10	\$74.29	\$7.43	10/03/2005	46	LEGAL RESEARCH
HLL16A	0.30	\$74.29	\$22.29	10/05/2005	35	TELEPHONE CALLS
HLL16A	0.40	\$74.29	\$29.72	10/05/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	10/05/2005	35	TELEPHONE CALLS
HLL16A	0.40	\$74.29	\$29.72	10/05/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL16A	0.20	\$74.29	\$14.86	10/05/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	10/05/2005	35	TELEPHONE CALLS
HLL25B	0.10	\$70.94	\$7.09	10/06/2005	41	REVIEW PLEADING
HLL25B	0.20	\$70.94	\$14.19	10/06/2005	70	CONFERENCES WITH LAWYERS
HLL16A	0.20	\$74.29	\$14.86	10/10/2005	35	TELEPHONE CALLS
HL96A	0.20	\$86.54	\$17.31	10/10/2005	70	CONFERENCES WITH LAWYERS
HLL16A	0.40	\$74.29	\$29.72	10/11/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL24B	0.40	\$62.00	\$24.80	10/11/2005	70	CONFERENCES WITH LAWYERS
HLL5B	0.10	\$82.62	\$8.26	10/11/2005	35	TELEPHONE CALLS
HLL16A	0.20	\$74.29	\$14.86	10/14/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	10/28/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$82.62	\$16.52	10/31/2005	35	TELEPHONE CALLS



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HLL5B	0.30	\$82.62	\$24.79	10/31/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.50	\$82.62	\$41.31	11/20/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$82.62	\$16.52	11/23/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$137.48	\$27.50	12/05/2005	25	REVIEW CASE FILE
HLL5B	0.30	\$137.48	\$41.24	12/05/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.40	\$137.48	\$54.99	12/05/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.60	\$82.62	\$49.57	12/09/2005	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.40	\$137.48	\$54.99	12/15/2005	35	TELEPHONE CALLS
HLL5B	0.50	\$137.48	\$68.74	12/15/2005	47	TRIAL PREPARATION
HLL5B	0.30	\$137.48	\$41.24	12/16/2005	35	TELEPHONE CALLS
HLL5B	0.30	\$137.48	\$41.24	12/23/2005	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.70	\$137.48	\$96.24	12/29/2005	25	REVIEW CASE FILE
HLL5B	0.20	\$137.48	\$27.50	12/29/2005	26	PREPARE OR REVISE MEMORANDUM
HLL5B	1.00	\$137.48	\$137.48	12/29/2005	47	TRIAL PREPARATION
HLL5B	0.70	\$137.48	\$96.24	12/30/2005	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.30	\$137.48	\$41.24	12/30/2005	41	REVIEW PLEADING
HLL5B	0.70	\$137.48	\$96.24	12/30/2005	35	TELEPHONE CALLS
HLL5B	0.20	\$137.48	\$27.50	12/30/2005	47	TRIAL PREPARATION
HLL5B	0.20	\$137.48	\$27.50	01/04/2006	47	TRIAL PREPARATION
HLL5B	0.90	\$137.48	\$123.73	01/05/2006	47	TRIAL PREPARATION
HLL5B	0.50	\$137.48	\$68.74	01/05/2006	35	TELEPHONE CALLS
HLL5B	0.40	\$137.48	\$54.99	01/05/2006	36	PREPARATION OR REVISION OF LETTER
HLL10A	0.70	\$136.37	\$95.46	01/06/2006	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.30	\$137.48	\$41.24	01/06/2006	35	TELEPHONE CALLS
HLL5B	0.30	\$137.48	\$41.24	01/06/2006	35	TELEPHONE CALLS
HLL5B	3.50	\$137.48	\$481.18	01/09/2006	47	TRIAL PREPARATION
HLL5B	6.50	\$137.48	\$893.62	01/10/2006	58	TRAVEL TIME

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Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL5B	1.50	\$137.48	\$206.22	01/10/2006	47	TRIAL PREPARATION
HLL5B	1.60	\$137.48	\$219.97	01/10/2006	47	TRIAL PREPARATION
HLL5B	2.20	\$137.48	\$302.46	01/11/2006	47	TRIAL PREPARATION
HLL5B	1.50	\$137.48	\$206.22	01/11/2006	48	FORMAL HEARING
HLL5B	0.30	\$137.48	\$41.24	01/11/2006	47	TRIAL PREPARATION
HLL5B	0.50	\$137.48	\$68.74	01/11/2006	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN (
HLL5B	0.40	\$137.48	\$54.99	01/11/2006	36	PREPARATION OR REVISION OF LETTER
HLL5B	1.40	\$137.48	\$192.47	01/11/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	0.90	\$137.48	\$123.73	01/12/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	7.30	\$137.48	\$1,003.60	01/13/2006	58	TRAVEL TIME
HLL5B	0.20	\$137.48	\$27.50	01/27/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	0.30	\$137.48	\$41.24	01/27/2006	35	TELEPHONE CALLS
HLL5B	0.40	\$137.48	\$54.99	01/27/2006	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.70	\$137.48	\$96.24	01/27/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	1.80	\$137.48	\$247.46	01/30/2006	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.50	\$137.48	\$68.74	02/01/2006	40	PREPARATION OF OR REVISION OF A PLEADING
HLL5B	0.20	\$137.48	\$27.50	02/07/2006	26	PREPARE OR REVISE MEMORANDUM
HLL5B	1.90	\$137.48	\$261.21	02/08/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	0.30	\$137.48	\$41.24	02/09/2006	88	PROOFING AND SIGNING LETTERS
HLL5B	0.30	\$137.48	\$41.24	04/03/2006	49	REVIEW TRANSCRIPTS AND PREPARE RECOMMENDED ORDER
HLL5B	0.30	\$137.48	\$41.24	04/03/2006	36	PREPARATION OR REVISION OF LETTER
HLL5B	0.20	\$137.48	\$27.50	04/04/2006	25	REVIEW CASE FILE
Sub Total	81.80		\$9,105.56			

Total Cost	122.30
	\$11,330.68



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Complaint Cost Summary

Complaint Number:200411974

Complainant's Name: DOH (S.M.) 0000776

Subject's Name: JAMES WEINER

	***** Cost to Date *****	
	Hours	Costs
Complaint:	1.00	\$51.04
Investigation:	39.50	\$2,174.08
Legal:	81.80	\$9,105.56
	*****	*****
Sub Total:	122.30	\$11,330.68
Expenses to Date:		\$1,049.21
Prior Amount:		\$0.00
Total Costs to Date:		\$12,379.89

