

18

Final Order No. DOH-07-2174-FOI-MOA
FILED DATE OCT 17 2007
Department of Health
By: *Rachelle*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2006-33227
LICENSE NO.: ME0083417

GERALD ETIEMOWEI DARIAH, 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 October 5, 2007, in Orlando, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. Respondent was served with the Administrative Complaint by publication. Because Respondent failed to submit an Election of Rights or otherwise dispute the facts or respond in any other way, Respondent waived his right to a hearing pursuant to Section 120.57(1), Florida Statutes. At the hearing, Petitioner was represented by Staci Braswell, 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:

1. Respondent shall pay an administrative fine in the amount of \$5,000.00 to the Board within 30 days from the date this Final Order is filed.

2. Respondent shall demonstrate compliance with Final Order DOH-06-1591-FOI-MQA.

3. Respondent shall be and hereby is REPRIMANDED by the Board.

RULING ON MOTION TO ASSESS COSTS

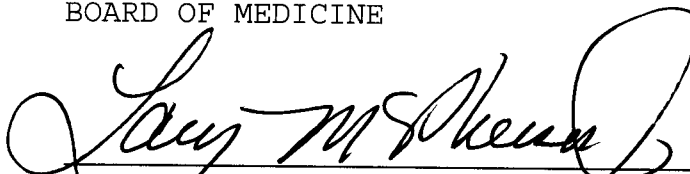
The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$495.03. Said costs are to be paid within 30 days from the date this Final Order is filed.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS 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 16 day of OCTOBER,
2007.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
For H. FRANK FARMER, JR., M.D., Chair

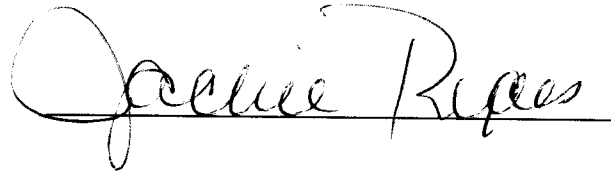
NOTICE OF RIGHT TO JUDICIAL REVIEW

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 GERALD ETIEMOWEI DARIAH, M.D., 1112 North Madison Street, Albany, Georgia 31701; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65,

Tallahassee, Florida 32399-3265 this 17th day of
October, 2007.

A handwritten signature in black ink, reading "Jackie Rojas", written over a horizontal line.

Deputy Agency Clerk

F:\Users\ADMIN\NANCY\MED\ORD\October-2007\DarlahWaiver.wpd

STATE OF FLORIDA
DEPARTMENT OF HEALTH

2006 APR 17 AM 10:13
COMMUNICATIONS SECTION
LEGAL

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2006-33227

GERALD ETIEMOWEI DARIAH, M.D.

RESPONDENT.

4-17-07

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 the Respondent, Gerald Etiemowei Dariah, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 83417.

3. Respondent's address of record is 1112 North Madison Street, Albany, Georgia 31701.

4. On or about August 31, 2006, the Board of Medicine filed a final order, number DOH-06-1591-FOI-MQA, in case number 2004-34929.

5. The final order filed on or about August 31, 2006, reprimanded Respondent, ordered Respondent to pay an administrative fine of ten thousand dollars (\$10,000.00) within thirty (30) days of its imposition by Final Order of the Board; Respondent shall reimburse the Department for administrative costs in the amount of one thousand sixty-three dollars and twenty-one cents (\$1,063.21) within thirty (30) days of their imposition by Final Order of the Board; Respondent's license to practice medicine shall be suspended for a minimum of two (2) years and until such time as he personally appears before the Board and demonstrates the ability to practice medicine with skill and safety.

6. To date Respondent has failed to pay the administrative fine of ten thousand dollars (\$10,000.00).

7. To date Respondent has failed to pay the administrative costs of one thousand sixty-three dollars and twenty-one cents (\$1,063.21).

8. Section 458.331(1)(x), Florida Statutes (2006), provides that violating a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department constitutes grounds for disciplinary action by the Board of Medicine.

9. Respondent failed to pay the administrative fine of ten thousand dollars (\$10,000.00) within thirty (30) days of the date of filing of the Final Order in case number 2004-34929, which was filed on August 31, 2006, as Final Order number DOH-06-1591-FOI-MQA.

10. Respondent failed to pay the administrative costs of one thousand sixty-three dollars and twenty-one cents (\$1,063.21) within thirty (30) days of the date of filing of the Final Order in case number 2004-34929, which was filed on August 31, 2006, as Final Order number DOH-06-1591-FOI-MQA.

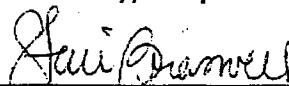
11. Based on the foregoing, Respondent has violated Section 458.331(1)(x), Florida Statutes (2005), by violating a lawful order of the Board of Medicine.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties:

permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

Signed this 13th day of April 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health



Staci Braswell
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #28845
(850) 245-4640 x8187
(850) 245-4681 Fax

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Rachael
DATE 4.17.07

SNB

PCP: April 13, 2007

PCP Members: Ashkar, Bearison, Beebe

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 456.0172(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 any other discipline imposed.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Racow*
DATE: 8-23-07

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2006-33227

Gerald Entiemowei Dariah, 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),¹ 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 four hundred ninety-five dollars and three cents (\$495.03), based on the following itemized statement of costs:

¹ Ch. 2003-416, § 19, Laws of Fla., effective September 15, 2003, amended Section 456.072(4), Florida Statutes (2003), to include the underlined language.

Gerald Etiemowei Dariah

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.40	\$18.81
Investigation:	0.00	\$0.00
Legal:	4.00	\$476.22
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	4.40	\$495.03
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$495.03

Therefore, the Petitioner seeks an assessment of costs against Respondent in the amount of four hundred ninety-five dollars and three cents (\$495.03), as evidenced in the attached affidavit. (Exhibit A).

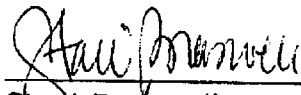
4. Should Respondent file written objections to the assessment of costs, within ten (10) days of the date of this motion, specifying the grounds for the objections and the specific elements of the costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs 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 four hundred ninety-five dollars and three cents (\$495.03) 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 four hundred ninety-five dollars and three cents (\$495.03).

DATED this 22nd day of August, 2007.

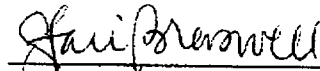
Respectfully submitted,



Staci Braswell
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0028845
(850) 245-4640
(850) 245-4680 FAX

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been furnished to Gerald Etimowei Dariah, M.D., 1112 North Madison Street, Albany, Georgia, 31701 by U.S. Mail this 22nd day of August, 2007.



Staci Braswell
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON

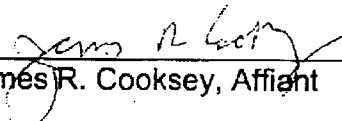
BEFORE ME, the undersigned authority, personally appeared **JAMES R. COOKSEY**, who was sworn and states as follows:

- 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 an 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 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399.
- 4) As an 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 2006-33227 (Department of Health v. Gerald Etiemowei Dariah, M.D.), are **four hundred ninety-five dollars and three cents (\$495.03)**.
- 6) The costs for DOH case number 2006-33227 (Department of Health v. Gerald Etiemowei Dariah, 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 2006-33227 (Department of Health v. Gerald Etiemowei Dariah, 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)

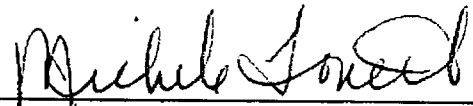
- 9) James R. Cooksey, first being duly sworn, states that he has read the foregoing Affidavit and its attachments and the statements contained therein are true and correct to the best of his knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


James R. Cooksey, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 20th day of August, 2007,
by James R. Cooksey, who is personally known to me.


Notary Signature

Name of Notary Printed

Stamp Commissioned Name of Notary Public



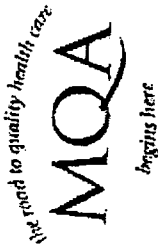
Complaint Cost Summary

Complaint Number: 200633227

Complainant's Name: DOH/ CSU

Subject's Name: DARIAH, GERALD ETIEMOWEI

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.40	\$18.81
Investigation:	0.00	\$0.00
Legal:	4.00	\$476.22
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	4.40	\$495.03
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$495.03



***** CONFIDENTIAL *****
Time Tracking System
Itemized Cost by Complaint

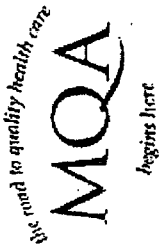
Complaint 200633227

Report Date: 08/17/2007

Page 1 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
CONSUMER SERVICES UNIT						
HA50	0.40	\$47.03	\$18.81	10/18/2006	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
Sub Total	0.40		\$18.81			
PROSECUTION SERVICES UNIT						
HLL51A	0.50	\$118.58	\$59.29	01/01/1900	25	REVIEW CASE FILE
HLL51A	1.00	\$118.58	\$118.58	01/01/1900	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL51A	0.60	\$118.58	\$71.15	02/01/2007	25	REVIEW CASE FILE
HL70A	0.10	\$137.48	\$13.75	02/12/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL51A	0.50	\$118.58	\$59.29	02/13/2007	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL51A	0.30	\$118.58	\$35.57	03/30/2007	89	PROBABLE CAUSE PREPARATION
HLL51A	0.10	\$118.58	\$11.86	04/09/2007	89	PROBABLE CAUSE PREPARATION
HLL51A	0.10	\$118.58	\$11.86	04/13/2007	89	PROBABLE CAUSE PREPARATION
HLL51A	0.10	\$118.58	\$11.86	04/13/2007	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
HLL51A	0.30	\$118.58	\$35.57	04/16/2007	90	POST PROBABLE CAUSE PROCESSING
HLL51A	0.20	\$118.58	\$23.72	04/17/2007	90	POST PROBABLE CAUSE PROCESSING
HLL51A	0.10	\$118.58	\$11.86	04/18/2007	90	POST PROBABLE CAUSE PROCESSING
HLL51A	0.10	\$118.58	\$11.86	05/16/2007	64	LEGAL ADVISED/DISCUSSION - BOARD OFFICE, DEPT STAFF OR ATTY GEN OFF
Sub Total	4.00		\$476.22			

Total Cost	\$495.03
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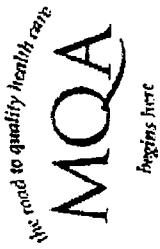
*** CONFIDENTIAL ***
Time Tracking System
Itemized Cost by Complaint

Complaint 200633227

Report Date: 08/17/2007

Page 2 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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***** CONFIDENTIAL *****
Time Tracking System
Itemized Expense by Complaint
Complaint

Report Date: 08/17/2007

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
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SubTotal
Total Expenses