

FILED DATE JUN 15 2016

Department of Health

By: Amy R. Canaway
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2014-07473

LICENSE NO.: ME0067330

BARRY ROSS KAPLOWITZ, 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 June 3, 2016, in Fort Lauderdale, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause pursuant to Respondent's Election of Rights. At the hearing, Petitioner was represented by Yolonda Green, Assistant General Counsel. Respondent was not present but was represented by Joseph A. Kovacs, Jr., Esquire. 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

At the hearing the Petitioner withdrew its Motion to Assess Costs in this matter.

(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 13th day of June, 2016.

BOARD OF MEDICINE

Claudia Kemp
Claudia Kemp, J.D., Executive Director
For Steven Rosenberg, 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 **Certified Mail** to BARRY ROSS KAPLOWITZ, M.D., 3218 NE 211 Terrace, Aventura, Florida 33180; to Benjamin Newman, Esquire, Gray Robinson, 301 East Pine Street, Suite 1400, Orlando, Florida 32801; by email to Yolonda Green, Assistant General Counsel, Department of Health, at Yolonda.Green@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 15th day of June, 2016.

Aventura

7016 0340 0000 8263 5157

Amy L. Conway

Deputy Agency Clerk

7016 0340 0000 8263 5164

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2014-07473

BARRY ROSS KAPLOWITZ, M.D.

Respondent.

_____ /

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

The Department of Health, by and through counsel, and moves the Board of Medicine for entry of a Final Order assessing costs against Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2015). 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.

2. Section 456.072(4), Florida Statutes (2015), states, in pertinent part, as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001, under 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 no board, shall assess costs related to the investigation and prosecution of the case. The 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. As evidenced in the attached affidavit (Exhibit A), the investigation and prosecution of this case has resulted in costs in the total amount of \$1,698.20, based on the following itemized statement of costs:

- a. Total costs for Complaints \$103.86
- b. Total costs for Investigations \$171.66
- c. Total costs for Legal \$1,397.38
- d. Total costs for expenses \$25.30

4. The attached affidavit reflects the Department's costs for attorney time in this case as \$1,397.38 (Exhibit A). The cost of obtaining an affidavit from an outside attorney will be greater than \$2,000.00. The Department, therefore, is not seeking costs for attorney time in this case.

5. 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 objections are made, 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.

6. Petitioner requests that the Board grant this motion and assess costs in the amount of \$300.82 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 (2015).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against Respondent in the amount of \$300.82.

Respectfully submitted,

Peter Delia

Peter Delia
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar #104207
(P) (850) 245-4640, Ext. 8152
(F) (850) 245-4684
(E) Peter.Delia@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided to Barry Ross Kaplowitz, M.D., Federal Corrections Institute of Miami, 15801 SW 137th Avenue, Miami, FL 33177, and to Benjamin Newman, Esq., Gray Robinson, 301 East Pine Street, Suite 1400, Orlando, FL 32801, by U.S. Mail this 15th day of April, 2016.

Peter Delia

Peter Delia
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **SHANE WALTERS** who was sworn and states as follows:

- 1) My name is Shane Walters.
- 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 the Senior Management Analyst II (SMAll) for the Consumer Services and Compliance Management 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-75 Tallahassee, Florida 32399-3275.
- 4) As SMAll of the Consumer Services and Compliance Management Unit, 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(s) 2014-07473 (Department of Health v. Barry Ross Kaplowitz, M.D.) are one thousand six hundred ninety-eight dollars and twenty cents (\$1,698.20).
- 6) The costs for DOH case number(s) 2014-07473 (Department of Health v. Barry Ross Kaplowitz, 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 numbers 2014-07473 (Department of Health v. Barry Ross Kaplowitz, 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) Shane Walters, 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.

Shane Walters
Shane Walters, Affiant

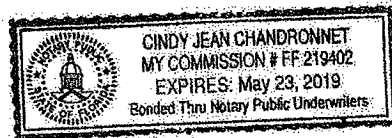
State of Florida
County of Leon

Sworn to and subscribed before me this 13 day of April, 2016,
by Shane Walters, who is personally known to me.

Cindy J. Chandronnet
Notary Signature

Cindy J. Chandronnet
Name of Notary Printed

Stamp Commissioned Name of Notary Public:



Search

Bates Number : 21589

07473

MAIN

HELP

Complaint Cost Summary
 Complaint Number: 201407473

Subject's Name: KAPLOWITZ, BARRY ROSS

	Hours	Costs
***** Cost to Date *****		
Complaint:	1.90	\$103.86
Investigation:	2.80	\$171.56
Legal:	13.20	\$1,397.38
Compliance:	0.00	\$0.00

Sub Total:	17.90	\$1,672.90
Expenses to Date:		\$25.30
Prior Amount:		\$0.00
Total Costs to Date:		\$1,698.20



*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 201407473

Report Date 04/13/2016

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
CONSUMER SERVICES UNIT						
HA151	0.30	\$54.65	\$16.40	05/14/2014	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA151	0.10	\$54.65	\$5.47	07/02/2014	25	REVIEW CASE FILE
HA151	0.80	\$54.65	\$43.72	03/18/2015	25	REVIEW CASE FILE
HA151	0.70	\$54.65	\$38.26	03/24/2015	77	PREPARATION OF DESK INVESTIGATION SYNOPSIS
HA151	0.20	\$54.65	\$10.93	05/08/2015	60	MISCELLANEOUS
HA151	0.30	\$54.65	\$16.40	09/02/2015	60	MISCELLANEOUS
HA151	0.10	\$54.65	\$5.47	09/03/2015	60	MISCELLANEOUS
HA151	0.10	\$54.65	\$5.47	09/08/2015	60	MISCELLANEOUS
HA151	0.40	\$54.65	\$21.86	09/11/2015	77	PREPARATION OF DESK INVESTIGATION SYNOPSIS
Sub Total	3.00		\$163.98			

INVESTIGATIVE SERVICES UNIT						
MI28	1.10	\$65.61	\$72.17	09/03/2015	58	TRAVEL TIME
MI28	0.60	\$65.61	\$39.37	09/03/2015	4	ROUTINE INVESTIGATIVE WORK
Sub Total	1.70		\$111.54			

PROSECUTION SERVICES UNIT						
HLL87A	0.20	\$105.33	\$21.07	05/04/2015	25	REVIEW CASE FILE
HLL87A	0.10	\$105.33	\$10.53	05/08/2015	115	CONTACT WITH INVESTIGATORS
HLL115B	0.80	\$105.33	\$84.26	05/12/2015	40	PREPARATION OF OR REVISION OF A PLEADING
HLL115B	0.40	\$105.33	\$42.13	05/12/2015	46	LEGAL RESEARCH
HLL115B	0.80	\$105.33	\$84.26	05/12/2015	25	REVIEW CASE FILE
HLL87A	0.30	\$105.33	\$31.60	05/12/2015	60	MISCELLANEOUS
HLL87A	0.10	\$105.33	\$10.53	05/13/2015	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFFI
HLL115B	0.30	\$105.33	\$31.60	05/13/2015	46	LEGAL RESEARCH
HLL115B	0.20	\$105.33	\$21.07	05/13/2015	70	CONFERENCES WITH LAWYERS



*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 201407473

Report Date 04/13/2016

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL115B	0.40	\$105.33	\$42.13	05/13/2015	40	PREPARATION OF OR REVISION OF A PLEADING
HLL115B	0.40	\$105.33	\$42.13	05/27/2015	25	REVIEW CASE FILE
HLL115B	0.10	\$105.33	\$10.53	05/27/2015	35	TELEPHONE CALLS
HLL115B	0.30	\$105.33	\$31.60	06/01/2015	35	TELEPHONE CALLS
HLL87A	0.20	\$105.33	\$21.07	06/11/2015	29	REVIEW ADMINISTRATIVE COMPLAINT
HLL115B	2.50	\$105.33	\$263.33	06/11/2015	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL115B	0.30	\$105.33	\$31.60	06/15/2015	35	TELEPHONE CALLS
HLL115B	0.30	\$105.33	\$31.60	06/15/2015	25	REVIEW CASE FILE
HLL115B	0.50	\$105.33	\$52.67	07/24/2015	89	PROBABLE CAUSE PREPARATION
HLL115B	0.30	\$105.33	\$31.60	07/24/2015	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
HLL115B	0.20	\$105.33	\$21.07	08/18/2015	35	TELEPHONE CALLS
HLL115B	0.30	\$105.33	\$31.60	08/18/2015	37	REVIEW LETTER
HLL115B	0.60	\$105.33	\$63.20	08/19/2015	35	TELEPHONE CALLS
HLL115B	0.60	\$105.33	\$63.20	08/19/2015	70	CONFERENCES WITH LAWYERS
HLL115B	0.50	\$105.33	\$52.67	08/20/2015	40	PREPARATION OF OR REVISION OF A PLEADING
HLL115B	0.30	\$105.33	\$31.60	08/20/2015	36	PREPARATION OR REVISION OF LETTER
HLL125B	0.70	\$109.02	\$76.31	12/08/2015	25	REVIEW CASE FILE
HLL125B	0.20	\$109.02	\$21.80	12/08/2015	35	TELEPHONE CALLS
HLL125B	0.30	\$105.33	\$31.60	12/17/2015	35	TELEPHONE CALLS
HLL125B	0.20	\$109.02	\$21.80	02/11/2016	35	TELEPHONE CALLS
HLL125B	0.50	\$109.02	\$54.51	02/16/2016	25	REVIEW CASE FILE
HLL125B	0.30	\$109.02	\$32.71	02/16/2016	41	REVIEW PLEADING
Sub Total	13.20		\$1,397.38			

Total Cost	\$1,672.90
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*** CONFIDENTIAL ***

Time Tracking System
Itemized Cost by Complaint

Complaint 201407473

Report Date 04/13/2016

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



*** CONFIDENTIAL ***

Time Tracking System
Itemized Expense by Complaint

Complaint 201407473

Report Date: 04/13/2016

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
INVESTIGATIVE SERVICES UNIT				
MI28	09/03/2015	\$25.30	497000	PAYMENT FOR INFORMATION AND EVIDENCE
	SubTotal	\$25.30		
	Total Expenses	\$25.30		

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2014-07473

BARRY ROSS KAPLOWITZ, M.D.,

RESPONDENT.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, hereby files this Administrative Complaint before the Board of Medicine against Respondent, Barry Ross Kaplowitz, 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 67330.

3. Respondent's address of record is 3218 NE 211 Terrace, Aventura, Florida 33180.

4. On September 25, 2014, Respondent was indicted for one count of conspiracy to commit health care fraud and wire fraud in violation of Title 18 U.S.C. Section 1349, four counts of wire fraud in violation of Title 18 U.S.C. Section 1342, two counts of health care fraud in violation of Title 18 U.S.C. Section 1347, and one count of making false statements relating to health care matters in violation of Title 18 U.S.C. Section 1035.

5. On February 20, 2015, in the United States District Court for the Southern District of Florida, in Case No. 14-20323-CR-ALTONAGA, Respondent was found guilty of making false statements relating to health care matters involving Medicare, in violation of Title 18 U.S.C. Section 1035(a)(2).

6. Section 456.072(1)(c), Florida Statutes (2014), provides that being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession constitutes grounds for disciplinary action by the Board of Medicine.

7. Respondent's above-referenced conviction for violating Title 18, U.S.C., Section 1035(a)(2), by knowingly and willfully making a materially false statement and representation to special agents of the FDA directly relates to his medical practice.

8. Based on the foregoing, Respondent violated Section 456.072(1)(c), Florida Statutes (2014).

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 24th day of July, 2015.

John H. Armstrong, MD, FACS
Surgeon General &
Secretary of Health



Adrienne E. Vining
Assistant General Counsel
Fla. Bar No. 0196290
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4444
Facsimile: (850) 245-4684
Email: Adrienne.Vining@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Bridget Cortes*

DATE JUL 24 2015

AEV

PCP Date: July 24, 2015
PCP Members: Dr. El-Bahri, Dr. Orr and Ms. Goersch

DOH VS. BARRY ROSS KAPLOWITZ , M.D. CASE NO. 2014-07473

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.