

FILED DATE - NOV 28 2016

Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By Amy L. Carraway
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-20534

LICENSE NO.: ME0105840

MARCUS W. ANDERSON, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57, Florida Statutes, on November 4, 2016, in Jacksonville, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause pursuant to Respondent's Election of Rights. Respondent was served with the Administrative Complaint by certified mail and hand delivery. Because Respondent failed to submit an Election of Rights or otherwise dispute the facts or respond in any other way, Respondent waived the right to a hearing pursuant to Section 120.57, Florida Statutes. At the hearing, Petitioner was represented by Allison Dudley, 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 \$2,000.00 to the Board within 30 days from the date the Final Order is filed. Said fine shall be paid by money order or cashier's check.

2. Respondent's license to practice medicine in the State of Florida is hereby **SUSPENDED** until such time as he demonstrates the ability to practice medicine with reasonable skill and safety. Such demonstration of skill and safety shall include an evaluation by the Professionals Resource Network (PRN). The Respondent shall appear before the Board with said PRN evaluation and the Board shall make the determination of whether Respondent is safe to practice medicine with reasonable skill and safety. The Board retains jurisdiction in this matter to impose terms and conditions upon reinstatement of

Respondent's license, including, but not limited to, a period of probation with said terms and conditions to be set at the time of reinstatement.

RULING ON MOTION TO ASSESS COSTS

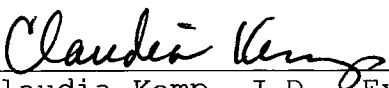
The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$738.11. Said costs are to be paid within 30 days from the date this Final Order is filed.

(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 22nd day of November,
2016.

BOARD OF MEDICINE



Claudia Kemp, J.D., Executive Director
For Sarvam TerKonda, 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.

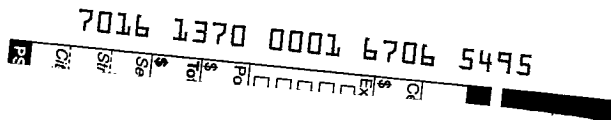
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by **Certified Mail** to MARCUS W. ANDERSON, M.D., 400 Health Park Boulevard, St. Augustine, Florida 32086; and 206 27th Avenue South, Myrtle Beach, South Carolina 29577; by email to Louise Wilhite-St. Laurent, Deputy General Counsel, Department of Health, at Louise.Stlaurent@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 29th day of November, 2016.

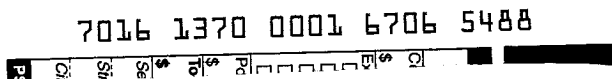
Amy L. Carraway

Deputy Agency Clerk

St Augustine



S.c.



**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-20534

MARCUS W. ANDERSON, 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 (2011-2016). As grounds therefore, 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 (2011-2016), 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 (Exhibits 1 and 2), the investigation and prosecution of this case has resulted in costs in the total amount of \$1,710.61 based on the following itemized statement of costs:

- a. Total costs for Complaints \$16.40
- b. Total costs for Investigations \$721.71
- c. Total costs for Legal \$972.50
- d. Total costs for expenses \$1,710.61

4. The attached affidavit reflects the Department's costs for attorney time in this case as \$972.50 (Exhibit 1). 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 \$738.11 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 (2011-2016).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against Respondent in the amount of \$738.11.

Respectfully submitted,

/s/ Jack Wise
Jack Wise
Assistant General Counsel
Florida Bar No. 0103953
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4640 x 8229
Facsimile: (850) 245-4684
Jack.Wise@flhealth.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for to Assess Costs has been furnished via certified mail to Marcus W. Anderson, M.D., at 206 27th Avenue South, Myrtle Beach, South Carolina, 29577, and at 400 Health Park Boulevard, St. Augustine, Florida 32086, this 8th day of August 2016

/s/ Jack Wise
Jack Wise
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 2015-20534 (Department of Health v Marcus W. Anderson, M. D. are One Thousand Seven Hundred Ten Dollars and Sixty-one Cents (\$1,710.61)
- 6) The costs for DOH case numbers 2015-20534 (Department of Health v. Marcus W. Anderson) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers 2015-20534 (Department of Health v. Marcus W. Anderson) 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 her 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 25th day of July, 2016, by Shane Walters, who is personally known to me.

Towanda B. Burnett
Notary Signature



Towanda B. Burnett
Name of Notary Printed

Stamp Commissioned Name of Notary Public:

Search

Complaint/Case Number: 201520534

MAIN

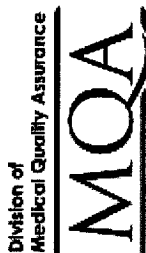
HELP

Complaint Cost Summary

Complaint Number: 201520534

Subject's Name: ANDERSON, MARCUS
WALTER

	***** Cost to Date *****	
	Hours	Costs
Complaint:	0.30	\$16.40
Investigation:	11.00	\$721.71
Legal:	9.10	\$972.50
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	20.40	\$1,710.61
Expenses to Date:		\$0.00
Prior Amount:		\$0.00
Total Costs to Date:		\$1,710.61



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

Complaint 201520534

Report Date 07/25/2016

Page 1 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
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CONSUMER SERVICES UNIT						
HA159	0.30	\$54.65	\$16.40	07/10/2015	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
Sub Total	0.30		\$16.40			

INVESTIGATIVE SERVICES UNIT						
J1101	1.30	\$65.61	\$85.29	07/10/2015	4	ROUTINE INVESTIGATIVE WORK
J1101	2.30	\$65.61	\$150.90	07/13/2015	58	TRAVEL TIME
J1101	1.80	\$65.61	\$118.10	07/13/2015	4	ROUTINE INVESTIGATIVE WORK
J1101	1.30	\$65.61	\$85.29	07/14/2015	4	ROUTINE INVESTIGATIVE WORK
J1101	0.50	\$65.61	\$32.81	07/16/2015	4	ROUTINE INVESTIGATIVE WORK
J1101	1.00	\$65.61	\$65.61	07/16/2015	76	REPORT WRITING
J1101	0.90	\$65.61	\$59.05	07/17/2015	4	ROUTINE INVESTIGATIVE WORK
J1101	1.40	\$65.61	\$91.85	07/20/2015	76	REPORT WRITING
J1101	0.50	\$65.61	\$32.81	07/20/2015	4	ROUTINE INVESTIGATIVE WORK
Sub Total	11.00		\$721.71			

PROSECUTION SERVICES UNIT						
HLL118A	0.60	\$105.33	\$63.20	07/24/2015	25	REVIEW CASE FILE
HLL118A	0.10	\$105.33	\$10.53	08/27/2015	35	TELEPHONE CALLS
HLL118A	0.50	\$105.33	\$52.67	08/27/2015	26	PREPARE OR REVISE MEMORANDUM
HLL102B	0.20	\$105.33	\$21.07	09/21/2015	25	REVIEW CASE FILE
HLL102B	0.30	\$105.33	\$31.60	09/21/2015	35	TELEPHONE CALLS
HLL102B	0.60	\$105.33	\$63.20	09/21/2015	36	PREPARATION OR REVISION OF LETTER
HLL102B	0.10	\$105.33	\$10.53	10/12/2015	35	TELEPHONE CALLS
HLL102B	1.00	\$105.33	\$105.33	12/09/2015	25	REVIEW CASE FILE
HLL102B	0.70	\$109.02	\$76.31	12/22/2015	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL102B	1.60	\$105.33	\$168.53	12/28/2015	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT

Exhibit 2

*** CONFIDENTIAL ***

**Time Tracking System
Itemized Cost by Complaint**

Complaint 201520534

Report Date 07/25/2016

Page 2 of 2

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL102B	0.30	\$105.33	\$31.60	12/29/2015	36	PREPARATION OR REVISION OF LETTER
HLL102B	0.20	\$109.02	\$21.80	01/15/2016	25	REVIEW CASE FILE
HLL102B	1.00	\$109.02	\$109.02	02/19/2016	89	PROBABLE CAUSE PREPARATION
HLL102B	0.10	\$109.02	\$10.90	02/19/2016	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
HLL102B	0.30	\$109.02	\$32.71	02/22/2016	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL102B	0.20	\$109.02	\$21.80	03/18/2016	25	REVIEW CASE FILE
HLL102B	0.10	\$109.02	\$10.90	03/18/2016	35	TELEPHONE CALLS
HLL102B	0.10	\$109.02	\$10.90	03/18/2016	67	STAFF MEETINGS
HLL102B	0.20	\$109.02	\$21.80	03/18/2016	46	LEGAL RESEARCH
HLL102B	0.20	\$109.02	\$21.80	05/09/2016	25	REVIEW CASE FILE
HLL102B	0.20	\$109.02	\$21.80	05/09/2016	25	REVIEW CASE FILE
HLL102B	0.20	\$109.02	\$21.80	05/09/2016	60	MISCELLANEOUS
HLL102B	0.10	\$109.02	\$10.90	05/10/2016	36	PREPARATION OR REVISION OF LETTER
HLL102B	0.10	\$109.02	\$10.90	07/05/2016	64	LEGAL ADVICE/DISCUSSION - BOARD OFFICE,DEPT STAFF OR ATTY GEN OFFI
HLL102B	0.10	\$109.02	\$10.90	07/12/2016	27	REVIEW MEMORANDUM
Sub Total	9.10		\$972.50			

Total Cost

\$1,710.61

Exhibit 2



*** CONFIDENTIAL ***
Time Tracking System
Itemized Expense by Complaint
Complaint 201520534

Report Date: 07/25/2016

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

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NUMBER 2015-20534

MARCUS W. ANDERSON, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health ("Department"), by and through its undersigned counsel, and files this Administrative Complaint ("Complaint") before the Board of Medicine ("Board") against Respondent, Marcus W. Anderson, M.D., and in support thereof alleges:

1. The Department of Health ("Department") is the state agency charged with regulating the practice of medicine, pursuant to Chapters 20, 456, and 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was licensed to practice as a physician in the State of Florida, having been issued license number ME 105840.

3. Respondent's address of record is 400 Health Park Boulevard, St. Augustine, Florida 32086.

4. Respondent's last known address is 206 27th Avenue South, Myrtle Beach, South Carolina 29577.

5. On or about April 8, 2010, Respondent executed a five-year chemical dependency monitoring contract ("the PRN contract") with the Professionals Resource Network ("PRN")¹.

6. On or about March 6, 2015, Respondent executed an addendum to the PRN contract. The addendum extended the PRN contract for another five years.

7. Among other provisions, the PRN contract stipulated that Respondent agreed to abstain completely from the use of alcohol and other mood altering substances unless ordered by his primary care physician and when approved by PRN.

8. The contract also stipulated that Respondent agreed to participate in a random urine drug, hair testing, and/or blood screen program, with the results of such testing to be released to PRN.

¹ PRN is designated as the State of Florida's impaired practitioners program for physicians.

9. On one or more occasions between February 2012 and June 2015, Respondent consumed alcohol in violation of his PRN contract.

10. In or about June 2015, pursuant to the PRN contract, Respondent provided a blood sample for phosphatidyl ethanol ("PEth") testing.

11. PEth is a marker of ethanol consumption. Ethanol is the intoxicating agent found in alcoholic beverages.

12. On or about June 26, 2015, PRN received the results of the aforementioned PEth test.

13. The PEth test was positive at 152 ng/mL.

14. After receiving the test result, PRN contacted Respondent and referred him for an inpatient evaluation.

15. Shortly thereafter, on or about June 30, 2015, Respondent informed PRN that he would no longer participate in PRN and/or that he was withdrawing from PRN.

16. As a result of Respondent's material non-compliance, PRN terminated Respondent from its program on or about July 9, 2015.

17. Section 456.072(1)(hh), Florida Statutes (2011-2015), subjects a licensee to discipline for being terminated from a treatment program for

impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

18. Based on the foregoing, Respondent violated Section 456.072(1)(hh), Florida Statutes (2011-2015) in one or more of the following ways:

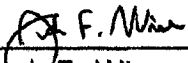
- a) By being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee by consuming alcohol on one or more occasions between February 2012 and June 2015; and/or
- b) By being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee by withdrawing from PRN on or about June 30, 2015.

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 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 26th day of February, 2016.

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



Jack F. Wise
Assistant General Counsel
DOH Prosecution Services Unit
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(F) 850-245-4684
(E) Jack.Wise@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Amy Larroway*
DATE 2-26-16

PCP Date: February 19, 2016

PCP Members: Dr. Fuad Ashkar; Dr. Enrique Ginzburg; Ms. Joy Tootle

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.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

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.