

FILED DATE - JUL 10 2017

Department of Health

Amber Greene
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2014-06266

LICENSE NO.: ME0034231

NICHOLAI ZELNERONOK, 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 9, 2017, in Orlando, 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 Corynn Alberto, Assistant General Counsel. Respondent was present but 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. The Board found mitigating factors in this matter as follows:

a. Respondent is no longer practicing medicine; and

b. This is the Respondent's first offense for a violation of Chapter 458 or 456, Florida Statutes.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent shall pay an administrative fine in the amount of \$1,000.00 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 shall be and is hereby issued a letter of concern by the Board.

3. Should Respondent re-enter the **active practice of medicine**, within 6 months, Respondent must submit to a Quality Assurance review of his medical practice to be performed by a licensed risk manager and provide the Board's Probation Committee with the quality assurance report. In addition, the Respondent shall comply with any and all recommendations made by the risk manager and shall document compliance with said recommendations by submitting a follow-up report completed by the licensed risk manager that verifies Respondent's compliance

with all prior recommendations. The follow-up report shall be filed with the Board's Probation Committee within 30 days from the date of submission of the quality assurance report.

RULING ON MOTION TO ASSESS COSTS

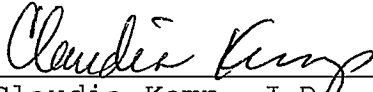
The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$4,698.58. Said costs are to be paid within 30 days from the date this Final Order is filed.

(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 7th day of July, 2017.

BOARD OF MEDICINE



Claudia Kemp, J.D., Executive Director
For Magdalena Averhoff, 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 NICHOLAI ZELNERONOK, M.D., 13 Sanchez Avenue, St. Augustine, Florida 32084; by email to Allison Dudley, Assistant General Counsel, Department of Health, at Allison.Dudley@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 10 day of July, 2017.

Amber Greene

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NUMBER: 2014-06266

NICHOLAI ZELNERONOK, M.D.,

Respondent.

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

The Department of Health, by and through counsel, 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 (2016). 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 (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 (Exhibit A), the investigation and prosecution of this case has resulted in costs in the total amount of \$4,698.59, based on the following itemized statement of costs:

- a. Total costs for Complaints \$204.99
- b. Total costs for Investigations \$2,102.22
- c. Total costs for Legal \$2,344.12
- d. Total costs for expenses \$47.25

4. The attached outside attorney affidavit (Exhibit B) indicates a review of the file and a finding that the Department's attorney time in this case is reasonable and justifiable in the amount of \$2,344.12.

5. Upon review of the file, the Department contends that the costs associated with attorney time spent on this case are reasonable and justifiable.

6. 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.

7. Petitioner requests that the Board grant this motion and assess costs in the amount of \$4,698.58 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 (2016).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against Respondent in the amount of \$4,698.58.

[signature appears on the following page]

Respectfully submitted,

Corynn Alberto
Corynn Alberto
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 68814
Phone (850) 245-4640 ext. 8243
FAX (850) 245-4684
Corynn.alberto@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 Respondent, Nicholai Zelneronok, M.D., at 13 Sanchez Avenue, St. Augustine, Florida 32084, by certified U.S. Mail this 12th day of April, 2017.

Corynn Alberto
Corynn Alberto
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 (SMAII) 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 SMAII 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) **2014-06266** (Department of Health v **Nicholai Zelneronok, M.D.**) is **FOUR THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS AND SIXTY-EIGHT CENTS (\$4,687.68)**.
- 6) The costs for DOH case number **2014-06266** (Department of Health v **Nicholai Zelneronok, 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 **2014-06266** (Department of Health v **Nicholai Zelneronok, 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 her knowledge and belief.

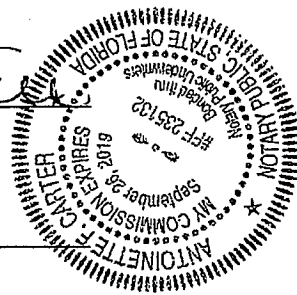
FURTHER AFFIANT SAYETH NOT.

Shane Walters
Shane Walters, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 4 day of April, 2017,
by Shane Walters, who is personally known to me.

W. J. Carter
Notary Signature



Name of Notary Printed

Stamp Commissioned Name of Notary Public:

Search

Complaint/Case Number: 201406266

[MAIN](#)[HELP](#)

Complaint Cost Summary

Complaint Number: 201406266

Subject's Name: ZELNERONOK, NICHOLAI

	***** Cost to Date *****	
	Hours	Costs
Complaint:	3.75	\$204.99
Investigation:	32.00	\$2,102.22
Legal:	21.40	\$2,333.22
Compliance:	0.00	\$0.00
	*****	*****
Sub Total:	57.15	\$4,640.43
Expenses to Date:		\$47.25
Prior Amount:		\$0.00
Total Costs to Date:		\$4,687.68



*** CONFIDENTIAL ***

**Time Tracking System
Itemized Cost by Complaint**

Complaint 201406266

Report Date 04/05/2017

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
CONSUMER SERVICES UNIT						
HA167	0.30	\$54.65	\$16.40	04/24/2014	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA167	0.30	\$54.65	\$16.40	04/25/2014	25	REVIEW CASE FILE
HA186	0.25	\$54.65	\$13.66	01/28/2015	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA186	0.50	\$54.65	\$27.33	01/29/2015	78	INITIAL REVIEW AND ANALYSIS OF COMPLAINT
HA167	0.20	\$54.65	\$10.93	02/04/2015	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	07/07/2015	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	01/25/2016	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	01/26/2016	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	02/16/2016	7	PRELIMINARY INVESTIGATION
HA167	0.40	\$54.65	\$21.86	05/06/2016	25	REVIEW CASE FILE
HA78	0.10	\$54.65	\$5.47	05/11/2016	25	REVIEW CASE FILE
HA167	0.30	\$54.65	\$16.40	08/04/2016	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	08/15/2016	25	REVIEW CASE FILE
HA167	0.40	\$54.65	\$21.86	08/23/2016	25	REVIEW CASE FILE
HA78	0.10	\$54.65	\$5.47	08/24/2016	25	REVIEW CASE FILE
HA167	0.40	\$54.65	\$21.86	08/25/2016	25	REVIEW CASE FILE
HA167	0.10	\$54.65	\$5.47	08/26/2016	25	REVIEW CASE FILE
Sub Total	3.85		\$210.46			

INVESTIGATIVE SERVICES UNIT						
J1100	0.60	\$65.83	\$39.50	08/26/2016	4	ROUTINE INVESTIGATIVE WORK
G138	0.50	\$65.83	\$32.92	08/29/2016	4	ROUTINE INVESTIGATIVE WORK
G138	0.40	\$65.83	\$26.33	09/14/2016	4	ROUTINE INVESTIGATIVE WORK
G138	2.60	\$65.83	\$171.16	09/22/2016	4	ROUTINE INVESTIGATIVE WORK
G138	0.20	\$65.83	\$13.17	09/29/2016	4	ROUTINE INVESTIGATIVE WORK
G138	1.50	\$65.83	\$98.75	10/04/2016	4	ROUTINE INVESTIGATIVE WORK
G138	1.50	\$65.83	\$98.75	10/11/2016	4	ROUTINE INVESTIGATIVE WORK
G138	2.00	\$65.83	\$131.66	10/12/2016	4	ROUTINE INVESTIGATIVE WORK

*** C O N F I D E N T I A L ***

**Time Tracking System
Itemized Cost by Complaint**

Complaint 201406266

Report Date 04/05/2017

Page 2 of 4

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
GI38	0.50	\$65.83	\$32.92	10/13/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.40	\$65.83	\$92.16	10/17/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.00	\$65.83	\$65.83	10/17/2016	100	SERVICE OF ADMINISTRATIVE COMPLAINTS, SUBPOENAS, NOTICE TO CEASE
GI38	0.50	\$65.83	\$32.92	10/19/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.60	\$65.83	\$39.50	11/01/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	2.00	\$65.83	\$131.66	11/02/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	4.00	\$65.83	\$263.32	11/03/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.00	\$65.83	\$65.83	11/07/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.50	\$65.83	\$98.75	11/08/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.00	\$65.83	\$65.83	11/10/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.30	\$65.83	\$19.75	11/15/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.40	\$65.83	\$26.33	11/17/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.20	\$65.83	\$79.00	11/17/2016	76	REPORT WRITING
GI38	0.20	\$65.83	\$13.17	11/17/2016	176	REPORT PREPARATION
GI38	0.60	\$65.83	\$39.50	11/18/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	1.20	\$65.83	\$79.00	11/18/2016	76	REPORT WRITING
GI38	1.00	\$65.83	\$65.83	11/21/2016	76	REPORT WRITING
GI38	0.50	\$65.83	\$32.92	11/21/2016	176	REPORT PREPARATION
GI38	0.50	\$65.83	\$32.92	11/21/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.40	\$65.83	\$26.33	12/07/2016	76	REPORT WRITING
GI38	0.20	\$65.83	\$13.17	12/13/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.20	\$65.83	\$13.17	12/14/2016	4	ROUTINE INVESTIGATIVE WORK
GI38	0.80	\$64.46	\$51.57	01/05/2017	76	REPORT WRITING
GI38	0.20	\$64.46	\$12.89	01/05/2017	176	REPORT PREPARATION
GI38	1.00	\$64.46	\$64.46	01/09/2017	76	REPORT WRITING
GI38	0.40	\$64.46	\$25.78	01/09/2017	176	REPORT PREPARATION
Sub Total	31.90		\$2,096.75			

PROSECUTION SERVICES UNIT

HLL131B	0.80	\$109.02	\$87.22	11/22/2016	25	REVIEW CASE FILE
HLL131B	0.10	\$109.02	\$10.90	11/23/2016	61	GENERAL INTAKE

*** CONFIDENTIAL ***

**Time Tracking System
Itemized Cost by Complaint**

Complaint 201406266

Report Date 04/05/2017

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Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL131B	0.20	\$109.02	\$21.80	11/29/2016	61	GENERAL INTAKE
HLL131B	0.20	\$109.02	\$21.80	12/02/2016	61	GENERAL INTAKE
HLL122A	0.10	\$109.02	\$10.90	12/09/2016	25	REVIEW CASE FILE
HLL138A	0.10	\$109.03	\$10.90	12/12/2016	60	MISCELLANEOUS
HLL138A	1.50	\$109.03	\$163.55	12/13/2016	25	REVIEW CASE FILE
HLL138A	1.70	\$109.03	\$185.35	12/19/2016	25	REVIEW CASE FILE
HLL138A	1.50	\$109.03	\$163.55	12/20/2016	25	REVIEW CASE FILE
HLL138A	1.00	\$109.03	\$109.03	12/20/2016	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL138A	1.00	\$109.03	\$109.03	01/03/2017	25	REVIEW CASE FILE
HLL138A	2.10	\$109.03	\$228.96	01/04/2017	25	REVIEW CASE FILE
HLL138A	0.20	\$109.03	\$21.81	01/04/2017	114	CONTACT WITH EXPERTS
HLL138A	1.00	\$109.03	\$109.03	01/05/2017	25	REVIEW CASE FILE
HLL138A	0.30	\$109.03	\$32.71	01/05/2017	102	REVIEW EXPERT WITNESS REPORT
HLL138A	0.50	\$109.03	\$54.52	01/05/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL138A	2.00	\$109.03	\$218.06	01/06/2017	25	REVIEW CASE FILE
HLL138A	1.50	\$109.03	\$163.55	01/06/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL122A	0.10	\$109.02	\$10.90	01/10/2017	70	CONFERENCES WITH LA WYERS
HLL122A	0.20	\$109.02	\$21.80	01/10/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL138A	2.00	\$109.03	\$218.06	01/10/2017	28	PREPARE OR REVISE ADMINISTRATIVE COMPLAINT
HLL138A	0.20	\$109.03	\$21.81	01/10/2017	89	PROBABLE CAUSE PREPARATION
HLL138A	0.50	\$109.03	\$54.52	01/12/2017	89	PROBABLE CAUSE PREPARATION
HLL138A	0.20	\$109.03	\$21.81	01/12/2017	89	PROBABLE CAUSE PREPARATION
HLL138A	0.10	\$109.03	\$10.90	01/18/2017	89	PROBABLE CAUSE PREPARATION
HLL136A	0.20	\$109.02	\$21.80	01/19/2017	89	PROBABLE CAUSE PREPARATION
HLL136A	0.10	\$109.02	\$10.90	01/20/2017	63	PRESENTATION OF CASES TO PROBABLE CAUSE PANEL
HLL138A	0.10	\$109.03	\$10.90	01/20/2017	90	POST PROBABLE CAUSE PROCESSING
HLL122A	0.10	\$109.02	\$10.90	01/24/2017	29	REVIEW ADMINISTRATIVE COMPLAINT
HLL122A	0.20	\$109.02	\$21.80	02/10/2017	35	TELEPHONE CALLS
HLL138A	0.10	\$109.03	\$10.90	02/10/2017	35	TELEPHONE CALLS
HLL138A	0.90	\$109.03	\$98.13	02/23/2017	25	REVIEW CASE FILE
HLL138A	0.10	\$109.03	\$10.90	02/23/2017	35	TELEPHONE CALLS
HLL138A	0.20	\$109.03	\$21.81	02/24/2017	25	REVIEW CASE FILE
HLL138A	0.10	\$109.03	\$10.90	02/24/2017	35	TELEPHONE CALLS



*** C O N F I D E N T I A L ***

Time Tracking System
Itemized Cost by Complaint

Complaint 201406266

Report Date 04/05/2017

Staff Code	Activity Hours	Staff Rate	Cost	Activity Date	Activity Code	Activity Description
HLL138A	0.20	\$109.03	\$21.81	02/27/2017	25	REVIEW CASE FILE
Sub Total	21.40		\$2,333.22			

Total Cost	\$4,640.43
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*** CONFIDENTIAL ***

**Time Tracking System
Itemized Expense by Complaint**
Complaint 201406266

Report Date: 04/05/2017

Page 1 of 1

Staff Code	Expense Date	Expense Amount	Expense Code	Expense Code Description
INVESTIGATIVE SERVICES UNIT				
GI38	10/25/2016	\$47.25	497000	PAYMENT FOR INFORMATION AND EVIDENCE
	SubTotal	\$47.25		
	Total Expenses	\$47.25		

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2014-06266

Nicholai Zelneronok, M.D.

Respondent.

AFFIDAVIT OF OUTSIDE ATTORNEY REGARDING COSTS

Daniel R. Russell, being duly sworn on oath, deposes and says:

1. I am an attorney at law duly authorized to practice in the State of Florida and have been active in the practice of law in Florida since March 21, 2009. My Curriculum Vitae is attached as Exhibit 1 hereto.
2. I am personally familiar with the fees usually and customarily awarded to attorneys for legal services in administrative proceedings of the kind and nature of the captioned case.
3. I am familiar with Rule 4-1.5(b) of the Rules Regulating the Florida Bar, and have taken such into consideration in forming my opinion in this matter, the factors set forth therein for the determination of reasonable attorney's fees.

4. I am also familiar with, and have considered in forming my opinion in this matter, the Florida Supreme Court in the case of *Florida Patient's Compensation Fund vs. Rowe*, 472 So.2d 1145 (Fla. 1985) relating to the determination of reasonable attorney's fees.
5. I have reviewed the file of the Department of Health (the Department) in relation to this case.
6. I have reviewed the Department's "Time Tracking System Itemized Cost by Complaint" for the case referenced herein, which is among the attachments to the Motion to Assess Costs. I have only reviewed and analyzed the time entries for the Prosecution Services Unit.
7. Based on my review of these documents, it is my understanding that the Department is seeking to recover \$2,344.12 for its attorney time and other costs related to the prosecution of this case.
8. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the hourly rates for the Department's prosecuting attorneys used in this case are within or below the reasonable and customary range for attorney time spent on cases of this type.

9. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the total number of attorney hours for which the Department of Health seeks recovery in this case is within the range of time customarily spent on cases of this type and is a reasonable total number of attorney hours for this case.

10. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that the total amount of costs sought to be recovered for attorney time and other costs of prosecution in this case is a reasonable amount in a case of this type.

11. It is my understanding that the Department is moving to recover a total of \$2,344.12 in relation to this case.

12. Based on the above, and on my years in legal practice and my experience in this area of legal practice, it is my opinion that items of expense are reasonable for a case of this type, and that the total amount of expenses sought to be recovered in this case is a reasonable amount for a case of this type.

DOR

Daniel R. Russell

STATE OF FLORIDA
COUNTY OF LEON

Before me, personally appeared Daniel R. Russell, who is personally known or provided state-issued identification to me and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 11th day of April, 2017.

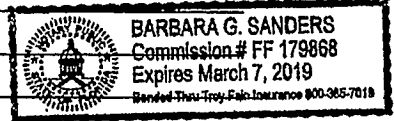
Barbara G. Sanders

Notary Public, State of Florida

Printed Name: _____

Commission No.: _____

Commission Expires: _____



Daniel Ryan Russell

292 Thornberg Drive, Tallahassee, FL 32312
(850) 425-7804 drussell@joneswalker.com

Experience:**Jones Walker LLP, Special Counsel**

- Primary areas of practice focuses on civil and administrative litigation, government relations, healthcare regulation and gaming law.

State of Florida, Department of the Lottery, General Counsel

- Responsible for all legal and regulatory affairs of the Florida Lottery, which employed approximately 500 people and generated nearly \$5.5 billion in annual gross revenue.
- In accordance with the Department's emergency rulemaking authority, managed the drafting and publication of new rules for each lottery game, of which around six are published each month.
- Responsible for personally handling bid protests, administrative, state and federal litigation, and all other legal matters for the Department.
- Spearheaded the Department's "Retailer Integrity Program" and supervised ten sworn law enforcement officers.

Jones Walker LLP, Associate

- Primary areas of practice include gaming and pari-mutuel law in the civil and administrative courts with a primary focus on administrative litigation, real estate and condominium law, labor and employment law, and legislative affairs for various industries.

Pennington, Moore, Wilkinson, Bell & Dunbar, Associate

- Primary areas of practice included gaming and pari-mutuel law, real estate, and employment law.
- Gaming practice included regulatory representation of multiple slot machine manufacturers and a Florida-based pari-mutuel facility with horse racing, slot machine and cardroom operations before the Florida Department of Business and Professional Regulation (DBPR) and Florida Legislature.

Gulfstream Park Racing & Casino, General Counsel

- Responsible for the legal, compliance, regulatory and risk management operations at Gulfstream's horse racing, cardroom and slot machine facility. Part of a management team that oversaw a \$20 million revenue growth over two years.
- Managed more than 100 pieces of active litigation and the distribution of an annual political and government affairs budget of approximately \$200,000.
- Advised Gulfstream through a year-long bankruptcy proceeding and worked with multiple vendors, including independent contractors, on matters of contract re-negotiations and collections.
- Completed collective bargaining agreements with Gulfstream's two active unions.
- Managed workers' compensation claims and day-to-day labor relations issues for more than 800 employees.

Education: Florida State University College of Law, Juris Doctorate

University of Florida, Bachelor of Science, Journalism

Licenses: Florida Bar, member in good standing and admitted to practice law in the State of Florida.

Publications:

"Misprinted Lottery Tickets and the Disappointment of a Non-Winning Ticket," American Gaming Lawyer, Fall 2015.

"Fraud and Ticket Brokering: A Dilemma for Public Lotteries," American Gaming Lawyer, Spring 2015.

"Frequent Jackpot Winners: Lucky Players or Scammers?," Casino Lawyer Magazine, Fall 2014.

"The Legal Status of Gambling in America's Senior Communities," Marquette Elder's Advisor: Vol. 8: Iss. 2, Article 5.

"The History of Internet Cafes and the Current Approach to Their Regulation" UNLV Gaming Law Journal: Vol. 3: Iss. 2, Article 5.

Lectures: "State Actions to Prevent/Cease Illegal Gambling," February 2016, ABA Gaming Law Minefield.

"Florida Lottery: What's Next?," January 2016, Florida Gaming Congress.

"Lotteries Seeking Growth Opportunities," January 2016, National Council of Legislators from Gaming States

State Law Resources, Featured Presenter, Fall 2012, Discussed the nationwide expansion of the Internet café industry at the State Law Resources annual conference before attorneys from more than 40 jurisdictions around the U.S.

Florida Gaming Summit, Panelist, Spring 2012, Discussed Florida's Public Policy as it relates to gaming and pari-mutuels.

Florida State University College of Law, Guest Lecturer, Fall 2010 - 2012, Gambling and Pari-Mutuel Law course. Presented information related to State and Federal gaming law issues.

Keiser University, Guest Lecturer, Fall 2009, White Collar Crimes course. Provided a detailed legal history of fraud and white collar crimes in Florida.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

Case Number 2014-06266

NICHOLAI ZELNERONOK, M.D.,

RESPONDENT.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Nicholai Zelneronok, M.D., and alleges:

1. Petitioner is the state agency 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 34231.

3. Respondent's address of record is 13 Sanchez Avenue, St. Augustine, Florida 32084.

4. At all times material to this Complaint, Respondent practiced medicine at Central Florida Urology Specialists located at 1934 Salk Avenue, Tavares, Florida 32778.

5. At all times material to this complaint, Respondent was Board Certified in Urology by the American Board of Urology.

6. Respondent treated patient S.D. from on or about February 3, 2011 to on or about March 4, 2011 ("treatment period").

7. On or about February 3, 2011, patient S.D. first presented to Respondent with micro hematuria and stone disease.

8. On or about February 9, 2011, Respondent ordered pre-operative blood work and chest x-rays of S.D.

9. The Radiology Report of the chest x-ray dated February 9, 2011 revealed a "newly developed 2.5 cm irregular contoured nodule located in the right lower lobe" that was "suspicious for potential malignancy and chest CT correlation is recommended..."

10. Respondent did not review the February 9, 2011 chest x-ray or radiology report and, subsequently, did not notify patient S.D. and/or S.D.'s primary care physician of the radiology findings.

11. In or about July 2012, S.D.'s primary care physician ordered a chest x-ray, which demonstrated a 5 cm mass with metastasis.

Standard of Care

12. At all times material to this complaint, the prevailing standard of care required that the Respondent review the chest x-rays and radiology report that were ordered by his staff and inform patient S.D. and/or S.D.'s primary care physician of the findings on the chest x-ray.

13. At all times material to this complaint, Section 458.331(1)(t), Florida Statutes (2010), subjected a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes (2010).

14. Section 456.50(1)(g), Florida Statutes (2010), states medical malpractice means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure.

15. Section 766.102, Florida Statutes (2010), provides that the prevailing standard of care for a given healthcare provider shall be that level of care, skill, treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

16. Respondent fell below the standard of care during the treatment period by failing to review the chest x-rays of S.D. and inform S.D. or S.D.'s primary care physician of the radiology results.

17. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2010).

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.

[signature appears on the following page]

SIGNED this 24th day of January, 2017.

Celeste Phillip, MD, MPH
Surgeon General and Secretary of Health

Corynn Alberto

Corynn Alberto
Assistant General Counsel
Florida Bar Number 68814
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4640, Ext. 8243
Facsimile: (850) 245-4684
Email: Corynn.Alberto@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE JAN 24 2017

PCP Date: January 20, 2017

PCP Members: G. El-Bahri, M.D., S. Terkonda, M.D. and Ms. B. Goersch

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.