

FILED DATE FEB 22 2017

Department of Health

By: *Amber Greene*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-17434
LICENSE NO.: ME0090972

GREGORY K. PENNOCK, 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 February 3, 2017, in Championsgate, 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 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 \$7,000.00 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 document the completion of 5 hours of continuing medical education (CME) in the area of risk management within one year from the date the Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

3. Respondent shall document the completion of 5 hours of continuing medical education (CME) in the area of diagnosis and treatment of lung cancer within one year from the date the Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Respondent shall

first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

4. Respondent shall be placed on probation for a period of 1 year subject to the following terms and conditions:

a. Respondent shall appear before the Board's Probation Committee at the first meeting after said probation commences, at the last meeting of the Probation Committee preceding termination of probation, triannually, and at such other times requested by the Committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probation Committee whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of probation, and shall subject the Respondent to disciplinary action. Unless otherwise provided in the Final Order, appearances at the Probation Committee shall be made triannually.

b. Respondent shall not practice except under the indirect supervision of a **BOARD CERTIFIED** physician fully licensed under Chapter 458 to be approved by the Board's Probation Committee. Absent provision for and compliance with the terms regarding temporary approval of a monitoring physician set forth below,

Respondent shall cease practice and not practice until the Probationer's Committee approves a monitoring physician.

Respondent shall have the monitoring physician present at the first probation appearance before the Probation Committee.

Prior to approval of the monitoring physician by the committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. A failure of the Respondent or the monitoring physician to appear at the scheduled probation meeting shall constitute a violation of the Board's Final Order. Prior to the approval of the monitoring physician by the Committee, Respondent shall submit to the committee a current curriculum vitae and description of the current practice of the proposed monitoring physician. Said materials shall be received in the Board office no later than fourteen days before the Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of a monitoring physician shall include:

(1) Submit quarterly reports, in affidavit form, which shall include:

A. Brief statement of why physician is on probation.

B. Description of probationer's practice.

C. Brief statement of probationer's compliance with terms of probation.

D. Brief description of probationer's relationship with monitoring physician.

E. Detail any problems which may have arisen with probationer.

(2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per month.

(3) Review 25 percent of Respondent's patient records selected on a random basis at least once every month. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's office once every month. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.

(4) Report to the Board any violations by the probationer of Chapter 456 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

c. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervising/monitoring physician who shall be approved by Probation Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician during those periods of time which Respondent's

monitoring/supervising physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternate supervising physician, Respondent shall so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which Respondent shall practice under the supervision of the alternate monitoring/supervising physician. Respondent shall not practice unless Respondent is under the supervision of either the approved supervising/monitoring physician or the approved alternate.

d. CONTINUITY OF PRACTICE

(1) TOLLING PROVISIONS. In the event the Respondent leaves the State of Florida for a period of 30 days or more or otherwise does not or may not engage in the active practice of medicine in the State of Florida, then certain provisions of the requirements in the Final Order shall be tolled and shall remain in a tolled status until Respondent returns to the active practice of medicine in the State of Florida. **Respondent shall notify the Compliance Officer 10 days prior to his/her return to practice in the State of Florida.** Unless otherwise set forth in the Final Order, **the following requirements and only the following requirements** shall be tolled until the Respondent returns to active practice:

A. The time period of probation shall be tolled.

B. The provisions regarding supervision whether direct or indirect by the monitor/supervisor, and required reports from the monitor/supervisor shall be tolled.

(2) ACTIVE PRACTICE. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Respondent may be required to appear before the Board and demonstrate the ability to practice medicine with reasonable skill and safety to patients prior to resuming the practice of medicine in the State of Florida.

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

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$1,667.03. 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 20th day of February,

2017.

BOARD OF MEDICINE

Claudia Kemp

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 GREGORY K. PENNOCK, M.D., 1235 San Marco Boulevard, Suite 2, Baptist MD Anderson Cancer Physicians, Jacksonville, Florida 32207; and MD Anderson Cancer Center Orlando, 1400 South Orange Avenue, MP 700, Orlando, Florida 32806; 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 22 day of

February, 2017.

Anber Greene

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-17434

GREGORY K. PENNOCK, 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 (2012-16). 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 (2012-16), 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, the investigation and prosecution of this case has resulted in costs in the total amount of \$2,655.76 based on the following itemized statement of costs:

- a. Total costs for Complaints \$46.47
- b. Total costs for Investigations \$1,620.56
- c. Total costs for Legal \$988.73

4. The attached affidavit reflects the Department's costs for attorney time in this case as \$988.73. 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 attached affidavit and any timely-filed written objections.

6. Petitioner requests that the Board grant this motion and assess costs in the amount of \$1,667.03 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 (2012-16).

WHEREFORE, the Department of Health requests that the Board of Medicine enter a Final Order assessing costs against Respondent in the amount of \$1,667.03.

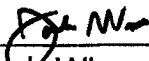
Respectfully submitted,



Jack Wise
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0103953
Phone: (850) 245-4640 ext. 8229
Fax: (850) 245-4684
E-mail: Jack.Wise@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 Gregory K. Pennock, M.D. at 1235 San Marco Blvd., Suite 2, Jacksonville, Florida 32207 by certified U.S. Mail this 5th day of December, 2016.



Jack Wise
Assistant General Counsel

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-17434

GREGORY K. PENNOCK, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Gregory K. Pennock, M.D., and in support thereof 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 90972.

3. Respondent's address of record is 1235 San Marco Boulevard, Suite 2, Jacksonville, Florida 32207.

4. Respondent is Board Certified In Oncology by the American Board of Internal Medicine.

5. Prior to the events material to the charges set forth in this Complaint, Patient R.F. successfully underwent treatment for lung cancer at MD Anderson Cancer Center ("MD Anderson") in or around Orlando, Florida.

6. At all times material to the charges set forth in this Complaint, Respondent was a physician who worked for, or was otherwise affiliated with, MD Anderson.

7. At all times material to the charges set forth in this Complaint, Patient R.F. was one of Respondent's patients.

8. In the months and/or years leading up to January 2013, Respondent's care of Patient R.F. included monitoring her for recurrence of lung cancer.

9. Sometime in 2012, Respondent ordered diagnostic imaging services for Patient R.F. that were to be performed in or around January 2013.

10. On or about January 8, 2013, Patient R.F. received diagnostic imaging services at Port Orange Imaging Center in Port Orange, Florida.

11. The ensuing diagnostic imaging report noted abnormal densities/masses in Patient R.F.'s lung(s) that were indicative of malignant neoplasm.

12. On or about January 21, 2013, Patient R.F. presented to Respondent for an appointment.

13. During the appointment, Respondent failed to mention any of the January 2013 diagnostic imaging report's aforementioned findings to Patient R.F.

14. On or about January 22, 2013, Respondent electronically signed, and/or otherwise approved, a medical progress note for Patient R.F. that acknowledged the diagnostic imaging performed on January 8, 2013.

15. The progress note referenced in the preceding paragraph stated that Patient R.F. exhibited no evidence of recurrent disease.

16. In or about May 2013, Patient R.F. telephoned Respondent's office and advised that one of her other physicians was concerned about areas of growth in her lung(s) shown on Patient R.F.'s January 2013 diagnostic images.

17. Personnel affiliated with Respondent's office indicated that Respondent would be advised of Patient R.F.'s call.

18. In the time between Respondent's May 2013 telephone call and January 10, 2014, Respondent did not order or perform any additional diagnostic services for Patient R.F., nor did Respondent indicate/communicate concern that Patient R.F.'s cancer was returning.

19. On or about January 10, 2014, Patient R.F. returned to Port Orange Imaging Center for diagnostic imaging services.

20. The ensuing diagnostic imaging report noted an increasing mass like density in Patient R.F.'s lung(s) that was concerning for recurrent cancer.

21. On or about January 14, 2014, Patient R.F. presented to Respondent for an appointment.

22. During the appointment, Respondent was unable to load an imaging disc provided by Port Orange Imaging Center. Respondent instructed Patient R.F. that she could follow up with a local oncologist.

23. In the time between January 10, 2014 and May 2014, Respondent did not obtain and/or review the aforementioned January 2014 diagnostic imaging/diagnostic imaging report for Patient R.F.

24. In the time period between January 10, 2014 and May 2014, Respondent did not order or perform any additional diagnostic services for

Patient R.F., nor did Respondent indicate/communicate concern that Patient R.F.'s cancer was returning.

25. In or about May 2014, Patient R.F. presented to, and was diagnosed with lung cancer by, a different physician.

26. At all times relevant to this case, the prevailing professional standard of care required that, when dealing with patients such as Patient R.F., a physician should:

- a) Accurately interpret and characterize all known and available diagnostic imaging/diagnostic imaging reports of the patient's lung(s) and/or pulmonary system; and
- b) Timely obtain, review, and communicate with the patient regarding, any ordered but unreviewed diagnostic imaging/diagnostic imaging reports of the patient's lung(s) and/or pulmonary system;

27. At times relevant to this case, Respondent failed to meet the prevailing professional standard of care in his treatment of Patient R.F. in one or more of the following ways:

- a) by failing to accurately interpret and/or characterize Patient R.F.'s January 2013 diagnostic imaging/diagnostic imaging report on or about January 21, 2013;
- b) by failing to accurately interpret and/or characterize Patient R.F.'s January 2013 diagnostic imaging/diagnostic imaging report in or around May 2013; and/or

- c) by failing to timely obtain, review, and/or communicate with Patient R.F. regarding, Patient R.F.'s January 2014 diagnostic imaging/diagnostic imaging report.

28. Section 458.331(1)(t)1, Florida Statutes (2012-2013), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes. Section 456.50(1)(g), Florida Statutes (2012-2013), states that 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. Section 766.102, Florida Statutes (2012-2013), provides that the prevailing standard of care for a given healthcare provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

29. Based on the foregoing, Respondent violated Section 458.331(1)(t)1, Florida Statutes (2012-2013), by committing medical malpractice in his treatment of Patient R.F. in one or more of the following ways:

- a) by failing to accurately interpret and/or characterize Patient R.F.'s January 2013 diagnostic imaging/diagnostic imaging report on or about January 21, 2013;

- b) by failing to accurately interpret and/or characterize Patient R.F.'s January 2013 diagnostic imaging/diagnostic imaging report in or around May 2013; and/or
- c) by failing to timely obtain, review, and/or communicate with Patient R.F. regarding, Patient R.F.'s January 2014 diagnostic imaging/diagnostic imaging report.

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.

[Signatures appear on the following page]

SIGNED this 26th day of October, 2016.

Celeste Phillip, M.D., M.P.H.
Surgeon General and Secretary

Jack F. Wise
Jack F. Wise
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number 0103953
(P) 850-245-4444, Ext. 8229
(F) 850-245-4684
(E) Jack.Wise@flhealth.gov

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK:

Synda Beppard

DATE

10.26.16

PCP Date: October 21, 2016

PCP Members: Fuad Ashkar, M.D.; Zachariah P. Zachariah, M.D.;
Nicholas Romanello

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.