

**STATE OF FLORIDA
BOARD OF BOARD OF OSTEOPATHIC MEDICINE**

DEPARTMENT OF HEALTH

Petitioner,

vs.

Case No: 2009-15727

License No.: OS 7841

JAMES EDWARD STEVENS, D.O.

Respondent.

FINAL ORDER

This matter appeared before the Board of Osteopathic Medicine (hereinafter the "Board") at a duly-noticed public meeting on May 15, 2010, in Tampa, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Pursuant to the Administrative Complaint, attached hereto as Exhibit A, it was alleged that Respondent violated specific sections of Chapter 459, Florida Statutes. Petitioner was represented by Tobey Schultz, Assistant General Counsel, Florida Department of Health. Respondent was not present nor represented by counsel.

On February 23, 2010, Petitioner filed an Administrative Complaint against the Respondent alleging violations of Section 459.015(1)(g), Florida Statutes. Service of the Administrative Complaint was made upon the Respondent by certified U.S. mail on February 24, 2010. Respondent has not filed an Election of Rights. Petitioner filed a Motion for Determination of Waiver and Entry of Final Order Following Hearing. Petitioner also filed a Motion to Assess Costs. Respondent has not filed a response to either motion.

Respondent has not replied to the Administrative Complaint nor contested the factual allegations. The prosecuting attorney offered the investigative file into evidence to prove the facts as alleged in the Administrative Complaint and for the purposes of determining penalty. The investigative file was received into evidence and the Board finds that the uncontested facts adequately support the allegations. After a complete review of the record in this matter, including consideration of the Administrative Complaint, any written or oral evidence and testimony, and any mitigating or aggravating circumstances, the Board makes the following findings and conclusions:

FINDINGS OF FACT

The allegations of fact set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the findings of fact by the Board. The Board also finds there is competent substantial evidence to support its findings and conclusions. Finally, the Board finds that Respondent failed to timely respond to the Administrative Complaint and waived his right to elect a method of resolution in this matter.

CONCLUSIONS OF LAW

Petitioner's Motion for Determination of Waiver and Entry of Final Order Following Hearing is granted. The conclusions of law alleged and set forth in the Administrative Complaint are approved, adopted, and incorporated herein by reference as the conclusions of law by the Board. Based upon the Findings of Fact, the Board concludes that the licensee violated Section 459.015(1)(g), Florida Statutes. The violations set forth warrant disciplinary action by the Board.

The Board is empowered by Sections 459.015(2) and 456.072(2), Florida Statutes, to impose a penalty against Respondent.

THEREFORE IT IS ORDERED AND ADJUDGED:

1. **Reprimand.** The Respondent's Florida license to practice as an osteopathic physician is hereby reprimanded.
2. **Fine.** The Respondent shall pay a fine of \$1,000.00 within 90 days of the filing of this Final Order.
3. **Satisfaction of Judgment.** The Respondent shall make complete satisfaction of the NICA judgment within 18 months of the filing of this Final Order. (County Court in and for Leon County, Case Number 06SC-9842, July 17, 2007).
4. **Continuing Education.** The Respondent shall complete a Florida Laws and Rules course within 18 months of the filing of this Final Order.

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 **\$327.06**. Said costs are to be paid **within 90 days** from the date this Final Order is filed.

Payment of Fine and Costs. Payment of all fine and costs shall be made to the Board of Osteopathic Medicine and mailed to: DOH-Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Osteopathic Compliance Officer.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 14 day of June, 2010.

BOARD OF OSTEOPATHIC MEDICINE


Christy Robinson, acting Executive Director
on behalf of Joel B. Rose, D.O., 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 Florida 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 has been furnished by **Certified U.S. Mail** to **James Edward Stevens, D.O.**, 1816 Broken Bend Drive, Westlake, TX 76262; and by interoffice mail to **Donna C. McNulty**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and **Tobey Schultz**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, this 15 day of June, 2010.



Deputy Agency Clerk

7010 0780 0002 2868 4285

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-15727

JAMES EDWARD STEVENS, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Osteopathic Medicine against Respondent James Edward Stevens, D.O., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, pursuant to Chapter 459, Florida Statutes, having been issued license number OS 7841.

EXHIBIT

A

3. Respondent's address of record is 1816 Broken Bend Drive, Westlake, TX 76262.

4. Florida Statutes Section 766.314(5)(a) imposes upon any physician licensed under Chapter 459, Florida Statutes, a duty to pay annually, beginning on January 1, 1990, an assessment in the amount of \$250.00 to fund the Florida Birth-related Neurological Injury Compensation Fund administered by the Florida Birth-Related Neurological Injury Compensation Association (NICA).

5. The creation of the Florida Birth-related Neurological Injury Compensation Fund and its public purpose is provided in Section 766.303, Florida Statutes.

6. Respondent at all times material hereto has been neither: a "participating physician" as specified in Section 766.314(4)(b), Florida Statutes, as one not required to pay the assessment; nor a physician excepted and specifically enumerated in Section 766.314(4)(b)4., Florida Statutes, as being excluded from the applicability of Section 766.314(4)(b)1., Florida Statutes.

7. Respondent made partial payment, but failed, after notice, to pay to NICA the balance due of the annual assessment required by Section 766.314(5)(a), Florida Statutes, for the five (5) years 2002 through 2006, inclusive, in the amount of one thousand two hundred fifty dollars (\$1,250.00).

8. NICA made demand upon Respondent, and, when Respondent still did not pay the assessments, filed an action at law to recover from Respondent the balance due on the assessments, totaling one thousand two hundred fifty dollars (\$1,250.00).

9. Pursuant to said action, the County Court in and for Leon County, Florida, in Case Number 06SC-9842, entered final judgment against Respondent and in favor of NICA in the sum of one thousand two hundred fifty dollars (\$1,250.00) for the unpaid statutory assessments, years 2002 through 2006, inclusive, plus costs, attorney's fees and interest for a total judgment amount of \$2,121.51, on July 17, 2007.

10. Entry of such Final Judgment constitutes legal adjudication of a statutory duty upon Respondent.

11. Section 459.015(1)(g), Florida Statutes, provides that failing to perform any statutory or legal obligation placed upon a licensed osteopathic physician constitutes grounds for discipline by the Board of Osteopathic Medicine.

12. Respondent has failed to pay the aforesaid judgment or assessments.

13. By failing either to pay the statutory assessments or the judgment establishing that legal duty, Respondent has violated Section 459.015(1)(g), Florida Statutes, by violating or failing to perform a statutory or legal obligation placed upon a licensed osteopathic physician.

WHEREFORE, Petitioner respectfully requests that the Board of Osteopathic 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 18 day of February, 2010.

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Angela Bault
DATE: 2/23/2010

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

Howard C. Holtzendorf
Howard C. Holtzendorf

Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 0133928
(850) 245-4640 x. 8114
(850) 245-4684 FAX

PCP DATE: February 18, 2010
PCP MEMBERS: Andriole, Malan

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.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2009-15727

JAMES EDWARD STEVENS, D.O.,

Respondent.

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

COMES NOW the Department of Health, by and through undersigned counsel, and moves the Board of Osteopathic Medicine for the entry of a Final Order assessing costs against the Respondent for the investigation and prosecution of this case in accordance with Section 456.072(4), Florida Statutes (2009). As grounds therefore, the Petitioner states the following:

1. At its next regularly scheduled meeting, the Board of Osteopathic Medicine will take up for consideration the above-styled disciplinary action and will enter a Final Order therein.

2. Section 456.072(4), Florida Statutes (2009),¹ states as follows:

In addition to any other discipline imposed through final order, or citation, entered on or after July 1, 2001,

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

pursuant to this section or discipline imposed through final order, or citation, entered on or after July 1, 2001, for a violation of any practice act, the board, or the department when there is not board, shall assess costs related to the investigation and prosecution of the case. Such costs related to the investigation and prosecution include, but are not limited to, salaries and benefits of personnel, costs related to the time spent by the attorney and other personnel working on the case, and any other expenses incurred by the department for the case. The board, or the department when there is no board, shall determine the amount of costs to be assessed after its consideration of an affidavit of itemized costs and any written objections thereto. . . .

3. The investigation and prosecution of this case has resulted in costs in the total amount of \$327.06, based on the following itemized statement of costs:

- a. Total soft costs for Complaints \$147.17
- b. Total soft costs for Investigations \$0.00
- c. Total soft costs for Legal \$179.89
- d. Total expenses \$327.06

Therefore, the Petitioner seeks an assessment of costs against the Respondent in the amount of \$327.06, as evidenced in the attached affidavit. (Exhibit A).

4. Should the Respondent file written objections to the assessment of costs, within ten (10) days of the date of this Motion, specifying the grounds for the objections and the specific elements of the

costs to which the objections are made, the Petitioner requests that the Board determine the amount of costs to be assessed based upon its consideration of the affidavit attached as Exhibit A and any timely-filed written objections.

5. Petitioner requests that the Board grant this motion and assess costs in the amount of \$327.06 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 (2009).

WHEREFORE, the Department of Health requests that the Board of Osteopathic Medicine enter a Final Order assessing costs against the Respondent in the amount of \$327.06.

DATED this 29 day of March, 2010.

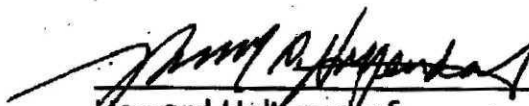
Respectfully submitted,



Howard Holtzendorf
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0133928
(850) 245-4640 Business
(850) 245-4684 Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Assess Costs has been provided to James Edward Stevens, D.O., 1816 Broken Bend Drive, Westlake, Texas 76262 by U.S. mail this 29 day of March, 2010.



Howard Holtzendorf
Assistant General Counsel

AFFIDAVIT OF FEES AND COSTS EXPENDED

STATE OF FLORIDA
COUNTY OF LEON:

BEFORE ME, the undersigned authority, personally appeared **JULIE M. WEEKS** who was sworn and states as follows:

- 1) My name is Julie M. Weeks.
- 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 Operations and Management Consultant Manager (OMCM) 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 OMCM 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) **2009-15727** (Department of Health v. **James Edward Stevens, D.O.**) are **THREE HUNDRED TWENTY-SEVEN DOLLARS AND SIX CENTS (\$327.06)**.
- 6) The costs for DOH case numbers **2009-15727** (Department of Health v. **James Edward Stevens, D.O.**) are summarized in Exhibit 1 (Cost Summary Report), which is attached to this document.
- 7) The itemized costs and expenses for DOH case numbers **2009-15727** (Department of Health v. **James Edward Stevens, D.O.**) 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) Julie M. Weeks, first being duly sworn, states that she 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.

Julie M. Weeks 3-24-10
Julie M. Weeks, Affiant

State of Florida
County of Leon

Sworn to and subscribed before me this 24th day of March, 2010,
by Julie M. Weeks, who is personally known to me.


Notary Signature



Name of Notary Printed

Stamp Commissioned Name of Notary Public: