Final Order No. DOH-23-1378-FOF-MQA
FILED DATE: OCT 2 7 2023
Department of Health
By: Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2018-07402
2019-06395
DOAH CASE NO.: 22-3288PL
22-3290PL
LICENSE NO.: ME0059800

NEELAM TANEJA UPPAL, M.D.,

Respondent.
_____/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on October 6, 2023, in Dania Beach, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions to the Recommended Order, (copies of which are attached hereto as Exhibits A, B, and C) in the above-styled cause. Petitioner was represented by Jonathan Golden, Assistant General Counsel. Respondent was present and was represented by Jay Romano, Esquire.

On September 28, 2023, Respondent filed an Emergency Motion for Continuance, and Petitioner filed a written response in opposition. Upon review of the documents submitted by the

Respondent and Petitioner, on October 2, 2023, the Board Chair denied Respondent's Emergency Motion for Continuance.

On September 19, 2023, Respondent filed a *pro se* Motion for Stay and to Cancel Hearing, and on September 26, 2023, Petitioner filed a Response in Opposition. As a preliminary matter at the October 6, 2023, hearing, the Board considered Respondent's Motion for Stay and to Cancel Hearing. After consideration of the arguments of the Respondent and Petitioner, both written and orally presented, and discussion on the record, the Board denied Respondent's Motion for Stay and to Cancel Hearing.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record of this case, the Board makes the following findings and conclusions.

RULING ON RESPONDENT EXCEPTIONS

The Board reviewed and considered the Respondent's Exceptions to the Recommended Order and ruled as follows:

1. The Board considered and reviewed Respondent's exceptions. Throughout the exceptions, Respondent generally asserted a variety of legal bases in support of her exceptions, including but not limited to due process, double jeopardy, collateral estoppel, laches, res judicata, "fraud in court," abuse of process, constitutional issues, unclean hands, and bad

faith. Respondent, however, failed to provide any citations to the record or any argument as to how they apply to the specific circumstances of this case. Upon consideration of the arguments of the parties and discussion on the record, the Board determined that the underlying proceeding complied with the essential requirements of law and denied these general exceptions for the reasons set forth by the Petitioner, they are not based on competent substantial evidence, and there are no specific references to the record.

2. The Board reviewed and considered the Respondent's exception 1, to Paragraph 3 on page 2 of the Preliminary Statement of the Recommended Order, and to the extent it is a factual finding, denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

3. The Board reviewed and considered the Respondent's "first" exception 2, to Paragraph 4 on page 2 of the Preliminary Statement of the Recommended Order, and to the extent it is a factual finding, denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

4. The Board reviewed and considered the Respondent's "second" exception number 2, to Paragraph 8 on page 5 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, the Board cannot reweigh the evidence, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

5. The Board reviewed and considered the Respondent's exception number 3, to Paragraph 8 on page 5 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, the Board cannot reweigh the evidence, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

6. The Board reviewed and considered the Respondent's "first" exception number 4, to Paragraph 11 on page 6 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, the Board cannot reweigh the evidence, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

7. The Board reviewed and considered the Respondent's "second" exception number 4, to Paragraph 12, page 6 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, the Board cannot reweigh the evidence, and

for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

8. The Board reviewed and considered the Respondent's exception number 5, to Paragraph 15 on page 6 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, the Board cannot reweigh the evidence, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

9. The Board reviewed and considered the Respondent's exception number 6, to Paragraph 21 on page 7 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

10. The Board reviewed and considered the Respondent's exception number 7, to Paragraph 22 on page 8 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

11. The Board reviewed and considered the Respondent's exception number 8, to Paragraph 25 on page 8 of the Recommended Order, and denied the exception because the finding was based on

competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

12. The Board reviewed and considered the Respondent's exception number 9, to Paragraph 26 on page 8 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

13. The Board reviewed and considered the Respondent's exception number 10, to Paragraph 27, on page 9 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

14. The Board reviewed and considered the Respondent's exception number 11, to Paragraph 29 on page 9 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

15. The Board reviewed and considered the Respondent's exception number 12, to Paragraph 31 on page 10 of the

Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

16. The Board reviewed and considered the Respondent's exception number 13, to Paragraph 32 on page 10 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

17. The Board reviewed and considered the Respondent's exception number 14, to Paragraph 33 on page 10 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

18. The Board reviewed and considered the Respondent's exception number 15, to Paragraph 35 on page 10 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

19. The Board reviewed and considered the Respondent's exception number 16, to Paragraph 36 on page 11 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

20. The Board reviewed and considered the Respondent's exception number 17, to Paragraph 37 on page 11 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, the Board cannot reweigh the evidence, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

21. The Board reviewed and considered the Respondent's exception number 18, to Paragraph 39 on page 11 of the Recommended Order, and denied the exception because the finding was based on competent substantial evidence, met the essential requirements of law, and for the reasons set forth in the Petitioner's Response to Respondent's Exceptions.

22. The Board reviewed and considered the Respondent's exception number 19, to Paragraph 41 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, including that the Board does not have substantive jurisdiction

to modify this paragraph, and to the extent it may be premised on purported facts, denied because it was based on competent substantial evidence and met the essential requirements of law.

23. The Board reviewed and considered the Respondent's exception number 20, to Paragraph 42 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions and to the extent it may be premised on purported facts, denied because it was based on competent substantial evidence and met the essential requirements of law.

24. The Board reviewed and considered the Respondent's exception number 21, to Paragraph 43 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and to the extent it may be premised on purported facts, denied because it was based on competent substantial evidence and met the essential requirements of law.

25. The Board reviewed and considered the Respondent's exception number 22, to Paragraph 44 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions including that the Administrative Law Judge's conclusions were based on competent substantial evidence, and supported by

citations to statutory authority and case law. The Board also denied the exception because the was based on competent substantial evidence and met the essential requirements of law.

26. The Board reviewed and considered the Respondent's exception number 23, to Paragraph 45 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions including that the Administrative Law Judge's conclusions were based on competent substantial evidence, and supported by citations to statutory authority and case law. The Board also denied the exception because the finding was based on competent substantial evidence and met the essential requirements of law.

27. The Board reviewed and considered the Respondent's exception number 24, to Paragraph 46 on page 12 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions including that the Administrative Law Judge's conclusions were based on competent substantial evidence, and supported by citations to statutory authority and case law. The Board also denied the exception because the finding was based on competent substantial evidence and met the essential requirements of law.

28. The Board reviewed and considered the Respondent's exception number 25, to Paragraph 48 on page 13 of the

Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and because the finding was based on competent substantial evidence and meets the essential requirements of law.

29. The Board reviewed and considered the Respondent's exception number 26, to Paragraph 48 on page 13 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and because the finding was based on competent substantial evidence and met the essential requirements of law.

30. The Board reviewed and considered the Respondent's exception number 27, to Paragraph 51 on page 13 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, Respondent's assertions were unsupported by the findings of fact, and Respondent did not propose substituted conclusions that are as or more reasonable than that of the Administrative Law Judge.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

RULINGS ON EXCEPTIONS TO PENALTY

1. The Board reviewed and considered the Respondent's exception number 28, to Paragraph 55 on page 14 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, the finding is supported by finding of fact in Paragraph 7, to which the Respondent did not take exception, and the Respondent also attempts to reweigh the evidence, which the Board cannot do.

2. The Board reviewed and considered the Respondent's exception number 29, to Paragraph 57 on page 14 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and because the finding was based on competent substantial evidence and met the essential requirements of law.

3. The Board reviewed and considered the Respondent's exception number 30, to Paragraph 61 on page 16 of the Recommended Order, and denied the exception for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and because the finding was based on competent substantial evidence and met the essential requirements of law.

4. The Board reviewed and considered the Respondent's exception called "Conclusion" and to the extent it is construed as an exception, denied it for the reasons set forth in the Petitioner's Response to Respondent's Exceptions, and because the finding was based on competent substantial evidence and met the essential requirements of law.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

Respondent's license to practice medicine in the State of Florida is hereby **REVOKED**.

RULING ON MOTION TO ASSESS COSTS

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of $41,054.16. Said costs are to be paid within 30 days from the date the Final Order is filed. The costs shall be paid by money order or cashier's check.

(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.)

DONE AND ORDERED this 25th day of October, 2023.

BOARD OF MEDICINE

Paul A. Vazquez, J.D., Executive Director
For Scot Ackerman, 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 and U.S. Mail to: Neelam Taneja Uppal, M.D., P.O. Box 1002, Largo, FL 33779 and at 5840 Park Blvd., Pinellas Park, FL 33781; and Jay Romano, Esq., 433 Plaza Real, Suite 275, Boca Raton, FL 33781; and by U.S. Mail to John D. C. Newton, II, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; by email to: Jay Romano, Esq., at **jromanopa@gmail.com**; John Wilson, General Counsel, Department of Health, at **John.Wilson@flhealth.gov**; Andrew J. Pietrylo, Jr., Chief Legal Counsel, Department of Health, at **Andrew.Pietrylo@flhealth.gov**; Jonathan Golden, Assistant General Counsel, Department of Health, at **Jonathan.Golden@flhealth.gov**; and Donna McNulty, Special Counsel, Office of the Attorney General, at **Donna.McNulty@myfloridalegal.com** this 27 day of October, 2023.

Certified Article Number
9414 7266 9904 2185 1417 33
SENDER'S RECORD

Neelam Taneja Uppal
P. O. Box 1002
Largo, FL 33779

Certified Article Number
9414 7266 9904 2185 1416 89
SENDER'S RECORD

Neelam Taneja Uppal
5840 Park Blvd.
Pinellas Park, FL 33781

Deputy Agency Clerk

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF MEDICINE,

Petitioner,

vs.

Case Nos. 22-3288PL
22-3290PL

NEELAM TANEJA UPPAL, M.D.,

Respondent.
_____/

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), conducted the final hearing in this case on May 23, and June 19, 2023, by Zoom conference at locations in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: Jonathan Golden, Esquire
Andrew James Pietrylo, Esquire
Florida Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Kevin John Draken, Esquire
Todd Foster Law Group
601 Bayshore Boulevard
Tampa, Florida 33606

STATEMENT OF THE ISSUES

A. Did Respondent, Neelam Taneja Uppal, M.D., violate section 458.331(1)(b), Florida Statutes (2016), by having her New York medical license revoked?

B. Did Respondent, Neelam Taneja Uppal, M.D., violate section 458.331(1)(x), Florida Statutes (2018), by violating a lawful order of the Board of Medicine (Board) imposing discipline upon her?

C. If Dr. Uppal committed either violation, what penalty should be imposed?

PRELIMINARY STATEMENT

On August 16, 2019, the Florida Department of Health (Department), filed two Administrative Complaints against Dr. Uppal in Department case numbers 2018-07402 (DOAH Case No. 22-3288) and 2019-06395 (DOAH Case No. 22-3290). The Complaint in case number 2018-07402 charged Dr. Uppal with violating section 458.331(1)(b), by having her medical license revoked by the licensing authority of New York. The Complaint in case number 2019-06395 charged Dr. Uppal with violating section 458.331(1)(x), by not complying with the Florida Board of Medicine's Final Orders in Department case numbers 2009-13497, 2011-06111, and 2011-17799, by returning to the active practice of medicine without first obtaining Board approval of a supervising physician.

Dr. Uppal disputed both Complaints and requested formal hearings. On October 26, 2022, the Department referred the cases to DOAH for conduct of the requested hearings. The cases were given DOAH Case Nos. 22-3288PL and 22-3290PL and assigned to the undersigned. The undersigned consolidated the cases. By notice issued November 21, 2022, the consolidated cases were scheduled for hearing on January 25, 2023.

The hearing was twice continued on unopposed motions. The hearing was rescheduled for May 23, 2023, and commenced as scheduled. At the end of the hearing, the Department moved to continue the hearing until a later date to allow for the testimony of David Ikudayisi, M.D., and Alison Williams. The

undersigned granted the motion over objection. The undersigned continued the case until June 19, 2023. The hearing was completed that day.

At the final hearing, Joint Exhibits 1-25 were admitted into evidence. Department Exhibits 1, 3, and 4 (page 64, lines 4-15) were admitted without objection. Department Exhibits 2, 5 (pages 14-16), and 19 were admitted into evidence over objection. The Department offered the testimony of David Ikudayisi, M.D.; Shaila Washington; Tammy Davis; and Alison Williams. Dr. Uppal's Exhibits 1-5, 7, 8, 10-14, and 16-17 were admitted into evidence without objection. Dr. Uppal's Exhibit 15 was admitted into evidence over objection. Dr. Uppal testified on her own behalf. She called no other witnesses.

Volume 1 of the final hearing Transcript was filed June 7, 2023. Volume 2 of the final hearing Transcript was filed July 5, 2023. The parties timely filed proposed recommended orders. They have been considered in preparing this Recommended Order. All references to the Florida Statutes and Florida Administrative Code rules are to those in effect at the time of the alleged violations unless otherwise noted.

FINDINGS OF FACT

Parties

1. The Department is the state agency charged with regulating the practice of medicine by section 20.43, Florida Statutes, and chapters 456 and 458, Florida Statutes.

2. At all times material to the Complaints, Dr. Uppal was a licensed medical doctor within the state of Florida, having been issued license number ME 59800 on April 29, 1991. Dr. Uppal's address of record is Post Office Box 1002, Largo, Florida 33779. She is certified in infectious diseases by the American Board of Internal Medicine. Dr. Uppal was formerly licensed as a

physician in the state of New York, having been issued license number 184610 on January 3, 1991.

Past Discipline in Florida

3. On January 8, 2015, the Florida Board of Medicine filed Final Order number DOH-15-0017-FOF-MQA (2015 Final Order), resolving Department case numbers 2009-13497, 2011-06111, and 2011-17799. The 2015 Final Order found that Dr. Uppal violated sections 458.331(1)(t), 458.331(1)(m), and 458.331(1)(q), Florida Statutes, by committing medical malpractice, failing to maintain adequate medical records, and inappropriately prescribing legend drugs.

4. The 2015 Final Order imposed the following discipline: suspension of Dr. Uppal's license for six months; a period of two years' probation, following the suspension; an administrative fine of $10,000 to be paid within one year after Dr. Uppal's license to practice medicine is reinstated; completion of the medical records course sponsored by the Florida Medical Association within one year from the date of the Final Order; completion of five hours of continuing medical education in the area of ethics within one year of the date of the Final Order; and reimbursement of the Department's costs in the amount of $74,323.56 within one year of reinstatement of Dr. Uppal's license.

5. Dr. Uppal's license was suspended on January 8, 2015. Her license entered probationary status on July 8, 2015, subject to the 2015 Final Order.

6. The 2015 Final Order imposed specific conditions on the two-year term of probation. Dr. Uppal was only permitted to practice under the supervision of a board-certified physician approved by the Board's Probation Committee. The supervising physician had to work in the same office as Dr. Uppal and appear at scheduled probation meetings with her. Before approval of the supervising physician by the Probation Committee, the Final Order required Dr. Uppal to provide a copy of the Administrative Complaints and 2015 Final Order to the proposed supervising physician. Also Dr. Uppal had to submit a current curriculum vitae and description of the current practice of the

proposed supervising physician to the Probation Committee. The 2015 Final Order included a tolling provision. It provided that probation would be tolled if Dr. Uppal left Florida for more than 30 days or otherwise did not engage in the active practice of medicine in the state of Florida. It also provided that probation would remain tolled until she returned to the active practice of medicine in Florida.

7. On August 16, 2019, the Board filed Final Order number DOH-19-1304-FOF-MQA (2019 Final Order), resolving Department case number 2017-09663. The 2019 Final Order found that Dr. Uppal violated section 458.331(1)(x), by failing to pay the administrative fine and costs imposed in the 2015 Final Order.

New York Disciplinary Action

8. On January 31, 2017, the State of New York Department of Health, Administrative Review Board for Professional Medical Conduct (ARB), revoked Dr. Uppal's New York medical license in Order No. 17-33 (New York Order). The ARB is a licensing authority in the state of New York. New York Public Health Law § 230, 230-c; New York Education Law § 6530.

9. The basis of the New York action was that Dr. Uppal willfully filed a false report and practiced medicine fraudulently because she falsely answered "no" in response to a question on her January 5, 2016, New York medical license renewal application that asked whether she had been disciplined by another jurisdiction. This New York discipline was not for the offenses giving rise to the 2015 Final Order. It was for not disclosing the discipline imposed by the 2015 Final Order.

10. The ARB reviewed the determination by the hearing committee for the Board of Professional Misconduct (BPMC), which found that Dr. Uppal knew she was subject to disciplinary action in Florida. This made her negative response on the New York renewal application intentionally misleading. The ARB noted that the BPMC committee concluded that, "Respondent had a propensity for misrepresenting the truth" and "found repeated contradictions

in the Respondent's hearing testimony." In closing, the ARB stated, "Respondent has no remorse nor recognition of her misconduct and no intention to correct the deficiencies in her practice" and noted that Respondent testified that her "interest is to make the patient better ... not follow laws."

11. The New York Order is action against Dr. Uppal's New York medical license taken by a jurisdiction other than Florida.

Violation of Terms of Probation

12. David Ikudayisi, M.D., has been licensed in Florida as a physician since 2003. Dr. Ikudayisi has owned and operated Glory MedClinic since 2009. Glory MedClinic has branches in Tampa, Lakeland, and New Port Richey, Florida. It provides pain management, weight loss, and regenerative medicine services. Dr. Ikudayisi employs several physicians. They work independently, without his supervision, following individual schedules.

13. Dr. Ikudayisi hired Dr. Uppal in February 2019 to work as a physician at Glory MedClinic. During Dr. Uppal's employment interview, she told Dr. Ikudayisi that her probation from the 2015 Final Order was satisfied and that her only remaining obligation was to pay the $10,000 fine. Dr. Ikudayisi relied on Dr. Uppal's representations in deciding to hire her.

14. Dr. Uppal worked at Glory MedClinic from February 11, 2019, until March 4, 2019. She started working with patients at Glory MedClinic on February 12, 2019, and saw patients on February 12, 19, 22, 26, and 27, 2019, and March 1, 2019.

15. While working for Glory MedClinic, Dr. Uppal examined multiple patients and prescribed medications, including controlled substances, for them. She also created medical records documenting her work. After her first day, Dr. Uppal worked independently. She was not supervised by another physician while she practiced at Glory MedClinic. Dr. Ikudayisi had not been approved by the Probation Committee. Dr. Uppal had not even submitted his name for approval.

16. Dr. Uppal's work at Glory MedClinic constituted the practice of medicine.

17. Dr. Ikudayisi's testimony was clear, direct, and weighty. He was not uncertain. He was a credible witness whose testimony left no uncertainty about the facts to which he testified.

18. The Department presented the testimony of Shaila Washington and Tammy Davis. Ms. Washington worked for the Department for over 13 years. She served as the medical compliance officer in the Compliance Management Unit (CMU) from June 2010 to February 2017. Since February 2017, Ms. Washington has worked for the Board as a regulatory supervisor. She regularly attends Board meetings. Ms. Davis has been employed by the Department for over five years. Ms. Davis is the current medical compliance officer. She has served in that role since October 2020. Both were credible, persuasive witnesses.

19. The medical compliance officer's duties include monitoring licensees' compliance with final orders, assisting with compliance by providing information to licensees regarding their various obligations, and facilitating requests to the Board and the Board's Probation Committee related to compliance.

20. The Board conducts disciplinary proceedings at public meetings. The meetings are audio recorded and transcribed by a stenographer. The Board publishes an agenda of the items to be considered at its meeting online, along with meeting minutes that memorialize the Board's decision on all agenda items. The Board issues written final orders of its decisions, which are filed with the agency clerk and provided to CMU.

21. After the filing of a final order, the medical compliance officer receives a copy of the final order from the Board, enters the terms of the final order in the Department's compliance database, and prepares an information packet to be sent to the licensee. The Department's compliance database is used to track licensees' compliance with final orders. It includes information on

whether a licensee has complied with specific terms. The database also tracks any modifications made to final orders.

22. CMU and the medical compliance officer have no authority to modify final orders, create or modify the requirements of a final order, or excuse a licensee's non-compliance with a final order. If a licensee wishes to have their final order modified, they must submit a written request, along with supporting documentation, to the medical compliance officer, who forwards that information to the Board which places it on the next available agenda.

23. If a licensee seeks approval of a supervising physician, they must submit a written request, along with supporting documentation, to the medical compliance officer. The compliance officer forwards the request and documentation to the Probation Committee chair. The chair has the authority to grant temporary approval and place the request on the agenda for the next available Probation Committee meeting. Temporary approval from the chair is valid until the licensee appears at the next available meeting.

24. The Probation Committee is the body that considers the request for approval of a supervising physician and issues an order deciding whether to approve or deny. The decision is also documented in the minutes for the meeting, which are later ratified by the full Board. The order and minutes are made available to the public on the Board's website. The Probation Committee order approving or denying the supervising physician is also provided to CMU.

25. The Department's compliance database documents that Dr. Uppal's probation remains tolled. There is no record that Dr. Uppal has completed her probation. The Board has never approved a permanent supervising physician for Dr. Uppal. Consequently, she has never satisfied the requirements of the 2015 Final Order.

26. Dr. Uppal testified that the terms of the 2015 Final Order were altered multiple times by the Board and medical compliance officers before February 2019, such that her conduct complied with the 2015 Final Order

and/or her probation was satisfied. Her testimony included claims that a medical compliance officer told her supervision by a New York doctor had been approved and that medical compliance officers had told her she could begin practicing before approval of a supervising physician. To put it simply, Dr. Uppal was not believable. For instance, there were no documents corroborating her testimony, despite the presence of procedures regularly followed by the Board that would have generated such documents. Also, the testimony of Ms. Washington and Ms. Davis was more persuasive and credible than the testimony of Dr. Uppal. So too was the testimony of the head supervisor of CMU since January 2014, Alison Williams, that medical compliance officers did not have authority to modify final orders. Furthermore, accepting Dr. Uppal's version requires believing at least two different people lied under oath and did not follow clear and long-standing procedures of the Board. The evidence and the demeanor of the witnesses do not support that belief.

Cases Not Previously Adjudicated by Informal Hearing

27. Dr. Uppal testified that Department case numbers 2018-07402 (DOAH Case No. 22-3288) and 2019-06395 (DOAH Case No. 22-3290) were adjudicated through an informal hearing[1] that began on October 4, 2019, before the Board.

28. In September 2019, Dr. Uppal signed an Election of Rights form for each case requesting a formal hearing before DOAH. Soon after, she hired an attorney who sent a letter to the Department waiving the requirement to refer the cases to DOAH within 45 days.

29. Dr. Uppal claims her attorney informed the Department's prosecutor that she wanted to proceed with an informal hearing. She believed that she

[1] An informal hearing is a hearing not involving disputed issues of material fact, in contrast with a formal hearing involving disputed material facts. *See* § 120.57(1)-(2), Fla. Stat. A final order entered following either an informal or formal hearing may be appealed to the appropriate district court of appeal. *See* § 120.68, Fla. Stat.

could appeal the results of the informal hearing to DOAH if she was not satisfied with the Board's ruling.

30. However, the Board's meeting minutes and agenda for the October 4, 2019, meeting do not mention Dr. Uppal. And she provided no evidence to support her claims.

31. Dr. Uppal testified that she appeared before the Board on December 6, 2019, and February 7, 2020, as a continuation of the alleged informal hearing on October 4, 2019. However, the meeting minutes for those dates clearly show that Dr. Uppal's appearances were related to a petition for modification of the 2015 Final Order, not these cases.

32. Dr. Uppal did not produce an order, amended election of rights, meeting minutes, transcript, letter, e-mail, or other documentation from the Board or Department to support her claim that the alleged informal hearings took place.

33. Also, Ms. Davis credibly testified that she reviewed the Department's database and could not find any record that these cases had been adjudicated. Ms. Davis was not aware of any final order or dismissal related to these two cases.

34. Dr. Uppal's testimony is not credible or persuasive. Dr. Uppal's claim that these cases were previously adjudicated is unproven.

Mitigation Argument

35. Dr. Uppal claims she believed that the 2015 Final Order was not reportable in New York because it was on appeal. This is an attempt to relitigate an issue that was adjudicated by the New York tribunals.
Dr. Uppal also asserts the New York Order was a reciprocal action taken by New York, for which the Board should not take action. That is incorrect. The plain language of the New York Order indicates that she was disciplined both for misrepresentations on her renewal application and for the discipline imposed by the Board. It was not reciprocal discipline mirroring Florida's discipline.

36. Dr. Uppal argues that she attempted to comply with the 2015 Final Order by obtaining an approved monitor following her termination from Glory MedClinic.

37. Dr. Uppal appeared before the Board on December 6, 2019, and requested that it modify the 2015 Final Order to allow indirect supervision for the entire two-year probation period. She admitted that she had practiced without an approved monitor in March of 2019. Her attorney conceded that she had not completed the required two years of supervised practice. The Board denied her request.

38. Dr. Uppal appeared again before the Board on February 7, 2020, and provided additional documentation to support her requested modification. The Board approved the modification to allow indirect supervision for the entire two-year probation period.

39. Dr. Uppal did not obtain an approved monitor until August 19, 2020, when the Probation Committee approved Dr. Krishan Batra to serve as Respondent's temporary monitor with conditions. The Probation Committee's order was clear that Respondent's practice under Dr. Batra would be limited to addiction medicine and would not count toward her required two-year probationary period with a permanent monitor.

40. Dr. Uppal's mitigation evidence was not coherent, persuasive, or credible. It also does not align with the documentary evidence. Respondent's efforts to obtain an approved monitor after she practiced at Glory MedClinic were not diligent and did not comply with the terms of the 2015 Final Order or the guidance she received from the Department.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

41. Sections 120.569 and 120.57(1), Florida Statutes (2022), grant DOAH jurisdiction of the subject matter and the parties to this action.

42. Because the Department seeks to discipline Dr. Uppal, the Department bears the burden of proving its allegations by clear and convincing evidence. *See Dep't of Banking & Fin. v. Osborne Stern & Co., Inc.*, 670 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

43. Clear and convincing evidence "require[s] that the witnesses to a fact must be found to be credible; the facts to which the witnesses testify must be distinctly remembered ... the testimony must be clear, direct and weighty, and the witnesses must be lacking in confusion as to the facts in issue." *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). Additionally, the evidence must be of such weight that it "produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the precise facts in issue." *Id.*

Offenses Charged

Section 458.331(1)(b)

44. Section 458.331(1)(b) provides that the following constitutes grounds for discipline by the Board:

> Having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions. The licensing authority's acceptance of a physician's relinquishment of a license, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of administrative charges against the physician's license, shall be construed as action against the physician's license.

45. Dr. Uppal's New York medical license was revoked on January 31, 2017, by the State of New York, Department of Health, Administrative Review Board.

46. The Department has proven by clear and convincing evidence that Dr. Uppal violated section 458.331(1)(b).

Section 458.331(1)(x)

47. Section 458.331(1)(x) provides that "[v]iolating a lawful order of the board or department previously entered in a disciplinary hearing" constitutes grounds for discipline by the Board.

48. Following the entry of the 2015 Final Order, Dr. Uppal left Florida for more than 30 days and ceased actively practicing medicine in Florida. Her two-year probation period and associated obligations were tolled while she was not practicing medicine in Florida. When Dr. Uppal returned to Florida, she did not obtain Board approval for a supervising physician. But she resumed the practice of medicine at Glory MedClinic in February and March 2019.

49. Dr. Uppal's practice of medicine at Glory MedClinic violated the 2015 Final Order.

50. Although the Board eventually approved modifications to the 2015 Final Order, this did not occur until well after Dr. Uppal practiced medicine at Glory MedClinic in February and March of 2019. The requirement for a supervising physician also did not change.

51. The Department has proven by clear and convincing evidence that Dr. Uppal violated section 458.331(1)(x).

Penalties

52. Florida Administrative Code Rule 64B8-8.001 establishes disciplinary guidelines that must be followed. § 456.079(5), Fla. Stat.

53. Rule 64B8-8.001(2)(b) provides that the range of penalties for a first violation of section 458.331(1)(b) (action against a license by another jurisdiction) is from imposition of discipline comparable to the discipline which would have been imposed if the substantive violation had occurred in Florida to suspension or denial of the license until the license is unencumbered in the jurisdiction in which disciplinary action was originally taken, and an administrative fine ranging from $1,000.00 to $5,000.00.

54. Rule 64B8-8.001(2)(x)2. provides that the range of penalties for a first violation of section 458.331(1)(x) is from a reprimand and an administrative fine from $5,000.00 to $10,000.00, to revocation or denial, based upon the severity of the offense and the potential for patient harm. The range of penalties for a second violation of section 458.331(1)(x) is from suspension, followed by a period of probation, and a $10,000.00 fine to revocation.

55. Dr. Uppal was previously found in violation of section 458.331(1)(x) in the Board's 2019 Final Order. Accordingly, the penalty range for a second violation applies in this case.

56. Section 456.072(4) requires that in addition to other discipline imposed through final order for a violation of chapter 458, the 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.

57. Rule 64B8-8.001(3) sets forth aggravating and mitigating circumstances that the Board may consider to deviate from the penalties recommended in the guidelines. The circumstances that apply here include:

> (a) Exposure of patient or public to injury or potential injury, physical or otherwise: none, slight, severe, or death;
>
> (b) Legal status at the time of the offense: no restraints, or legal constraints;
>
> (c) The number of counts or separate offenses established;
>
> (d) The number of times the same offense or offenses have previously been committed by the licensee or applicant;

> (e) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;
>
> (f) Pecuniary benefit or self-gain inuring to the applicant or licensee;
>
> * * *
>
> (i) Any other relevant mitigating factors.

58. Dr. Uppal's claimed mitigating circumstances are irrelevant, unpersuasive, and outweighed by the aggravating factors here.

59. Dr. Uppal's claim that she had, in some fashion, obtained an approved monitor is unconvincing. Her testimony about conversations with Board representatives upon which she relies is untruthful. In addition, courts routinely find that ignorance of the law is not an excuse. *See, e.g., Fla. Bar v. Dubow*, 636 So. 2d 1287, 1288 (Fla. 1994); *D.F. v. State*, 682 So. 2d 149, 152 (Fla. 4th DCA 1996); *Reason v. Motorola, Inc.*, 432 So. 2d 644, 645 (Fla. 1st DCA 1983). The terms of the 2015 Final Order were clear. Dr. Uppal admitted that she did not read the order or seek legal counsel to help understand its terms. Despite Dr. Uppal's non-credible assertions to the contrary, the Department's compliance officers were also available to help her understand what was required of her, and they repeatedly informed her of the need to obtain a Board-approved monitor in Florida.

60. Dr. Uppal's attempts to secure a monitor after returning to the practice of medicine at Glory MedClinic and being terminated are not persuasive as mitigation; Dr. Uppal did not obtain an approved monitor before practicing as required by the 2015 Final Order. As of the final hearing, more than eight years after the 2015 Order imposed the obligations necessary to fulfill the term of probation, Dr. Uppal has not even started her two-year term of supervision by an approved, permanent monitor. Instead, she has devoted extraordinary efforts to avoiding her obligations, from leaving the

state, to seeking multiple concessions from the Board, to challenging the Department's authority to prosecute the present cases.

61. Dr. Uppal has committed two separate offenses, violating an order of the Board and having her New York medical license revoked. Dr. Uppal's Florida license was in probationary status when she committed both violations. Dr. Uppal has violated the same Final Order of the Board twice. She has been previously disciplined by the Board. Respondent benefitted financially by working at Glory MedClinic without first complying with her probationary requirements. Finally, the 2015 Final Order imposing probation and requiring supervised practice resulted from findings that Dr. Uppal committed medical malpractice, inappropriately prescribed drugs, and failed to maintain adequate medical records. These are serious offenses exposing patients to injury or even death. The requirement of supervised practice is no *pro forma* sanction. It is a condition crafted to alter the way Dr. Uppal practices with oversight from an approved physician. Violation of the requirement is a very serious offense.

62. Violation of the requirements of the 2015 Final Order also demonstrates that lesser sanctions such as a fine and probation are insufficient to protect the public. Dr. Uppal has repeatedly demonstrated lesser penalties do not alter her conduct. Dr. Uppal's pattern of ignoring the discipline imposed by the Board raises grave doubts about her willingness to comply with future disciplinary requirements.

RECOMMENDATION

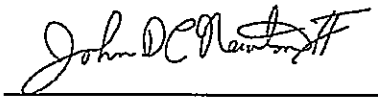
Based on the Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Medicine enter a Final Order:

1. Finding that Respondent, Neelam T. Uppal, M.D., violated sections 458.331(1)(b) and 458.331(1)(x), Florida Statutes, as charged in the Administrative Complaints;

2. Revoking Dr. Uppal's medical license; and

3. Assessing the costs of the investigation and prosecution of this case against Dr. Uppal.

DONE AND ENTERED this 4th day of August, 2023, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of August, 2024.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Amy Carraway
DATE AUG 2 8 2023

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No.: 2019-06395
2018-07402
DOAH Case No.: 22-3288PL

NEELAM TANEJA UPPAL, M.D.,

Respondent.
_____/

PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioner, Department of Health ("Department"), by and through the undersigned counsel, hereby files this Response to Respondent's Exceptions to the Recommended Order. In support thereof, Petitioner states the following:

1. A formal administrative hearing in this matter was held on May 19, 2023, and June 19, 2023, via Zoom conference. Recommended Order, p. 1.

2. On August 4, 2023, the presiding Administrative Law Judge ("ALJ") entered a Recommended Order which found that Petitioner proved by clear and convincing evidence that Respondent violated sections 458.331(1)(b), Florida Statutes (2016), and 458.331(1)(x), Florida Statutes (2018). The ALJ recommended that the Board of Medicine ("Board") enter a final order finding that Respondent violated the aforementioned statutes, revoking Respondent's license to practice medicine and imposing costs of investigation and prosecution of this matter. Recommended Order, pp. 16-17.

3. On August 18, 2023, Respondent filed Respondent's Exceptions to the Recommended Order ("Respondent's Exceptions") with the Department.

I. APPLICABLE STANDARD OF REVIEW

4. The ALJ and the Board have distinct roles in formal administrative hearings. It is the function of the ALJ to consider all evidence presented, resolve conflicts in the evidence, assess the credibility of witnesses, draw permissible inferences from the evidence, and complete a recommended order consisting of findings of fact, conclusions of law, and a recommended penalty. § 120.57(k), Fla. Stat. (2023); Heifetz v. Dep't of Bus. Regul., 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

5. A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. Bridlewood Grp. Home v. Agency For Pers. With Disabilities, 136 So. 3d 652, 657 (Fla. 2d DCA 2013); Rogers v. Dep't of Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep't of Env't Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands Cnty. Sch. Bd., 652 So. 2d 894 (Fla. 2d DCA 1995). Evidentiary rulings are matters within the ALJ's sound prerogative as the finder of fact and may not be reversed on agency review. Save Our Creeks, Inc. & Env't Confederation of SW Fla., Inc. v. Fla. Fish & Wildlife Conservation Comm'n & Dep't of Env't Prot., WL 211098 at *4 (DOAH January 15, 2014). If the evidence presented supports two inconsistent findings, it is the ALJ's role to decide the issue one way or the other. Id. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. Id. In

addition, an agency has no authority to make independent or supplemental findings of fact. See North Port, Fla. v. Consol. Mins., 645 So. 2d 485, 487 (Fla. 2nd DCA 1994).

6. Parties may file exceptions to findings of fact and conclusions of law contained within the ALJ's recommended order. § 120.57(1)(k), Fla. Stat. (2023). Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record. R. 28-106.217(1), Fla. Admin. Code (2023).

7. The Board cannot reject or modify the ALJ's findings of fact unless it first determines from a review of the entire record, and states with particularity in the order, that there is no competent, substantial evidence from which the finding could be reasonably inferred or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(l), Fla. Stat. (2023); Heifetz, 475 So. 2d at 1281. Competent evidence is evidence sufficiently relevant and material to the ultimate determination "that a reasonable mind would accept it as adequate to support the conclusion reached." City of Hialeah Gardens v. Miami Dade Charter Found, Inc., 857 So. 2d 202, 204 (Fla. 3rd DCA 2003) (citing DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)). Substantial evidence is evidence that provides a factual basis from which a fact at issue may reasonably be inferred. Id.

8. The Board may only reject or modify an ALJ's conclusions of law and interpretations of administrative rules if the Board has substantive jurisdiction. See, e.g., § 120.57(1)(l), Fla. Stat. (2023); Barfield v. Dep't of Health, 805 So. 2d 1008 (Fla. 1st DCA 2001); Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140 (Fla. 2nd DCA

2001). "Jurisdiction" has been interpreted to mean "administrative authority" or "substantive expertise." See Deep Lagoon Boat Club, Ltd., 784 So. 2d at 1142.

9. While the ALJ recommends interpretations of law and/or administrative rules, the Board has ultimate discretion over matters of substantive jurisdiction. However, the Board may only reject or modify the ALJ's conclusions of law if the Board:

> a. states with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule; and
>
> b. makes a finding that the substituted conclusions of law or interpretation of administrative rule is as reasonable or more reasonable than that which was rejected.

§ 120.57(1)(l), Fla. Stat. (2023); Barfield, 805 So. 2d at 1011.

10. If a finding of fact in an ALJ's Recommended Order is improperly labeled, the label should be disregarded, and the item treated as though it were properly labeled as a conclusion of law. Battaglia Props. v. Fla. Land & Adjudicatory Comm'n, 629 So. 2d 161, 168 (Fla. 5th DCA 1994).

11. The final order must include an explicit ruling on each exception; however, an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat. (2023); Boundy v. Sch. Bd. of Miami-Dade Cnty., 994 So. 2d 433, 434 (Fla. 3d DCA 2008).

12. The Board may not reduce or increase the ALJ's recommended penalty without a review of the complete record and without stating with particularity its reasons

in the final order, by citing to the record in justifying the action. Id. at § 120.57(1)(l), Fla. Stat. (2023).

II. PETITIONER'S GENERAL OBJECTIONS

13. Petitioner objects to the Board's consideration of Respondent's Exceptions, as identified below, because Respondent failed to clearly identify the portions of the Recommended Order by page number or paragraph to which Respondent takes exception, failed to identify the legal basis for the exception, and/or failed to include appropriate and specific citations to the record.

14. Throughout Respondent's Exceptions, Respondent repeatedly references the transcript and various exhibits generally, without any specific citation to the record, and references facts that are not even in evidence. Additionally, Respondent fails to clearly identify the legal basis for numerous exceptions and fails to identify the disputed portion of the Recommended Order for one exception. These exceptions do not comply with the legal requirements for exceptions and do not provide the Board with a sufficient basis to rule on the issues in dispute.

15. Petitioner submits that Respondent's exception 2 (relating to RO paragraph 4), 3 (relating to RO paragraph 8), 4 (relating to RO paragraph 1), 5 (relating to RO paragraph 11), 6 (relating to RO paragraph 11), 7 (relating to RO paragraph 12), 8 (relating to RO paragraph 15), 9 (relating to RO paragraphs 21), 10 (relating to RO paragraph 22), 11 (relating to RO paragraph 25), 12 (relating to RO paragraph 26), 13 (relating to RO paragraph 27), 14 (relating to RO paragraph 29), 15 (relating to RO paragraph 31), 16 (relating to RO paragraph 32), 17 (relating to RO paragraph 33), 19

(relating to RO paragraph 36), 24 (relating to RO paragraph 43), 26 (relating to RO paragraph 45), 27 (relating to RO paragraph 46), 28 (relating to RO paragraph 48), 29 (relating to RO paragraph 48), 30 (relating to RO paragraph 51), 31 (relating to RO paragraph 55), 32 (relating to RO paragraph 57), and 33 (relating to RO paragraph 61) all fail to specify the legal bases for the exceptions or appropriate and specific citations to the record. Petitioner also submits that Respondent's "conclusion" section on pages 37-38 of Respondent's Exceptions fails to identify the specific disputed portions of the Recommended Order or provide any appropriate or specific citations to the record.

16. Based on the foregoing, Petitioner contends that the Board is not required to rule on Respondent's Exceptions to the extent the exceptions do not comply with section 120.57(1)(k) or Rule 28-106.217(1).

17. Subject to, and without waiving these general objections, Petitioner will respond substantively to each of Respondent's exceptions below, in the event the Board wishes to consider the exception on the merits.

III. PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS

FINDINGS OF FACT

i. Respondent's First Exception (Page 2, paragraph 3 of RO) and Second Exception (Page 2, paragraph 4 of RO)[1]

18. Respondent attempts to take exception to the ALJ's recitation of the allegations and procedural history and posture in the Preliminary Statement of the

[1] Respondent's Exceptions do not employ consistent paragraph numbering and the individual exceptions are not numbered; instead, they appear to be labelled according to the page and paragraph number of the Recommended Order. Petitioner has numbered Respondent's exceptions for ease of reference in this Response.

Recommended Order. Respondent's exception takes issue with the ALJ's finding that Respondent requested a formal hearing and insists, incorrectly, that these cases were heard at a prior informal hearing. Respondent's Exceptions, pp. 3-8.

19. Respondent also takes issue with the ALJ's decision to refrain from mentioning Respondent's previously filed Motion to Dismiss and Respondent's appeal to the First District Court of Appeals in the Preliminary Statement, as well as claiming the ALJ ignored all hearings that occurred until August 19, 2020. Respondent's Exceptions, p. 8.

20. This section of the Recommended Order is merely a recitation of the allegations and procedural history of the case and does not form the basis of any conclusion or recommendation by the ALJ. Moreover, the ALJ's recitation in the Preliminary Statement is accurate and well supported by the full record, including the parties' pleadings and filings, orders by the ALJ, and the transcript of the final hearing.

21. There is no basis for Respondent to take exception to the contents of the Preliminary Statement since it contains no findings of fact or conclusions of law that the Board may modify. See § 120.57(1)(l), Fla. Stat. (2023).

22. Because Respondent failed to identify any finding of fact or conclusion of law in this section to which she takes exception, the Board should deny Respondent's First and Second Exceptions.

23. Subject to, and without waiving this objection, Petitioner will substantively respond to Respondent's First and Second Exceptions, in the event the Board wishes to consider the exceptions on the merits.

24. Respondent is attempting to reweigh the documentary evidence and the credibility of her testimony. Respondent states that she "contradicts the ALJ perception of the record" and that the ALJ "did not consider" the August 19, 2020, order of the Board and "failed to recognize" its impact on these cases. Respondent's Exceptions, pp. 4, 8-9.

25. As set forth above, the Board cannot re-weigh the evidence already considered by the ALJ or make substitute or supplementary findings of fact. The Board may only modify the ALJ's findings of fact if there is no competent, substantial evidence from which the finding could be reasonably inferred or the proceedings on which the findings were based did not comply with the essential requirements of law.

26. The ALJ had competent, substantial evidence in the record to support these findings, and it is within the purview of the ALJ to determine the credibility, weight, and relevance of evidence presented. The ALJ's statements are well supported by the motions, orders, and notices in the record; the exhibits admitted into evidence, and the transcript of the final hearing. J. Ex. 8-16, 24; Tr. V.1. pp. 135-144, 209-222.

27. Moreover, the ALJ's findings of fact in the Recommended Order make clear that the ALJ considered Respondent's arguments about prior appearances before the Board and discredited her testimony about the proceedings. Recommended Order, pp. 8-10.

28. Respondent also asserts a variety of legal bases in support of these exceptions, which she believes demonstrate that the ALJ lacks jurisdiction to issue a Recommended Order in these cases. These include concerns with due process, double jeopardy, collateral estoppel, laches, res judicata, "Fraud in court," abuse of process, unclean hands, and bad faith. Respondent's Exceptions, pp. 5-8.

29. Respondent's exceptions fail to explain in any detail how the aforementioned legal doctrines apply to the ALJ's findings and do not establish any basis for the Board to determine that the proceedings did not comply with the essential requirements of law. Moreover, Respondent's arguments appear to be entirely predicated on her belief that the present cases were previously resolved—a belief the ALJ explicitly rejected based on the evidence. See Recommended Order, pp. 9-10.

30. Finally, the Board does not have substantive jurisdiction to rule on evidentiary matters or legal defenses. See, e.g., § 120.57(1)(l), Fla. Stat. (2023); Barfield, 805 So. 2d 1008; Deep Lagoon Boat Club, 784 So. 2d 1140.

31. To the extent that the excepted portions of the Preliminary Statement of the Recommended Order are findings of fact, they are supported by competent, substantial evidence, and Respondent's First and Second Exceptions should therefore be denied.

ii. Respondent's Third Exception (Page 5, paragraph 8 of RO), Fourth Exception (Page 5, paragraph 1 of RO); and Fifth and Sixth Exceptions (Page 6, paragraph 11 of RO)

32. Respondent takes exception to the ALJ's findings of fact on page 5, paragraphs 8 and 1,[2] and on page 6, paragraph 11 of the Recommended Order, relating to her discipline in New York.

33. Respondent seeks to have the Board re-weigh the evidence already considered by the ALJ in order to reach conclusions that the ALJ has rejected. See Recommended Order, pp. 5-6, 10.

[2] Respondent's Exceptions reference "Page 5, paragraph 1" of the Recommended Order, which does not exist. Respondent perhaps intended to reference paragraph 10.

34. Because the ALJ had competent, substantial evidence to make the findings of fact in paragraphs 8, 10, and 11 of the Recommended Order, the Board should reject Respondent's Third through Sixth Exceptions. J. Ex. 5, 7.

iii. Respondent's Seventh Exception (Page 6, paragraph 12 of RO); Eighth Exception (Page 6, paragraph 15 of RO); Ninth Exception (Page 7, paragraph 21 of RO); Tenth Exception (Page 8, paragraph 22 of RO); Eleventh Exception (Page 8, paragraph 25 of RO); and Twelfth Exception (Page 8, paragraph 26 of RO)

35. Respondent takes exception to the ALJ's findings of fact in paragraphs 12, 15, 21, 22, 25, and 26 of the Recommended Order, relating to her practice of medicine at Glory MedClinic without first obtaining an approved monitor, and the Department's tracking of her compliance with probation requirements.

36. Respondent seeks to have the Board re-weigh the evidence already considered by the ALJ, including making determinations as to the credibility of witnesses, in order to conclude that Respondent did not violate the Board's Final Order.

37. However, the ALJ made detailed findings of fact regarding these issues based on the credible testimony of Dr. Ikudayisi, Ms. Washington, Ms. Davis, and Ms. Williams, and after consideration of a plethora of documentary evidence. J. Ex. 9a-16, 22-25; Tr. V. I. pp. 48-71, 84-92, 102-103, 107-114; Tr. V. II. pp. 12, 19-20, 42-43, 57-61.

38. Because ALJ had competent, substantial evidence to make the findings of fact in paragraphs 12, 15, 21, 22, 25, and 26 of the Recommended Order, the Board should reject Respondent's Seventh through Twelfth Exceptions.

iv. Respondent's Thirteenth Exception (Page 9, paragraph 27 of RO); Fourteenth Exception (Page 9, paragraph 29 of RO); Fifteenth Exception (Page 10, paragraph 31 of RO); Sixteenth Exception (Page 10, paragraph 32 of RO); Seventeenth Exception (Page 10, paragraph 33 of RO)

39. Respondent takes exception to the ALJ's findings of fact in paragraphs 27, 29, 31, 32, and 33 of the Recommended Order, relating to Respondent's contention that these cases were previously adjudicated by the Board.

40. Respondent seeks to have the Board re-weigh the evidence already considered by the ALJ, including reassessing the credibility of Respondent, and consider records that are not in evidence and may not even exist. Respondent also insists that the ALJ ignored evidence that was obviously considered.

41. The ALJ made findings based on consideration of the extensive documentary evidence and the credible testimony of Ms. Davis. Tr. V. I. pp. 112-116; J. Ex. 8-16, 22-25.

42. Additionally, the ALJ specifically considered Respondent's testimony on this issue and determined that it was not credible and not corroborated by any documentary evidence. Recommended Order, p. 10.

43. Because ALJ had competent, substantial evidence to make the findings of fact in paragraphs 27, 29, 31, 32, and 33 of the Recommended Order, the Board should reject Respondent's Thirteenth through Seventeenth Exceptions.

v. Respondent's Eighteenth Exception (Page 10, paragraph 35 of RO)

44. Respondent takes exception to the ALJ's findings of fact in paragraph 35 of the Recommended Order regarding potential mitigating evidence relating to her New York discipline.

45. Respondent argues that the ALJ incorrectly found that the New York Order imposing discipline against Respondent was for both misrepresentations on her New York renewal application and for the discipline imposed by the Florida Board. Respondent's Exceptions, pp. 21-22.

46. Respondent cites to Volume 1, pages 141-142, of the final hearing transcript in support of this exception; however, there is no discussion regarding Respondent's New York discipline on these pages. Respondent also cites to page 40 of Joint Exhibit 2; however, Joint Exhibit 2 is only 14 pages and contains only the two administrative complaints filed by Petitioner.

47. Respondent is attempting to reweigh the evidence and relitigate issues from the New York proceeding, which is outside of the Board's purview. Respondent attempted to assert the same arguments at the final hearing, which the ALJ rejected.

48. Respondent also references an appeal in New York; however, she does not cite to any evidence in the record to support this argument. Similarly, she does not cite to any evidence in the record to support the claim that she could re-apply for licensure in New York.

49. It is the role of the ALJ to consider all the evidence presented, resolve conflicts in the evidence, assess the credibility of witnesses, and draw permissible inferences from

the evidence. Heifetz, 475 So. 2d at 1281. The ALJ relied on the plain language of the New York Order, which was properly admitted as a Joint Exhibit with no objection, and rejected Respondent's testimony as not credible. Recommended Order, p. 11; J. Ex. 7.

50. Because the ALJ's findings of fact in paragraph 35 of the Recommended Order are supported by competent, substantial evidence, Respondent's Eighteenth Exception should be denied.

vi. Respondent's Nineteenth Exception (Page 11, paragraph 36 of RO), Twentieth Exception (Page 11, paragraph 37 of RO), and Twenty-First Exception (Page 11, paragraph 39 of RO)

51. Respondent takes exception to the ALJ's findings of fact in paragraphs 36, 37, and 39 of the Recommended Order, regarding potential mitigating evidence relating to her practice of medicine without an approved monitor.

52. Respondent argues that the ALJ incorrectly found that Respondent appeared before the Board in December of 2019 and August 2020 to request modifications to the Board's 2015 Final Order, rather than to adjudicate the present cases.

53. However, the ALJ's findings are supported by the plain language of the December 16, 2019, and August 19, 2020, Board orders, and by the transcript, minutes, and audio recording from the December 6, 2019, Board meeting. J. Ex. 9k, 12, 16, 23, 24.

54. Respondent is attempting to re-weigh the evidence, including the credibility of her testimony, which is outside of the Board's purview.

55. Respondent also argues that the ALJ incorrectly found that Respondent did not obtain an approved monitor until August 19, 2020, when Dr. Batra was approved on

June 6, 2019. Respondent asserts that the "ALJ's perception is wrong again" and that he "is intentionally ignoring the record." Respondent's Exceptions, p. 25.

56. The ALJ stated in paragraph 39 that, "Dr. Uppal did not obtain an approved monitor until August 19, 2020, when the Probation Committee approved Dr. Krishan Batra to serve as Respondent's temporary monitor with conditions."

57. The record reflects that on June 3, 2020, the Board's Probation Committee gave temporary approval for Dr. Batra to serve as Respondent's monitor until the next meeting, at which Respondent and Dr. Batra would have to appear. However, it was not until the July 30, 2020, meeting that the Committee gave indefinite approval to Dr. Batra. The Board did not enter an Order Regarding Probation Monitor until August 19, 2020, which ratified the decision of the Probation Committee and allowed Respondent to practice addiction medicine under Dr. Batra's supervision, notwithstanding the original requirements of the 2015 Final Order. The Probation Committee can approve probation monitors in accordance with the terms of a final order, but only the full Board can modify the terms of a final order. J. Ex. 5, 9n, 9o, 15, 16; Tr. V. I. pp. 41-42, 48-71, 84-92, 99-100, 102-103, 107-114; Tr. V. II. pp. 57-61.

58. The ALJ appropriately found that Respondent did not have a monitor approved until August 19, 2020. Additionally, even if the ALJ had found that Respondent had obtained an approved monitor in June 2020, it would not alter the ALJ's ultimate finding in paragraph 40—which Respondent has not challenged—that:

> Dr. Uppal's mitigation evidence was not coherent, persuasive, or credible. It also does not align with the documentary evidence. Respondent's efforts to obtain an approved monitor after she practiced at Glory MedClinic were not

diligent and did not comply with the terms of the 2015 Final Order or the guidance she received from the Department.

Because the ALJ's findings of fact are supported by competent, substantial evidence, Respondent's Nineteenth, Twentieth, and Twenty-First Exceptions should be denied.

CONCLUSIONS OF LAW

vii. Respondent's Twenty-Second Exception (Page 12, paragraph 41 of RO)

59. Respondent takes exception to paragraph 41 of the Recommended Order, wherein the ALJ concluded that DOAH has jurisdiction in these cases, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2023).

60. Respondent's stated basis for the exception is that DOAH does not have jurisdiction over this case because Respondent withdrew her request to refer the case to DOAH and has "already completed her punishment." Respondent's exception is premised on purported facts that were not found by the ALJ and are unsupported by the record. See Recommended Order, pp. 8-10.

61. The record is clear that Respondent requested formal administrative hearings before DOAH, pursuant to sections 120.569 and 120.57(1). See J. Ex. 1. The statutes cited by the ALJ demonstrate DOAH's jurisdiction to hear such cases. See § 120.569 ("On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter."); § 120.57(1) ("...an administrative law judge assigned by the division shall conduct all hearings under this subsection..."); see also § 456.073(5) Fla. Stat. (2023) ("A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact.").

62. The Board does not have "administrative authority" or "substantive expertise" regarding DOAH's jurisdiction; therefore, the Board does not have substantive jurisdiction to modify this conclusion of law.

63. Moreover, even though Respondent did not propose a substituted conclusion, Petitioner submits that any conclusion that DOAH did not have jurisdiction over these cases would not be as or more reasonable than the ALJ's conclusion. Accordingly, Respondent's Twenty-Second exception should be denied.

viii. Respondent's Twenty-Third Exception (Page 12, paragraph 42 of RO) and Twenty-Fourth Exception (Page 12, paragraph 43 of RO)

64. Respondent takes exception to paragraphs 42 and 43 of the Recommended Order, wherein the ALJ concluded that the Department bears the burden of proving its allegations by clear and convincing evidence and set forth the legal standard for such evidence.

65. Respondent's exceptions fail to identify why the burden of proof articulated by the ALJ is incorrect. Instead, Respondent attempts to argue both that the Department did not meet that burden based on the evidence presented and that the ALJ did not properly consider Respondent's testimony. Such arguments are irrelevant to the ALJ's conclusions in these paragraphs.

66. Respondent did not propose substituted conclusions that are as or more reasonable than the ALJ's conclusions. Accordingly, Respondent's Twenty-Third and Twenty-Fourth Exceptions should be denied.

ix. Respondent's Twenty-Fifth Exception (Page 12, paragraph 44 of RO); Twenty-Six Exception (Page 12, paragraph 45 of RO); and Twenty-Seventh Exception (Page 12, paragraph 46 of RO)

67. Respondent takes exception to the ALJ's conclusions of law in paragraphs 44, 45, and 46 of the Recommended Order, wherein the ALJ concluded that Respondent violated section 458.331(1)(b).

68. Paragraph 44 of the Recommended Order merely quotes the statutory language of section 458.331(1)(b). Respondent's exception does not allege that the citation is incorrect, but instead argues that this action is barred by the doctrine of laches.

69. Paragraph 45 of the Recommended Order reiterates the ALJ's prior finding of fact that Respondent's New York medical license was revoked on January 31, 2017. See Recommended Order, p. 5. As set forth above, the ALJ had competent, substantial evidence to make this finding. Respondent's exception to this paragraph merely states that the "New York action is still on appeal" and that the present action is barred by the doctrine of collateral estoppel, with no further explanation.

70. Paragraph 46 of the Recommended Order concludes that the "Department has proven by clear and convincing evidence that Dr. Uppal violated section 458.331(1)(b)." Respondent's exception merely accuses the ALJ of being biased and not properly considering the evidence.

71. The ALJ's conclusions in these paragraphs are predicated on competent, substantial evidence, clearly articulated, and supported by citations to statutory and case

law. Respondent has provided no contrary legal authority to challenge the conclusions or any meaningful explanation of why the ALJ might have misapplied the law.

72. Respondent did not propose substituted conclusions that are as or more reasonable than the ALJ's conclusions. Accordingly, Respondent's Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Exceptions should be denied.

x. Respondent's Twenty-Eighth Exception (Page 13, paragraph 48 of RO); Twenty-Ninth Exception (Page 13, paragraph 48 of RO); and Thirtieth Exception (Page 13, paragraph 51 of RO)

73. Respondent takes exception to the ALJ's conclusions of law in paragraphs 48 and 51 of the Recommended Order, wherein the ALJ concluded that Respondent violated section 458.331(1)(x).

74. In paragraph 48, the ALJ reiterates previously found facts relating to the tolling of Respondent's probation under the 2015 Final Order of the Board and her failure to obtain an approved monitor before returning to practice in Florida. See Recommended Order, pp. 4-9. As set forth above, the ALJ had competent, substantial evidence to make these findings. Respondent's exceptions merely disagree with the ALJ's findings of fact and seek to re-weigh the evidence already considered by the ALJ.

75. Paragraph 51 concludes that the "Department has proven by clear and convincing evidence that Dr. Uppal violated section 458.331(1)(x)." Respondent's exception argues that these cases were previously heard by the Board and that Respondent was already disciplined — assertions which are unsupported by any finding of fact.

76. Respondent did not propose substituted conclusions that are as or more reasonable than the ALJ's conclusions. Accordingly, Respondent's Twenty-Eighth, Twenty-Ninth, and Thirtieth Exceptions should be denied.

xi. Respondent's Thirty-First Exception (Page 14, paragraph 55 of RO); Thirty-Second Exception (Page 14, paragraph 57 of RO); and Thirty-Third Exception (Page 16, paragraph 61 of RO)

77. Respondent takes exception to the ALJ's conclusions of law in paragraphs 55, 57, and 61 of the Recommended Order, regarding the Board's disciplinary guidelines and the appropriate penalty in this matter.

78. Paragraph 55 concluded that Respondent previously violated section 458.331(1)(x), so the penalty range for a second violation applied. This conclusion is supported by the ALJ's finding of fact in paragraph 7, to which Respondent did not take exception, that the Board previously disciplined Respondent on August 16, 2019, for a violation of section 458.331(1)(x). See J. Ex. 6. This conclusion is also supported by the ALJ's conclusion of law in paragraph 54, to which Respondent did not take exception, which set forth the Board's disciplinary guidelines for violations of section 458.331(1)(x).

79. Respondent again attempts to re-weigh evidence instead of providing any legal basis for why the ALJ's conclusion of law is incorrect.

80. Paragraph 57 identifies aggravating and mitigating circumstances from the Board's disciplinary guidelines that the ALJ believed were applicable to this matter, including "[e]xposure of patient or public to injury or potential injury, physical or otherwise..."

81. Respondent's exception contests whether there was evidence that she harmed any patients and asserts facts not in evidence regarding her malpractice history; however, Respondent does not explain why these factors from the rule are not applicable or identify any factors from the rule that she believes are more appropriate.

82. The ALJ's conclusion that these factors are applicable is supported by the detailed discussion of aggravating circumstances in paragraphs 61 and 62.

83. Paragraph 61 of the Recommended Order lists numerous aggravating circumstances, including that Respondent committed two separate offenses, violated the same Final Order twice, was previously disciplined by the Board, and benefitted financially from working without a monitor. Paragraph 61 also articulates that the violations found by the Board in the 2015 Final Order were serious and involved "exposing patients to injury or even death" and that Respondent's violation of her resulting probation "is a very serious offense."

84. Respondent's exception asserts that the "ALJ's finding is fabricated and preposterous" and that the ALJ is prejudiced against Respondent and in favor of the Department. Respondent cites to no finding of fact or record evidence to support these assertions. Respondent also tries to re-weigh the evidence regarding her practice at Glory MedClinic and asserts that no patient harm resulted from her practice there. Respondent also identifies a number of legal doctrines that supposedly form the legal basis for the exception but does not explain at all how these doctrines apply to the case.

85. Paragraph 61 is well supported by the ALJ's previous findings of fact and conclusions of law in the Recommended Order, as well as by the evidence in the record and permissible inferences. See, e.g., J. Ex. 5-7; P. Ex. 2-3; see also Heifetz, 475 So. 2d at 1281.

86. The ALJ's conclusions regarding the gravity of Respondent's prior violations and the importance of compliance with her probation terms are well supported by the Board's 2015 Final Order, which incorporated detailed findings of fact and conclusions of law from a recommended order. Notably, the Board determined that Respondent's violations were so serious that she should be immediately suspended for six months and then prohibited from practicing medicine unless she underwent 2 years of practice under the direct supervision of an approved physician. See J. Ex. 5.

87. Although Respondent did not propose a substituted conclusion, Petitioner submits that any conclusion that the ALJ improperly considered aggravating circumstances would not be as or more reasonable than the ALJ's conclusion, which is well reasoned and supported by the record. Accordingly, Respondent's Thirty-First, Thirty-Second, and Thirty-Third Exceptions should be denied.

xii. Respondent's Conclusion

88. Respondent concludes her Exceptions by requesting that the Board reject the ALJ's findings of fact and conclusions of law in the Recommended Order based on a litany of legal terms and doctrines. Respondent does not identify any specific portion of the Recommended Order or explain how the identified principles apply to the case.

89. To the extent that Respondent's Conclusion is construed to be an exception to the Recommended Order, it should be denied because it does not propose any alternative

findings of fact or conclusions or law and provides no clear rationale for any modification of the Recommended Order.

Respectfully submitted this 28th day of August, 2023.

/s/ Jonathan Golden
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via electronic mail to counsel for Respondent, Jay Romano, Esquire, at jromanopa@gmail.com on this 28th day of August, 2023.

/s/ Jonathan Golden
Jonathan Golden
Assistant General Counsel

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2018-07402**

NEELAM TANEJA UPPAL, M.D.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Neelam Taneja Uppal, 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 medical doctor within the state of Florida, having been issued license number ME 59800.

3. Respondent's address of record is P. O. Box 1002 Largo, Florida 33779.

4. Respondent is board certified in infectious disease by the American Board of Internal Medicine.

5. On or about January 31, 2017, the State of New York Department of Health Administrative Review Board for Professional Medical Conduct revoked the Respondent's New York medical license in Order No. 17-33 after the New York hearing committee issued Determination and Order BPMC No. 16-283 finding Respondent guilty of making misrepresentations concerning Florida disciplinary action on the Respondent's application to renew her New York medical license, among other charges.

6. Section 458.331(1)(b), Florida Statutes (2016), provides that having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, constitutes grounds for disciplinary action by the Board of Medicine.

7. On or about January 31, 2017, the State of New York: Department of Health Administrative Review Board for Professional Medical Conduct revoked the Respondent's New York medical license in Order No. 17-33.

8. Based on the foregoing, respondent has violated Section 458.331(1)(b), Florida Statutes (2016), by having her New York medical license revoked by the licensing authority of New York.

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 16th day of August, 2019.

Scott A. Rivkees, M.D.
State Surgeon General

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Amanda Mathews
DATE: AUG 16 2019

Virginia Edwards

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PCP Date: August 16, 2019
PCP Members: Mark Avila, M.D.; Hector Vila, M.D.; Andre Perez

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.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2019-06395**

NEELAM TANEJA UPPAL, M.D.,

RESPONDENT.
_____/

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Neelam Taneja Uppal, 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 medical doctor within the state of Florida, having been issued license number ME 59800.

3. Respondent's address of record is 5840 Park Blvd Pinellas Park, Florida 33781.

4. Respondent is board certified in Infectious Disease by the American Board of Internal Medicine.

5. On or about September 10, 2010, the Department filed a three-count Administrative Complaint against Respondent's Florida medical license in Department of Health case number 2009-13497.

6. The Administrative Complaint in case number 2009-13497 alleged Respondent violated section 458.331(1)(t)1, Florida Statutes (2008) by committing medical malpractice, section 458.331(1)(q), Florida Statutes (2008) by prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice, and section 458.331(1)(m), Florida Statutes (2008) by failing to keep legible medical records that justify the course of treatment of the patient.

7. On or about July 14, 2014, the Department filed a two-count Amended Administrative Complaint against Respondent's Florida medical license in Department of Health case number 2011-06111.

8. The Amended Administrative Complaint in case number 2011-06111 alleged Respondent violated section 458.331(1)(t)1, Florida Statutes (2010) by committing medical malpractice, and section 458.331(1)(m),

Florida Statutes (2010) by failing to keep legible medical records that justify the course of treatment of the patient.

9. On or about July 14, 2014, the Department filed a one-count Second Amended Administrative Complaint against Respondent's Florida medical license in Department of Health case number 2011-17799.

10. The Second Amended Administrative Complaint in case number 2011-17799 alleged Respondent violated section 458.331(1)(m), Florida Statutes (2007-2011) by failing to keep legible medical records that justify the course of treatment of the patient.

11. On or about January 8, 2015, the Florida Board of Medicine filed Final Order Number DOH-15-0017-FOF-MQA, which resolved department of health case numbers 2009-13497, 2011-06111, and 2011-17799 (Final Order).

12. The Final Order imposed, among other requirements, a two (2) year probation period subject to the following terms:

a. Respondent shall appear before the Board's Probation Committee at the first meeting after probation commences, at the last meeting of the Probation Committee before termination of probation, triannually, and at such other times requested by the Committee;

b. During the first year of probation, Respondent shall only practice under the direct supervision of a board-certified physician who has been approved by the Board's Probation Committee;

c. The supervisory physician shall work in the same office with Respondent;

d. Absent provision for and compliance with the terms regarding temporary approval of a supervising physician, Respondent shall cease practice and not practice until the Probation Committee approves a supervising physician;

e. Prior to approval, Respondent shall provide a copy of the Administrative Complaint and Final Order to the supervising physician;

f. Prior to approval, Respondent shall submit a current curriculum vitae and description of current practice of the proposed supervising physician;

g. The supervising physician must appear at the scheduled probation meeting;

h. The supervising physician must comply with the incorporated responsibilities in the Final Order;

i. Respondent shall also submit the curriculum vitae for an alternate supervising/monitoring physician to be approved by the probation committee;

j. During the second year of probation, Respondent shall only practice under the indirect supervision of a board-certified physician who has been approved by the Board's Probation Committee;

k. Respondent shall not practice unless Respondent is under the supervision of either the approved supervising/monitoring physician or the approved alternate.

13. The Final Order also included a tolling provision providing if 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 the time period of the probation and the provisions regarding supervision whether direct or indirect by the monitor/supervisor and required reports from the monitor/supervisor shall be tolled and remain tolled until Respondent returns to the active practice of medicine in the State of Florida.

14. On or about February 19, 2019, the Department of Health received notification that Respondent was practicing medicine by providing pain management care to patients at Glory MedClinic in Tampa, Florida.

15. Respondent returned to the active practice of medicine through her treatment of patients at Glory MedClinic on or about February 12th, February 19th, February 22nd, February 26th, February 27th, and March 1st, 2019.

16. Respondent did not have temporary approval from the Board for a supervising physician to comply with the probation requirements.

17. Respondent did not appear before the probation committee with a proposed supervising physician.

18. Respondent did not have a Board approved supervisor during her treatment of patients.

19. Respondent failed to comply with the Final Order of the Board.

20. Section 458.331(1)(x), Florida Statutes (2018), provides that violating a lawful order of the Board previously entered in a disciplinary hearing constitutes grounds for disciplinary action by the Board.

21. Respondent violated a lawful order of the board or department previously entered in a disciplinary hearing by failing to secure temporary approval of a supervising physician before returning to the active practice

of medicine in Florida and/or by failing to appear before the Board's Probation Committee to have a supervising physician approved.

22. Based on the foregoing, respondent has violated Section 458.331(1)(x), Florida Statutes (2018), by violating a lawful order of the Board previously entered in a disciplinary hearing.

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 16th day of August, 2019.

Scott A. Rivkees, M.D.
State Surgeon General

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: [signature]
DATE: AUG 16 2019

Virginia Edwards

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PCP Date: August 16, 2019
PCP Members: Mark Avila, M.D.; Hector Vila, M.D.; Andre Perez

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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.

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