

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
4-24-14
CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 3:14-cr-75-J-39PDB
Cts. 1-20: 18 U.S.C. §§ 1347 and 2
Forfeiture: 18 U.S.C. § 982(a)(7)

DAVID MING PON

INDICTMENT

The Grand Jury charges:

COUNTS ONE THROUGH TWENTY

A. INTRODUCTION

At all times material herein, unless otherwise specified:

THE DEFENDANT

1. DAVID MING PON ("PON") owned and operated Advanced Retina-Eye Institute, an ophthalmology practice located in Leesburg, Florida, as well as a satellite office in Orlando, Florida.
2. PON was a medical doctor licensed to practice Medicine in the State of Florida. His ophthalmology practice specializes in retinal diseases and treatment. He was and always has been the sole ophthalmologist at the Advanced Retina-Eye Institute.
3. PON was an approved Medicare service provider.

HEALTH INSURANCE: MEDICARE

4. Medicare is a federal insurance program that provides coverage for people 65 and older, and for certain disabled persons. The United States Department of Health and Human Services (HHS) is responsible for the administration of the Medicare program. The Center for Medicare and Medicaid Services (CMS), is the component agency of HHS that administers and supervises the Medicare program. CMS has contracted with First Coast Service Options (FCSO), in Jacksonville, Florida, so that FCSO will receive, adjudicate, and pay certain Medicare claims submitted by Medicare providers and suppliers of medical services in the State of Florida.

5. Part B of the Medicare program is a medical insurance program that pays providers and suppliers, with the exception of inpatient healthcare facilities, directly for goods and services. Claims processing and payment for Medicare Part B claims is done by FCSO in Jacksonville, Florida.

6. Medicare covers the costs of certain medically necessary clinical services provided that the services are ordered or prescribed by a physician who certifies that these services are medically necessary for the treatment of the patient. Although the provider is not required to submit supporting documentation relating to the claim, such as original prescriptions or treatment notes, the clinic must maintain such documentation as part of the patient medical record at the facility for at least 5 years pursuant to Medicare regulations.

7. To receive payment from Medicare, Part B providers are required to include on the electronically submitted claim information, the dates of the services provided, the diagnoses of the conditions requiring the services, and the procedures performed.

8. To aid in processing and adjudicating of submitted claims, Part B providers are required to use standardized codes to describe the pertinent diagnoses and the procedures for which payment is being sought. With respect to diagnoses, providers are required to use the codes established in the International Classification of Diseases Manual ("ICD-9 CM"). With respect to procedures for which payment is being sought, providers are required to use the codes established in the Physicians' Current Procedural Terminology code book ("CPT") and the Health Care Financing Administration Common Procedural Coding System book ("HCPCS"). Medical providers indicate, on their claims for payment, CPT and HCPCS codes that identify the types of equipment or services for which Medicare is being charged. These codes are used to determine the reimbursement.

9. A Medicare-approved company that provides services to Medicare beneficiaries must meet certain contractual obligations to Medicare. These obligations are to: (a) bill Medicare only for reasonable and necessary medical services; (b) not make false statements or misrepresentations of material facts concerning requests for payment under Medicare; (c) provide economical medical services only when such services are medically necessary and ordered by the treating physician; (d) assure that such services are not substantially in excess of the needs of such beneficiaries; and (e) not submit or

cause to be submitted bills or requests for payment substantially in excess of the provider's costs.

10. In order to bill Medicare for services rendered, the physician or provider submits a claim electronically to FCSO. When the claim is submitted, the provider certifies that the contents of the claim are true, correct, and complete, and that the claim was prepared in compliance with the laws and regulations governing the Medicare program. In the claim, the person, such as a physician, or company making the claim or causing the claim to be made with Medicare certifies that the claim is true and accurate.

11. Medicare makes the physician the "gatekeeper" for determining when medical testing and other medical services are medically necessary, and it is the physician who must certify the necessity of the services. Absent a valid certification by the treating physician, Medicare lacks the statutory authority to pay the claim. Federal law, 42 U.S.C. §§ 1395y(a)(1), provides that "no payment may be made...for any expenses incurred for items or services...which are not reasonable and necessary for the diagnosis or treatment of illness or injury."

B. SCHEME AND ARTIFICE

From at least the mid-2000s, through at least September of 2011, at Jacksonville, Leesburg, and Orlando, in the Middle District of Florida, and elsewhere,

DAVID MING PON,

the defendant herein, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, that is, the Medicare program, and to obtain, by means of false and fraudulent pretenses and representations, money under the custody or control of a health care benefit program, that is, the Medicare program, in connection with the delivery of and payment for health care benefits, items and services.

C. MANNER AND MEANS

1. It was part of the scheme and artifice to defraud that PON would and did own and operate the Advanced Retina-Eye Institute, with offices in Leesburg and Orlando, Florida.

2. It was further part of the scheme and artifice to defraud that PON would and did operate Advanced Retina-Eye Institute as a facility to provide ophthalmological medical services to adult patients covered under Medicare and commercial insurance.

3. It was further part of the scheme and artifice to defraud that PON would falsely and fraudulently diagnose patients who came to the Advanced Retina-Eye Institute with wet macular degeneration and other retinal diseases.

4. It was further part of the scheme and artifice to defraud that PON would purport to treat falsely diagnosed retinal diseases, including wet macular degeneration, with laser treatments that were neither medically necessary nor rendered.

5. It was further part of the scheme and artifice to defraud that PON, would unnecessarily perform additional diagnostic testing following a false diagnosis of wet macular degeneration, knowing that such diagnostic testing was based upon a false and fictitious diagnosis and therefore not medically necessary.

6. It was further part of the scheme and artifice to defraud that in-house billing documents would be created falsely reflecting that patients were suffering from wet macular degeneration.

7. It was further part of the scheme and artifice to defraud that PON, in an effort to conceal and cover-up his fraudulent scheme, would create sham medical notes, writings and records falsely asserting that patients had wet macular degeneration, when in fact, the patients were not suffering from wet macular degeneration.

8. It was further part of the scheme and artifice to defraud that PON would falsely and fraudulently advise patients that they were suffering from wet macular degeneration.

9. It was further part of the scheme and artifice to defraud that PON would falsely and fraudulently counsel patients that he had falsely and fraudulently diagnosed as suffering from wet macular degeneration, that unless he performed laser coagulation treatments on the retinas in their eyes, the patients would go blind in the allegedly diseased eye(s).

10. It was further part of the scheme and artifice to defraud that PON would submit or cause to be submitted, false, fictitious and fraudulent claims to Medicare and other insurance for payment under his provider number.

11. It was further part of the scheme and artifice to defraud that PON, as a direct result if the submission of these false, fictitious and fraudulent claims, caused the Medicare program to pay PON's medical practice more than \$7 million dollars as payment based upon PON's submission of false and fraudulent claims for wet macular degeneration diagnosis and treatment.

12. It was further part of the scheme and artifice to defraud that PON, deposited or caused the deposit of funds paid by Medicare and other insurances based upon false and fraudulent claims into a corporate account under his control.

13. It was further a part of the scheme and artifice to defraud that PON would withdraw proceeds of his fraudulent scheme from a corporate account under his control and use said funds for his personal use.

14. It was further a part of the scheme and artifice to defraud that PON would take any and all actions to conceal and disguise the fraudulent scheme.

D. EXECUTION OF THE SCHEME

On or about the dates listed below in each count, at Jacksonville, Leesburg and Orlando, in the Middle District of Florida, and elsewhere,

DAVID MING PON,

the defendant herein, in connection with the delivery of and payment for health care benefits, items and services, knowingly, willfully and with intent to defraud, did submit, and cause to be submitted, the following claims for payment under Medicare, which claims reflected a diagnosis of wet macular degeneration falsely supporting an alleged medical service captured in CPT Code 67220, that is, destruction of localized lesions of choroid (e.g., choroidal neovascularization); photocoagulation (e.g., laser), one or more sessions:

COUNT	CLAIM DATE	DATE OF SERVICE	MEDICARE BENEIFICIARY	MODIFIER	CLAIM #
1	04/23/2009	4/21/2009	A.D.	RT (Right Eye)	B22090507374595
2	05/13/2009	5/11/2009	A.D.	RT (Right Eye)	B22090507374596
3	09/09/2009	9/8/2009	D.A.	LT (Left Eye)	B22090906529889
4	12/11/2009	12/10/2009	D.A.	LT (Left Eye)	B22091206212300
5	01/27/2009	1/22/2009	D.M.	LT (Left Eye)	B32090105208712
6	02/20/2009	2/16/2009	D.M.	RT (Right Eye)	B32090204825116
7	10/23/2008	10/20/2008	D.S.	RT (Right Eye)	B22081004225249
8	08/20/2010	8/19/2010	D.S.	RT (Right Eye)	B22100803152925
9	11/05/2010	11/4/2010	E.L.	RT (Right Eye)	B82101107773965
10	08/10/2009	9/10/2009	J.T.	RT (Right Eye)	B22090807277461
11	11/09/2009	11/9/2009	J.T.	LT (Left Eye)	B22091107913447
12	12/08/2009	12/7/2009	K.S.	LT (Left Eye)	B92091201449193
13	03/26/2010	3/25/2010	K.S.	RT (Right Eye)	B92100402036711
14	01/02/2009	12/30/2008	M.G.	LT (Left Eye)	B52090108513607
15	12/15/2009	12/14/2009	M.G.	RT (Right Eye)	B52091207025151
16	10/29/2010	10/28/2010	M.T.	LT (Left Eye)	B92101100792336
17	12/03/2010	21/2/2010	M.T.	RT (Right Eye)	B92101200810176
18	10/23/2008	10/16/2008	N.J.	LT (Left Eye)	B72081106971860

COUNT	CLAIM DATE	DATE OF SERVICE	MEDICARE BENEFIICIARY	MODIFIER	CLAIM #
19	12/02/2009	12/1/2009	P.H.	RT (Right Eye)	B12091202408036
20	03/24/2010	3/23/2010	P.H.	RT (Right Eye)	B12100403394085

All in violation of Title 18, United States Code, Sections 1347 and 2.

FORFEITURES

1. The allegations contained in Counts One through Twenty of this Indictment are incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(7).

2. Upon conviction of a violation of Title 18, United States Code, Section 1347, the defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense(s).

3. The property to be forfeited includes, but is not limited to, the following:

a. A sum of money equal to at least \$7,100,000 in United States currency, representing the approximate amount of proceeds obtained as a result of the offenses, in violation of Title 18, United States Code, Section 1347;

b. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at

5150 Fairway Oaks Drive, Windermere, Orange County, Florida 34786, more particularly described as:

Lot 110, ISLEWORTH, according to map or plat thereof as recorded in Plat Book 16, Pages 118 through 130, of the Public Records of Orange County, Florida;

c. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 3480 Soho Street, #104, Orlando, Orange County, Florida, 32835, more particularly described as:

Unit No. 104, Building 27 of The Hamptons at Metrowest, a Condominium, according to The Declaration of Condominium recorded in O.R. Book 7830, Page 2283, and all exhibits and amendments thereof, Public Records of Orange County, Florida;

d. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 5132 Conroy Road, Unit 11, Orlando, Orange County, Florida 32811, more particularly described as:

Building 5132, Unit 11 of RESIDENCES AT MILLENIA, a condominium according to the Declaration of Condominium recorded in Official Records Book 8499, Page 4131, and all amendments, if any, filed thereto in the Public Records of Orange County, Florida; together with an undivided interest in the common elements appurtenant thereto;

e. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 2517 Kilgore Street, #104, Orlando, Orange County, Florida 32803, more particularly described as:

Condominium Unit A104, TARPON KEY CONDOMINIUM, according to the Declaration of Condominium thereof, recorded in Official Records Book 8433, Page 1601, of the Public Records of Orange County Florida, together with an undivided interest or share in the [sic] common elements appurtenant thereto and any amendments thereto; Together with that certain parking space, designated as a limited common element, appurtenant to the Unit;

f. A 2008 Lexus GX470, Florida tag 131KBM, VIN: JTJBT20X580149229; and

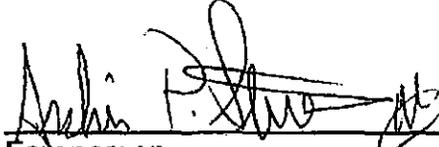
g. A 2005 Porsche 911 Convertible, Florida tag 201YAT, VIN: WP0CA299X5S755899.

4. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

A TRUE BILL,


Foreperson

A. LEE BENTLEY, III
United States Attorney

By: 
MARK B. DEVEREAUX
Assistant United States Attorney

By: 
Mac D. Heavener, III
Assistant United States Attorney
Deputy Chief, Jacksonville Division

UNITED STATES DISTRICT COURT
Middle District of Florida
Jacksonville Division

THE UNITED STATES OF AMERICA

vs.

DAVID MING PON

INDICTMENT

Violations:

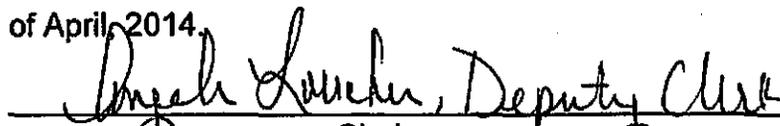
18 U.S.C. §§ 1347 and 2

A true bill,


Foreperson

Filed in open court this 24th day

of April, 2014.


Clerk

Bail \$ _____

4. Count Four of the Indictment (Darlene Allee)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

5. Count Five of the Indictment (Dwight McGee)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

6. Count Six of the Indictment (Dwight McGee)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

7. Count Seven of the Indictment (Doris Showers)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

8. Count Eight of the Indictment (Doris Showers)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

9. Count Nine of the Indictment (Edith Livek)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

10. Count Ten of the Indictment (Joan Terranova)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

11. Count Eleven of the Indictment (Joan Terranova)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

12. Count Twelve of the Indictment (Karl Schneider)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

13. Count Thirteen of the Indictment (Karl Schneider)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

14. Count Fourteen of the Indictment (Marvin Gertz)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

15. Count Fifteen of the Indictment (Marvin Gertz)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

16. Count Sixteen of the Indictment (Marcia Tetrault)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

17. Count Seventeen of the Indictment (Marcia Tetrault)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

18. Count Eighteen of the Indictment (Norma Johnson)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

19. Count Nineteen of the Indictment (Phyllis Hart)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

20. Count Twenty of the Indictment (Phyllis Hart)

As to the offense of health care fraud, in violation of 18 U.S.C. § 1347, We, the

Jury, find the defendant, DAVID MING PON:

Guilty Not Guilty

SO SAY WE ALL.


Foreperson

Dated: September 29, 2015



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

APR 14 2017

David Ming Pon
601 East Dixie Avenue, No. 1003
Leesburg, FL 34748

Re: **Physician**
CA License No. G53071
FL License No. ME0058295
Provider No. 1336248723

Dear Dr. Pon:

The Deputy Director and Chief Counsel of the State Department of Health Care Services (Department) has been notified by the Medical Board of California, that your license to practice medicine in the state of Florida has been revoked, effective August 18, 2016, by the Florida Board of Medicine. In addition, your license to practice medicine was suspended by the Medical Board of California on October 7, 2016, and revoked on February 17, 2017. As a provider of health care services, you were granted certain permissions to receive payment from the Medi-Cal program by operation of law with or without applying for enrollment. Pursuant to Welfare and Institutions Code section 14043.6, the Department is required to automatically suspend these permissions, which means that you are precluded from being eligible to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to any individual or entity that has a license, certificate, or other approval to provide health care which is revoked or suspended by a federal or state licensing, certification, or approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on that license, certificate, or approval was pending. This suspension is non-discretionary, and shall be effective on the date that the license, certificate, or approval was revoked, lost, or surrendered. Furthermore, pursuant to Business and Professions Code, section 2050 and California Code of Regulations, title 22, section 51228, it is unlawful to engage in the practice of medicine without a license.

In addition, the Department has been notified of your September 29, 2015, conviction in the United States District Court, Middle District of Florida (*U.S. v. David Ming Pon*, No. 3:14-cr-00075-BJD-PDB) for violation of 20 counts of title 18, United States Code section 1347. This is a conviction involving fraud and that has been determined by the

David Ming Pon

Page 2

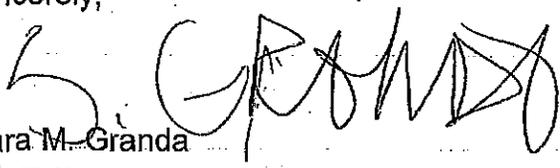
APR 14 2017

Medical Board of California to be substantially related to the qualifications, functions, or duties of a provider of service. Pursuant to Welfare and Institutions Code section 14123, subdivision (a), the Director is required to automatically suspend these permissions in certain cases, which means that the affected individual or entity is precluded from being eligible to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to anyone who provides health services whenever that person is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. (See 42 C.F.R. § 1001.101 (a) & (c); Welf. & Inst. Code, § 14123.25.)

Therefore, on behalf of the Director of the Department, you are hereby notified that you are prohibited from participating in the Medi-Cal program for an indefinite period of time, effective August 18, 2016. Your name will be posted on the "Medi-Cal Suspended and Ineligible Provider List," available on the Internet. During the period of your suspension, no person or entity, including an employer, may submit any claims to the Medi-Cal program for items or services rendered by you. If you are currently enrolled in Medi-Cal, that enrollment will be terminated. Any involvement by you directly or indirectly (i.e., as an office manager, administrator, billing clerk processing or preparing claims for payment, salesperson for medical equipment, etc., or utilizing any other provider number or group or clinic number for services rendered by you) will result in nonpayment of the claim(s) submitted. Any person who presents or causes to be presented a claim for equipment or services rendered by a person suspended from receiving Medi-Cal payment shall be subject to suspension from receiving payment, the assessment of civil money penalties, and/or criminal prosecution. (See Welf. & Inst. Code, §§ 14043.61, 14107, 14123.2; Cal. Code Regs., tit. 22, §§ 51458.1, 51484, 51485.1.) The Department will seek recoupment of any monies paid for claims presented to the Medi-Cal program for services or supplies provided by you during the duration of your suspension.

If you have any questions about this action, please submit your concerns, in writing, to the Office of Legal Services, Mandatory Suspension Desk, at the address above.

Sincerely,


Sara M. Granda
Attorney

cc: See Next Page

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Florida Board of Osteopathic Medicine
2020 Capital Circle, SE, BIN, No. C08
Tallahassee, FL 32399-3253

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**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 800-2016-025446

DAVID M. PON, M.D.
601 E. DIXIE AVENUE #1003
LEESBURG, FL 34748

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

PHYSICIAN'S AND SURGEON'S CERTIFICATE NO. G53071

RESPONDENT.

11 On November 7, 2016, an employee of the Medical Board of California (Board) sent by
12 certified mail a copy of Accusation No. 800-2016-025446, Statement to Respondent, Notice of
13 Defense in blank, copies of the relevant sections of the California Administrative Procedure Act
14 as required by sections 11503 and 11505 of the Government Code, and a request for discovery,
15 to David M. Pon, M.D. (Respondent) at his address of record with the Board, 601 E. Dixie
16 Avenue #1003, Leesburg, FL 34748. United States Post Office records show that the package
17 could not be delivered at that address. (Accusation package, proof of service, USPS printout,
18 Exhibit Package, Exhibit 1¹.)

19 There was no response to the Accusation. On December 8, 2016, an employee of the
20 Attorney General's Office sent by certified and first class mail, addressed to Respondent at his
21 address of record, a courtesy Notice of Default, advising Respondent of the service Accusation,
22 and providing him with an opportunity to file a Notice of Defense and request relief from default.
23 Both packages were returned marked unable to forward. (Exhibit Package, Exhibit 2, Notice of
24 Default, proof of service, return envelopes.)

25 ///

26 ///

27 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
28 "Exhibit Package."

1 Respondent has not responded to service of the Accusation or the Notice of Default. He
2 has not filed a Notice of Defense. As a result, Respondent has waived his right to a hearing on
3 the merits to contest the allegations contained in the Accusation.

4 **FINDINGS OF FACT**

5 I.

6 Kimberly Kirchmeyer is the Executive Director of the Board. The charges and allegations
7 in the Accusation were at all times brought and made solely in the official capacity of the Board's
8 Executive Director.

9 II.

10 On July 16, 1984, Physician's and Surgeon's Certificate No. G53071 was issued by the
11 Board to David M. Pon, M.D. The certificate expired on October 31, 2015, and is SUSPENDED
12 based on an order issued on October 7, 2016 pursuant to Business and Professions Code section
13 2310(a). (Exhibit Package, Exhibit 3, license certification.)

14 III.

15 On November 7, 2016, Respondent was duly served with an Accusation, alleging causes
16 for discipline against Respondent. A courtesy Notice of Default was thereafter served on
17 Respondent. Respondent failed to file a Notice of Defense.

18 IV.

19 The allegations of the Accusation are true as follows:

20 On August 18, 2016, the Florida Board of Medicine issued a Final Order Revoking
21 Respondent's license to practice medicine in the State of Florida. The Final Order was based on
22 Respondent's September 29, 2015 conviction of multiple counts of health care fraud. The
23 conviction involved conduct between 2006 and 2011, when Respondent defrauded the Medicare
24 Program of more than seven million dollars by intentionally and fraudulently misdiagnosing

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1 patients and billing Medicare for unnecessary tests and unwarranted treatments. (Copies of the
2 Final Order and the Administrative Complaint issued by the Florida Board of Medicine are
3 attached to the Accusation, Exhibit Package, Exhibit 1.)

4 On September 29, 2015 in the United States District Court, Middle District of Florida,
5 Respondent was found guilty following a jury trial, of twenty counts of health care fraud, in
6 violation of 18 U.S.C. section 1347. The facts underlying the criminal conviction are that
7 between 2006 and 2011, Respondent defrauded the Medicare Program of more than seven million
8 dollars by intentionally and fraudulently misdiagnosing Medicare beneficiaries as suffering from
9 wet macular degeneration, and billing Medicare for unnecessary tests and unwarranted laser
10 treatments. The unnecessary medical treatments included subjecting Medicare patients, many of
11 whom were elderly, to repetitive, unnecessary and often invasive diagnostic testing. (Exhibit
12 Package, Exhibit 4, Indictment, Verdict.)

13 DETERMINATION OF ISSUES

14 I.

15 Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action of the
16 Florida Board of Medicine constitute cause for discipline within the meaning of Business and
17 Professions Code sections 2305 and 141(a).

18 II.

19 Respondent's criminal conviction constitutes unprofessional conduct and the conviction of
20 crimes substantially related to the qualifications, functions or duties of a physician and surgeon,
21 and are cause for discipline pursuant to Business and Professions Code sections 2234 and/or
22 2236.

23 DISCIPLINARY ORDER

24 Physician's and Surgeon's certificate No. G53071 issued to David M. Pon, M.D.
25 is hereby **REVOKED**.

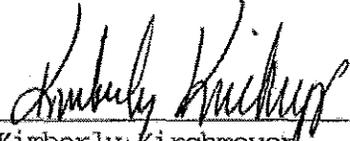
26 Respondent shall not be deprived of making a request for relief from default as set forth in
27 Government Code section 11520(c) for good cause shown. However, such showing must be
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1 made in writing by way of a motion to vacate the default decision and directed to the Medical
2 Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven
3 (7) days of the service of this Decision.

4 This Decision will become effective February 17, 2017

5 It is so ordered on January 19, _____, 2017.

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7 MEDICAL BOARD OF CALIFORNIA
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 By 
11 Kimberly Kirchmeyer
12 Executive Director

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1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-025446

13 **David M. Pon, M.D.**
14 601 E. Dixie Avenue #1003
15 Leesburg, FL 34748

ACCUSATION

16 Physician's and Surgeon's Certificate No.
17 G53071,

Respondent.

18 Complainant alleges:

PARTIES

19 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
20 of California, Department of Consumer Affairs, and brings this Accusation solely in her official
21 capacity.

22 2. On July 16, 1984, Physician's and Surgeon's Certificate No. G53071 was issued by
23 the Medical Board of California to David M. Pon, M.D. (Respondent.) The certificate is
24 delinquent, having expired on October 31, 2015, and is SUSPENDED by virtue of an Order
25 issued on October 7, 2016 pursuant to Business and Professions Code section 2310(a).

JURISDICTION

26
27 3. This Accusation is brought before the Medical Board of California (Board) under the
28 authority of the following sections of the California Business and Professions Code (Code) and/or

1 other relevant statutory enactment:

2 A. Section 2227 of the Code provides in part that the Board may revoke, suspend
3 for a period not to exceed one year, or place on probation, the license of any licensee who
4 has been found guilty under the Medical Practice Act, and may recover the costs of
5 probation monitoring.

6 B. Section 2305 of the Code provides, in part, that the revocation, suspension, or
7 other discipline, restriction or limitation imposed by another state upon a license to
8 practice medicine issued by that state, or the revocation, suspension, or restriction of the
9 authority to practice medicine by any agency of the federal government, that would have
10 been grounds for discipline in California under the Medical Practice Act, constitutes
11 grounds for discipline for unprofessional conduct.

12 C. Section 141 of the Code provides:

13 “(a) For any licensee holding a license issued by a board under the jurisdiction
14 of a department, a disciplinary action taken by another state, by any agency of the
15 federal government, or by another country for any act substantially related to the
16 practice regulated by the California license, may be a ground for disciplinary
17 action by the respective state licensing board. A certified copy of the record of
the disciplinary action taken against the licensee by another state, an agency of
the federal government, or by another country shall be conclusive evidence of the
events related therein.

18 “(b) Nothing in this section shall preclude a board from applying a specific
19 statutory provision in the licensing act administered by the board that provides
20 for discipline based upon a disciplinary action taken against the licensee by
another state, an agency of the federal government, or another country.”

21 D. Section 2234 of the Code provides that the Board shall take action against a
22 licensee who is charged with unprofessional conduct.

23 E. Section 2236 of the Code provides that the conviction of any offense
24 substantially related to the qualifications, functions or duties of a physician and surgeon
25 constitutes unprofessional conduct.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Discipline, Restriction, or Limitation Imposed by Another State)

3 4. On August 18, 2016, the Florida Board of Medicine issued a Final Order Revoking
4 Respondent's license to practice medicine in the State of Florida. The Final Order was based on
5 Respondent's September 29, 2015 conviction of multiple counts of health care fraud. The
6 conviction involved conduct between 2006 and 2011, when Respondent defrauded the Medicare
7 Program of more than seven million dollars by intentionally and fraudulently misdiagnosing
8 patients and billing Medicare for unnecessary tests and unwarranted treatments. Copies of the
9 Final Order and the Administrative Complaint issued by the Florida Board of Medicine are
10 attached as Exhibit A.

11 5. Respondent's conduct and the action of the Florida Board of Medicine as set forth in
12 paragraph 4, above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the
13 Code.

14 SECOND CAUSE FOR DISCIPLINE

15 (Criminal Conviction)

16 6. On September 29, 2015 in the United States District Court, Middle District of
17 Florida, Respondent was found guilty following a jury trial, of twenty counts of health care fraud,
18 in violation of 18 U.S.C. section 1347. The facts underlying the criminal conviction are that
19 between 2006 and 2011, Respondent defrauded the Medicare Program of more than seven million
20 dollars by intentionally and fraudulently misdiagnosing Medicare beneficiaries as suffering from
21 wet macular degeneration, and billing Medicare for unnecessary tests and unwarranted laser
22 treatments. The unnecessary medical treatments included subjecting Medicare patients, many of
23 whom were elderly, to repetitive, unnecessary and often invasive diagnostic testing.

24 7. Respondent's criminal conviction constitutes unprofessional conduct and the
25 conviction of crimes substantially related to the qualifications, functions or duties of a physician
26 and surgeon, and cause for discipline pursuant to Business and Professions Code sections 2234
27 and/or 2236.

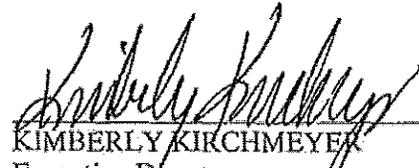
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G53071 issued to respondent David M. Pon, M.D.;
2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants;
3. Ordering Respondent, if placed on probation, to pay the costs of probation monitoring; and
4. Taking such other and further action as the Board deems necessary and proper.

DATED: November 7, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2016201918
41620891.doc

EXHIBIT A

FILED DATE AUG 18 2016

Department of Health

By: Angela S. [Signature]

Beauty Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2014-06934
LICENSE NO.: ME0058295

DAVID MING PON, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on July 29, 2016, in Tampa, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause pursuant to Respondent's Election of Rights. At the hearing, Petitioner was represented by Louise St. Laurent, Assistant General Counsel. Respondent was not present but was represented by Richard Jay Brooderson, Esquire. The facts are not in dispute.

Upon consideration, it is ORDERED:

1. The allegations of fact set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the findings of fact by the Board.

2. The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and

incorporated herein by reference as the conclusions of law by the Board.

3. The violations set forth warrant disciplinary action by the Board.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

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 voted to waive the costs associated with this.

(NOTE: SEE RULE 64B8-8.0011, FLORIDA ADMINISTRATIVE CODE. UNLESS OTHERWISE SPECIFIED BY FINAL ORDER, THE RULE SETS FORTH THE REQUIREMENTS FOR PERFORMANCE OF ALL PENALTIES CONTAINED IN THIS FINAL ORDER.)

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 16th day of August

2016.

BOARD OF MEDICINE

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

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA

STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by Certified Mail to DAVID MING PON, M.D., 601 E. Dixie Avenue, Suite 1003, Leesburg, Florida 34748; Richard Jay Brooderson, Esquire, Chaires, Brooderson & Guerrero, 283 Cranes Roost Boulevard, Suite 165, Altamonte Springs, Florida 32701; by email to Jack Wise, Assistant General Counsel, Department of Health, at Jack.Wise@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 18th day of August, 2016.

7016 0340 0000 8267 9403

Angel Sanders
Deputy Agency Clerk

7016 0340 0000 8267 9410

Richard J. Brooderson, Esq.
Chaires, Brooderson & Guerrero
283 Cranes Roost Blvd., Ste. 165
Altamonte Springs, FL 32701

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2014-06934

DAVID MING PON, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, files this Administrative Complaint before the Board of Medicine against Respondent, David Ming Pon, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 58295.
3. Respondent's address of record is 601 East Dixie Avenue, Suite 1003, Leesburg, Florida 34748.
4. On or about September 29, 2015, in the United States District Court, Middle District of Florida, Jacksonville Division, in Case Number

3:14-cr-00075-BJD-PDB, Respondent was found guilty of twenty counts of health care fraud, in violation of 18 U.S.C. Section 1347.

5. It is alleged in Case Number 3:14-cr-00075-BJD-PDB, that between 2006 and 2011, Respondent defrauded the Medicare program of an amount more than seven million dollars by intentionally and fraudulently misdiagnosing Medicare beneficiaries as suffering from wet macular degeneration, and billed Medicare for unnecessary tests and unwarranted laser treatments.

6. Section 458.331(1)(c), Florida Statutes (2015), provides that being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession is grounds for discipline by the Board of Medicine.

7. Respondent was found guilty of crimes that directly relate to the practice of medicine. Respondent's license to practice medicine in the state of Florida enabled him to commit the crimes detailed in the aforementioned paragraphs.

8. Based on the foregoing, Respondent has violated Section 458.331(1)(c), Florida Statutes (2015), by being found guilty of a crime

that is directly related to the practice of medicine or to the ability to practice medicine, which is Respondent's profession.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 11 day of January, 2016.

John A. Armstrong, MD, FACS
State Surgeon General & Secretary
of Health


John B. Fricke, Jr.
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar #0901910
Telephone (850) 245-4444
Fax (850) 245-4684
john.frickejr@flhealth.gov

FILED
Department of Health
Deputy Clerk
Fiscal Specialist
CLERK
DATE JAN 11 2016

JBF

PCP: January 8, 2016
PCP Member: Dr. Avila, Dr. Averhoff, Ms. Goersch

DOH v. David Ming Pon, M.D.
Case Number 2014-06934

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. 2010-11590

DAVID MING PON, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, David Ming Pon, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 58295.

3. Respondent's address of record is 601 East Dixie Avenue, Suite 1003, Leesburg, Florida 34748.

4. At all times material to this Complaint, Respondent was Board certified in Ophthalmology.

5. At all times material to this Complaint, Respondent provided ophthalmologic care and treatment to patients E.S., J.W., and R.S.

6. At all times material to this Complaint, Respondent diagnosed patients E.S., J.W., and R.S. with wet macular degeneration.

7. Wet macular degeneration is caused by abnormal blood vessel growth in the eye, which leads to loss of vision from bleeding, leaking, and scarring.

8. Patients E.S., J.W., and R.S. did not provide subjective complaints such as significant vision reduction for a diagnosis of wet macular degeneration.

9. Patients E.S., J.W., and R.S. did not exhibit objective findings such as hemorrhages and exudates for a diagnosis of wet macular degeneration.

10. Fluorescein angiograms of patients E.S., J.W., and R.S. did not reveal sub-retinal neovascularization for a diagnosis of wet macular degeneration.

11. Respondent treated patients E.S., J.W., and R.S. for Respondent's diagnoses of wet macular degeneration with micro pulse laser, at a frequency of 810 nm.

12. The standard of care required that Respondent perform complete histories and physical examinations of patients E.S., J.W., and R.S., and obtain test results showing sub-retinal neovascularization, in order to make evidence based diagnoses of wet macular degeneration, and not treat patients E.S., J.W., and R.S. with micro pulse laser as provided.

FACTS SPECIFIC TO PT. E.S.

13. Respondent provided care and treatment to patient E.S. from on or about June 8, 2006, to on or about September 1, 2009.

14. Beginning on or about June 15, 2006, and continuing until on or about August 11, 2009, Respondent treated patient E.S. with laser photocoagulation for Respondent's diagnosis of wet macular degeneration.

COUNT I – PT. E.S.

15. Petitioner re-alleges paragraphs one (1) through fourteen (14) as if fully set forth herein.

16. Section 458.331(1)(t), Florida Statutes (2007-2009), provides that committing medical malpractice as defined in Section 456.50, Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine. The Board shall give great weight to the provisions of Section 766.102, Florida Statutes, when enforcing Section 458.331(1)(t), Florida Statutes. Medical Malpractice is defined in Section 456.50, Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes, provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

17. Respondent failed to practice medicine with that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably

prudent similar health care providers in violation of Section 458.331(1)(t), Florida Statutes (2007-2009), in the care and treatment of patient E.S. in one or more of the following ways:

- a. By diagnosing wet macular degeneration without subjective complaints for the diagnosis;
- b. By diagnosing wet macular degeneration without objective findings for the diagnosis;
- c. By treating patient E.S. for wet macular degeneration without medical justification;
- d. By ordering unwarranted tests; and/or
- e. By treating patient E.S. with micro pulse laser as provided without medical justification.

18. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007-2009), by committing medical malpractice.

COUNT II – PT. E.S.

19. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) as if fully set forth herein.

20. Section 458.331(1)(m), Florida Statutes (2007-2009), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

21. On or about the date set forth above, Respondent failed to keep medical records that justified the course of treatment of patient E.S. in one or more of the following ways:

- a. By failing to document a complete medical history;
- b. By failing to document adequate physical examinations;
- c. By failing to document sufficient test results for a diagnosis of wet macular degeneration; and/or
- d. By failing to document sufficient findings to justify the

diagnosis and treatment provided to patient E.S.

22. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2007-2009), by failing to keep medical records that justified the course of treatment of patient E.S.

COUNT III – PT. E.S.

23. Petitioner re-alleges paragraphs one (1) through fourteen (14) as if fully set forth herein.

24. Section 458.331(1)(n), Florida Statutes (2007-2009), subjects a licensee to discipline for exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.

25. Respondent exercised influence on patient E.S. by diagnosing E.S. with wet macular degeneration in the absence of subjective complaints and/or objective findings, and exploited patient E.S. for financial gain by providing and billing for medical services including fluorescein angiography and micro pulse laser treatment for the diagnosis of wet macular degeneration.

26. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes (2007-2009), in his care and treatment of patient E.S.

FACTS SPECIFIC TO PT. J.W.

27. Respondent provided care and treatment to patient J.W. from on or about March 26, 2008 to on or about November 17, 2009.

28. Beginning on or about August 17, 2008, and continuing until on or about November 17, 2009, Respondent treated patient J.W. with laser photocoagulation for Respondent's diagnosis of wet macular degeneration.

COUNT IV – PT. J.W.

29. Petitioner re-alleges paragraphs one (1) through fourteen (14) and twenty-seven (27) through twenty-eight (28) as if fully set forth herein.

30. Section 458.331(1)(t), Florida Statutes (2007-2009), provides that committing medical malpractice as defined in Section 456.50, Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine. The Board shall give great weight to the provisions of Section 766.102, Florida Statutes, when enforcing Section 458.331(1)(t), Florida

Statutes. Medical Malpractice is defined in Section 456.50, Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes, provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

31. Respondent failed to practice medicine with that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers in violation of Section 458.331(1)(t), Florida Statutes (2007-2009), in the care and treatment of patient J.W. in one or more of the following ways:

- a. By diagnosing wet macular degeneration without subjective complaints for the diagnosis;
- b. By diagnosing wet macular degeneration without objective findings for the diagnosis;

- c. By treating patient J.W. for wet macular degeneration without medical justification;
- d. By ordering unwarranted tests; and/or
- e. By treating patient J.W. with micro pulse laser as provided without medical justification.

32. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007-2009), by committing medical malpractice.

COUNT V – PT. J.W.

33. Petitioner re-alleges paragraphs one (1) through fourteen (14) and twenty-seven (27) through twenty-eight (28) as if fully set forth herein.

34. Section 458.331(1)(m), Florida Statutes (2007-2009), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not

limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

35. On or about the date set forth above, Respondent failed to keep medical records that justified the course of treatment of patient J.W. in one or more of the following ways:

- a. By failing to document a complete medical history;
- b. By failing to document adequate physical examinations;
- c. By failing to document sufficient test results for a diagnosis of wet macular degeneration; and/or
- d. By failing to document sufficient findings to justify the diagnosis and treatment provided to patient J.W.

36. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2007-2009), by failing to keep medical records that justified the course of treatment of patient J.W.

COUNT VI – PT. J.W.

37. Petitioner re-alleges paragraphs one (1) through fourteen (14) and twenty-seven (27) through twenty-eight (28) as if fully set forth herein.

38. Section 458.331(1)(n), Florida Statutes (2007-2009), subjects a licensee to discipline for exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.

39. Respondent exercised influence on patient J.W. by diagnosing J.W. with wet macular degeneration in the absence of subjective complaints and/or objective findings, and exploited patient J.W. for financial gain by providing and billing for medical services including fluorescein angiography and micro pulse laser treatment for the diagnosis of wet macular degeneration.

40. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes (2007-2009), in his care and treatment of patient J.W.

FACTS SPECIFIC TO PT. R.S.

41. Respondent provided care and treatment to patient R.S. from on or about December 21, 2006 to on or about April 17, 2009.

42. Beginning on or about December 22, 2006, and continuing until on or about April 6, 2009, Respondent treated patient R.S. with laser photocoagulation for Respondent's diagnosis of wet macular degeneration.

COUNT VII – PT. R.S.

43. Petitioner re-alleges paragraphs one (1) through fourteen (14) and forty-one (41) through forty-two (42) as if fully set forth herein.

44. Section 458.331(1)(t), Florida Statutes (2007-2009), provides that committing medical malpractice as defined in Section 456.50, Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine. The Board shall give great weight to the provisions of Section 766.102, Florida Statutes, when enforcing Section 458.331(1)(t), Florida Statutes. Medical Malpractice is defined in Section 456.50, Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes, provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

45. Respondent failed to practice medicine with that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers in violation of Section 458.331(1)(t), Florida Statutes (2007-2009), in the care and treatment of patient R.S. in one or more of the following ways:

- a. By diagnosing wet macular degeneration without subjective complaints for the diagnosis;
- b. By diagnosing wet macular degeneration without objective findings for the diagnosis;
- c. By treating patient R.S. for wet macular degeneration without medical justification;
- d. By ordering unwarranted tests; and/or
- e. By treating patient R.S. with micro pulse laser as provided without medical justification.

46. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007-2009), by committing medical malpractice.

COUNT VIII – PT. R.S.

47. Petitioner re-alleges paragraphs one (1) through fourteen (14) and forty-one (41) through forty-two (42) as if fully set forth herein.

48. Section 458.331(1)(m), Florida Statutes (2007-2009), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

49. On or about the date set forth above, Respondent failed to keep medical records that justified the course of treatment of patient R.S. in one or more of the following ways:

- a. By failing to document a complete medical history;
- b. By failing to document adequate physical examinations;

c. By failing to document sufficient test results for a diagnosis of wet macular degeneration; and/or

d. By failing to document sufficient findings to justify the diagnosis and treatment provided to patient R.S.

50. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2007-2009), by failing to keep medical records that justified the course of treatment of patient R.S.

COUNT IX – PT. R.S.

51. Petitioner re-alleges paragraphs one (1) through fourteen (14) and forty-one (41) through forty-two (42) as if fully set forth herein.

52. Section 458.331(1)(n), Florida Statutes (2007-2009), subjects a licensee to discipline for exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.

53. Respondent exercised influence on patient R.S. by diagnosing R.S. with wet macular degeneration in the absence of subjective complaints and/or objective findings, and exploited patient R.S. for financial gain by providing and billing for medical services including

fluorescein angiography and micro pulse laser treatment for the diagnosis of wet macular degeneration.

54. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes (2007-2009), in his care and treatment of patient R.S.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

[Signatures are on the following page.]

SIGNED this 13 day of December, 2013.

John H. Armstrong, MD, FACS
Surgeon General & Secretary



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DEPARTMENT OF HEALTH
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DATE: *12-16-13*

JBF/ks

PCP Date: December 13, 2013

PCP Members: Dr. Ashkar, Dr. Lage, and Ms. Tootle

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

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.