

**BOARD OF OSTEOPATHIC MEDICINE
PROBABLE CAUSE PANEL**

AGENDA

January 17, 2014 at 2:00 pm

Conference Call Number: 888-670-3525

Participant Pass Code: 6558995979

Reconsiderations:

RC-1 Robert J. Kaplan, DO – Case #2012-14321

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

BOARD: Osteopathic Medicine

CASE NUMBER: 2012-14321

COMPLAINT MADE BY: Tana D. Storey, Esq.
Brewton Plante, P.A.
225 South Adams St., Suite 250
Tallahassee, FL 32301

DATE OF COMPLAINT: October 5, 2012

RESPONDENT: Robert J. Kaplan, D.O.
2332 Pine Ridge Road
Naples, FL 34109

RESPONDENT'S ATTORNEY: N/A

INVESTIGATED BY: Miles Hardison
Consumer Services

REVIEWED BY: Judson Searcy
Assistant General Counsel

RECOMMENDATION: 4097
Reconsideration

CLOSING ORDER ON RECONSIDERATION

THE COMPLAINT: The Complainant alleged that Subject violated Section 459.015(1)(g), Florida Statutes (2012), for failing to perform any statutory or legal obligation placed upon a licensed osteopathic physician constitutes grounds for discipline by the Board of Osteopathic Medicine.

THE FACTS: This investigation arose when the Department received evidence that Respondent had failed to pay his Florida Birth-

Related Neurological Injury Compensation Association (NICA) assessment. Respondent failed to pay NICA the balance due in the annual assessment required by Section 766.314(5)(a), Florida Statutes, in the amount of one thousand two hundred fifty dollars (\$1,250.00). The County Court in and for Leon County, Florida, in Case Number 11-SC-004035, entered a final judgment against Respondent and in favor of NICA in the sum of one thousand two hundred fifty dollars (\$1,250.00) for the unpaid statutory assessments, inclusive, plus costs, attorney's fees and interest for a total judgment amount of \$2,217.38, on July 24, 2012.

The Department filed an Administrative Complaint against Respondent alleging the above on October 31, 2013.

On or about November 25, 2013, the Department received notice of satisfaction of judgment from NICA's counsel. Respondent has paid the required NICA fee and the additional court fees and costs.

In light of the evidence available in this matter, it is recommended that this case be closed. The Panel therefore directs this case be dismissed.

LAW: Based on the foregoing facts and findings, and pursuant to Section 456.073(4), Florida Statutes, the Probable Cause panel dismisses this case with no further action to be taken.

It is, therefore, ORDERED that this matter be, and same is hereby, DISMISSED.

DONE AND ORDERED this _____ day of _____, 201__.

CHAIRPERSON, PROBABLE CAUSE PANEL
BOARD OF OSTEOPATHIC MEDICINE

IN THE COUNTY COURT IN
AND FOR LEON COUNTY, FLORIDA

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION,

Case No.: 11 SC 004035

Plaintiff,

vs.

Robert J. Kaplan, OS0005424
2332 Pine Ridge Road
Naples, FL 34109-2003,

Defendant.

NOTICE OF SATISFACTION OF JUDGMENT

COMES NOW the Plaintiff, Florida Birth-Related Neurological Injury
Compensation Association, and gives notice to the Court that the Defendant,
Robert J. Kaplan, OS0005424, has satisfied the judgment entered on September 24,
2012, by payment in full.

Respectfully submitted,

/s/ Tana D. Storey

Wilbur E. Brewton, Esquire
Florida Bar No.: 110408
Kelly B. Plante, Esquire
Florida Bar No.: 866441
Tana D. Storey, Esquire
Florida Bar No.: 0514772
BREWTON PLANTE, P.A.
225 South Adams Street – Suite 250
Tallahassee, FL 32301
Phone: (850) 222-7718
Fax: (850) 222-8222
Attorneys for Plaintiff NICA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to Christy Robinson, Florida Department of Health, Board of Osteopathic Medicine (Christy_Robinson@doh.state.fl.us); Judson Searcy, Assistant General Counsel, Florida Department of Health (judson.searcy@flhealth.gov) and by U.S. Mail this 25th day of November, 2013, to:

Robert J. Kaplan, OS0005424
Pine Ridge Medical Group
2332 Pine Ridge Road
Naples, FL 34109

/s/ Tana D. Storey

Tana D. Storey, Esquire

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-14321

ROBERT J. KAPLAN, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

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

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

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, pursuant to Chapter 459, Florida Statutes, having been issued license number OS 5424.

3. Respondent's address of record is 2332 Pine Ridge Road, Naples, Florida 34109.

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

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

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

7. Respondent failed to pay NICA the balance due in the annual assessment required by Section 766.314(5)(a), Florida Statutes, in the amount of one thousand two hundred fifty dollars (\$1,250.00).

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

9. Pursuant to said action, the County Court in and for Leon County, Florida, in Case Number 11-SC-004035, entered final judgment against Respondent and in favor of NICA in the sum of one thousand two hundred fifty dollars (\$1,250.00) for the unpaid statutory assessments, inclusive, plus costs, attorney's fees and interest for a total judgment amount of \$2,217.38, on July 24, 2012.

10. Entry of such Final Judgment against Respondent constitutes adjudication of a failure to perform a statutory duty.

11. Section 459.015(1)(g), Florida Statutes (2012), provides that failing to perform any statutory or legal obligation placed upon a licensed osteopathic physician constitutes grounds for discipline by the Board of Osteopathic Medicine.

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

13. By failing either to pay the statutory assessments or the judgment establishing that legal duty, Respondent has violated Section 459.015(1)(g), Florida Statutes (2012), by violating or failing to perform a statutory or legal obligation placed upon a licensed osteopathic physician.

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

SIGNED this 30th **day of** October, **2013.**

John H. Armstrong, MD, FACS
State Surgeon General and Secretary of Health



JUDSON SEARCY
Assistant General Counsel
Fla. Bar No. 98772
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin #C65
Tallahassee, FL 32399-3265
Telephone: (850) 245-4640 ex. 8100
Facsimile: (850) 245-4683
Email: judson_searcy@doh.state.fl.us

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Angelo Searcy

DATE: OCT 31 2013

PCP: 10/29/2013
PCP Members: Andriole + St. Louis

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.

7196 9008 9111 8826 6679

TO:

Robert J. Kaplan, D.O.
2012-14321
JS/ab/StipPk
Sent 10/31/2013

Robert Kaplan
2332 Pine Ridge Road
Naples, FL 34109

RECEIPT
SERVICE

Certified Fee	
Return Receipt Fee	
Restricted Delivery	
Total Postage & Fees	

USPS®
Receipt for
Certified Mail™

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE


 FLORIDA DEPARTMENT OF
HEALTH
INVESTIGATIVE REPORT

Office: CONSUMER SERVICES		Date of Complaint: October 05, 2012		Case Number: OS 201214321	
Subject: ROBERT J. KAPLAN 2332 Pine Ridge Road Naples, FL 34109 (239) 643-8500			Source: BREWTON PLANTE, P.A. Tana D. Storey, Esquire 225 South Adams St. Suite 250 Tallahassee, FL 32301 (850) 222-7718		
Prefix: OS	License #: 5424	Profession: Osteopathic Physician	Board: Osteopathic Medicine	Report Date: 11/09/12	
Period of Investigation: 10/12/12 – 11/09/12			Type of Report: FINAL		
<p>Alleged Violation: ss. 459.015(1)(g)(pp), 456.072(1)(k)(dd), F.S.</p> <ul style="list-style-type: none"> • Failing to perform any statutory or legal obligation placed upon a licensed osteopathic physician. • Violating any provision of chapter 459 or chapter 456, or any rules adopted pursuant thereto. • Failing to perform any statutory or legal obligation placed upon a licensee. • Violating any provision of chapter 456, the applicable practice act, or any rules adopted pursuant thereto. 					
<p>Synopsis: This investigation is predicated on receipt of documents from Leon County Court. Final Judgment 11-SC-004-35, dated 7/24/12, states that KAPLAN owed \$2217.38 to the Florida Birth-Related Neurological Injury Compensation Association (NICA). Per s. 766.314(5)(a), F.S., physicians shall pay an annual assessment to the NICA program. (Exhibit #1: UCF and attachments)</p> <p>Notified KAPLAN by letter (Exhibit #2), dated 10/12/12, to his address on file with the Board. Forwarded with this letter were copies of the UCF and initiating documents (Exhibit #1).</p> <p>DOH computer licensure records, checked on 11/09/12, show that KAPLAN is licensed to practice as an Osteopathic Physician in Florida and that his license status is: clear, active.</p> <p>Patient notification is not required because no patients are involved.</p> <p>KAPLAN does not appear to be represented by counsel as of the date of this report.</p> <p>KAPLAN responded to the investigation by letter, dated 10/26/12, to the effect that he admitted to the allegations.</p>					
Related Case: None					
Investigator/Date: <i>Miles Hardison 11/09/12</i> Miles Hardison (HA151), Investigation Specialist II			Approved By/Date: <i>Nicole Singleton 11/19/12</i> Nicole Singleton, OMC Manager		
Distribution: Legal/Consumer Services Unit					

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 12 NOV 20 11:12:43

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INVESTIGATIVE DETAILS

SUMMARY OF RECORDS

Exhibit #1 contains the initial complaint (pg. 5) and a copy of the KAPLAN'S Final Judgment (pg. 6) from Leon County Court.

STATEMENT OF BREWTON PLANTE, P.A. – Source

Tana D. Storey, Esquire
225 South Adams St.
Suite 250
Tallahassee, FL 32301
(850) 222-7718

No additional information has been attained from this source.

STATEMENT OF ROBERT J. KAPLAN – Subject

2332 Pine Ridge Road
Naples, FL 34109
(239) 643-8500

KAPLAN responded to the investigation by letter, dated 10/26/12, stating that the issue was an oversight and that his bookkeeper was under the misconception that only OB - GYN physicians had to pay the fee. KAPLAN says that he will pay the fee immediately and instructed his bookkeeper that the fee must be paid every year.



Rick Scott
Governor

John H. Armstrong, M.D.
State Surgeon General

October 12, 2012

CONFIDENTIAL

Robert J. Kaplan, DO
2332 Pine Ridge Road
Naples, FL 34109

Complaint #: 201214321

Dear Dr. Kaplan:

The Consumer Services Unit has received the enclosed complaint against you. We reviewed the complaint or report and determined that the Osteopathic Medicine Practice Act may have been violated. Therefore, we have opened an investigation into this matter. Please submit a written response to this complaint within 45 days of receipt of this letter.

You may make a written request for a copy of the investigative file. This complaint and all investigative information will remain confidential until 10 days after the probable cause panel has determined that a violation has occurred or you give up the right to confidentiality.

The mission of the Department of Health is to protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts. If you have any questions, please call the Consumer Services Unit at (850) 245-4339. In addition, if you have any concerns or suggestions about our complaint process, please fill out our *Customer Concerns or Suggestions* form at www.floridashealth.com/mqa/survey.html.

Sincerely,

A handwritten signature in cursive script that reads "Miles Hardison".

Miles Hardison
Investigation Specialist I

MH/kb
Enclosure

Division of Medical Quality Assurance, Consumer Services Unit
4052 Bald Cypress Way, Bin C-75 * Tallahassee, FL 32399-3275
Telephone Number (850) 245-4339
Visit us online at www.doh.state.fl.us

REPORT _____
EXHIBIT NO. 2
PAGE NO. 11

RECEIVED
OCT 29 2012
BY: _____

October 26, 2012


Division of Medical Assurance
4052 Bald Cypress Way, Bin C-75
Tallahassee, Florida 32399-3275

Attn: Miles Hardison

Dear Miles,

Please forgive this oversight! My bookkeeper was under the misconception that only OB - GYN physicians had to pay this fee. I will pay this fee immediatly and instruct my bookkeeper that this fee must be paid by all physicians in the state of Florida every year.

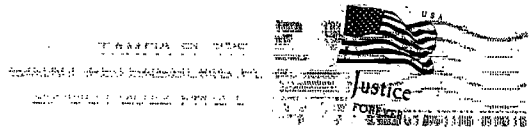
Sincerely


Robert J Kaplan, D.O.



Family Medicine
2332 Pine Ridge Road
Naples, FL 34109

REPORT _____
EXHIBIT NO. 3
PAGE NO. 13



*Miles Hardison
Division of Medical Assurance, bin C-75
Tallahassee, Florida 32399-3275*

32399327599

