IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH
AUG 18 2015
Kevin Westray, Legal Assistant

GEORGIA COMPOSITE MEDICAL BOARD,	:	
Petitioner,	:	
v.	:	**Docket Nos.:** **OSAH-CSBME-PHY-1444768-33-Malihi**
NEDRA DODDS, M.D.	:	
Respondent.	:	

Bryon Thernes, Esq.
Asst. Attorney General
For Petitioner

Francisco Marquez, Esq.
For Respondent

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DETERMINATION

I. SUMMARY OF PROCEEDINGS

On July 2, 2015, the Georgia Composite Medical Board (hereinafter "the Board") filed a Motion for Summary Determination (hereinafter "the Motion") and simultaneously served a copy on Respondent Dr. Nedra Dodds. Subsequently, the Court issued an Order canceling the evidentiary hearing set to begin on August 13, 2015 and advised Respondent that she had until July 22, 2015 to respond to the Board's Motion "pursuant to Ga. Comp. R. & Regs. 616-1-2-.15(2)."

Respondent filed a response to the Board's Motion (hereinafter "the Response") by e-mail on July 22, 2015. Respondent attached to the Response (1) the affidavit of Dr. Thomas Locke, M.D.; (2) Dr. Dodds' personal affidavit; (3) excerpts from the transcript of the deposition testimony of Rachel Loewe; and (4) medical records of patient E.B. The affidavit of Dr. Locke

was not signed, dated, or sworn before a notary public or other officer empowered to administer oaths. Dr. Dodds' personal affidavit was signed by the affiant, but was neither sworn nor dated.

On August 3, 2015, the Board moved to strike the affidavits of Dr. Locke and Dr. Dodds, asserting that they lacked the elements necessary to constitute competent evidence in support of a response to a motion for summary determination. As of the close of business on August 17, 2015, Respondent has given no response to the Board's motion to strike. Accordingly, the Court considers the Board's motion unopposed. However, as discussed *infra*, even if the Court grants full consideration to Dr. Locke's and Dr. Dodds' affidavits, pretermitting their legal insufficiency, it nonetheless concludes that the Board is entitled to judgment as a matter of law.

After consideration of the arguments and for the reasons stated below, the Board's Motion for Summary Determination is **GRANTED**. However, because issues remain as to the appropriateness of the Board's proposed sanction, this matter is set for a hearing beginning on September 22, 2015 and continuing thereafter for as many days as necessary. This hearing shall be for the sole purpose of allowing Respondent an opportunity to introduce evidence and testimony in opposition to the Board's proposed sanction of revocation. The Board shall have an opportunity at this hearing to cross-examine Respondent's witnesses and offer rebuttal witnesses and documentary evidence if it deems necessary.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421, 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-05 (2006) (noting summary determination is "similar to summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary determination).

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3). See Lockhart v. Dir. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

In the present case, the Board's Motion conforms to the procedural requirements of OSAH Rule 15 and is adequately supported by affidavits and other probative evidence. See Ga. Comp. R. & Regs. 616-1-2-.15(1). Accordingly, the burden shifts to Respondent to demonstrate by affidavit or other probative evidence that there is a genuine issue of material fact for determination. Ga. Comp. R. & Regs. 616-1-2-.15(3); see Rudy v. Walter Coke, Inc., No. 14-12703, 2015 U.S. App. LEXIS 9099 (11th Cir. June 2, 2015).

The Board is correct in asserting that the affidavits submitted by Respondent lack the essential prerequisites for consideration as competent evidence in support of a response to motion for summary determination. Roberson v. Ocwen Fed. Bank FSB, 250 Ga. App. 350, 352

(2001) ("A complete affidavit must satisfy three essential elements: (a) a written oath embodying the facts as sworn to by the affiant; (b) the signature of the affiant; and (c) the attestation by an officer authorized to administer the oath that the affidavit was actually sworn by the affiant before the officer."). However, even if the Court accepts the affidavits as competent evidence, the Response nonetheless fails to demonstrate the existence of a genuine issue of material fact because the allegations contained in the affidavits amount to "bare legal conclusions," which are "insufficient . . . to create an issue of fact on motion for summary [determination]. Mica-Top Fixture Co. v. Frank G. Shattuck Co., 124 Ga. App. 100, 101 (1971).

Moreover, admissibility of the affidavits notwithstanding, Respondent has introduced insufficient evidence for the Court to reasonably enter a decision in her favor. Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2512 (1986) ("The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the [trier-of-fact] could reasonably find for the [non-movant]."); see also Godwin v. WellStar Health Sys., No. 14-11637, 2015 U.S. App. LEXIS 10178 (11th Cir. June 17, 2015). The Response to the Board's Motion consists of "[m]ere conclusions and unsupported factual allegations," which are insufficient to defeat a well-supported motion for summary determination.[1] Ellis v. England, 432 F.3d 1321, 1325-26 (11th Cir. 2005) (citations omitted).

III. Undisputed Material Facts

Respondent has failed to demonstrate, by affidavit or other probative evidence, that a genuine issue of material fact exists. Ga. Comp. R. & Regs. 616-1-2-.15(3); Ellis v. England, 432 F.3d 1321, 1325-26 (11th Cir. 2005). Consequently, the Court has accepted the Board's well-supported and legally sufficient proposed undisputed facts in their entirety, as follows:

[1] In its Order dated July 6, 2015, the Court cautioned Respondent to ensure that her Response was supported "by affidavits or other probative evidence" in accordance with Ga. Comp. R. & Regs. 616-1-2-.15(2).

PATIENT A.J.

1.

Respondent's records reflect that on or about February 19, 2013, Respondent performed liposuction surgery on A.J., and performed fat injections to A.J.'s hip/buttock area. [Petitioner's Exhibit 2].

2.

Respondent's records for patient A.J., specifically the "Liposuction Abdominoplasty Operative Worksheet" in A.J.'s medical chart, identify Respondent as the sole "Surgeon" during patient A.J.'s surgery. On that same form, the space after "Assistant Surgeon" is left blank, and various staff members are listed as "Assistant" or "Circulator." [Petitioner's Exhibit 2, page 2].

3.

As the surgeon, Respondent was responsible for the procedure, for supervision of her surgical staff, for accurate medical record keeping, and for the management of any emergencies which would arise during or after surgery. [Petitioner's Exhibit 2; Exhibit 1, ¶ 4].

4.

Respondent's records reflect that surgery began at 1755 (5:55 p.m.). [Petitioner's Exhibit 2, page 2].

5.

In her post mortem statement to the Board, Respondent states that two of her staff members performed the "debulking of the patient," and that Respondent performed the "refinement parts of the liposuction." [Petitioner's Exhibit 6, page 1].

6.

Respondent deposed, at pages 9 – 10 of her deposition, that during surgery, while surgery

was ongoing, Respondent left the surgical suite to eat her first meal of the day:

Q: Now, how long do you think you were in that room, the surgical suite where this woman crashed?
A: Continuously I would say probably under an hour. I do remember stepping out to go grab something to eat and go to the bathroom.
Q: Where did you get something to eat?
A: We have a breakroom that's in the front of the office.
Q: Did you order any food in, like from – I don't know –
A: No.
Q: -- I'll throw out a name – Wenday's? Was it just a break?
A: No; just like going to like kind of kitchen area.
Q: And were you eating lunch or dinner, or what were you doing?
A: It was probably – actually probably be the first meal of my day, that late, yeah. But, no, it was just probably like a half a sandwich or something somebody ordered way earlier, and I was just getting around to grabbing something.

[Petitioner's Exhibit 7].

7.

Respondent's records for patient A.J., specifically the "Liposuction Abdominoplasty Operative Worksheet" in A.J.'s medical chart, identify Michelle Michael as a "circulator" for the subject procedure. [Petitioner's Exhibit 2, page 2].

8.

Michelle Michael deposed, at pages 88 – 94 of her deposition, that she was in the surgical suite during the liposuction procedure, at which time: patient A.J. was screaming that the procedure was tearing and burning; patient A.J. had already been given the maximum doses of sedative medications; patient A.J.'s hands were physically restrained; and a towel was placed in patient A.J.'s mouth to give her something to bite down on and to quiet her screaming:

Q: Was April communicating?
A: Yes.
Q: And tell me what April was saying.
A: When the liposuction started on her abdomen, she started screaming. It's tearing. It's burning. It's tearing. It's burning.

...

Q: Was there any adjustment in her medication given at that point in time?

A: At that time we gave her as much as we possibly could –

. . .

Q: Was anything else done to subdue April at that point in time?

A: We had a patient in the recovery room right next door to the OR suite. I believe April's fiancé would have been in the waiting room at the time. And she was screaming. And so we have – generally speaking, we have towels like behind their neck and up by their arms and stuff. And so when somebody is in that much pain and when we can't give them any other medications – I gave her the towel to bite down on so that that would – hoping that would help her, to be able to bite down on something.

Q: Was that something she could have in her hand, or were her hands restrained?

A: Her hands were restrained.

Q: So this was something you placed in her mouth?

A: Yes.

Q: Was there anything on –

A: It wasn't really in her mouth. It just gave her something to bite down on. She was screaming very loudly, and we had – and she had been screaming for a few minutes. And so when I did that to give her something do [sic] bite down on, it was probably only there for 30 seconds to a minute, just until they finished working on her abdomen.

Q: And it was to assist her in literally biting on the bullet, or was it to subdue the sound?

A: I would say both. It was to give her something to bite down on, because sometimes that helps when you're in pain. And also a little bit – you know, the screaming, we don't want any other patients or anybody in the office to hear something like that. And, you know, you feel terrible by doing that. But, at the same time, there was no malicious intent to it. It was nothing that was done in any kind of hateful manner.

It was done to help and comfort – like not – I can't say comfort. I don't think that's the appropriate word. But it was kind of to help maybe take the edge off a little bit, but then also to keep her from screaming so loud. We didn't want to upset anybody.

[Petitioner's Exhibit 8].

9.

According Respondent's post mortem statement to the Board, as A. J. was being cleaned up at 19:45, and as A. J. remained in the prone position, A.J. made a loud snore and flexed her legs backwards into the air, then dropped her legs, and became incontinent. [Exhibit 6, page 1]. Respondent's records corroborate the time of this event as "the onset of distress" at 19:45.

[Petitioner's Exhibit 2, page 3].

10.

At page 37 of her deposition, Respondent testified that no more than 5 – 6 minutes passed between the 19:45 event and the patient entering PEA, at 19:50 or 19:51 [recorded as 7:50 or 7:51 in the deposition transcript]. [Petitioner's Exhibit 7].

11.

PEA means pulseless electrical activity. It is an emergency condition in which the heart is engaged in disorganized electrical activity, preventing the heart from pumping blood. It is an immediate, life-threatening condition. [Petitioner's Exhibit 1, ¶ 5(h)].

12.

Records of the Cobb County Police Department show that Respondent did not contact 911 for aid or transport until 20:17. [Petitioner's Exhibit 5].

13.

Respondent's records for the time period between the onset of distress at 19:45, and Respondent's call to 911 at 20:17, contain documentation of only one oxygen saturation reading, only one generalized blood pressure reading (80s/90s), and only two generalized pulse readings (50s – 70s and 30s). The times of these readings are not documented. [Petitioner's Exhibit 2, fifth page].

14.

A.J. was subsequently transported to the emergency room at Wellstar Kennestone Hospital where, according to Wellstar Emergency Room records, patient A.J. was dead on arrival. [Petitioner's Exhibit 3].

15.

The Cobb County Medical Examiner's report included the following, under the headings identified below:

a. "LIVER AND DIAPHRAM: The diaphragm shows a perforation over the left posterior medial aspect. There is surrounding hemorrhage in this region. The underlying liver shows multiple small defects noted laterally in the posterior aspect of the right lobe. An additional defect is noted in the quadrate lobe …"
b. "POSTMORTEM AUTOPSY FINDINGS … [4] Liver showing capusular defects associated with hemmorage secondary to liposuction/fat transfer procedure. [5] Perforation of diaphragm. [6] Two defects between the 7th and 8th intercostal space, right mid-back, associated with liposuction procedure. [7] 250 cc blood within abdomen. [8] Hemmorage within mesentery of stomach and bowel."
c. "COMMENT: … The postmortem examination and autopsy showed Ms. Jenkins had defects within her liver, diaphragm, and intercostal space (7th and 8th ribs) of the right mid-back associated with the liposuction/fat transfer procedure. There was approximately 250 cc of blood within the abdomen. These findings are disturbing …"

[Petitioner's Exhibit 4, pages 2 - 3].

16.

Respondent's records do not reflect: which portions of the liposuction she personally performed, when she was or was not present in the surgical suite, which portions of the liposuction were performed when she was absent from the surgical suite, do not reflect what transpired while she was absent from the surgical suite, and do not reflect who was administering

medications while Respondent was absent from the surgical suite. Respondent's records do not reflect how many individuals performed liposuction, or the areas on which each person performed liposuction. [Petitioner's Exhibit 2].

17.

A Board appointed peer reviewer evaluated Respondent's care of patient A.J. and concluded that the overall care of patient A. J. departed from and failed to conform to the minimum standard of acceptable and prevailing medical practice in in that Respondent's record keeping, surgical techniques, surgical management, anesthetic management, intra-operative monitoring and documentation, and Respondent's ability to recognize, react to, and treat life-threatening complications all, individually and collectively, fell grossly below the standard of care. [Petitioner's Exhibit 1].

PATIENT E.B.

18.

E.B. presented to Respondent on June 20, 2013, for liposuction, including liposuction of previously placed silicone, and fat transfers to the thighs. [Petitioner's Exhibit 9, second page].

19.

Respondent described the silicone removal as vigorous and physically taxing. [Petitioner's Exhibit 13, first page].

20.

Respondent was the principal surgeon during the procedure, and was responsible for the procedure, for supervision of her surgical staff, for accurate medical record keeping, and for the management of any emergencies which would arise during or after surgery. [Petitioner's Exhibit 9; Petitioner's Exhibit 1, ¶ 6].

21.

Respondent's records do not reflect estimated blood loss during or after surgery. [Petitioner's Exhibit 9].

22.

According to Respondent's records, at 18:50 while patient E.B. was recovering from surgery, patient E.B.'s [cardiac] rhythm changed, and Respondent was notified and reported to the patient's room. Respondent's records do not reflect patient E.B.'s vital signs at the time of the "rhythm change." [Petitioner's Exhibit 9, first page].

23.

Respondent's records do not reflect any vital signs or measurements whatsoever between 18:50 and 19:00, when, according to Respondent's records, CPR and ACLS (advanced cardiac life support) were initiated. Respondent's records do not describe the kind or type of cardiac rhythm necessitating the initiation of CPR and ACLS, and still do not reflect any patient vital signs or measurements. [Petitioner's Exhibit 9, first page].

24.

Respondent did not contact 911 for aid or transport until 19:15. [Petitioner's Exhibit 12].

25.

In total, between 18:50 and 19:15 when 911 was called, Respondent's records contain documentation of only two oxygen saturation readings, three blood pressure readings, and only one heart rate reading. [Petitioner's Exhibit 9, first page].

26.

E.B. was subsequently transported to the emergency room at Wellstar Kennestone Hospital where, according to Wellstar Emergency Room records, E.B. was pronounced dead at

21:10 after ninety minutes of unsuccessful resuscitative efforts. [Petitioner's Exhibit 10].

27.

The Cobb County Medical Examiner's finding as to cause of death was: "Cardiac Dysrhythmia associated with hypovolemia secondary to liposuction procedure." (emphasis added) [Petitioner's Exhibit 11, first page].

28.

A Board appointed peer reviewer evaluated Respondent's care of patient E.B. and concluded that the overall care of patient E.B. departed from and failed to conform to the minimum standard of acceptable and prevailing medical practice in the following ways: Respondent's pre-operative, intra-operative, post-operative, and resuscitative care all fell grossly below the standard of care. [Petitioner's Exhibit 1,¶ 7].

PATIENT G.B.

29.

Respondent's records indicate that patient G.B. presented to Respondent for consultation regarding liposuction surgery on October 25, 2012. Liposuction was scheduled for October 30, 2012. [Petitioner's Exhibit 14].

PATIENT G.B. REGARDING HEPATITIS

30.

According to Respondent's medical records, on or about October 25, 2012, Respondent sent a request for medical records to a previous medical provider for G.B. The requested records included "All Medical Records" and "Labs." Next to the request for labs was written "STAT". (emphasis in original). [Petitioner's Exhibit 14, first page].

31.

According to Respondent's medical records, on or about October 29, 2012, Respondent received a facsimile from the above referenced medical provider in Florida, including Labs that showed atypical results related to liver function. [Petitioner's Exhibit 14, pages 2 - 3]. On or about October 29, 2012, Respondent Ordered new Labs for G.B., specifically including a hepatitis panel.

32.

On or about the morning of October 30, 2012, before surgery was performed on patient G.B., Respondent received lab results for patient G.B. The results for the "Hepatitis Acute Panel" read "pending." Respondent initialed the lab results, and proceeded with the surgery in conscious ignorance of the Hepatitis Panel. [Petitioner's Exhibit 14, pages 4 - 6].

33.

Respondent's records do not reflect that she informed her staff that the results of the hepatitis panel were unknown, and do not reflect that any additional precautions were taken in light of the unknown results. [Petitioner's Exhibit 14].

34.

On or about the afternoon of October 30, 2012, at or about 3:16 p.m., the results of G.B.'s complete Labs were sent by facsimile to Respondent's office, including the Hepatitis Acute Panel. The result of that panel indicated "reactive", meaning positive, for Hepatitis C. The Lab report further reads: "Result repeated and verified." [Petitioner's Exhibit 14, pages 7 – 10 (the labs without initials, received via facsimile at 15:17].

35.

Proceeding with elective surgery such as liposuction in conscious ignorance of a pending

hepatitis panel, exposing staff to possible infection without informing them or taking additional precautions, falls grossly below the standard of care. [Petitioner's Exhibit 1, ¶ 9(a)].

PATIENT G.B. REGARDING DIABETES

36.

Respondent's records indicate that the lab results for G.B. received the morning of October 30, 2012, showed a blood glucose level of 290 and a hemoglobin A1C of 13.6. [Petitioner's Exhibit 14, pages 4 - 6].

37.

Such blood glucose level and hemoglobin A1C levels are very high, will result in delayed wound healing and increased risk of infection, and strongly contra-indicate elective surgery, such as the liposuction being performed on patient G.B. Respondent initialed the lab results, and proceeded with the surgery. [See Petitioner's Exhibit 1, ¶ 9(b)].

38.

Respondent was aware of the risks to patient G.B. at the time she proceeded with surgery. Respondent's records indicate that on October 31, 2012, Respondent drafted correspondence to G.B. which read as follows:

> Your Hemoglobin A1C (which measures the average blood sugar over 3 months) indicates that you have severe uncontrolled diabetes.
>
> We recommend that you seek the appropriate medical care immediately. If you choose not to seek medical attention immediately, you understand that this is a life threatening condition.
>
> In addition, based on your current blood sugar reading, we are sending you to the Kaufman Clinic.
>
> Dr. Kaufman is expecting you now. 2001 Professional Way Ste 220 Woodstock, Ga 30188.

[Petitioner's Exhibit 14, page 11].

39.

Dr. Kaufmann's records dated November 1, 2012, as included as a part of Respondent's records, and state in part as follows:

> Pt was being evaluated by plastic surgery for liposuction and was found to have a very elevated sugar. Was sent to Dr. Kaufmann yesterday and found to have sugar of 500 and sent to the ER. Pt was given IV insulin and told to follow up with her PCP. Pt is reluctant to restart insulin because it causes weight gain. Pt has been off intermittently checking her insulin and would give herself an injection maybe once a week if she found it to be high. Pt was giving herself basically a sliding scale of 70/30. Pt does not take baby aspirin. Has not had eye exam. HgbA1C was 13.6. Was also found to have elevated liver enzymes. Acute hepatitis panel was negative but did come back positive for Hepatitis C. Pt states she was unaware that she had this disease. ... Also has a microcytic anemia.

[Petitioner's Exhibit 14, pages 13].

40.

Respondent's records indicate that on November 1, 2012, Respondent drafted additional correspondence directed to "Dear Dr.," for G.B. to provide to a PCP upon her return to her home state, which read in part as follows:

> Our patient [G.B.] opted to have an elective cosmetic procedure with us. During her pre-operative evaluations, lab tests showed abnormal glucose level and Hemoglobin A1C.
>
> She underwent moderate liposuction procedure with fat transfer to the hips on 10/30/2012 with no complications, and therefore is at risk of delayed wound healing because of current metabolic state. Her glucose level was 496 at her follow up appointment on 10/31/12. We referred her immediately to our local internist, Dr. Kaufman for evaluation and treatment of her diabetes.
>
> Please address her medical concerns as soon as possible to ensure best medical and cosmetic outcome for the patient.

[Petitioner's Exhibit 14, page 12].

41.

Proceeding with elective surgery such as liposuction with full knowledge of patient

G.B.'s blood glucose and hemoglobin A1C levels, and of the risk to patient G.B.'s safety, falls grossly below the standard of care. [Petitioner's Exhibit 1, ¶ 9(b)].

IV. CONCLUSIONS OF LAW

A. Unprofessional Conduct

1.

Because this matter concerns the Board's proposed revocation of Respondent's license to practice medicine, the Board bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

O.C.G.A. § 43-34-8 states, in pertinent part, that the Board has the authority to discipline a licensee upon a finding that the licensee has [e]ngaged in any unprofessional . . . conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person." O.C.G.A. § 43-34-8(a)(7); *see also* O.C.G.A. § 43-1-19(a)(6). Unprofessional conduct includes "any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice." O.C.G.A. § 43-34-8(a)(7); *see also* Ga. Comp. R. & Regs. 360-3-.02.

3.

The undisputed facts in this case demonstrate that Respondent's care of A.J., E.B., G.B. departed from and failed to conform to the minimum standard of acceptable and prevailing medical practice. Accordingly, the Board is entitled to judgment as a matter of law and is entitled to take disciplinary action against Respondent. However, a genuine issue of material fact remains with regard to the appropriateness of the Board's proposed sanction.

B. Appropriateness of the Sanction

4.

This Court has the responsibility to independently review the facts and law de novo, "without according deference or presumption of correctness" to the referring agency's decision. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 768 (2009); Ga. Comp. R. & Regs. 616-1-2-.21 (1), (3).

5.

The Court "has all the powers of the referring agency with respect to a contested case." O.C.G.A. § 50-13-41(b). Further, the Court "shall make an independent determination on the basis of the competent evidence presented at the hearing" and "may make any disposition of the matter available to the Referring Agency." Ga. Comp. R. & Regs. 616-1-1-.21(1).

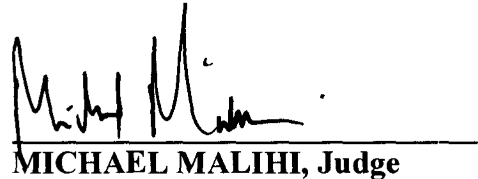
6.

The Board is not *required* to exercise its revocation authority where a licensee engages in unprofessional conduct. See O.C.G.A. § 43-34-8(b)(1) ("When the board . . . finds that any person should be disciplined . . . [it] *may* . . . [r]evoke any license, certificate, or permit . . . .") (emphasis added). Accordingly, an evidentiary hearing is necessary to allow Respondent an opportunity to refute the Board's assertion that revocation of her license to practice medicine is appropriate through the presentation of mitigating evidence and testimony.

V. DECISION

After careful consideration of the arguments and submissions of the parties and for the reasons stated above, the Board's Motion for Summary Determination is **GRANTED**. The evidentiary hearing on the sole issue of the appropriateness of the Board's proposed sanction shall commence at 9:00 a.m. on September 22, 2015 at OSAH, 225 Peachtree Street, N.E., Suite 400, Atlanta, Georgia 30303.

SO ORDERED, this 18th day of August, 2015.



MICHAEL MALIHI, Judge