Florida Board Of Medicine

PCP North
March 20, 2020

Meet-Me #: 1 (888) 585-9008
Participation Code: 432-162-565
Notice of Meeting/Workshop Hearing

DEPARTMENT OF HEALTH
Board of Medicine

The Board of Medicine - Probable Cause Panel North announces a public meeting to which all persons are invited.

DATE AND TIME: Friday, March 20, 2020, 2:30 p.m.

PLACE: Meet-Me #: 1 (888) 585-9008, Participation Code: 432-162-565

GENERAL SUBJECT MATTER TO BE CONSIDERED: To conduct a public meeting to reconsider disciplinary cases with prior findings of probable cause.

A copy of the agenda may be obtained by contacting: Jacoyia Reddick at (850) 558-9848 or email her at Jacoyia.Reddick@flhealth.gov.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 10 days before the workshop/meeting by contacting: Jacoyia Reddick at (850) 558-9848 or email her at Jacoyia.Reddick@flhealth.gov.

If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, you may contact: Jacoyia Reddick at (850) 558-9848 or email her at Jacoyia.Reddick@flhealth.gov.
NORTH PROBABLE CAUSE
BOARD OF MEDICINE AGENDA
SCHEDULED FOR MARCH 28, 2020

RN-01  Reconsideration

The Probable Cause Panel meeting scheduled for March 20, 2020 will commence at 2:30 p.m., or thereafter, at the following location:

MEET – ME NUMBER
Toll Free Number - 1-888-585-9008

For this meeting, participants will need to call the number above for the public and non-public sections of the agenda.

After you dial in at the number above, please enter the following conference code number and then press #:

Public Code: 432-162-565#

PUBLIC PORTION
Call in Number: 1-888-585-9008
Public Conference Code: 432-162-565#

RECONSIDERATION

RN-01  Sherwin Zargaroff, M.D.  2018-22260
MEMORANDUM FOR RECONSIDERATION

TO: Probable Cause Panel  
FROM: Cynthia Nash-Early, Assistant General Counsel  
RESPONDENT: Sherwin Zargaroff, M.D.  
DATE: January 21, 2020  
CASE NO.: 2018-22260

On August 26, 2019, the Department filed a one count Administrative Complaint against Respondent. The Complaint alleged Respondent violated section 458.331(1)(s), Florida Statutes, by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. On or about December 11, 2018, Respondent underwent a Professional’s Resource Network (PRN) facilitated evaluation and was diagnosed with alcohol use to be monitored for alcohol use disorder. Respondent was considered able to practice medicine with reasonable skill and safety if he was being monitored by PRN. Respondent refused to sign the PRN contract. On or about January 24, 2019, PRN closed Respondent’s case.

On or about January 16, 2020, the Department received a letter from PRN stating Respondent signed a PRN contract on December 27, 2019 and is in compliance with all requirements of the monitoring contract.

Since Respondent is now being monitored by PRN and is considered safe to practice with reasonable skill and safety, the Department recommends the Panel reconsider and dismiss the Administrative Complaint.
THE COMPLAINT: Subject is alleged to have violated section 458.331(1)(s), Florida Statutes (2018), by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

THE FACTS: This investigation was predicated upon an anonymous complaint, alleging that Respondent suffered from a possible impairment
issue. On or about December 11, 2018, Respondent underwent a Professionals Resource Network (PRN) facilitated evaluation and was diagnosed with generalized anxiety disorder and alcohol use to be monitored for alcohol use disorder. The PRN evaluator considered Respondent safe to practice with reasonable skill and safety if he was being monitored by PRN.

Respondent originally refused to sign the PRN contract. On or about January 24, 2019, PRN closed Respondent’s case for refusing to sign the PRN contract. On or about August 26, 2019, the Department filed a one count administrative complaint alleging Respondent violated section 458.331(1)(s), Florida Statutes.

On or about January 16, 2020, the Department received a letter from PRN stating Respondent signed a PRN monitoring contract on December 27, 2019 and is in compliance with all requirements of the monitoring contract. Since Respondent is being monitored by PRN, he is considered safe to practice with reasonable skill and safety.

Due to Respondent signing and being in compliance with a PRN monitoring contract, the Department recommends dismissal.

THE LAW: Based on the foregoing, and pursuant to section 456.073(4), Florida Statutes, there is no probable cause to believe Subject violated chapter 456 or 458, Florida Statutes, or the rules of the Board or Department.

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

DONE and ORDERED this _____ day of ________________, 2020.

________________________________________
Chairperson, Probable Cause Panel
Board of Medicine

CNE/ rr
PCP: March 20, 2020
PCP Members:
CONFIDENTIAL AND EXEMPT MATERIALS

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456.057 - Ownership and control of patient records; report or copies of records to be furnished.—
10)(a)All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v. Case No. 2018-22260

SHERWIN ZARGAROFF, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Sherwin Zargaroff, 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 medical doctor within the state of Florida, having been issued license number MD 126486.

3. Respondent’s address of record is 11800 South Gardens Drive, Unit 112, Palm Beach Gardens, Florida 33418.
4. The Professionals Resource Network (PRN) is designated as the State of Florida’s impaired practitioners’ program for physicians.

5. On or about December 11, 2018, Respondent underwent a PRN facilitated evaluation and was diagnosed with controlled generalized anxiety disorder and alcohol use to be monitored for alcohol use disorder.

6. Respondent was considered able to practice medicine with reasonable skill and safety if he was being monitored by PRN.

7. Respondent did not sign the PRN monitoring contract and is not being monitored by PRN.

8. On or about January 24, 2019, PRN closed Respondent’s case for refusing to sign the PRN monitoring contract.

9. Section 458.331(1)(s), Florida Statutes (2018), subjects a licensee to discipline for being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. A licensee or certificate holder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of medicine with reasonable skill and safety to patients.
10. Respondent is not being monitored by PRN and therefore, is not safe to practice.


WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, 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 24th day of August, 2019.

Cynthia Nash-Early
Assistant General Counsel
Florida Bar No. 20554
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
(850) 558-9872
(850) 245-4684 fax
E-Mail: Cynthia.NashEarly@flhealth.gov

CNE/sdr
PCP Date: August 23, 2019
PCP Members: Georges El-Bahri, M.D.; Seela Ramesh, M.D.; and Ricardo Morales
DOH v. Sherwin Zargaroff, M.D.
Case No. 2018-01595
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.
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Certification of Completeness of Personnel Records (Obtained by Subpoena)

I, _______ hereby certify that I am the official custodian of personnel records for: ____ Healthcare System ______ (business name). My title and telephone number are: ____ Human Resources Officer ____. My employer's address is: ____ 350 7th Street N., Naples, FL 34102. I hereby verify that I have searched the personnel records maintained at ___ Healthcare System ___ and have determined that the attached records consisting of ____ pages are true and correct copies of the personnel records requested pursuant to Subpoena No. ___ for _____.

I further certify that these records are kept in the course of the regularly conducted business of ____ Healthcare System ___ (business name); and that it is the regular practice of ____ Healthcare System ___ (business name) to keep such records. This certification is made pursuant to Section 90.902(11), Florida Statutes.

Affiant Signature: _______ Date: 2-23-2019

STATE OF FLORIDA
CITY/COUNTY OF _______

Before me personally appeared _______ whose identity is known to me by ____ (type of identification) and who acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this ____ day of February, 2019.

Signature of Notary Public – State of Florida

Name of Notary Typed, Printed or Stamped

Florida Department of Health
Division of Medical Quality Assurance
4052 Bald Cypress Way, Bls C-70 • Tallahassee, FL 32399
PHONE: 850/245-4476 • FAX: 850/245-4456
FloridaHealth.gov
INV FORM 382, Created 4/06

Exhibit S1-2

00085
Synopsis: This investigation is predicated upon the receipt of an anonymous complaint received alleging SHERWIN ZARGAROFF, MD, has a possible impairment issue due to him suffering from bipolar disorder. ZARGAROFF is a urologist for Naples Community Hospital Medical Group with clinical privileges at Naples Community Hospital in Naples, FL. It is alleged ZARGAROFF self-medicates with marijuana and possibly other drugs. It is alleged ZARGAROFF's disease keeps him from being able to practice medicine. It is alleged the week of September 10-14, ZARGAROFF went crazy, was hallucinating and was confused because he diagnosed a patient with cancer when the patient had not been and performed an unsterile procedure on a different patient risking infection. It is further alleged ZARGAROFF failed to show up for a full day of surgical procedures he had scheduled at Naples Community Hospital without calling anyone or making any arrangements for coverage resulting in his termination.

| Yes | No | Subject Notification Completed? |
| Yes | No | Subject Responded? |
| Yes | No | Patient Notification Completed? *No patient identified |
| Yes | No | Above referenced licensure checked in database/LEIDS? |
| Yes | No | Board certified? Name of Board: |

Law Enforcement

| Yes | No | Subject represented by an attorney? |
| Attorney information: |

Investigator/Date: 2/15/19

Approved By/Date: 02/15/18

R. Jay Foos
Medical Quality Assurance Investigator, FI-87

Ylonka Guzman Jimenez, FI72 for
Karen Anderson, FI-98
Investigation Manager

Distribution: HQ/ISU
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* Exhibits contain information which identifies patient(s) by name and are sealed pursuant to section 456.057(9)(a) Florida Statute.
INVESTIGATIVE DETAILS

INVESTIGATOR NOTES

No audiotaped interviews are included with this report. The source is anonymous and there was no response from SHERWIN ZARGAROFF, MD. A subject notification was mailed on 1/22/19 and emailed to ZARGAROFF on 1/28/19. The subject notification along with a Voluntary Relinquishment form was again sent on 2/15/19. Should ZARGAROFF respond, his response will be included in a supplemental report.

On 1/30/19, Investigator R. JAY FOOS spoke with ANNETTE WENOWSKY at Collier County Sheriff’s Office (CCSO) Central Records. She said the incident report filed by TERESA BAZLEY for alleged victim MARC COLTON, MD, against ZARGAROFF (Exhibit #6) was given to a CCSO officer who forwarded it to Misdemeanor Investigations Investigator Corporal RICHARD STONESON for review.

On 2/14/19, FOOS spoke with KARLA ALVAREZ, Executive Assistant of LINDA ROEBACK, General Counsel at NCH Healthcare System, Inc. She said ROEBACK can provide the Credentialing File for ZARGAROFF now but is still putting together the complete personnel file, which is being obtained from several sources. She said she would send it as soon as ROEBACK gets it to her. Once received, this will be sent in a supplemental report.

INTERVIEW OF LINDA ROEBACK (WITNESS)

Work:
NCH Healthcare System, Inc.
350 7th Street North
Naples, FL 34102
(2239) 624-4010

On 1/23/19, Investigator R. JAY FOOS interviewed LINDA ROEBACK, General Counsel, telephonically.

- ROEBACK confirmed SHERWIN ZARGAROFF, MD, was hired as a temporary replacement for the period 3/15/18 – 12/14/18 but was terminated in September 2018 for breaking health insurance policy regarding use of nicotine. There were no indications of drug use at the time.
- ROEBACK said the same anonymous letter sent to the Department of Health was sent to them with the same allegations of marijuana use, mental health issues and missing work.
- ROEBACK said she suspects a former partner of ZARGAROFF’s, Dr. MARC COLTON, may have been the anonymous source of the letter, but she is not positive.
- ROEBACK said COLTON and ZARGAROFF had a “falling out” over some allegations of forgery by ZARGAROFF, which was reported to the Collier County Sheriff’s Office. She did not know how that turned out.
- ROEBACK said to email a subpoena for ZARGAROFF’s employment information and credentials file and she would provide them.
INTERVIEW OF CORPORAL RICHARD STONESON (WITNESS)

Work:
Collier County Sheriff’s Office
3319 Tamiami Trail East, Bldg. J
Naples, FL 34112
(239) 252-9105

On 2/5/19, Investigator R. JAY FOOS interviewed Corporal RICHARD STONESON telephonically.

- STONESON confirmed he is lead Misdemeanor Investigator for Collier County Sheriff’s Office.
- STONESON said Incident Report #18-313412 involving allegations of prescription forgery by SHERWIN ZARGAROFF, MD, was passed to him in early October 2018 for review.
- STONESON said the incident did not meet criteria for his office. He said he forwarded it to the Vice Narcotics Bureau for review, but according to their system that office has not pursued it further.
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January 22, 2019

CONFIDENTIAL TO:
SHERWIN ZARGAROFF, MD
3550 Galt Ocean DR, Suite 901
Fort Lauderdale, FL 33308

Dear Dr. ZARGAROFF:

We are currently investigating the enclosed document received by the Department of Health. This investigation was initiated after it was determined that you may have violated your practice act.

Within **45 days** of receiving this letter, you may:

* submit a **written response** to the address below; or
* call our office to schedule an **interview**.

Please provide a copy of your **curriculum vitae** and identify your **specialty** even if you choose not to submit a response. Include the above-referenced case number in any correspondence that you send.

Florida law requires that this case and all investigative information remain confidential until 10 days after the Probable Cause Panel has determined that a violation occurred or you give up the right to confidentiality. Therefore, the contents of the investigation cannot be disclosed to you or the general public. You may make a written request for a copy of the investigative file and it will be sent to you when the investigation is complete.

You are not required to answer any questions or give any statement, and you have the right to be represented by an attorney. It is not possible to estimate how long it will take to complete this investigation because the circumstances of each investigation differ.

The mission of the Department of Health is to protect, promote & improve the health of all people in Florida through integrated state, county & community efforts. If you have any questions please call us at (239) 338-2623 or email at ronald.foos@flhealth.gov. 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,

R. Jay Foos
Medical Quality Assurance Investigator

/JF
Enclosed: Case Summary
RE: 201822260 Zargaroff

Dr. Zargaroff,

Please review the attached documentation from the Florida Department of Health and respond accordingly.

I have also mailed a copy to your address of record with the Board of Medicine and Department of Health.

Thanks.

R. Jay Foos
Medical Quality Assurance Investigator
Florida Department of Health
2295 Victoria Avenue, Suite 242, Fort Myers, FL 33901
Phone: (239) 338-2623, Fax: (239) 338-2337
ronald.foos@flhealth.gov

Mission: To protect, promote & improve the health of all people in Florida through integrated state, county, and community efforts.

Vision: To be the healthiest state in the nation

Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.
From: noreply@hcs.net
Sent: Wednesday, January 23, 2019 1:18 PM
To: Foos, Ronald J
Subject: Fax Sent to PRN Program at 9042613996

Pages Sent  : 4
Duration    : 183
Remote CSID : 
Destination : 9042613996
Subject     : Request
Hayes Fax Portal : https://faxservice.hcs.net/fax

******************************************************************************
This footnote confirms that this email message has been scanned by
PineApp Mail-SeCure for the presence of malicious code, vandals & computer viruses.
******************************************************************************
PRN/DOH INVESTIGATOR COMMUNICATION FORM
(Top portion to be completed by DOH Investigator)

To: PRN  
Fax: (904) 261-3996  
Date: 1/23/19

From: R. Jay Foos  
Title: Medical Quality Assurance Investigator  
(Please print)

Return Fax: (239) 338-2337  
Phone: (239) 338-2623

Re: Zagoroff  
Last Name: Sherwin  
First Name:  
Other known name:

ME126486  
License Number: 201822260

DOH (specific or additional questions):

Please send all records pertaining to this individual. Thanks.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

(Bottom of portion to be completed by PRN and faxed back to DOH)

PRN comments:

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

PRN information pertinent to above complaint number only.

__________________________________________  
PRN Case Manager

PRN will research this case, complete the following information and return to above fax number.

A. This Practitioner (check if applicable):
1. _____ is presently an active and compliant PRN participant (if additional information is needed, please contact present Case Manager, ______________________ at (800) 888-8776).

2. _____ was noncompliant and failed to progress. Efforts to monitor this Practitioner were discontinued on ______________________. This Practitioner was dismissed from PRN and reported to DOH at that time. The last contact regarding this Practitioner was on ______________________ with ______________________.

STOP HERE (continue only if #1 or #2 above do not apply)

DOH Complaint #____________________________

B. This Practitioner (check if applicable):

1. _____ was 2. _____ did
   _____ was not 2. _____ did not
   reported to PRN. contact PRN.

2. Agreed to PRN participation:
   _____ and is pending entry; has been compliant thus far.
   _____ but has failed to comply with PRN direction and requirements by (check all that apply):
   _____ did not return required paperwork and confidentiality releases.
   _____ did not obtain required;
   _____ evaluation
   _____ treatment.
   _____ did not execute PRN Contract.

3. PRN:
   _____ reported this Practitioner to DOH on ______________________.
   _____ directed ______________________ to consult with DOH
   on ______________________. (See attached intake refused letter.)

4. Last contact regarding this Practitioner was on ______________________ with
   ______________________.

Form completed by ______________________
(PRN Case Manager)

Date ______________________
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Vision: To be the Healthiest State in the Nation
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TO: NCH HEALTHCARE
350 7th ST N
Naples, FL 34102
(239) 624-5000

ATTENTION: RECORDS CUSTODIAN

YOU ARE HEREBY COMMANDED to produce for inspection and copying at 2295 Victoria Avenue, Suite 242, Fort Myers, Florida 33901 by January 29, 2019 at 9:30 A.M., for the Department of Health the following:

All Employment Information and the Credentials File for SHERWIN ZARGAROFF (ME#126486)

This subpoena is issued pursuant to Section 456.071, Florida Statutes. This subpoena is supported by affidavit which is available upon request. These records may be copied for use in other related investigations initiated as a result of our review/analysis of this incident.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), authorizes a covered entity to disclose protected health information without the written authorization of an individual, or without the opportunity for an individual to agree or object, when such disclosure is to a health oversight agency for oversight activities authorized by law. The Department of Health, Division of Medical Quality Assurance, is an agency of the State of Florida, authorized by Florida Statutes to oversee the healthcare system.

In lieu of producing these records for inspection and copying as described above, you may choose to comply with this subpoena by mailing a copy of these records to the below identified investigator with the attached verification fully executed by the above date. The Department will reimburse actual copying or reproduction costs, not to exceed the following limits: Hard copies at $1.00 per written page for the first 25 pages and $.25 per written page thereafter; X-Rays or other photographs or images at $10.00 per x-ray or image; Electronic records from scanning, digital imaging, or other digital format at $10.00 per filled CD Rom, DVD or other storage media.

YOU SHALL RESPOND to this subpoena as directed unless excused by the party who requested issuance of the subpoena or by order of the Department of Health.

Issued this 24th day of January 2019.
ANY PERSON FAILING TO APPEAR IN ACCORDANCE WITH THIS SUBPOENA MAY BE SUBJECT TO A PETITION FOR ENFORCEMENT BY WHICH THE DEPARTMENT MAY SEEK A FINE OF UP TO $1,000 AND OTHER RELIEF AS SET FORTH IN SECTION 120.69, FLORIDA STATUTES.

Received this subpoena on __________, 2019, at 10:30 o'clock A.M. and served the same on __________, 2019, at 10:42 o'clock A.M. by delivering a true copy thereto:

NCH Naples

RETURN IF SERVED BY SHERIFF

DATE ______, 20____, by ________________________________

Sheriff of ________________________________ County, Florida.

By: ________________________________ Deputy Sheriff

RETURN IF SERVED BY OTHER QUALIFIED PERSON

Date ________, 20____, By: ________________________________

Before me, personally appeared ________________________________

Whose identity is known to me by ________________________________

(type of identification)

and who, under oath, acknowledges that his/her signature appears above.

Sworn to or affirmed by Respondent before me this ______ day of ____________, 20____.

Notary Public

______________________________

DiANE R. DIROCCO

Type Name

NOTE: AFFIDAVIT REQUIRED ONLY IF SERVICE IS MADE BY A PERSON OTHER THAN A SHERIFF OR DEPUTY SHERIFF.
AFFIDAVIT FOR SUBPOENA

FIELD OFFICE: Fort Myers

CASE NUMBER: 201822260

☐ The Department is reviewing a report of a closed civil claim filed pursuant to Section 627.912, F.S.
☐ The Department is reviewing an incident report filed by a hospital or ambulatory surgical center pursuant to Section 395.0197, F.S.
☐ The Department is reviewing an incident report filed by a nursing home pursuant to Section 400.147(12), F.S., or by an assisted living facility pursuant to Section 429.23(8), F.S.
☐ The Department is reviewing a report of discipline by a peer review organization pursuant to Section 395.0193, 458.337 or 459.016, F.S.
☒ The Department is initiating an investigation, investigating a complaint, or conducting a preliminary inquiry pursuant to Section 468.073, F.S.
☐ The Department is initiating an investigation, investigating a complaint, or conducting a preliminary inquiry pursuant to Section 468.310(1), F.S., Radiologic Personnel.
☐ The Department is reviewing a report of a birth-related neurological injury filed pursuant to section 766.305, or a civil malpractice suit pursuant to Section 766.106(2), F.S.

1. This investigation/claim/report/complaint against or involving SHERWIN ZARGAROFF, MD, alleges possible violations of §§ 458.072(1)(k)(i)(dd), 458.337(11)(g)(e)(nn), F.S. Complaint alleges ZARGAROFF may be impaired.
2. The material or information being sought are personnel records for SHERWIN ZARGAROFF (ME#126486), from NCH HEALTHCARE, 350 7th ST N, Naples, FL 34102.
3. This material or information is necessary to adequately review this matter, or to substantiate the allegations or show them to be unsubstantiated.
4. This Affiant feels that the recipient of this subpoena will be able to provide the material/information being requested because recipient is CUSTODIAN OF RECORDS.

Name of Affiant: R. JAY FOOS

Signature of Affiant

STATE OF FLORIDA
COUNTY OF LEE

Before me, personally appeared R. JAY FOOS, whose identity is known to me by personally and who acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this 24th day of January 2019.

Notary Public State of Florida

Type or Print Name

My Commission Expires:

This affidavit has been reviewed as to sufficiency and approved by:

Signature of General/Manager/Supervisor on Jan. 24, 2019
Linda,

I appreciate you speaking with me yesterday. I have attached the subpoena for personnel records for Dr. Zargaroff as we discussed.

Thanks.

R. Jay Foos
Medical Quality Assurance Investigator
Florida Department of Health
2295 Victoria Avenue, Suite 242, Fort Myers, FL 33901
Phone: (239) 338-2623, Fax: (239) 338-2337
ronald.foos@flhealth.gov

Mission: To protect, promote & improve the health of all people in Florida through integrated state, county, and community efforts.

Vision: To be the healthiest state in the nation

Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.
January 24, 2019

TO: NCH HEALTHCARE
350 7th ST N
Naples, FL 34102
(239) 624-5000

ATTENTION: RECORDS CUSTODIAN
DOH Reference Number: 2018-22260

The Florida Department of Health has determined the following records are necessary and essential to establish lawful compliance with existing rules and standards:

- All Employment Information and the Credentials File for SHERWIN ZARGAROFF (ME#126486).

Note that a certification of completeness form has been included with the release and it is requested that this form be completed, notarized and returned with the personnel records. The Department will reimburse the cost of copying the records at the rate of $1.00 per page for the first twenty-five pages and $.25 for each page thereafter. Billing instructions are attached.

It is requested that the records be provided by January 29, 2019. The requested the records can be mailed to the address below, emailed to ronald.foos@flhealth.gov or faxed to (239) 338-2337. Your cooperation in this matter is appreciated. If you have any questions, please feel free to call me at (239) 338-2623.

Note: If responding by email, please do not use names in the subject line.

Sincerely,

R. Jay Foos
Medical Quality Assurance Investigator

/JF
Enclosed: Subpoena, Certification of Completeness, Billing Instructions
TO: NCH HEALTHCARE
350 7th ST N
Naples, FL 34102
(239) 624-5000

ATTENTION: RECORDS CUSTODIAN

YOU ARE HEREBY COMMANDED to produce for inspection and copying at 2295 Victoria Avenue, Suite 242, Fort Myers, Florida 33901 by January 29, 2019 at 9:30 A.M., for the Department of Health the following:

All Employment Information and the Credentials File for SHERWIN ZARGAROFF (ME#126486)

This subpoena is issued pursuant to Section 456.071, Florida Statutes. This subpoena is supported by affidavit which is available upon request. These records may be copied for use in other related investigations initiated as a result of our review/analysis of this incident.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), authorizes a covered entity to disclose protected health information without the written authorization of an individual, or without the opportunity for an individual to agree or object, when such disclosure is to a health oversight agency for oversight activities authorized by law. The Department of Health, Division of Medical Quality Assurance, is an agency of the State of Florida, authorized by Florida Statutes to oversee the healthcare system.

In lieu of producing these records for inspection and copying as described above, you may choose to comply with this subpoena by mailing a copy of these records to the below identified investigator with the attached verification fully executed by the above date. The Department will reimburse actual copying or reproduction costs, not to exceed the following limits: Hard copies at $1.00 per written page for the first 25 pages and $.25 per written page thereafter; X-Rays or other photographs or images at $10.00 per x-ray or image; Electronic records from scanning, digital imaging, or other digital format at $10.00 per filled CD Rom, DVD or other storage media.

YOU SHALL RESPOND to this subpoena as directed unless excused by the party who requested issuance of the subpoena or by order of the Department of Health.

Issued this 24th day of January 2019.

THIS SUBPOENA HAS BEEN ISSUED UPON THE REQUEST OF:

NAME: R. JAY FOOS
ADDRESS: 2295 Victoria Avenue, Suite 242
Fort Myers, Florida 33901
PHONE: 239-338-2623

INV FORM 354-M
GENERAL RECORD
Certification of Completeness of Personnel Records (Obtained by Subpoena)

I, ___________________ hereby certify that I am the official custodian of personnel records for: ____________________________ (business name). My title and telephone number are: _____________________________. My employer’s address is: _____________________________. I hereby verify that I have searched the personnel records maintained at ____________________________ and have determined that the attached records consisting of ____________________ pages are true and correct copies of the personnel records requested pursuant to Subpoena No. ____________________ for _____________________________. I further certify that these records are kept in the course of the regularly conducted business of ____________________________ (business name); and that it is the regular practice of ____________________________ (business name) to keep such records. This certification is made pursuant to Section 90.902(11), Florida Statutes.

Affiant Signature _______________________________ Date __________________________

STATE OF FLORIDA
CITY/COUNTY OF __________________:

Before me personally appeared ______________________ whose identity is known to me by ______________________ (type of identification) and who acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this _____ day of _____, 20__.

Signature of Notary Public – State of Florida ______________________________

(NOTARY SEAL) ______________________________

Name of Notary Typed, Printed or Stamped ______________________________

Case Number: 201822260

Florida Department of Health
Division of Medical Quality Assurance
4052 Bald Cypress Way, Bin C-70 • Tallahassee, FL 32399
PHONE: 850/245-4478 • FAX: 850/245-4436
FloridaHealth.gov
INV FORM 382, Created 4/06
TO: Medical Records Copying Services  
FROM: Consumer Services Unit  
SUBJECT: Important Billing Instructions

The Department will reimburse actual copying or reproduction costs, not to exceed the following limits:

- Hard copies at $1.00 per written page for the first 25 pages and $.25 per written page thereafter
- X-Rays and other photographs or images at $10.00 per x-ray or image
- Electronic records from scanning, digital imaging or other digital format at $10.00 per filled CD Rom, DVD or other storage media.

Additional fees or charges will not be paid. The Record’s Custodian will be required to appear with the records as stated in the subpoena if the charges exceed those as indicated above.

To receive payment for copies of medical records, you must comply with the following:

1) If you have never received payment from the Department of Health you must register as a vendor with the State of Florida using internet registration at: https://vendor.myfloridamarketplace.com. If you have previously received payment from the Department of Health for medical records and none of your information (address, FEID, etc.) has changed since your last payment, you do not need to register and may proceed to step 2.

2) Submit a proper invoice that includes:
   a) Name and address where medical copies are sent
   b) Appropriate billing address
   c) If hard copy records, an itemized break out of the number of pages being charged
   (for example: 25 pages @ 1.00 = 25.00 & 5 pages @ .25 = 1.25 for a total of 26.25)
   d) If electronic records, an itemized break out of the number of pages/images included on the CD or DVD, not to exceed $10.00 per filled CD/DVD.
   e) DOH case number (listed on the subpoena, if one was issued)
   f) Federal tax identification number of physician or facility
   g) Subpoena number (if applicable)

3) Send copies of medical records and invoice to:

   Department of Health
   Consumer Services Unit
Secured Message

From: Roeback, Linda <linda.roeback@nchmd.org>
To: ronald.foos@flhealth.gov
Date: 02/06/2019 08:06:26 PM EST
Subject: RE: Confidential Pursuant to 456.073(10)

I should have the file in order by Friday.

--------Original Message:

From: ronald.foos@flhealth.gov
To: "Roeback, Linda" <linda.roeback@nchmd.org>
Date: 02/04/2019 03:19:03 PM GMT
Subject: RE: Confidential Pursuant to 456.073(10)

Okay, thanks. Do you have an estimate of when I should get them?

--------Original Message:

From: "Roeback, Linda" <linda.roeback@nchmd.org>
To: "Foos, Ronald J" <Ronald.Foos@flhealth.gov>
Date: 02/04/2019 09:59:17 AM EST
Subject: RE: Confidential Pursuant to 456.073(10)

Good morning Jay. I just received the employment file and need to organize it. Outside counsel is organizing the credential's file and should have that to me shortly. I will send them both as soon as they're ready.

Many thanks,

Linda

Linda M Roeback
General Counsel
NCH Healthcare System, Inc.
350 7th Street North
Naples, FL 34102
(239) 624-4010
linda.roeback@nchmd.org

From: Foos, Ronald J [mailto:Ronald.Foos@flhealth.gov]
Sent: Monday, February 04, 2019 8:44 AM
To: Roeback, Linda <linda.roeback@nchmd.org>
Subject: Confidential Pursuant to 456.073(10)

Zargaroff 2018-22260

Linda,

Good morning. Just checking on the status of my subpoena request for records.
Thanks

R. Jay Foos
Medical Quality Assurance Investigator
Florida Department of Health
2295 Victoria Avenue, Suite 242, Fort Myers, FL 33901
Phone: (239) 338-2623, Fax: (239) 338-2337
ronald.foos@flhealth.gov (link: mailto:ronald.foos@flhealth.gov)

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My apologies. I will send them out Monday.

--- Original Message:
From: ronald.foos@flhealth.gov
To: linda.roeback@nchmd.org
Date: 02/08/2019 01:04:16 PM GMT
Subject: RE: Confidential Pursuant to 456.073(10)

That would be great. I'm getting some pressure from Tallahassee. Thanks.

--- Original Message:
From: linda.roeback@nchmd.org
To: ronald.foos@flhealth.gov
Date: 02/06/2019 08:06:26 PM EST
Subject: RE: Confidential Pursuant to 456.073(10)

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Linda

Linda M Roeback
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Sent: Monday, February 04, 2019 8:44 AM
To: Roeback, Linda &lt;linda.roeback@nchmd.org&gt;
Subject: Confidential Pursuant to 456.073(10)

Zargaroff 2018—22260

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Good morning. Just checking on the status of my subpoena request for records.

Thanks

R. Jay Foos
Medical Quality Assurance Investigator
Florida Department of Health
2295 Victoria Avenue, Suite 242, Fort Myers, FL 33901
Phone: (239) 338-2623, Fax: (239) 338-2337
ronald.foos@flhealth.gov (link: mailto:ronald.foos@flhealth.gov)

(image)

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456.057 - Ownership and control of patient records; report or copies of records to be furnished.—
10)(a) All patient records obtained by the department and any other documents maintained by the department which identify the patient by name are confidential and exempt from s. 119.07(1) and shall be used solely for the purpose of the department and the appropriate regulatory board in its investigation, prosecution, and appeal of disciplinary proceedings. The records shall not be available to the public as part of the record of investigation for and prosecution in disciplinary proceedings made available to the public by the department or the appropriate board.