

FILED DATE - DEC 21 2017  
Department of Health

*Amber Greene*

By: \_\_\_\_\_  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2017-01603  
LICENSE NO.: ME0044641

GUILLERMO O. CASTELLVI, M.D.,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on December 1, 2017, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise full advised in the premises, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which Respondent was given 7 days to accept. By email dated December 19, 2017, counsel for Respondent timely accepted the Board's Counter Settlement Agreement on behalf of the Respondent. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

1. The fine set forth in Paragraph 2 of the Stipulated Disposition shall be increased to \$10,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$4,015.23.

3. Within six months of entry of the Final Order, Respondent is required to submit a letter for publication by the county medical society specifically addressing the pitfalls/complications of colonic surgery during the surgical management of colonic polyps. The letter shall request that it be shared by the medical society with its members via publication in a newsletter, on its website, or by some other means. A copy of the letter shall be provided to the Board's Compliance Officer. As an alternative to the requirement for publication of the letter set forth above, Respondent shall make a presentation to the surgical staff members at his hospital/surgical facility specifically addressing the pitfalls/complications of colonic surgery during the surgical management of colonic polyps. Documentation of completion of said presentation shall be provided to the Board's Probation Committee.

4. Respondent shall document the completion of a course on physician/patient communication within one year from the date the Final Order is filed.

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as amended.

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

DONE AND ORDERED this 20<sup>th</sup> day of December, 2017.

BOARD OF MEDICINE

  
\_\_\_\_\_  
Claudia Kemp, J.D., Executive Director  
For Brigitte R. Goersch, Vice-Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to GUILLERMO O. CASTELLVI, M.D., P.O. Box 320502, Tampa, Florida 33679; to Keith M. Hoffman, Esquire, Fudge & McArthur, P.A., 650 16<sup>th</sup> Street North, St. Petersburg, Florida 33705; by email to Allison Dudley, Assistant General Counsel, Department of Health, at [Allison.Dudley@flhealth.gov](mailto:Allison.Dudley@flhealth.gov); and by email to Edward A. Tellechea, Chief Assistant Attorney General, at

Ed.Tellechea@myfloridalegal.com this 21<sup>st</sup> day of  
DEC, 2017.

*Amber Greene*  
~~Deputy Agency Clerk~~

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2017-01603**

**GUILLERMO O. CASTELLVI, M.D.,**

**RESPONDENT.**

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**SETTLEMENT AGREEMENT**

Guillermo O. Castellvi, M.D., referred to as the "Respondent," and the Department of Health, referred to as the "Department," stipulate and agree to the following Settlement Agreement ("Agreement") and to the entry of a Final Order of the Board of Medicine, referred to as the "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

The Department is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapters 456 and 458, Florida Statutes.

**STIPULATED FACTS**

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 44641.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent alleging violations of Chapters 456 and/or

458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. For purposes of these proceedings, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

#### **STIPULATED CONCLUSIONS OF LAW**

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and/or 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapters 456 and/or 458, Florida Statutes.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate, and acceptable to Respondent.

#### **STIPULATED DISPOSITION**

1. **Letter Of Concern** – The Board shall issue a Letter of Concern against Respondent's license.

2. **Fine** - The Board shall impose an administrative fine of *three thousand, five hundred dollars and zero cents (\$3,500.00)* against Respondent's license which Respondent shall pay to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty (30) days from the date of filing of the Final Order accepting this Agreement ("Final Order"). **All fines shall be paid by cashier's check or money order.** Any change in the terms of

payment of any fine imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED IN THIS SETTLEMENT AGREEMENT. SPECIFICALLY, IF RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL RESPONDENT RECEIVES SUCH WRITTEN CONFIRMATION FROM THE BOARD.**

3. **Reimbursement of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for the Department's costs incurred in the investigation and prosecution of this case ("Department costs"). Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, any other costs Respondent incurs to comply with the Final Order, and the Board's administrative costs directly associated with Respondent's probation, if any. Respondent agrees that the amount of Department costs to be paid in this case is *three thousand, six hundred, thirty-three dollars and sixty-nine cents (\$3,633.69) but shall not exceed five thousand, six hundred, thirty-three dollars and sixty-nine cents (\$5,633.69)*. Respondent will pay such Department costs to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty (30) days from the date of filing of the Final Order. **All costs shall be**

**paid by cashier's check or money order.** Any change in the terms of payment of costs imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED IN THIS SETTLEMENT AGREEMENT. SPECIFICALLY, IF RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL RESPONDENT RECEIVES SUCH WRITTEN CONFIRMATION FROM THE BOARD.**

4. **Continuing Medical Education – "Risk Management"** – Respondent shall complete this requirement and document such completion within one (1) year from the date the Final Order is filed. **Respondent shall satisfy this requirement in one of the two following ways:**

(a) Respondent shall complete five (5) hours of CME in "Risk Management" after first obtaining written advance approval from the Board's Probation Committee of such proposed course, and shall submit documentation of such completion, in the form of certified copies of the receipts, vouchers, certificates, or other official proof of completion, to the Board's Probation Committee; or



(b) Respondent shall complete (5) five hours of CME in risk management by attending one full day or eight (8) hours, whichever is more, of disciplinary hearings at a regular meeting of the Board of Medicine. In order to receive such credit, Respondent must sign in with the Executive Director of the Board before the meeting day begins, Respondent must remain in continuous attendance during the full day or eight (8) hours of disciplinary hearings, whichever is more, and Respondent must sign out with the Executive Director of the Board at the end of the meeting day or at such other earlier time as affirmatively authorized by the Board. Respondent may not receive CME credit in risk management for attending the disciplinary hearings portion of a Board meeting unless the Respondent is attending the disciplinary hearings portion for the **sole** purpose of obtaining the CME credit in risk management. In other words, Respondent may not receive such credit if appearing at the Board meeting for any other purpose, such as pending action against Respondent's medical license.

5. **Lecture/Seminar** – Within twelve (12) months following the filing date of a Final Order, Respondent shall present a one (1) hour lecture/seminar on Wrong Site and/or Wrong Procedures to medical staff at an approved medical facility. Respondent shall submit a written plan to the Board's Probation Committee for approval prior to performance of said lecture/seminar. Within twelve months of the date of filing of the Final Order, Respondent shall obtain a letter from the Risk Manager of the approved medical facility indicating that the lecture/seminar has been completed and submit such letter to the Board's Probation Committee.

### **STANDARD PROVISIONS**

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

2. **No Force or Effect until Final Order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

3. **Continuing Medical Education** - Unless otherwise provided in this Agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Respondent shall submit documentation to the Board's Probation Committee of having completed a CME course in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the filing of the Final Order in this matter. All such documentation shall be sent to the Board's Probation Committee, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. CME hours required by this Agreement shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board's Probation Committee, such CME course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must provide current residence and practice addresses to the Board. Respondent shall notify the Board in writing within ten (10) days

of any changes of said addresses and shall also comply with all statutory requirements related to practitioner profile and licensure renewal updates.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458, or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this Agreement, the Respondent shall read Chapters 456, 458, and 893, Florida Statutes, and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **Violation of Terms** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony, or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the

Board or any of its members from further participation, consideration, or resolution of these proceedings.

8. **No Preclusion of Additional Proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

9. **Waiver of Attorney's Fees and Costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of Department costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

10. **Waiver of Further Procedural Steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement

*[Signatures appear on the following page]*

SIGNED this 29 day of September, 2017.

Guillermo O. Castellvi  
Guillermo O. Castellvi, M.D.

STATE OF FLORIDA

COUNTY OF Hillsborough

BEFORE ME personally appeared Guillermo O Castellvi, M.D., whose identity is known to me or who produced FL Drivers License (type of identification) and who, under oath, acknowledges that his signature appears above.

SWORN TO and subscribed before me this 29 day of SEPT, 2017.



H. Scott Galloway  
NOTARY PUBLIC

My Commission Expires: 6-15-21

APPROVED this 2 day of October, 2017.

Celeste Philip, MD, MPH  
Surgeon General & Secretary

By: Corynn Alberto  
Corynn Alberto, Esq.  
Assistant General Counsel  
Department of Health

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

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**v.**

**CASE NO. 2017-01603**

**GUILLERMO O. CASTELLVI, M.D.,**

**RESPONDENT.**

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**ADMINISTRATIVE COMPLAINT**

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Guillermo O. Castellvi, M.D., and alleges:

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

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 44641.

3. Respondent's address of record is P.O. Box 320502, Tampa, Florida 33679.

4. On or about June 9, 2016, Patient PM ("PM"), a then 49 year old female, presented to Dr. M., M.D. ("Dr. M.") for a colonoscopy.

5. During the colonoscopy, Dr. M. documented a 25 mm polyp in PM's descending colon. Due to its size, Dr. M. was only able to partially resect the polyp. He placed a hemostatic clip to prevent bleeding and tattooed the area.

6. PM was subsequently referred to Respondent for surgical resection of the left colon.

7. On or about July 15, 2015, PM presented to Respondent for a pre-operative history and physical.

8. On or about July 15, 2015, Respondent incorrectly documented that Dr. M. incompletely resected a polyp in PM's right colon, and identified the planned procedure as a right colectomy.

9. On or about July 20, 2016, PM presented to Respondent at Tampa Community Hospital.

10. On or about July 20, 2016, Respondent performed a right colectomy of PM's ascending colon.

11. Section 456.072(1)(bb), Florida Statutes (2016), provides that performing or attempting to perform health care services on the wrong

patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition is grounds for disciplinary action by the Board of Medicine.

12. On or about July 20, 2016, Respondent performed a wrong-site and/or wrong procedure when he performed a right colectomy of PM's ascending colon instead of a left colectomy of her descending colon.

13. Based on the foregoing, Respondent has violated Section 456.072(1)(bb), Florida Statutes (2016), by performing a wrong-site and/or wrong procedure.

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



SIGNED this 21<sup>st</sup> day of August, 2017.

Celeste Philip, M.D., M.P.H.  
Surgeon General and Secretary of Health

Corynn Alberto

Corynn Alberto  
Assistant General Counsel  
Florida Bar Number 68814  
Florida Department of Health  
Office of the General Counsel  
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Tallahassee, Florida 32399-3265  
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FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK Amber Greene  
DATE AUG 21 2017

PCP Date: August 18, 2017

PCP Members: Mark Avila, M.D.; Magda H. Averhoff, M.D.; Bradley Levine

### **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.**