

FILED DATE **NOV 08 2017**

Department of Health

By: *Amber Greene*
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-11782

LICENSE NO.: ME0072530

GUY EDWARD NICOLAS, 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 October 13, 2017, in Tampa, 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 fully advised in the premises,

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 following clarification:


The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$3,005.95.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

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

DONE AND ORDERED this 7th day of November 2017.

BOARD OF MEDICINE



Claudia Kemp, J.D., Executive Director
For Magdalena Averhoff, M.D., 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 GUY EDWARD NICOLAS, M.D., 800 North Maitland Avenue, Maitland, Florida 32751; by email to Michael R. D'Lugo, Esquire, Wicker, Smith, et al., at mdlugo@wickersmith.com; by email to Allison Dudley, Assistant General Counsel, Department of Health, at Allison.Dudley@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at

Ed.Tellechea@myfloridalegal.com this 8th day of
November, 2017.

Amber Greene

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2015-11782

Guy Edward Nicolas, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Guy Edward Nicolas, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 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 72530.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent alleging violations of Chapter 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/her capacity as a licensed physician, he/she is subject to the provisions of Chapters 456 and 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 Chapter 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 ***Five Thousand Dollars and Zero Cents (\$5,000.00)*** 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/HER 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 *Two Thousand One Hundred Twenty-Two Dollars and Zero Cents (\$2,122.00)*, but *shall not exceed Four Thousand One Hundred Twenty-Two Dollars and Zero Cents (\$4,122.00)*. 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/HER 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** - Respondent shall document completion of ten (10) hours of Continuing Medical Education (CME) in diagnosis in cardiology within one (1) year from the date the Final Order is filed.

5. **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.

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

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 to include, but not limited to, all statutory requirements related to practitioner profile and licensure renewal updates. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 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.]

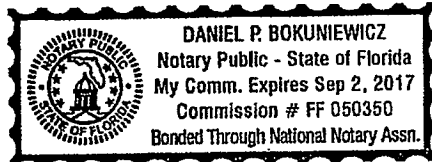
SIGNED this 8 day of August, 2017.

Guy Edward Nicolas
Guy Edward Nicolas, M.D.

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME personally appeared Guy E Nicolas, whose identity is known to me or who produced FLDL [REDACTED] [REDACTED] (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 8th day of AUGUST, 2017.



Daniel P. Bokuniewicz
NOTARY PUBLIC

My Commission Expires:

APPROVED this 11 day of August, 2017.

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

By: Jasmine Green
Jasmine Green
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO.: 2015-11782

GUY EDWARD NICOLAS, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

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

1. Petitioner is the state agency charged with regulating the practice of Medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
 2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 72530.
 3. Respondent's address of record is 800 North Maitland Ave., Maitland, Florida 32751.
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4. On or about August 27, 2012, Patient J.W., a forty-seven (47) year-old female, presented to Orlando Health Physician Associates with complaints of hypertension, possibly Hyperlipidemia¹ and pain in her foot.

5. Respondent assessed Patient J.W. and diagnosed her with poor control of her hypertension and reinforced medical advice for Patient J.W. to increase her Lisinopril. Additionally, Respondent waited for the results of previous laboratory work and recommended conservative management and stretching for the foot and ankle.

6. On or about April 1, 2013, Patient J.W. again presented to Orlando Health Physician Associates to address difficulties with recurrent chest pain.

7. Patient J.W. stated the chest pains were very severe and "stopped her in her tracks at times".

8. Patient J.W. stated that she felt she was having a heart attack, although she reportedly realized that was not the case.

9. Respondent deemed the chest pain was likely an esophageal spasm for which Respondent prescribed Patient J.W. Librax² and recommended that she see a gastroenterologist for an endoscopy if the medication failed to provide relief.

¹ Hyperlipidemia is an abnormally high concentration of fats or lipids in the blood.

² Librax is used to treat stomach ulcers, irritable bowel syndrome, and intestinal infections.

10. Respondent also assessed Patient J.W. for hypertension and instructed Patient J.W. to stop taking Hydrochlorothiazide. Respondent provided Patient J.W. with a trial of Dyrenium.

11. On or about April 12, 2013, Patient J.W. complained of chest pain and suffered a cardiac arrest.

12. Upon EMS' arrival, Patient J.W. was unstable and unresponsive.

13. Patient J.W. was transported to Orlando Health, South Seminole Hospital, where she was later pronounced deceased.

14. At all times material to the charge set forth herein, the prevailing professional standard of care required Respondent to:

- a.) conduct an adequate history, which included a risk factor assessment for a patient complaining of chest pain;
- b.) to order or perform an EKG on a patient complaining of chest pain; and/or
- c.) to send a patient complaining of chest pain to an emergency room or an expedited outpatient facility for a chest pain evaluation.

15. Section 458.331(1)(t)1., Florida Statutes (2012), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes. Section 456.50(1)(g), Florida

Statutes (2012), states medical malpractice means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes (2012), provides that the prevailing standard of care for a given healthcare provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

16. The Respondent failed to meet the standard of care for Patient J.W. by:

- a. failing to conduct an adequate history of Patient J.W. including a risk factor assessment;
- b. failing to order or perform an EKG on Patient J.W.; and/or
- c. failing to send Patient J.W. to an emergency room or an expedited outpatient facility to have a chest pain evaluation.

17. Based on the foregoing, Respondent violated Section 458.331(1)(t)1., Florida Statutes (2012).

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand,

placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 24th day of April, 2017.

Celeste Phillip, M.D., M.P.H.
Surgeon General and Secretary



Chad Dunn
Assistant General Counsel
Florida Bar No. 111963
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
(850) 245-4444, Ext. 8224
(850) 245-4684 fax
E-Mail: chad.dunn@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Amber Greene**
DATE **APR 24 2017**

PCP: April 21, 2017
PCP Members: Dr. Ginzburg, Dr. Romanello

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.