

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.: 2015-24292

LICENSE NO.: ME0083451

GARY HELFIN, 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 \$2,820.04.

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 TH day of November 2017.

BOARD OF MEDICINE

Claudia Kemp
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 GARY HELFIN, M.D., P.O. Box 3774, Ocala, Florida 34478; and 10461 SW Highway 484, Dunnellon, Florida 34432; by email to Gregory A. Chaires, Esquire, Chaires, Brooderson & Guerrero, at gchaires@chlawyers.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.

Anber Greene

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-24292

GARY HELFIN, M.D.,

Respondent.

_____ /

SETTLEMENT AGREEMENT

GARY HELFIN, 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 83451.
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. **Reprimand** - The Board shall issue a Reprimand against Respondent's license.

2. **Fine** - The Board shall impose an administrative fine of ***Seven Thousand Five Hundred Dollars and no Cents (\$7,500.00)*** against Respondent's license which Respondent shall pay to: Payments, Department of Health, Compliance Management Unit, Bln 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 ***Eight Hundred Twenty Dollars and Four Cents (\$820.04), but shall not exceed Two Thousand Eight Hundred Twenty Dollars and Four Cents (\$2,820.04).*** 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. Drug Course - Respondent shall document completion of a Board-approved drug prescribing course within one (1) year from the date the Final Order is filed.

5. Records Course - Respondent shall document completion of a Board-approved medical records course within one (1) year from the date the Final Order is filed.

6. Continuing Medical Education - Respondent shall document completion of five (5) hours of Continuing Medical Education (CME) in Nephrology within one (1) year from the date the Final Order is filed.

7. 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 21 day of July, 2017.

Gary Helfin
GARY HELFIN, M.D.

STATE OF FLORIDA
COUNTY OF Marion

BEFORE ME personally appeared Gary Helfin, whose
identity is known to me or who produced Florida Driver's License (type of
identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 21 day of July,
2017.



Kimberly A. Eaton
NOTARY PUBLIC

My Commission Expires: September 3, 2017

APPROVED this 26 day of July, 2017.

Celeste Philip, MD, MPH
Surgeon General and Secretary

By: Michael E. Morris
Michael E. Morris
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-24292

GARY HELFIN, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Gary Helfin, 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 83451.
3. Respondent's address of record is 10461 SW Highway 484, Dunnellon, Florida 34432.

4. Patient K.F., a twenty-seven year-old female, was a patient of the Respondent.

5. On or about February 11, 2014, Patient K.F. started complaining to Respondent about a potential kidney stone.

6. Respondent had records indicating that Patient K.F. was treating with Tramadol, Percoset, Fluoxetine, and Promethazine.

7. On or about May 12, 2014, Respondent prescribed morphine 60 mg. extended release to Patient K.F., to be taken twice a day, but Respondent never adequately documented medical justification for the prescription.

8. The standard starting dose for morphine is 15mg every eight to twelve hours.

9. Patient K.F. was also taking fluoxetine and promethazine, and Respondent signed a CVS form indicating the patient could start morphine despite possible contraindications.

10. Respondent did not take additional precautions to monitor Patient K.F., despite her taking fluoxetine and promethazine in combination with morphine.

11. At about 5:25PM on May 14, 2014, Patient K.F.'s husband found her unresponsive in the bedroom, and 911 was called immediately.

12. Patient K.F. ultimately was transported to Shands Hospital and diagnosed with poisoning by opiates and related narcotics.

13. At all times material to this Complaint, the prevailing professional standard of care required Respondent to:

- a. Prescribe morphine for medically justified reasons;
- b. Begin with an initial dose of morphine at 15mg every eight to twelve hours; and/or
- c. Take additional precautions regarding monitoring for central nervous system or respiratory depression when morphine is prescribed with either fluoxetine or promethazine.

Count I

14. Petitioner re-alleges and incorporates by reference paragraphs one (1) through thirteen (13), as if fully set forth herein.

15. Section 458.331(1)(t), Florida Statutes (2013), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.60, Florida Statutes (2013). Section 456.50(1)(g), Florida Statutes (2013), 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 (2013), 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. Respondent fell below the prevailing professional standard of care, in one or more of the following was, by:

- a. Prescribing morphine (60 mg) extended release to Patient K.F. without medical justification;
- b. Beginning Patient K.F. with a dose of 60 mg morphine extended release, without medical necessity; and/or
- c. Failing to monitor for central nervous system and respiratory depression while Patient K.F. was taking morphine in combination with fluoxetine and promethazine.

17. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2013).

Count II

18. Petitioner re-alleges and incorporates by reference paragraphs one (1) through thirteen (13), as if fully set forth herein.

19. Section 458.331(1)(m), Florida Statutes (2013), provides that the Board of Medicine may take disciplinary action against a licensee for “.....failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment for the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered and reports of consultations and hospitalizations.”

20. Section 458.331(1)(nn), Florida Statutes (2013), provides that the Board of Medicine may take disciplinary action against a licensee for violating any provision of Chapter 456 or Chapter 458, Florida Statutes (2012), or any rules adopted pursuant thereto.

21. Rule 64B8-9.003, Florida Administrative Code, provides that, “[t]he medical record shall contain sufficient information to identify the

patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed or administered; reports of consultations and hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient."

22. Respondent failed to adequately create or maintain medical records that justify the course of treatment of Patient K.F. in one or more of the following ways:

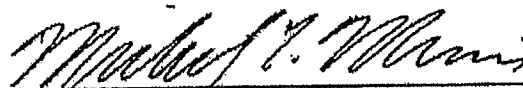
- a. By not creating or maintaining adequate records indicating the medical justification for prescribing morphine with fluoxetine and promethazine; and/or
- b. In the alternative to paragraph 16(a), by not creating or maintaining adequate records indicating the medical justification for the prescription of and the dosage of morphine 60 mg extended release to Patient K.F.

23. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2013), and/or Section 458.331(1)(nn), Florida Statutes (2013).

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 13 day of December, 2016.

Celeste Phillip, MD, MPH
Surgeon General and Secretary



Michael E. Morris
Assistant General Counsel
Florida Bar No. 0081493
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4640, Ext. 8114
Fax: (850) 245-4684
E-Mail: michael.morris@flhealth.gov

FILED

Department Of Health
Deputy Clerk

CLERK *Linda Leonard*
DATE *12.13.16*

MEM/ep

PCP Date: December 12, 2016

PCP Members: Mark Avila, M.D., Jorge Lopez, M.D., Donald Mullins

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.