

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-15182
LICENSE NO.: ME0105157

MIGUEL ANGEL MONTOYA, 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 \$39,421.80.

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 17th 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 MIGUEL ANGEL MONTOYA, M.D., 6802 North Armenia Avenue, Tampa, Florida 33604; to Dale R. Sisco, Esquire, Sisco Law Firm, 1110 N. Florida Avenue, Tampa, Florida 33602; 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.

Angel Sanders
Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2013-15182

MIGUEL ANGEL MONTOYA, M.D.,

Respondent.

_____ /

SETTLEMENT AGREEMENT

MIGUEL ANGEL MONTOYA, 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 105157.
2. The Department charged Respondent with an Amended 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 Amended 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 *Twelve Thousand Dollars and no Cents (\$12,000.00)* 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 ninety (90) 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 ***Thirty-Seven Thousand Four Hundred Twenty-One Dollars and Eighty Cents (\$37,421.80)***, but shall not exceed ***Thirty-Nine Thousand Four Hundred Twenty-One Dollars and Eighty Cents (\$39,421.80)***. 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 ninety (90) 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. **Laws And Rules Course** - Respondent shall document completion of a Board-approved laws and rules 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 – "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.

7. **Restriction on Practice (PIP)** - Respondent's practice is permanently restricted in that Respondent may not perform services for patients eligible for or applying for Personal Injury Protection ("PIP") benefits, or apply for reimbursement for services involving PIP services.

8. **Probation Language** - Effective on the date of the filing of the Final Order, Respondent's license to practice medicine shall be placed on probation for a period of Two Years. The purpose of probation is not to prevent Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the obligations and restrictions set forth in this Paragraph.

(a) **Indirect Supervision** - Respondent shall practice only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "Monitor," whose responsibilities are set by the Board. Indirect supervision does not require that the Monitor practice on the same premises as Respondent; however, the Monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 20 miles unless otherwise provided by the Board, and shall be readily available for consultation. The Monitor shall be Board Certified, and actively engaged, in Respondent's specialty area unless otherwise provided by the Board. Respondent shall allow the Monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the Monitor to perform the duties set forth in this Paragraph.

(b) **Restriction** - Respondent shall not practice medicine without an approved Monitor/Supervisor, as specified in this Agreement, unless otherwise ordered by the Board.

(c) Eligibility of Monitor/Supervisor - The Monitor/Supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his/her license. In addition, the Board may reject any proposed Monitor/Supervisor on the basis that he/she has previously been subject to any disciplinary action against his/her medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The Board may also reject any proposed Monitor/Supervisor for good cause shown.

(d) Temporary Approval Of Monitor/Supervisor - The Board confers authority on the Chairman of the Probation Committee to temporarily approve Respondent's Monitor/Supervisor. To obtain temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting the Agreement is filed, Respondent shall not practice medicine without an approved Monitor/Supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

(e) Formal Approval Of Monitor/Supervisor - Prior to the consideration of the Monitor/Supervisor by the Probation Committee, Respondent shall provide a copy of the Administrative Complaint and Final Order in this case to the Monitor/Supervisor. Respondent shall submit a copy of the proposed Monitor/Supervisor's current curriculum vita and a description of his/her current practice to the Board office no later than fourteen (14) days before Respondent's first scheduled probation appearance. Respondent shall

ensure that the Monitor/Supervisor is present with Respondent at Respondent's first appearance before the Probation Committee. **It shall be Respondent's responsibility to ensure the appearance of the Monitor/Supervisor as directed.** If the Monitor/Supervisor fails to appear as required, this shall constitute a violation of this Settlement Agreement and shall subject Respondent to disciplinary action.

(f) Change In Monitor/Supervisor - In the event that the Monitor/Supervisor is unable or unwilling to fulfill the responsibilities of a Monitor/Supervisor as described above, Respondent shall immediately advise the Probation Committee of this fact and submit the name of a temporary Monitor/Supervisor for consideration. **Respondent shall not practice pending approval of the temporary Monitor/Supervisor by the Chairman of the Probation Committee.** Furthermore, Respondent shall make arrangements with his/her temporary Monitor/Supervisor to appear before the Probation Committee at its next regularly scheduled meeting. Respondent shall only practice under the auspices of the temporary Monitor/Supervisor (after approval by the Chairman) until the next regularly scheduled meeting of the Probation Committee at which the formal approval of Respondent's new Monitor/Supervisor shall be addressed.

(g) Responsibilities of Respondent - In addition to the other responsibilities set forth in this Agreement, Respondent shall be solely responsible for ensuring that:

- (1) The Monitor/Supervisor submits tri-annual reports as required by this Agreement or directed by the Board;

(2) Respondent submits tri-annual reports as required by this Agreement or directed by the Board;

(3) The Monitor/Supervisor appears before the Probation Committee as required by this Agreement or directed by the Board; and

(4) Respondent appears before the Probation Committee as required by this Agreement or directed by the Board.

(5) Respondent shall pay all costs associated with probation.

Respondent understands and agrees that if either the approved Monitor/Supervisor or the Respondent fails to appear before the Probation Committee as required, Respondent shall immediately cease practicing medicine until such time as both the approved Monitor/Supervisor (or approved alternate) and the Respondent appear before the Probation Committee.

(h) Responsibilities of the Monitor/Supervisor - The Monitor/Supervisor shall:

(1) Review Twenty-Five percent of Respondent's active patient records at least once every quarter for the purpose of ascertaining compliance with PIP restrictions. The Monitor shall go to Respondent's office once every quarter and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

(2) Maintain contact with Respondent on a frequency of at least once per quarter. In the event that Respondent does not timely contact the

Monitor, the Monitor shall immediately report this fact in writing to the Probation Committee.

(3) Submit reports to the Probation Committee on a tri-annual basis, in affidavit form, which shall include:

- a. A brief statement of why Respondent is on probation;
- b. A description of Respondent's practice (type and composition);
- c. A statement addressing Respondent's compliance with the terms of probation;
- d. A brief description of the Monitor/Supervisor's relationship with Respondent;
- e. A statement advising the Probation Committee of any problems that have arisen; and
- f. A summary of the dates the Monitor/Supervisor went to Respondent's office, the number of records reviewed, the overall quality of the records reviewed, and the dates Respondent contacted the Monitor/Supervisor.

(4) Report immediately to the Board any violations by Respondent of Chapters 456 or 458, Florida Statutes, and the rules promulgated thereto.

(l) Respondent's Required Appearance Before Probation Committee - Respondent shall appear before the Probation Committee at the **first** meeting of said Committee following commencement of the probation, at the **last** meeting of the Committee preceding scheduled termination of the probation, and at such other times as directed by the Committee. Respondent shall be noticed by the Board staff of the date, time and place of the Committee meeting at which Respondent's appearance is required. **Failure of Respondent to appear as directed, and/or failure of**

Respondent to comply with any of the terms of this Agreement, shall be considered a violation of the terms of this Agreement, and shall subject Respondent to disciplinary action.

(j) Monitor/Supervisor's Required Appearance - Respondent's Monitor/Supervisor shall appear before the Probation Committee at the first meeting of said Committee following commencement of the probation, and at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure the appearance of Respondent's monitor to appear as directed. **If the approved Monitor/Supervisor falls to appear as directed by the Probation Committee, Respondent shall immediately cease practicing medicine until such time as the approved Monitor/Supervisor or alternate approved monitor appears before the Probation Committee.**

(k) Reporting by Respondent - Respondent shall submit tri-annual reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- (1) A brief statement of why Respondent is on probation;
- (2) A description of practice location;
- (3) A description of current practice (type and composition);
- (4) A brief statement of compliance with probationary terms;
- (5) A description of the relationship with the Monitor/Supervisor;
- (6) A statement advising the Board of any problems that have

arisen; and

(7) A statement addressing compliance with any restrictions or requirements imposed.

(l) Tolling Provisions - In the event Respondent physically leaves the State of Florida for a period of thirty (30) days or more or otherwise does not engage full-time in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

(1) The time period of probation shall be tolled;

(2) The provisions regarding direct and indirect supervision and required reports from the monitor/supervisor shall be tolled;

(3) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled; and

(4) Any provisions regarding community service shall be tolled.

(m) Active Practice - In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

(n) Supervision of Physician Assistants and/or Anesthesiologist Assistants - Respondent is required to notify, in writing, any physician assistant and/or anesthesiologist assistant whom the Probationer supervises, of Respondent's

probationary status. A copy of said written notification(s) shall be submitted to the Board's Compliance Officer within ten (10) days of the filing of the Final Order.

9. **Amending Complaint**- Petitioner agrees to amend the filed Amended Administrative Complaint to delete Counts IV - VI, upon the acceptance of this Agreement by the Board of Medicine and the Respondent.

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.

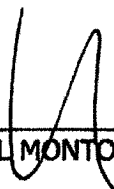
9. **Waiver Of Attorney's Fees And Costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of Department costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives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

SIGNED this 22nd day of June, 2017.



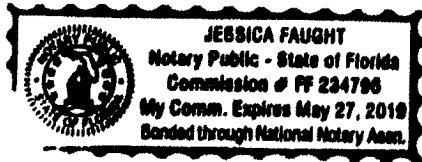
MIGUEL ANGEL MONTOYA, M.D.

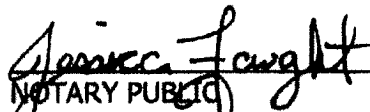
STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME personally appeared Miguel Angel Montoya, whose identity is known to me or who produced _____ (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 22nd day of June, 2017.






NOTARY PUBLIC

My Commission Expires:

APPROVED this 22 day of June, 2017.

Celeste Phillip, MD, MPH
Surgeon General and Secretary


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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Amber Greene
DATE MAY 30 2017

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2013-15182

MIGUEL ANGEL MONTOYA, M.D.,

Respondent.

_____ /

AMENDED ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Amended Administrative Complaint before the Board of Medicine against Respondent Miguel Angel Montoya, 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 105157.

3. Respondent's address of record is 6802 N. Armenia Avenue, Tampa, Florida 33604.

4. On or about September 21, 2012, Patients P.L., A.O., and C.M. presented to Respondent at the same time in his office.
5. Respondent saw the patients for less than nine minutes total.
6. At no time were the patients separated for individual assessments.
7. The patients were an undercover detective and two informants, using pseudonyms.
8. The appointment was audiotaped and videotaped.
9. Respondent failed to perform a physical examination on any of the three patients.
10. Respondent failed to create a treatment plan for any of the three patients.
11. Respondent sent the three patients for x-rays, without a physical examination.
12. Per Respondent's instructions, all three patients presented for x-rays; however, only Patients A.O. and C.M. actually had x-rays performed.
13. Respondent failed to create or maintain documentation of referring the three patients for x-rays.

14. On or about October 30, 2012, Patients P.L., A.O., and C.M. presented to Respondent for a follow-up visit.

15. At that time, Respondent failed to review readily available medical records from the patients' first visit, failed to inquire about x-ray results, failed to review physical therapy results, failed to perform physical examinations and/or failed to create treatment plans for all three patients.

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

- a. Perform a physical examination;
- b. Perform a complete individual physical examination for each patient prior to referral for x-rays, other diagnostic testing, or further treatment;
- c. Review any medical records or results at a follow-up visit, including x-rays, from prior visits and/or procedures;
- d. Review and analyze the physical therapy progress of the patients; and
- e. Create a treatment plan for each patient.

17. Respondent knew or should have known that the three patients were presenting for personal-injury protection (PIP) claims.

18. Respondent knew or should have known that the three patients were subject to the statutes governing PIP, including Section 627.736, Florida Statutes (2012).

19. Respondent failed to comply with the treatment provisions and requirements under Section 627.736, Florida Statutes (2012).

20. Respondent facilitated the creation and submission of fraudulent and untrue insurance forms, medical evaluations and billing statements for PIP for all three patients.

21. Respondent did not create or maintain adequate medical records which would justify the treatment of the three patients.

Count I

22. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

23. Section 458.331(1)(t), Florida Statutes (2012), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.60, Florida Statutes (2012). 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.

24. Respondent fell below the prevailing professional standard of care in his treatment of Patient P.L. by:

- a. Failing to perform a physical exam on either September 21, 2012, or October 30, 2012;
- b. Failing to perform a physical exam on or about September 21, 2012, prior to referral for x-rays, other diagnostic testing, or further treatment;
- c. Failing to review any medical records or results at a follow-up visit, including x-rays, from prior visits and/or procedures on or about October 30, 2012;
- d. Failing to review and analyze the physical therapy progress of the patient on or about October 30, 2012; and/or
- e. Failing to create a treatment plan.

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

Count II

26. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

27. Section 458.331(1)(t), Florida Statutes (2012), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.60, Florida Statutes (2012). 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.

28. Respondent fell below the prevailing professional standard of care in his treatment of Patient A.O. by:

- a. Failing to perform a physical exam on either September 21, 2012, or October 30, 2012;

- b. Failing to perform a physical exam on or about September 21, 2012, prior to referral for x-rays, other diagnostic testing, or further treatment;
- c. Failing to review any medical records or results at a follow-up visit, including x-rays, from prior visits and/or procedures on or about October 30, 2012;
- d. Failing to review and analyze the physical therapy progress of the patient on or about October 30, 2012; and/or
- e. Failing to create a treatment plan.

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

Count III

30. Petitioner re-alleges and Incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

31. Section 458.331(1)(t), Florida Statutes (2012), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.60, Florida Statutes (2012). 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.

32. Respondent fell below the prevailing professional standard of care in his treatment of Patient C.M. by:

- a. Failing to perform a physical exam on either September 21, 2012, or October 30, 2012;
- b. Failing to perform a physical exam on or about September 21, 2012, prior to referral for x-rays, other diagnostic testing, or further treatment;
- c. Failing to review any medical records or results at a follow-up visit, including x-rays, from prior visits and/or procedures on or about October 30, 2012;
- d. Failing to review and analyze the physical therapy progress of the patient on or about October 30, 2012; and/or
- e. Failing to create a treatment plan.

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

Count IV

34. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

35. Section 458.331(1)(k), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for making deceptive, untrue or fraudulent representations in or related to the practice of medicine, or for employing a trick or scheme in the practice of medicine.

36. Respondent made deceptive, untrue or fraudulent representations in or related to the practice of medicine, or employed a trick or scheme in the practice of medicine in one or more of the following ways:

- a. By signing for, or by his actions causing, the submission of fraudulent and untrue insurance documents, medical evaluations and billing statements for PIP indicating that physical examinations were performed for Patient P.L., when a physical was not performed; and/or
- b. By participating in a plan to defraud PIP insurance carriers.

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

Count V

38. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

39. Section 458.331(1)(k), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for making deceptive, untrue or fraudulent representations in or related to the practice of medicine, or for employing a trick or scheme in the practice of medicine.

40. Respondent made deceptive, untrue or fraudulent representations in or related to the practice of medicine, or employed a trick or scheme in the practice of medicine in one or more of the following ways:

- a. By signing for, or by his actions causing, the submission of fraudulent and untrue insurance documents, medical evaluations and billing statements for PIP indicating that physical examinations were performed for Patient A.O., when a physical was not performed; and/or
- b. By participating in a plan to defraud PIP Insurance carriers.

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

Count VI

42. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

43. Section 458.331(1)(k), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for making deceptive, untrue or fraudulent representations in or related to the practice of medicine, or for employing a trick or scheme in the practice of medicine.

44. Respondent made deceptive, untrue or fraudulent representations in or related to the practice of medicine, or employed a trick or scheme in the practice of medicine in one or more of the following ways:

- a. By signing for, or by his actions causing, the submission of fraudulent and untrue insurance documents, medical evaluations and billing statements for PIP indicating that physical examinations were performed for Patient C.M., when a physical was not performed; and/or
- b. By participating in a plan to defraud PIP insurance carriers.

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

Count VII

46. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

47. Section 458.331(1)(m), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for ".....falling 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."

48. Section 458.331(1)(nn), Florida Statutes (2012), 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.

49. 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.”

50. Respondent failed to adequately create or maintain medical records that justify the course of treatment of Patient P.L. in one or more of the following ways:

- a. By not documenting his referral for x-rays and any other instructions for care on September 21, 2012; and/or
- b. By not documenting the information available to him at the October 30, 2012 visit; and any other instructions for care afterward.

51. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2012), and/or Section 458.331(1)(nn), Florida Statutes (2012).

Count VIII

52. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

53. Section 458.331(1)(m), Florida Statutes (2012), 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."

54. Section 458.331(1)(nn), Florida Statutes (2012), 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.

55. 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."

56. Respondent failed to adequately create or maintain medical records that justify the course of treatment of Patient A.O., in one or more of the following ways:

- a. By not documenting his referral for x-rays and any other instructions for care afterward on September 21, 2012; and/or

b. By not documenting the information available to him at the October 30, 2012 visit; and any other instructions for care afterward.

57. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2012), and/or Section 458.331(1)(nn), Florida Statutes (2012).

Count IX

58. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

59. Section 458.331(1)(m), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for ".....falling 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."

60. Section 458.331(1)(nn), Florida Statutes (2012), 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.

61. 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."

62. Respondent failed to adequately create or maintain medical records that justify the course of treatment of Patient C.M. in one or more of the following ways:

- a. By not documenting his referral for x-rays and any other instructions for care afterward on September 21, 2012; and/or

b. By not documenting the information available to him at the October 30, 2012 visit and any other instructions for care afterward.

63. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2012), and/or Section 458.331(1)(nn), Florida Statutes (2012).

Count X

64. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

65. Section 458.331(1)(g), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for failing to perform any statutory or legal obligation placed upon a licensed physician.

66. Section 627.736(1)(6), Florida Statutes (2012) indicates, "[t]he Financial Services Commission shall adopt by rule the form that must be used by an insurer and health care provider.... To document that the health care provider meets the criteria of this paragraph, which rule must include a requirement for a sworn statement or affidavit."

67. Section 627.736(5)(e), Florida Statutes (2012), indicates,

1. [a]t the initial treatment or service provided, each physician, other licensed professional, clinic, or other medical institution

providing medical services upon which a claim for personal injury protection benefits is based shall require an Insured person, or his or her guardian, to execute a disclosure and acknowledgment form, which reflects at a minimum that: . . .

c. The insured, or his or her guardian, was not solicited by any person to seek any services from the medical provider; . . .

4. The licensed medical professional rendering treatment for which payment is being claimed must sign, by his or her own hand, the form complying with this paragraph.

5. The original completed disclosure and acknowledgment form shall be furnished to the insurer pursuant to paragraph 4(b) and may not be electronically furnished. . . .

9. . . . For subsequent treatments or service, the provider must maintain a patient log signed by the patient, in chronological order by date of service, which is consistent with the services being rendered to the patient as claimed.

68. Respondent failed to perform his legal obligations under Section 627.736 in one or more of the following ways:

- a. Respondent knew or should have known that someone was bringing him Patient P.L., who had been solicited;
- b. Respondent did not have the proper disclosure statements signed by Patient P.L.;
- c. Respondent did not personally sign the proper statutory forms for Patient P.L.; and/or
- d. Respondent did not create a log for subsequent treatments for Patient P.L.

69. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes (2012) through violation of Section 627.736, Florida Statutes (2012).

Count XI

70. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

71. Section 458.331(1)(g), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for failing to perform any statutory or legal obligation placed upon a licensed physician.

72. Section 627.736(1)(6), Florida Statutes (2012) indicates , "[t]he Financial Services Commission shall adopt by rule the form that must be used by an insurer and health care provider.... To document that the health care provider meets the criteria of this paragraph, which rule must include a requirement for a sworn statement or affidavit."

73. Section 627.736(5)(e), Florida Statutes (2012), indicates,

1. [a]t the initial treatment or service provided, each physician, other licensed professional, clinic, or other medical institution providing medical services upon which a claim for personal injury protection benefits is based shall require an insured person, or his or her guardian, to execute a disclosure and acknowledgment form, which reflects at a minimum that: . . .

c. The insured , or his or her guardian, was not solicited by any person to seek any services from the medical provider; . . .

4. The licensed medical professional rendering treatment for which payment is being claimed must sign, by his or her own hand, the form complying with this paragraph.

5. The original completed disclosure and acknowledgment form shall be furnished to the insurer pursuant to paragraph 4(b) and may not be electronically furnished. . . .

9. ...For subsequent treatments or service, the provider must maintain a patient log signed by the patient, in chronological order by date of service, which is consistent with the services being rendered to the patient as claimed.

74. Respondent failed to perform his legal obligations under Section 627.736 in one or more of the following ways:

- a. Respondent knew or should have known that someone was bringing him Patient A.O., who had been solicited;
- b. Respondent did not have the proper disclosure statements signed by Patient A.O.;
- c. Respondent did not personally sign the proper statutory forms for Patient A.O.; and/or
- d. Respondent did not create a log for subsequent treatments for Patient A.O.

75. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes (2012) through violation of Section 627.736, Florida Statutes (2012).

Count XII

76. Petitioner re-alleges and incorporates by reference paragraphs one (1) through twenty-one (21), as if fully set forth herein.

77. Section 458.331(1)(g), Florida Statutes (2012), provides that the Board of Medicine may take disciplinary action against a licensee for failing to perform any statutory or legal obligation placed upon a licensed physician.

78. Section 627.736(1)(6), Florida Statutes (2012) indicates , "[t]he Financial Services Commission shall adopt by rule the form that must be used by an insurer and health care provider.... To document that the health care provider meets the criteria of this paragraph, which rule must include a requirement for a sworn statement or affidavit."

79. Section 627.736(5)(e), Florida Statutes (2012), Indicates,

1. [a]t the initial treatment or service provided, each physician, other licensed professional, clinic, or other medical institution providing medical services upon which a claim for personal injury protection benefits is based shall require an insured person, or his or her guardian, to execute a disclosure and acknowledgment form, which reflects at a minimum that: . . .

c. The insured , or his or her guardian, was not solicited by any person to seek any services from the medical provider; . . .

4. The licensed medical professional rendering treatment for which payment is being claimed must sign, by his or her own hand, the form complying with this paragraph.

5. The original completed disclosure and acknowledgment form shall be furnished to the insurer pursuant to paragraph 4(b) and may not be electronically furnished. . . .

9. ...For subsequent treatments or service, the provider must maintain a patient log signed by the patient, in chronological order by date of service, which is consistent with the services being rendered to the patient as claimed.

80. Respondent failed to perform his legal obligations under Section 627.736 in one or more of the following ways:

- a. Respondent knew or should have known that someone was bringing him Patient C.M., who had been solicited;
- b. Respondent did not have the proper disclosure statements signed by Patient C.M.;
- c. Respondent did not personally sign the proper statutory forms for Patient C.M.; and/or
- d. Respondent did not create a log for subsequent treatments for Patient C.M.

81. Based on the foregoing, Respondent violated Section 458.331(1)(g), Florida Statutes (2012) through violation of Section 627.736, Florida Statutes (2012).

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 25 day of May, 2017.

Celeste Phillip, MD, MPH
Surgeon General and Secretary



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MEM/ep

PCP Date: May 26, 2017

PCP Members: Georges El-Bahri, M.D., Seela Ramesh, M.D., Nicholas 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.