

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

MARK S. FRISCH, M.D.,

Respondent.

Final Order No. DOH-17-0668-*S* - MQA

FILED DATE - *APR 21 2017*
Department of Health

By: *Amy R. Carraway*
Deputy Agency Clerk

DOH CASE NO.: 2015-10916

LICENSE NO.: ME0096093

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on April 7, 2017, in Fort Lauderdale, 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 \$5,230.82.

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 20th day of April,
2017.

BOARD OF MEDICINE

Cynthia A. Spill for
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 MARK S. FRISCH, M.D., 601 East Rollins Street, Orlando, Florida 32803; to 13614 Glynshel Drive, Winter Garden, Florida 34787; and 2000 Fowler Grove Boulevard, Winter Garden, Florida 34787; to Gregory A. Chaires, Esquire, Chaires, Brooderson & Guerrero, 283 Cranes Roost Boulevard, Suite 165, Altamonte Springs, Florida 32701; 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 21st day of

April, 2017.

Amy L. Conway

Deputy Agency Clerk

Mission:

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



Rick Scott
Governor

Celeste Philip, MD, MPH
Surgeon General and Secretary

Vision: To be the Healthiest State in the Nation

MEMORANDUM

DATE: April 19, 2017

TO: Adrienne C. Rodgers, J.D. Bureau Chief
Bureau of Health Care Practitioner Regulation

FROM: Claudia J. Kemp
Executive Director, Board of Medicine

SUBJECT: Delegation of Authority

This is to advise you that while I am out of the office April 19, 2017 through April 21, 2017 the following Executive Director is delegated to serve as Acting Executive Director for the Board of Medicine.

Joe Baker Executive Director (850) 245-4158

CK/lw
cc:

Sylvia Sanders
Staff, Board of Medicine
Board and Council Chairs

Florida Department of Health
Board of Medicine

4052 Bald Cypress Way, Bin C-03 • Tallahassee, Florida 32399
PHONE: 850/245-4131 • FAX: 850/488-0596 and 850/412-1268
FloridaHealth.gov



Accredited Health Department
Public Health Accreditation Board

Sanford, Crystal

From: Baker, Joe
Sent: Thursday, April 20, 2017 10:13 AM
To: Sanford, Crystal
Cc: Willis, Leonta; Kemp, Claudia J
Subject: Delegation

You are authorized to sign Orders for the BOM today and tomorrow.

Thank you.

Joe Baker, Jr., Exec. Dir.
Florida Board of Nursing
Sent from my DOH iPad

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2015-10916

MARK S. FRISCH, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Mark S. Frisch, M.D. (hereinafter "Respondent"), and the Florida Department of Health (hereinafter the "Department"), hereby stipulate and agree to the entry of a Final Order of the Florida Board of Medicine (hereinafter the "Board"), incorporating the following agreed terms in settlement of the above-styled and -numbered matter.

STIPULATED FACTS

1. The Department is charged with regulating the practice of medicine within the State of Florida pursuant to Section 20.43, Florida Statutes, and Chapters 456 and 458, Florida Statutes.
2. At all times material hereto, Respondent was a licensed physician within the State of Florida, having been issued license number ME 96093.

3. The Department filed and properly served upon Respondent an Administrative Complaint which charged him with violations of Chapter 458, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

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

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a Florida-licensed physician, he 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 **Ten Thousand Dollars and Zero Cents (\$10,000.00)** against Respondent's license which Respondent shall pay to: Payments, Department of Health, Compliance Management Unit, Bln C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, within thirty (30) days of the date of the filing of the Final Order accepting this Agreement (the "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 Board's Probation Committee.**

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED IN THIS AGREEMENT. SPECIFICALLY, IF RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION WITHIN FORTY-FIVE (45) DAYS FROM THE DATE THE FINAL ORDER IS FILED 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 currently ***Four Thousand Four Hundred Forty-Five Dollars and Ninety-One Cents (\$4,445.91)***, but shall not exceed ***Six Thousand Four Hundred Forty-Five Dollars and Ninety-One Cents (\$6,445.91)***. Respondent will pay such Department costs to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, Florida 32314-6320, within thirty (30) days from the date the Final Order is filed. **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 Board's Probation Committee.**

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT
OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY**

AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED IN THIS AGREEMENT. SPECIFICALLY, IF RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION WITHIN FORTY-FIVE (45) DAYS OF THE DATE THE FINAL ORDER IS FILED THAT THE FULL AMOUNT OF THE COSTS 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 complete five (5) hours of Continuing Medical Education (hereinafter "CME") in the area of high risk emergency medicine, or a Board-approved equivalent, after first obtaining written advance approval from the Board's Probation Committee (hereinafter "Probation Committee") of such proposed course. Respondent shall complete this requirement and document such completion within one (1) year from the date the Final Order is filed.

5. **Medical 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 of the date of filing of the Final Order. **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 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 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. 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 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 date the Final Order is filed. All such documentation shall be sent to the 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 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, Respondent

shall read Chapters 456, 458, and 893, Florida Statutes, and the Rules of the Board, 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 this 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 hereto 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 this Agreement and the Final Order of the Board incorporating this Agreement.

[Signatures appear on next page.]

SIGNED this 3 day of February, 2017.

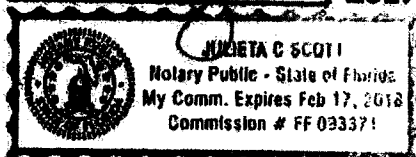
Mark S. Frisch
Mark S. Frisch, M.D.

STATE OF Florida

COUNTY OF Orange

BEFORE **ME** personally appeared
Mark Frisch, whose identity is known to me or who
produced drivers license (type of identification) and
who, under oath, acknowledges that his signature appears above.

SWORN TO and subscribed before me this 3rd day of
February, 2017.



Judith C Scott
NOTARY PUBLIC

My Commission Expires:

APPROVED this 9th day of FEBRUARY, 2017.

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

Geoffrey M. Christian
Geoffrey M. Christian, Esq.
Assistant General Counsel

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2015-10916

MARK S. FRISCH, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner, the Florida Department of Health (hereinafter "Petitioner"), hereby files this Administrative Complaint before the Florida Board of Medicine (hereinafter the "Board") against Respondent, Mark S. Frisch, M.D. (hereinafter "Respondent"), and in support thereof alleges:

1. Petitioner is charged with regulating the practice of medicine within the State of Florida pursuant to Section 20.43, Florida Statutes, and Chapters 456 and 458, Florida Statutes.
2. At all times material hereto, Respondent was a licensed physician within the State of Florida, having been issued license number ME 96093.
3. At all times material hereto, Respondent was certified in Emergency Medicine by the American Board of Emergency Medicine.

4. Respondent's address of record is 13614 Glynshel Drive, Winter Garden, Florida 34787.
5. On or about March 24, 2015, Patient A.I., then a twenty-two (22) year old female (hereinafter "A.I."), presented to Respondent in the Emergency Room at Florida Hospital Waterman in Tavares, Florida (hereinafter the "ER"), with complaints of abdominal pain.
6. Respondent ordered A.I. undergo a urine pregnancy test and, based on the results, diagnosed her with pregnancy.
7. Respondent ordered A.I. undergo a pelvic ultrasound, after performance of which, the technician advised Respondent the fetus' estimated gestational age was thirty-five (35) weeks and six (6) days.
8. Respondent performed a pelvic examination of A.I. which revealed abnormal green discharge.
9. Respondent ordered A.I. undergo further urinalysis and, based on the results, diagnosed her with cervicitis and a urinary tract infection.
10. Respondent failed to differentially diagnose, or failed to document differentially diagnosing, A.I. with possible premature rupture of membranes.

11. Respondent failed to differentially diagnose, or failed to document differentially diagnosing, A.I. with possible premature labor.

12. Respondent prescribed parenteral and oral antibiotics to A.I. and discharged her home.

13. A.I.'s medical condition required further emergent evaluation by an obstetrician.

14. Respondent failed to arrange, or failed to document arranging, for emergent transfer of A.I. to an obstetrician for further evaluation.

15. On or about March 25, 2015, the ultrasound report was read by the radiologist whose impressions included: single live intrauterine pregnancy; a large disparity in estimated age based on measurements; and potential premature rupture of membranes.

16. On or about March 27, 2015, A.I. again presented to the ER with complaints of dysuria and abdominal pain.

17. Following examination, A.I. was emergently transferred to the labor and delivery department where the baby was delivered stillborn.

COUNT I

18. Petitioner re-alleges and incorporates paragraphs one (1) through seventeen (17) as if fully set forth herein.

19. Section 458.331(1)(t)1., Florida Statutes (2014), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes. Section 456.50(1)(g), Florida Statutes (2014), defines the term "medical malpractice" to mean "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(1), Florida Statutes (2014), provides the prevailing professional 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.

20. At all times material hereto, the prevailing professional standard of care required that Respondent treat A.I. in the following manner:

- a. Differentially diagnose A.I. with possible premature rupture of membranes;
- b. Differentially diagnose A.I. with possible premature labor; and/or
- c. Arrange for emergent transfer of A.I. to an obstetrician for further evaluation.

21. On or about March 24, 2015, Respondent fell below the minimum professional standard of care in his treatment of A.I. in one or more of the following ways:

a. By failing to differentially diagnose A.I. with possible premature rupture of membranes;

b. By failing to differentially diagnose A.I. with possible premature labor; and/or

c. By failing to arrange for emergent transfer of A.I. to an obstetrician for further evaluation.

22. Based on the foregoing, Respondent violated Section 458.331(1)(t)1., Florida Statutes (2014).

COUNT II

23. Petitioner re-alleges and incorporates paragraphs one (1) through seventeen (17) as if fully set forth herein.

24. Section 458.331(1)(m), Florida Statutes (2014), subjects a licensee to discipline for failing to keep legible medical records that justify the course of treatment of 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.

25. Section 458.331(1)(nn), Florida Statutes (2014), subjects a licensee to discipline for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

26. Rule 64B8-9.003(1), Florida Administrative Code (revised September 9, 2013), provides that medical records are maintained to serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment; to furnish documentary evidence of the course of the patient's medical evaluation, treatment, and change in condition; to document communication between the practitioner responsible for the patient and any other health care professional who contributes to the patient's care; and to assist in protecting the legal interest of the patient, the hospital, and the practitioner responsible for the patient.

27. Rule 64B8-9.003(2), Florida Administrative Code (revised September 9, 2013), provides that a licensed physician shall maintain patient medical records in English, in a legible manner, and with sufficient detail to clearly demonstrate why the course of treatment was undertaken.

28. Rule 64B8-9.003(3), Florida Administrative Code (revised September 9, 2013), provides that the 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.

29. In the alternative to Count I above, on or about March 24, 2015, Respondent violated Section 458.331(1)(m), Florida Statutes (2014), by failing to create and keep legible medical records that justify the course of A.I.'s treatment, and/or Respondent violated Section 458.331(1)(nn), Florida Statutes (2014), through a violation of Rule 64B8-9.003, Florida Administrative Code (revised September 9, 2013), by failing to create and keep legible medical records with sufficient detail to clearly demonstrate why the course of A.I.'s treatment was undertaken, specifically, by failing to document one or more of the following:

- a. Differentially diagnosing A.I. with possible premature rupture of membranes;
- b. Differentially diagnosing A.I. with possible premature labor; and/or
- c. Arranging for emergent transfer of A.I. to an obstetrician for further evaluation.

30. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2014) and/or Respondent violated Section 458.331(1)(nn), Florida Statutes (2014), through a violation of Rule 64B8-9.003, Florida Administrative Code (revised September 9, 2013).

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

SIGNED this 6TH day of JANUARY, 2017.

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



Geoffrey M. Christian, Esq.
Assistant General Counsel
Florida Bar No. 0010325
Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone (850) 245-4640, ext. 4661
Facsimile (850) 245-4684
E-mail Geoffrey.Christian@health.gov
Attorney for Petitioner

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Bridget Coates*
DATE 1-6-2017

PCP Date: January 6, 2017
PCP Members: S. Rosenberg, M.D.; Mr. D. Mullins

**DOH V. MARK S. FRISCH, M.D.
DOH CASE NUMBER 2015-10916**

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 of Health within 21 days from the day Respondent received this 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 this 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 of Medicine shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on Respondent in addition to any other discipline imposed.