

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-16-2383-^S-MQA

FILED DATE - DEC 16 2016

Department of Health

By: Ornel Sadous
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-21253

LICENSE NO.: ME0013614

DONALD S. FRANKLIN, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on December 2, 2016, in Kissimmee, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise full advised in the premises, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which was accepted on the record by the parties. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

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

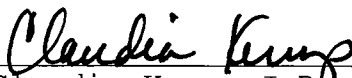
2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$1,959.04.

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

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

DONE AND ORDERED this 15th day of December, 2016.

BOARD OF MEDICINE



Claudia Kemp, J.D., Executive Director
For Sarvam TerKonda, 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 DONALD S. FRANKLIN, M.D., 5905 Grand Loneoak Lane, Lithia, Florida

33547-4874; to Bruce D. Lamb, Esquire, 401 East Jackson Street,
Suite 2500, 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 16th day of

Dec . _____, 2016.

Angel Sanders

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2015-21253

DONALD S. FRANKLIN, M.D.,

Respondent.

_____ /

SETTLEMENT AGREEMENT

Donald S. Franklin, 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 13614.
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 capacity as a 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 ***eight thousand dollars and zero cents (\$8,000.00)*** against Respondent's license which Respondent shall pay to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty (30) days from the date of filing of the Final Order accepting this Agreement ("Final Order"). **All fines shall be paid by cashier's check or money order.** Any change in the terms of payment of any fine imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

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

3. **Reimbursement of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for the Department's costs incurred in the investigation and prosecution of this case ("Department costs"). Any costs that Respondent incurs to comply with the Final Order, including but not limited to, the costs associated with quality assurance reviews and/or the probationary supervision of Respondent's practice, are the separate and sole responsibility of Respondent. Respondent agrees that the amount of Department costs to be paid in this case is ***one thousand four hundred fifty-seven dollars and fifty-seven cents (\$1,457.57), but shall not exceed three thousand four hundred fifty-seven dollars and fifty-seven cents (\$3,457.57)***. Respondent will pay such Department costs to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty (30) days from the date of filing of the Final Order. **All costs shall be paid by cashier's check or money order.** Any change in

the terms of payment of costs imposed by the Board **must be approved in advance by the Probation Committee of the Board.**

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

4. **Continuing Medical Education – 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. **Continuing Medical Education – 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. **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.

STANDARD PROVISIONS

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

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

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

4. **Addresses** - Respondent must provide current residence and practice addresses to the Board. Respondent shall notify the Board in writing within ten (10) days of any changes of said addresses and shall also comply with all statutory requirements related to practitioner profile and licensure renewal updates.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 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 10 day of September, 2016.

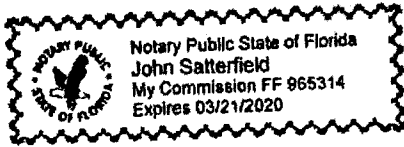
Donald S. Franklin
Donald S. Franklin, M.D.

STATE OF FLORIDA

COUNTY OF Hillsborough

BEFORE ME personally appeared Donald S. Franklin, whose identity is known to me or who produced FL DL (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 10 day of September, 2016.



[Signature]
NOTARY PUBLIC

My Commission Expires: 03/21/2020

APPROVED this 28th day of September, 2016.

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

By: Jack F. Wise
Jack F. Wise
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-21253

DONALD S. FRANKLIN, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Donald S. Franklin, 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 13614.

3. Respondent's address of record is 5905 Grand Loneoak Lane, Lithia, Florida 33547.

4. On or about February 17, 2014, Patient B.S., a male then in his early twenties, presented to Respondent for medical assessment and/or treatment.

5. On or about February 17, 2014, Patient B.S. disclosed to Respondent that he was obtaining injectable testosterone from a source unknown to Respondent.

6. Patient B.S. indicated that he was utilizing the testosterone referenced in the preceding paragraph for body-building purposes.

7. On or about February 17, 2014, Patient B.S. reported to Respondent that he was suffering from headaches and elevated blood pressure.

8. On or about February 17, 2014, Respondent surmised that Patient B.S.' symptoms were likely the result of excess estrogen production secondary to Patient B.S.' high-dose testosterone use.

9. On or about February 17, 2014, Respondent wrote Patient B.S. a prescription for Anastrozole, an estrogen-blocking substance.

10. On or about February 20, 2014, Patient B.S. presented to Respondent for medical assessment and/or treatment.

11. On or about February 20, 2014, Respondent continued Patient B.S. on Anastrozole.

12. In February 2014, Respondent did not obtain or review any medical records establishing that Patient B.S. was experiencing excess estrogen production.

13. In February 2014, Respondent did not obtain bloodwork or perform other diagnostic testing to confirm whether Patient B.S. was experiencing excess estrogen production.

14. On or about April 6, 2014, Patient B.S. presented to Respondent for medical assessment and/or treatment.

15. On or about April 6, 2014, Patient B.S. reported to Respondent that he was continuing to use testosterone, and that he was continuing to experience headaches.

16. On or about April 6, 2014, Respondent surmised that Patient B.S.' ongoing headaches were caused by elevated prolactin levels.

17. On or about April 6, 2014, Respondent wrote Patient B.S. a prescription for Carbergoline, a prolactin-blocking substance.

18. On or about April 10, 2014, Patient B.S. presented to Respondent for medical assessment and/or treatment.

19. On or about April 10, 2014, Respondent continued Patient B.S. on Carbergoline.

20. In April 2014, Respondent did not obtain or review any medical records establishing that Patient B.S. was experiencing elevated prolactin levels.

21. In April 2014, Respondent did not obtain bloodwork or perform other diagnostic testing to confirm whether Patient B.S. was experiencing elevated prolactin levels.

22. On one or more occasions between June 27, 2014 and January 9, 2015, Respondent prescribed the following substances to Patient B.S.: Clindamycin, Bactroban ointment, Doxycycline, Zithromax, oral prednisone, Neurontin, and diazepam.

23. On one or more occasions in 2015, Respondent also prescribed Anastrozole to Patient B.S.

24. Respondent did not keep any contemporaneous medical records regarding the medical assessment and/or treatment that he provided to Patient B.S. between February 17, 2014 and January 9, 2015.

25. To the extent that Respondent has medical records regarding the medical assessment and/or treatment that he provided to Patient B.S. between February 17, 2014 and January 9, 2015, such records were all created in or about October 2015.

COUNT I

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

27. At all times material to this case, the prevailing professional standard of care dictated that Respondent should:

- a) Refrain from prescribing to a patient, and/or refrain continuing a patient on, Anastrozole and/or Carbergoline for the purpose of counteracting non-emergent symptoms associated with the patient's known, non-medical use of testosterone;
- b) Refrain from prescribing to a patient, and/or refrain from continuing a patient on, Anastrozole and/or Carbergoline in the absence of medical records, bloodwork, or other diagnostic testing confirming a medically appropriate basis (i.e. excess estrogen levels or elevated prolactin levels, respectively) for the prescriptions.

28. Regarding his aforementioned medical assessment and/or treatment of Patient B.S., Respondent failed to meet the prevailing professional standard of care in one or more of the following ways:

- a) On one or more occasions in February 2014, April 2014, and/or in 2015, Respondent prescribed to Patient B.S., and/or continued Patient B.S. on, Anastrozole and/or Carbergoline for the purpose of counteracting non-emergent symptoms associated with Patient B.S.' known, non-medical use of testosterone; and/or
- b) On one or more occasions in February 2014, April 2014, and/or in 2015, Respondent prescribed to Patient B.S., and/or continued Patient B.S. on, Anastrozole and/or Carbergoline in the absence of medical records, bloodwork, or diagnostic testing confirming a medically appropriate basis (ex. excess estrogen levels or elevated prolactin levels, respectively) for the prescriptions.

29. Section 458.331(1)(t)1., Florida Statutes (2013-2014), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50(1)(g), Florida Statutes. Section 456.50(1)(g), Florida Statutes (2013-2014), states that 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 (2013-2014), 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.

30. Based on the foregoing, Respondent committed medical malpractice in violation of Section 458.331(1)(t)1., Florida Statutes (2013-2014).

COUNT II

31. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-five (25) as if fully set forth herein.

32. Section 458.331(1)(nn), Florida Statutes (2013-2014), subjects a licensee to discipline for violating any provision of Chapter 458, Florida Statutes, or any rules adopted pursuant thereto.

33. Rule 64B8-9.003, Florida Administrative Code (2013-2014), is an administrative rule adopted pursuant to Chapter 458, Florida Statutes.

34. Rule 64B8-9.003(1), Florida Administrative Code (2013-2014), states that medical records are maintained, among other purposes, 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; and to assist in protecting the legal interest of the patient, the hospital, and the practitioner responsible for the patient.

35. Rule 64B8-9.003(2), Florida Administrative Code (2013-2014), states that a licensed physician shall maintain patient records in English, in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken.

36. Rule 64B8-9.003(3), Florida Administrative Code (2013-2014), states that a physician's 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, among other things, patient histories, examination results, and test results.

37. Respondent violated Rule 64B8-9.003, Florida Administrative Code (2013-2014), in one or more of the following ways:

- a) Failing to maintain patient records for Patient B.S. during the course of Respondent's assessment and/or treatment of Patient B.S. between February 17, 2014 and January 9, 2015; and/or
- b) In the alternative to sub-paragraph (b) of Count I, failing to maintain medical records for Patient B.S. evidencing other medical records, bloodwork, or diagnostic testing confirming a medically appropriate basis for the aforementioned prescriptions of Anastrozole and/or Carbergoline that Respondent wrote for Patient B.S.

38. Based on the foregoing, Respondent violated Section 458.331(1)(nn), Florida Statutes (2013-2014), through the aforementioned violations of Rule 64B8-9.003, Florida Administrative Code (2013-2014).

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

[Signatures contained on the following page]

SIGNED this 25th day of August, 2016.

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

Jack F. Wise
Jack F. Wise
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar Number 0103953
(P) 850-245-4640, Ext. 8229
(F) 850-245-4684
(E) Jack.Wise@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Sandra Leonard
DATE 8/25/16

JFW/ep

PCP Date: August 19, 2016

PCP Members: Fuad Ashkar, M.D.; Ms. Joy Tootle

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.