

STATE OF FLORIDA  
BOARD OF MEDICINE

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK **Angel Sanders**  
DATE **OCT 10 2011**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2010-03039  
LICENSE NO.: ME0014909

MICHAEL J. BENJAMIN, M.D.,

Respondent.

ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on October 1, 2011, in Tampa, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Pursuant to Section 456.073(9), Florida Statutes, the complainant in this matter appeared and testified at the hearing. 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 Respondent was given 7 days to accept. The Respondent rejected the Board's Counter Settlement Agreement on the record. 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 increased to require a fine in the amount of \$10,000.00.

2. The costs set forth in Paragraph 4 of the Stipulated Disposition shall be set at \$1,728.30.

3. Respondent's license to practice medicine shall be **SUSPENDED** until such time as he undergoes an evaluation by Florida CARES, or a board-approved equivalent evaluator, and personally appears before the Board with said evaluation and the evaluator's recommendations. Upon review of the evaluation, the Board shall determine the conditions for reinstatement and may impose additional terms and conditions on Respondent's practice such as a period of probation with term and conditions to be set at the time of reinstatement.

4. Respondent shall submit to a Quality Assurance review of his medical practice to be performed by a licensed risk manager and provide the Board's Probation Committee with the quality assurance report within six (6) months from the date of entry of the Final Order. In addition, the Respondent shall comply with any and all recommendations made by the risk manager and shall document compliance with said recommendations by submitting a follow-up report completed by the licensed risk manager that verifies Respondent's compliance with all prior recommendations. The follow-up report shall be filed with the

Board's Probation Committee within 30 days from the date of submission of the quality assurance report.

5. Within one (1) year from the date this Final Order is filed, Respondent shall document the completion of 100 hours of community service. Community service shall be provided without fee or cost to the person or entity benefiting from the service, for the good of the people of the State of Florida. A community service plan must be pre-approved by the Board's Probation Committee. Affidavits detailing the completion of community service requirements shall be filed with the Board's Probation Committee.

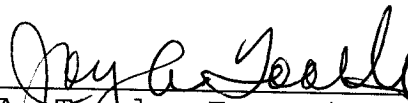
6. The continuing medical education (CME) set forth in Paragraph 6 of the Stipulated Disposition shall be amended to require Respondent to complete a week-long course in child abuse. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said course. Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said course shall consist of a formal live lecture format.

Upon Respondent's rejection of the Board's Counter Settlement Agreement, this matter is referred back to the Department for further proceedings.

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

DONE AND ORDERED this 10th day of October,  
2011.

BOARD OF MEDICINE

  
\_\_\_\_\_  
Joy A. Tootle, Executive Director  
For GEORGE THOMAS, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by U.S. Mail to MICHAEL J. BENJAMIN, M.D., 7777 N. University Drive, Suite 1-2, Tamarac, Florida 33321; to David W. Spicer, Esquire, 11000 Prosperity Farms Road, Suite 104, Palm Beach Gardens, Florida 33410; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 10<sup>th</sup> day of October, 2011.

  
**Deputy Agency Clerk**

REGULATORY REGULATION  
LEGAL  
11 MAY 12 AM 9:57

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**DOH Case No. 2010-03039**

**MICHAEL BENJAMIN, M.D.,**

**Respondent,**

**SETTLEMENT AGREEMENT**

Michael Benjamin, 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 14909.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with 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. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

4. Respondent agrees that Count II of the Administrative Complaint will be dropped only for the purpose of this Settlement Agreement.

**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, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

**STIPULATED DISPOSITION**

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Medicine shall impose an administrative fine of \$8,000.00 against the license of Respondent, to be paid by Respondent to Payments, Department of Health, Compliance Management Unit, Bldg C-76, P. O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. **All fines shall be paid by cashiers check or money order.** The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. Dismissal of Count Two: For the purposes of settlement agreement only, both Petitioner and Respondent have agreed to drop Count Two of the Administrative Complaint filed in this matter. A new complaint will be filed within ten (10) days if the Board adopts this agreement as a resolution for this matter.

4. Reimbursement Of Costs: Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case is currently *nine hundred forty-seven dollars and forty cents (\$947.40)*, but shall not exceed *one thousand nine hundred forty-seven dollars and forty cents (\$1,947.40)*. Respondent will pay costs to Payments, Department of Health, Compliance

Management Unit, Bln C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order in this cause. All costs shall be paid by cashiers check or money order. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

**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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.**

5: Laws And Rules Course - Respondent shall complete course, "Legal and Ethical Implications in Medicine Physician's Survival Guide-Laws and Rules" administered by the Florida Medical Association, or a Board-approved equivalent, within eighteen (18) months of the date of filing of the Final Order of the Board. In addition, Respondent shall submit documentation 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 education course within eighteen (18) months of the date of filing of the Final Order incorporating this Agreement.



6. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend five (5) hours of Continuing Medical Education (CME) In "Recognizing Reasonably Suspected Child Abuse" and/or "Mandatory Reporting Child Abuse Guidelines."

7. **Continuing Medical Education - "Risk Management"** - Respondent shall complete five (5) hours of Continuing Medical Education In "Risk Management" within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

#### **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 written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education

course(s). Respondent shall submit documentation 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 of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, 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. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board 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. 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 considered** - 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.

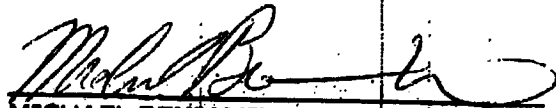
7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction 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 incorporating same 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 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.

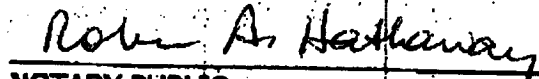
10. Waiver of further procedural steps - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 29th day of April, 2011.

  
MICHAEL BENJAMIN, M.D.

Before me, personally appeared Michael Benjamin, M.D., whose identity is known to me by personally known to me (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 29th day of April, 2011.

  
NOTARY PUBLIC

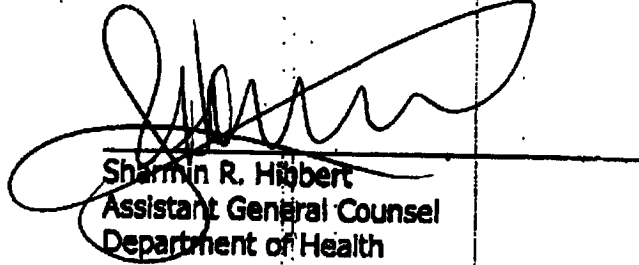
My Commission Expires:



ROBIN A. HATHAWAY  
MY COMMISSION # EE 012028  
EXPIRES: September 25, 2014  
Bonded Thru Budget Notary Services

APPROVED this 12<sup>th</sup> day of May, 2011.

H. Frank Farmer, Jr., M.D., Ph.D.  
Secretary, Department of Health



Sharrin R. Hibbert  
Assistant General Counsel  
Department of Health

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2010-03039**

**MICHAEL J. BENJAMIN, M.D.,**

**RESPONDENT.**

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**AMENDED ADMINISTRATIVE COMPLAINT**

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Michael J. Benjamin, M.D., and in support thereof alleges:

1. Petitioner is the state department 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 14909.
3. Respondent's address of record is 7777 North University Drive, Suite 1-2, Tamarac, Florida 33321.

4. On or about November 4, 2009, Patient E.W., a twelve year-old female, presented to Respondent's office accompanied by her mother, J.M. and her mother's boyfriend, J.J.

5. J.M. had previously contacted a national hotline for reproductive services and was referred to Respondent's office. J.M. was seeking an abortion for her daughter and traveled from Alachua County, Florida to Tamarac, Florida to see Respondent.

6. Patient E.W. was initially seen by N.S., Advanced Registered Nurse Practitioner (ARNP) for Respondent. N.S. went over the procedure and any other issues with E.W. in the presence of her mother, J.M.

7. At the initial visit, an ultrasound was performed and it was determined that E.W. was twenty-four (24) weeks pregnant. There is no indication in the medical record that E.W. received any prenatal care or medical treatment regarding her pregnancy prior to seeing Respondent.

8. Respondent asserts that he had an in depth discussion with E.W. and her mother lasting around thirty (30) minutes. Respondent states he ascertained through this conversation and observations of E.W.'s body language, demeanor, and emotions, that E.W.'s pregnancy was not the result of child abuse, rape, incest, or molestation but instead consensual sexual activity with a neighbor. Under Florida Law, consent is

irrelevant to sexual activity for a twelve (12) year old. There is no indication that Respondent inquired as to if J.M. was aware of the pregnancy or that E.W. was being properly supervised at the time this event occurred.

9. Respondent asserts that N.S. also talked with E.W. when he was not present in the room about boys she liked, school, and if she if knew that sex was adult behavior with consequences.

10. E.W.'s mother, J.M. stated that she did not recall speaking with Respondent and N.S. about the circumstances surrounding E.W.'s pregnancy; she remembers talking only about the abortion procedure briefly before Respondent performed the procedure. J.M. asserts this to be the only time Respondent spoke with her daughter.

11. The record states that Respondent did have pre-operative counseling with E.W. that lasted for approximately 6-8 minutes. There is no indication in the record of any other discussions with E.W. concerning the circumstances surrounding her pregnancy.

12. On or about November 4-6, 2009, Respondent terminated E.W.'s pregnancy utilizing a serial procedure with two (2) days of laminaria insertion to dilate the cervix, and dilation and evacuation of the fetus being



done on the third day. A follow up appointment for E.W. was scheduled; E.W. did not present for the follow up appointment.

13. Respondent never contacted DCF or law enforcement in reference to E.W.'s pregnancy. Any evidence related to this matter was destroyed and unrecoverable by law enforcement as the matter went unreported.

14. Later, E.W. was seen by her pediatrician for a check up following the abortion; it was at this appointment that the pediatrician reported E.W.'s termination of pregnancy to DCF and/or law enforcement.

15. During this investigation, Detective D.M., of the Alachua County Sheriff's Department (ACS), questioned ARNP N.S. who stated that she could not recall specifics about discussions with J.M. or E.W. as to how E.W. became pregnant. N.S. stated that she wasn't sure why DCF or law enforcement was not contacted, but that because the child was present with her mother, there was no reason for a report to be made to law enforcement or to the Florida Department of Children and Families (DCF). N.S. continued to say, "Maybe we've been hardened with so many kids comin' in."

16. Section 39.201(1)(a), Florida Statutes (2009-2010), provides that any person who knows, or has reasonable cause to suspect, that a

child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

17. Respondent had a mandatory duty to report known or reasonably suspected child abuse. Respondent should have known or reasonably suspected that E.W. was the victim of child abuse and/or a crime by the fact that she was twelve years old and pregnant, and had not received any prenatal care even though she was twenty-four (24) weeks pregnant.

### **COUNT ONE**

18. Petitioner realleges and fully incorporates paragraphs one (1) through seventeen (17) as if fully stated herein.

19. Section 458.331(1)(g), Florida Statutes (2009-2010) provides that failing to perform any statutory or legal obligation placed upon a licensed physician is grounds for disciplinary action by the board and/or Department.

20. Section 39.201(1)(a), Florida Statutes (2009-2010), states that any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

21. Respondent had reasonable cause to suspect that E.W. was either being abused, neglected, or improperly supervised. E.W. was age twelve (12), in elementary school, and six (6) months pregnant. There was no indication that E.W. had received any prenatal care or treatment. There was no indication that J.M. attempted to get treatment for E.W. prior to twenty-four (24) weeks or that she was aware of how E.W. was impregnated. Respondent failed to meet his mandatory duty to report suspected child abuse to DCF and or law enforcement. This failure resulted in the impediment of ACS's investigation in this matter and the destruction of evidence.

22. Based on the foregoing, Respondent has violated Section 458.331(1)(g), Florida Statutes (2008), by failing to meet his statutory and legal obligation of reporting known or reasonably suspected child abuse.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2011.**

H. Frank Farmer, Jr., MD, PhD, FACP  
State Surgeon General

\_\_\_\_\_  
Sharmin R. Hibbert  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, BIN C-65  
Tallahassee, FL 32399-3265  
Florida Bar #032569  
(850) 245-4640 VOICE  
(850) 245-4681 FAX

PCP: January 21, 2011

PCP Members: El-Bahri, M.D, Espinola, M.D. & Ms. Goersch

### **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.**

### **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.**