

**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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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 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.

COUNT TWO

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

24. Section 458.331(1)(h), Florida Statutes (2009-2010), provides that making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so, is grounds for disciplinary action by the board and/or Department.

25. Respondent either intentionally or negligently failed to file a mandatory report to DCF regarding suspected child abuse for Patient E.W. which is required by Florida law under Section 39.201, Florida Statutes (2009-2010).

26. Based on the foregoing, Respondent has violated Section 458.331(1)(h), Florida Statutes (2009-2010), by either intentionally or negligently failing to file a mandatory report.

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 21 day of January,
2011.

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

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PCP Members: El-Bahri, M.D, Espinola, M.D., Ms. Goersch
DOH v. Michael Benjamin, M.D. DOH Case No.: 2010-03039

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.