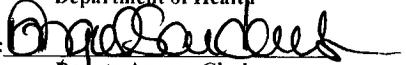


STATE OF FLORIDA
BOARD OF MEDICINE

FILED DATE **MAR 10 2016**
Department of Health

By: 
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2012-16381
LICENSE NO.: ME0055556

FRANK RODRIGUEZ, 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 February 5, 2016, in Orlando, 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 Respondent was given 7 days to accept. By email dated March 9, 2016, counsel for Respondent accepted the Board's Counter Settlement Agreement on behalf of Respondent. 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 \$30,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$5,619.92.

3. 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 12 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.

4. The language regarding the Florida CARES requirement as set forth in Paragraph 7 of the Stipulated Disposition shall be amended to read: "Within 30 days of entry of the Final Order in this matter, Respondent shall make initial contact to undergo an evaluation by Florida CARES, or a board-approved equivalent evaluator, and within 13 months Respondent shall undergo said evaluation and personally appear before the Board (Probation Committee) with said evaluation and the evaluator's

recommendations. If the evaluator recommends that Respondent undergo further evaluation for an impairment issue, such evaluation must be done under the auspices of the Professionals Resource Network (PRN). Upon review of the evaluation, the Board shall set forth terms of remediation and may impose additional terms and conditions on Respondent's practice such as a period of probation with term and conditions to be set forth at such time."

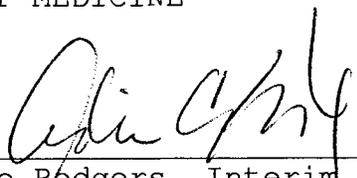
IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement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

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

DONE AND ORDERED this 10th day of March,

2016.

BOARD OF MEDICINE



Adrienne Rodgers, Interim Executive Director
For Steven Rosenberg, 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 FRANK RODRIGUEZ, M.D., 1005 Bear Island Drive, West Palm Beach, Florida 33409; and 7777 N. University Drive, Suite 102, Tamarac, Florida 33321; to Bruce D. Lamb, Esquire, Gunster, Yoakley & Stewart, P.A., 401 East Jackson Street, Suite 2500, Tampa, Florida 33602; by email to Yolonda Green, Assistant General Counsel, Department of Health, at Yolonda.Green@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 10th day of March, 2016.

Angel Sanders

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2012-16381

FRANK RODRIGUEZ, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Frank Rodriguez, M.D., referred to as "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 55556.
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 Complaints.

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 ten thousand dollars (\$10,000.00) 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 ONE HUNDRED FIVE (105) 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 **FOUR THOUSAND FOUR HUNDRED AND SEVENTY-ONE DOLLARS AND SEVENTY-SIX CENTS (\$4,471.76)**, but shall not exceed **SIX THOUSAND FOUR HUNDRED SEVENTY-ONE DOLLARS AND SEVENTY-SIX CENTS (\$6,471.76)**. 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 ONE HUNDRED FIVE (105) 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 – "Abortion Procedures"

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 by completing ten (10) hours of CME in "Abortion Procedures" 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.

5. **Lecture/Seminar** - Within six (6) months following the filing date of a Final Order, Respondent shall present a one (1) hour lecture/seminar on retained foreign body object to medical staff at an approved medical facility. Respondent shall submit a written plan to the Board's Probation Committee for approval prior to performance of said lecture/seminar. Within six months of the date of filing of the Final Order, Respondent shall obtain a letter from the Risk Manager of the approved medical facility indicating that the lecture/seminar has been completed and submit such letter to the Board's Probation Committee.

6. **Medical Records Course** - Within one (1) year of the date of filing of the Final Order, Respondent shall complete the course "Quality Medical Record Keeping for Health Care Professionals" sponsored by the Florida Medical Association, or a Board-approved equivalent, 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.

7. **Physician Assessment** - Within thirty (30) days of the filing of the Final Order, Respondent shall make initial contact with one of the following: (i) the Florida CARES program, (ii) the Center for Personalized Education for Physicians (CPEP), or (iii) the Federation of State Medical Boards and National Board of Medical Examiner's Post Licensure Assessment System, Institute for Physician Evaluation. Within nine (9) months of the filing of the Final Order, Respondent shall complete the application process for the Florida CARES program or a Board-approved equivalent evaluation. Within thirteen (13) months of the filing of the Final Order, Respondent shall be evaluated by, comply with,

and document compliance with, the recommendations of the Florida CARES program or a Board-approved equivalent evaluation. At the next meeting of the Probation Committee following Respondent's receipt of the evaluation, Respondent shall personally appear before the Board's Probation Committee with said evaluation, the evaluator's recommendations, and documentation of compliance. Upon review of such materials, the Board's Probation Committee shall determine any terms and conditions on Respondent's practice, such as a period of probation, with such terms and conditions to be set at the time of review. Respondent may, at his option, appear before the Board instead of the Probation Committee at any regularly scheduled meeting to present the results of the evaluation, including the Board meeting at which this Settlement Agreement is considered.

8. **Restriction on Practice**- Respondent is restricted from performing any and all surgical procedures, including but not limited to abortion procedures, until he complies with all of the terms and conditions set forth in Paragraph 7.

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, 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 Complaints marked 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.]

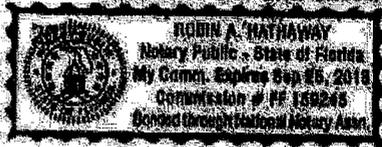
SIGNED this 20 day of Nov, 2015.


Frank Rodriguez, M.D.

STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME personally appeared Frank Rodriguez MD, 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 20th day of November,

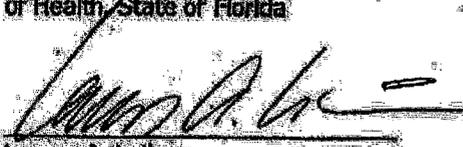



NOTARY PUBLIC

My Commission Expires:

APPROVED this 17th day of December, 2015.

John H. Armstrong, MD, FACS, FCCP
State Surgeon General & Secretary
of Health, State of Florida


By: Lauren A. Loikam
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-16381

FRANK RODRIGUEZ, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Frank Rodriguez, 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 55556.

3. Respondent's address of record is 7777 North University Drive, Suite 102, Tamarac, Florida 33321.

4. On or about September 22, 2012, Patient S.H., a 31 year-old female, presented to Presidential Women's Center, located in West Palm Beach, Florida, to undergo a pregnancy termination ("procedure").

5. During the procedure, Respondent used a cervical dilator to dilate the cervix. Respondent then pushed the cervical dilator into S.H.'s uterine cavity. At some point, Respondent released his hold of the dilator.

6. Respondent failed to remove the cervical dilator used during the procedure from Patient S.H. prior to concluding the procedure.

7. Respondent failed to create and/or keep an adequate surgical operative report of the procedure.

COUNT ONE

8. Petitioner re-alleges and incorporates by reference paragraphs 1 through 7, as if fully set forth herein.

9. Section 456.072(1)(cc), Florida Statutes (2012), subjects a physician to discipline for leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. For the

purposes of this paragraph, it shall be legally presumed that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.

10. Respondent failed to remove a cervical dilator used during the surgery from Patient S.H. prior to concluding the procedure.

11. Based on the foregoing, Respondent violated Section 456.072(1)(cc), Florida Statutes (2012).

COUNT II

12. Petitioner re-alleges and incorporates by reference paragraphs 1 through 7, as if fully set forth herein.

13. Section 458.331(1)(t), Florida Statutes (2012), subjects a physician to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50(1)(g), Florida Statutes (2012), defines medical malpractice as 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.

14. Respondent fell below the standard of care in the treatment of S.H. in one or more the following ways:

- a. By inserting the cervical dilator into S.H.'s uterine cavity; and/or
- b. By releasing his hold of the cervical dilator while it was still inside S.H.

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

COUNT III

16. Petitioner re-alleges and incorporates by reference paragraphs 1 through 7, as if fully set forth herein.

17. Section 458.331(1)(m), Florida Statutes (2012), subjects a physician to discipline 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 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.

18. Respondent violated Section 458.331(1)(m), Florida Statutes (2012), by failing to create and/or keep an adequate surgical operative report of the September 22, 2012, procedure.

19. Based on the foregoing, Respondent violated Section 458.331(1)(m), 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.

(Signature appears on following page)

SIGNED this 27th day of February, 2015.

John H. Armstrong, MD, FACS, FCCP
State Surgeon General & Secretary
of Health, State of Florida



Kristen Summers, Esq.
Assistant General Counsel
Fla. Bar No. 112206
Florida Department of Health
Office of the General Counsel
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Email: kristen.summers@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE MAR 02 2015

KMS/

PCP Date: February 27, 2015
PCP Members: Dr. El-Bahri, Dr. Thomas, and Ms. Tootle

DOH V. FRANK RODRIGUEZ, M.D.

CASE NO. 2012-16381

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.