

FILED DATE - JUL 22 2019
Department of Health

By: *Angel Saucedo*

Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2017-23375
LICENSE NO.: ME0064837

HARVEY CRAIG ROTH, 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 June 7, 2019, in Miami, 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 July 17, 2019, the Respondent timely accepted the Board's Counter Settlement Agreement. 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 \$10,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$3,563.70.

3. The lecture required by Paragraph 4 of the Stipulated Disposition shall include information regarding the performance of the appropriate time-out during surgical procedures.


4. Respondent shall document completion of a Board-approved laws and rules course within one year from the date the Final Order is filed.

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 18th day of July,
2019.

BOARD OF MEDICINE



Claudia Kemp, J.D., 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 HARVEY CRAIG ROTH, M.D., 20423 State Road 7 F6-199, Boca Raton, Florida 33498; Megan S. Paranzino, Esquire, Lubell Rosen, 200 South Andrews Avenue, Suite 900. Fort Lauderdale, Florida 33301; 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 22 day of July, 2019.

Angel Sanders

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2017-23375

HARVEY CRAIG ROTH, M.D.,

Respondent.

_____ /

SETTLEMENT AGREEMENT

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

STIPULATED FACTS

1. The Department is the state agency charged with regulating the practice of medicine in 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 in Florida, having been issued license number ME 64837.
3. The Department filed and properly served upon Respondent an Administrative Complaint which charged him with a violation of chapter 456, 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 a violation of chapter 456, 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 *Three Thousand Dollars and Zero Cents (\$3,000.00)* against Respondent's license which Respondent shall pay to: Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, 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. 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 costs to be paid in this case is currently *Two Thousand Two Hundred Twenty-One Dollars and Eighty-Four Cents (\$2,221.84)*, but shall not exceed *Four Thousand Two Hundred Twenty-One Dollars and Eighty-Four Cents (\$4,221.84)*. Respondent will pay such 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. **Lecture/Seminar** - Within six (6) months from the date the Final Order is filed, Respondent shall present a one (1) hour lecture/seminar in the area of "risk management and avoiding wrong procedures in the office surgery setting," 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 (6) months from the date the Final Order is filed, 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.

5. **Continuing Medical Education - "Risk Management"** - Respondent shall document completion of this requirement 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 Continuing Medical Education (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 five (5) 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 Board's 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 from the date the Final Order is filed. 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.

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 the following page.]

SIGNED this 6 day of March, 2019.

[Signature]
Harvey Craig Roth, M.D.

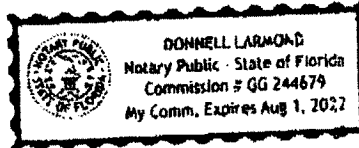
STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME personally appeared Harvey Roth, whose identity is known to me or who produced [Redacted] (type of identification) and who, under oath, acknowledges that his signature appears above.

SWORN TO and subscribed before me this 6 day of 2019 March, 2019.

[Signature]
NOTARY PUBLIC

My Commission Expires:



APPROVED this 12th day of March, 2019.

By: [Signature]
Zachary Bell
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2017-23375

HARVEY CRAIG ROTH, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, files this Administrative Complaint before the Board of Medicine against Respondent, Harvey Craig Roth, 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 64837.

3. Respondent's address of record is: 20423 State Road 7, Suite F6-199, Boca Raton, Florida 33498.

4. Respondent is board certified by the American Board of Obstetrics and Gynecology, in the field of obstetrics and gynecology.

5. On or about December 11, 2017, Patient K.M., then a thirty-five (35) year old female, presented to Respondent at A Woman's Center of Hollywood, 3829 West Hollywood Boulevard, Suite C, Hollywood, Florida 33021, for a medical termination of her pregnancy (the correct procedure).

6. On or about December 11, 2017, Patient S.H. provided informed consent for the medical termination of her pregnancy.

7. On or about December 11, 2017, Respondent performed a surgical termination of pregnancy procedure on Patient K.M. (the wrong procedure), instead of assisting Patient K.M. with a medical termination of her pregnancy.

8. Patient K.M. did not authorize Respondent to perform a surgical termination of pregnancy procedure on her prior to Respondent's performance of the surgical termination of pregnancy procedure.

9. Section 456.072(1)(bb), Florida Statutes (2017), provides that performing or attempting to perform health care services (including the preparation of the patient) on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is

medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition is grounds for disciplinary action by the Board of Medicine.

10. Respondent performed a wrong procedure and/or an unauthorized procedure when he performed a surgical termination of pregnancy procedure on Patient K.M., instead of assisting her in a medical termination of her pregnancy.

11. Based on the foregoing, Respondent violated section 456.072(1)(bb), Florida Statutes (2017), by performing a wrong procedure and/or unauthorized procedure on Patient K.M., by performing an unauthorized surgical termination of pregnancy procedure on Patient K.M. Instead of assisting Patient K.M. with a medical termination of her pregnancy.

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 the following page.]

SIGNED this 3rd day of January, 2019.

Celeste Philip, MD, MPH
State Surgeon General

Corynn Alberto

for

Zachary Bell

68814

Assistant General Counsel

Florida Bar No. 0105735

DOH-Prosecution Services Unit

4052 Bald Cypress Way-Bin C-65

(850) 245-4666

(850) 245-4684 fax

E-Mail: zachary.bell@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Angel Sanders

DATE: JAN 03 2019

ZB

PCP: December 28, 2018.

PCP Members: Georges El-Bahri, M.D.; Seela Ramesh, M.D.;
Nicholas Romanello

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.

Please be advised that mediation under section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

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 any other discipline imposed.