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Final Order No. DOH-03-0062-S-MOA

FILED DATE - 1/9/03

Department of Health

STATE OF FLORIDA  
BOARD OF MEDICINE

By: Vicki R. Leon  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NOS.: 2000-13904  
2000-12770  
LICENSE NO.: ME0018197

MICHAEL R. LOSS, M.D.,

Respondent.

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FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on December 6, 2002, in Tampa, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, the Board rejected the Consent Agreement and offered a Counter Consent Agreement which Respondent was given 7 days to accept. By written acceptance dated December 12, 2002, and subsequent clarification dated December 20, 2002, the Respondent timely accepted the Counter Consent Agreement. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendments:

1. The fine set forth in Paragraph 2 of the Stipulated Disposition shall be increased to \$10,000. Said fine and costs

shall be paid within one (1) year from the date the Final Order is filed.

2. The requirement for community service as set forth in Paragraph 5 shall be amended to require 100 hours of community service.

3. The requirement for a letter of concern as set forth in Paragraph 6 of the Stipulated Disposition shall be deleted.

4. Respondent shall submit to the UF CARES evaluation and document compliance with said evaluation within six months from the date the Final Order is filed.

5. Respondent shall receive a REPRIMAND from the Board.

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

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

DONE AND ORDERED this 8 day of JANUARY, 2003.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director  
for Zachariah P. Zachariah, 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 R. LOSS, M.D., 6710 W. Sunrise Boulevard, Suite 110, Plantation, Florida 33313; and by interoffice delivery to Ephraim Livingston and Pamela Page, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3265 this 9<sup>th</sup> day of January, 2003.

Mare Boyett

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF MEDICINE

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DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2000-13904  
2000-12770

MICHAEL R. LOSS, M.D.,

Respondent.

CONSENT AGREEMENT

Daniel Michael R. Loss, 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 department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number ME 0018197.

2. The Respondent was charged by an Administrative Complaint filed by the Agency and properly served upon the Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted 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.

#### STIPULATED CONCLUSIONS OF LAW

1. The 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. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

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

#### STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** The Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of Three thousand dollars (\$3,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within thirty (30) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINES IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

3. **REIMBURSEMENT OF COSTS.** In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation, prosecution, and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. The agreed upon Agency costs to be reimbursed in this case is two thousand, eight hundred twenty one dollars and forty cents (\$2,821.40). The costs shall

be paid by the Respondent to the Board of Medicine within thirty (30) days of its imposition by Final Order of the Board. **THE 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 CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).**

4. **FMA MEDICAL RECORDS COURSE.** Respondent shall complete the Florida Medical Association course entitled "Quality Medical Record Keeping for Health Care Professionals" within one (1) year of the 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 one (1) year of the Final Order incorporating this Agreement. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously

provided during the course of any audit or discussion with counsel for the Department.

These hours shall be in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. **COMMUNITY SERVICE.** During the next twelve months following the filing date of a Final Order in this case, Respondent shall perform ten (10) hours of community service. Community service shall consist of the delivery of medical services directly to patients, without fee or cost to the patient, for the good of the people of the state of Florida. Such community service shall be performed outside the Respondent's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Board for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board quarterly.

6. **LETTER OF CONCERN.** Respondent shall receive a Letter of Concern from the Board of Medicine.

7. **MITIGATING FACTORS:** No prior discipline during 28 years of practice. No restraints or legal restraints on license at time of offense. although these cases were not opened as investigative complaints until 3/20/2001, Respondent filed incident reports on each within two weeks of the occurrence.



### STANDARD PROVISIONS

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Agency. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

2. Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

3. Respondent and the Agency fully understand that this joint agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

4. 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.

5. Respondent waives the right to seek any attorney's fees or costs from the Agency in connection with this matter.

6. This agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning

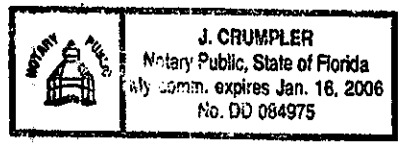
Respondent prior to or in conjunction with consideration of the Agreement. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration, or resolution of these proceedings.

SIGNED this 23 day of OCTOBER, 2002.

Michael R. Loss, M.D.  
Michael R. Loss, M.D.

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

Sworn to and subscribed before me this 23 day of October, 2002.



J. Crumpler  
NOTARY PUBLIC  
My Commission Expires:

APPROVED this 30<sup>th</sup> day of October, 2002.

John O. Agwunobi, M.D., M.B.A.,  
Secretary, Department of Health

By: Wings S. Benton  
Wings S. Benton  
Deputy General Counsel  
Department of Health

AUG 28 2002

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2000-12770  
2000-13904

MICHAEL R. LOSS, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

NOW COMES Petitioner, the Department of Health, and for its Complaint against Michael R. Loss, M.D., states as follows:

**PARTIES**

1. The Department of Health is the state agency charged with regulating the practice of medicine under Florida Law.
2. Respondent, whose address of record is 6710 W. Sunrise Boulevard, Suite 110, Plantation, Florida 33313, was issued license number ME 0018197 on December 31, 1973, and is Board Certified in Obstetrics and Gynecology.

**GENERAL ALLEGATIONS**

3. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida.

#### **FACTS RELATING TO PATIENT S.R. 2000-13904**

4. On or about October 13, 2000, Patient S.R., a fifteen (15) year-old female, presented to Respondent at the East Cypress Women's Center in Ft. Lauderdale, Florida, for a termination of pregnancy estimated at thirteen (13) weeks gestational age.

5. On or about October 13, 2000, Respondent performed a dilatation and curettage on Patient S.R.

6. Dilatation and curettage (D&C) is a method of induced abortion, consisting of removal of the uterine contents, after dilatation, by means of a hollow curette introduced into the uterus, through which suction is applied.

7. During the procedure on Patient S.R., Respondent noted omentum (a fold of peritoneum extending from the stomach to adjacent abdominal organs) in the suction curette, which represented a uterine perforation.

8. Respondent stopped the procedure and transferred Patient S.R. to Plantation General Hospital for treatment.

9. At Plantation General Hospital, on October 13, 2000, a general surgeon performed an exploratory laparotomy (an operation to open the abdomen to rule out bowel injury), repair of uterine laceration, and a partial omentectomy (excision of the membrane that encloses the bowels) of Patient S.R.

10. Respondent did not perform a preoperative or intraoperative ultrasound during the procedures to terminate the second trimester fetus of Patient S.R.

11. Respondent did not determine the uterine size or placental location during the procedures to terminate the second trimester fetus of Patient S.R.

12. Respondent did not record medication administered to Patient S.R. before or during the termination of pregnancy procedures.

13. Respondent did not document counseling to Patient S.R. about the possible increased risks of termination of pregnancy in cases of second trimester pregnancy.

#### **COUNT ONE – STANDARD OF CARE**

14. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), as if fully set forth herein this Count One.

15. Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in one or more of the following ways:

- (a) By failing to perform a preoperative or intraoperative ultrasound during the procedures to terminate the second trimester fetus of Patient S.R.; or
- (b) By failing to determine the uterine size or placental location during procedures to terminate the second trimester fetus of Patient S.R.

16. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

### **FACTS RELATING TO PATIENT A.G. 2000-12770**

17. On or about September 5, 2000, Patient A.G., a seventeen (17) year-old female, presented to Respondent at the East Cypress Women's Center In Ft. Lauderdale, Florida, for a termination of pregnancy initially estimated at ten (10) to eleven (11) weeks gestation age.

18. On or about September 5, 2000, Respondent performed a dilatation and curettage on Patient A.G. and noted that Patient A.G.'s fetus was closer to twenty (20) weeks gestational age.

19. Respondent stopped the procedure when he could not remove the fetal skull and put Patient A.G. on antibiotics and Metergine, with instructions to return on September 6, 2000, to finish the procedure.

20. Metergine is a blood-vessel constrictor and is given to prevent or control excessive bleeding following childbirth. It works by causing the uterine muscles to contract, thereby reducing the mother's blood loss.

21. On or about September 6, 2000, Patient A.G. presented to Respondent for a uterine exploration to remove the remainder of the products of conception including the fetal skull.

22. During the procedure, Respondent noted a loop of small bowel at the cervical canal, which represented a uterine perforation and transferred Patient A.G. to Plantation General Hospital.

23. At Plantation General Hospital, on September 6, 2000, a general surgeon performed an exploratory laparotomy, resection of 20 inches of small bowel, and repair of the uterine laceration of Patient A.G.

24. Respondent did not perform a preoperative or Intraoperative ultrasound during the procedures to terminate the second trimester fetus of Patient A.G.

25. Respondent did not determine the uterine size or placental location during the procedures to terminate the second trimester fetus of Patient A.G.

26. Respondent did not record medication administered to Patient A.G. before or during the termination of pregnancy procedures.

27. Respondent did not document counseling to Patient A.G. about the possible increased risks of termination of pregnancy in cases of second trimester pregnancy.

#### **COUNT TWO -- STANDARD OF CARE**

28. Petitioner realleges and incorporates paragraphs sixteen (16) through twenty four (24), as if fully set forth herein this Count Two.

29. Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in one or more of the following ways:

- (a) By failing to perform a preoperative or Intraoperative ultrasound during the procedures to terminate the second trimester fetus of Patient A.G.; or

- (b) By failing to determine the uterine size or placental location during procedures to terminate the second trimester fetus of Patient A.G

30. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

### **COUNT THREE - DEFICIENT MEDICAL RECORDS**

31. Petitioner realleges and incorporates paragraphs one (1) through twelve (12), and paragraph sixteen (16) through twenty four (24), and paragraph twenty six (26), as if fully set forth herein this Count Three.

32. Respondent failed to keep legible medical records that justify the course of treatment of the patient, in one or more of the following ways:

- (a) By failing to record medication administered before the termination of pregnancy procedures on Patients S.R. and A.G.;
- (b) By failing to document uterine size and placental location in Patients S.R. and A.G.; and
- (c) By failing to document counseling about increased risks of termination of pregnancy in second trimester in Patients S.R. and A.G.

33. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep medical records 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.

**WHEREFORE**, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties, in addition to the assessment of the costs related to the investigation and prosecution of this case as provided for in Section 456.072(4), Florida Statutes (2001):

- a) Revocation of Respondent's license;
- b) Suspension of Respondent's license for an appropriate period of time;
- c) Restriction of the Respondent's practice;
- d) Imposition of an administrative fine;
- e) Issuance of a reprimand;
- f) Placement of the Respondent on probation;
- g) Administrative costs, and/or any other relief that the Board deems appropriate.

SIGNED this 26th day of August, 2002

John O. Agwunobi, M.D., M.B.A.  
Secretary, Department of Health

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Vicki R. Kenon  
DATE 8/28/02

  
Nancy Snurkowski  
Chief Attorney, Practitioner Regulation

**COUNSEL FOR DEPARTMENT:**

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**Senior Attorney**

**Agency for Health Care Administration**

**P. O. Box 14229**

**Mail Stop 39-A**

**Tallahassee, Florida 32317-4229**

**Florida Bar # 191163**

**BAC/bwk**

**PCP: August 16, 2002**

**PCP Members: El-Bahri, Tucker and Long**