

FILED DATE JUN 18 2014
Department of Health

STATE OF FLORIDA
BOARD OF MEDICINE

By: [Signature]
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

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

MICHAEL J. BENJAMIN, 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 6, 2014, in Tampa, 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 fully advised in the premises,

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 following clarification:

The costs set forth in Paragraph 4 of the Stipulated Disposition shall be set at \$4,355.10.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

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

DONE AND ORDERED this 12th day of June, 2014.

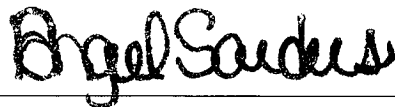
BOARD OF MEDICINE



Allison M. Dudley, J.D., Executive Director
For Nabil El Sanadi, 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 MICHAEL J. BENJAMIN, M.D., 7777 N. University Drive, Suite 102, Tamarac, Florida 33321; to David Spicer, Esquire, 11000 Prosperity Farms Road, Suite 104, Palm Beach Gardens, Florida 33410; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 18th day of June, 2014.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2010-3039

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 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 Complaint.

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/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 thirty (30) 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 45 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. **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 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 One Hundred Dollars and Twenty-one Cents (\$4,100.21.xx)***, but shall not exceed ***Six Thousand One Hundred Dollars and Twenty-one Cents (\$6,100.21)***. 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 thirty (30) 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 45 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.

5. **Laws And Rules Course** - Within eighteen (18) months of the filing of the Final Order, Respondent shall complete the 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, 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.

6. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order, 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. **Quality Assurance Consultation/Risk Management Assessment** - Within sixty (60) days of the date of filing of the Final Order, Respondent shall engage an independent, certified licensed risk manager will review Respondent's current practice. Specifically, the independent consultant shall review the office procedures employed at Respondent's practice and prepare a report addressing Respondent's practice which shall include recommended quality assurance improvements of Respondent's practice ("quality assurance report"). Within six (6) months from the filing of the Final Order, Respondent will submit the quality assurance report to the Board's Probation Committee as well as documentation that demonstrates Respondent's compliance with the recommended improvements. Such documentation shall consist of a follow-up report completed by the independent consultant or a licensed risk manager that verifies Respondent's compliance. Respondent shall bear the cost of the initial consultation and any necessary or appropriate follow-up consultation.

8. **Probation Language** - Effective on the date of the filing of the Final Order, Respondent's license to practice medicine shall be placed on probation for a

period of two years. The purpose of probation is not to prevent Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the obligations and restrictions set forth in this Paragraph.

(a) Indirect Supervision - Respondent shall practice only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "Monitor," whose responsibilities are set by the Board. Indirect supervision does not require that the Monitor practice on the same premises as Respondent; however, the Monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 40 miles unless otherwise provided by the Board, and shall be readily available for consultation. The Monitor shall be Board Certified, and actively engaged, in Respondent's specialty area unless otherwise provided by the Board. Respondent shall allow the Monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the Monitor to perform the duties set forth in this Paragraph.

(b) Restriction - Respondent shall not practice medicine without an approved Monitor/Supervisor, as specified in this Agreement, unless otherwise ordered by the Board.

(c) Eligibility of Monitor/Supervisor - The Monitor/Supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his/her license. In addition, the Board may reject any proposed Monitor/Supervisor on the basis that he/she has previously been subject to any disciplinary action against his/her medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The Board may also reject any proposed Monitor/Supervisor for good cause shown.

(d) Temporary Approval Of Monitor/Supervisor - The Board confers authority on the Chairman of the Probation Committee to temporarily approve Respondent's Monitor/Supervisor. To obtain temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting the Agreement is filed, Respondent shall not practice medicine without an approved Monitor/Supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

(e) Formal Approval Of Monitor/Supervisor - Prior to the consideration of the Monitor/Supervisor by the Probation Committee, Respondent shall provide a copy of the Administrative Complaint and Final Order in this case to the Monitor/Supervisor. Respondent shall submit a copy of the proposed Monitor/Supervisor's current curriculum vita and a description of his/her current practice to the Board office no later than fourteen (14) days before Respondent's first scheduled probation appearance.

Respondent shall ensure that the Monitor/Supervisor is present with Respondent at Respondent's first appearance before the Probation Committee. **It shall be Respondent's responsibility to ensure the appearance of the Monitor/Supervisor as directed.** If the Monitor/Supervisor fails to appear as required, this shall constitute a violation of this Settlement Agreement and shall subject Respondent to disciplinary action.

(f) Change In Monitor/Supervisor - In the event that the Monitor/Supervisor is unable or unwilling to fulfill the responsibilities of a Monitor/Supervisor as described above, Respondent shall immediately advise the Probation Committee of this fact and submit the name of a temporary Monitor/Supervisor for consideration. **Respondent shall not practice pending approval of the temporary Monitor/Supervisor by the Chairman of the Probation Committee.** Furthermore, Respondent shall make arrangements with his/her temporary Monitor/Supervisor to appear before the Probation Committee at its next regularly scheduled meeting. Respondent shall only practice under the auspices of the temporary Monitor/Supervisor (after approval by the Chairman) until the next regularly scheduled meeting of the Probation Committee at which the formal approval of Respondent's new Monitor/Supervisor shall be addressed.

(g) Responsibilities of Respondent - In addition to the other responsibilities set forth in this Agreement, Respondent shall be solely responsible for ensuring that:

(1) The Monitor/Supervisor submits tri-annual reports as required by this Agreement or directed by the Board;

(2) Respondent submits tri-annual reports as required by this Agreement or directed by the Board;

(3) The Monitor/Supervisor appears before the Probation Committee as required by this Agreement or directed by the Board; and

(4) Respondent appears before the Probation Committee as required by this Agreement or directed by the Board.

Respondent understands and agrees that if either the approved Monitor/Supervisor or the Respondent fails to appear before the Probation Committee as required, Respondent shall immediately cease practicing medicine until such time as both the approved Monitor/Supervisor (or approved alternate) and the Respondent appear before the Probation Committee.

(h) Responsibilities of the Monitor/Supervisor - The Monitor/Supervisor shall:

(1) Review twenty-five percent of Respondent's active patient records at least once every [REDACTED/quarter] for the purpose of ascertaining compliance with the laws of the State of Florida related to Respondent's practice. The Monitor shall go to Respondent's office once every quarter and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

(2) Review **all** of Respondent's patient records for patients under the age of eighteen receiving abortion services. In this regard, Respondent shall maintain a log documenting all such patients.

(3) Consult with Respondent on all cases involving abortion services provided to patients under the age of eighteen.

(4) Maintain contact with Respondent on a frequency of at least once per month. In the event that Respondent does not timely contact the Monitor, the Monitor shall immediately report this fact in writing to the Probation Committee.

(5) Submit reports to the Probation Committee on a tri-annual basis, in affidavit form, which shall include:

- a. A brief statement of why Respondent is on probation;
- b. A description of Respondent's practice (type and composition);
- c. A statement addressing Respondent's compliance with the terms of probation;
- d. A brief description of the Monitor/Supervisor's relationship with Respondent;
- e. A statement advising the Probation Committee of any problems that have arisen; and
- f. A summary of the dates the Monitor/Supervisor went to Respondent's office, the number of records reviewed, the overall quality of the records reviewed, and the dates Respondent contacted the Monitor/Supervisor pursuant to Subparagraph (i)(4), above.

(6) Report immediately to the Board any violations by Respondent of Chapters 456 or 458, Florida Statutes, and the rules promulgated thereto.

(i) Respondent's Required Appearance Before Probation Committee - Respondent shall appear before the Probation Committee at the **first** meeting of said Committee following commencement of the probation, at the **last** meeting of the Committee preceding scheduled termination of the probation, **and** at such other times as directed by the Committee. Respondent shall be noticed by the Board staff of the date, time and place of the Committee meeting at which Respondent's appearance is required. **Failure of Respondent to appear as directed, and/or failure of Respondent to comply with any of the terms of this Agreement, shall be considered a violation of the terms of this Agreement, and shall subject Respondent to disciplinary action.**

(j) Monitor/Supervisor's Required Appearance - Respondent's Monitor/Supervisor shall appear before the Probation Committee at the first meeting of said Committee following commencement of the probation, and at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure the appearance of Respondent's monitor to appear as directed. **If the approved Monitor/Supervisor fails to appear as directed by the Probation Committee, Respondent shall immediately cease practicing medicine until such time as the approved Monitor/Supervisor or alternate approved monitor appears before the Probation Committee.**

(k) Reporting by Respondent - Respondent shall submit tri-annual reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- (1) A brief statement of why Respondent is on probation;
- (2) A description of practice location;
- (3) A description of current practice (type and composition);
- (4) A brief statement of compliance with probationary terms;
- (5) A description of the relationship with the Monitor/Supervisor;
- (6) A statement advising the Board of any problems that have arisen; and
- (7) A statement addressing compliance with any restrictions or requirements imposed.

(l) Tolling Provisions - In the event Respondent physically leaves the State of Florida for a period of thirty (30) days or more or otherwise does not engage full-time in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

- (1) The time period of probation shall be tolled;
- (2) The provisions regarding direct and indirect supervision and required reports from the monitor/supervisor shall be tolled;

(3) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled.

(m) Active Practice - In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

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, 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** - 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 Complaint attached as Exhibit A.

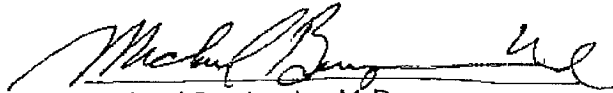
9. **Waiver Of Attorney's Fees And Costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of Department costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives 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 10th day of April, 2014.


Michael Benjamin, M.D.

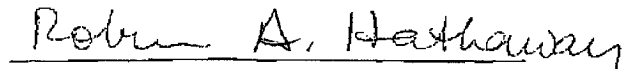
STATE OF FLORIDA
COUNTY OF Broward

BEFORE ME personally appeared Michael Benjamin, 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 10th day of April, 2014.




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


NOTARY PUBLIC

My Commission Expires: 09/25/2014

APPROVED this 14 day of April, 2014.

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


By: Marisa G. Button
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.

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.

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

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Angel Sanders**
DATE **JAN 24 2011**

PCP: January 21, 2011

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.