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Final Order No. DOH-08-0211-⁹-MOA
FILED DATE - 2.12.08
Department of Health
By: Rachel Brewer
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-02581
LICENSE NO.: ME0065525

ZVI HARRY PERPER, 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 1, 2008, in Jacksonville, 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, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which was accepted on the record by the parties. 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 4 of the Stipulated Disposition shall be set at \$2,589.30.

3. The community service set forth in Paragraph 5 of the Stipulated Disposition shall be amended to require 50 hours of community service.

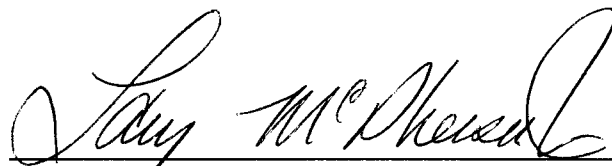
4. Respondent shall document completion of the medical records course sponsored by the Florida Medical Association (FMA) within one year from the date this Final Order is filed.

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 11 day of FEBRUARY, 2008.

BOARD OF MEDICINE

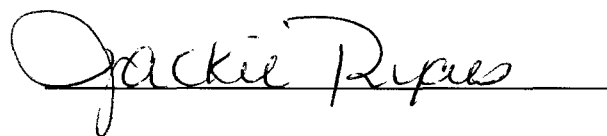


Larry McPherson, Jr., Executive Director
for ROBERT CLINE, M.D., Chair

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 ZVI HARRY

PERPER, M.D., 3330 West Kennedy Avenue, Tampa, Florida 33609; and
609 Virginia Drive, Orlando, Florida 32803; to Jon Pellett,
Esquire, Barr, Murman, et al., 201 E. Kennedy Boulevard, Suite
1700, P. O. Box 172669, Tampa, Florida 33602; and by interoffice
delivery to Ephraim Livingston, Department of Health, 4052 Bald
Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this
124th day of February, 2008.

A handwritten signature in cursive script that reads "Jackie Ripes". The signature is written in black ink and is positioned above a solid horizontal line.

Deputy Agency Clerk

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2004-02581

Zvi Harry Perper, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against the Respondent, Zvi H. Perper, 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 ME 65525.

3. Respondent's address of record is 609 Virginia Drive Orlando, Florida 32803.

4. On or about December 11, 2003, Patient M.R. presented to the Orlando Women's Center where she was examined and found to be nine (9) to ten (10) weeks pregnant. M.R. requested an elective termination of her pregnancy, which was scheduled for the same day.

5. At approximately 3:00 p.m. on or about December 11, 2003, Respondent attempted to terminate M.R.'s pregnancy through dilation and curettage ("D&C"). D&C is a procedure where the cervix is enlarged (or dilated) so that thin scraping or vacuuming instruments can be introduced in order to scrape (curettage) or suction away the lining and contents of the uterus. The procedure lasted approximately ten (10) minutes.

6. During the D&C procedure, Respondent perforated M.R.'s uterus.

7. During the D&C procedure, materials from M.R.'s uterus, including a fetus and placenta, were pushed through the perforation and deposited in M.R.'s lower abdominal cavity.

8. At the time the incidents described in paragraphs six (6) and seven (7) occurred, Respondent either did not recognize them or recognized them and did not treat them.

9. After completion of the D&C, Respondent ordered Patient M.R. held overnight for observation.

10. During this time he also ordered that M.R. be given Cytotec. Cytotec (Misoprostol) is an ulcer medication; the FDA, however, has also approved its use in inducing abortions.

11. Between approximately 3:10 p.m. on or about December 11, 2003 and midnight the same day, Patient M.R. was sedated and administered Cytotec.

12. At approximately midnight on or about December 11, 2003, a nurse made the decision to discontinue the Cytotec because M.R. was experiencing acute pain. This decision was later confirmed by another doctor at the Orlando Women's Center.

13. At approximately 10:00 a.m. on December 12, 2003, Respondent examined Patient M.R. and noted suspected uterine and bowel perforations.

14. Shortly after this exam, Patient M.R. was transferred to Orlando Regional Medical Center ("ORMC").

15. Between December 12 and December 15, 2003, Patient M.R. remained at ORMC, in pain and not improving.

16. On or about December 15, 2003, Dr. Jennifer R. Hamm of ORMC performed a diagnostic laparoscopy on Patient M.R.. Laparoscopy is the examination of the abdominal cavity using a small camera inserted through the abdominal wall.

17. During the laparoscopy described above, Dr. Hamm observed the following: (1) a ten (10) to twelve (12) centimeter, right pelvic sidewall hematoma (mass of blood) extending into the broad ligament down to the bladder and up to the level of the kidney; (2) a fetus, located in the posterior cul-de-sac of the abdomen; (3) an approximately four to five centimeter perforation across the uterus, extending out the right side into the broad ligament and into the pelvic sidewall; (4) approximately two hundred cubic centimeters of old blood and clot in the pelvis; (5) placenta, present in the perforation and extending out toward the right pelvic sidewall hematoma.

18. While Dr. Hamm was attempting to remove placental matter from the uterine perforation during the laparoscopy, Patient M.R. began to bleed significantly. Because of this, Dr. Hamm chose to proceed with laparotomy (opening the abdomen by incision).

19. During the laparotomy, Dr. Hamm removed a fetus and placenta from Patient M.R.'s abdominal cavity, then determined that the uterus was so severely perforated that she had no choice except to perform a hysterectomy (removal of the uterus), which was done.

20. Patient M.R. tolerated the surgery well and appears to have eventually made a full recovery.

Count I

21. Petitioner realleges and incorporates paragraphs one (1) through twenty (20) as if fully set forth herein.

22. Section 458.331(1)(t), Florida Statutes (2003), provides that gross or repeated malpractice or the failure 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 is grounds for discipline by the Board of Medicine.

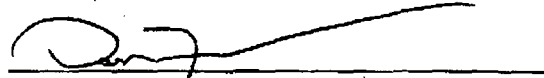
23. On or about December 11, 2003, Respondent failed to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician in one or more of the following ways: (1) by perforating Patient M.R.'s uterus (2) by pushing the fetus and placenta out of the uterus and into the abdominal cavity (3) by not timely recognizing he had done the same and (4) by not timely taking measures to redress the error (5) by not timely conducting appropriate post-operative testing and assessment on Patient M.R. to determine the presence of suspected surgical complications (6) by not timely transferring Patient M.R. to a facility where such testing and assessment could be done and (7) by ordering Cytotec administered to Patient M.R. while she was recovering from a surgical procedure where he had perforated her uterus and pushed the fetus and placental material into her abdominal cavity.

24. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2003), 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.

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 16th day of May, 2006.

M. Rony Francois, M.D., M.S.P.H., Ph.
Secretary, Department of Health



Don Freeman
Assistant General Counsel
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265
Florida Bar # 736171
(850) 245-4640
(850) 245-4681 fax

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Jheusa McKinn*
DATE 5-16-06

PCP: 5/12/05
PCP Members: Ashkan, Avilla + Beebe

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.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2004-02581

ZVI H. PERPER, M.D.

Respondent,

SETTLEMENT AGREEMENT

Zvi H. Perper, 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 65525.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with 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.

 DOH v. Perper, Case No. 2004-02581

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3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

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

3. The parties agree that the Stipulated Disposition in this case is fair, appropriate and acceptable.

STIPULATED DISPOSITION

1. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of \$5,000.00 against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by 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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative 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, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case includes but shall not exceed three thousand one hundred fifty dollars (\$3150.00). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

5. **Community Service** - Respondent shall perform 25 hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

6. **Continuing Medical Education** - 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) that address the management of surgical complications. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). 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 course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, 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. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

7. **Mitigation.** Respondent does not have any prior discipline with the Board of Medicine. Additionally, uterine perforation is a known risk of a termination procedure. Respondent did not discharge the patient following the termination procedure. Instead, he kept her for observation because of concern for a possible uterine perforation. When it was determined that the patient should be transferred to a hospital, Respondent informed the receiving hospital of a possible uterine perforation. The hospital discharge summary indicates that despite the CT scan indicating a possible

uterine perforation, the hospital felt on admission that it was appropriate to monitor her for the suspected perforation since no products of conception were visible on ultrasound, which is what Respondent was doing prior to the transfer.

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. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within fifteen (15) days of any changes of said addresses.
4. **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.
5. **Violation of terms considered** - 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.

6. **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.

7. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same 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.


8. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of 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.

9. **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.

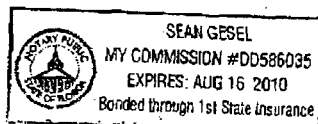
SIGNED this 15 day of October

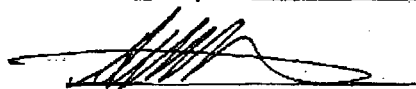
2007.


Zvi H. Perper, M.D.

Before me, personally appeared Zvi Perper, whose identity is known to me by Florida Drivers License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

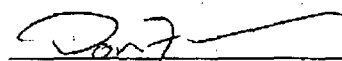
Sworn to and subscribed before me this 15 day of October, 2007.




NOTARY PUBLIC
My Commission Expires: Aug 16 2010

APPROVED this 17th day of October, 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health


By: Don Freeman
Assistant General Counsel
Department of Health