

STATE OF FLORIDA
DEPARTMENT OF HEALTH

NOV 08 2005

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2005-04680

ALLEN BAIDEY, 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 Respondent, Allen Baidey, May, 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 87545.

3. Respondent's address of record is 1904 Hyde Park Street, Sarasota, Florida 34239.

4. Respondent is Board Certified in Psychiatry.

5. On or about March 1, 2005, Patient J.S., a seventy-eight year-old female, presented at the Center for Endoscopy in Sarasota, Florida, for Respondent to perform a transforaminal infusion (lumbosacral nerve blocking) in her lower lumbar spine on her left side.

6. The Respondent did not pause prior to performing Patient J.S.'s surgery/procedure, and failed to confirm the intended site.

7. Respondent incorrectly performed the transforaminal infusion on Patient J.S.'s right side rather than on the J.S.'s left side.

COUNT ONE

8. Petitioner realleges and incorporates paragraphs one (1) through nine (9) as if fully set forth herein.

9. Section 456.072(1)(aa), Florida Statutes (2004), provides that performing or attempting to perform health care services 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 constitutes grounds for disciplinary action.

10. Respondent performed a wrong-site procedure on Patient J.S. when he performed a transforaminal infusion on the Patient's right side rather than on the left side.

11. Based on the foregoing, Respondent has violated Section 456.072(1)(aa), Florida Statutes (2004), by performing a wrong-site procedure on Patient J.S.

COUNT TWO

12. Petitioner realleges and incorporates paragraphs one (1) through twelve (11) as if fully set forth herein.

13. Section 458.331(1)(nn), Florida Statutes (2004), states that a physician may be subjected to discipline for violating any provision of chapter 458 or chapter 456, or any rules adopted pursuant thereto.

14. Rule 64B8-9.007(2)(b), Florida Administrative Code states that:

Except in life-threatening emergencies requiring immediate resuscitative measures, once the patient has been prepared for the elective surgery or procedure and the surgical team has been gathered in the operating room and immediately prior to the initiation of any surgical procedure, the surgical team will pause and the operating physician will verbally confirm the patient's identification, the

intended procedure and the correct surgical/procedure site. The operating physician shall not make any incision or perform any surgery or procedure prior to performing this required confirmation. The notes of the procedure shall specifically reflect when this confirmation procedure was completed and which personnel on the surgical team confirmed each item. This requirement for confirmation applies to physicians performing procedures either in office settings or facilities licensed pursuant to Chapter 395, Florida Statutes, and shall be in addition to any other requirements that may be required by the office or facility.

15. The Respondent failed to comply with Rule 64B8-9.007(2)(b), Florida Administrative Code, by failing to ensure that the "Pause Rule" was implemented and followed prior to performing the operative procedure in this matter.

16. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2004), by failing to pause and confirm the correct surgical/procedure site for patient J.S., in violation of Rule 64B8-9.007(2)(b), Florida Administrative Code.

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 7th day of November, 2005.

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



Ellen M. Simon
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 0976792
(850) 414-8126
(850) 414-1989 FAX

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK Jheusa McKown

DATE 11-08-05

Reviewed and approved by: _____(initials) _____(date)

PCP: November 4, 2005

PCP Members: Gustavo Leon, M.D. (Chairperson), Raghavendra Vijayanagar, M.D., and John 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
BOARD OF MEDICINE**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NO. 2005-04680

ALLEN BAIDEY, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Allen Baidey, 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 ME 87545.

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. **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 Ten Thousand Five Hundred Dollars (\$10,000.00) 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.

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 FORTY-FIVE (45) 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.

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 actual costs not to exceed Two Thousand Dollars (\$2,000.00). 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 FORTY-FIVE (45) 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.

4. **Community Service** - Respondent shall perform fifty (50) 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.

5. **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), on **Risk Management.** Respondent shall submit a written plan to the Chairman of

the Board for approval prior to the completion of said continuing education hours and course. The Board confers authority on the Chairman of the Board to approve or disapprove said continuing education hours or course. 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 course within one (1) year of the entry 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 previously provided 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 shall consist of a formal, live lecture format.

6. **LECTURE/SEMINAR.** During the next six (6) months following the filing date of a Final Order in this case, Respondent shall present a one (1) hour lecture/seminar on Wrong Site Surgeries. The lecture/seminar shall be presented to hospital staff at an approved medical facility. Respondent shall submit a written plan to the Board for approval prior to performance of said lecture/seminar. Respondent shall also provide

written documentation to the Board that said lecture/seminar has been completed within six months of the filing of the Final Order in this case. Said documentation shall consist of a letter from the Risk Manager of the approved medical facility indicating that the lecture/seminar has been completed.

7. **DISMISSAL**. Count Two of the Administrative Complaint, charging the Respondent with a violation of Section 458.331(1)(nn), Florida Statutes, alleging failure to comply with the Board's Pause Rule, is hereby dismissed. Respondent provided the sworn affidavit of a medical assistant who was present at the incident attesting that Respondent executed the Pause procedure.

STANDARD PROVISIONS

8. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

9. **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.

10. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

11. **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, and 458 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

12. **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.

13. **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.


14. **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.

15. **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.

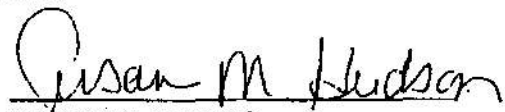
16. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 13th day of February, 2006.


Allen Baidey, M.D.

STATE OF FLORIDA
COUNTY OF Sarasota

Before me, personally appeared Allen A. Baidey, whose identity is known to me by Personally Known (type of identification) and who, under oath, acknowledges that his/her signature appears above. Sworn to and subscribed before me this 13 day of February, 2006.


NOTARY PUBLIC

My Commission Expires:

Allen Baidey, M.D., 2005-04680

10

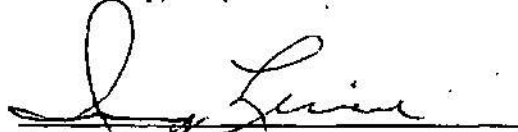


Susan M. Hudson
My Commission DD127578
Expires June 20, 2008

3867

APPROVED this 21st day of February, 2006.

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



Irving Levine
Assistant General Counsel
Florida Bar # 0822957
DOH-Prosecution Services Unit
4052 Bald Cypress Way-Bin C-65
Tallahassee, Florida 32399-3265

att

Final Order No. DOH-06-0664-5 -MQA
FILED DATE - 4-19-06
Department of Health
By: Theresa McKown
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2005-04680

LICENSE NO.: ME0087545

ALLEN BAIDEY, 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 April 7, 2006, 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, 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 letter of concern set forth in Paragraph 1 of the Stipulated Disposition shall be deleted.

2. The fine set forth in Paragraph 2 of the Stipulated Disposition shall reflect that the fine is \$10,000.

3. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$1,254.21.

4. The dismissal of Count II of the Administrative Complaint as set forth in Paragraph 7 of the Stipulated Disposition shall be removed. The Board finds a violation of Section 458.331(1)(nn), Florida Statutes.

5. Respondent shall be and hereby is REPRIMANDED by the Board.

6. 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.

7. Within 30 days from the date this Final Order is filed, Respondent shall submit a copy of his modified informed consent form to the Board's Probation Committee.

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 18 day of APRIL,

2006.

BOARD OF MEDICINE



Larry McPherson, Jr. Executive Director
for MAMMEN 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 ALLEN BAIDEY, M.D., 3325 South Tamiami Trail, Sarasota, Florida 34239; and 1904 Hyde Park Street, Sarasota, Florida 34239; to Brian Newman, Esquire, Pennington, Moore, et al., 215 South Monroe Street, 2nd Floor, P.O. Box 10095, Tallahassee, Florida 32302; and by interoffice delivery to John Terrel and Wings Benton, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 19th day of April, 2006.



Deputy Agency Clerk