

STATE OF FLORIDA
BOARD OF MEDICINE

FILED DATE - AUG 18 2015
Department of Health

By: 
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2012-17662
LICENSE NO.: ME0053120

MARC WEINBAUM, 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 August 7, 2015, 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 3 of the Stipulated Disposition shall be set at \$5,936.97.

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 17 day of August, 2015.

BOARD OF MEDICINE



André Ourso, J.D., M.P.H., Executive Director
For Bernardo Fernandez, 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 MARC WEINBAUM, M.D., 3002 NW 1st Avenue, Building 100, Ocala, Florida 34471; to E. Victoria Penny, Esquire, 2508 Barrington Circle, Tallahassee, Florida 32308; by email to Yolonda Green, Assistant General Counsel, Department of Health, at Yolonda.Green@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 18th day of August, 2015.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2012-17662

Marc Weinbaum, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Marc Weinbaum, 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 53120.
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.

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. **Letter Of Concern** - The Board shall issue a Letter of Concern against Respondent's license.

2. **Fine** - The Board shall impose an administrative fine of ***Five Thousand Dollars and Zero Cents (\$5,000.00)*** 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 sixty (60) 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 75 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. **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 ***Five Thousand Ninety-Four Dollars and Fifty Cents (\$5,094.50), but shall not exceed Seven Thousand Ninety-Four Dollars and Fifty Cents (\$7,094.50).*** 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 sixty (60) 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 75 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.

4. 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.

5. Continuing Medical Education - "Risk Management" - Respondent shall complete this requirement and document such completion within one (1) year of

the date of filing of the Final Order. **Respondent shall satisfy this requirement in one of the two following ways:**

(a) Respondent shall complete five (5) hours of CME in "Risk Management" after first obtaining written advance approval from the Board's Probation Committee of such proposed course, and shall submit documentation of such completion, in the form of certified copies of the receipts, vouchers, certificates, or other official proof of completion, to the Board's Probation Committee, or

(b) Respondent shall complete (5) five hours of CME in risk management by attending one full day or eight (8) hours, whichever is more, of disciplinary hearings at a regular meeting of the Board of Medicine. In order to receive such credit, Respondent must sign in with the Executive Director of the Board before the meeting day begins; Respondent must remain in continuous attendance during the full day or eight (8) hours of disciplinary hearings, whichever is more, and Respondent must sign out with the Executive Director of the Board at the end of the meeting day or at such other earlier time as affirmatively authorized by the Board. Respondent may not receive CME credit in risk management for attending the disciplinary hearings portion of a Board meeting unless the Respondent is attending the disciplinary hearings portion for the sole purpose of obtaining the CME credit in risk management. In other words, Respondent may not receive such credit if appearing at the Board meeting for any other purpose, such as pending action against Respondent's medical license.

STANDARD PROVISIONS

1. **Appearance** - Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.
2. **No Force or Effect until Final Order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.
3. **Continuing Medical Education** - Unless otherwise provided in this Agreement Respondent shall first submit a written request to the 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.

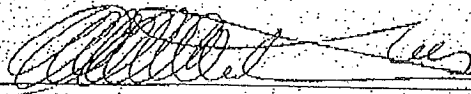
8. **No Preclusion Of Additional Proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative 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 6TH day of JUNE, 2015.



Marc Weinbaum, M.D.

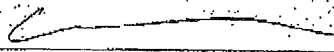
STATE OF FLORIDA

COUNTY OF MARLBOROUGH

BEFORE ME personally appeared Marc Weinbaum, whose identity is known to me or who produced FL Drivers License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

SWORN TO and subscribed before me this 6 day of June, 2015.



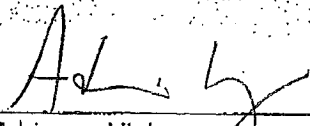


NOTARY PUBLIC Mattie H Williams

My Commission Expires: 10-10-2017

APPROVED this 9th day of June, 2015.

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



By: Adrienne Vining
Assistant General Counsel
Department of Health

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-17662

MARC WEINBAUM, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Marc Weinbaum, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 53120.
3. Respondent's address of record is 3002 NW 1st Avenue, Building 100, Ocala, Florida, 34471.

4. On September 20, 2012, Patient J.H., a 68 year-old male, was arrested by the Ocala Police Department on a charge of indecent exposure. J.H. told the arresting officer that he was going to kill himself by hanging himself in his garage if he was arrested.

5. Because J.H. threatened to commit suicide and refused to undergo a voluntary examination, the arresting officer, pursuant to Section 394.463, Florida Statutes, took J.H. to The Vines Hospital (Vines) for an involuntary examination.

6. Upon arrival at Vines, an initial assessment of J.H. was conducted by employees of Vines other than Respondent, which indicated that J.H. had no prior mental health issues and confirmed that he had threatened to kill himself, but he now claimed he had done so in order to avoid arrest.

7. In the initial assessment, J.H. denied loss of energy or interest in activities, social withdrawal, problems with activities of daily living, irritability, poor impulse control or aggression. He also denied having a sleep disturbance and any problems with weight or appetite. At the time, J.H. denied depression, suicide attempts, mood swings, hallucinations, delusions, attention deficit, alcoholism or drug dependency.

8. After the initial assessment, Respondent was contacted for admission orders.

9. Respondent then observed J.H. in the intake area and he appeared to be relaxed, content and engaged in conversation.

10. Respondent admitted J.H. for further observation and assessment the following morning and placed him on suicide precautions.

11. The following morning, on or about September 21, 2012, staff at Vines were in the process of preparing to discharge J.H. to the Ocala Police Department and had contacted the police to come pick up J.H.

12. When the police arrived at Vines, hospital staff called Respondent to ask for discharge orders from Respondent and informed him that the police were there to take J.H.

13. Respondent then discharged J.H. to the police without performing a complete psychiatric assessment.

14. J.H. was then taken to the Marion County Jail.

15. The next day, on or about September 22, 2012, J.H. committed suicide by jumping over a second story railing at the jail.

16. The standard of care requires a physician treating a patient who has been taken to a facility for an involuntary examination pursuant to Section 394.463, Florida Statutes, to perform a complete examination

without delay, and for the physician to not discharge the patient without first conducting an examination.

17. Vines had a suicide prevention policy that provided that the physician is to assess each patient during an initial psychiatric evaluation, and prior to discharge the physician is to perform a comprehensive assessment of the patient's suicide risk.

18. While J.H. was at Vines, Respondent never conducted a complete evaluation and a mental status exam of J.H. prior to J.H. being discharged from the facility back into police custody.

19. Respondent was the attending physician for J.H. and he held the ultimate responsibility to ensure that the proper risk assessment was carried out. It was up to Respondent to evaluate J.H. and make medical and psychiatric decisions based upon that examination; however, Respondent failed to evaluate J.H.

20. Section 458.331(1)(t)1., Florida Statutes (2012), subjects a medical doctor to discipline by the Board of Medicine for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2012), defines medical malpractice as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. The level of

care, skill, and treatment recognized in general law related to health care licensure means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes (2012), defines the standard of care to mean ". . . The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

21. Respondent fell below the standard of care in one or more of the following ways:

- a. By failing to conduct a complete evaluation of J.H.; and,
- b. By discharging J.H. without conducting a complete evaluation of him.

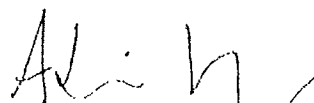
22. Based on the foregoing, Respondent has violated Section 458.331(1)(t)1., Florida Statutes (2012), by committing medical malpractice in his care of J.H.

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 13th day of March, 2015.

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



Adrienne E. Vining
Assistant General Counsel
Fla. Bar No. 0196290
Florida Department of Health
Office of General Counsel
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4444
Facsimile: (850) 245-4684
Email: Adrienne.Vining@flhealth.gov

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE **MAR 16 2015**

AEV

PCP Date: March 13, 2015

PCP Members: Dr. Avila, Dr. Zachariah & Ms. Di Pietro

DOH VS. MARC WEINBAUM, M.D. CASE NO. 2012-17662

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.