

STATE OF FLORIDA  
BOARD OF MEDICINE

FILED DATE **JUN 17 2016**

Department of Health

By:

*Angel Sanders*

Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2015-19427

LICENSE NO.: ME0028975

LOWELL I. GERBER, 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 3, 2016, in Fort Lauderdale, 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:

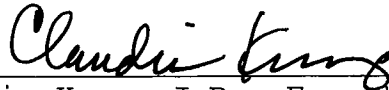
The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$1,410.68.

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 13<sup>th</sup> day of June,  
2016.

BOARD OF MEDICINE



\_\_\_\_\_  
Claudia Kemp, J.D., Executive Director  
For Steven Rosenberg, 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 LOWELL I. GERBER, M.D., 100 Spencers Ridge Road, Freeport, ME 04032; to Richard H. Levenstein, Esquire, Kramer, Sopko & Levenstein, P.A., 2300 SE Monterey Road, Suite 100, Stuart, Florida 34996; 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 17<sup>th</sup> day of

June, 2016.

Angel Sanders

**Deputy Agency Clerk**

FILED  
2016 MAR 17 AM 8:54

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**CASE NUMBER 2015-19427**

**LOWELL I. GERBER, M.D.,**

**Respondent.**

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

Lowell I. Gerber, 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 28975.

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 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, 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 ***Five Thousand Dollars and No 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 ninety (90) 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 105 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 ***Three Hundred Forty-Four Dollars and Nineteen Cents (\$344.19)***, but shall not exceed ***Two Thousand Three Hundred Forty-Four Dollars and Nineteen Cents (\$2,344.19)***. 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 ninety (90) 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 105 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. Practice Restriction**- Respondent's license is RESTRICTED in that Respondent may not examine or treat female patients in the State of Florida without the presence of a female Florida licensed health care provider who shall maintain a log of each such patient contact, with said log immediately available to a Department inspector upon request. The restriction shall take effect upon the filing of the Final Order in this matter, and shall remain in effect at least until:

- (a) Respondent provides the Board with written proof that the Requirement for a Chaperone imposed by the Maine Board of Licensure in Medicine ("Maine Board") through its July 2, 2015 Consent Agreement for Discipline (In re: Lowell I. Gerber, M.D., Complaint No. CR15-12) has been permanently lifted by the Maine Board; and
- (b) Respondent submits a written petition to the Board to lift the practice restriction imposed through this agreement, personally appears before the Board in furtherance of his petition, and has his practice restriction lifted by the Board.

The Board retains jurisdiction in this matter to grant or deny any petition(s) submitted by Respondent to lift the practice restriction imposed through this agreement.

**5. Medical Ethics and Boundaries Course** – Within one (1) year of the date of the filing of the Final Order, Respondent shall complete five (5) hours of continuing medical education (“CME”) in the area of medical ethics and boundaries, 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. Any hours of CME in medical ethics and boundaries taken to fulfill obligations imposed through the Maine Board of Licensure in Medicine’s July 2, 2015 Consent Agreement for Discipline (In re: Lowell I. Gerber, M.D., Complaint No. CR15-12) shall be credited toward the CME hours imposed through this paragraph if Respondent timely provides documentation of completion as set forth herein.

**6. 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.

**7. 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 fifteen (15) 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 presenting this agreement to the Board, 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 17 day of February, 2016.

Lowell I. Gerber  
Lowell I. Gerber, M.D.

Maine  
**STATE OF FLORIDA**  
**COUNTY OF** Cumberland

**BEFORE ME** personally appeared Lowell Ian Gerber, whose identity is known to me or who produced Maine Driver's Lic (type of identification) and who, under oath, acknowledges that his/her signature appears above.

**SWORN TO** and subscribed before me this 17 day of February, 2016.

Mary C. Howe  
NOTARY PUBLIC  
*Mary C. Howe, Notary Public  
State of Maine  
My commission expires: 04/2/2022*

My Commission Expires:

**APPROVED** this 18th day of March, 2016.

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

By: Jack F. Wise  
Jack F. Wise  
Assistant General Counsel  
Department of Health

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2015-19427

LOWELL I. GERBER, M.D.,

Respondent.

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**ADMINISTRATIVE COMPLAINT**

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Lowell I. Gerber, 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 28975.

3. Respondent's address of record is 100 Spencers Ridge Road, Freeport, Maine, 04032.

4. At all times material to this Complaint, Respondent was licensed to practice medicine in the State of Maine, having been issued license number MD17412.

5. The State of Maine Board of Licensure in Medicine ("Maine Board") is the licensing authority regulating the practice of medicine in the State of Maine.

6. In or about July 2015, the Maine Board acted against Respondent's Maine medical license by accepting a Consent Agreement ("Consent Agreement") regarding disciplinary action against Respondent's license to practice medicine in Maine.

7. According to the Consent Agreement, on or about February 3, 2015, the Maine Board received a complaint from "Patient A", one of Respondent's patients. Patient A alleged that Respondent saw patients, including her, in an office located in Respondent's home. Patient A further alleged that she had sexual relations with Respondent, in Respondent's home, on multiple occasions during September 2014.

8. The Consent Agreement was offered in response to or in anticipation of the filing of administrative charges against Respondent's Maine medical license.

9. Among other terms, the Consent Agreement provided for a thirty (30) day suspension of Respondent's Maine medical license.

10. Section 458.331(1)(b), Florida Statutes (2015), subjects a licensee to discipline for having a license or the authority to practice medicine revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction. The licensing authority's acceptance of a consent order offered in response to or in anticipation of the filing of administrative charges against the physician's license shall be construed as action against the physician's license.

11. Based on the foregoing, Respondent violated Section 458.331(1)(b), Florida Statutes (2015), in one or more of the following ways:

- a) By having his Maine medical license suspended by the Maine Board in or about July 2015; and/or
- b) By having his Maine medical license acted against by the Maine Board, through the Maine Board's acceptance of the aforementioned Consent Agreement, in or about July 2015.

WHEREFORE, 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 22nd day of December, 2015.

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

Jack F. Wise  
Jack F. Wise  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar Number 0103953  
(P) 850-245-4444, Ext. 8229  
(F) 850-245-4684  
(E) Jack.Wise@flhealth.gov

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK: Amy Larroway

DATE 12-22-15

PCP Date: December 18, 2015

PCP Members: Georges El-Bahri, M.D.; Jorge Lopez, M.D.; Joy Tootle

## 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.

A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

## 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.