STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2010-05889
2010-08233
LICENSE NO.: ME0082538

ROGER L. GORDON, M.D.,

Respondent.

/_________________________________/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) on June 6, 2014, in Tampa, Florida, for the purpose of considering Respondent’s offer to voluntarily relinquish his license to practice medicine in the State of Florida. (Attached hereto as Exhibit A.) Said written offer of relinquishment specifically provides that Respondent agrees never again to apply for licensure as a physician in the State of Florida.

Upon consideration of the written offer of voluntary relinquishment, the charges, and the other documents of record, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that Respondent’s Voluntary Relinquishment of his license to practice medicine in the State of Florida is hereby ACCEPTED, and shall constitute discipline upon Respondent’s license.
This Final Order shall take effect upon being filed with
the Clerk of the Department of Health.

DONE AND ORDERED this 19th 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 ROGER L.
GORDON, M.D., 10911 NW 39th Street, Apt. 102, Sunrise, Florida
33351; and 1661 NW 100 Way, Plantation, Florida 33322; to Brook
Butler, Esquire, 601 21st Street, Suite 300, Vero Beach, Florida
32960; 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.

Angel Sanders
Deputy Agency Clerk
VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent Roger Gordon, M.D., license No. 82538, hereby voluntarily relinquishes Respondent's license to practice medicine in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of Medicine (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner's Data Bank as disciplinary action. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.

2. Respondent agrees to never reapply for licensure as a Medical Doctor in the State of Florida.

3. Respondent agrees to voluntarily cease practicing medicine immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from
the practice of Medicine until such time as this Voluntary Relinquishment is presented to the Board and the Board issues a written final order in this matter.

4. In order to expedite consideration and resolution of this action by the Board in a public meeting, Respondent, being fully advised of the consequences of so doing, hereby waives the statutory privilege of confidentiality of Section 456.073(10), Florida Statutes, and waives a determination of probable cause, by the Probable Cause Panel, or the Department when appropriate, pursuant to Section 456.073(4), Florida Statutes, regarding the complaint, the investigative report of the Department of Health, and all other information obtained pursuant to the Department's investigation in the above-styled action. By signing this waiver, Respondent understands that the record and complaint become public record and remain public record and that information is immediately accessible to the public. Section 456.073(10) Florida Statutes.

5. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

6. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

7. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the
Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Rerlinquishment are not accepted by the Board.

DATED this 1st day of APRIL, 2014.

Roger Gordon, M.D.

STATE OF FL
COUNTY OF INDIAN RIVER

Before me, personally appeared _____________, whose identity is known to me or who produced _____________ (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 1st day of APRIL, 2014.

Margaret E. Hannah, Notary Public

My Commission Expires: 9/12/2017
ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel files this Administrative Complaint before the Board of Medicine (the Board) against Respondent, Roger L. Gordon, 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 medical doctor within the state of Florida, having been issued license number ME 82538.

3. At all times material hereto Respondent's address of record was 1661 NW 100 Way, Plantation, Florida 33322.
4. At all times material hereto Respondent was certified in general surgery by the American Board of General Surgery. He was also certified in plastic surgery by the American Board of Plastic Surgery.

5. At all times material hereto, Respondent practiced at 4300 N. University Dr., Lauderhill, Florida 33351 at an office surgery facility known as the Surgery Center of Broward, licensed by the Department for level II office surgery pursuant to Rule 64B8-9.009, Florida Administrative Code (FAC), the Board’s rule regarding the standard of care for office surgery.

6. On or about March 5, 2010, patient AJ, a 28 year-old female, presented to Respondent for smart liposuction of her abdomen, flanks and lower back under level II anesthesia.

7. The smart liposuction performed on AJ by Respondent on March 5, 2010 took one hour and fifteen minutes.

8. The anesthesia records reflect that during the course of AJ’s surgery a registered nurse assisted Respondent and provided anesthesia to AJ under Respondent’s instructions she administered two respiratory depressants intravenously to AJ prior to and during surgery, namely midazolam a benzodiazepine (trade name Versed) and meperidine an opioid analgesic (trade name Demerol).
9. Versed is defined under Chapter 893, Florida Statutes, (2009) as a Schedule IV substance with a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States and abuse of the substance may lead to limited physical or psychological dependence.

10. Demerol is defined under Chapter 893, Florida Statutes (2009) as a Schedule II substance with a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence.

11. During the surgery performed by Respondent (AJ’s anesthesia record) shows that she received Versed and Demerol intravenously in a dosage consistent with level III anesthesia. The anesthesia records also failed to note whether AJ was able to respond to verbal commands.

12. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by Level II sedation.

13. After conclusion of the liposuction, AJ was cleared for discharge
from the post-anesthesia care unit (PACU) at Surgery Center of Broward at 3:25 p.m. in the afternoon but was held in the post-anesthesia care unit because her ride home was delayed.

14. AJ then developed an unstable blood pressure and eventually respiratory distress and was transported by EMS to the nearest hospital due to her respiratory distress.

15. AJ required multiple procedures at University Hospital and required a stay in the ICU to stabilize her vital signs after the surgery and recovery.

16. Respondent did not have a transfer agreement with a licensed hospital within reasonable proximity, nor staff privileges to perform the same procedure as that being performed in the out-patient setting at a licensed hospital within reasonable proximity.

17. AJ's post operative care records reflect Respondent did not manage the patient in the postoperative period and was not active in AJ's transfer and care at University Hospital.

18. Rule 64B8-9.009, Florida Administrative Code (FAC), the Board's rule regarding the standard of care for office surgery, provides in subsection (2):
(2) General Requirements for Office Surgery.

(a) The surgeon must maintain complete records of each surgical procedure, as set forth in Rule 64B8-9.003, F.A.C., including anesthesia records, when applicable and the records shall contain written informed consent from the patient reflecting the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider, and that a choice of anesthesia provider exists, i.e., anesthesiologist, another appropriately trained physician as provided in this rule, certified registered nurse anesthetist, or physician assistant qualified as set forth in subparagraph 64B8-30.012(2)(b)(6), F.A.C.

(c) The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, time of arrival in the operating suite, the name of the physician who provided medical clearances, the surgeon's name, diagnosis, CPT Codes, patient ASA classification, the type of procedure, the level of surgery, the anesthesia provider, the type of anesthesia used, the duration of the procedure, the type of post-operative care, duration of recovery, disposition of the patient upon discharge, list of medications used during surgery and recovery, and any adverse incidents, as identified in Section 458.351, F.S. The log and all surgical records shall be provided to investigators of the Department of Health upon request.

(h) The surgeon must assure that the post-operative care arrangements made for the patient are adequate to the procedure being performed as set forth in Rule 64B8-9.007, F.A.C. Management of post surgical care is the responsibility of the operating surgeon and may be delegated only as set forth in subsection 64B8-9.007(3), F.A.C which states . . . .The operating surgeon can delegate discretionary postoperative activities to equivalently trained licensed doctors of medicine or osteopathy or to physicians practicing within Board approved postgraduate training programs. Delegation to any health care practitioner is permitted only if the other practitioner is supervised by the operating surgeon or an equivalently trained licensed doctor of medicine or osteopathy or a physician practicing within a Board approved postgraduate training program.
(k) The surgeon shall report to the Department of Health any adverse incidents that occur within the office surgical setting. This report shall be made within 15 days after the occurrence of an incident as required by Section 197, Chapter 99-397, Laws of Florida.

* * *

19. Rule 64B8-9.009, (FAC) further provides in subsection (4):

(4) Level II Office Surgery.
(a) Scope.

1. Level II Office Surgery is that in which peri-operative medication and sedation are used intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 4000cc of supernatant fat.

2. Level II Office surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.

(Emphasis supplied)

20. In pertinent part, Rule 64B8-9.009, FAC, related to Level II office surgery also provides:

(b) Standards for Level II Office Surgery.

1. Transfer Agreement Required. The physician must have a transfer agreement with a licensed hospital within reasonable proximity if the physician does not have staff privileges to perform the same procedure as that being performed in the out-patient setting at a licensed hospital within reasonable proximity. “Reasonable proximity” is defined as not to exceed
thirty (30) minutes transport time to the hospital.

2. Training Required.
   a. The surgeon must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office setting or must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine or must be able to establish comparable background, training, and experience. Such Board certification or comparable background, training and experience must also be directly related to and include the procedure(s) being performed by the physician in the office surgery facility.

   *   *   *

21. Rule 64B8-9.009, FAC, is part of the chapter of the Florida Administrative Code where the Board of Medicine establishes standards of care for physicians.

22. The surgery that Respondent performed on Patient AJ on March 5, 2010 qualified as Level II surgery.

23. Section 458.351, Florida Statutes (2009), provides in pertinent part:

   458.351 Reports of adverse incidents in office practice settings.--

   (1) Any adverse incident that occurs on or after January 1, 2000, in any office maintained by a physician for the practice of medicine which is not licensed under chapter 395 must be reported to the department in accordance with the provisions of this section.

   (2) Any physician or other licensee under this chapter practicing in this state must notify the department if the physician or licensee was involved
in an adverse incident that occurred on or after January 1, 2000, in any
office maintained by a physician for the practice of medicine which is not
licensed under chapter 395.

(3) The required notification to the department must be submitted in
writing by certified mail and postmarked within 15 days after the
occurrence of the adverse incident.

(4) For purposes of notification to the department pursuant to this section,
the term "adverse incident" means an event over which the physician or
licensee could exercise control and which is associated in whole or in part
with a medical intervention, rather than the condition for which such
intervention occurred, and which results in the following patient injuries:

* * *

(f) Any condition that required the transfer of a patient to a hospital
licensed under chapter 395 from an ambulatory surgical center licensed
under chapter 395 or any facility or any office maintained by a physician
for the practice of medicine which is not licensed under chapter 395.

24. The incident involving AJ constituted an adverse Incident which
occurred in Respondent's office. Respondent did not report the adverse
incident as required by Section 458.351, Florida Statutes (2009).

25. Rule 64B8-9.009, (FAC) further provides in subsection (6)

Level III Office Surgery.

(a) Scope.

1. Level III Office Surgery is that surgery which involves, or reasonably
should require, the use of a general anesthesia or major conduction
anesthesia and pre-operative sedation. This includes the use of:

a. Intravenous sedation beyond that defined for Level II office surgery;

b. General Anesthesia: loss of consciousness and loss of vital reflexes
with probable requirement of external support of pulmonary or cardiac
functions; or
c. Major conduction anesthesia.

*        *        *

4. Assistance of Other Personnel Required. An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in subparagraph 64B8-30.012(2)(c)6., F.A.C., must administer the general or regional anesthesia...

COUNT ONE

26. Petitioner realleges and incorporates paragraphs one through twenty-five (25) as if fully set forth herein.

27. Section 458.331(1)(v), Florida Statutes (2009), provides that practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform constitutes grounds for disciplinary action by the Board of Medicine. The Board may establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.
28. The Board established, by rule, standards of practice and standards of care for Level II office surgery facilities in Rule 64B8-9.009, FAC. Respondent practiced or offered to practice beyond the scope permitted pursuant to that rule by supervising the administration of level III anesthesia to AJ without the presence of an Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in subparagraph 64B8-30.012(2)(c) 6 FAC and in violation of Rule 64B8-9.009(6) 4. FAC.

29. Based on the foregoing, Respondent has violated Section 458.331(1)(v), Florida Statutes (2009).

COUNT TWO

30. Petitioner realleges and incorporates paragraphs one (1) through twenty-five (25) as if fully set forth herein.

31. Section 458.331(1)(nn), Florida Statutes (2009), provides that violating any provision of Chapter 458 or Chapter 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Medicine. Rule 64B8-9.009, FAC, quoted above, is a rule adopted by the Board of Medicine.
32. Respondent failed to comply with Rule 64B8-9.009(2) and (4), FAC, by performing Level II office surgery on Patient AJ in Respondent’s office without complying with the requirements of Rule 64B8-9.009 as to informed consent as to the level of anesthesia performed or the manner in which it was performed in violation of Rule 64B8-9.009(6)(4), FAC, by failing to make appropriate and/or adequate arrangements for AJ’s post operative care; by failing to have a transfer agreement and/or staff privileges at a local hospital to which AJ was transferred in violation of Rule 64B8-9.009(b)(1), FAC and Rule 64B8-9.009(2)(h), FAC.

33. Respondent failed to comply with Section 458.351, Florida Statutes (2009), by failing to file an adverse incident report regarding the incident involving Patient AJ.

34. Respondent failed to meet the prevailing standard of care in regard to patient AJ in one or more of the following ways:

a. By performing level II surgery with level III anesthesia without the presence of an Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in subparagraph 64B8-30.012(2)(c) in violation of Rule 64B8-0.009, FAC.
b. By failing to make adequate arrangements for AJ's postoperative and/or improperly delegating AJ's postoperative care in violation of the Standards for Office Surgery in Rule 64B8-9.009(2)(h), FAC.

c. By failing to meet the Standards of Practice and Care established by the Board of Medicine in Rule 64B8-9.009, FAC.

35. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2009), by violating any provision of Chapter 458 or Chapter 456, or any rules adopted pursuant thereto, by violating Section 458.351, Florida Statutes (2009), and Rule 64B8-9.009, FAC, quoted above, rules adopted by the Board of Medicine.

COUNT THREE

36. Petitioner realleges and incorporates paragraphs one (1) through twenty-five (25) as if fully set forth herein.

37. Section 458.331(1)(m), Florida Statutes (2009), provides that failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for
each diagnostic or treatment procedure and that justify the course of
treatment of the patient, including, but not limited to, patient histories;
examination results; test results; records of drugs prescribed, dispensed, or
administered; and reports of consultations and hospitalizations constitutes
grounds for disciplinary action by the Board of Medicine.

38. Respondent failed to keep legible medical records that identify
the licensed physician who was responsible for rendering, ordering,
supervising, or billing for each diagnostic or treatment procedure and that
justify the course of treatment of the patient, including, but not limited to,
patient histories; examination results; test results; records of drugs
prescribed, dispensed, or administered; and reports of consultations and
hospitalizations. Specifically, Respondent failed to document the anesthesia
administered, the informed consent and the pre-operative and post-
operative care provided.

39. Respondent failed to document one or more of the following in
the medical chart of Patient AJ:

a. The level of anesthesia performed;
b. The informed consent;
c. The post-operative care provided;
d. The adverse incident report.
40. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2009).

COUNT FOUR

41. Petitioner realleges and incorporates paragraphs one (1) through twenty-five (25) as if fully set forth herein.

42. Section 458.331(1)(t), Florida Statutes (2009), subjects a doctor to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2009), 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.

43. 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 (2009), 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...."
44. Respondent failed to meet the prevailing standard of care in regard to patient AJ in one or more of the following ways:

   a. By performing level II surgery with level III anesthesia without the presence of an Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in subparagraph 64B8-30.012(2)(c) in violation of Rule 64B8-0.009, FAC.;

   b. By failing to make adequate arrangements for AJ's postoperative and/or improperly delegating AJ's postoperative care in violation of the Standards for Office Surgery in Rule 64B8-9.009(2)(h), FAC.

   c. By failing to comply with Section 458.351, Florida Statutes (2009), by failing to file an adverse incident report regarding the incident involving Patient AJ;

   d. By failing to meet the Standards of Practice and Care established by the Board of Medicine in Rule 64B8-9.009, FAC.

45. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2009), by committing medical malpractice.
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 30th day of January, 2011.

H. Frank Farmer, Jr., M.D., Ph.D.  
State Surgeon General

Robert A. Milne  
Assistant General Counsel  
DOH-Prosecution Services Unit  
4052 Bald Cypress Way-Bin C-65  
Tallahassee, Florida 32399-3265  
Florida Bar # 622338  
(850) 245-4640  
(850) 245-4681 fax

PCP: May 21st, 2011

PCP Members: Ef-Baker
Winc蕾e
Maline
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. CASE NO. 2010-08233

ROGER L. GORDON, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel files this Amended Administrative Complaint before the Board of Medicine (the Board) against Respondent, Roger L. Gordon, 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 medical doctor within the state of Florida, having been issued license number ME 82538.

3. At all times material hereto Respondent’s address of record was 1661 NW 100 Way, Plantation, Florida 33322.
4. At all times material hereto Respondent was certified in general surgery by the American Board of General Surgery and was also certified in plastic surgery by the American Board of Plastic Surgery.

5. At all times material hereto, Respondent practiced at 4300 N. University Dr., Lauderhill, Florida 33351 at an office surgery facility known as the Surgery Center of Broward, licensed by the Department for level II office surgery pursuant to Rule 64B8-9.009, Florida Administrative Code (FAC), the Board's rule regarding the standard of care for office surgery.

6. On or about February 26, 2010, patient WG, a 49 year-old female, presented to Respondent at his offices for an extensive breast surgery, combined with liposuction and abdominoplasty (plastic surgery on the abdomen).

7. When WG presented to Respondent for multiple surgeries all of which were to be performed by Respondent on the same day she was 5'2" and 218 lbs, (equating to a Body Mass Index which is an index for estimating obesity, of 40) which is morbidly obese. WG also suffered from hypertension.

8. Due to her morbid obesity and hypertension, it was clearly obvious to any prudent physician that WG was a borderline ASA III patient
(a patient with severe systemic disease limiting activity but not incapacitating), and not an appropriate outpatient candidate for multiple complex procedures of the trunk including breast surgery, liposuction, and abdominoplasty.

9. Respondent’s plan and treatment were not appropriate for this patient and ignored her morbid obesity and hypertension which made her a poor outpatient candidate for the multiple surgeries scheduled.

10. In light of WG’s borderline ASA III status Respondent should have rescheduled WG’s surgical procedures, which could have been divided into two or three separate surgeries.

11. WG’s anesthesia records reflect that her levels of Lidocaine (a local anesthetic) were not assessed.

12. Lidocaine is defined under Chapter 893 (2), Florida Statutes, (2009) as a Schedule IV substance with a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, abuse of the substance may lead to limited physical or psychological dependence relative to substances in Schedule III.
13. After surgery WG's blood pressure was unstable and she was given boluses of IV fluids and then IM ephedrine to raise her blood pressure.

14. WG was discharged from the recovery room approximately one hour and 15 minutes after the pressor agent was given.

15. Upon discharge, staff witnessed that WG either had a seizure or a hypotensive episode in the parking lot and she was returned to the surgery center where she was given food and drink and then discharged home again.

16. Postoperatively WG had a prolonged stay in the recovery room and exhibited unstable vital signs on more than one occasion.

17. WG's postoperative care records from Respondent's facility show that despite having been observed by staff suffering a seizure or other hypotensive episode in the surgery center parking lot, Respondent failed to examine her or make any adequate or appropriate arrangements for WG's postoperative care and management, instead Respondent allowing her to be discharged home without any further follow up.

18. WG should have been treated as an inpatient for her recovery.
In light of the extensive surgery that was done; the lengthy period of postoperative observation where WG continued to exhibit unstable vital signs in the recovery room and the worrying fact that postoperatively WG's blood pressure could only be maintained by the administering of medications.

19. After discharge home WG lost consciousness and was brought from home by her family to the emergency room at Homestead Hospital where on presentation WG was in hypovolemic shock (diminished blood volume) and required multiple units of blood to stabilize her vital signs.

20. WG was found to have a postoperative hematoma which required emergency surgery, an extended stay in the intensive care unit and multiple blood transfusions.

21. WG's postoperative care records reflect Respondent did not manage nor was he involved in WG's postoperative care.

22. Rule 64B8-9.009, Florida Administrative Code (FAC), the Board's rule regarding the standard of care for office surgery, provides in subsection (2):

(2) General Requirements for Office Surgery.

* * *

(a) . . . The surgeon must maintain complete records of each surgical procedure, as set forth in Rule 64B8-9.003, F.A.C., including anesthesia
records, when applicable and the records shall contain written informed consent from the patient reflecting the patient’s knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider, and that a choice of anesthesia provider exists, i.e., anesthesiologist, another appropriately trained physician as provided in this rule, certified registered nurse anesthetist, or physician assistant qualified as set forth in subparagraph 64B8-30.012(2)(b)6., F.A.C.

* * *

(c) The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, time of arrival in the operating suite, the name of the physician who provided medical clearances, the surgeon’s name, diagnosis, CPT Codes, patient ASA classification, the type of procedure, the level of surgery, the anesthesia provider, the type of anesthesia used, the duration of the procedure, the type of post-operative care, duration of recovery, disposition of the patient upon discharge, list of medications used during surgery and recovery, and any adverse incidents, as identified in Section 458.351, F.S. The log and all surgical records shall be provided to investigators of the Department of Health upon request.

* * *

(h) The surgeon must assure that the post-operative care arrangements made for the patient are adequate to the procedure being performed as set forth in Rule 64B8-9.007, F.A.C. Management of post surgical care is the responsibility of the operating surgeon and may be delegated only as set forth in subsection 64B8-9.007(3), F.A.C which states . . . . The operating surgeon can delegate discretionary postoperative activities to equivalently trained licensed doctors of medicine or osteopathy or to physicians practicing within Board approved postgraduate training programs. Delegation to any health care practitioner is permitted only if the other practitioner is supervised by the operating surgeon or an equivalently trained licensed doctor of medicine or osteopathy or a physician practicing within a Board approved postgraduate training program.

* * *

23. Rule 64B8-9.009, (F.A.C.) further provides in subsection (4):
(4) Level II Office Surgery.

(a) Scope.

1. Level II Office Surgery is that in which peri-operative medication and sedation are used intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and liposuction involving the removal of up to 4000cc supernatant fat.

24. Rule 64B8-9.009, F.A.C., is part of the chapter of the Florida Administrative Code where the Board of Medicine establishes standards of care for physicians.

COUNT ONE

25. Petitioner realleges and incorporates paragraphs one through twenty-four (24) as if fully set forth herein.

26. Section 458.331(1)(nn), Florida Statutes (2009), provides that violating any provision of Chapter 458 or Chapter 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Medicine. Rule 64B8-9.009, FAC, quoted above, is a rule adopted by the Board of Medicine.

27. Respondent failed to comply with Rule 64B8-9.009(2)(h) F.A.C., in one or more of the following ways:
a) By failing to assure that the post-operative care arrangements made for the patient were adequate to the procedure being performed as set forth in Rule 64B8-9.007, F.A.C. and or,

b) By failing to appropriately delegate the management of WG's post surgical care as required by this rule;

28. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2009), by violating any provision of Chapter 458 or Chapter 456, or any rules adopted pursuant thereto, by violating Section 458.351, Florida Statutes (2009), and Rule 64B8-9.009, F.A.C. adopted by the Board of Medicine.

**COUNT TWO**

29. Petitioner realleges and incorporates paragraphs one (1) through twenty-four (24) as if fully set forth herein.

30. Section 458.331(1)(m), Florida Statutes (2009), provides that failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of
treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations constitutes grounds for disciplinary action by the Board of Medicine.

31. Respondent failed to keep legible medical records that identify the licensed physician who was responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations in one or more of the following ways:

a) By failing to document the level of Lidocaine administered during surgery;

b) By failing to appropriately document the arrangements that he was required to have made for his postoperative care of this patient to assure that the postoperative care arrangements made for the patient are adequate to the procedure being performed as set forth in Rule 64B8-9.007, F.A.C.;
c) By failing to appropriately document the means by which he arranged for the delegation of this duty to assure that the postoperative care arrangements made for the patient are adequate to the procedure being performed pursuant to the office surgery standard of care rules cited herein.

32. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2009).

**COUNT THREE**

33. Petitioner realleges and incorporates paragraphs one through twenty-four (24) as if fully set forth herein.

34. Section 458.331(1)(t), Florida Statutes (2009), subjects a doctor to discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes (2009). Section 456.50, Florida Statutes, 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.

35. 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 (2009), 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. ..."

36. Respondent failed to meet the prevailing standard of care in regard to patient WG in one or more of the following ways:

a. By performing multiple surgeries on WG when she was a borderline ASA III suffering from morbid obesity and hypertension;

b. By failing to appropriately evaluate WG and by failing to realize that WG was not an appropriate outpatient candidate for multiple complex procedures of the trunk including breast surgery, liposuction, and abdominoplasty as an outpatient;

c. By failing to assure that the post-operative care arrangements made for the patient are adequate to the procedure being performed; Management of post surgical care is the responsibility of the operating surgeon and may be delegated only as set forth in subsection 64B8-9.007, F.A.C.;
d. By failing to delegate WG’s post surgical care in compliance with the Standards of Practice and Care established by the Board of Medicine in Rule 64B8-9.007, FAC;

e. By creating an inappropriate treatment plan which ignored factors of morbid obesity and hypertension, and which made WG a poor outpatient candidate for the multiple surgeries scheduled as an outpatient;

f. By failing to reschedule WG’s surgical procedures which could have been divided into two or three separate surgeries;

g. By failing to make arrangements for WG’s postoperative care as an inpatient.

37. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2009), by committing medical malpractice.

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 3rd day of January, 2011.

H. Frank Farmer, Jr., M.D., Ph.D.  
State Surgeon General

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PCP: May 27, 2011

PCP Members: El-Bakrai  
Wiercleveland  
Mullins
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.