STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-23402
LICENSE NO.: ME0059339

DAVID M. SPELLBERG, M.D.,

Respondent.

__________________________________________/

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) on April 4, 2014, in Deerfield Beach, 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 \( 10^{th} \) day of April, 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 DAVID M. SPELLBERG, M.D., 1132 Goodlette Road, Naples, Florida 34102; to Sean M. Ellsworth, Esquire, 420 Lincoln Road, Suite 601, Miami Beach, Florida 33139-3015; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this \( 17^{th} \) day of April, 2014.

Angel Sardes
Deputy Agency Clerk
DEPARTMENT OF HEALTH
Petitioner,

v.

DOH Case No. 2009-23402

DAVID M. SPELLBERG, M.D.,
Respondent.

______________________________________

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent David M. Spellberg, M.D., license number ME 59339, 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 Relinquishment are not accepted by the Board.

DATED this 9th day of JANUARY, 2014.

[Signature]

David M. Spellberg, M.D.

STATE OF Florida
COUNTY OF Collier

Before me, personally appeared David M. Spellberg, whose identity is known to me or who produced Florida Driver's License (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 9th day of January, 2014.

[Signature]

NOTARY PUBLIC

My Commission Expires: 08/17/2015

[Stamp]
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

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v.

CASE NO. 2009-23402

DAVID M. SPELLBERG, 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, David M. Spellberg, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 59339.

3. Respondent's address of record is 1132 Goodlette Road, Naples, Florida 34102.
4. Respondent is board certified by the American Board of Urology.

5. On or about August 29, 2007, Patient R.M., a 72 year old male, presented to Respondent with complaint of blood in his urine.

6. On or about August 29, 2007, Respondent ordered a CT without contrast which revealed a "3.6 cm mass upper pole left kidney."

7. On or about August 29, 2007, Respondent ordered an ultrasound. The ultrasound was completed on or about September 4, 2007. The ultrasound report indicated, "3.9 x 3.1 x 3.4 cm mass of the upper pole left kidney, worrisome for renal cell carcinoma. Correlation with contrast-enhanced CT or MRI would be useful for verification."

8. On or about August 29, 2007, Respondent did not order a retrograde pyelogram with renal pelvic washings for cytology.

9. Respondent did not order a CT with contrast or an MRI as suggested by the September 4, 2007, ultrasound report.

10. On or about October 16, 2007, Respondent performed cryosurgery on Patient R.M. at Naples Community Hospital (NCH) prior to obtaining a full and complete evaluation.
11. At a follow-up appointment, on or about December 28, 2007, Respondent ordered a CT with contrast for Patient R.M. The CT report indicated, "mass increased in size in left kidney area, with nodules in lung and heart areas..." Respondent recommended that Patient R.M. undergo surgery to remove his left kidney.

12. Patient R.M. declined further treatment from Respondent and sought out a second opinion.

13. On or about January 18, 2008, Patient R.M. saw a physician at Florida Cancer Specialists. At that time, the record indicates Patient R.M.'s diagnosis was, "stage IV renal carcinoma, metastatic to lymphatics and lung." The assessment portion of the record indicates that a biopsy was not performed at the time of initial diagnosis in October of 2007.

14. The records from Florida Cancer Specialists detail subsequent care and treatment for end stage cancer through on or about October 26, 2008, at which time Patient R.M. died.

15. Section 458.331(1)(t), Florida Statutes (2007), subjects a doctor to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2007), 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.

16. 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 (2007), 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....”

17. Respondent failed to meet the prevailing standard of care in regard to patient R.M. in one or more of the following ways:

a. By failing to order a retrograde pyelogram with renal pelvic washings for cytology, on or about August 29, 2007; and/or

b. By failing to order a CT with contrast or an MRI as suggested by the September 4, 2007, ultrasound report; and/or

c. By performing cryosurgery on Patient R.M. prior to obtaining a full and complete evaluation, on or about October 16, 2007.
18. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007), 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 27th day of May, 2011.

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

[Signature]

Shirley L. Bates
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
(850) 245-4640
(850) 245-4681 FAX

PCP: May 27, 2011
PCP Members: El-Bahri, Winchester, 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 any other discipline imposed.