STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH

Petitioner,

vs.

ROBERT E. TOMAS, D.O.,

Respondent.

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FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

This matter appeared before the Board of Osteopathic Medicine (hereinafter “Board”) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a duly-noticed public meeting on May 15, 2015, in Tampa, Florida, for consideration of a Settlement Agreement (attached hereto as Exhibit “A”) entered into between the parties in this cause and incorporated by reference into this Final Order. The Department of Health (hereinafter “Petitioner”) was represented by Matthew Witters, Assistant General Counsel, with the Department of Health. Robert E. Tomas, D.O, (hereinafter “Respondent”) was present and was represented by Mindy McLaughlin, Esquire.

The Petitioner filed an Administrative Complaint against the Respondent on October 14, 2014, attached hereto as Exhibit “B” and incorporated by reference into this Final Order.

During discussion of this matter, the Board determined that the topic for the one hour lecture/seminar in Paragraph 6 of the Stipulated Disposition is to include wrong site surgery, the particular issues involved in this case, practice improvements for the “time-
out” process in ambulatory surgery centers, and process improvements in informed consent.

Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties and otherwise being advised in the premises, the Board accepted the Settlement Agreement. Costs are assessed in the amount of two thousand one hundred forty-four dollars and seventy cents ($2,144.70) and payable within thirty (30) days from the filing date of this Final Order.

WHEREFORE, the Board hereby accepts the Settlement Agreement, settling all matters in this case consistent with the terms of the agreement between the parties, and Respondent is hereby ORDERED to abide by the terms of the Settlement Agreement. This Final Order shall be placed in and made part of the Respondent’s official records.

This Final Order shall become effective upon filing with the Clerk for the Department of Health.

DONE AND ORDERED this 15 day of June, 2015.

BOARD OF OSTEOPATHIC MEDICINE

Christy Robinson, Executive Director
on behalf of Anna Hayden, D.O., CHAIR
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert E. Tomas, D.O., 13300-56 S. Cleveland Avenue, #318, Fort Myers, FL 33907; Mindy McLaughlin, Esq., 201 N. Franklin St., Suite 2900, Tampa, FL 33602; and by email to Donna C. McNulty, Senior Assistant Attorney General, at Donna.McNulty@myfloridalegal.com; and Matthew Witters, Assistant General Counsel, at Matthew.Witters@flhealth.gov; this 16th day of June, 2015.

[Signature]
Deputy Agency Clerk
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2013-12312

ROBERT E. TOMAS, D.O.,

Respondent,

__________________________________________

SETTLEMENT AGREEMENT

Robert E. Tomas, D.O., referred to as the "Respondent", and the Department of Health, referred to as "Department" stipulate and agree to the following Settlement Agreement and to the entry of a Final Order of the Board of Osteopathic 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 osteopathic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed osteopathic physician in the State of Florida having been issued license number OS 9678.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of

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Robert E. Tomas, D.O.
Chapter 459, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit "A".

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

**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 459, 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 Chapters 456 and/or 459, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

**STIPULATED DISPOSITION**

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Osteopathic Medicine shall impose an administrative fine of seven thousand five hundred dollars and no cents ($7,500.00) against the license of Respondent, to be paid by Respondent to the Department of Health, Compliance Management Unit, 811 N C76, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer, within thirty (30) days from the date of filing of the Final Order incorporating this Settlement Agreement. All fines shall be paid by certified funds.
or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by 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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN FORTY-FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The current estimate of the Department's costs in this case is two hundred, twenty-one dollars and no cents ($221.00), but this amount will increase prior to the Board meeting where this Settlement Agreement is presented. Respondent will pay costs to the Department of Health, Compliance Management Unit, Bldg C76, P.O. Box 6320, Tallahassee, Florida 32314-6320,
Attention: Board of Osteopathic Medicine Compliance Officer, within thirty (30) days from the date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this Settlement Agreement.

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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN FORTY-FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Laws And Rules Course** - Respondent shall complete course, "Legal and Ethical Implications in Medicine Physician’s Survival Guide-Laws and Rules" administered by the Florida Medical Association (FMA), or a Board-approved equivalent, within twelve (12) months of the date of filing of the Final Order of the Board incorporating this Settlement Agreement. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician’s recognition awards, documenting completion of this medical education course within thirteen (13) months of the date
of filing of the Final Order incorporating this Settlement Agreement to the
Department of Health, Compliance Management Unit, Bln C76, P.O. Box 6320,
Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine
Compliance Officer.

5. Continuing Medical Education - Respondent shall complete
Continuing Osteopathic Medical Education in twelve (12) hours of "Risk
Management," twelve (12) hours of "Patient Care," and twelve (12) hours of
"Professionalism," within two (2) years of the date of filing of the Final Order.
Respondent shall first submit a written request to the Board Chairman for approval
prior to performance of said continuing medical education course(s). These
courses must be live and participatory.

6. Lecture/Seminar - During the next twelve (12) months following
the filing date of a Final Order incorporating this Settlement Agreement in this
case, Respondent shall present a one (1) hour lecture/seminar on a topic approved
by the Board Chairman. The lecture/seminar shall be presented to medical staff at
an approved medical facility. Prior to performance of said lecture/seminar,
Respondent shall submit a written plan to the Board Chairman for approval.
Respondent shall also provide written documentation to the Board that said
lecture/seminar has been completed within twelve (12) months of the date of filing
of the Final Order incorporating this Settlement Agreement in this case. Said
documentation shall consist of a letter from the Risk Manager of the approved
medical facility indicating that the lecture/seminar has been completed.
STANDARD PROVISIONS

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

2. **No Force or Effect Until Final Order**: It is expressly understood that this Settlement 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 Settlement Agreement.

3. **Continuing Medical Education**: Unless otherwise provided in this Settlement Agreement, Respondent shall first submit a written request to the Board Chairman for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician’s recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order incorporating this Settlement Agreement. All such documentation shall be sent to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320, Tallahassee, Florida 32314, Attention: Board of Osteopathic Medicine Compliance Office, 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. These hours shall be in addition to those hours required for renewal of licensure.
Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

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

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 459 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 osteopathic medicine. Prior to signing this Settlement Agreement, the Respondent shall read Chapters 456, 459 and 893 and the Rules of the Board of Osteopathic Medicine, at Chapter 64B15, Florida Administrative Code.

6. **Violation of Settlement Agreement Terms** - It is expressly understood that a violation of the terms of this Settlement 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 459, Florida Statutes.

7. **Purpose of Settlement Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this case, executes this Settlement 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 Settlement Agreement. Respondent agrees to support this Settlement 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 Settlement Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement 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 Settlement Agreement and subsequent Final Order Incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A".

9. **Waiver of Attorney’s Fees and Costs** - Upon the Board's adoption of this Settlement Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

10. **Waiver of Further Procedural Steps** - Upon the Board's adoption of this Settlement 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 Settlement Agreement and the Final Order of the Board incorporating said Settlement Agreement.

Robert E. Tomas, D.O.
SIGNED this 18th day of March, 2015

[Signature]
Robert E. Tomas, D.O.

Before me, personally appeared Robert E. Tomas whose identity is known to me by personally known (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 19th day of March, 2015

[Signature]
BONNIE J. MERRITT
Rotary Public State Of Florida
Printed Name: BONNIE J. MERRITT
Commission No.: EE11508
Commission Expires: 8-11-2015

APPROVED this 23rd day of March, 2015

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

[Signature]
By: Jodi-Ann V. Livingstone
Assistant General Counsel
Department of Health
FBN 0073325

[Signature]
Ann L. Prescott

Robert E. Tomas, D.O.
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

ROBERT E. TOMAS, D.O.,

RESPONDENT.

____________________________________________________/

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned
counsel, files this Administrative Complaint before the Board of Osteopathic
Medicine against Respondent, Robert E. Tomas, D.O., and in support
thereof alleges:

1. Petitioner is the state agency charged with regulating the
practice of osteopathic medicine pursuant to Section 20.43, Florida
Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was an
osteopathic physician within the state of Florida and was issued license
number OS 9878.
3. Respondent's address of record is 13300-56 South Cleveland Avenue #318, Fort Myers, Florida 33907.

4. On or about June 25, 2013, patient BD, a then fifty-five year old male, presented to Lee Island Coast Surgery Center, located in Fort Myers, Florida, for the purpose of having surgery on his left inguinal hernia and umbilical hernia.

5. Respondent was the operating physician for the procedure.

6. The surgical orders for the procedure indicate that the procedure was to be done on the left inguinal hernia and umbilical hernia.

7. The pre-admission record indicates the procedure was to be done on the left inguinal hernia and umbilical hernia.

8. On or about June 25, 2013, patient BD signed a written consent form for a surgical procedure to be performed on his left inguinal hernia and umbilical hernia.

9. On or about June 25, 2013, Respondent performed surgery on patient BD's right inguinal hernia and umbilical hernia.

10. Upon completion of the surgery on patient BD's right inguinal hernia and umbilical hernia, Respondent discovered that surgery on the right inguinal hernia was not consented for.
11. After the error was discovered, Respondent requested and received consent from BD's wife for the right inguinal hernia.

12. BD's wife, CD, stated that when requesting consent for the right inguinal hernia, Respondent told her that he had misdiagnosed patient BD. CD stated that Respondent told her that after starting surgery he discovered that the right inguinal hernia was in worse condition and he needed her to sign a consent form so he could perform surgery on the right side. CD stated that she was never told that surgery on the right inguinal hernia was already completed.

13. Thereafter, Respondent performed the surgery on patient BD's left inguinal hernia.

COUNT ONE

14. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13), as if fully set forth herein.

15. Section 456.072(1)(bb), Florida Statutes (2012), provides that performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition, constitutes grounds for disciplinary action.
16. On or about June 25, 2013, Respondent performed surgery on patient BD’s right inguinal hernia and umbilical hernia, even though patient BD was scheduled to have surgery on his left inguinal hernia and umbilical hernia.

17. Based upon the foregoing, the Respondent violated Section 456.072(1)(bb), Florida Statutes (2012), by performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient’s diagnosis or medical condition.

**COUNT TWO**

18. Petitioner realleges and incorporates paragraphs one (1) through thirteen (13), as if fully set forth herein.

19. Section 459.015(1)(m), Florida Statutes (2012), provides that making deceptive, untrue, or fraudulent representations in or related to the practice of osteopathic medicine or employing a trick or scheme in the practice of osteopathic medicine, constitutes grounds for disciplinary action.

20. On or about June 25, 2013, Respondent made deceptive and/or
consent form to complete surgery on patient BD's right inguinal hernia and umbilical hernia, leading her to believe it had not been completed, when the surgery was already completed.

21. Based upon the foregoing, the Respondent violated Section 459.015(1)(m), Florida Statutes (2012), provides that making deceptive, untrue, or fraudulent representations in or related to the practice of osteopathic medicine or employing a trick or scheme in the practice of osteopathic medicine, constitutes grounds for disciplinary action. or otherwise unrelated to the patient's diagnosis or medical condition.

WHEREFORE, the Petitioner respectfully requests that the Board of Osteopathic 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 14th day of October, 2014.

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

J. Livingston
Jodi Ann V. Livingston
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No.: 0073525
(850) 245-4444 x. 8113 Business
(850) 245-4684 Facsimile

/JVL

PCP: October 14, 2014

PCP Members: Andriole and Bellingar

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Bridget Conte
DATE OCT 1 4 2014
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.