STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-16567
LICENSE NO.: ME0051970

BARRY MISKIN, 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
November 4, 2016, in Jacksonville, 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 full advised in the premises, the Board rejected
the Settlement Agreement and offered a Counter Settlement
Agreement which was accepted on the record by the parties. The
Counter Settlement Agreement incorporates the original
Settlement Agreement with the following amendments:

1. The costs set forth in Paragraph 3 of the Stipulated
Disposition shall be set at $8,463.75.
2. The continuing medical education (CME) set forth in Paragraph 5 of the Stipulated Disposition shall be amended to require said CME to be in the area of vascular surgical complications. At least 2 of the required 5 hours must address post-operative complications.

3. Respondent shall document the completion of 5 hours of continuing medical education (CME) in the area of venous surgery, including the identification of venous anatomy, within one year from the date the Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Unless otherwise approved by the Board or the Chairperson of the Probation Committee, said continuing education courses shall consist of a formal live lecture format.

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated by reference with the amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as amended.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.
DONE AND ORDERED this 22nd day of November, 2016.

BOARD OF MEDICINE

Claudia Kemp, J.D., Executive Director
For Sarvam TerKonda, 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 BARRY MISKIN, M.D., 1926 Lenmore Drive, Palm Beach Gardens, Florida 33410; to Julia Ingle, Esquire and Gordon Lee, Esquire, Lubell & Rosen, LLC, 200 South Andrews Avenue, Suite 900, Fort Lauderdale, Florida 33301; by email to Louise Wilhite-St. Laurent, Deputy General Counsel, Department of Health, at Louise.Stlaurent@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 8th day of Dec., 2016.

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

DEPARTMENT OF HEALTH,

Petitioner,

v. DOH Case No. 2013-16567

BARRY MISKIN, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Barry Miskin, 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 51970.

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. **Letter Of Concern** – The Board shall issue a Letter of Concern against Respondent’s license.

2. **Fine** – The Board shall impose an administrative fine of **Ten Thousand Dollars and Zero Cents ($10,000)** 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 thirty (30) 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 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 45 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 **Eight Thousand Seventy Dollars and Seventy-Nine Cents ($8,070.79), but shall not exceed Ten Thousand Seventy Dollars and Seventy-Nine Cents ($10,070.79)**. 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 thirty (30) 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 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 45 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. **Records Course** – Respondent shall document completion of a Board-approved medical records course within one year from the date the Final Order is filed.

5. **Continuing Medical Education** – Within one year of the date of the filing of a Final Order, Respondent shall complete five (5) hours of Continuing Medical Education (CME) in vascular surgery, 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.

6. **Continuing Medical Education – "Risk Management"** – Respondent shall complete this requirement and document such completion within one (1) year of the date of filing of the Final Order. **Respondent shall satisfy this requirement in one of the two following ways:**
(a) Respondent shall complete five (5) hours of CME in "Risk Management" after first obtaining written advance approval from the Board’s Probation Committee of such proposed course, and shall submit documentation of such completion, in the form of certified copies of the receipts, vouchers, certificates, or other official proof of completion, to the Board’s Probation Committee; or

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

**STANDARD PROVISIONS**

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

3. **Continuing Medical Education** – Unless otherwise provided in this Agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said CME course(s). Respondent shall submit documentation to the Board’s Probation Committee of having completed a CME course in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician’s recognition awards, documenting completion of this medical course within one (1) year of the filing of the Final Order in this matter. All such documentation shall be sent to the Board’s Probation Committee, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. CME hours required by this Agreement shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board’s Probation Committee, such CME course(s) shall consist of a formal, live lecture format.

4. **Addresses** – Respondent must provide current residence and practice addresses to the Board. Respondent shall notify the Board in writing within ten (10) days of any changes of said addresses.

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 to include, but not limited to, all statutory requirements related to practitioner
profile and licensure renewal updates. Prior to signing this agreement, the Respondent
shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter
64B8, Florida Administrative Code.

6. **Violation of Terms** – It is expressly understood that a violation of the
terms of this Agreement shall be considered a violation of a Final Order of the Board, for
which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida
Statutes.

7. **Purpose of Agreement** – Respondent, for the purpose of avoiding further
administrative action with respect to this cause, executes this Agreement. In this regard,
Respondent authorizes the Board to review and examine all investigative file materials
concerning Respondent prior to or in conjunction with consideration of the Agreement.
Respondent agrees to support this Agreement at the time it is presented to the Board
and shall offer no evidence, testimony or argument that disputes or contravenes any
stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted
by the Board, it is agreed that presentation to and consideration of this Agreement and
other documents and matters by the Board shall not unfairly or illegally prejudice the
Board or any of its members from further participation, consideration or resolution of
these proceedings.

8. **No Preclusion Of Additional Proceedings** – Respondent and the
Department fully understand that this Agreement and subsequent Final Order will in no
way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

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

10. **Waiver of Further Procedural Steps** — Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

[Signatures appear on the following page.]
SIGNED this 30 day of June, 2016.

Barry Miskin, M.D.

STATE OF FLORIDA
COUNTY OF Palm Beach

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

SWORN TO and subscribed before me this 30th day of June, 2016.

PAMELA SOWDONHAMAUCHOR
Notary Public - State of Florida
Commission # FF 018648
My Comm. Expires Nov 9, 2019

PAMELA SOWDONHAMAUCHOR
NOTARY PUBLIC

My Commission Expires: Nov. 9, 2019

APPROVED this 20 day of July, 2016.

Celeste Philip, M.D., M.P.H.
Surgeon General and Secretary

By: Sarah Corrigan
Assistant General Counsel
Department of Health

DOH v. Barry Miskin
Case #2013-16567

Page 9 of 9
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-16567

BARRY MISKIN, M.D.,

RESPONDENT.

/__________________________/

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Barry Miskin, 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 medical doctor within the state of Florida, having been issued license number ME 51970.

3. Respondent's address of record is 1926 Lenmore Drive, Palm Beach Gardens, Florida 33410.
4. Respondent is board certified in surgery and hospice and palliative care by the American Board of Surgery.

5. On or about September 9, 2011, Respondent performed a greater saphenous vein stripping, a ligation of saphenofemoral junction, and phlebectomies Patient W.D.'s right leg.

6. On or about the third post-operative day, September 12, 2011, at a follow up appointment, Patient W.D. reported pain and redness.

7. The next day, on or about September 13, 2011, Patient W.D. called the Respondent's office and complained of throbbing pain in her right leg and groin. Patient W.D. was instructed to use a heating pad, elevate her leg as much as possible, and to call if symptoms escalate.

8. The next day, on or about September 14, 2011, at a follow up appointment with Respondent, Patient W.D. reported increased pain secondary to a hematoma. Patient W.D. was instructed to follow up in one week.

9. Six days later, on or about September 19, 2011, Patient W.D. called Respondent's office and complained of increased pain in her right leg and a lump in her right groin area. Patient W.D. was
instructed to go to Jupiter Medical Center Radiology for a stat right leg ultrasound.

10. Patient W.D. presented to Jupiter Medical Center for a venogram, which revealed total occlusion of the right common femoral vein with extravasation.

11. Patient W.D. was transferred to Palm Beach Medical Center and on or about September 23, 2011, Dr. R.F. performed a right groin evacuation of the hematoma and exploration of the right common femoral vein. Dr. R.F. found that during the original surgery, the Respondent had ligated and transected the common femoral vein instead of the greater saphenous vein.

12. As a result of the injury, Patient D.F. continues to experience pain and swelling to her right leg.

13. The standard of care required the Respondent to clearly identify the saphenofemoral junction and then ligate, transect, and strip the greater saphenous vein.

14. The standard of care also required the Respondent to further investigate Patient W.D.’s pain and hematoma at the time of her complaints, including ordering a venous ultrasound of the leg.
15. Respondent did not correctly identify and ligate the greater saphenous vein. Instead, he ligated and transect the common femoral vein.

16. Respondent did not adequately investigate and evaluate Patient W.D.'s post-operative pain and hematoma. Instead, he waited seven (7) days before advising Patient W.D. to obtain a venous ultrasound.

**COUNT I**

17. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17) as if fully set forth herein.

18. Section 458.331(1)(t)(1), Florida Statutes (2011), subjects a doctor to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2011), 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.

19. 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
(2011), defines the standard of care to mean "... 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. . . ."

20. Respondent failed to meet the prevailing standard of care in one or more of the following ways:

   a. By severing and ligating the common femoral vein instead of the saphenous vein;

   b. By failing to properly evaluate Patient W.D.'s postoperative pain and groin hematoma; and/or

   c. By failing to take the appropriate steps to diagnose Patient W.D.'s common femoral vein injury.

21. Based on the foregoing, Respondent has violated Section 458.331(1)(t)(1), Florida Statutes (2011), by committing medical malpractice.

COUNT II

22. Petitioner realleges and incorporates paragraphs one (1) through seventeen (17) as if fully set forth herein.
23. Section 458.331(1)(m), Florida Statutes (2011), 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, is grounds for disciplinary action by the Board and/or Department.

24. Respondent failed to maintain complete and adequate medical records that justified the course of treatment provided for Patient W.D. in one or more of the following ways:

   a. By failing to document a medical justification for ligating the common femoral vein instead of the greater saphenous vein;
b. By failing to document the appropriate follow up history and physicals for Patient W.D.'s post-operative follow up visits;

c. By failing to document any plans for evaluation of Patient W.D.'s post-operative pain and hematoma; and/or

d. By failing to adequately document an appropriate plan of care.

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 26th day of FEBRUARY, 2016.

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

Sarah Corrigan
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SEC/
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PCP Members: Georges El-Bahri, M.D., James W. Orr Jr., M.D.,
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