

LICENSE NUMBER

1074660

PROFESSION CODE

1301

FILE NUMBER

53579

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Final Order # 00-2323-S

Date FO Filed 12/14/04

DEPARTMENT OF HEALTH, BOARD OF MEDICINE

FINAL ORDER FACT SHEET

1. Respondent's/Petitioner's/Applicant's Name: JORGE BENITO, M.D.
2. License Number: ME0062660
3. Profession Type: Physician
4. Type of Order: X Discipline \_\_\_\_\_ Licensure \_\_\_\_\_ Declaratory Statement
5. DOH Case Number: 2004-41736
6. File Number: 53579
7. Statutory reference for Violations/Reasons for Denial: 458.331(1)(m), (dd), F.S.
8. Violation Codes: 34 18
9. Penalties Imposed: \$5,000 fine; \$2,755.19 costs; FMA Laws & Rules course; FMA medical records course; 100 hours community service; quality assurance review of practice; letter of concern.
10. Closure code: 4050
11. Exhibits to be Attached to Final Order:
  - a. Administrative Complaint X
  - b. Settlement Agreement/Stipulation X
  - c. Recommended Order \_\_\_\_\_  
Exceptions: Petitioner's \_\_\_\_\_ Respondent's \_\_\_\_\_
  - d. Motions (Specify) \_\_\_\_\_
  - e. Other (Specify) \_\_\_\_\_
12. Special Handling Instructions \_\_\_\_\_
12. Fact Sheet Prepared By: Nancy Murphy
13. Codes Added to Fact Sheet By: Alan Han
14. Exhibits Attached to Final Order By: Alan Han

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Final Order No. DOH-06-2323-5 -MOA  
FILED DATE - 12/14/06  
Department of Health  
By: Alia Stapp  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2004-41736  
LICENSE NO.: ME0062660

JORGE BENITO, 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 December 1, 2006, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents ~~submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, 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:~~

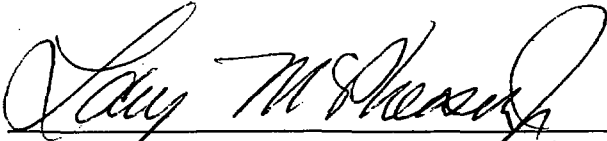
1. ~~The fine set forth in Paragraph 2 of the Stipulated~~ Disposition shall be reduced to \$5,000.00.
2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$2,755.19.

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the 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 13 day of December, 2006.

BOARD OF MEDICINE

  
Larry McPherson, Jr., Executive Director  
for MAMMEN P. ZACHARIAH, 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 JORGE BENITO, M.D., 1316 Alhambra Circle, Coral Gables, Florida 33134; to Robert M. Penezic, Esquire, Broad & Cassel, P.A., P.O. Box 14010, Fort Lauderdale, Florida 33302; and by interoffice

delivery to John Terrel, Department of Health, 4052 Bald Cypress  
Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 14 day  
of December, 2006.

Meredith Koby  
**Deputy Agency Clerk**

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**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**DOH Case No. 2004-41736**

**JORGE BENITO, M.D.**

**Respondent.**

**SETTLEMENT AGREEMENT**

Jorge Benito, 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 a 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 62660.

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

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JORGE BENITO MD

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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. 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 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, 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. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

2. **Fine** - The Board of Medicine shall impose an administrative fine of fifteen thousand dollars (\$15,000.00) against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check 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 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 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 administrative costs incurred in the investigation and preparation 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 agreed upon amount of Department costs to be paid in this case includes but shall not exceed two thousand nine hundred dollars (\$2,900.00). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the



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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 agreement.

**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 TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 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 the Laws and Rules Course, administered by the Florida Medical Association, within one (1) year of the date of filing of the Final Order of the Board. 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 one (1) year of the date of filing of the Final Order incorporating this Agreement. **All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department.** These hours shall be

**In addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.**

5. **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

6. **Community Service** - Respondent shall perform one hundred (100) hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

7. **Quality Assurance Consultation/Risk Management Assessment**  
- An independent, certified risk manager will review Respondent's current practice within sixty (60) days of the date of filing of the Final Order. Specifically, this independent consultant shall review the office procedures employed at

Respondent's practice. This consultant will prepare a report addressing Respondent's practice. This report will include suggested improvements of the quality assurance of Respondent's practice. Respondent will submit this report, as well as documentation that demonstrates compliance with the suggestions enumerated in the report, to the Probation Committee. Respondent shall bear the cost of such consultation and any necessary or appropriate follow-up consultation.

**STANDARD PROVISIONS**

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

9. ~~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.

10. **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.

11. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read

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Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

12. **Violation of terms considered** - 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.

13. **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.

14. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this 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.

15. Waiver of attorney's fees and costs - Upon the Board's adoption of this 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.

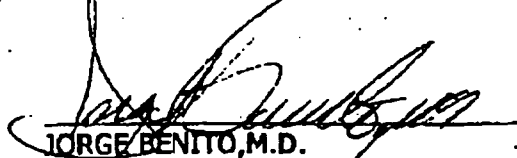
16. Waiver of further procedural steps - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board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

Oct 26 2006 2:45PM JORGE BENITO MD

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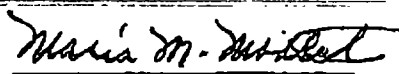
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SIGNED this 26 day of October, 2006.

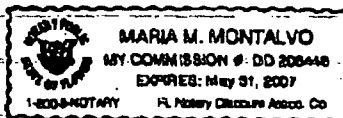
  
JORGE BENITO, M.D.

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

Sworn to and subscribed before me this 26 day of October, 2006.

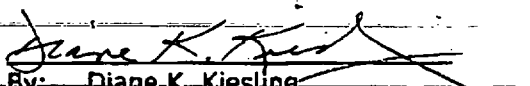
  
NOTARY PUBLIC

My Commission Expires:



APPROVED this 26<sup>th</sup> day of October, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.  
Secretary, Department of Health

  
By: Diane K. Kiesling  
Assistant General Counsel  
Department of Health

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2004-41736**

**JORGE BENITO, M.D.,**

**RESPONDENT.**

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**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, Jorge Benito, 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 62660.

3. Respondent's address of record is 1316 Alhambra Circle, Coral Gables, Florida 33134.

4. From on or about January 1, 2001, through December 31, 2002, Respondent billed Medicaid for reimbursement for psychiatric services provided to patients.

5. On or about August 6, 2004, a provisional audit report was sent to Respondent by the Agency for Health Care Administration, Office of Medicaid Program Integrity (MPI), indicating that an audit revealed deficiencies, which included the following:

a. services for which Respondent billed and received payment were not properly documented to include the beginning time and ending time of the psychiatric visits;

b. patient medical records were not properly signed or initialed when a rubber stamp was used;

c. patient medical records which Respondent billed and received payment for ~~consultation services did not~~ contain a copy of a request for consultation and/or a copy of the report given to the requesting physician.

6. The MPI audit further revealed that Respondent allowed his physician assistant to perform psychiatric services and Respondent billed



Medicaid using Respondent's provider number for those services rendered by the physician assistant.

### COUNT ONE

7. Petitioner realleges and incorporates paragraphs one (1) through six (6) as if fully set forth herein.

8. Section 458.331(1)(m), Florida Statutes (2001-2002), 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.

~~9. Respondent failed to document one or more of the following in the medical charts of patients:~~

~~a.) proper documentation of the length of psychiatric visits;~~

~~b.) proper signatures identifying the licensed physician or physician assistant; and/or~~

c.) reports of consultations.

10. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2001-2002), by 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

### **COUNT TWO**

11. Petitioner realleges and incorporates paragraphs one (1) through six (6) as if fully set forth in this count.

12. Section 458.331(1)(dd), Florida Statutes (2001-2002), provides that failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced registered nurse practitioners, or anesthesiologist assistants acting under the supervision of the physician, constitutes grounds for disciplinary action.

13. Respondent allowed his physician assistant to use his Medicaid provider number to bill for psychiatric services that the physician assistant performed.

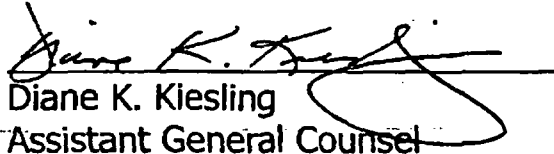
14. Respondent failed to properly supervise his physician assistant by allowing the physician assistant to perform psychiatric services and to use Respondent's Medicaid provider number for billing for those services.

15. Based on the foregoing, Respondent has violated Section 458.331(1)(dd), Florida Statutes (2001-2002), by failing to supervise adequately the activities of those physician assistants, paramedics, emergency medical technicians, advanced registered nurse practitioners, or anesthesiologist assistants acting under the supervision of the physician.

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 26<sup>th</sup> day of October, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.  
Secretary, Department of Health

  
Diane K. Kiesling  
Assistant General Counsel

DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
Florida Bar # 00233285  
(850) 245-4640 Ext.8127  
(850) 245-4680 FAX

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: Alicia Stiffen  
DATE: 10/27/06

DKK

PCP: 10-26-06  
PCP Members: Waiver of Probable Cause

#### 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.