STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v. **CASE NO. 2012-06505**

MICHAEL C. BENGALA, 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 the Respondent, Michael C. Bengala, 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 Order, Respondent was licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes (2011), and was authorized to prescribe controlled substances classified under schedules two through five of Section 893.03, Florida

Statutes (2011) to patients, having been issued registration number ME 98278.

3. Respondent's address of record is 2237 SE 9th Street, Pompano Beach, Florida 33062.

4. Beginning in May 2010, the Federal Drug Enforcement Administration ("DEA"), the Florida Department of Law Enforcement ("FDLE"), the Florida Division of Insurance Fraud ("FDIF"), the Vero Beach Police Department ("VBPD"), the Jacksonville Sheriff's Office ("JSO"), the Sarasota County Sheriff's Office ("SCSO"), the Indian River County Sheriff's Office ("IRCSO") (hereafter collectively referred to as "Law Enforcement") and the Florida Department of Health commenced a joint undercover investigation of the Respondent, and his employer, Miami-Dade Medical Solutions, Inc. (the clinic).

5. The investigation was predicated upon information received by Law Enforcement that Respondent was inappropriately prescribing large quantities of controlled substances from the Clinic and that the Clinic was operating as an illegal pill mill[1]. According to Law Enforcement officials, Respondent and the Clinic owners were conspiring with members of a

[1] The term "pill mill" is used by law enforcement agencies in Florida to refer to a clinic from which prescriptions for controlled substances are dispensed for illegal purposes.

major drug trafficking organization ("DTO") that is illegally distributing controlled substances from the Clinic in exchange for cash.

6. As part of their undercover investigation, Law Enforcement officers posed as patients during visits to the Clinic between February 2012 and April 2012. During these visits, undercover officers openly exhibited drug-seeking behavior in front of Clinic employees and Respondent.

7. Respondent disregarded this drug-seeking behavior and prescribed large quantities of highly-addictive controlled substances to the officers. During each visit, Respondent performed little or no examination of the officers.

8. The Clinic owner is a member of a drug trafficking organization ("DTO"), which operates ten pain management clinics throughout Florida and Georgia. As with Miami-Dade Medical Solutions, Inc., these clinics are designed to appear to be legitimate pain management clinics. They each hire licensed physicians and nurses and receive instruction from the DTO on how to avoid unwanted attention from Law Enforcement and the Department of Health. In return, the clinics pay the members of the DTO tribute money for their guidance.

9. On February 27, 2012, Law Enforcement officer S.M. ("SM"), acting in an undercover capacity, first presented to Respondent at the Clinic as a forty-one year old male patient with complaints of upper back pain near his shoulder blades. SM submitted to a urine drug screening which was negative for controlled substances, including those controlled substances that were purportedly prescribed to SM previously. This should have alerted Respondent to the fact that SM may not have been taking his medication as prescribed. SM provided a copy of the results of a magnetic resonance imaging ("MRI") study of SM's lumbar spine (lower back) dated August 22, 2011, and SM's prescription history. SM's medical records revealed a mild annular bulge, foraminal herniation, mild desiccation, degenerative changes, and evidence of an annular tear.[2] SM did not complain of pain to his lower back during his visit to the Clinic. SM's medical record included a history of receiving Oxycodone 30 mg and Xanax 2 mg from January 10, 2011, through September 2, 2011.

10. Oxycodone is commonly prescribed to treat pain. According to Section 893.03(2), Florida Statutes (2010-2011), oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a

[2] SM's medical record and prescription history were fabricated by Law Enforcement with the assistance of a cooperating physician. SM's MRI was authentic.

currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

11. Xanax is the brand name for alprazolam and is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes (2010-2011), alprazolam is a Schedule IV controlled substance that has 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 alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

12. During the course of this initial visit, SM reported a pain level of five on a scale of one-through-ten without pain medication and two on a scale of one-through-ten with pain medication.

13. After paying his visit fee of $200.00, SM was escorted into an examination room. Respondent entered the room a few minutes later and inquired about SM's history of pain treatment. SM stated that he had a car wreck in the 1980's but was not diagnosed with back problems at that time. SM said that he first sought treatment in 2010 for pain in his upper back between his shoulder blades. Respondent briefly reviewed SM's

lumbar spine MRI and asked SM if he had considered surgery. SM stated that he would not consider surgery. SM further revealed that he had not tried alternative treatments such as physical therapy, chiropractic care, or injections.

14. Respondent's physical exam of SM lasted less than 35 seconds and was limited to asking SM to squeeze his fingers and checking SM's patellar reflexes. Respondent failed to evaluate the range of motion of SM's spine and performed no examination of SM's back. SM remained seated during the entire visit with Respondent.

15. Respondent briefly counseled SM in regard to new guidelines and law pertaining to pain management and controlled substances, as well as the benefits of physical therapy, exercise, and diet. He also recommended that SM take a "medication holiday" one day per week during which SM would only take half his normal dosage of medications. Respondent explained that a "medication holiday" would help prevent tolerance and habituation.

16. At the conclusion of this visit, Respondent asked if SM was satisfied with the medications previously prescribed by Dr. Gordon, another physician at the Clinic, during another undercover visit in January 2012.

SM answered affirmatively and Respondent provided SM with prescriptions for 120 dosage units of oxycodone 30 mg, 30 dosage units of Valium 10 mg, and 90 dosage units of Motrin 800 mg.

17. Valium is a brand name for diazepam which is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, diazepam is a Schedule IV controlled substance that has 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 diazepam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

18. Motrin is a brand name for ibuprofen. Ibuprofen is a nonsteroidal anti-inflammatory drug (NSAID) and is used to treat pain or inflammation.

19. On March 26, 2012, SM went to the Clinic for a follow-up visit with Respondent. After paying a visit fee of $200.00, SM was escorted to an examination room where a medical assistant took SM's blood pressure and asked if there were any changes since the previous visit. In response, SM indicated that there were no changes.

20. When Respondent entered the exam room, SM informed Respondent that the "medication holiday" did not work and caused him to take more medication on the other days. Respondent asked a few questions regarding SM's efforts to lose weight and performed a very brief physical exam. The physical exam consisted only of Respondent checking SM's patellar reflexes and asking SM if he could feel the coolness of the metal part of the reflex hammer with his hand.

21. After Respondent concluded his exam, SM asked for an increase in the quantity of oxycodone prescribed. Respondent stated that he would increase the amount to 150 tablets per month but that the most he would prescribe would be 180 tablets.

22. At the conclusion of this visit, Respondent provided SM with prescriptions for 150 dosage units of oxycodone 30 mg, 30 dosage units of Valium 10 mg, and 90 dosage units of Motrin 800 mg.

23. Respondent's second visit with SM lasted approximately seven and a half minutes.

24. An independent medical expert, who is Board-Certified in Pain Management, Anesthesiology and Interventional Pain Management, reviewed the treatment provided by Respondent to SM and opined

Respondent fell below the standard of care in several respects. In particular, the expert found Respondent failed to utilize a multi-disciplinary approach in his treatment of SM; prescribed large amounts of controlled substances to SM without medical justification; failed to perform physical examinations of SM's back (the patient's main complaint); failed to provide a written treatment plan to SM; failed to order diagnostic or objective tests; and prescribed increased amounts of controlled substances to SM after the patient reported running out of medication early when SM reported no increases in pain and tested negative for the substances during drug screens.

25. On February 27, 2012, Law Enforcement officer M.M. ("MM"), acting in an undercover capacity, first presented to the Clinic as a forty-one year-old female patient with complaints of shoulder pain. After MM completed intake paperwork, a medical assistant weighed MM and asked her to submit to a urine drug screening. MM provided a urine sample without being observed. The drug screening was negative for controlled substances, including those controlled substances that were purportedly previously prescribed to MM. This should have alerted Respondent to the possibility that MM may not have been taking her medication as prescribed.

MM provided copies of her medical records from a prior-treating physician to the Clinic, as well as her prescription history. MM's prior medical records included the results of an MRI study of MM's left shoulder area dated March 2, 2010, which revealed a mild enlargement of the AC joint and mild fluid in the glenohumeral joint.[3]

26. MM indicated that her prior treating physician prescribed 90 dosage units of oxycodone 30 mg, 30 dosage units of Xanax 2 mg, and 90 dosage units of Soma 350 mg, between January 10, 2011, and January 10, 2012.

27. Soma is a brand name for carisoprodol, which is a muscle relaxant prescribed to treat muscular pain. According to Section 893.03(4), Florida Statutes (2011), carisoprodol is a Schedule IV controlled substance that has 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 carisoprodol may lead to limited physical or psychological dependence relative to the substances in Schedule III.

28. After entering the examination room, Respondent advised MM that the clinic treated only neck and back pain. He further observed that

[3] MM's medical record and prescription history were fabricated by Law Enforcement with the assistance of a cooperating physician. MM's MRI was authentic.

MM's MRI findings were insignificant and questioned why she had not considered surgery. Although Respondent expressed concern about MM taking such strong medications for a mild condition, he indicated he would continue the treatment because she had already started taking the medications.

29. Before the visit concluded, BT, an owner/operator of the Clinic, entered the exam room. BT is not medically licensed or trained. BT inquired about MM's medical history and prescriptions. BT stated that MM's shoulder pain would likely cause back or neck problems due to MM overcompensating for the injury. BT stated that she would refer MM for an MRI. BT then instructed Respondent to write MM prescriptions for two weeks of medications while MM obtained an MRI. In doing so, BT instructed Respondent to decrease the quantity of carisoprodol prescribed to MM.

30. Thereafter, Respondent performed a brief physical exam of MM which consisted of him raising MM's arm slightly, having her grip his fingers, and having her feel the reflex hammer. The exam lasted approximately 35 seconds.

31. At the conclusion of this visit, Respondent prescribed MM 60 dosage units of oxycodone 30 mg, 45 dosage units of carisoprodol 600 mg and 15 dosage units of Xanax 2 mg.

32. An independent medical expert, who is Board-Certified in Pain Management, Anesthesiology and Interventional Pain Management, reviewed the treatment provided by Respondent to MM and opined Respondent fell below the minimum standards of care. The expert found Respondent performed an inadequate physical examination of MM and prescribed controlled substances to MM without medical justification.

33. On April 9, 2012, Law Enforcement officer K.C. ("KC"), acting in an undercover capacity, first presented to the Clinic as a thirty-two year-old female patient with complaints of upper back pain between her shoulder blades. KC submitted to a urine drug screening which was negative for controlled substances, including those controlled substances that were purportedly prescribed to KC previously. This should have alerted Respondent to the possibility that KC may not have been taking her medication as prescribed. KC provided a copy of the results of an MRI study of her lumbar spine dated March 21, 2012, and KC's prescription history. KC's MRI revealed no abnormalities. KC also provided medical

records and prescription records which included a history of receiving Oxycodone 30 mg and Xanax 2 mg from September 29, 2011, through February 27, 2012.[4]

34. When Respondent entered the exam room in which KC was waiting, he reviewed her chart and asked her some questions regarding her pain history. He noted that KC's MRI indicated no lumbar spine problems and that he did not believe her pain was chronic.

35. Respondent performed a very brief examination of KC, which consisted of him checking her patellar reflexes and having her feel the metal part of the reflex hammer.

36. Upon concluding the physical exam, Respondent told KC that he would have to check with BT in regard to prescribing KC any medication.

37. BT entered the exam room shortly thereafter and asked KC some questions regarding her medical history and her occupation. KC claimed to be a cleaning lady and stated that her pain radiated all over her back. BT told KC that she would not be prescribed oxycodone until KC underwent another MRI. BT informed KC that she would prescribe her a

[4] KC's medical record and prescription history were fabricated by Law Enforcement with the assistance of a cooperating physician. KC's MRI was authentic.

one week supply of Percocet and an MRI. At the conclusion of the visit, KC received prescriptions for 42 dosage units of Percocet 10-325 mg, 4 dosage units of Vitamin D tablets, and a cervical spine MRI.

38. Percocet is a brand name for oxycodone/APAP which contains oxycodone and acetaminophen, or Tylenol. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

39. KC presented to Respondent on April 16, 2012, for a follow up visit after submitting to a cervical spine MRI on April 12, 2012. A medical assistant directed KC to an exam room and took her blood pressure.

40. When Respondent entered the exam room, he asked KC if she had spoken with BT. When KC answered "no," Respondent advised KC that he would have to speak with BT before beginning the follow up visit.

41. BT subsequently entered the exam room and directed KC to follow her to another exam room where Respondent was waiting. BT told KC that she was waiting on additional paperwork from the MRI facility and

would only be able to prescribe 90 oxycodone tablets at that time. BT then advised Respondent that he did not need to examine KC because the medical assistant had already taken KC's vital signs.

42. At the conclusion of the follow up visit, Respondent prescribed KC 90 dosage units of oxycodone 30 mg.

43. KC presented to the clinic on April 30, 2012, for another follow up visit. The receptionist at the Clinic took KC's blood pressure, asked her weight, and asked her if she had participated in a "med holiday." .The receptionist then directed KC to an exam room where Respondent was waiting.

44. Respondent performed no physical exam of KC during this follow up visit. Respondent briefly reviewed KC's chart and asked a few questions about KC's adjustment to the medications prescribed and her ability to work with the medications prescribed. Respondent told KC that he wished he had not prescribed oxycodone 30 mg tablets so quickly after prescribing Percocet 10/325 mg, but said "it's too late now." Ultimately, Respondent prescribed KC 90 dosage units of oxycodone 30 mg and 4 Vitamin D tablets. The follow up visit lasted less than seven and a half minutes.

45. An independent medical expert, who is Board-Certified in Pain Management, Anesthesiology and Interventional Pain Management, reviewed the treatment provided by Respondent to KC and opined Respondent fell below the standard of care in several respects. In particular, the expert found Respondent failed to utilize a multi-disciplinary approach in his treatment of KC; prescribed large amounts of controlled substances to KC without medical justification; failed to perform an adequate physical examination of KC on the first visit; failed to perform physical examinations on the follow up visits; failed to provide a written treatment plan to KC; prescribed increased amounts of controlled substances to KC after the patient reported running out of medication early, reported no increases in pain and tested negative for the substances during drug screens; and prescribed Vitamin D with no discussion, laboratory tests or medical indication. The expert further noted that Respondent apparently took direction from BT in regard to prescribing controlled substances.

COUNT ONE

46. Petitioner realleges and incorporates Paragraphs one (1) through forty-five (45), as if fully set forth herein.

47. Section 458.331(1)(t)1, Florida Statutes (2011), subjects a licensee to discipline, including suspension, for committing medical malpractice as defined in Section 456.50, Florida Statutes (2011). "Medical malpractice" is defined by Section 456.50(1)(g), Florida Statutes (2011), 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." Section 456.50(1)(e), Florida Statutes (2011), provides that the "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care that is specified in Section 766.102(1), Florida Statutes (2011), which states as follows:

> 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.

Section 458.331(1)(t)1, Florida Statutes (2011), directs the Board of Medicine to give "great weight" to this provision of Section 766.102, Florida Statutes (2011).

48. Respondent failed to meet the prevailing standards of care in one or more of the following manners:

a. By prescribing inappropriate quantities of controlled substances to Patients SM, MM, and KC without justification;

b. By failing to employ other modalities for the treatment of pain in connection with Patients SM, MM, and KC; and

c. By failing to order appropriate diagnostic or objective tests for Patients SM and MM.

49. Based on the foregoing, Respondent has violated Section 458.331(1)(t)1, Florida Statutes (2011), by failing to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure.

COUNT TWO

50. Petitioner realleges and incorporates Paragraphs one (1) through forty-five (45), as if fully set forth herein.

51. Section 456.072(1)(dd), Florida Statutes (2011), subjects a licensee to discipline for violating any provision of Chapter 456, Florida Statutes, Chapter 458, Florida Statutes, or any rules adopted pursuant thereto.

52. Rule 64B8-9.013, Florida Administrative Code, sets forth the standards for the use of controlled substances for the treatment of pain, in part, as follows:

> (3) Standards. The Board has adopted the following standards for the use of controlled substances for pain control:
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> (a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record shall document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also shall document the presence of one or more recognized medical indications for the use of a controlled substance.
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> (b) Treatment Plan. The written treatment plan shall state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and shall indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician shall adjust drug therapy, if necessary, to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.
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> * * *
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> (e) Consultation. The physician shall be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention must be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a

risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

1. The complete medical history and a physical examination, including history of drug abuse or dependence, as appropriate;
2. Diagnostic, therapeutic, and laboratory results;
3. Evaluations and consultations;
4. Treatment objectives

53. Respondent violated Rule 64B8-9.013, Florida Administrative Code, in one or more of the following manners:

a. By failing to document an adequate treatment plan for Patients SM, MM, and KC;

b. By failing to conduct or document an adequate physical examination of Patients SM, MM, and KC;

c. By failing to document adequate justification for the prescription of controlled substances to Patients SM, MM, and KC; and

d. By failing to appropriately monitor Patients SM, MM, and KC for drug diversion or drug abuse.

54. Based on the foregoing Respondent has violated Section 456.072(1)(dd), Florida Statutes (2011), by failing to comply with the standards prescribed by Rule 64B8-9.013, Florida Administrative Code.

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 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 24th day of July, 2012.

JOHN H. ARMSTRONG, MD
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE JUL 25 2012

MMR/tgc
PCP: July 24, 2012
PCP Members: Nuss + Goersch

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.