

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-17-0351-<sup>9</sup>-MQA  
FILED DATE FEB 22 2017  
Department of Health  
By: Bryndi Sanders  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2013-15235  
2015-30747  
LICENSE NO.: ME0086083

ROBERT J. MORGENTHAL, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) on February 3, 2017, in Championsgate, Florida, for the purpose of considering Respondent's offer to voluntarily relinquish his license to practice medicine in the State of Florida. (Attached hereto as Exhibit A.) Said written offer of relinquishment specifically provides that Respondent agrees never again to apply for licensure as a physician in the State of Florida.

Upon consideration of the written offer of voluntary relinquishment, the charges, and the other documents of record, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED that Respondent's Voluntary Relinquishment of his license to practice medicine in the State of Florida is hereby ACCEPTED, and shall constitute discipline upon Respondent's license.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 20<sup>th</sup> day of February, 2017.

BOARD OF MEDICINE

Claudia Kemp

Claudia Kemp, J.D., Executive Director  
For Brigitte Goersch, Vice-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 ROBERT J. MORGENTHAL, M.D., 13051 Lake Live Oak Drive, Orlando, Florida 32828; to Eric Elms, Esquire, Fisher Rushmer, Attorneys at Law, 390 N. Orange Avenue, Suite 2200, Orlando, Florida 32801-1642; by email to Allison Dudley, Associate General Counsel, Department of Health, at Allison.Dudley@flhealth.gov; and by email to Edward A. Tellechea, Chief Assistant Attorney General, at Ed.Tellechea@myfloridalegal.com this 22 day of Feb., 2017.

Angel Sanders  
Deputy Agency Clerk

CLERK Linda Leonard  
DATE 12.15.16

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,  
Petitioner,

v.

DOH Case No. 2013-15235  
2015-30747

ROBERT JOSEPH MORGENTHAL, M.D.  
Respondent.

VOLUNTARY RELINQUISHMENT OF LICENSE

Respondent Robert Joseph Morgenthal, M.D., license No. ME 86083, hereby voluntarily relinquishes Respondent's license to practice medicine in the State of Florida and states as follows:

1. Respondent's purpose in executing this Voluntary Relinquishment is to avoid further administrative action with respect to this cause. Respondent understands that acceptance by the Board of Medicine (hereinafter the Board) of this Voluntary Relinquishment shall be construed as disciplinary action against Respondent's license pursuant to Section 456.072(1)(f), Florida Statutes. As with any disciplinary action, this relinquishment will be reported to the National Practitioner Data Bank as disciplinary action. Licensing authorities in other states may impose discipline in their jurisdiction based on discipline taken in Florida.
2. Respondent agrees to never reapply for licensure as a medical doctor in the State of Florida.
3. Respondent agrees to voluntarily cease practicing medicine immediately upon executing this Voluntary Relinquishment. Respondent further agrees to refrain from the

practice of medicine until such time as this Voluntary Relinquishment is presented to the Board and the Board Issues a written final order in this matter.

4. Upon the Board's acceptance of this Voluntary Relinquishment, Respondent agrees to waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of, this Voluntary Relinquishment and of the Final Order of the Board incorporating this Voluntary Relinquishment.

5. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

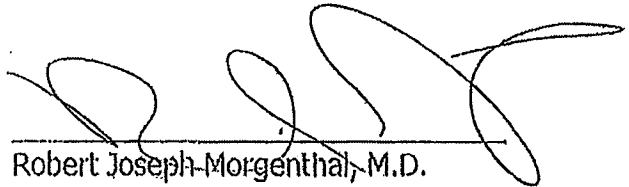
6. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board, or any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

7. Petitioner and Respondent hereby agree that upon the Board's acceptance of this Voluntary Relinquishment, each party shall bear its own attorney's fees and costs related to the prosecution or defense of this matter.

8. Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent in connection with the Board's consideration of this Voluntary Relinquishment. Respondent agrees that consideration of this Voluntary Relinquishment and other related materials by the Board shall not prejudice or preclude the Board/Department, or

any of its members, from further participation, consideration, or resolution of these proceedings if the terms of this Voluntary Relinquishment are not accepted by the Board.

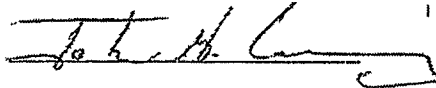
DATED this 12 day of October, 2016.

  
Robert Joseph Morgenthal, M.D.

STATE OF FLORIDA  
COUNTY OF ORANGE

Before me, personally appeared Robert Morgenthal, whose identity is known to me or who produced FL. DRIVERS LICENSE (type of identification) and who, under oath, acknowledges that his signature appears above.

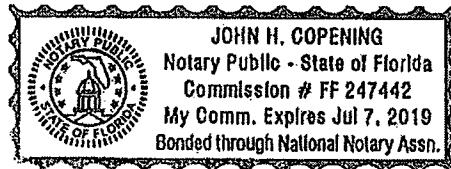
Sworn to and subscribed before me this 12 day of OCTOBER, 2016.



NOTARY PUBLIC

My Commission Expires:

7-7-19



STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NOS. 2013-15235  
2015-30747

ROBERT J. MORGENTHAL, M.D.,

RESPONDENT.

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**ADMINISTRATIVE COMPLAINT**

Petitioner Department of Health files this Administrative Complaint before the Board of Medicine against Respondent Robert Joseph Morgenthal, M.D., and alleges:

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

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 86083.

3. Respondent's address of record is 13051 Lake Live Oak Drive, Orlando, Florida 32828.

Facts Relating to Patient N.M.<sup>1</sup>

4. On or about July 4, 2013, Respondent conducted a patient discharge evaluation of Patient N.M., a twenty-seven-year-old female patient at Central Florida Behavioral Hospital. Patient N.M. presented to Central Florida Behavioral Hospital with complaints of moderate depression, and anxiety state not otherwise specified, exacerbated by marital problems.

5. During her evaluation, Respondent made sexually explicit comments and propositioned Patient N.M. to engage in sexual activity.

6. Respondent asked Patient N.M. what her sexual preferences were and inquired about her sexual performance.

7. Respondent suggested that he and Patient N.M. go on a date.

8. Respondent requested that Patient N.M. send him nude photographs via text message. Respondent provided Patient N.M. with his personal cellular telephone number so Patient N.M. could text message Respondent nude photographs.

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<sup>1</sup> Department of Health Case Number 2013-15235  
Dep't of Health v. Morgenthal, M.D.,  
Case Nos. 13-15235, 15-30747

Facts Relating to Patient R.M.<sup>2</sup>

9. On or about June 11, 2014, Patient R.M., a forty-one-year-old female, presented to Peace River Center with complaints of depression, possible bipolar disorder, and alcohol abuse.

10. On or about April 1, 2015, Respondent evaluated Patient R.M. for the first time.

11. Respondent asked Patient R.M. about entering into a sexual relationship and gave her his personal cell phone number.

12. On or about and between October 4, 2015, and November 16, 2015, Patient R.M. and Respondent exchanged sexually explicit text messages.

13. Many of the text messages from Respondent were instructions to Patient R.M. on sexual activities he desired Patient R.M. engage in with him or at his direction.

14. Respondent and Patient R.M. engaged in sexual activity during that time period.

COUNT I

15. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 14, as if fully set forth herein.

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<sup>2</sup> Department of Health Case Number 2015-30747  
Dep't of Health v. Morgenthal, M.D.,  
Case Nos. 13-15235, 15-30747



16. Section 458.331(1)(j), Florida Statutes (2015), subjects a physician to discipline, for exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

17. Respondent violated Section 458.331(1)(j), Florida Statutes (2015), by exercising influence within the physician-patient relationship with Patient N.M. for the purposes of engaging Patient N.M. in sexual activity.

18. Based on the foregoing, Respondent violated Section 458.331(1)(j), Florida Statutes (2015), by exercising influence within the physician-patient relationship for the purposes of engaging that patient in sexual activity.

#### COUNT II

19. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 14, as if fully set forth herein.

20. Section 458.331(1)(j), Florida Statutes (2015), subjects a physician to discipline, for exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity.

21. Respondent violated Section 458.331(1)(j), Florida Statutes (2015), by exercising influence within the physician-patient relationship with Patient R.M. for the purposes of engaging Patient R.M. in sexual activity.

22. Based on the foregoing, Respondent violated Section 458.331(1)(j), Florida Statutes (2015), by exercising influence within the physician-patient relationship for the purposes of engaging that patient in sexual activity.

### COUNT III

23. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 14, as if fully set forth herein.

24. Section 458.331(1)(nn), Florida Statutes (2015), subjects a physician to discipline, for violating any provision of chapter 458, Florida Statutes (2015).

25. Section 458.329, Florida Statutes (2015), defines sexual misconduct as:

The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

26. Respondent violated Section 458.331(1)(nn), Florida Statutes (2015), by violating Section 458.329, Florida Statutes (2015), by committing sexual misconduct in one or more of the following ways, by:

- a. Attempting to induce Patient N.M. to engage in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment; and/or
- b. Inducing Patient N.M. to engage in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment.

27. Based on the foregoing, Respondent violated Section 458.331(1)(nn), Florida Statutes (2015), by committing sexual misconduct as defined and prohibited in Section 458.329, Florida Statutes (2015), with Patient N.M.

#### COUNT IV

28. Petitioner re-alleges and incorporates by reference Paragraphs 1 through 14, as if fully set forth herein.

29. Section 458.331(1)(nn), Florida Statutes (2015), subjects a physician to discipline, for violating any provision of chapter 458, Florida Statutes (2015).

30. Section 458.329, Florida Statutes (2015), defines sexual misconduct as:

The physician-patient relationship is founded on mutual trust. Sexual misconduct in the practice of medicine means violation of the physician-patient relationship through

which the physician uses said relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

31. Respondent violated Section 458.331(1)(nn), Florida Statutes (2015), by violating Section 458.329, Florida Statutes (2015), by committing sexual misconduct in one or more of the following ways, by:

- a. Attempting to induce Patient R.M. to engage in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment;
- b. Inducing Patient R.M. to engage in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment;
- c. Attempting to engage Patient R.M. in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment; and/or
- d. Engaging Patient R.M. in sexual activity outside the scope of practice or the scope of generally accepted exam or treatment.

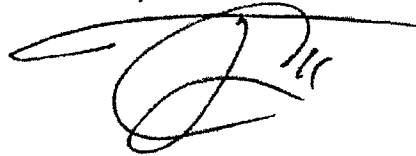
32. Based on the foregoing, Respondent violated Section 458.331(1)(nn), Florida Statutes (2015), by committing sexual misconduct

as defined and prohibited in Section 458.329, Florida Statutes (2015), with Patient R.M.

WHEREFORE, 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 12<sup>TH</sup> day of JULY, 2016.

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



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Francis A. Carbone, II, Esquire  
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Florida Bar No 105786  
Florida Department of Health  
Prosecution Services Unit  
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FILED  
Department Of Health  
Deputy Clerk  
CLERK *Angel Sanders*  
DATE JUL 12 2016

PCP: July 8, 2016  
PCP Members: Mark Avila, M.D., Magda Averhoff, M.D., Joy Tootle, Deborah Gerbert, P.A.

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## **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. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.**

**Mediation under Section 120.573, Florida Statutes, is not available for resolution of this Administrative Complaint.**

## **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.**