

**CONSENT AGREEMENT
BETWEEN
MICHAEL STEPHEN INSLER, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO
10-CRF-005**

This Consent Agreement is entered into by and between Michael Stephen Insler, M.D., [Dr. Insler], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Insler enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(22), Ohio Revised Code, for “actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license to surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand.”
- B. On or about January 13, 2010, the Board issued to Dr. Insler a Notice of Opportunity for Hearing (“January Notice”), a copy of which is attached hereto and fully incorporated herein as Exhibit A.
- C. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Section 4731.22(B)(22), Ohio Revised Code, as set forth in the January Notice, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- D. Dr. Insler is licensed to practice medicine and surgery in the State of Ohio, License number 35.082432.
- E. Dr. Insler states that he is also currently licensed to practice in the state of Florida, Louisiana, Georgia, and Tennessee. In addition, Dr. Insler holds inactive licenses to practice in Texas, and South Carolina.
- F. Dr. Insler admits to the factual and legal allegations as set forth in the January Notice of Opportunity for a Hearing.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Insler knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

REPRIMAND

- 1. Dr. Insler is hereby REPRIMANDED.

REQUIRED REPORTING BY LICENSEE

- 2. Within thirty days of the effective date of this Consent Agreement, Dr. Insler shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Insler shall promptly provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. In the event that Dr. Insler provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Insler shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Insler shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

3. Within thirty days of the effective date of this Consent Agreement, Dr. Insler shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Insler further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Insler shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
4. Dr. Insler shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

DURATION/MODIFICATION OF TERMS

The Reprimand of Dr. Insler shall not terminate. Further, Dr. Insler shall not request termination of this Consent Agreement for a minimum of three years. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

In the event that the Board initiates future formal proceedings against Dr. Insler, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Dr. Insler and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Insler appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches,

including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Insler has violated any term, condition or limitation of this Consent Agreement, Dr. Insler agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Insler acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Insler hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

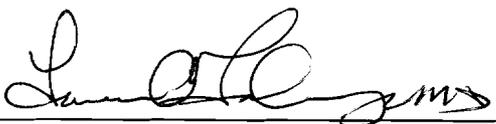
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Insler acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



MICHAEL STEPHEN INSLER, M.D.



LANCE A. TALMAGE, M.D.
Secretary

5/4/2010

DATE

5-12-10

DATE



ELIZABETH Y. COLLIS
Attorney for Dr. Insler

5-10-10

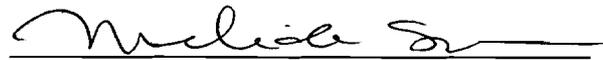
DATE



JACK C. AMATO, M.D.
Acting Supervising Member

5-12-10

DATE



MELINDA R. SNYDER
Assistant Attorney General

5-11-10

DATE

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

January 13, 2010

Case number: 10-CRF- 005

Michael Stephen Insler, M.D.
2660 Peachtree Road NW #9A
Atlanta, GA 30305

Dear Doctor Insler:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about October 28, 2009, the Florida Department of Health, Board of Medicine, issued a Final Order [Florida Final Order], whereby you were reprimanded; fined \$30,000; and ordered to pay costs of \$3,787.69; complete 250 hours of community service; present a lecture / seminar on wrong site surgeries to medical staff at an approved medical facility; complete a laws and rules course; and complete five hours of continuing medical education [CME] in the area of medical ethics and five hours in the area of risk management, in addition to CME hours already required for renewal of licensure.

A copy of the Florida Final Order is attached hereto and incorporated herein.

The Florida Final Order as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must

Mailed 01-14-10

To protect and enhance the health and safety of the public through effective medical regulation



Michael Stephen Insler, M.D.

Page 2

be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/DSZ/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3068 4812
RETURN RECEIPT REQUESTED

Duplicate Copy:

Michael Stephen Insler, M.D.
2020 Gravier Street
New Orleans, LA 70112

CERTIFIED MAIL #91 7108 2133 3936 3068 4805
RETURN RECEIPT REQUESTED – RESTRICTED DELIVERY



CERTIFICATION

I, **Japanyca Allen**, Deputy Agency Clerk and Custodian of Records, HEREBY certify the following to be true and correct as on file with the Department of Health.

Attached is a true and correct copy of a Final Order Number **200807879** as maintained by the Department of Health. The attached is a regularly received and retained record of the **Board of Medicine vs. Michael Stephen Insler; ME88691** and is received and retained in the ordinary course of business of the Department of Health.



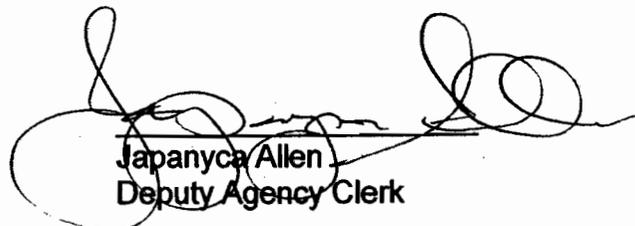
Japanyca Allen
Deputy Agency Clerk

Charlie Crist
Governor



Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

Personally appeared before me, the undersigned authority, **Janyca Allen**, Deputy Agency Clerk, Department of Health, Division of Medical Quality Assurance, who being sworn, says that this is a true and correct copy from the official file of the Department of Health.



Janyca Allen
Deputy Agency Clerk

STATE OF FLORIDA
COUNTY OF LEON

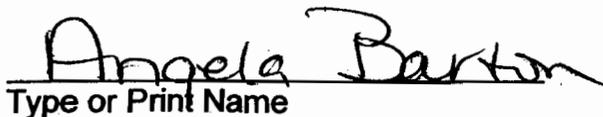
Before me, personally appeared Janyca Allen whose identity is personally known to me as Deputy Agency Clerk, and who, acknowledges that his/her signature appears above.

Sworn and subscribed to, before me, this **23th** day of **November 2009**.



Notary Public-State of Florida

ANGELA BARTON
NOTARY PUBLIC-STATE OF FLORIDA
COMMISSION # DD922154
EXPIRES 9/1/2013
BONDED THRU 1-998-NOTARY1



Type or Print Name

STATE OF FLORIDA
BOARD OF MEDICINE

Final Order No. DOH-09-2208-5-MOA
FILED DATE - 10/28/09
Department of Health
By: Angele Barton
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2008-07879
LICENSE NO.: ME0088691

MICHAEL S. INSLER, 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 October 2, 2009, in Tampa, 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 Respondent was given 7 days to accept. By letter dated October 21, 2009, Respondent timely accepted the Board's Counter Settlement Agreement. 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 amended to require a fine in the amount of \$30,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$3,787.69.

3. The community service set forth in Paragraph 5 of the Stipulated Disposition shall be amended to require the completion of 250 hours of community service. Said community service shall be completed within 2 years from the date the Final Order is filed.

4. The provision to dismiss Count III as set forth in Paragraph 8 of the Stipulated Disposition is deleted. Count III shall remain as charged in the Administrative Complaint.

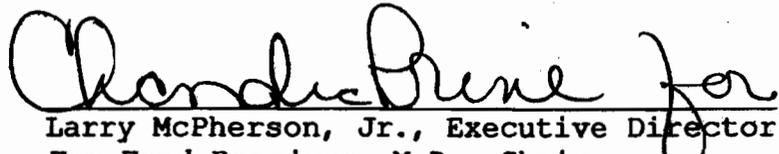
5. Respondent shall document the completion of five (5) hours of continuing medical education (CME) in the area of medical ethics within one year from the date the Final Order is filed. These hours shall be in addition to those hours required for biennial renewal of licensure. Respondent shall first 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 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 27 day of October 2009.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
For Fred Bearison, 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 MICHAEL S. INSLER, M.D., 5649 Marcia Avenue, New Orleans, Louisiana 70124; to Paul Nugent, Esquire, O'Hara & Nugent, 312 West First Street, Suite 600, Sanford, Florida 32771; and by interoffice

delivery to Ephraim Livingston, Department of Health, 4052 Bald
Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this
28th day of October, 2009.

Angela Barton

Deputy Agency Clerk

From: McPherson, Larry
Sent: Friday, October 23, 2009 6:36 PM
To: DL MQA Management Team
Cc: Sanford, Crystal; Prine, Chandra; Taylor, Natalie; Trexler, JoAnne; Nelson, Gloria J; Gray, Melinda
Subject: Board of Medicine Delegation

Citizens,

During my absence on October 26-29, 2009, Board of Medicine Executive Director authority is delegated to:

Chandra Prine, Program Operations Administrator, 245-4135.

Larry McPherson
Executive Director
Florida Board of Medicine

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2008-07879

MICHAEL S. INSLER, M.D.,

Respondent,

SETTLEMENT AGREEMENT

Michael S. Insler, 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 88691.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with 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. 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. **Reprimand** - The Board shall reprimand the license of Respondent.
2. **Fine** - The Board of Medicine shall impose an administrative fine of **fifteen thousand dollars (\$15,000)** 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/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 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 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 agreed upon amount of Department costs to be paid in this case is currently **three thousand one hundred ninety-five dollars and seventy cents (\$3,195.70)**, but shall not exceed **four thousand one hundred ninety-five dollars and seventy cents (\$4,195.70)**. 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 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/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 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, or a Board-approved equivalent, within eighteen (18) months 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 eighteen (18) months of the date of filing of the Final Order incorporating this Agreement.

5. **Community Service** - Respondent shall perform 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.

6. **Continuing Medical Education – "Risk Management"**

Respondent shall complete five (5) hours of Continuing Medical Education in "Risk Management" within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

7. **Lecture/Seminar** – During the next six (6) months following the filing date of a Final Order in this case, Respondent shall present a one (1) hour lecture/seminar on Wrong Site Surgeries. The lecture/seminar shall be presented to medical staff at an approved medical facility. Respondent shall submit a written plan to the Board for approval prior to performance of said lecture/seminar. Respondent shall also provide written documentation to the Board that said

lecture/seminar has been completed within six months of the date of filing of the Final Order 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.

8. **Dismissal of Count Three** – Petitioner agrees to dismiss Count Three of the Administrative Complaint.

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 written agreement Respondent shall first submit a written request to the Probation Committee 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 in this matter. All such documentation shall be sent to the Board of Medicine, 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, 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 Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **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.

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 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 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 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.

SIGNED this 21 day of August, 2009.


Michael S. Insler, M.D.

Before me, personally appeared Michael S. Insler, whose identity is known to me by Directors because (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 21 day of August, 2009.

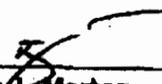

NOTARY PUBLIC

My Commission Expires: 7/28/11



APPROVED this 26th day of August, 2009.

Ana M. Viamonte Ros, M.D., M.P.H.
Secretary, Department of Health

By: 
Thomas G. Morton
Assistant General Counsel
Department of Health

ELECTION OF RIGHTS

DOH v. Michael S. Insler, M.D.

Case No.: 2008-07879

2008 JUN 13 PM 2:54

PLEASE SELECT ONLY 1 OF THE 3 OPTIONS

An Explanation of Rights is attached. If you do not understand these options, please consult with your attorney or contact the attorney for the Prosecution Services Unit at the address/phone number listed at the bottom of this form

OPTION 1. I do not dispute the allegations of fact in the Administrative Complaint, but do wish to be accorded a hearing, pursuant to Section 120.57(2), Florida Statutes, at which time I will be permitted to submit oral and/or written evidence in mitigation of the complaint to the Board.

OPTION 2. I do not dispute the allegations of fact contained in the Administrative Complaint and waive my right to object or to be heard. I request that the Board enter a final order pursuant to Section 120.57, Florida Statutes.

OPTION 3. I do dispute the allegations of fact contained in the Administrative Complaint and request this to be considered a petition for formal hearing, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings. I specifically dispute the following paragraphs of the Administrative Complaint:

Paragraphs 3-30

In addition to the above selection, I also elect the following:

- I accept the terms of the Settlement Stipulation, have signed and am returning the Settlement Stipulation or I am interested in settling this case.
- I do not wish to continue practicing, have signed and returned the voluntary relinquishment of licensure form, if it has been provided.

Regardless of which option I have selected, I understand that I will be given notice of time, date, and place when this matter is to be considered by the Board for Final Action. Mediation under Section 120.573, Florida Statutes, is not available in this matter.

(Please sign and complete all the information below.)

Michael S. Insler
 Michael S. Insler, M.D.
 Address: 5649 MARCIA AVE
New Orleans, LA 70124
 Lic. No. ME 88691
 Phone No. 504
 Fax No. _____

STATE OF LOUISIANA
COUNTY OF Orleans

Before me, personally appeared Michael S. Insler, M.D. whose identity is known to me or by George Diller's license (type of identification) and who, acknowledges that his/her signature appears above.

Sworn to or affirmed by Affiant before me this 6th day of July 2009

[Signature]
Notary Public - State of Florida Louisiana My Commission Expires with life

Elizabeth A. Gatzman 86574

Type or Print Name
PLEASE MAIL AND/OR FAX COMPLETED FORM TO: Thomas J. Morton, Assistant General Counsel, DOH, Prosecution Services Unit, 4987 Bald Cypress Way, Bin C-85, Tallahassee, Florida 32389-3285. Telephone Number: (850) 245-4840; FAX (850) 245-4861;

7602

STATE OF FLORIDA
DEPARTMENT OF HEALTH

2008 JUL 13 PM 2:54

DEPARTMENT OF HEALTH,)
)
Petitioner,)
)
vs.)
)
MICHAEL INSLER, M.D.)
)
Respondent.)

DOH Case No.: 2008-07879

**NOTICE OF APPEARANCE; REQUEST FOR COMPLETE
INVESTIGATIVE FILE AND EXHIBITS; REQUEST FOR
PROBABLE CAUSE TRANSCRIPT; REQUEST FOR
OPPORTUNITY TO DISCUSS A SETTLEMENT; AND NOTICE
OF FILING ALTERNATIVE REQUEST FOR FORMAL HEARING.**

The undersigned attorney, Paul A. Nugent, hereby files this Notice of Appearance for and on behalf of the Respondent, Michael Insler, M.D., in conjunction with the above-captioned Department of Health case. Copies of all pleadings, notices, and correspondence regarding the above-styled cause are hereby requested to be furnished to the undersigned counsel at the address stated.

REQUEST FOR COMPLETE INVESTIGATIVE FILE AND EXHIBITS

The undersigned counsel for Respondent requests to be promptly provided with a copy of the complete Department of Health investigative file in conjunction with the above-captioned case along with a copy of all supplemental investigations conducted by the Department in this matter. This request includes but is not limited to the following categories of documents:

- a. Copies of all records created, maintained, sent, or received by the Department of Health in any way related to the above-captioned investigation, including but not limited to reports of DOH investigators, summaries of witness statements, medical records, covers

of file, and other documents;

- b. Reports of experts consulted in this matter, correspondence to and from experts, copy of the Curriculum Vitae of any expert consulted in this matter, and copy of any bill or invoice rendered by any expert; and
- c. Copies of any recommendations to the Probable Cause Panel made by any representative of the Department of Health, and copies of all recommendations from the Probable Cause Panel directed to DOH or the Board of Medicine.
- d. A copy of each and every document sent to the Probable Cause Panel for its review in determining whether or not probable cause existed for the issuance of the Administrative Complaint in this case. (Please identify such documents as having been sent to the members of the Probable Cause Panel if they duplicate documents produced in response to any other Request set forth herein).

This is a continuing request, and the Department of Health is requested to provide a copy of all supplemental documents and reports promptly after they come within the possession of the Department. The failure to provide these documents in a timely fashion to Respondent's counsel will prejudice Respondent in preparation of this case. The Respondent agrees to the customary and reasonable charges for the copying of these materials.

REQUEST FOR PROBABLE CAUSE TRANSCRIPT

The undersigned counsel for Respondent requests to be provided with a copy of any and all Probable Cause Panel transcripts in the above-captioned case. The Respondent agrees to pay the customary and reasonable charge for the preparation of this transcript(s).

REQUEST FOR OPPORTUNITY TO DISCUSS POSSIBLE SETTLEMENT AND ALTERNATIVE REQUEST FOR A FORMAL HEARING

The undersigned counsel for Respondent, Michael Insler, M.D., requires the opportunity to discuss possible terms of settlement after review of the materials requested in this pleading before

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TJM

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2008-07879

MICHAEL S. INSLER, 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 Respondent, Michael S. Insler, 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 physician within the State of Florida, having been issued license number ME 88691.

3. Respondent's address of record is 2660 Peachtree Road NW, #9A, Atlanta, Georgia 30305.

4. At all times material to this complaint, Respondent was Board Certified in Ophthalmology by the American Board of Ophthalmology

5. On or about July 5, 2005, Patient T.W., a then thirty-two (32) year-old male, presented to The Lasik Vision Institute in Tampa, Florida for a pre-operative examination for Photo Refractive Keratotomy ("PRK").

6. PRK is a laser eye procedure intended to correct a person's vision, reducing dependency on glasses or contact lenses.

7. On or about July 5, 2005, a physician at The Lasik Vision Institute measured Patient T.W.'s right eye and determined Patient T.W.'s right eye glass prescription was -1 -0.75 x 10. The physician also measured Patient T.W.'s left eye and determined Patient T.W.'s left eye glass prescription was -1.75 -0.25 x 35.

8. On or about July 28, 2005, Patient T.W. signed an informed consent for Respondent to perform PRK.

9. On or about July 29, 2005, Patient T.W. presented to The Lasik Vision Institute for PRK.

10. On or about July 29, 2005, Respondent planned to treat Patient T.W.'s right eye for -0.75 -0.4 x 8 and planned to treat Patient T.W.'s left eye for -0.75 -0.4 x 28.

11. On or about July 29, 2005, at approximately 4:12 p.m., Respondent treated Patient T.W.'s right eye for -7.50 -0.4 x 4. The VISX laser printout from this treatment was excluded from Patient T.W.'s file until on or about September 14, 2005.

12. Rule 6488-9.007(2)(b), Florida Administrative Code, provides that:

Except in life-threatening emergencies requiring immediate resuscitative measures, once the patient has been prepared for the elective surgery/procedure and the surgical team has been gathered in the operating room and immediately prior to the initiation of any surgical procedure, the surgical team will pause and the operating physician will verbally confirm the patient's identification, the intended procedure and the correct surgical/procedure site. The operating physician shall not make any incision or perform any surgery or procedure prior to performing this required confirmation. The notes of the procedure shall specifically reflect when this confirmation procedure was completed and which personnel on the surgical team confirmed each item. This requirement for confirmation applies to physicians performing procedures either in office settings or facilities licensed pursuant to Chapter 395, F.S., and shall be in addition to any other requirements that may be required by the office or facility.

13. Respondent failed to verbally confirm the intended procedure and/or record when the confirmation was completed and which personnel

on the surgical team confirmed each item, as contemplated in the aforementioned rule.

14. At approximately 4:20 p.m., Respondent treated Patient T.W.'s left eye for -0.82 -0.4 x 28. The VISX laser printout from this treatment was immediately placed in Patient T.W.'s file.

15. At approximately 4:25 p.m., Respondent ran the laser as if treatment was being completed on Patient T.W.'s right eye for -0.75 -0.4 x 8. The VISX laser printout from this "sham" treatment was immediately placed in Patient T.W.'s file.

16. On or about September 14, 2005, Respondent met with Dr. R.G. to discuss the overcorrection of Patient T.W.'s right eye. Respondent admitted that the technician present during the laser procedure performed on or about July 29, 2005, had incorrectly programmed the VISX laser.

17. On or about September 14, 2005, Respondent produced a crumpled copy of the VISX laser printout from the first treatment of Patient T.W.'s right eye, treating the eye for -7.50 -0.4 x 4.

18. On or about September 22, 2005, Patient T.W. presented to The Lasik Vision Institute for a follow up appointment. During the appointment Respondent discussed with Patient T.W. the treatment error (overcorrection

of right eye) that occurred during the PRK performed on or about July 29, 2005.

COUNT ONE

19. Petitioner realleges and incorporates paragraphs one (1) through eighteen (18) as if fully set forth herein.

20. Section 456.072(1)(aa), Florida Statutes (2005), sets forth grounds for disciplinary action by the Board of Medicine for 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.

21. Respondent performed or attempted 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 in one or more of the following ways:

- a. By performing a wrong procedure on Patient T.W. by treating the right eye for -7.50 -0.4 x 4 when Patient T.W.'s condition required treating the right eye for -0.75 -0.4 x 8; and/or

- b. By performing a medically unnecessary procedure on Patient T.W. by treating the right eye for -7.50 -0.4 x 4 when Patient T.W.'s condition required treating the right eye for -0.75 -0.4 x 8.

22. Based on the foregoing, Respondent has violated Section 456.072(1)(aa), Florida Statutes (2005), by performing a wrong procedure on Patient T.W. and/or a medically unnecessary procedure on Patient T.W.

COUNT TWO

23. Petitioner realleges and incorporates paragraphs one (1) through eighteen (18) as if fully set forth herein.

24. Section 458.331(1)(nm), Florida Statutes (2005), sets forth grounds for disciplinary action by the Board of Medicine for violating any provision of chapter 458 or chapter 456, or any rules adopted pursuant thereto.

25. Respondent failed to comply with Rule 64B8-9.007(2)(b), Florida Administrative Code, by failing to verbally confirm the correct procedure and/or record when the confirmation was completed and which personnel on the surgical team confirmed each item.

26. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2005), by failing to confirm the correct procedure and/or record when the confirmation was completed and which personnel on the surgical team confirmed each item, in violation of Rule 64B8-9.007(2)(b), Florida Administrative Code.

COUNT THREE

27. Petitioner realleges and incorporates paragraphs one (1) through eighteen (18) as if fully set forth herein.

28. Section 458.331(1)(k), Florida Statutes (2005), sets forth grounds for disciplinary action by the Board of Medicine for making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.

29. Respondent made deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employed a trick or scheme in the practice of medicine:

- a. By failing to immediately place the VISX laser printout from the first treatment in Patient T.W.'s medical records;

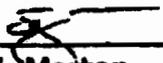
- b. By running the VISX laser a third time to give the appearance the treatment plan was properly performed; and/or
- c. By concealing the incident until on or about September 14, 2005.

30. Based on the foregoing, Respondent has violated Section 458.331(1)(k), Florida Statutes (2005), by making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.

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 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 12th day of June 2009.

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General


Thomas J. Morton
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar # 13771
(850) 245-4640
(850) 245-4681 Fax

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DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Rachel Oh*
DATE *6-15-09*

DOH v. Michael S. Insler, M.D. Case No.: 2008-07879

PCP: 6/12/09

PCP Members: Ashkar, Lage, Beebe