

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,	)	
BOARD OF MEDICINE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-2069PL
	)	
PURUSHOTTAM MITRA, M.D.,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Notice was provided and on October 23, 2001, and December 4, 2001, a formal hearing was held in this case. The hearing location was the Marion County Government Complex, Ocala, Florida. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Ephraim D. Livingston, Esquire  
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For Respondent: Paul A. Nugent, Esquire  
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STATEMENT OF THE ISSUE

Should discipline be imposed on Respondent's license to practice medicine in Florida?

PRELIMINARY STATEMENT

In an action State of Florida, Department of Health, Petitioner, vs. Purushottam Mitra, M.D., Respondent, before the State of Florida, Department of Health, Case No. 1999-58979, Respondent was accused of regulatory violations in his care rendered patient F.C. There are two counts in the Administrative Complaint. Count I accuses Respondent of failing to practice medicine with the level of care, skill, and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances in violation of Section 458.331(1)(t), Florida Statutes. Count II accuses Respondent of failing to keep medical records justifying the course of treatment of the patient F.C. in violation of Section 458.331(1)(m), Florida Statutes.

Respondent contested the factual allegations in the Administrative Complaint and requested consideration of the matter through a formal hearing pursuant to Section 120.569(2)(a), Florida Statutes, to be conducted by an

Administrative Law Judge assigned by the Division of Administrative Hearings. The case was forwarded to Sharyn Smith, Chief Administrative Law Judge, Division of Administrative Hearings, for assignment of an Administrative Law Judge to conduct the formal hearing. The assignment was made and the hearing was held.

Petitioner presented George Schoonover, M.D., as its witness. Petitioner's Exhibits 1 through 5 and 7 were admitted. Respondent testified in his own behalf and presented Krishna Rao, M.D., as his witness. Respondent's Exhibits 1, 2, and 10A and 10B were admitted. Respondent's Exhibit 11 was denied admission.

In addition, Petitioner presented the deposition testimony of Anju Vasudevan, M.D., and the rebuttal testimony of Kristine Sittrick, R.N.

Consistent with a pre-hearing order, the parties submitted a pre-hearing stipulation. Through the pre-hearing stipulation certain facts were admitted. In discovery, Petitioner propounded a request for admissions to Respondent. Respondent admitted some facts in response. The stipulation of facts made in compliance with the pre-hearing order and the facts admitted through discovery are available for fact finding in the recommended order.

On December 24, 2001, the hearing transcript was filed with the Division of Administrative Hearings. The parties had been granted 15 days from the filing of the transcript to file proposed recommended orders. On January 8, 2002, both parties filed proposed recommended orders. Those proposed recommended orders have been considered in preparing the recommended order.

#### FINDINGS OF FACT

##### Stipulated Facts and Admitted Facts:

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. Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued License No. ME0063587.

3. Respondent's mailing address is 1834 Southwest 1st Avenue, Ocala, Florida 34474.

4. Respondent is board certified in Internal Medicine with a sub-specialty in Pulmonary Disease and Critical Care Medicine.

5. On July 21, 1999, Patient F.C. presented to Respondent for the bronchoscopy and biopsy of his left lung.

6. The results of the biopsy performed on July 21, 1999, by Respondent were benign.

7. The final diagnosis on the cytology of the biopsy performed on July 21, 1999, by Respondent showed malignancy not identified.

Additional Facts:

8. F.C. was born on December 12, 1939. In January of 1997 he was diagnosed with small cell carcinoma of the lung with brain metastasis. He received Carboplatinum and VP-16 to treat the condition. He had a DVT in January of 1998.

9. In 1999 F.C. was the patient of Thumati Jagalur, M.D. Dr. Jagalur referred F.C. to Anju Vasudevan, M.D., for an oncology consult. As of July 16, 1999, Dr. Vasudevan determined that given F.C.'s status two and a half years post-diagnosis, it would be worthwhile to obtain a biopsy through bronchoscopy. Dr. Vasudevan made Dr. Jagalur aware of this plan in correspondence dated July 16, 1999. This report from Dr. Vasudevan to Dr. Jagalur made mention of the results of a CT scan of the chest that had been done on F.C., in which a multi-lobular soft tissue density mass, left intrahilar posteriorly with respect to the hilum had been identified. The mass was approximately 3.5 x 4cm in diameter, according to Dr. Vasudevan's remarks to Dr. Jagalur. The CT scan did not

reveal any definite metastatic disease in the abdomen or brain pan.

10. Dr. Vasudevan anticipated that the bronchoscopy would be performed by Nagesh Kohli, M.D., a physician practicing pulmonary medicine with Ocala Lung and Critical Care Associates in Ocala, Florida. Respondent was also a member of that practice.

11. In anticipation of the bronchoscopy, Dr. Kohli gave pre-bronchoscopy orders on July 19, 1999. The bronchoscopy was scheduled to be conducted on July 21, 1999. These orders did not make mention of the location of the soft tissue density mass that had been previously identified in the CT scan of the chest, left intrahilar posteriorly with respect to the hilum.

12. The bronchoscopy to be performed on patient F.C. was to take place in the Ocala Regional Medical Center, Ocala, Florida.

13. The procedure was performed by Respondent, who substituted for Dr. Kohli. The procedure took place as scheduled at Ocala Regional Medical Center.

14. In the records from the Ocala Regional Medical Center in the operative report, Respondent describes the pre-operative diagnosis as right lower lobe mass. The post-operative diagnosis states "No endobronchial lesions.

Biopsies taken from the right lower lobe as well as right hilar Wang aspiration." The procedures were described in the report as bronchoscopy and biopsy. The report by Respondent goes on to describe examination of the trachea, the carina, and the main bronchi. These features were found to be normal. The report describes examination of the main stem bronchus left and right and other aspects of the left and right bronchus with no abnormalities found. The report further describes that "transbronchial biopsies were obtained from the right lower lobe, multiple biopsies were taken from various segments. Wang aspiration was performed times 3 from the right hilum."

15. In his post-bronchoscopy orders Respondent referred to the specimen biopsy sites as right trans-bronchial biopsies associated with the pathology.

16. In correspondence from Dr. Vasudevan to Dr. Jagalur following the negative results obtained in the biopsy performed by Respondent, Dr. Vasudevan expressed her belief that the biopsy done on July 21, 1999, by Respondent was in relation to the right lung, not the left lung as intended. In the correspondence from Dr. Vasudevan to Dr. Jagalur she goes on to describe how there were no indobronchial lesions noted on either side. As explained in the correspondence, Dr. Vasudevan, with F.C.'s consent, determined to arrange a CT

scan guided biopsy of the left lung mass, to be followed by a repeat bronchoscopy with biopsy of the left side if the results obtained from the guided biopsy of the left lung mass were negative.

17. The patient F.C. returned to Ocala Regional Medical Center on July 26, 1999, and the CT scan biopsy needle guided was performed, in which the spinal needle was inserted into the mass lesion in the left lower lung field. The pathology from this biopsy was negative.

18. On August 16, 1999, patient F.C. returned to the Ocala Regional Medical Center. At that time Dr. Kohli performed a bronchoscopy with biopsy of the left lower lobe lung mass. No indobronchial lesions were seen. During the procedure the trans-bronchial biopsies performed by Dr. Kohli were in the superior segment of the left lower lobe and posteria segment of the left lower lobe. The results of the specimens revealed a grade IV carcinoma.

19. Patient F.C. died sometime around the end of June 2001.

20. Respondent is board certified in pulmonary medicine and critical care medicine. He performed the bronchoscopy and biopsy on F.C. as part of his practice in pulmonary medicine. Before performing the bronchoscopy and biopsy he had reviewed radio-graphic studies which revealed the mass in the left



lung. No other mass was evident in the studies. The review of the film was made with the aid of a view box. In particular, when Respondent did the bronchoscopy on July 21, 1999, he displayed the aforementioned CT scans on the view box. The CT scan available to Respondent when performing the bronchoscopy had been made on July 14, 1999. Although no mention is made in the operative report prepared by Respondent on July 21, 1999, Respondent used fluoroscopy to assist in obtaining the biopsies.

21. The procedure performed on July 21, 1999, was videotaped and available for viewing on a television screen through a live picture, to include the use of fluoroscopy.

22. Kristine Sittrick, R.N., was employed by the Ocala Regional Medical Center on the date Respondent performed the bronchoscopy with biopsy on F.C. She had involvement in the procedure in the capacity of respiratory care therapist. At the time and at present Ms. Sittrick served as supervisor for the pulmonary lab where the procedure was being performed. During the procedure Ms. Sittrick told Respondent that F.C.'s history of cancer was on the left side. She told Respondent this because she observed that Respondent ". . . was going into, on the right side. . . . He was looking in the area that wasn't . . . ." When asked if Respondent was performing procedures on the side that was not implicated by F.C.'s

history of cancer, Ms. Sittrick stated "I believe he did." Ms. Sittrick did not recall in her testimony what exactly Respondent may have done on the right side. Ms. Sittrick further describes her concern that Respondent "knew the man's history of what was on the left . . . because he was doing the procedure for Dr. Kohli, and that was a limitation as well. I just wanted to make sure he knew the tissue was on the left."

23. Consistent with Respondent's instructions, Ms. Sittrick wrote on the specimen labels the location that Respondent said the specimen was obtained from. That information Respondent imparted was that the specimen came from the right lung, leading to the pathology report reflecting findings in the right lung, transbronchial biopsies.

24. When Respondent concluded the bronchoscopy with biopsy for patient F.C. he immediately dictated his operative report indicating that transbronchial biopsies were obtained from the right lower lobe.

25. Notwithstanding contrary evidence, Respondent biopsied the mass in question from the left lung as he claimed in his testimony. The expectation in the case is that the biopsy should have been performed on the left lung. All Respondent's records prepared in association with the procedure say otherwise. Consequently, the medical record

prepared by Respondent fails to justify in any manner the course of treatment involving the left lung where the biopsies were taken. Instead, the records justify the biopsies in the right lung that were not actually performed. Those are circumstances that violated the standard of care for physicians, as established through the opinion of George Schoonover, M.D., who is board certified in internal medicine and pulmonary diseases with a special qualification in critical care medicine. Dr. Schoonover's opinion is premised upon the fact that the record reflects Respondent biopsied the right lung, which was an erroneous medical record.

#### CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in accordance with Sections 120.569, 120.57(1), and 456.073(5), Florida Statutes.

27. This a disciplinary case in which Petitioner must prove the allegations in the Administrative Complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The meaning of clear and convincing evidence is defined in Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

28. Count I to the Administrative Complaint charges Respondent with violating Section 458.331(1)(t), Florida

Statutes, by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. In particular, it is alleged that Respondent failed to do one or more of the following: (a) review patient F.C.'s CT scan immediately prior to the surgery, or otherwise ensure that he was operating on the correct lung, and/or (b) perform a biopsy on F.C.'s left lung, instead of performing a biopsy on the patient's right lung. Respondent did review the CT scan immediately prior to the surgery which revealed the problem with the left lung. Ms. Sittrick also advised Respondent concerning the appropriate location of the mass in the left lung. The biopsy was performed on the left lung and not the right lung. Petitioner has failed to prove that Respondent violated Section 458.331(1)(t), Florida Statutes.

29. Count II alleges that Respondent has violated Section 458.331(1)(m), Florida Statutes, in the maintenance of records justifying the course of treatment for patient F.C. In particular, it is alleged that Respondent failed to keep medical records that would justify the course of treatment for the patient F.C. in that Respondent did not document in patient F.C.'s medical records: (a) Justification for performing a biopsy on the right lung instead of the patient's

left lung; or alternatively, (b) that he had incorrectly performed a biopsy on the unintended right lung. Clear and convincing evidence was presented to establish a violation Section 458.331(1)(m), Florida Statutes. There was no factual basis for documenting in the patient F.C.'s medical records justification for performing a biopsy on the right lung instead of the patient's left lung. The only appropriate medical record entry would have been in association with the left lung, not the right lung, when describing the biopsies performed by Respondent in relation to patient F.C.

30. For the violation that has been established, the range of permissible penalties are set forth in Section 458.331(2), Florida Statutes. The imposition of penalties is further discussed in the disciplinary guidelines of the Board of Medicine found in Rule 64B-8.001, Florida Administrative Code.

31. Petitioner is also entitled to reimbursement for the costs of prosecution and investigation in the amount of \$3,630.50. Section 456.072(4), Florida Statutes.

#### RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered dismissing Count I, and finding Respondent in violation of Count II in the Administrative Complaint, issuing a letter of reprimand, imposing a \$5,000.00 administrative fine, and the cost of investigation and prosecution in the amount of \$3,630.50.

DONE AND ENTERED this 15th day of February, 2002, in Tallahassee, Leon County, Florida.

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CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of February, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.