

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD)	
OF MEDICINE,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 01-2115PL
)	01-3795PL
ROBERT M. KNIGHT, M.D.,)	01-3796PL
)	01-3797PL
Respondent.)	
_____)	
—)	

RECOMMENDED ORDER

On January 22, 2002, a formal administrative hearing in this case was held in Naples, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kathryn E. Price, Esquire
Agency for Health Care Administration
Office of the General Counsel
Post Office Box 14229
Tallahassee, Florida 32317-4229

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue in the case is whether the allegations in the Administrative Complaints are correct and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On May 3, 2000, the Department of Health, Board of Medicine, (Petitioner) filed an Administrative Complaint against Robert M. Knight, M.D. (Respondent) alleging that he violated applicable statutes and rules in providing medical care for a patient. The Respondent filed a request for formal hearing. The request was forwarded to the Division of Administrative Hearings, which scheduled a formal hearing. Prior to the hearing, legal counsel for the Respondent withdrew from the case, and the hearing was continued. Subsequently, the Petitioner filed additional Administrative Complaints against the Respondent. The Respondent requested formal hearings in the additional cases, and the request was forwarded to the Division of Administrative Hearings. The cases were consolidated and scheduled for hearing.

At the commencement of the hearing, the Petitioner voluntarily dismissed the Administrative Complaint filed in Case Number 01-2115PL. Accordingly, jurisdiction is hereby relinquished to the Petitioner for entry of an appropriate Final Order in Case Number 01-2115PL. This Recommended Order addresses the allegations set forth in the remaining Administrative Complaints.

During the hearing, the Petitioner presented the testimony of four witnesses and had Exhibits numbered 1-9 admitted into

evidence. The Respondent did not attend the hearing and was not represented by counsel.

A Transcript of the hearing was filed on March 4, 2002. The Petitioner sought and was granted an extension of time for filing a Proposed Recommended Order, which was timely filed and was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to this case, the Respondent was a licensed physician in the State of Florida, holding license number ME0039986.

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2. Between May 22 and June 5, 1998, the Respondent ordered a series of diagnostic lab tests for Patient C. H., a 63-year-old female.

3. As to the care provided to Patient C. H., the Petitioner presented the testimony of Hamilton Fish, M.D., whose testimony was persuasive and is credited.

4. According to Dr. Fish, many of the tests performed on Patient C. H. were not medically indicated according to a review of the information set forth in the patient's medical records, and the medical treatment care provided by the Respondent to the patient was inappropriate and failed to meet the applicable standard of care.

5. According to the hemoglobin test performed on Patient C. H., the patient was diabetic and the diabetes was

uncontrolled. The Respondent did not provide proper treatment to the patient for the diabetes.

6. According to one of the lab tests, Patient C. H. was deficient in calcium. The Respondent did not provide appropriate treatment for the calcium deficiency.

7. Although there was no medical indication that Patient C. H. had a thyroid problem, the Respondent prescribed a thyroid hormone medication. The thyroid medication was inappropriate and could have exacerbated the diabetic condition.

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8. The Petitioner introduced into evidence an advertisement that appears to have been published in the June 25, 1999, edition of the "Sun-Sentinel Community News."

9. There is no evidence that the Respondent created, read, placed, or paid for the advertisement in the newspaper.

10. The ad offered a complementary consultation with the Respondent, who was identified in the ad as a diplomate of the "American Board of Anti-Aging."

11. Florida law requires that a disclaimer appear in such advertisements advising a patient of the right to essentially decline non-free services that are recommended on the basis of the free consultation. The cited advertisement did not include the disclaimer.

12. The Petitioner's administrative rules prohibit advertisement of affiliation with groups not "recognized" by the

Petitioner. The Petitioner has not approved of the "American Board of Anti-Aging."

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Patient D. E.

13. On or about July 21, 1998, the Respondent ordered a series of diagnostic lab tests for Patient D. E., a 53-year-old male.

14. According to the records, Patient D. E. had complained of impotency and loss of sexual desire.

15. As to the care provided to Patient D. E., the Petitioner presented the testimony of Timothy Shapiro, M.D., whose testimony was persuasive and is credited.

16. According to Dr. Shapiro, many of the tests performed on Patient D. E. were not medically indicated according to a review of the information set forth in the patient's medical records.

17. At least one of the tests performed on several of the patients referenced herein (the "Barnes Basil Temperature Test") is not recognized in the medical community as providing valid information for the conventional diagnosis or treatment of any disorder.

18. On or about August 18, 1998, the Respondent diagnosed Patient D. E. with hypothyroidism, panhypothyroidism, food allergies, and impotence of organic origin. He prescribed Cytomel, Armour Thyroid, and testosterone gel for the patient.

19. According to the testimony of Dr. Shapiro, the prescribed medications were inappropriate because the medical record fails to indicate any deficiencies being addressed by the medication.

20. The course of treatment provided for the patient is not documented by the medical records and is below the standard of care.

Patient J. N.

21. On or about August 27, 1998, the Respondent ordered a series of diagnostic lab tests for Patient J. N., a 50-year-old female.

22. According to the records, Patient J. N.'s symptoms included fatigue, numbness, tingling and burning in the extremities, muscle and head aches, insomnia, swelling, depression and easy bruising.

23. As to the care provided to Patient J. N., the Petitioner presented the testimony of Hamilton Fish, M.D., whose testimony was persuasive and is credited.

24. According to Dr. Fish, many of the tests performed on Patient J. N. were not medically indicated according to a review of the information set forth in the patient's medical records.

25. On or about September 10, 1998, the Respondent diagnosed Patient J. N. with chronic fatigue, probable hypothyroidism, and unspecified liver disorder. An existing

diagnosis of ischemic heart disease was confirmed; he prescribed various medications for the patient.

26. According to the testimony of Dr. Fish, the prescribed drugs (Cytomel, Hydrocortisone, Rezulin, and a female hormonal transdermal gel) were inappropriate and below the standard of care, and the medical records do not justify the course of treatment provided by the Respondent.

Patient T. B.

27. On or about October 8, 1998, the Respondent ordered a series of diagnostic lab tests for Patient T. B. (also identified as T. P.) a 49-year-old female.

28. According to the records, Patient T. B.'s symptoms included muscle ache, migraines, insomnia, vaginal discharge, and neck, back and stomach pain.

29. As to the care provided to Patient T. B., the Petitioner presented the testimony of Hamilton Fish, M.D., whose testimony was persuasive and is credited.

30. According to Dr. Fish, many of the tests performed on Patient T. B. were not medically indicated according to a review of the information set forth in the patient's medical records, and the medical treatment care provided by the Respondent to the patient was inappropriate and failed to meet the applicable standard of care.

31. On or about October 21, 1998, the Respondent diagnosed Patient T. B. with hyperthyroidism, migraine headaches, chronic

fatigue, yeast infection, and unspecified disorder of the intestines, stomach, and duodenum. He prescribed various medications for the patient.

32. According to the testimony of Dr. Fish, the prescribed drugs (Cytomel and Armour Thyroid) were inappropriate and below the standard of care, and the medical records do not justify the course of treatment provided by the Respondent.

33. The Respondent failed to perform a pelvic examination or to refer the patient to a gynecologist despite the diagnosis that she was suffering a yeast infection, and therefore failed to meet the applicable standard of care.

34. The diagnosis of unspecified disorder of the stomach, duodenum, and intestines was apparently based on described pain. There is nothing in the medical record indicating that appropriate testing to determine causality was ordered or performed.

Patient A. M.

35. On or about August 26, 1998, the Respondent ordered a series of diagnostic lab tests for Patient A. M.

36. According to the records, Patient A. M.'s symptoms included muscle and head ache, constipation, cramps and menstrual irregularity, decreased libido, sore throat and sinus problems.

37. As to the care provided to Patient A. M., the Petitioner presented the testimony of Hamilton Fish, M.D., whose testimony was persuasive and is credited.

38. According to Dr. Fish, many of the tests performed on Patient A. M. were not medically indicated according to a review of the information set forth in the patient's medical records, and the medical treatment care provided by the Respondent to the patient was inappropriate and failed to meet the applicable standard of care.

39. On or about September 9, 1998, the Respondent diagnosed Patient T. B. with hypothyroidism, chronic fatigue, hyperinsulinemia, and unspecified ovarian dysfunction. The lab test results do not support the diagnosis.

40. On December 2, 1998, the Respondent prescribed various medications for the patient. According to the testimony of Dr. Fish, the prescribed drugs (Cytomel, Rezulin, Glucophage, glycine, and fish oil) were inappropriate for the patient and below the standard of care, and the medical records do not justify the course of treatment provided by the Respondent.

CONCLUSIONS OF LAW

41. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

42. The Petitioner has the burden of proving by clear and convincing evidence the allegations against the Respondent. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

43. The burden has not been met in Case Number 01-3796. There is no evidence that the Respondent created, read, placed, or paid for the advertisement in the newspaper.

44. As set forth in the preceding Findings of Fact, the burden has been met in DOAH Cases Numbered 01-3795 and 01-3797. The Respondent failed to keep records justifying the course of treatment for the patients identified herein, offered diagnoses without adequate or appropriate testing, and prescribed inappropriate medications to the patients based on the inadequate diagnoses.

45. Section 458.331, Florida Statutes, provides in relevant part as follows:

458.331 Grounds for disciplinary action;
action by the board and department.--

* * *

(m) Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and

reports of consultations and hospitalizations.

* * *

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

* * *

(t) Gross or repeated malpractice or the failure 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. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes, but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$25,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross malpractice" or "the failure 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," shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice

medicine in order to be disciplined pursuant to this paragraph.

46. In these cases, the evidence establishes that the Respondent failed to keep records justifying the course of treatment provided to the patients identified herein and therefore has violated Section 458.331(1)(m), Florida Statutes.

47. The evidence establishes that the Respondent inappropriately prescribed medications as set forth herein and therefore has violated Section 458.331(1)(q), Florida Statutes.

48. The evidence establishes that the Respondent has failed 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 and has therefore violated Section 458.331(1)(t), Florida Statutes.

49. Rule 64B8-8.001, Florida Administrative Code, sets forth guidelines for imposition of disciplinary penalties based upon violation of applicable statutes.

50. For a first time violation of Section 458.331(1)(m), Florida Statutes, the rule provides a range of penalties from a reprimand to denial or two years' suspension followed by probation, and an administrative fine from \$1,000 to \$10,000.

51. For a first-time violation of Section 458.331(1)(q), Florida Statutes, the rule provides a range of penalties from

one year probation to revocation or denial, and an administrative fine from \$1,000 to \$10,000.

52. For a first time violation of Section 458.331(1)(t), Florida Statutes, the rule provides a range of penalties from two years' probation to revocation or denial, and an administrative fine from \$1,000 to \$10,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Agency for Health Care Administration, Board of Medicine, enter a final order suspending the medical license of Robert M. Knight, M.D., for a period of one year followed by five-year period of probation, and imposing an administrative fine of \$5,000.

DONE AND ENTERED this 19th day of April, 2002, in Tallahassee, Leon County, Florida.

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 19th day of April, 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.