STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF OSTEOPATHIC MEDICINE,	)	
Petitioner,	)	
vs.	)	Case No. 02-3859PL
WILLIAM H. WEAVER, D.O.,	)	
Respondent.	)	

RECOMMENDED ORDER

On December 20, 2002, a formal administrative hearing in this case was held by videoconference between Tallahassee and Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kim Kluck, Esquire
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For Respondent: Matthew P. Bartolomei, Esquire
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STATEMENT OF THE ISSUE

The issue in the case is whether the allegations of the Administrative Complaint, filed by the Petitioner against the

Respondent, are correct, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Administrative Complaint dated February 28, 2002, the Department of Health (Petitioner) alleged that William H. Weaver, D.O. (Respondent), violated Section 459.015(1)(x), Florida Statutes, in his treatment of a patient in February 2000. The Respondent disputed the allegations and requested a formal hearing. The Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner presented the testimony of one witness (by deposition). The Respondent testified on his own behalf, presented the testimony of one witness, and had Exhibits 1 through 4 admitted into evidence. Joint Exhibits 1 through 3 were also admitted into evidence.

A Transcript of the hearing was filed on January 16, 2003. Both parties filed Proposed Recommended Orders that were considered in the preparation of this Recommended Order.

In order to protect the right to privacy of the patient, this Recommended Order does not identify the patient by name.

FINDINGS OF FACT

1. The Petitioner is the agency responsible for licensure and regulation of osteopathic physicians practicing in the State of Florida.

2. At all times material to this case, the Respondent has been a Florida licensed osteopathic physician, holding license number OS 005726. The Respondent is board-certified in family medicine and emergency medicine.

3. On February 23, 2000, the Respondent was working in the emergency room at Health Central medical facility in Ocoee, Florida.

4. On February 23, 2000, a patient, herein identified as Patient D.S., arrived at the Health Central emergency room. According to the triage notes, Patient D.S. presented with "intermittent chest & upper back pain" occurring over a two-week period. Patient D.S. had been brought to the emergency room by a friend.

5. The triage nurse's notes indicate that he was interviewed at about 2:05 p.m. The patient's vital signs were taken. As recorded in the triage nurse's notes, the patient's pulse was slightly elevated at 110. His blood pressure was 139/96.

6. Patient D.S. presented at the emergency room with several cardiac risk factors. He was a smoker and over 40 years

of age. The fact that he is a male is alleged as an additional risk factor although the evidence fails to establish that gender alone is a significant risk factor.

7. At about 2:28 p.m., the Respondent met Patient D.S. for evaluation. The Respondent noted the patient's chief complaint to be "intermittent r[ight] upper back discomfort and chest tightness" of two weeks' duration. The patient indicated that the pain radiated across the upper back. There was no shortness of breath, no nausea or vomiting, and no diaphoresis noted. The patient identified the pain as a three on a one-to-ten scale.

8. The Respondent observed that the patient was curt in his responses to questions and did not appear interested in remaining in the emergency room. The patient indicated that he had no personal or family history of coronary artery disease, hypertension or diabetes (additional coronary risk factors). The patient admitted to smoking a pack of cigarettes daily. The patient denied any prior cardiac event.

9. The Respondent performed a physical examination of the patient. The patient did not exhibit any of the classical signs of a heart attack, such as sharp lateral left chest pain, substernal chest pressure or pain, pallor, sweating, nausea, vomiting, severe indigestion, or loss of blood pressure.

10. Based on the triage protocol, a "12 lead" EKG was ordered for Patient D.S. and was performed at about 2:52 p.m.

According to the EKG (also known as an ECG), Patient D.S. exhibited normal sinus rhythm, but the EKG was classified as "abnormal" and displayed possible left atrial enlargement and an anterolateral infarct of undetermined age.

11. The EKG measures different heart functions including ischemia, infarction, enlargement, arrhythmias and irregularities in conduction patterns.

12. Patient D.S.'s EKG showed poor "R wave" progression, which is indicative of prior myocardial injury.

13. Patient D.S.'s EKG exhibited the presence of "QS complexes" from V1 to V6 with no "R wave" progression, which is indicative of prior myocardial injury.

14. Patient D.S.'s EKG showed evidence of an anterolateral infarct, indicating the existence of prior myocardial injury.

15. According to the EKG analysis, Patient D.S. had experienced a cardiac injury at some time prior to his arrival at the emergency room on February 23, 2000, or was experiencing a cardiac injury during his visit to the emergency room.

16. The fact that the EKG exhibited evidence of prior myocardial injury places Patient D.S. at higher-risk for subsequent cardiac injury.

17. The Respondent documented that he evaluated the triage assessment and reviewed the EKG results.

18. The Respondent did not admit the patient to the hospital for observation.

19. The Respondent did not consult with a cardiologist on staff at the hospital.

20. The Respondent did not order cardiac enzyme testing for the patient.

21. The patient told the Respondent that the patient had an appointment on February 24, 2000, with his primary physician. The Respondent discharged the patient with a diagnosis of right shoulder and back pain, concluding the symptoms were of a musculoskeletal origin. The Respondent provided a copy of the EKG to the patient and instructed him to give it to his primary care physician on the next day.

22. By deposition, Dr. Steven M. Schwartz testified as a medical expert on behalf of the Petitioner. At the hearing, Todd M. Husty testified as a medical expert on behalf of the Respondent. Based upon a review of the testimony, the testimony of Dr. Schwartz is persuasive and is credited.

23. Based on the circumstances of this case and on Dr. Schwartz testimony, the Respondent has failed to practice osteopathic medicine with the level of care, skill, and treatment recognized as being acceptable under similar conditions and circumstances.

24. The symptoms exhibited or reported by Patient D.S. during his visit to the emergency room on February 23, 2000, are consistent with ischemic heart disease which is the result of insufficient blood circulation to the heart muscle tissue.

25. A reasonable and prudent physician under similar circumstances would have considered Patient D.S. to be at high risk for ischemic heart disease, and would have admitted the patient to the hospital for further diagnostic testing and evaluation including consultation with a staff cardiologist.

26. Patients experiencing cardiac infarction can present with atypical symptoms almost as frequently as with classical symptoms. Atypical presentations can include pain in areas other than those identified as classical pain patterns. The pain can be dull instead of sharp. The pain can be reproducible on manipulation. Patient D.S. was experiencing atypical dull and reproducible pain. The absence of classical symptoms does not rule out the possibility of infarction or ischemia.

27. Symptoms of musculoskeletal chest pain are similar to symptoms exhibited by a person who has experienced or is experiencing a myocardial infarction. The standard of care requires that potential myocardial infarction be ruled out. A reasonable and prudent physician would proceed to perform appropriate tests to rule out cardiac cause of the symptoms before concluding they were of musculoskeletal origin.

28. The day after leaving the emergency room, the patient was evaluated by his primary care physician and was transported from the physician's office to Florida Hospital for further treatment.

29. On February 25, 2000, Patient D.S. underwent a left heart catheterization and coronary arteriogram, which revealed 90 percent stenosis of the left anterior, and atherosclerotic plaquing of the right coronary artery and circumflex.

30. On February 29, 2000, Patient D.S. underwent a percutaneous transluminal coronary angioplasty and stenting. The patient's recovery from the incident and procedure was satisfactory.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

32. 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). In this case, the burden has been met.

33. The Petitioner has charged the Respondent with a violation of 459.015(1)(x), Florida Statutes, which provides as follows:

> 459.015 Grounds for disciplinary action; action by the board and department.--
> (1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):
> * * *
> (x) Gross or repeated malpractice or the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic physician as being acceptable under similar conditions and circumstances. . . . As used in this paragraph, "gross malpractice" or "the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar osteopathic 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 an osteopathic physician be incompetent to practice osteopathic medicine in order to be disciplined pursuant to this paragraph. A recommended order by an administrative law judge or a final order of the board finding a violation under this paragraph shall specify whether the licensee was found to have committed "gross malpractice," "repeated malpractice," or "failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances," or any combination thereof, and any publication by the board shall so specify.

34. The evidence establishes that the Respondent's failure to consider Patient D.S. to be at high risk for ischemic heart disease, failure to admit the patient to the hospital for further diagnostic testing and evaluation, and failure to

consult with a staff cardiologist, constitute failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized as being acceptable under similar conditions and circumstances and is a violation of Section 459.015(1)(x), Florida Statutes.

35. The fact that the patient denied any prior cardiac injury while the EKG indicated a previous infarction is of significance, suggesting that the patient's prior cardiac event occurred asymptomatically or without the classical symptoms of a heart attack. Under the circumstances and in light of this patient's risk, the standard of care requires more than discharging a patient, EKG in hand, to see a primary care physician on the following day.

36. Rule 64B15-19.002, Florida Administrative Code, establishes a range of penalties that may be imposed for violation of the cited statute. There is no evidence that the Respondent has been the subject of any prior disciplinary proceeding. Under the version of the rule in effect at the time of the violation, the recommended penalty in this case ranges from a fine of up to $2,500 and reprimand to probation conditioned on continuing education.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Health enter a Final Order finding that William H. Weaver, D.O., violated Section 459.015(1)(x), Florida Statutes, and imposing a reprimand and a fine of $2,500.00. It is further recommended that William H. Weaver, D.O., be required to complete within six months of the Final Order, a continuing medical education course related to proper diagnosis and treatment of cardiac-related presentations in an emergency room setting.

DONE AND ENTERED this 7th day of February, 2003, 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
Division of Administrative Hearings
this 7th day of February, 2003.

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.