

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF	)	
MEDICINE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 02-4429PL
	)	
MOHAMED IBRAHIM ABDEL-AZIZ,	)	
M.D. ,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on January 28 and 29, 2003, in Tampa, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James W. Earl, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Jon M. Pellet, Esquire  
Barr, Murman, Tonelli, Slother & Sleet  
201 East Kennedy Boulevard, Suite 1700  
Tampa, Florida 33602

STATEMENT OF THE ISSUES

Whether Respondent violated Subsections 458.331(1)(t) and 458.331(1)(m), Florida Statutes, and, if so, what discipline should be imposed.

### PRELIMINARY STATEMENT

On August 28, 2002, the Petitioner, Department of Health (Department), filed an Administrative Complaint against Respondent, Mohamed I. Abdel-Aziz, M.D. (Dr. Abdel-Aziz), alleging that Dr. Abdel-Aziz violated Subsections 458.331(1)(m) and 458.331(1)(t), Florida Statutes. Dr. Abdel-Aziz filed a request for a formal hearing, and the case was forwarded to the Division of Administrative Hearings on November 15, 2002, for assignment of an Administrative Law Judge.

The parties filed a Joint Prehearing Stipulation on January 21, 2003, and stipulated to certain facts in Section E of the Joint Prehearing Stipulation. To the extent relevant and material, those stipulated facts have been included in this Recommended Order.

At the final hearing, Joint Exhibits 1 through 3 were admitted in evidence. Petitioner's Exhibits 1 through 3 were admitted in evidence. Respondent's Exhibits 1, 2, 3, 10 through 21, 23, and 25 were admitted in evidence. Respondent's Exhibits 4 through 9 were proffered but not admitted in evidence. Respondent's Exhibits 22 and 24 were marked for demonstrative purposes only.

At the final hearing Petitioner presented the testimony of Glenn L. Salkind, M.D.; James Albert Ray, R.N.; and Teresa Boley, R.N. Respondent testified in his own behalf and

presented the testimony of Roberto Morales, M.D. Respondent proffered the testimony of Brenda Lanaris, R.N.

The court reporter failed to preserve the redirect testimony of Teresa Boley. On March 11, 2003, the parties filed a joint stipulation regarding the lost testimony.

The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript, which was filed on February 20, 2003. On February 21, 2003, the parties requested an extension of time to file their proposed recommended orders. The request was granted by order dated February 24, 2003, extending the time to file proposed recommended orders to March 12, 2003. The parties timely filed their Proposed Recommended Orders, which have been considered in rendering this Recommended Order.

#### FINDINGS OF FACT

1. At all times material to this proceeding, Dr. Abdel-Aziz was a licensed physician within the State of Florida. He has been licensed to practice medicine in Florida since 1985. Dr. Abdel-Aziz is board-certified in obstetrics and gynecology.

2. Since 1993, Dr. Abdel-Aziz has been patient D.D.'s obstetrician and gynecologist. In April 2000, when D.D. presented to Brandon Regional Hospital in labor, D.D. was 35 years old and had had three prior pregnancies.

3. In 1993, D.D. has a missed abortion which was treated with suction D & C. D.D.'s second pregnancy in 1995 was at 41 weeks with spontaneous labor, and the baby was delivered with forceps. In 1997, D.D.'s third pregnancy went to term and was a spontaneous labor with spontaneous vaginal delivery.

4. On admission to Brandon Regional Hospital on April 18, 2000, there were no known problems with D.D.'s fetus. D.D. was admitted to labor room 3 and placed on a fetal heart monitor at 15:04 hours. The fetal heart tones at that time were reported as 130 base line with good variability. D.D.'s contractions were reported as two every ten minutes.

5. Dr. Abdel-Aziz ordered Pitocin to be administered to D.D. on April 18, 2000. Pitocin is the synthetic form of oxytocin, a hormone that is produced naturally in the body and is responsible for causing the uterus to contract during labor. At the time of D.D.'s admission, Brandon Regional Hospital had an established protocol for administering Pitocin during labor.

6. Forty-five minutes later, at 15:45, the fetal heart tones were reported to show good variability and normal rate. There were accelerations and no decelerations were noted by D.D.'s nurse. D.D.'s contractions were reported to be irregular every two to six minutes and 30 to 60 seconds in duration.

7. At 19:30 hours on April 18, 2000, D.D. was examined, her cervix was at 3-4 cm dilated, 80 percent effaced, and vertex

was at -2/-3 station. Artificial rupture of the membranes was performed at 19:30 hours, and the amniotic fluid was noted in D.D.'s medical records to be clear.

8. At 20:45 hours the Pitocin drip was switched off to allow for the administration of the epidural anesthetic. D.D. received the epidural anesthesia, and the Pitocin drip was restarted at 21:10 hours.

9. D.D. was examined at 21:12 hours, and her cervix was found to be 5 cm dilated and 80 percent effaced with vertex at -2 station. At 22:20 hours, D.D. was again examined. Her cervix was 7 to 8 cm dilated, 100 percent effaced with vertex at 0 station.

10. At 22:24 hours, Dr. Abdel-Aziz was notified about D.D.'s condition, and he gave instructions to the nurse on how to contact him.

11. The hospital records for D.D. show that at 22:50 hours, the Pitocin drip was increased from 6 to 7 mu/min per protocol.

12. The hospital records for D.D. show, according to the monitor clock, that at 22:50 hours there were adequate contractions and good fetal heart tones at baseline with variability. The fetal heart rate baseline was reported at around 150 beats per minute. D.D. was receiving Pitocin at 7 mu/min.

13. Dr. Abdel-Aziz examined D.D. at 22:55 hours. There was no fetal distress evident. D.D.'s cervix was fully dilated, 100 percent effaced, vertex at +1 station. At that time, D.D. began pushing. Pitocin was being administered as ordered at 7 mu/min.

14. At 22:55 hours Dr. Abdel-Aziz notified the nurse on how to contact him with any problems and informed the nurse that he would remain in the hospital.

15. A non-reassuring fetal heart rate pattern is a pattern which gives one concern about the well-being of the baby. At 23:15 hours, Baby D. had a non-reassuring heart rate. The hospital records for D.D. do not show that the nurse notified Dr. Abdel-Aziz of the problems evident at 23:15 hours.

16. At around midnight on April 18, 2000, D.D. was still pushing and was in the second stage of labor. The fetal heart rates were non-reassuring at this time. A review of the fetal heart monitor strip showed that Baby D. was experiencing late decelerations. A late deceleration is a slowing of the fetal heart rate which comes at the end of a contraction and is repetitive.

17. At midnight D.D.'s contractions and progress were reported by the nurses as good. Although Baby D. was showing non-reassuring heart rate patterns, the fetal heart tones were erroneously reported as assuring. Dr. Abdel-Aziz was not

notified of the non-reassuring heart rate which was present at midnight.

18. D.D. was still receiving Pitocin at 7 mu/min at midnight. Shortly thereafter, at 00:15 hours on April 19, 2000, D.D.'s nurse increased D.D.'s Pitocin drip from 7 mu/min to 9 mu/min. Dr. Abdel-Aziz did not order the increased dosage of Pitocin.

19. At 00:30 hours, the Pitocin was increased to 11 mu/min and then at 00:45 hours, increased once more to 13 mu/min. Dr. Abdel-Aziz did not order the increase of Pitocin either at 00:30 hours or 00:45 hours. The increased dosage of Pitocin was done by the nurse attending D.D., without the consulting Dr. Abdel-Aziz.

20. The increases of Pitocin at 00:15, 00:30, and 00:45 hours were unnecessary as D.D. was making adequate progress on the 7 mu/min dosage.

21. At 00:30 hours, Baby D.'s heart rate showed tachycardia, which means that the fetal heart rate exceeded 160 beats per minute. Tachycardia is a non-reassuring heart rate pattern. Tachycardia was evidenced again approximately at 00:35 hours and persisted for another 20 minutes intermittently with late decelerations.

22. At 01:00 hours there was a pattern of late decelerations. At 01:15 and 01:24 hours there were episodes of

tachycardia, followed by late decelerations. At 01:31 hours the fetal monitor shorted out for approximately eight minutes and did not pick up the fetal heart rate. Beginning around 01:39 hours, a new fetal heart pattern appeared without either tachycardia or late decelerations.

23. At approximately 01:30 hours, D.D. was exhausted and wanted Dr. Abdel-Aziz to delivery the baby by using forceps. The nurse went to get Dr. Abdel-Aziz to examine D.D. Dr. Abdel-Aziz presented at the D.D.'s bedside at 01:30 hours and examined the patient. The baby's head was not low enough for a forceps delivery. D.D. strongly wanted to have a vaginal delivery and agreed to push for another 30 minutes. Dr. Abdel-Aziz did not review the fetal heart monitor recordings.

24. At 01:55 hours, Dr. Abdel-Aziz again presented at D.D.'s bedside and examined D.D. At that point, Dr. Abdel-Aziz called for delivery by caesarean section. Dr. Abdel-Aziz did not review the fetal heart monitor recordings.

25. D.D. was taken to the operating room. While D.D. was on the operating table, the fetal heart rate dropped from 120 to 80, and Dr. Abdel-Aziz was so advised. Dr. Abdel-Aziz performed a caesarean delivery. When Dr. Abdel-Aziz opened D.D.'s abdomen, he found meconium-stained fluid mixed with blood and suspected there was a uterine rupture. He delivered Baby D. and found the rupture, which he repaired.

26. D.D. experienced a "silent" rupture. No symptoms of a rupture were present during D.D.'s labor. No complaints of abdominal pain were recorded by D.D.'s nurses and none were reported to Dr. Abdel-Aziz. No blood was seen oozing from the vagina at anytime during D.D.'s labor such that a uterine rupture could have been suspected any earlier than when it was noted by Dr. Abdel-Aziz when he performed a cesarean on D.D. No meconium was present at anytime during the labor.

27. On delivery Baby D. had no pulse. After oropharyngeal and nasopharyngeal suctioning were performed, Baby D. was given to a neonatal service representative and was resuscitated. Baby D. was placed on life support. The life support was later discontinued, and Baby D. died.

28. Between the hours of 23:00 on April 18, 2000, and 2:00 on April 19, 2000, no fetal scalp electrode was applied. It was not necessary to apply a fetal scalp electrode because the fetal heart monitor was recording non-reassuring fetal heart rate patterns, which were readily discernable from looking at the monitor's recordings.

29. The standard of care requires that when a physician examines an obstetric patient in labor that the physician review at least the last 30 minutes of the fetal monitoring records.

30. The standard of care of for a reasonably prudent physician who would have examined D.D. at 01:30 hours would have

been to attempt intrauterine resuscitation by stopping the contractions, giving oxygen, giving more IV fluids to dilute the pitocin, and changing the position of the mother. If those efforts were unsuccessful, an emergency cesarean section would have been the appropriate course of action.

#### CONCLUSIONS OF LAW

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

32. The Department has the burden to establish the allegations against Dr. Abdel-Aziz by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). Clear and convincing evidence has both qualitative and quantitative factors. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

It requires:

that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Id.

33. The Department has alleged that Dr. Abdel-Aziz has violated Subsections 458.331(1)(m) and (t), Florida Statutes, which provide:

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

\* \* \*

(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.

\* \* \*

(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.

34. The Department alleged in the Administrative Complaint that Dr. Abdel-Aziz violated Subsection 458.331(1)(m), Florida Statutes, by failing to document justification for the following:

- (a) Amount of time it took to diagnose that Patient D.D. had suffered an uterine tear;
- (b) Amount of time that it took to diagnose that the fetal heart pattern was abnormal indicating stress;
- (c) Not adequately diagnosing that the fetal heart rate pattern was abnormal indicating severe stress;
- (d) Not assessing Patient D.D.'s complaints and symptoms of severe pain after an epidural anesthesia was administered as a sign that complication(s) had developed during the labor; or
- (e) The plan of treatment for Patient D.D.'s condition in that the Respondent did not immediately take action when an abnormal fetal heart rate pattern indicating severe stress developed.

35. The Department concedes in its Proposed Recommended Order that it did not demonstrate that Dr. Abdel-Aziz failed to keep written medical records justifying the course of treatment for D.D. Thus, the Department has not established that Dr. Abdel-Aziz violated Subsection 458.331(1)(m), Florida Statutes.

36. The Department alleged in the Administrative Complaint that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, in the following ways:

(a) Failed to diagnose in a timely manner the following:

(1) that Patient D.D. has suffered a uterine tear;

(2) that the abnormal fetal heart rate pattern was abnormal indicating severe stress; or

(3) that the administering of pitocin should be discontinued.

(b) Failed adequately to diagnose the following:

(1) that Patient D.D. had suffered a uterine tear;

(2) that the fetal heart rate pattern was abnormal indicating severe stress; or

(3) the use of pitocin was not appropriate.

(c) Failed adequately to assess Patient D.D.'s complaints and symptoms of severe pain after an epidural anesthesia was administered as a sign that complication(s) had developed during labor.

(d) Failed to adequately monitor Patient D.D. during labor:

(e) Failed to pursue an appropriate plan of treatment for Patient D.D.'s condition in that the Respondent failed to take immediate action when an abnormal fetal heart rate indicating severe stress developed.

37. The Department did not establish that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to either timely diagnose or to adequately diagnose that D.D. had suffered a uterine tear. The evidence showed that the uterine tear was a silent rupture and that Dr. Abdel-Aziz could not have diagnosed the tear until he performed the cesarean

section. When he delivered Baby D., he discovered the uterine tear and repaired it.

38. The Department has established by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to timely and adequately diagnose that the fetal heart rate pattern was abnormal, indicating severe stress. The standard of care required the doctor to review the fetal monitor strip at the time he examined D.D., at least for the last thirty minutes. Had Dr. Abdel-Aziz met this standard of care, he would have known when he examined D.D. at 01:30 hours that there was an abnormal fetal heart rate pattern. He did not review the fetal monitor strip; thus, he failed to diagnose an abnormal fetal heart rate pattern.

39. The Department has established by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to timely diagnose that the administration of Pitocin should have been discontinued. When Dr. Abdel-Aziz examined D.D. at 1:30 hours, he should have reviewed the fetal heart rate monitor and realized that the Pitocin should be discontinued because of the abnormal heart rate pattern.

40. The Department has failed to establish by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to

adequately diagnose that the use of Pitocin was improper. Dr. Abdel-Aziz gave an appropriate order for the use of Pitocin when D.D. was admitted to the hospital. The nurse on duty failed to properly administer the Pitocin and failed to discontinue the use of Pitocin when the labor pattern had been established. She did not tell the doctor that she had continued to increase the dosage after the labor pattern had been established.

41. When Dr. Abdel-Aziz examined D.D. at 22:55 hours, a review of the fetal monitoring strip for the previous 30 minutes would not have revealed that Pitocin was still being administered or at what dosage. The fetal heart rate pattern showed no fetal distress, so Dr. Abdel-Aziz would have no reason to think that the Pitocin was being administered improperly. The inappropriate increases in the dosage of the Pitocin came between the hours of 00:15 and 00:45. Dr. Abdel-Aziz was not informed of the dosage increases or of the non-reassuring fetal heart rate pattern after the increases. Since Dr. Abdel-Aziz did not examine D.D. again until 01:30 hours, there was no way that he could have been aware that the Pitocin had been administered improperly.

42. The Department did not establish that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to adequately assess D.D. complaints and symptoms of severe pain

after an epidural anesthesia was administered as a sign that complications had developed with the labor. The evidence did not establish and the parties stipulated that no complaints of severe abdominal pain were recorded by the nurses or reported to the doctor.

43. The Department has established by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to adequately monitor D.D. during labor in that he failed to review the fetal monitoring strip when he examined her at 01:30 hours.

44. The Department has established by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 458.331(1)(t), Florida Statutes, by failing to pursue an appropriate plan of treatment for D.D. when he could have determined at 01:30 hours by looking at the fetal monitoring strip that severe stress had developed. At that point, he should have begun intrauterine resuscitation, which he did not do. Instead, he allowed D.D. to push for another 25 minutes.

45. Based on the forgoing, the Department has established by clear and convincing evidence that Dr. Abdel-Aziz violated Subsection 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 physician as being acceptable under similar conditions and circumstances.

46. Rule 64B8-8.001(2)(t), Florida Administrative Code, provides that the range of penalties for the first offense of a violation of Subsection 458.331(1)(t), Florida Statutes, is 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 a Final Order be entered finding that Dr. Mohamed I. Abdel-Aziz did not violate Subsection 458.331(1)(m), Florida Statutes, finding that he did violate Subsection 458.331(1)(t), Florida Statutes, placing him on probation for six months, imposing an administrative fine of \$7,500 to be paid within 90 days of the issuance of the Final Order, and requiring the completion of six hours of continuing medical education courses in obstetrics and four hours in risk management within one year.

DONE AND ENTERED this 2nd day of June, 2003, in  
Tallahassee, Leon County, Florida.

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SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of June, 2003.

COPIES FURNISHED:

James W. Earl, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

Jon M. Pellett, Esquire  
Barr, Murman, Tonelli,  
Slother & Sleet, P.A.  
201 East Kennedy Boulevard  
Suite 1700  
Tampa, Florida 33602

William W. Large, General Counsel  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1701

Larry McPherson, Executive Director  
Board of Medicine  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1701

R. S. Power, Agency Clerk  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1701

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.