

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF )  
MEDICINE, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-3954PL  
 )  
RAMESHIBHAI P. PATEL, M.D., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 10, 2007, in Titusville, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ephraim Livingston, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265

For Respondent: Gregory A. Chaires, Esquire  
Chaires & Hammond  
283 Cranes Roost Blvd., No. 165  
Altamonte Springs, Florida 32701

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsection 458.331(1)(t), Florida Statutes (2004),<sup>1</sup> and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On May 15, 2006, Petitioner, Department of Health, Board of Medicine (Department), filed an Administrative Complaint against Respondent, Rameshibhai P. Patel, M.D. (Dr. Patel), alleging that Dr. Patel violated Subsection 458.331(1)(t), Florida Statutes. Dr. Patel requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on October 12, 2006, for assignment of an Administrative Law Judge.

The final hearing was originally scheduled for December 15, 2006. On November 30, 2006, Respondent filed Respondent's Unopposed Motion for Continuance, which was granted by Order dated December 11, 2006. The final hearing was rescheduled for January 10, 2007.

On December 6, 2006, Petitioner filed Petitioner's Motion for Official Recognition, requesting official recognition of Subsection 458.331(1)(t), Florida Statutes, and Florida Administrative Code Rule 64B8-8.001, which motion was granted by Order dated December 13, 2006.

On December 27, 2006, Petitioner filed Petitioner's Motion for Leave to Amend Administrative Complaint. The motion was granted by Order dated January 4, 2007, and the Amended Administrative Complaint was deemed filed on January 4, 2007.

On January 2, 2007, the parties filed a Joint Pre-Hearing Stipulation, in which the parties agreed to certain facts contained in Section E of the Joint Pre-Hearing Stipulation. To the extent relevant those agreed facts are incorporated into this Recommended Order.

At the final hearing, the Department called S.A. and Armand H. Katz, M.D. as its witnesses. Petitioner's Exhibits 1 through 6 were admitted in evidence. Dr. Patel testified on his own behalf and called Edward Meadors Copeland III, M.D. as his witness. Respondent Exhibits 1 through 4 were admitted in evidence.

The one-volume Transcript of the final hearing was filed on January 29, 2007. The parties timely filed their Proposed Recommended Orders, which have been considered in rendering this Recommended Order.

#### FINDINGS OF FACT

1. The Department is the state agency charged with regulating the practice of medicine pursuant to Section 20.43 and Chapters 456 and 458, Florida Statutes.

2. Dr. Patel is a licensed physician within the state of Florida, having been issued license number 54617. He has been board certified in general surgery since 1990 and has been practicing medicine in Florida since 1989.

3. For the past 20 years, S.A. has had yearly gynecological examinations and mammograms. In 1994, a mammogram revealed a lump in her left breast. She was referred to a specialist, who removed the lump. The biopsy revealed that the lump was a fibroadenoma, which is a common, benign tumor of the female breast with unknown etiology.

4. In 2004, S.A. found a lump in her right breast during a self-examination. She consulted her gynecologist, Dr. Hae Soo Lim, who had been prescribing Clomid for S.A. Dr. Lim advised S.A. that the Clomid could be causing the lump. S.A. discontinued taking Clomid, but the lump did not dissipate. In August 2004, Dr. Lim ordered a mammogram for S.A.

5. The mammogram did not reveal an abnormality in the right breast. Because a lump could be felt on examination, S.A. was advised to have a supplemental bilateral breast sonography. A sonogram was performed on the same date as the mammogram and revealed the following as it related to the right breast:

In the area of palpable abnormality, there is a solid hyperechoic nodule that has a central cleft. It is more echogenic than the adjacent breast parenchyma and could therefore represent a focal fatty deposit or area of breast tissue fibrosis. This measures approximately 1.5 cm x 1.2 cm. This is 5 mm beneath the skin surface and is readily palpable. This is 5 cm away from the nipple in the 12 o'clock position.

Using color flow Doppler imaging, no vascular flow is demonstrated within the

lesion. This would further support probable benign etiology. This does not have the appearance of a complicated cyst or of a typical fibroadenoma or malignancy.

CONCLUSION: Hyperechoic nodule accounting for palpable abnormality. This is not seen mammographically. This has indeterminate characteristics and most likely represents a focal fatty deposit and/or area of breast tissue fibrosis. A biopsy or excision would be needed to establish pathology. It is noted that the patient states that this fluctuates in size during the course of her period.

6. Dr. J.M. Swalchick, who prepared the report of the sonogram findings, recommended a surgical consultation for the palpable abnormality in the right breast. Dr. Swalchick noted in his report that he discussed his findings with S.A. at the time of the performance of the sonogram. His discussion was limited to telling S.A. that she should follow up with a surgical consultation and that he would send the report to Dr. Lim.

7. On or about August 12, 2005, S.A. presented to Dr. Patel for a surgical consultation and evaluation of the mammogram and breast ultrasound reports upon referral from Dr. Lim. Dr. Patel reviewed the mammogram, ultrasound, and the accompanying radiology reports.

8. In his office notes, which were dictated within 24 hours of S.A.'s visit, Dr. Patel made the following findings during his examination of S.A.'s right breast:

Patient has a small palpable nodule in the right breast at 12:00 to 11:00 position and appears to be right under the skin. Appears to be more likely a simple fibroadenoma without any skin dimpling or any nipple or skin retraction. Patient did not have any axillary adenopathy.

9. Dr. Patel made the following notation of S.A.'s August 12, 2004, office visit:

Patient was explained regarding her mammogram, regarding her ultrasound exam and also regarding various breast problems with the help of the booklet on the breast disorders and was advised that what appears to be a palpable nodule seen on the ultrasound is a fibroadenoma and she can be followed clinically and will advise her to be seen again in six months in follow up. Patient explained that if she wants this to be removed, it can be removed either in the office or in outpatient surgery and the patient is agreeable to have simple follow up done and will be seen again in six months.

10. Dr. Patel does not have a specific recollection of S.A.'s office visit on August 12, 2004, other than what he wrote in the patient's chart. Dr. Patel's office notes comport with S.A.'s testimony that he told her that she had a fibroadenoma. He did not tell S.A. that the lump was indeterminate. Based on Dr. Patel's representation that the lump was a fibroadenoma, S.A. elected to wait and return to Dr. Patel in six months for a follow-up visit.

11. There is conflict between S.A.'s testimony and Dr. Patel's office notes concerning whether he explained the

mammogram and ultrasound to her and whether he showed her a booklet on breast disorders. I credit Dr. Patel's office notes in that he did discuss the mammogram and ultrasound tests with S.A. and that he did go over a booklet with S.A. on various breast disorders. Additionally, I credit Dr. Patel's notes that he told her that he could remove the nodule in his office if she desired. However, I credit S.A.'s testimony that Dr. Patel told her that she had a benign fibroadenoma and had nothing to worry about. Had Dr. Patel told her that the lump was indeterminate, S.A. could have made an informed decision concerning the removal of the mass versus waiting six months to see what would happen.

11. On February 22, 2005, S.A. returned to Dr. Patel's office for a follow-up visit. The lump was still present. Based on Dr. Patel's office notes, he was still under the impression that the lump was a benign fibroadenoma. He told her that he would remove the lump in his office under local anesthesia. Another office visit was scheduled to remove the lump.

12. On or about March 8, 2005, Dr. Patel excised the breast mass in his office using local anesthesia. A biopsy of the excised tissue revealed that S.A. had an infiltrating ductal carcinoma (breast cancer).

13. On or about March 14, 2005, Dr. Patel performed a right partial mastectomy on S.A.

14. Dr. Armand H. Katz testified as an expert for the Department. Dr. Katz's testimony is credited that the standard of care required that Dr. Patel tell S.A. that the lump was indeterminate and could be cancerous.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2006).

16. The Department bears the burden to establish the allegations in the Amended Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996). In the Amended Administrative Complaint, the Department alleges that Dr. Patel violated Subsection 458.331(1)(t), Florida Statutes, which provides:

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

\* \* \*

(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. . . . 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. . . .

17. The Department further alleges that Dr. Patel violated Subsection 458.331(1)(t), Florida Statutes, by the following acts:

A. By failing to inform/explain to Patient S.A. that the palpable mass/lesion on her right breast's [sic] nature was indeterminate;

B. By failing to adequately inform Patient S.A. that the palpable mass/lesion on her right breast was not a fibroadenoma, but an indeterminate lesion.

17. The Department has established by clear and convincing evidence that Dr. Patel violated 458.331(1)(t), Florida Statutes, by failing to tell S.A. that the lump in her breast was indeterminate. He told her that the lump was a benign fibroadenoma. Dr. Patel should have informed S.A. that the lump was indeterminate and could be cancerous. Dr. Patel failed to practice medicine with that level of skill, care, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

18. Florida Administrative Code Rule 64B8-8.001(2)(t) provides that the range of penalties for a violation of Subsection 458.331(1)(t), Florida Statutes, is from two year's

probation to revocation 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. Rameshibhai P. Patel violated Subsection 458.331(1)(t), Florida Statutes; placing him on probation for one year with indirect supervision, with the terms to be set by the Board of Medicine; requiring completion of five hours of continuing medical education in risk management; and imposing an administrative fine of \$1,000.

DONE AND ENTERED this <day> day of <month>, <year>, in Tallahassee, Leon County, Florida.

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SUSAN B. HARRELL  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this <day> day of <month>, <year>.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida Statutes are to the 2004 version.

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.