

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 07-3405PL
)
AARON B. ROUSH, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 27, 2007, in Winter Haven, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Aaron B. Roush, M.D., pro se
Kelly E. Speer, Esquire¹
1804 West Baker Street, Suite D
Plant City, Florida 33563

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsection 458.331(1)(t), Florida Statutes (2004),² and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On September 26, 2006, Petitioner, Department of Health (Department), filed a one-count Administrative Complaint with the Board of Medicine against Respondent, Aaron B. Roush, M.D. (Dr. Roush), alleging that Dr. Roush violated Subsection 458.331(1)(t), Florida Statutes. Dr. Roush requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 24, 2007, for assignment to an Administrative Law Judge to conduct the final hearing.

Dr. Roush's legal counsel was unable to attend the final hearing due to a medical emergency. Dr. Roush appeared at the final hearing. The undersigned offered to continue the final hearing until Dr. Roush's legal counsel could participate in the final hearing, but Dr. Roush elected to go forward with the final hearing and to represent himself.

At the final hearing, the Department did not call any witnesses. Petitioner's Exhibits A, B, C, D, E, and F were admitted in evidence. The testimony of the Department's expert witness, Michael J. Cohen, M.D., was presented by deposition, which was marked as Petitioner's Exhibit D. At the final hearing, Dr. Roush testified in his own behalf, and Respondent's Exhibit 1 was admitted in evidence.

The one-volume Transcript was filed on October 2, 2007. On October 12, 2007, the parties 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 the regulation of the practice of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes.

2. Dr. Roush is a licensed medical doctor in the State of Florida, having been issued license No. ME 83992. He is board-certified in general surgery by the American Board of Surgery.

3. On February 8, 2005, V.R. presented to the emergency department at Winter Haven Hospital, Inc. Her chief complaint was "near syncope," which means near fainting. She had fallen and hit her left ribs. She denied hitting her head and stated that she never "went completely out." She complained of feeling dizzy when she stood.

4. While in the emergency department, V.R. had a CT which indicated an abnormality. She was admitted to the hospital by Ernesto J. Perez, M.D., who was the attending physician. V.R.'s medical history included hypertension, osteoarthritis, osteoporosis, and gastroesophageal reflux disease. A brain magnetic resonance imaging (MRI) and a carotid magnetic resonance angiography (MRA) were ordered for V.R.

5. After the MRI and MRA were completed, V.R. was seen by Juan L. Joy, M.D., who reviewed the test results. Dr. Joy found that both studies were "unremarkable." Specifically, Dr. Joy found that the MRI showed no posterior fossa lesions.

6. The radiographic report of the MRA showed that there was "approximately 70 to 80 percent luminal narrowing of the proximal left ICA." Because of the abnormal MRA, Dr. Perez consulted with Dr. Roush.

7. Dr. Roush examined the patient and felt that V.R.'s symptoms were consistent with inner ear cochlear malfunction. However, he determined that V.R. had left-sided 70 to 80 percent carotid stenosis. His assessment of V.R. was that she was "a 66-year-old female with probable asymptomatic high-grade stenosis in the left carotid internal artery." He recommended a carotid endarterectomy, which is a procedure that removes plaque from the lining of the carotid artery.

8. An MRA is used to diagnose blockages or stenosis in the carotid arteries. An MRA can overestimate the degree of blockage. Other studies such as ultrasound, carotid Doppler studies, and standard arteriography are used to diagnose carotid stenosis. Roush did not order or perform any additional diagnostic studies to confirm the results of V.R.'s MRA prior to making the surgical recommendation.

9. Dr. Roush performed the carotid endarterectomy on V.R., but no carotid stenosis was found. An ultrasound of the right carotid artery was ordered to determine if the original MRA had been of the right carotid rather than the left. The ultrasound showed that there was "no hemodynamically significant stenosis" and "no plaque" in the right carotid.

10. The Department presented Dr. Michael J. Cohen as its expert witness. Dr. Cohen is board-certified in vascular surgery. It was Dr. Cohen's opinion that an MRA, alone, was not sufficient to diagnose carotid stenosis and that Dr. Roush fell below the standard of care by not ordering additional diagnostic tests prior to recommending surgical intervention. Dr. Cohen's opinion is credited.

11. The MRA showed a blockage of 70 to 80 percent. Dr. Cohen credibly opined that most vascular surgeons would not have operated on an asymptomatic patient such as V.R. with that level of stenosis without additional testing.

12. It was Dr. Cohen's credible opinion that the carotid endarterectomy which Dr. Roush performed on V.R. was an unnecessary surgical procedure; thus, Dr. Roush fell below the standard of care when he performed the surgery.

CONCLUSIONS OF LAW

13. 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. (2007).

14. The Department alleged that Dr. Roush violated Subsection 458.331(1)(t), Florida Statutes, which provides:

(1) The following acts constitute grounds for denial of 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. 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 of medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$50,000 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 to require that a physician be incompetent to practice 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 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.

15. The Department alleged that Dr. Roush violated Subsection 458.331(1)(t), Florida Statutes, by failing to perform diagnostic studies to confirm the results of V.R.'s MRA, by incorrectly diagnosing V.R. with left-sided carotid stenosis, and by performing or attempting to perform an unnecessary surgery on V.R.

16. The Department has established that Dr. Roush violated Subsection 458.331(1)(t), Florida Statutes, by failing to practice medicine with that level of care, skill, and treatment which is recognizable by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. The Department established that the standard of care required that Dr. Roush perform additional diagnostic testing on V.R. to determine whether there was carotid stenosis. An MRA can overestimate the blockage, and V.R. was asymptomatic. In other words, her symptoms did not point to a diagnosis of carotid stenosis. No carotid stenosis was found when the surgery was performed. Dr. Roush incorrectly diagnosed carotid stenosis and performed an unnecessary surgical procedure.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Dr. Roush violated Subsection 458.331(1)(t), Florida Statutes; imposing an administrative fine of \$10,000; requiring 25 hours of community service; requiring Dr. Roush to take no less than five hours of Risk Management Continuing Medical Education coursework; and issuing a reprimand.

DONE AND ORDERED this 16th day of November, 2007, in Tallahassee, Leon County, Florida.

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SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of November, 2007.

ENDNOTES

^{1/} Ms. Speer was unable to attend the final hearing due to medical reasons. Dr. Roush represented himself at the final hearing, and Ms. Speer filed a proposed recommended order on Dr. Roush's behalf.

^{2/} Unless otherwise indicated, all references to the Florida Statutes are to the 2004 edition.

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.