

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 12-1177PL
)
ROBERT DEAN MARSHALL, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

On June 11, 2012, an administrative hearing was held in this case in Tallahassee, Florida, before J. Lawrence Johnston, Administrative Law Judge (ALJ), Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Greg S. Marr, Esquire
Department of Health
Bin C-65
4052 Bald Cypress Way
Tallahassee, Florida 32399-3265

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

The issue is whether Respondent's Florida license to practice medicine should be revoked for malpractice under section 458.331(1)(t), Florida Statutes (2006).

PRELIMINARY STATEMENT

On April 23, 2010, Petitioner, Department of Health (DOH), filed an Administrative Complaint against Respondent, Robert Dean Marshall, M.D., seeking the imposition of license discipline for alleged malpractice. On May 21, 2010, Respondent's attorney acknowledged Respondent's receipt of the Administrative Complaint at 400 East Colonial Drive, Apartment 310, Orlando, Florida 32803, and requested a hearing under sections 120.569 and 120.57, Florida Statutes, to resolve disputed facts. On September 8, 2011, Respondent's attorney gave notice to DOH that he had no contact with Respondent "for some time" and was withdrawing from the representation. DOH diligently attempted to contact Respondent at his last known address, where he had received the Administrative Complaint, and at a prior address, where Respondent's ex-wife lives, to no avail.

On March 30, 2012, DOH referred Respondent's request for a hearing to DOAH for assignment of an ALJ. The referral suggested that Respondent still was represented by counsel. On April 2, 2012, DOH gave notice of the previous withdrawal of counsel, and leave to withdraw was granted. The final hearing was then scheduled for June 11, 2012, in Tallahassee. Respondent was given notice of the final hearing by mail at his last known addresses.

Respondent did not participate in any aspect of this proceeding. He did not appear at the final hearing. At the final hearing, DOH called Daryl Fruth, Roxanne McCarthy, Paula Simon, and Tony Hannah. DOH had Petitioner's Exhibits 1 through 3 and 5 through 9 admitted in evidence. Petitioner's Exhibit 6 was the transcript of the deposition of expert witness Kenneth K. Hines, Jr., M.D.

The Transcript of the final hearing was filed at DOAH on June 27, 2012. DOH filed a Proposed Recommended Order, which has been considered.

FINDINGS OF FACT

1. Respondent is licensed to practice medicine in Florida, holding license number ME 66823. He is a radiologist and is certified by the American Board of Orthopedic Radiology and Diagnostic Radiology.

2. On June 17, 2004, the Board of Medicine (Board) disciplined Respondent's medical license by issuing a letter of concern, imposing a \$15,000 fine, assessing \$4,010.59 in costs, requiring eight hours of continuing medical education, and prohibiting him from treating or prescribing medication to members of his family.

3. On or about October 4, 2006, while working at Drew Medical, Inc., Respondent performed a diagnostic procedure called an intravenous pyelogram (IVP) without tomograms for Patient

G.P., who had complained of right-side pain and had a history of kidney stones. An IVP without tomograms is a series of time-lapse x-rays using a dye material to provide radiographically contrasting images to detect a stone in a kidney or ureter. The resulting x-ray images revealed a partial obstructing stone in the right-side kidney/ureter area, which Respondent detected and reported.

4. One of the resulting x-ray images contained an anomaly having the classical appearance of an abdominal aortic aneurysm, including conspicuous tissue displacement and rim calcification. It had an elongated, water balloon-type appearance with calcifications on one of the walls. It was alarming or life-threatening in size, such that it could cause death by bleeding. Respondent did not mention the aneurysm in his report or recommend any further evaluation of the anomaly.

5. Although he was tasked to look for kidney stones, Respondent's failure to report the aneurysm or recommend any further evaluation of the anomaly fell below the level of care, skill, and treatment that is recognized by reasonably prudent, similar physicians as being acceptable.

6. Patient G.P. was admitted to Orlando Regional Hospital with a ruptured abdominal aortic aneurysm on October 6, 2006. Attempts were made to repair the rupture, but they were not successful. The patient died on October 12, 2006.

7. By his conduct in disappearing without a trace, despite the diligent efforts of DOH to find him, and not participating in any manner in the hearing he requested to dispute the Administrative Complaint, Respondent effectively abandoned his license to practice medicine in Florida.

CONCLUSIONS OF LAW

8. Section 458.331(1)(t), Florida Statutes (2006), authorizes the Board to discipline a Florida-licensed physician who does not 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." In evaluating a physician under this provision, the Board gives great weight to the definition in section 766.102(1), Florida Statutes: "The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."

9. Because it seeks to impose license discipline, DOH has the burden to prove its allegations by clear and convincing evidence. Dep't of Banking & Finance v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). DOH met its burden of proof. Petitioner was

guilty of medical malpractice in failing to report Patient G.P.'s aneurysm or recommend any further evaluation of the anomaly evident in the radiological examination Respondent performed.

10. Under Florida Administrative Code Rule 64B8-8.001(2)(t), the appropriate penalty for medical malpractice can range from a year's probation to revocation and an administrative fine from \$1,000 to \$10,000. Rule 64B8-8.001(3) sets out aggravating and mitigating circumstances in determining an appropriate penalty.

11. In this case, Respondent's medical malpractice exposed the patient, G.P., to death. In addition, Respondent has a discipline history involving intentional misconduct. Finally, Respondent has essentially abandoned his license by disappearing and not facing the charge of medical malpractice alleged by DOH. See § 456.035, Fla. Stat. (licensees are solely responsible for providing a current mailing address, and service by regular mail to the address of record is adequate and sufficient notice to the licensees). See also Griffis v. Dep't of Bus. & Prof. Reg., 2012 Fla. App. LEXIS 2781, 37 Fla. L. Weekly D488 (Fla. 1st DCA 2012). Under these circumstances, the maximum discipline is appropriate.

RECOMMENDATION

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

RECOMMENDED that the Board of Medicine enter a final order finding Respondent guilty of medical malpractice, revoking his medical license, and imposing a \$10,000 administrative fine.

DONE AND ENTERED this 25th day of July, 2012, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of July, 2012.

COPIES FURNISHED:

Greg S. Marr, Esquire
Department of Health
Bin C-65
4052 Bald Cypress Way
Tallahassee, Florida 32399-3265

Robert Dean Marshall, M.D.
Apartment 310
400 East Colonial Drive
Orlando, Florida 32803

Robert Dean Marshall, M.D.
5987 Southwest Moore Street
Palm City, Florida 34990

Jennifer A. Tschetter, General Counsel
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1701

Joy Tootle, Executive Director
Board of Medicine
Department of Health
4052 Bald Cypress Way
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.