

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,  
BOARD OF OSTEOPATHIC MEDICINE,

Petitioner,

Case No. 19-4724PL

vs.

JOHN JOSEPH IM, D.O.,

Respondent.

---

RECOMMENDED ORDER

On November 7, 2019, Administrative Law Judge Yolonda Y. Green of the Florida Division of Administrative Hearings ("Division"), conducted a final hearing pursuant to section 120.57(1), Florida Statutes, in Lady Lake, Florida.

APPEARANCES

For Petitioner: Virginia Edwards, Esquire  
William Edward Walker, Esquire  
Department of Health  
Bin C-65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399

For Respondent: John Joseph Im, D.O., pro se  
Exceptional Urgent Care Center  
13767 U.S. Highway 441  
Lady Lake, Florida 32159

STATEMENT OF THE ISSUES

Whether Respondent failed to meet the prevailing professional standard of care by failing to counsel J.K.

regarding the risks of, or alternatives to, taking Levaquin with Tikosyn in violation of section 459.015(1)(x), Florida Statutes, as alleged in the Administrative Complaint; and, if so, what sanction is appropriate.

PRELIMINARY STATEMENT

On June 19, 2019, Petitioner, the Department of Health, Board of Osteopathic Medicine ("Petitioner" or the "Department"), filed an Administrative Complaint against Respondent, Dr. John Joseph Im, D.O. ("Respondent" or "Dr. Im"), alleging that he violated section 459.015(1)(x). On July 24, 2019, Respondent filed an Election of Rights seeking a final hearing pursuant to section 120.57(1), and on September 6, 2019, the case was referred to the Division for assignment of an administrative law judge.

The undersigned issued a Notice of Hearing scheduling the final hearing to take place on November 7, 2019, which commenced on the scheduled date. At hearing, Petitioner presented the testimony of patient J.K. (by deposition), K.K. (Patient J.K.'s wife), and Dr. Anthony Davis (Petitioner's expert). Petitioner's Exhibits 1 through 3, and 5 through 9 were admitted. Petitioner proffered Exhibit 4. Respondent testified on his own behalf. Respondent's Exhibit 7 was admitted over objection, and Exhibit 8 was admitted without objection.

At the hearing, the undersigned considered Respondent's Motion for Sanctions as it related to his assertions regarding the conduct of Petitioner's counsel during the deposition of K.K. After hearing argument from both parties, the undersigned denied Respondent's request for sanctions.<sup>1/</sup>

The one-volume Transcript of the hearing was filed with the Division on December 4, 2019. The Petitioner timely filed its Proposed Recommended Order in this matter, which has been carefully considered in the preparation of this Recommended Order. Respondent did not file a post-hearing submittal.

Unless otherwise indicated, all references to the Florida Statutes are to the 2017 codification, and all references to the Florida Administrative Code are to the 2016 version.<sup>2/</sup>

#### FINDINGS OF FACT

The following Findings of Fact are based upon the testimony and documentary evidence presented at hearing, the demeanor and credibility of the witnesses, and on the entire record of this proceeding.

1. Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to section 20.43, and chapters 456 and 459, Florida Statutes.

2. At all times material to these proceedings, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 8729.

3. Respondent's address of record at the time of filing the Administrative Complaint was 11950 County Road 101, Suites 101, 102, and 103, The Villages, Florida 32162. Respondent's current address of record is 13767 U.S. Highway 441, Lady Lake, Florida 32159.

4. Respondent currently holds no board certification in any specialty area, and did not complete any residency other than in emergency medicine. Respondent attended Michigan State University, College of Osteopathic Medicine. In 2002, he began full-time practice as an emergency room physician at Munroe Regional Medical Center in Ocala, Florida. He worked as an emergency room physician until he opened Exceptional Urgent Care Center ("EUCC").

5. At all times material to this complaint, Respondent owned and operated EUCC.

Treatment Provided to Patient J.K.

6. On March 15, 2018, J.K., along with his wife, presented to EUCC with complaints of a sore throat and fever. This was the first of two visits to the clinic.

7. J.K. reported his medications as Amlodipine, Warfarin, Tamsulosin, and Dofetilide (unless otherwise indicated, hereinafter referred to by its trade name "Tikosyn").

8. J.K. was prescribed these medications by his cardiologist at the William S. Middleton Memorial Veterans Hospital ("V.A. Hospital") in Wisconsin, his home state.

9. Relevant to this matter, Tikosyn helps patients maintain a normal heartbeat rhythm. Tikosyn was prescribed to keep J.K.'s heart in rhythm as he had atrial fibrillation.

10. J.K. was treated by a nurse practitioner, who ordered a chest x-ray and a flu swab. The flu swab returned negative, and the chest x-ray showed no focal pneumonia. J.K. was prescribed Tamiflu and Naproxen. J.K. elected not to fill the Tamiflu due to the "expensive cost." Respondent was not involved in J.K.'s treatment on this date.

11. On March 16, 2018, J.K. and his wife K.K. returned to EUCC as J.K.'s symptoms had not improved. On this visit, J.K. saw Dr. Im. Dr. Im evaluated J.K. and ordered two tests. Dr. Im ordered a Prothrombin Time International Normalized Ration ("PT INR") test to determine J.K.'s coagulation and he ordered a CT scan of the chest. The PT INR results were within the therapeutic range. The CT scan showed shattered ground-glass opacification in the posterior right lower lobe and the medial left upper lobe. The CT scan findings were interpreted as "non-specific, may represent hypoventilatory change or an infectious inflammatory process (acute or chronic)."

12. Respondent advised J.K. and K.K. that the CT scan appeared to show the start of pneumonia, and he was going to prescribe three medications: Levaquin 750 mg, Prednisone 20 mg, and Zyrtec 10 mg.

13. K.K. testified that she asked Respondent if the Levaquin, Prednisone, or Zyrtec were contraindicated with any of J.K.'s current prescriptions, specifically Tikosyn. K.K. recalls that Respondent replied that he was not familiar with Dofetilide (Tikosyn), and advised them to check with the pharmacist to see if there were any contraindications.

14. Although Respondent initially advised J.K. and K.K. that he was not familiar with Tikosyn, Respondent testified that he advised J.K. and K.K. of the possible interactions between Levaquin and Tikosyn and told her that the interaction was very rare. He testified that he advised J.K. and K.K. that the pharmacist is a safety net, and the pharmacist would call him to discuss the prescriptions if he missed anything.

15. K.K. credibly testified that Respondent did not counsel J.K. or K.K. on any risks regarding the medications Dr. Im prescribed or provide them with any alternatives during the visit on March 16, 2018.

16. J.K. and K.K. left EUCC and went to Publix to fill the prescriptions. K.K. asked the pharmacist if any medications would interfere with any of J.K.'s prescribed medications. Upon

advice of the pharmacist that Levaquin was contraindicated with Tikosyn, K.K. declined to fill the prescription for Levaquin.

17. On behalf of J.K., K.K. then called EUCC and asked for a different antibiotic that would not interact with Tikosyn. However, she was instructed to contact J.K.'s cardiologist.

18. K.K. then contacted the cardiology staff of the V.A. Hospital in Wisconsin, who instructed K.K. to follow the advice of the pharmacist and (tell J.K.) not to take the Levaquin.

19. K.K. called EUCC a second time to confirm whether J.K. had an infection and she was told that J.K. did not have an infection.

20. Respondent recalls that he had a personal conversation with K.K. during a courtesy telephone call placed the next day (March 17, 2018). Respondent testified that during that call, he explained Levaquin was the drug of choice, other medications would not cover J.K.'s pneumonia, the potential interactions were very rare, and J.K. needed to take the Levaquin. By his own admission and his medical records, Respondent did not provide J.K. or K.K. with any specific alternative antibiotics and insisted that J.K. needed to take the Levaquin.

21. K.K. disputes that Dr. Im spoke with her or J.K. at any point after the March 16, 2018, visit. She clearly recalled that she spoke with a woman each time she spoke with staff at Dr. Im's office. Overall, J.K. and K.K. clearly and

convincingly testified that Respondent never advised them of the risks of using Levaquin with Tikosyn or provided any alternatives to the Levaquin.

Expert Testimony

22. Petitioner offered the testimony of Dr. Anthony Davis, who testified as an expert. Dr. Davis has been licensed as an osteopathic physician in Florida since 1995. Dr. Davis attended Kirksville College of Osteopathic Medicine and completed an internship in family practice. He has been board certified in family medicine by the American Board of Osteopathic Family Physicians since 2001, and board certified in emergency medicine by the American Association of Physician Specialists since July 2003. He is also affiliated with professional organizations including the American College of Family Practice and Florida Osteopathic Medical Association.

23. Dr. Davis was accepted as an expert in emergency and family medicine.

24. Dr. Davis relied upon his work experience, his training, and his review of the medical records for J.K. to render his opinion regarding the standard of care related to treating J.K.

25. The standard of care requires an osteopathic physician treating a patient similar to J.K. to: (1) provide and document their justification for why Levaquin was the appropriate drug of



choice; (2) note the patient's acknowledgment that there are interactions with Tikosyn; (3) ensure the patient understands the risks and benefits of combining Tikosyn and Levaquin; (4) explain to the patient that there are limited alternatives to Levaquin; and (5) provide the reason for prescribing a potentially dangerous drug.

26. Levaquin is a medication that comes with a black box warning that requires physicians to counsel patients on the risks associated.

27. When a drug is designated as contraindicated and has a category X for interaction, the standard of care requires that the physician clearly explains to the patient why they are using the drug and defend how it is going to be safe. Tr., p. 70.

28. Dr. Davis opined there were multiple treatment options available for J.K., such as supportive care or an antibiotic with a lower risk of interaction with J.K.'s existing medication. Moreover, Dr. Davis testified that there were safer alternatives to Levaquin that would effectively treat pneumonia, such as doxycycline, if J.K. actually had pneumonia and an antibiotic was necessary.

29. Respondent provided literature from the Infectious Diseases Society of America related to community-acquired pneumonia in an attempt to prove that X-Ray or other imaging techniques are required for the diagnosis of pneumonia and to

support his claim that Levaquin was the drug of choice for J.K. However, Dr. Davis credibly pointed out that the article, published in 2007, is no longer accurate.

#### CONCLUSIONS OF LAW

30. The Division has jurisdiction of the subject matter and the parties to this action pursuant to sections 120.569 and 120.57(1), Florida Statutes (2019).

31. This is a proceeding in which the Department seeks to revoke Respondent's license to practice medicine. The Department has the burden to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 595 So. 2d 292 (Fla. 1987). As stated by the Supreme Court of Florida,

Clear and convincing evidence 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 lacking in confusion as to the facts at issue. The evidence must be of such a 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.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). This burden of proof may be met where the evidence is in conflict; however, "it seems to preclude evidence that is ambiguous."

Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (Fla. 1st DCA 1991).

32. Disciplinary statutes and rules "must always be construed strictly in favor of the one against whom the penalty would be imposed and are never to be extended by construction." Griffis v. Fish & Wildlife Conser. Comm'n, 57 So. 3d 929, 931 (Fla. 1st DCA 2011); Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136 (Fla. 1st DCA 1992).

33. Petitioner charged Respondent under section 459.015(1)(x), which provides in pertinent part: "Notwithstanding s. 456.072(2) but as specified in s. 456.50(2): 1. Committing medical malpractice as defined in s. 456.50. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. Medical malpractice shall not be construed to require more than one instance, event, or act."

34. The Administrative Complaint alleged that Respondent committed medical malpractice. Section 456.50(1)(g), Florida Statutes, defined "medical malpractice," in relevant part, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure.

35. Section 766.102(1), Florida Statutes, provided in part, that 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 healthcare providers.

36. Petitioner alleged that Respondent committed medical malpractice by failing to advise J.K. of the contraindication of Levaquin and Tikosyn. Dr. Davis testified that the applicable standard of care required that an osteopathic physician advise a patient of the interactions between Levaquin and Tikosyn and provide any alternatives to taking Levaquin. Dr. Davis' expert testimony was credited. Petitioner proved this allegation.

37. Even had Levaquin not been contraindicated with Tikosyn, the standard of care required that Respondent advise J.K. of the additional risks, including death, involved in taking the two drugs together. The more compelling evidence demonstrates that Respondent did not advise J.K. of these risks, and Respondent's testimony to the contrary is rejected as not credible.

38. Petitioner established by clear and convincing evidence that Respondent committed medical malpractice in violation of section 459.015(1)(x), as charged in the Administrative Complaint.

#### Penalty

39. Petitioner imposes penalties upon licensees consistent with disciplinary guidelines prescribed by Florida

Administrative Code Rule 64B15-19.002. See Parrot Heads, Inc. v. Dep't of Bus. & Prof'l Reg., 741 So. 2d 1231, 1233-34 (Fla. 5th DCA 1999).

40. Penalties in a licensure discipline case may not exceed those in effect at the time the violation was committed. Willner v. Dep't of Prof. Reg., Bd. of Med., 563 So. 2d 805, 806 (Fla. 1st DCA 1990), rev. denied, 576 So. 2d 295 (Fla. 1991).

41. At the time of the incidents, rule 64B15-19.002(28) provided that for a first-time offender, committing medical malpractice, as described in section 459.015(1)(x), the prescribed penalty range was "letter of concern, up to one (1) year probation and \$1,000 fine to denial or revocation and \$10,000 fine."

42. Rule 64B15-19.003 provided that, in applying the penalty guidelines, Petitioner may deviate from the penalties recommended above when there is evidence of aggravating and mitigating factors present in the individual case. Petitioner shall consider aggravating or mitigating factors as follows:

- (1) The danger to the public;
- (2) The length of time since the violations;
- (3) The number of times the licensee has been previously disciplined by the Board;
- (4) The length of time the licensee has practiced;
- (5) The actual damage, physical or otherwise, caused by the violation;

- (6) The deterrent effect of the penalty imposed;
- (7) The effect of penalty upon the licensee's livelihood;
- (8) Any effort of rehabilitation by the licensee;
- (9) The actual knowledge of the licensee pertaining to the violation;
- (10) Attempts by the licensee to correct or stop violations or refusal by licensee to correct or stop violations;
- (11) Related violations against licensee in another state, including findings of guilt or innocence, penalties imposed and penalties served;
- (12) The actual negligence of the licensee pertaining to any violations;
- (13) The penalties imposed for related offenses; and
- (14) The pecuniary gain to the licensee;
- (15) Any other relevant mitigating or aggravating factors under the circumstances. Any penalties imposed by the board may not exceed the maximum penalties set forth in Section 459.015(2), F.S.

43. A significant aggravating factor was that Respondent's actions exposed J.K. to potential serious injury or death. While there was potential for harm, J.K. did not suffer harm as he did not fill the prescription or take the Levaquin.

44. On the other hand, Respondent was not under any legal restraints at the time of the incident. There was no evidence of any prior disciplinary history in any jurisdiction over a 15-year successful career. Respondent received no special pecuniary benefit or self-gain from his actions. While these

factors do not serve as a legal defense to the proven charges, they are relevant in determining an appropriate penalty.

45. Taken as a whole, the evidence presented does not warrant deviation in penalty from the disciplinary guidelines contained within the rule.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Osteopathic Medicine enter a Final Order as follows:


a) Finding that John Joseph Im, D.O., violated section 459.015(1)(x), by committing medical malpractice, as defined in section 456.50, as alleged in the Administrative Complaint;

b) Issue a letter of concern against Respondent's license to practice osteopathic medicine;

c) Requiring completion of a prescribing practices course;  
and

d) Imposing an administrative fine of \$2,500.

DONE AND ENTERED this 16th day of December, 2019, in  
Tallahassee, Leon County, Florida.



---

YOLONDA Y. GREEN  
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 16th day of December, 2019.

ENDNOTES

<sup>1/</sup> The deposition in lieu of live testimony of K.K. was not admitted into evidence as Respondent successfully argued there were questions he desired to ask the witness that he was unable to ask during the deposition.

<sup>2/</sup> Unless otherwise noted, references to the statutory codification or rules are to those in effect at the time the alleged violation occurred.

COPIES FURNISHED:

Virginia Edwards, Esquire  
Department of Health  
Prosecution Services Unit  
Bin C-65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399  
(eServed)



William Edward Walker, Esquire  
Department of Health  
Bin C-65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399  
(eServed)

John Joseph Im, D.O.  
Exceptional Urgent Care Center  
13767 U. S. Highway 441  
Lady Lake, Florida 32159  
(eServed)

Kama Monroe, Executive Director  
Board of Osteopathic Medicine  
Department of Health  
Bin C06  
4052 Bald Cypress Way  
Tallahassee, Florida 32399-3257  
(eServed)

Louise Wilhite-St. Laurent, General Counsel  
Department of Health  
Bin C65  
4052 Bald Cypress Way  
Tallahassee, Florida 32399  
(eServed)

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.