

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,)
)
 PETITIONER,)
)
 v.)
)
 GUILLERMO DANIEL MARCOVICI, M.D.,)
)
 RESPONDENT.)
 _____)

CASE NO. 1998-21564

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Health, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against Guillermo Daniel Marcovici, M.D., hereinafter referred to as "Respondent," and alleges:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.
2. Respondent is and has been at all times material hereto a licensed physician in the state of Florida, having been issued license number ME 0037469. Respondent's last known address is 1111 12th Street, Suite 204, Key West, Florida 33040.
3. Respondent specializes in psychiatry.

4. On or about December 1, 1997, Patient J.W. presented to the Emergency Room (ER) complaining of an intractable headache and was admitted to the Lower Florida Keys Health System.

5. On or about December 1, 1997, Patient J.W. underwent a magnetic resonance imaging (MRI) scan, with a finding of a small dural (tentorial) AVM (arteriovenous malformation) or angioma on the right. Angiomas are collections of abnormally dense blood or lymph vessels that are usually located in and below the skin and that cause red or purple discolorations. A tentorial is a membranous cover or horizontal partition of the dural. The dural is a tough fibrous membrane covering the brain and the spinal cord and lining the inner surface of the skull.

6. On or about December 2, 1997, Patient J.W. underwent an Electroencephalogram (EEG), with normal findings, and no evidence of any lateralized, focal, abnormal, paroxysmal or eliptiform activity. Patient J.W. was discharged home with a diagnosis of a chronic headache to follow-up in the doctor's office.

7. On or about December 5, 1997, Patient J.W. was voluntarily admitted to dePoo Hospital, the psychiatric unit of Lower Florida Keys Health System, complaining of pain with an admitting diagnosis of depressive disorder, rule out substance abuse/dependence. His admitting psychiatrist described Patient J.W. as alert and oriented in all spheres.

8. On or about December 5, 1997, Patient J.W. upon admission was given a standing order (PRN) of Ativan 2mg for agitation. Ativan is the brand name for Lorazepam, an anti-anxiety agent, and has a tranquilizing action on the central nervous system with no appreciable effect on the respiratory or cardiovascular systems.

9. On or about December 6, 1997, the psychiatrist conducted a medical consultation with an assessment of mixed headaches, AIDS Somatization and electrolyte abnormalities.

Somatization disorder is a chronic, severe illness characterized by many physical symptoms, particularly some combination of pain and gastrointestinal, sexual, and neurologic symptoms.

10. On or about December 6, 1997, Respondent, the attending physician and medical director of the inpatient psychiatric unit for the dePoo Hospital, ordered a neurology consultation. The neurology consult resulted in findings of psychogenic pain, described as related to his medical condition, and recommended over the counter analgesics.

11. On or about December 6, 1997, Respondent described Patient J.W. as histrionic, loud, complaining of an inability to see or talk at different times, attention seeking, complaining bitterly about pain and constantly begging for medication.

12. On or about December 7, 1997, Respondent described Patient J.W.'s condition as unchanged, requiring extra doses of Lorazepam for control of agitation and anxiety. Respondent described Patient J.W. as complaining of an inability to see, hear and talk at times. Respondent diagnosed Patient J.W. as having a Psychogenic pain disorder and histrionic pain.

13. On or about December 8, 1997, Respondent described Patient J.W. as totally limp, bedridden, flaccid, uncooperative with caretakers and refusing to take showers. Respondent decided to continue medicating and adjusting his medications to provide supportive care.

14. On or about December 8, 1997, Patient J.W. had blood pressure readings of 170/110 and pulse was ninety-six at eight a.m. Patient J.W. had a blood pressure reading of 160/100 and pulse was eighty at four p.m.

15. On or about December 9, 1997, Respondent described Patient J.W. as continuing to be limp in bed, non-communicative, with communication consisting of moans, groans and screams for help. Patient J.W. remains in a flaccid catatonic like state with very limited intake of fluid and foods. The neurology consultant ordered labwork to assess Patient J.W.'s nutritional

status and electrolyte balance. Respondent decided to change Patient J.W.'s medication from Ativan to Haloperidol. Haloperidol is indicated for use in the management of manifestation of psychotic disorders.

17. On or about December 9, 1997, Respondent suspected Patient J.W. of drug withdrawal and began assessment through the use of the Withdraw Assessment Scale, Patient J.W.'s score was 48, due in part to extremely high blood pressure readings (a score of ten or more requires the patient be medicated).

18. On or about December 9, 1997, Patient J.W. was described by hospital staff as having visual hallucinations. At or around 8:00 p.m., Patient J.W. had a blood pressure of 198/122 and a temperature of 99.5 Fahrenheit. At this time Tylenol was given. Respondent was called and Ativan 2mg was given at 8:30 p.m. At or around 9:30 p.m., Patient J.W. was described as restless, blood pressure was 184/122 and pulse was 100. At or around 10:00 p.m. Patient J.W.'s blood pressure was 194/134. At or around 10:30 p.m. Patient J.W. was given Ativan.

19. On or about December 10, 1997, at or around 2:55 a.m. Patient J.W. had a blood pressure of 190/124 and given Ativan 2mg. At or around 9:00a.m. Patient J.W. was described as disoriented, demonstrating inability to focus or track conversation, with a blood pressure of 200/120 and was incontinent.

20. On or about December 10, 1997, at or around 9:00a.m., a physician was called and given findings of patient J.W.'s blood pressure and physical findings including the fact that Patient J.W. was unresponsive and obtunded. The physician then ordered Patient J.W. be transported by emergency medical service to the emergency room.

21. On or about December 10, 1997, Patient J.W. arrived at the ER with an admitting diagnosis of respiratory arrest. Patient J.W. was then admitted to the Intensive Care Unit in a coma, by a physician, completely unresponsive to nomotopic stimuli.

22. On or about December 11, 1997 at or around 7:20 p.m. Patient J.W. was pronounced dead.

COUNT ONE

23. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21), as if fully set forth herein this Count One.

24. Respondent practiced medicine below the acceptable standard of care, in that Respondent failed to properly diagnose, examine, treat and refer Patient J.W. to the emergency room in a timely fashion. Respondent failed to adequately diagnose a psychiatric condition in Patient J.W. Respondent fell below the acceptable standard of care by prescribing medications that further induced the depression of Patient J.W.'s central nervous system.

25. Based on the foregoing, Respondent violated Section 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 similar physician as being acceptable under similar conditions and circumstances

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, the assessment of costs

related to the investigation and prosecution of this case as provided for in Section 455.624(4),
Florida Statutes, and/or any other relief that the Board deems appropriate.

SIGNED this 1st day of May, 2000.

Robert G. Brooks, M.D., Secretary


Kathryn L. Kasprzak
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:

Kathryn L. Kasprzak
Chief Medical Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, Florida 32317-4229
Florida Bar # 937819
EL/jdl
PCP: April 24, 2000
PCP Members: Cerda, Pardue

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Ellison*
DATE 5-1-2000

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 1998-21564

GUILLERMO D. MARCOVICI, M.D.

Respondent.

MOTION FOR DEFAULT

COMES NOW the Petitioner, the Department of Health, acting by and through the Agency for Health Care Administration, and files this Motion for Default. As grounds therefore Petitioner states:

1. Effective July 1, 1997, Petitioner is the state agency charged with regulating the practice of respiratory care pursuant to Section 20.43, Florida Statutes; Chapter 455, Florida Statutes, and Chapter 468, Florida Statutes. Pursuant to the provisions of Section 20.43(3), Florida Statutes, the Petitioner has contracted with the Agency for Health Care Administration to provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

2. On May 1, 2000, the Petitioner filed an Administrative Complaint against the Respondent alleging that the Respondent violated Section 458.331(1)(t), Florida Statutes.

3. On May 3, 2000, an Administrative Complaint was served certified mail to Respondent.

4. On May 13, 2000, Respondent sent a letter to the Agency asking for an extension of time to serve the election of rights as he was disabled at that time.

5. On May 24, 2000, the Agency sent a letter to the Respondent extending the deadline for an additional thirty (30) days and asking for an update on his health status.

6. On September 8, 2000, the Agency sent a letter to the Respondent stating that we had not received a response from him regarding the election of rights or his health status. The letter stated that the Respondent had fifteen (15) days to respond or the case would be set before the Board.

7. The Respondent has failed to make an election of rights or other responsive pleading in this case within the required time period.

8. Since the Respondent was served by certified mail, and the Respondent has failed to make an election of rights, the Respondent is in default. Section 28-5.111, Florida Administrative Code, provides that, unless otherwise provided by law or agency rule, a person whose substantial interests are affected by agency action must petition for a formal hearing within 21 days of receiving notice of the Agency action. Failure to make a timely written request for a formal hearing is deemed a waiver of his right to subsequently request a formal hearing. Section 28-5.111(2), Florida Administrative Code, Capeletti Brothers v. State, Dept. of Transportation, 362 So. 2d 346 (Fla. 1st DCA 1978). In this case, the Agency provided the Respondent with notice of its intent to discipline the Respondent's license, and the Respondent has not been located, and therefore did not make, an election of rights.

9. The Respondent has been advised, by a copy of this Motion, that a copy of the investigative file in this case shall be furnished to the Board to establish a prima facie case regarding the violations as set forth in the Administrative Complaint.

WHEREFORE, the Petitioner requests this Board of Medicine to enter an Order finding Respondent in default. Furthermore, Petitioner requests that the Board find, based on the information contained in the investigative report, that Respondent has violated the provisions of Chapter 468, Florida Statutes, as alleged in the Administrative Complaint.

Respectfully submitted,



Ephraim D. Livingston, Senior Attorney
Florida Bar # 0121347
Agency for Health Care
Administration
Office of General Counsel
P.O. Box 14229
Tallahassee, Florida 32317-4229
(850) 487-2813 Fax (850) 414-1989

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Petitioner to Respondent Guillermo D. Marcovici, M.D., 5726 SW 31st Street, Miami, Florida 33155, via U.S. mail this 5 day of October 2000.



Ephraim D. Livingston, Senior Attorney

STATE OF FLORIDA
BOARD OF MEDICINE

By: Vicki R. Knowlton
Deputy Agency Clerk

DEPARTMENT OF HEALTH,
Petitioner,

vs.

CASE NO.: 1998-21564
LICENSE NO.: ME0037469

GUILLERMO D. MARCOVICI, M.D.,
Respondent.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on December 3, 2000, in Tampa, Florida, for consideration of the Administrative Complaint (attached hereto as Exhibit A) in the above-styled cause. Respondent was served with the Administrative Complaint by certified mail. Because Respondent failed to submit an Election of Rights or otherwise dispute the facts or respond in any other way, this cause was treated as a default. At the hearing, Petitioner was represented by Larry G. McPherson, Jr., Senior Prosecuting Attorney. No dispute of material fact has been asserted.

Upon consideration, it is ORDERED:

1. Respondent is found to be in DEFAULT.
2. The allegations of fact set forth in the Administrative Complaint are approved and adopted and incorporated herein by

reference as the findings of fact by the Board.

3. The conclusions of law alleged and set forth in the Administrative Complaint are approved and adopted and incorporated herein by reference as the conclusions of law by the Board.

4. The violations set forth warrant disciplinary action by the Board. THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED:

1. Respondent's license to practice medicine in the State of Florida in the State of Florida is hereby SUSPENDED until such time as he appears before the Board and demonstrates the ability to practice medicine with skill and safety. At such time that the Respondent can demonstrate that he can practice with skill and safety, the Board may impose a period of probation with the terms and conditions to be set at that time.

2. Respondent shall pay an administrative fine in the amount of \$5,000 to the Board within 60 days from the date this Final Order is filed.

3. Respondent shall pay the costs associated with this case in the amount of \$307.45 within 60 days from the date this Final Order is filed.

4. Respondent shall be and hereby is REPRIMANDED.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 13th day of December, 2000.

BOARD OF MEDICINE

George A. El-Bahri
for GEORGES A. EL-BAHRI, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE AGENCY FOR HEALTH CARE ADMINISTRATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to Guillermo D. Marcovici, M.D., 1111 12th Street, Suite 204, Key West, Florida 33040, and by interoffice delivery to Kathryn L. Kasprzak, Chief Medical Attorney, and Simone Marstiller, Senior Attorney - Appeals, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, on or before 5:00 p.m., this _____ day of _____, 2000.