

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

PETITIONER,

vs.

CASE NO. 8909022

JOHN AUGUST ORTOLANI, M.D.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner," and files this Administrative Complaint before the Board of Medicine against JOHN AUGUST ORTOLANI, M.D., hereinafter referred to as "Respondent," and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 458, Florida Statutes.

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 0034710. Respondent's last known address is 1430 Mason Avenue, Daytona Beach, Florida, 32117-4551.

3. At all times material hereto, Respondent, a Board Certified physician in neurology, considered himself a specialist in diagnosing and treating headaches and practiced medicine at the Daytona Neurological Associates in Daytona Beach Florida.

4. From on or about May 18, 1984, to on or about December 23, 1988, Respondent rendered neurological care to Patient #1, a female born on November 14, 1963.

5. On or about May 18, 1984, Patient #1 presented to Respondent's office complaining of severe headaches. At this time, Respondent noted in his medical records that Patient #1 had been on birth control pills for three years and had ceased taking them two months prior to this visit.

6. From on or about May 18, 1984, until some time in June, 1984, Respondent prescribed to Patient #1 Asendin 150 mg., a legend drug indicated for depression accompanied by anxiety or agitation.

7. On or about January 30, 1986, Patient #1 presented to Respondent's office complaining of headaches. Respondent's associate, Dr. Ralph J. Zwolinski, prescribed Phrenilin Forte (an analgesic sedation for muscle contraction headaches) four tablets per day.

8. From January 30, 1986, to until on or about September 12, 1986, Respondent treated Patient #1's headaches by prescribing Phrenilin Forte, Norpramin (an antidepressant drug) and Tylenol #3 (pain medication).

9. On or about September 12, 1986, Respondent prescribed a Medrol Dosepak unit to Patient #1 without advising her of this medication's adverse effects.

10. From on or about September 12, 1986, to on or about September 17, 1986, Patient #1 ingested decreasing dosages of the

Medrol Dosepak starting at 24 mg., ending at 4 mg. and totalling 84 mg. for this period of five days.

11. On or about October 30, 1986, Respondent prescribed another Medrol Dosepak unit to Patient #1. The patient took the Medrol tablets beginning on this date, in decreasing dosages, starting at 24 mg., ending at 4 mg. on or about November 4, 1986, and totalling 84 mg. for this period of five days.

12. Medrol is a legend drug as defined in Section 465.003 Florida Statutes, and it contains both natural and synthetic adrenocortical steroids (glucocorticoids). Although brief courses of cortico steroids may be sporadically indicated for a patient suffering from severe and prolonged migraine attacks, it should not be prescribed for long periods of time since it may cause aseptic necrosis of femoral and humeral heads among other adverse reactions.

13. On or about November 7, 1986, Respondent prescribed Prednisone 40 mg. for three days and 20 mg. for five days to Patient #1.

14. Prednisone is a legend drug as defined in Section 465.003, Florida Statutes, and it contains both natural and synthetic adrenocortical steroids.

15. On or about November 14, 1986, Respondent saw Patient #1 in his office and indicated in his records that the patient seemed to be doing better on Prednisone. Respondent then prescribed Prednisone 20 mg. for nine days.

16. This is the first time, that Respondent documented in Patient #1's medical records that he had prescribed Prednisone for this patient.

17. On or about November 25, 1986, Respondent saw Patient #1 in his office and prescribed Prednisone 10 mg. for seven days.

18. On or about January 20, 1987, Respondent saw Patient #1 in his office and prescribed Prednisone 40 mg. for three days, 20 mg. for the following three days and 10 mg. for another three days.

19. On or about January 30, 1987, Respondent prescribed Prednisone 60 mg. for Patient #1 for ten days.

20. On or about March 18, 1988, Respondent prescribed Prednisone 40 mg. for Patient #1 for four days.

21. On or about April 27, 1988, Respondent admitted Patient #1 to Halifax Hospital Medical Center in Daytona Beach, Florida, to receive intravenous (IV) Decadron, undergo a spinal tap work up and a magnetic resonance imaging (MRI) scan of her brain.

22. From on or about April 28, 1988 to on or about May 6, 1988 Patient #1 received approximately 4 mg. IV of Decadron per day.

23. Decadron is a legend drug as defined in Section 465.003, Florida Statutes, and it contains both natural and synthetic adrenocortical steroids. Four mg. of Decadron equal to 25 mg. of Prednisone.

24. On or about May 7, 1988, Respondent ordered two tablets of Decadron (Dexamethasone) 4 mg. for Patient #1 and on or about

May 8, 1988, he ordered another tablet of Decadron 4 mg. for this patient.

25. On or about May 8, 1988, Respondent discharged Patient #1 with a diagnosis of severe vascular migraine headaches under control with a combination of Mellaril and Procardia.

26. On or about November 4, 1988, Patient #1 visited an orthopedic physician, Dr. Marc Harr due to pain in her hips.

27. On or about January 6, 1989, Dr. Harr advised Patient #1 that she had avascular necrosis of both femoral heads and that this condition required surgery. Subsequently she underwent a bone graft on her right hip and a joint hip replacement on her left hip.

28. A subsequent treating physician diagnosed Patient #1 as suffering from two types of headaches, vascular headaches which are more severe and last a short period of time, and muscle contraction headaches.

29. Although steroids may be used to treat vascular headaches due to their short duration, they should not be prescribed to treat muscle contraction headaches. Furthermore, patients should not receive steroids for more than two to three weeks.

30. Respondent prescribed excessive amounts corticosteroids for Patient #1 for extended periods of time thereby causing her avascular necrosis of her femoral heads and surgery.

31. During his treatment of Patient #1, Respondent prescribed for her the following medications: Tenormin 100 mg. (used for hypertension); Empirin #4 (pain reliever); Percocet (pain reliever); Fiorinal (for muscle contraction headaches); Midrin #20

#20 (for vascular headaches); Percodan (pain reliever); Procardia (for hypertension); Prozac (for depression); Vicodin (pain reliever); Lombital (for depression and anxiety); Dyazide (for hypertension and swelling); Pamelor (for depression); Mellaril (for short treatment of depression); Dolobid (for mild to moderate pain); Phenergan (to prevent vomiting and nausea associated with certain anesthesia); Compazine (for severe nausea and vomiting); Mixitil (an active antiarrhythmic agent); and Benadryl (antihistamine).

COUNT ONE

32. Petitioner realleges and incorporates paragraphs one (1) through thirty (30), as if fully alleged herein this Count One.

33. Respondent is guilty of 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, in that Respondent prescribed excessive dosages of cortico steroids to Patient #1 for extended periods of time and failed to warn Patient #1 about the potential side effects of this medication including aseptic necrosis of the femoral heads.

34. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by being guilty of 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.

COUNT TWO

35. Petitioner realleges and incorporates paragraphs one (1) through thirty (30), and thirty-two (32), as if fully alleged herein this Count Two.

36. Respondent failed to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations, in that Respondent's records do not include the following: all the times he prescribed Prednisone to Patient #1; the dosages of cortico steroids he prescribed; instructions to Patient #1 informing her of the schedule she was to follow in taking this medication; any justification for prescribing cortico steroids to this patient for the period of approximately six months; and documentation that he had informed Patient #1 that she was ingesting steroids and that she was warned about its potential side effects.

37. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

COUNT THREE

38. Petitioner realleges and incorporates paragraphs one (1) through thirty, thirty-two (32), and thirty-five (35), as if fully alleged herein this Count Three.

39. Respondent inappropriately prescribed, dispensed, administered, mixed, or otherwise prepared a legend drug, including any controlled substance, other than in the course of the physician's professional practice, in that he prescribed Medrol Dosepak and Prednisone to Patient #1 for a period of approximately six months and 4 mg. of Decadron (4 times the amount of Prednisone) per day during this patient's 12 day hospitalization.

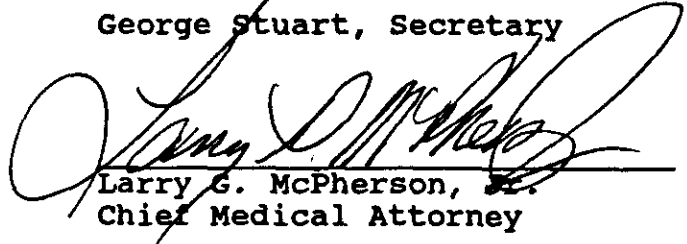
40. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

WHEREFORE, the Petitioner respectfully requests the Board of Medicine enter an Order imposing one or more of the following penalties: 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, and/or any other relief that the Board deems appropriate.

SIGNED this 14 day of May, 1992.

George Stuart, Secretary



Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:
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CJR/tc
PCP: May 11, 1992
McEwen, Kaiser and Dauer

FILED

Department of Professional Regulation
AGENCY CLERK



CLERK _____

DATE 5-15-92

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF F

Final Order No. AHCA-96-00811 Date 7-15-96

AGENCY FOR HEALTH CARE
ADMINISTRATION, BOARD OF
MEDICINE,

Petitioner,

v.

JOHN AUGUST ORTOLANI, M.D.,

Respondent.

FILED

Agency for Health Care Administration
AGENCY CLERK

By: R.S. Power, Agency Clerk
Deputy Agency Clerk

AHCA CASE NO: 89-09022
DOAH CASE NO: 94-2117
LICENSE NO: ME 0034710

FINAL ORDER

THIS MATTER was heard by the Board of Medicine (hereinafter Board) pursuant to Section 120.57(1)(b)10., Florida Statutes, on June 7, 1996, in Miami Beach, Florida, for consideration of the Hearing Officer's Recommended Order (Attached as App. A), Respondent's written Exceptions to the Recommended Order (Attached as App. B) and Petitioner's written Response thereto (Attached as App. C) in the case of Agency for Health Care Administration, Board of Medicine v. John August Ortolani, M.D. At the hearing before the Board, Petitioner was represented by Larry G. McPherson, Jr., Chief Medical Attorney. Respondent was present and was represented by Donald W. Weidner, Esquire and Donna J. Torsney, Esquire. Upon consideration of the Hearing Officer's Recommended Order, the exceptions and responses thereto of the parties, after review of the complete record and having been otherwise fully advised in its proceedings, the Board makes the following findings and conclusions:

RULING ON RESPONDENT'S EXCEPTION TO FINDINGS OF FACT

The Respondent's Exception to paragraph 32 of the Recommended Order of the Hearing Officer which found that Respondent's medical records were inadequate, is REJECTED. The finding of the Hearing Officer was supported by competent, substantial evidence of record.

FINDINGS OF FACT

1. The Hearing Officer's Recommended Findings of Fact are approved and adopted and are incorporated herein by reference as the Findings of Fact of the Board in this cause.

2. There is competent, substantial evidence to support the Board's findings herein.

RULING ON RESPONDENT'S EXCEPTION TO CONCLUSIONS OF LAW

The Petitioner's Exception to paragraphs 37 and 38 of the Conclusions of Law of the Recommended Order of the Hearing Officer that the Respondent violated Section 458.331(1)(m), Florida Statutes, is REJECTED. The conclusion of the Hearing Officer was supported by competent, substantial evidence and the omissions of the Respondent in maintaining adequate medical records during the period in question were fairly encompassed by the statute in force at the time of the violation.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this case pursuant to Section 120.57 and Chapter 458, Florida Statutes.

2. The findings of fact set forth above do not establish that Respondent has violated Section 458.331(1)(t) and (q), Florida

Statutes as charged in the Administrative Complaint and these two allegations are DISMISSED.

3. The findings of fact set forth above do establish that Respondent has violated Section 458.331(1)(m), Florida Statutes, as charged in the Administrative Complaint.

3. The Conclusions of Law of the Recommended Order are approved and adopted and incorporated herein.

RULING ON RESPONDENT'S EXCEPTION TO THE RECOMMENDED PENALTY

1. The Respondent's exception to the recommended penalty of the Hearing Officer, is ACCEPTED. The Board finds that although the recommended penalty of the Hearing Officer was within the disciplinary guidelines provided for the violation, under the circumstances of this case, a lesser penalty is appropriate.

DISPOSITION

WHEREFORE, it is hereby ORDERED and ADJUDGED that Respondent has not violated Sections 458.331(1)(g) and (t), Florida Statutes, as alleged in the Administrative Complaint and these two allegations are DISMISSED, however, Respondent has violated Section 458.331(1)(m), Florida Statutes and the following penalty is imposed:

1. Respondent shall pay an administrative fine of five thousand dollars (\$5,000) to the Board within thirty (30) days of the filing of the Final Order in this case.

2. Within one (1) year of the filing of the Final Order in this case, the Respondent shall complete the course " Medical Record Keeping" sponsored by the Florida Medical Association.

3. Within one (1) year of the filing of the Final Order in this case, the Respondent shall have an independent, certified health care risk manager review the adequacy of Respondent's office practice. This independent consultant shall prepare a report specifically addressing the Respondent's office practice. Such report will include, if necessary, suggested improvements of the quality assurance of Respondent's practice. The Respondent will submit to the Board of Medicine and the Office of the General Counsel, Medical Section, this report and documentation that demonstrates his compliance with the suggestions enumerated in the consultant's report.

NOTICE

The parties are hereby notified pursuant to Section 120.59(4), Florida Statutes, that an appeal of this Final Order may be taken pursuant to Section 120.68, Florida Statutes, by filing one copy of a Notice of Appeal with the Clerk of the Agency for Health Care Administration and one copy of a Notice of Appeal with the required filing fee with the District Court of Appeal within thirty (30) days of the date this Final Order is filed.

DONE and ORDERED this 8th DAY OF July, 1996.

BOARD OF MEDICINE

Mary Kathryn Garrett, M.D.
MARY KATHRYN GARRETT, M.D.
CHAIRMAN