

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-09396

ARNOLD CARTER, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

The Petitioner, Department of Health, by and through the undersigned counsel, files this Administrative Complaint (Complaint) before the Board of Medicine (Board) against the Respondent, Arnold Carter, M.D., and alleges:

1. The Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, the Respondent was a licensed physician within the state of Florida, having been issued license number ME 24997.

3. The Respondent's address of record is 2529 Aventura Boulevard Suite 303, Aventura, Florida 33108.

4. The Respondent is not board certified in any specialty.

Facts Related to the Standard of Care

5. On or about October 30, 2008, DI presented to the Respondent's office for the first time for an evaluation and treatment. DI was a 41 year old man, had been referred to the Respondent from his employee assistance program.

6. On or about October 30, 2008, the Respondent obtained a history and performed a mental health examination. DI had a history of mood swings, agitation, depression, substance abuse and poor impulse control. The mental health examination revealed a patient who appeared disheveled, had normal speech patterns with tight associations, labile affect and a depressed mood. The patient was oriented to time, place and person.

7. On or about October 30, 2008, the Respondent had the patient undergo audio and visual evoked potential testing.

8. The Respondent prescribed, dispensed or administered Ritalin to the patient while he underwent the audio and visual evoked potential testing.
9. The standard of care for an evaluation is to order medically indicated testing.
10. Audio or visual evoked potential testing is indicated for patients with neurological injuries, such as traumatic brain injuries.
11. There was no medical indication for DI to undergo audio evoked potential testing or for visual evoked potential testing during this evaluation on or about October 30, 2008.
12. There was no medical indication for the patient to be on Ritalin while taking audio or visual evoked potential testing.
13. On or about October 30, 2008, the Respondent's initial diagnoses for DI were major affective disorder (bipolar type) and poly-substance dependence. The Respondent treated the patient with medication.
14. On or about October 31, 2009, the patient was admitted to the emergency room at Aventura Hospital for chest pains and cocaine use.

15. On or about November 4, 2008, the patient was admitted to Aventura Hospital for voluntary inpatient treatment. The Respondent was the patient's treating psychiatrist. The admitting diagnosis was bipolar disorder.

16. On or about November 17, 2008, the Respondent discharged the patient with diagnoses of bipolar disorder, cocaine abuse, coronary artery disease and esophageal reflux. Upon discharge, the Respondent ordered DI to follow up with the Respondent on November 20, 2008.

17. The Respondent treated DI at his office from on or about November 19, 2008, through December 23, 2008.

18. From October 30, 2008 through December 23, 2008, the Respondent prescribed, dispensed or ordered one or more of the following drugs for DI: Seroquel, Trileptal, Topamax, Lexapro and Xanax.

19. The standard of care for medical therapy is to prescribe medications that are medically indicated.

20. A reasonably prudent physician would prescribe a combination of Seroquel, Trileptal, Topamax, Lexapro and Xanax to a patient who was agitated, depressed and/or psychotic and the patient had failed to respond to other drugs.

21. There was no medical indication for the Respondent to prescribe Seroquel, Trileptal, Topamax, Lexapro and Xanax to DI. The Respondent fell below the standard of care by prescribing Seroquel, Trileptal, Topamax, Lexapro and Xanax to DI since DI had not failed to respond to other drugs and was not agitated, depressed and/or psychotic.

Count I

22. The Petitioner realleges and incorporates paragraphs 1-21, as if fully set forth in this count.

23. Section 458.331(1)(t), Florida Statutes (2008), subjects a licensee to discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes. Section 456.50(1)(g), Florida Statutes, states medical malpractice means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure.

24. Level of care, skill, and treatment recognized in general law related to health care licensure means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "[t]he 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.”

25. The Respondent fell below the standard of care by ordering auditory evoked potential testing or visual evoked potential testing (or both) even though there was no medical indication for either or both tests.

26. The Respondent fell below the standard of care by providing drug treatment which was not medically indicated for DI.

27. Based on the foregoing, the Respondent has violated Section 458.331(1)(t), Florida Statutes (2008), by committing medical malpractice and is subject to disciplinary action by the Board of Medicine.

Facts Related to the Release of Medical Records

28. From on or about October 30, 2008, through on or about December 23, 2008, the Respondent obtained a patient history, performed examinations, ordered tests, diagnosed the patient and provided treatment on an inpatient and outpatient bases.

29. On or about April 20, 2009, DI went to the Respondent's office and requested a copy of his medical records, but the Respondent did not provide DI a copy of his medical records.

30. On or about May 5, 2009, DI wrote a letter to the Respondent requesting a copy of his medical records, but the Respondent did not provide them.

31. On or about May 16, 2011, DI went to the Respondent's office and requested a copy of his records. The Respondent or his staff provided DI with a copy of DI's billing ledger but did not provide a copy of his medical records.

32. On or about July 13, 2012, DI wrote the Respondent to request a copy of his medical records. On or about July 25, 2012, the Respondent's office staff wrote a letter to DI declining to provide DI a copy of his medical records.

33. The Respondent did not provide DI a report of treatment or examination to the patient at any point.

34. Section 456.057(6), Florida Statutes (2008-2012), provides:

Any health care practitioner licensed by the department or a board within the department who makes a physical or mental examination of, or administers treatment or dispenses legend drugs to, any person shall, upon request of such person or the person's legal representative, furnish, in a timely manner, without delays for legal

review, copies of all reports and records relating to such examination or treatment, including X rays and insurance information. However, when a patient's psychiatric, chapter 490 psychological, or chapter 491 psychotherapeutic records are requested by the patient or the patient's legal representative, the health care practitioner may provide a report of examination and treatment in lieu of copies of records. Upon a patient's written request, complete copies of the patient's psychiatric records shall be provided directly to a subsequent treating psychiatrist. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered. (emphasis added.)

35. The Respondent violated Section 456.057(6), Florida Statutes (2008-2012), by failing to provide DI a copy of his medical records or failing to provide a report of examination and treatment.

Count II

36. The Petitioner realleges and incorporates paragraphs 1-35, as if fully set forth in this count.

37. Section 458.331(1)(nn), Florida Statutes (2008-2012), provides that a licensee is subject to discipline for violating any provision of chapter 458 or chapter 456, or any rules adopted pursuant thereto.

38. The Respondent violated Section 456.057(6), Florida Statutes (2008-2012), by failing to provide DI his medical records or by failing to provide DI a report of this examination and treatment in lieu of copies of DI's medical records.

39. Based on the foregoing, the Respondent has violated Section 458.331(1)(nn), Florida Statutes (2008-2012), by violating Section 458.057(6), Florida Statutes (2008-2012), and is subject to disciplinary action by the Board of Medicine.

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

fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 24th day of May, 2013.

John H. Armstrong, MD, FACS, FCCP
State Surgeon General &
Secretary of Health, State of Florida



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DEPUTY CLERK
CLERK *Angel Sanders*
DATE MAY 28 2013

PCP: 5/24/2013
PCP Members: Dr. Avila and Mr. Mullins

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or his behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.