

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NUMBER 2016-27450

STEPHEN WAYNE THOMPSON, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, hereby files this Administrative Complaint before the Board of Medicine against Respondent, Stephen Wayne Thompson, M.D., and alleges:

1. Petitioner is the state agency 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, Respondent was a licensed physician in the state of Florida, having been issued license number ME 44112.

3. Respondent's address of record is 1890 Southwest Health Parkway, Suite 204, Naples, Florida 34109.

4. Respondent is board certified in Obstetrics and Gynecology by the American Board of Obstetrics and Gynecology.

5. On or about February 24, 2014, Patient K.T., a then thirty-six (36) year-old female, presented to Respondent at Naples OB-GYN in Naples, Florida, for fatigue, breast tenderness, and absence of menstruation.

6. At the aforementioned visit, Respondent diagnosed Patient K.T. with amenorrhea and sent her to have blood work.

7. On or about February 25, 2014, Patient K.T. was notified of her positive pregnancy test.

8. On or about March 10, 2014; March 17, 2014; March 24, 2014; April 24, 2014; August 7, 2014; and September 25, 2015, Respondent ordered obstetrical ultrasounds and/or sonograms of Patient K.T.

9. On or about April 23, 2014, and August 20, 2014, Patient K.T. presented to Respondent with thick vaginal fluid and bloody discharge and/or morning sickness, nausea, chills, fever, and back pain.

10. On or about May 23, 2014; June 20, 2014; July 16, 2014; August 15, 2014; September 12, 2014; October 13, 2014; October 20, 2014; October 27, 2014, Patient K.T. presented to Respondent for follow-up visits.

11. On or about November 2, 2014, Patient K.T gave birth to her son, Patient J.T., who was born with a neural tube defect¹ called spina bifida/myelomeningocele.

12. Respondent failed to observe on imaging studies, and follow-up on, known indicators that Patient J.T. may have had a neural tube defect, or alternatively, did not create, keep, or maintain adequate legible documentation of observing on imaging studies, and following-up on, known indicators that Patient J.T. may have had a neural tube defect.

13. Respondent failed to order a maternal serum alpha-fetoprotein (MSAFP) test,² or alternatively, did not create, keep, or maintain adequate legible documentation of ordering a MSAFP test.

14. Respondent failed to order an anatomical survey sonogram, or alternatively, did not create, keep, or maintain adequate legible documentation of ordering an anatomical survey sonogram.

15. At all times material to the complaint, the prevailing standard of care required Respondent to do one or more of the following:

¹Neural tube defect - A major birth defect caused by abnormal development of the neural tube, the structure that is present during embryonic life that gives rise to the central nervous system.

²MSAFP test - A routine screening test conducted between the fourteenth (14th) and twenty-second (22nd) weeks of pregnancy to examine the level of alpha-fetoprotein in the mother's blood during pregnancy. The presence of abnormal results indicates a need for further testing to determine whether the fetus has a neural tube defect, among other things.

- a. Observe on one or more imaging studies, and follow-up on, known indicators that Patient J.T. may have had a neural tube defect; and/or
- b. Order a MSAFP test; and/or
- c. Order an anatomical survey sonogram.

COUNT ONE

16. Petitioner re-alleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth herein.

17. Section 458.331(1)(t)1., Florida Statutes (2013-2014), subjects a physician to discipline for committing medical malpractice as defined in section 456.50, Florida Statutes (2013-2014). "Medical malpractice" is defined by section 456.50(1)(g), Florida Statutes (2013-2014), 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." Section 456.50(1)(e), Florida Statutes (2013-2014), provides that the "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care that is specified in section 766.102(1), Florida Statutes (2013-2014), which states as follows:

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.

18. Section 458.331(1)(t)1., Florida Statutes (2013-2014), directs the Board of Medicine to give "great weight" to this provision of Section 766.102, Florida Statutes (2013-2014).

19. Respondent failed to meet the prevailing standard of care in his treatment of Patients K.T. and/or J.T. in one or more of the following ways:

- a. By failing to observe on one or more imaging studies, and follow-up on, known indicators that Patient J.T. may have had a neural tube defect; and/or
- b. By failing to order a MSAFP test; and/or
- c. By failing to order an anatomical survey sonogram.

20. Based on the foregoing, Respondent has violated section 458.331(1)(t)1., Florida Statutes (2013-2014), by committing medical malpractice.

COUNT TWO

21. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth herein.

22. Section 458.331(1)(m), Florida Statutes (2013-2014), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that justify 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.

23. Section 458.331(1)(nn), Florida Statutes (2013-2014), subjects a licensee to discipline for violating any provision of chapter 458 or chapter 456, or any rules adopted pursuant thereto.

24. Rule 64B8-9.003, Florida Administrative Code, provides:

(2) A licensed physician shall maintain patient medical records in English, in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken.

(3) The medical record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician in determining the appropriate treatment of the patient.

25. In the alternative to the allegations set forth in subsections (a) through (c) of paragraph nineteen (19) above, Respondent failed to create,

keep, or maintain records that justified the course of treatment of Patients K.T. and/or J.T. in one or more of the following ways:

- a. By failing to create, keep, or maintain adequate, legible, documentation of observing on one or more imaging studies, and following-up on, known indicators that Patient J.T. may have had a neural tube defect; and/or
- b. By failing to create, keep, or maintain adequate, legible documentation of ordering a MSAFP test; and/or
- c. By failing to create, keep, or maintain adequate, legible documentation of ordering an anatomical survey sonogram.

26. Based on the foregoing, Respondent violated section 458.331(1)(m), Florida Statutes (2013-2014); and/or section 458.331(1)(nn), Florida Statutes (2013-2014), by violating Rule 64B8-9.003, Florida Administrative Code.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of 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 25th day of August, 2017.

CELESTE PHILIP, MD, MPH
State Surgeon General and Secretary



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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Amy Carraway*

AUG 25 2017

DATE _____

PCP Date: August 25, 2017

PCP Members: Georges El-Bahri, M.D.; Zachariah P. Zachariah, M.D.;
Brigitte Goersch

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 her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.

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 to any other discipline imposed.