

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NUMBER 2014-12077

DAVID E. SMOCK, 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 David Smock, 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 within the State of Florida, having been issued license number ME 45941.

3. Respondent's address of record is P.O. Box 9829, Naples, Florida 34101.

4. On or about June 23, 2014, Patient D.H., a then 66-year-old male, presented to Physicians Regional Medical Center for gastric bypass surgery.

5. Following the gastric bypass procedure, on June 24, 2014, Respondent performed a Gastrografin upper GI series on Patient D.H. to ascertain whether there was a leak or obstruction in Patient D.H.'s digestive tract. A leak of contrast material was visible on radiographic images obtained by Respondent during the procedure; however, Respondent failed to detect the leak in Patient D.H.'s digestive tract and reported a negative GI series. Patient D.H. was subsequently discharged from the hospital.

6. Approximately thirty (30) hours after his discharge, Patient D.H. returned to the hospital suffering from abdominal pain and sepsis. It was discovered that Patient D.H. had a perforation in his digestive tract. During surgery to repair this perforation, Patient D.H. suffered cardiac arrest and anoxic brain injury. Patient D.H. ultimately expired as a result of these complications on July 10, 2014.

7. At all times material to this complaint, the standard of care required Respondent to have detected the leak in Patient D.H.'s digestive tract.

8. Section 458.331(1)(t), Florida Statutes (2013), provides that committing medical malpractice as defined in Section 456.50, Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine. The Board shall give great weight to the provisions of Section 766.102, Florida Statutes (2013), when enforcing Section 458.331(1)(t), Florida Statutes (2013). Medical Malpractice is defined in Section 456.50, Florida Statutes (2013); 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 766.102, Florida Statutes (2013), provides 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 health care providers.

9. Respondent failed to practice medicine with 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 in violation of Section 458.331(1)(t), Florida Statutes (2013), in the care and treatment of Patient D.H. by failing to detect a leak

in Patient D.H.'s digestive tract during the performance of a Gastrografin upper GI series.

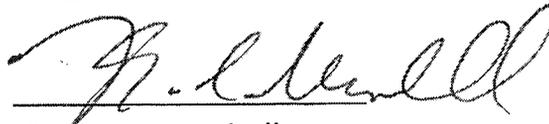
10. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2013), by committing medical malpractice.

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.

Signatures appear on next page

SIGNED this 15th day of December, 2017.

Celeste Philip, MD, MPH
Surgeon General and Secretary of Health



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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Amy Carraway*
DATE DEC 15 2017

PCP Date: December 15, 2017

PCP Members: Georges El-Bahri, M.D.; Hector Vila, 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.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

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.