

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2014-14769

EMAD ISMAEL ATTA, M.D.,

Respondent.

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ADMINISTRATIVE COMPLAINT

Petitioner, the Florida Department of Health (Petitioner), hereby files this Administrative Complaint before the Florida Board of Medicine (the Board) against Respondent, Emad Ismael Atta, M.D. (Respondent), and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine in the State of Florida pursuant to section 20.43, Florida Statutes, and chapters 456 and 458, Florida Statutes.
2. At all times material hereto, Respondent was a licensed physician in the State of Florida, having been issued license number ME 102841.
3. Respondent is board certified in obstetrics and gynecology by the American Board of Obstetrics and Gynecology.

4. Respondent's address of record is 4812 West Highway 90, Lake City, Florida 32055.

FACTS RELATED TO PATIENT A.L.

5. Between in or around May 2011 and December 2011, Respondent provided obstetric services to Patient A.L., a then 16/17 year-old female, and followed the course of her pregnancy.

6. Patient A.L. had an estimated delivery date of December 1, 2011, and ultimately delivered her baby on or about December 1, 2011.

7. On or about May 5, 2011, and May 19, 2011, Respondent performed first-trimester ultrasounds on Patient A.L. to monitor Patient A.L.'s fetus.

8. On or about June 17, 2011, Respondent performed a second-trimester ultrasound on Patient A.L. to monitor Patient A.L.'s fetus.

9. On or about October 11, 2011, Respondent performed a third-trimester ultrasound on Patient A.L. to monitor Patient A.L.'s fetus. Patient A.L.'s fetus was in the 29th percentile for growth, which was normal.

10. On or about October 20, 2011, Respondent performed a third-trimester ultrasound on Patient A.L. to monitor Patient A.L.'s fetus. Patient A.L.'s fetus was in the 44th percentile for growth, which was normal.

11. There was no indication for the third-trimester ultrasound that Respondent performed on Patient A.L. on or about October 20, 2011.

12. On or about October 28, 2011, Respondent performed a biophysical profile with ultrasound on Patient A.L. and her fetus in order to monitor Patient A.L.'s fetus.

13. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient A.L. and her fetus on or about October 28, 2011, were intrauterine growth restriction and "size less than dates."

14. Both intrauterine growth restriction and "size less than dates" were ruled out by the ultrasound(s) conducted on or about October 11, 2011, and/or October 20, 2011.

15. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient A.L. and her fetus on or about October 28, 2011.

16. On or about November 4, 2011, Respondent performed a biophysical profile with ultrasound on Patient A.L. and her fetus in order to monitor Patient A.L.'s fetus.

17. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient A.L. and her fetus on or about November 4, 2011, were intrauterine growth restriction and "size less than dates."

18. Both intrauterine growth restriction and "size less than dates" were ruled out by the ultrasound(s) conducted on or about October 11, 2011, and/or October 20, 2011; and/or by the biophysical profile performed on or about October 28, 2011.

19. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient A.L. and her fetus on or about November 4, 2011.

20. On or about November 11, 2011, Respondent performed a third-trimester ultrasound on Patient A.L. to monitor Patient A.L.'s fetus. Patient A.L.'s fetus was in the 34th percentile for growth, which was normal.

21. There was no indication for the third-trimester ultrasound that Respondent performed on Patient A.L. on or about November 11, 2011.

22. On or about November 18, 2011, Respondent performed a third-trimester ultrasound on Patient A.L. to monitor Patient A.L.'s fetus. Patient A.L.'s fetus was in the 68th percentile for growth, which was normal.

23. There was no indication for the third-trimester ultrasound that Respondent performed on Patient A.L. on or about November 18, 2011.

24. The standard of care required Respondent to adequately manage Patient A.L.'s pregnancy through the use of only indicated antepartum testing, and to refrain from performing excessive and/or unindicated antepartum testing.

FACTS RELATED TO PATIENT T.B.

25. Between in or around August 2011 and March 2012, Respondent provided obstetric services to Patient T.B., then a 21/22 year-old female, and followed the course of her pregnancy.

26. Patient T.B. had an estimated delivery date of March 6, 2012, and ultimately delivered her baby on or about March 1, 2012.

27. On or about August 16, 2011, August 21, 2011, and September 7, 2011, Respondent performed first-trimester ultrasounds on Patient T.B. to monitor Patient T.B.'s fetus. These ultrasounds were indicated for monitoring pain and bleeding experienced by Patient T.B. during that time period.

28. On or about September 29, 2011, Respondent performed a second-trimester ultrasound on Patient T.B. to monitor Patient T.B.'s fetus.

29. In his report for the second-trimester ultrasound performed on or about September 29, 2011, Respondent lists his findings/impression as: "normal growth scan."

30. On or about January 13, 2012, Respondent performed a third-trimester ultrasound on Patient T.B. to monitor Patient T.B.'s fetus. Patient T.B.'s fetus was in the 37th percentile for growth, which was normal.

31. The indications documented for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about January 13, 2012, were abdominal pain and "size less than dates."

32. On or about January 19, 2012, Respondent performed a third-trimester ultrasound on Patient T.B. to monitor Patient T.B.'s fetus.

33. Respondent did not document a growth percentile for Patient T.B.'s fetus on the report Respondent completed for the third-trimester ultrasound he performed on or about January 19, 2012, though he did list his findings/impression as: "normal growth and Doppler."

34. On or about January 27, 2012, Respondent performed a biophysical profile with ultrasound on Patient T.B. and her fetus in order to monitor Patient T.B.'s fetus.

35. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient T.B. and her fetus on or about January 27, 2012, were abdominal pain and "size less than dates."

36. Both abdominal pain and "size less than dates" were ruled out as indications for the biophysical profile with ultrasound by the ultrasound performed on or about January 19, 2012.

37. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient T.B. and her fetus on or about January 27, 2012.

38. Respondent did not document a growth percentile for Patient T.B.'s fetus on the report Respondent completed for the biophysical profile with ultrasound that he performed on or about January 27, 2012, though he did list his findings/impression as: "normal BPP and Doppler."

39. On or about February 10, 2012, Respondent performed a third-trimester ultrasound on Patient T.B. in order to monitor Patient T.B.'s fetus. Patient T.B.'s fetus was in the 33rd percentile for growth, which was normal.

40. The indications documented for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 10, 2012, were intrauterine growth restriction and asthma.

41. Both intrauterine growth restriction and asthma were ruled out as indications for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 10, 2012, by the ultrasound performed on or about January 19, 2012, and/or by the biophysical profile with ultrasound performed on or about January 27, 2012.

42. There was no indication for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 10, 2012.

43. On or about February 17, 2012, Respondent performed a biophysical profile with ultrasound on Patient T.B. and her fetus in order to monitor Patient T.B.'s fetus.

44. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient T.B. and her fetus on or about February 17, 2012, were intrauterine growth restriction, pain, and "size less than dates."

45. Intrauterine growth restriction, pain, and "size less than dates" were each ruled out as indications for the biophysical profile with ultrasound by the ultrasound(s) performed on or about January 19, 2012, and/or February 10, 2012, and/or by the biophysical profile with ultrasound performed on or about January 27, 2012.

46. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient T.B. and her fetus on or about February 17, 2012.

47. Respondent did not document a growth percentile for Patient T.B.'s fetus on the report Respondent completed for the biophysical profile with ultrasound that he performed on or about February 17, 2012, though he did list his findings/impression as: "normal BPP."

48. On or about February 28, 2012, Respondent performed a third-trimester ultrasound on Patient T.B. in order to monitor Patient T.B.'s fetus.

49. The indications documented for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 28, 2012, were abdominal pain and "size less than dates."

50. Both abdominal pain and "size less than dates" were ruled out as indications for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 28, 2012, by the ultrasound(s) performed on or about January 19, 2012, and/or February 10, 2012, and/or by the biophysical profile(s) with ultrasound(s) performed on or about January 27, 2012, and/or February 17, 2012.

51. There was no indication for the third-trimester ultrasound that Respondent performed on Patient T.B. on or about February 10, 2012.

52. The standard of care required Respondent to adequately manage Patient T.B.'s pregnancy through the use of only indicated antepartum testing, and to refrain from performing excessive and/or unindicated antepartum testing.

FACTS RELATED TO PATIENT M.W.

53. Between in or around May 2011 and December 2011, Respondent provided obstetric services to Patient M.W., then a 19 year-old female, and followed the course of her pregnancy.

54. Patient M.W. had an estimated delivery date of December 31, 2011, and ultimately delivered her baby on or about December 25, 2011.

55. On or about May 13, 2011, May 27, 2011, June 17, 2011, and July 8, 2011, Respondent performed first-trimester ultrasounds on Patient M.W. to monitor Patient M.W.'s fetus. These ultrasounds were indicated by spotting experienced by Patient M.W. during that time period.

56. On or about August 1, 2011, Respondent performed a second-trimester ultrasound on Patient M.W. to monitor Patient M.W.'s fetus.

57. Respondent did not document a growth percentile for Patient M.W.'s fetus on the report Respondent completed for the second-trimester ultrasound he performed on or about August 1, 2011, though he did note in the findings/impression portion of his report that Patient M.W.'s fetus had normal growth for eighteen weeks.

58. On or about November 17, 2011, Respondent performed a third-trimester ultrasound on Patient M.W. to monitor M.W.'s fetus. Patient M.W.'s fetus was in the 31st percentile for growth, which was normal.

59. The indications documented for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about November 17, 2011, were abdominal pain and "size less than dates."

60. Both abdominal pain and "size less than dates" were ruled out as indications for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about November 17, 2011, by the ultrasound performed on or about August 1, 2011.

61. There was no indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about November 17, 2011.

62. The findings/impression portion of the report Respondent completed for the third-trimester ultrasound he performed on or about

November 17, 2011, notes that Patient M.W.'s fetus had "Normal Growth/Doppler."

63. On or about December 1, 2011, Respondent performed a third-trimester ultrasound on Patient M.W. to monitor M.W.'s fetus. Patient M.W.'s fetus was in the 35th percentile for growth, which was normal.

64. The indications documented for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 1, 2011, threatened pre-mature labor.

65. Threatened pre-mature labor was ruled out as an indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 1, 2011, by the ultrasound(s) performed on or about August 1, 2011, and/or November 17, 2011.

66. There was no indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 1, 2011.

67. On or about December 6, 2011, Respondent performed a biophysical profile with ultrasound on Patient M.W. and her fetus in order to monitor Patient M.W.'s fetus.

68. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient M.W. and her fetus on or

about December 6, 2011, were intrauterine growth restriction and threatened pre-mature labor.

69. Both intrauterine growth restriction and threatened pre-mature labor were each ruled out as indications for the biophysical profile with ultrasound Respondent performed on Patient M.W. and her fetus on or about December 6, 2011, by the ultrasound(s) performed on or about August 1, 2011, November 17, 2011, and/or December 1, 2011.

70. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient M.W. and her fetus on or about December 6, 2011.

71. On or about December 9, 2011, Respondent performed a third-trimester ultrasound on Patient M.W. to monitor M.W.'s fetus.

72. The indications documented for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 9, 2011, were intrauterine growth restriction and drug dependency.

73. Both intrauterine growth restriction and drug dependency were ruled out as indications for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 9, 2011, by the ultrasound(s) performed on or about August 1, 2011, November 17, 2011,

and/or December 1, 2011; and/or by the biophysical profile performed on or about December 6, 2011.

74. There was no indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 9, 2011.

75. On or about December 14, 2011, Respondent performed a biophysical profile with ultrasound on Patient M.W. and her fetus in order to monitor Patient M.W.'s fetus.

76. The indications documented for the biophysical profile with ultrasound that Respondent performed on Patient M.W. and her fetus on or about December 14, 2011, were intrauterine growth restriction and drug dependency.

77. Both intrauterine growth restriction and drug dependency were each ruled out as indications for the biophysical profile with ultrasound Respondent performed on Patient M.W. and her fetus on or about December 14, 2011, by the ultrasound(s) performed on or about August 1, 2011, November 17, 2011, December 1, 2011, and/or December 9, 2011; and/or by the biophysical profile performed on or about December 6, 2011.

78. There was no indication for the biophysical profile with ultrasound that Respondent performed on Patient M.W. and her fetus on or about December 14, 2011.

79. On or about December 16, 2011, Respondent performed a third-trimester ultrasound on Patient M.W. to monitor M.W.'s fetus.

80. The indication documented for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 16, 2011, was drug dependency.

81. Drug dependency was ruled out as an indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 16, 2011, by the ultrasound(s) performed on or about August 1, 2011, November 17, 2011, December 1, 2011, and/or December 9, 2011; and/or by the biophysical profile(s) performed on or about December 6, 2011, and/or December 14, 2011.

82. There was no indication for the third-trimester ultrasound that Respondent performed on Patient M.W. on or about December 16, 2011.

83. The standard of care required Respondent to adequately manage Patient M.W.'s pregnancy through the use of only indicated antepartum

testing, and to refrain from performing excessive and/or unindicated antepartum testing.

SECTION 458.331(1)(t)1., FLORIDA STATUTES

84. Section 458.331(1)(t)1., Florida Statutes (2011), subjects a licensee to discipline for committing medical malpractice as defined in section 456.60, Florida Statutes. Section 456.50(1)(g), Florida Statutes (2011), defines the term "medical malpractice to mean "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(1), Florida Statutes (2011), provides the prevailing professional standard of care for a given healthcare 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.

COUNT I - PATIENT A.L.

85. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-four (24), and eighty-four (84), as if fully set forth herein.

86. Respondent fell below the acceptable standard of care in his treatment of Patient A.L. in one or more of the following ways:

- a. by performing an excessive and/or unindicated ultrasound on or about October 28, 2011;
- b. by performing an excessive and/or unindicated biophysical profile on or about November 4, 2011;
- c. by performing an excessive and/or unindicated ultrasound on or about November 11, 2011; and/or
- d. by performing an excessive and/or unindicated ultrasound on or about November 18, 2011.

87. Based on the foregoing, Respondent violated section 458.331(1)(t)1., Florida Statutes (2011).

COUNT II - PATIENT T.B.

88. Petitioner re-alleges and incorporates paragraphs one (1) through four (4), twenty-five (25) through fifty-two (52), and eighty-four (84), as if fully set forth herein.

89. Respondent fell below the acceptable standard of care in his treatment of Patient T.B. in one or more of the following ways:

- a. by performing an excessive and/or unindicated biophysical profile on or about January 27, 2012;

- b. by performing an excessive and/or unindicated ultrasound on or about February 10, 2012;
- c. by performing an excessive and/or unindicated biophysical profile on or about February 17, 2012; and/or
- d. by performing an excessive and/or unindicated ultrasound on or about February 28, 2012.

90. Based on the foregoing, Respondent violated section 458.331(1)(t)1., Florida Statutes (2011).

COUNT III - PATIENT M.W.

91. Petitioner re-alleges and incorporates paragraphs one (1) through four (4), and fifty-three (53) through eighty-four (84), as if fully set forth herein.

92. Respondent fell below the acceptable standard of care in his treatment of Patient M.W. in one or more of the following ways:

- a. by performing an excessive and/or unindicated ultrasound on or about November 17, 2011;
- b. by performing an excessive and/or unindicated ultrasound on or about December 1, 2011;

- c. by performing an excessive and/or unindicated biophysical profile on or about December 6, 2011;
- d. by performing an excessive and/or unindicated ultrasound on or about December 9, 2011;
- e. by performing an excessive and/or unindicated biophysical profile on or about December 14, 2011; and/or
- f. by performing an excessive and/or unindicated ultrasound on or about December 16, 2011.

93. Based on the foregoing, Respondent violated section 458.331(1)(t)1., Florida Statutes (2011).

WHEREFORE, Petitioner respectfully requests the Board 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 Respondent on probation, corrective action, refund of fees billed or collected, remedial education, and/or any other relief the Board deems appropriate.

[Signature appears on the following page.]

SIGNED this 24th day of October, 2017.

Celeste Philip, MD, MPH
State Surgeon General



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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Angel Sanders*
DATE: **OCT 24 2017**

ZB

PCP: October 23, 2017.

PCP Members: Fuad Ashkar, M.D.; Steven Rosenberg, M.D.; Donald 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 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.