

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2015-21080

SALOMON EMILIO MELGEN, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Medicine against the Respondent, Salomon Emilio Melgen, M.D., and in support thereof 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 medical doctor in the State of Florida, having been issued license number ME 48581.

3. Respondent's address of record is 2521 Metrocentre Boulevard, West Palm Beach, Florida 33407.

4. Respondent is board certified in Ophthalmology by the American Board of Ophthalmology.

5. At all times relevant to the complaint, the Respondent performed procedures at Vitreo Retinal Eye Center.

6. Respondent treated Patient J.L., a 50 year old male, from on or about July 30, 2014 to March 18, 2015.

7. On or about July 30, 2014, Patient J.L. presented to Respondent for evaluation of macular degeneration.

8. Respondent diagnosed Patient J.L. with wet age-related macular degeneration in the right eye, localized retinal detachment in both eyes, posterior vitreous detachment in vitreous membranes in both eyes, and retinal tears in both eyes.

9. Over the course of his treatment of Patient J.L., Respondent performed ultrasonography four (4) times, Lucentis injections seven (7) times, focal laser treatments four (4) times, fundus photography twelve (12) times, and fluorescein angiography and indocyanine green angiography twenty-six (26) times.

10. Respondent failed to utilize, or did not create, keep, or maintain adequate, legible documentation of utilizing optical coherence tomography¹ to evaluate Patient J.L.

11. At all times material to this complaint, the prevailing standard of care dictated that a physician:

- a. Correctly diagnose the patient;
- b. Perform testing and/or treatments that are medically justified;
- c. Provide medical justification for the testing and treatments provided to the patient;
- d. Prioritize treatment of localized retinal detachments before treatment of other conditions;
- e. Not perform a Lucentis injection before treating localized retinal detachments;
- f. Utilize optical coherence tomography to evaluate a patient for macular conditions; and
- g. Record the lot number and/or other identifying information from used vials of Lucentis.

¹ Optical coherence tomography is a non-contact, non-invasive imaging technique that is used to evaluate for macular conditions. It poses a lower risk to the patient than fluorescein and indocyanine green angiography tests.

12. Respondent incorrectly and/or falsely diagnosed Patient J.L with wet macular degeneration in the right eye.

13. On or about March 18, 2015, Respondent performed a focal laser treatment on Patient J.L.'s right eye without medical justification.

14. Respondent performed fundus photography on Patient J.L.'s eyes excessively and/or without medical justification on one or more occasions.

15. Respondent performed Lucentis injections on Patient's J.L.'s right eye without medical justification on one or more occasions.

16. Respondent performed fluorescein and indocyanine angiography on Patient J.L.'s eyes excessively and/or without medical justification on one or more occasions.

17. Respondent performed ultrasounds on Patient J.L.'s eyes without medical justification on one or more occasions.

18. Respondent inappropriately delayed treating Patient J.L.'s localized retinal detachments.

19. Respondent performed an intravitreal Lucentis injection in Patient J.L.'s right eye before treating Patient J.L.'s retinal detachment and tears.

20. Respondent failed to utilize optical coherence tomography to evaluate Patient J.L.

21. Respondent did not document, or did not create, keep, or maintain adequate, legible documentation of the lot number or any other identifying information from any of the vials of Lucentis used during his course of treatment of Patient J.L.

COUNT ONE

22. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21) as if fully set forth in this count.

23. Section 458.331(1)(t), Florida Statutes (20), subjects a physician to discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes (2015). Section 456.50, Florida Statutes (2015), defines medical malpractice 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(1), Florida Statutes (2015), provides that the standard of care 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.

24. The Respondent failed to meet the prevailing standard of care in regard to Patient J.L. in one or more of the following ways:

- a. By incorrectly and/or falsely diagnosing Patient J.L. with wet macular degeneration in the right eye;
- b. By performing a focal laser treatment on Patient J.L.'s right eye without medical justification;
- c. By performing fundus photography on Patient J.L. excessively on one or more occasions;
- d. By performing fundus photography on Patient J.L. without medical justification on one or more occasions;
- e. By performing Lucentis injections on Patient's J.L.'s right eye without medical justification on one or more occasions;
- f. By performing fluorescein and indocyanine angiography on Patient J.L. excessively on one or more occasions;
- g. By performing fluorescein and indocyanine angiography on Patient J.L. without medical justification on one or more occasions;
- h. By performing ultrasonography on Patient J.L. without medical justification on one or more occasions;

- i. By inappropriately delaying treatment of Patient J.L.'s localized retinal detachments;
- j. By performing an intravitreal Lucentis injection in Patient J.L.'s right eye before treating Patient J.L.'s retinal detachment and tears;
- k. By failing to document the lot number or any other identifying information from any of the vials of Lucentis used during his course of treatment of Patient J.L.; and/or
- l. By failing to utilize optical coherence tomography to evaluate Patient J.L.

25. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2015), by committing medical malpractice as defined in Section 456.50 and/or by failing to practice medicine in accordance with the 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 TWO

26. Petitioner realleges and incorporates paragraphs one (1) through twenty-one (21) as if fully set forth in this count.

27. Section 458.331(1)(m), Florida Statutes (2015), provides that failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and 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, is grounds for disciplinary action by the Board and/or Department.

28. Section 458.331(1)(nn), Florida Statutes (2015), provides that violating any provision of Chapter 458 or 456, or any rules adopted pursuant thereto constitutes grounds for disciplinary action by the Board of Medicine.

29. Chapter 64B8-9.003(d)(3), Florida Administrative Code (2006), provides that medical records 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.

30. Respondent failed to maintain complete and adequate medical records that justified the course of treatment provided for Patient J.L. and/or satisfy the requirements of Chapter 64B8-9.003(d)(3), Florida Administrative Code (2006), in one or more of the following ways:

- a. In the alternative to the allegations in paragraph twenty-four (24), by failing to create or maintain records documenting a medical justification for the care and treatment provided to Patient J.L.;
- b. In the alternative to the allegation in paragraph twenty-four (24), by failing to create or maintain records that document utilizing optical coherence tomography to evaluate Patient J.L.; and/or

- c. By failing to create or maintain records that document the lot number or any other identifying information from the vial of Lucentis used in his treatment of Patient J.L.

31. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2015), and/or Section 458.331(1)(nn), Florida Statutes (2015).

COUNT THREE

32. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) as if fully set forth therein.

33. Section 458.331(1)(n), Florida Statutes (2015), subjects a licensee to discipline for exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to the promoting or selling of services, goods, appliances, or drugs.

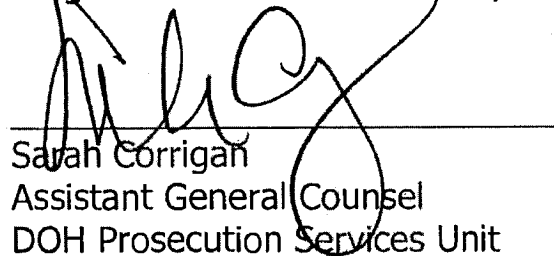
34. Respondent exercised his influence on Patient J.L. by performing and charging for medically unnecessary and/or excessive tests and treatments on Patient J.L.

35. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes (2015).

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 16 day of DECEMBER, 2016.

Celeste Philip, M.D., M.P.H.
Surgeon General and Secretary



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CLERK ANGEL SANDERS
DATE DEC 19 2016

SEC/
PCP: December 16, 2016
PCP Members: Dr. El-Bahri, Dr. Ramesh, Ms. 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.