

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

WILLIAM T. BRESMAN, M.D.

*

By letter dated August 8, 1990, which is attached hereto and incorporated herein, the State Medical Board of Ohio notified William T. Breesman, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board's proposal was based on prior disciplinary action against Dr. Breesman's Florida license by the Florida Department of Professional Regulation's Board of Medicine.

The Ohio Medical Board subsequently received notice that on or about September 5, 1990, the action taken by the Florida Board of Medicine was reversed and remanded for an Order of Dismissal by the District Court of Appeals, First District, State of Florida, Case No. 89-2278. The District Court's decision is attached hereto and incorporated by reference.

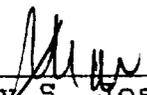
WHEREFORE, based upon the foregoing, it is hereby ORDERED that the allegations set forth in the State Medical Board of Ohio's August 8, 1990 citation letter be and are hereby DISMISSED.

So ORDERED this 27th day of September, 1990.

(SEAL)



Henry G. Cramblett, M.D.
Secretary


Timothy S. Jost
Supervising Member

THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

August 8, 1990

William T. Breesman, M.D.
133 Darnell Avenue
Springhill, FL 33526

Dear Doctor Breesman:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about August 21, 1989 the Florida Department of Professional Regulation's Board of Medicine suspended your license to practice medicine in the State of Florida and upon termination of suspension placed it on probation for a period of two years subject to various terms and conditions based upon a Final Order containing Findings of Fact and Conclusions of Law which is attached hereto and fully incorporated by reference herein.

The suspension and subsequent probation of your license to practice medicine in the State of Florida, as alleged in the above paragraph (1), constitutes "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Sections 4731.22(B)(5), 4731.22(B)(6) and 4731.22(B)(8), Ohio Revised Code.

Mailed 8/9/90

August 8, 1990

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERIFIED MAIL #P 746 510 172
RETURN RECEIPT REQUESTED

STATE MEDICAL
OF FLORIDA
AUG 22 PM 3:28

FILED
Department of Professional Regulation
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

Paul Cope

DEPARTMENT OF PROFESSIONAL
REGULATION,

CLERK

Petitioner,

DATE 8-21-89

-vs-

DPR CASE NUMBER: 0085267
DOAH CASE NUMBER: 88-5117
LICENSE NUMBER: ME 0033496

WILLIAM BREESMEN, M.D.,

Respondent.

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)9, Florida Statutes, on August 4, 1989, in Orlando, Florida, for the purpose of considering the Hearing Officer's Recommended Order, Respondent's Exceptions to the Recommended Order, Petitioner's Response to Respondent's Exceptions, and Petitioner's Memorandum of Law (copies of which are attached hereto as Exhibits A, B, C, and D, respectively) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Larry G. McPherson, Jr., Attorney at Law. Respondent was present at the hearing.

Upon review of the Recommended Order, the other pleadings, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.

STATE MEDICAL BOARD
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2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein.

3. There is competent substantial evidence to support the conclusions of law.

RULINGS ON EXCEPTIONS

1. Respondent's first exception is REJECTED for the reasons set forth in Petitioner's response to the exception.

2. Respondent's second exception is REJECTED for the reasons set forth in Petitioner's response to the exception.

3. Respondent's third exception is REJECTED for the reasons set forth in Petitioner's response to the exception.

4. Respondent's fourth exception, is REJECTED for the reasons set forth in Petitioner's response to the exception, including the arguments set forth in Petitioner's Memorandum of Law.

5. Respondent's fifth exception, is REJECTED for the reasons set forth in Petitioner's response to the exception. In addition, see the requirements of Section 458.331(1)(m), Florida Statutes, that the medical records justify the course of treatment.

6. Respondent's sixth exception is REJECTED.

PENALTY

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Hearing Officer be ACCEPTED and ADOPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

1. Respondent's license to practice medicine in the State of Florida is SUSPENDED for a period of six months.

2. Upon termination of suspension, Respondent's license to practice medicine in the State of Florida is placed on PROBATION for a period of two years, subject to the following terms and conditions:

a. Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 455, 458, and 893, Florida Statutes, and Rules 21M, Florida Administrative Code.

b. Respondent shall appear before the Probation Committee at the first meeting after said probation commences, at the last meeting of the Probation Committee preceding termination of probation, and at such other times requested by the Committee.

c. In the event Respondent leaves the State of Florida for a period of thirty (30) days or more, or otherwise does not engage in the active practice of medicine in Florida, then certain provisions of Respondent's probation (and only those provisions of said probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida. Respondent must keep current residence and business addresses on file with the Board.

Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore, Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

d. In the event that Respondent leaves the active practice of medicine in this state for a period of thirty days or more, the following provisions of his probation shall be tolled:

- (1). The time period of probation shall be tolled.
- (2). The provisions regarding preparation of investigative reports detailing compliance with this Stipulation shall be tolled. See paragraph 2.g. below.

e. Respondent shall submit semiannual reports in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

- (1) Brief statement of why physician is on probation.
- (2) Practice location.
- (3) Describe current practice (type and composition.)
- (4) Brief statement of compliance with probation terms.
- (5) Describe relationship with monitoring/supervising physician.

f. Respondent shall attend twenty hours of Category I Continuing Medical Education courses during the period of probation in the area of medical recordkeeping and risk management. Respondent shall submit a written plan to the Probationer's Committee for approval prior to completion of said courses. These hours shall be in addition to those hours required for renewal of licensure.

g. During this period of probation, semiannual investigative reports will be compiled by the Department concerning Respondent's compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

h. Respondent shall pay all costs necessary to comply with the terms of the Final Order issued based on this proceeding. Such costs include, but are not limited to, the cost of preparation of investigative reports detailing compliance with the terms of this proceeding, the cost of analysis of any blood or urine specimens submitted pursuant to the Final Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes(1988 Supp.).

This Order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 17 day of August, 1989.

BOARD OF MEDICINE



MARGARET C.S. SKINNER, M.D.
VICE CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to William Breesmen, M.D., 133 Darnell Avenue, Spring Hill, Florida 33526 and Barbara Glover Moore, Attorney at Law, Smith & Fuller, P.A., Post Office Box 3288, Tampa, Florida 33601; by U.S. Mail to K. N. Ayers, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550; and by interoffice delivery to Larry G. McPherson, Jr., Attorney at Law, Department of Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-0792 at or before 5:00 P.M., this 21 day of August, 1989


Anthony J. Faircloth

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs. . .

WILLIAM BREESMEN, M.D.,

Respondent.

CASE NO. 88-5117

RECOMMENDED ORDER

Pursuant to notice the Division of Administrative Hearings by its duly designated Hearing Officer, K. N. Ayers, held a public hearing in the above styled case on March 15, 1989 at New Port Richey, Florida.

APPEARANCES

For Petitioner: Larry G. McPherson, Esquire
Department of Professional
Regulation
130 North Monroe Street
Tallahassee, Florida 32399-0750.

For Respondent: Hugh M. Smith, Esquire
Barbara E. Moore, Esquire
Post Office Box 3288
Tampa, Florida 33601.

By Administrative Complaint filed September 6, 1988 the Department of Professional Regulation, Petitioner, seeks to revoke, suspend, or otherwise discipline the license of William Breesmen, Respondent, as a medical doctor. As grounds therefor it is alleged that in his care and treatment of patient B.R. in July 1985, Respondent failed to practice medicine with that level of care, skill, and treatment recognized by a reasonably

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prudent physician as being acceptable under the circumstances; and that he failed to maintain written medical records justifying his course of treatment of the patient.

At the beginning of the hearing, as Exhibit 1, the parties presented a pre-hearing stipulation containing, inter alia, findings 1-4 below. Thereafter Petitioner called four witnesses, two of whom were called in rebuttal; Respondent called four witnesses, including himself and eleven (11) exhibits were admitted into evidence. Also admitted as late filed Exhibit 12 to be submitted on or before April 15, 1989, is the deposition of an expert witness for Petitioner on medical ethics. This deposition was received from Dr. James T. Menges.

Proposed findings have been submitted by the parties. Treatment accorded those proposed findings is contained in the appendix attached hereto and made a part hereof..

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes, and Chapter 458, Florida Statutes.
2. Respondent is and has been at all times material hereto a licensed physician in the State of Florida having been issued license No. 0033496. Respondent's address is 133 Darnell Avenue, Spring Hill, Florida 33626.
3. Respondent rendered medical care and treatment to patient B.R. during the period July 11, 1985 to July 15, 1985 while she was a patient at the Oak Hill Community Hospital, Spring Hill, Florida for, among other things, acute transmural myocardial infarction.

4. On or about July 15, 1985, patient B.R. died from acute myocardial infarction after resuscitative procedures were unsuccessful.

5. Patient B.R. was brought to the emergency room at Oak Hill Community Hospital on July 11, 1985 by her husband after complaining of chest pains. Shortly after arrival she suffered a myocardial infarction and "coded." She was resuscitated and placed in the intensive care unit.

6. As the medical services physician on call, Respondent was contacted and assumed the care of patient B.R., a 65 year old female.

7. Respondent is Board-certified in internal medicine and is Board eligible in cardiology having completed a fellowship in cardiology at George Washington University in 1968.

8. B.R. had formerly worked as a licensed practical nurse who suffered a back injury some years ago which resulted in back surgery three times. In 1978, some 10 years before her demise, B.R. suffered a heart attack. She also had a history of diabetes and recently had undergone a thyroidectomy. With this medical history she presented a complex case for care and treatment.

9. With a patient presenting the history and symptoms of B.R., a reasonably prudent physician would have ordered daily chest X-rays, had an echocardiogram taken, inserted a Swan-Ganz catheter and consulted with a cardiologist on the treatment of this patient. None of these were done by Respondent.

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10. While acknowledging those procedures above listed were clearly indicated, Respondent testified he suggested those procedures to B.R. but, while she was fully competent to understand his recommendation, B.R. refused to be further X-rayed, refused the echocardiogram because she thought it produced some type of nuclear radiation, and also specifically refused to have any tubes inserted in her veins which would result if the Swan-Ganz catheter was inserted.

11. None of the patient's refusals to accept recommended procedures was charted in B.R.'s hospital records.

12. Respondent testified that B.R. specifically directed him to not chart on her hospital record her refusal to undergo the test and procedures recommended by Respondent. Respondent further testified that following her refusal to undergo the test and procedures and under directions to him not to chart those refusals on the hospital chart, he put this history in his office notes. To corroborate this testimony Respondent presented Exhibit 5, a copy of those office notes containing entries dated July 12, 13, 14, 15, and 23, August 13, September 26, December 13, 1985 and January 29, 1986, comprising 4 typewritten pages.

13. While a patient has a absolute right to refuse treatment or procedures recommended by his/her physician, the patient does not have the right to direct the physician to prepare an incomplete record of his treatment and progress. The principal purpose of the chart is to record medical evidence of the patient's condition, treatment rendered and results obtained

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to provide a history from which another physician can, if necessary, adequately take over the care of the patient. The record also provides a history of the patient's response to treatment. Respondent's explanation that if he had expected to be away and another physician had to take over the care and treatment of B.R. he would have made the other physician aware of B.R.'s refusal to undergo the recommended procedures totally failed to satisfy the need for a complete record of the patient in one place.

14. To prove the validity of the office notes as a "business record", Respondent testified that for the past 30 years he has maintained office notes in which he has placed information the patient didn't want in the hospital record. An expert witness in the field of questioned documents testified that each dated entry on Exhibit 5 was typed following a new insertion of the paper in the typewriter rather than all entries being typed at the same time or with the same insertion of the paper in the typewriter and this was consistent with what would be expected in normal office procedures.

15. Respondent's office manager and secretary during the times reported on Exhibit 5 testified she was the one who normally transcribed Respondent's dictated notes, that Exhibit 5 was consistent with the normal office practice which would be to date the entries when they were typed, and, although she does not specifically recall typing each entry on Exhibit 5, they were probably all typed by her.

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16. Evidence questioning the validity of Respondent's testimony that the office notes were dictated contemporaneously with his treatment of B.R. and typed on the dates indicated included the testimony of the husband of B.R. that B.R. had a zest for life and it would be contrary to her nature to refuse certain procedures or consultations; the fact that on July 14, 1985 B.R. was intubated with the Respondent present; that there was no financial consideration involved as B.R. was adequately insured; the office manager and secretary of Respondent during the period the office notes are alleged to have been prepared is the daughter of Respondent; and the fact that at the peer review committee inquiry into the facts surrounding the death of B. R., Respondent never mentioned the existence of office notes although he was extensively questioned regarding his failure to maintain a more complete medical record in this case.

17. From the foregoing it is found that B.R.'s refusal to submit to the procedures allegedly recommended by Respondent were not contemporaneously recorded in Respondent's office notes and Exhibit 5 was prepared after Respondent appeared before the hospital peer review committee if not also after the administrative complaint was filed in this case.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceeding.

2. Respondent is here charged with violating Section 458.331(1)(m) and (t), Florida Statutes (1986 Supp.) which

constitute grounds for disciplinary action. Subsection (m) proscribes the failure to keep written medical records justifying the course of treatment of the patient and subsection (t) proscribes the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

3. Here Petitioner has the burden to prove the allegation made by clear and convincing evidence. Ferris v. Turlington, 510 So 2d 292 (Fla. 1987).

4. With respect to the malpractice charge Respondent's testimony that B.R. refused to permit the procedures he recommended was uncontradicted by direct testimony. On the other hand this testimony was not corroborated by B.R. who is now deceased or by another person who may have overheard the conversation when B.R. voiced her refusal, by an entry in the patient's hospital records recording this refusal contemporaneously with the refusal or by evidence that Respondent discussed this refusal of B.R. with another doctor on the hospital staff. Circumstantial evidence rebutting Respondent's direct testimony with respect to B.R.'s direction to him include the intubation of B.R. on July 14 and her husband's testimony that B.R. had a zest for life and was temperamentally unlikely to refuse a procedure that could save her life.

5. Since a competent patient has the final word respecting the treatment to be given to the patient, if in fact B.R. refused the procedures which the Respondent testifies he

recommended, Respondent cannot be found guilty of malpractice as alleged. With Respondent testifying B.R. refused to allow the procedures he recommended and B.R. unable, (from the grave) to rebut this testimony the evidence is not clear and convincing that Respondent is guilty of malpractice.

6. With respect to the charge of failure to maintain records adequate to justify the course of treatment followed, Respondent contends medical ethics precluded him from placing B.R.'s refusal to accept the procedures he recommended in her hospital records after she instructed him not to do so. This argument is not persuasive. Medical records provide the history of the patient's reaction to the course of treatment followed by the physician. These records should contain not only the treatment followed but also why other treatment normally followed was not used in this case. While the patient's request respecting treatment the patient declines should be followed, the charting of this refusal should be in the medical records regardless of the patient's instructions to omit such refusal from the records. This is so for several reasons other than the physician's own protection from malpractice charges. Here Respondent testified that had he turned B.R. over to another doctor during his absence he would have revealed the patient's refusal to accept those procedures recommended. A change of doctors under these circumstances is less likely than some emergency arising which would require such a change yet not provide an opportunity to apprise the new physician with those patient's instructions not included in the hospital records.

7. Simply put there is no medical ethics problem involved in maintaining patient records adequate to justify the treatment provided.

8. From the foregoing it is concluded that in his treatment of B.R. Respondent is not guilty of malpractice but is guilty of failure to maintain adequate medical records to justify the treatment rendered to B.R.

Rule 10M-17.015, Florida Administrative Code, provides a recommended punishment for failure of a physician to keep written medical records ranging from a reprimand to denial or two (2) years suspension followed by probation and an administrative fine from \$50 to \$1000. Accordingly, it is

RECOMMENDED that Willian T. Breesmen's license to practice medicine be suspended for six (6) months and that he pay an administrative fine of \$1000.00. It is further recommended that he thereafter be placed on a period of probation for two (2) years under such terms and conditions as the Board of Medicine may deem appropriate.

ENTERED this 15th day of May, 1989, in Tallahassee, Florida.



K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of May, 1989.

Copies furnished:

See next page.

Copies furnished:
DOAH Case No. 88-5117

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