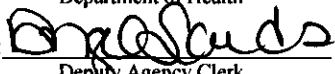


STATE OF FLORIDA
DEPARTMENT OF HEALTH

Final Order No. DOH-10-0659-^{ES0}-MQA
FILED DATE - 3-4-10
Department of Health
By: 
Deputy Agency Clerk

IN RE: The Emergency Suspension of the License of
Omar Brito Marin, M.D.
License Number: ME 37203
Case Number 2009-20072

ORDER OF EMERGENCY SUSPENSION OF LICENSE

Ana M. Viamonte Ros, M.D., M.P.H., State Surgeon General, ORDERS the Emergency Suspension of the license of Omar Brito Marin, M.D. (Dr. Brito Marin) to practice as a physician in the State of Florida. Dr. Brito Marin holds license number ME 37203 and his last known address is 1916 Weston Road, Weston, Florida 33327. The following Findings of Fact and Conclusions of Law support the emergency suspension of Dr. Brito Marin's license to practice as a physician.

FINDINGS OF FACT

1. The Department of Health (Department) is the state agency charged with regulating the practice of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes.
2. Section 456.073, Florida Statutes (2009), empowers the State Surgeon General of the Department to summarily suspend Dr. Brito Marin's license to practice as a physician in the State of Florida in accordance with Section 120.60(6), Florida Statutes (2009).
3. Dr. Brito Marin is, and has been at all times material to this Order, licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.

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4. Dr. Brito Marin is not board certified in plastic surgery, anesthesiology, or any board recognized by the American Board of Medical Specialties (ABMS). His background is in Occupational Health medicine.

5. On September 25, 2009, at or about 11:00 AM, Patient R.K.-O., a thirty-seven year-old female, presented to Weston MedSpa for liposuction surgery. Weston MedSpa is not licensed as a Level II Office Surgery facility.

6. During the course of R.K.-O.'s surgery, Dr. Brito Marin was assisted by a Miriam Yanes, a phlebotomy technician, and E. Luis Rodriguez Mora, a surgical assistant. Neither of those persons are qualified to provide anesthesia. According to R.K.-O.'s "Local Anesthesia & OR Record," at or about 11:30 R.K.-O. was administered 30 milligrams (mg) of Propofol intravenously and 50 mg of Benadryl intramuscularly. The OR record also indicates R.K.-O. received 3,060 mg of intravenous lidocaine. It also indicates six hundred milliliters of "supranant [sic] fat" were removed. Dr. Brito Marin commenced the surgery at approximately 12:00 PM. There is no record that an updated physical was performed on R.K.-O. on the day of surgery.

7. Propofol is a powerful intravenous sedative-hypnotic agent that can be used for both induction and maintenance of anesthesia for inpatient and outpatient surgery. Qualified individuals may administer Propofol in less than general anesthetic doses for sedation. Propofol has a small margin for error and is profoundly potentiated by other Central Nervous System (CNS) depressants.

8. Benadryl is the brand name for diphenhydramine hydrochloride, an antihistamine with anticholinergic (drying) and sedative (CNS depressant) side effects.

9. Lidocaine is an anesthetic with sedative, analgesic, and cardiac depressant properties. Seizures are a common symptom of lidocaine overdose.

10. The surgery lasted approximately two hours. At the end of the procedure R.K.-O. had several seizures and then, according to Dr. Brito Marin, she went into shock; cardiac and respiratory arrest soon followed. Emergency resuscitation was attempted but the facility had no "emergency crash cart," (a portable cart containing all the necessary equipment and medications for cardiopulmonary resuscitation (CPR) and emergency care). The Broward Sheriff's Fire Rescue (BSFR) was called.

11. Upon their arrival, the BSFR noted that no CPR was being performed and R.K.-O.'s IV was non-working. There was no indication drugs had been given for the seizures. They attempted unsuccessfully to establish an intravenous line. Dr. Brito Marin is reported to have told the BSFR personnel that the patient had received between 4,500 and 5,000 milligrams of lidocaine IV and 10-20 mg of Valium. This contradicts what is stated in the Local Anesthesia & OR Record which indicates she was administered 3,060 mg of lidocaine, and shows she was administered Benadryl, but not Valium.

12. The paramedics were able to re-establish cardiac activity but R.K.-O. was still unconscious and non-responsive. She was taken to the Cleveland Clinic Hospital Emergency Room.

13. Patient R.K.-O. was admitted to Cleveland Clinic Hospital and placed on a mechanical ventilator. Brain death was confirmed on September 29, 2009, and on October 9, 2009, artificial life support was terminated and R.K.-O. expired.

14. Rule 64B8-9.009, Florida Administrative Code (FAC), is titled: Standard of Care for Office Surgery. It is the Board's rule regarding office surgery and specifically states in its opening paragraph: "Nothing in this rule relieves the surgeon of the responsibility for making the medical determination that the office is an appropriate forum for the particular procedure(s) to be performed on the particular patient."

15. Office surgery is defined as surgery which is performed outside of any facility licensed under Chapter 390 or 395, Florida Statutes.

16. Rule 64B8-9.009, FAC, provides in subsection (4):

(4) Level II Office Surgery.

(a) Scope.

1. Level II Office Surgery is that in which peri-operative medication and sedation are used intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hemorrhoidectomy, hernia repair, reduction of simple fractures, large joint dislocations, breast biopsies, colonoscopy, and *liposuction involving the removal of up to 4000cc supernatant fat.*

2. Level II Office surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.

(Emphasis supplied).

17. The procedure Dr. Brito Marin performed on R.K.-O. was a Level II Office Surgery because he used peri-operative medication and sedation intravenously and

intramuscularly during the performance of a liposuction involving the removal of up to 4,000 cc of supernatant fat.

18. As it relates to Level II office surgery, Rule 64B8-9.009, FAC, also provides:

(b) Standards for Level II Office Surgery.

1. Transfer Agreement Required. The physician must have a transfer agreement with a licensed hospital within reasonable proximity if the physician does not have staff privileges to perform the same procedure as that being performed in the out-patient setting at a licensed hospital within reasonable proximity. "Reasonable proximity" is defined as not to exceed thirty (30) minutes transport time to the hospital.

2. Training Required.

a. The surgeon must have staff privileges at a licensed hospital to perform the same procedure in that hospital as that being performed in the office setting or must be able to document satisfactory completion of training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or any other board approved by the Board of Medicine or must be able to establish comparable background, training, and experience. Such Board certification or comparable background, training and experience must also be directly related to and include the procedure(s) being performed by the physician in the office surgery facility.

b. One (1) assistant must be currently certified in Basic Life Support and the surgeon must be currently certified in Advanced Cardiac Life Support.

3. Equipment and Supplies Required.

a. Full and current crash cart at the location the anesthetizing is being carried out

4. Assistance of Other Personnel Required. The surgeon must be assisted by a qualified anesthesia provider as follows: An Anesthesiologist, Certified Registered Nurse Anesthetist, or Physician Assistant qualified as set forth in subparagraph 64B8-30.012(2)(b)6., F.A.C., or a registered nurse may be utilized to assist with the anesthesia, if the surgeon is ACLS certified. An assisting anesthesia provider cannot function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, osteopathic physician, registered nurse, licensed practical nurse, or operating room technician. A physician licensed under Chapter 458 or 459, F.S., a licensed physician assistant, a licensed registered nurse with post-anesthesia care unit experience or the equivalent, credentialed in Advanced Cardiac Life Support or, in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient is recovered from anesthesia.

19. At no time during R.K.-O.'s surgery was there an anesthesiologist, certified nurse anesthetist, or physician assistant present to administer anesthesia to R.K.-O. Further, Dr. Brito Marin was not certified in Advanced Cardiac Life Support (ACLS).

20. A Departmental expert, Board Certified in plastic surgery, reviewed R.K.-O.'s medical records and submitted a written report of his findings.

21. The Department's expert noted that Dr. Brito Marin's training in liposuction consisted of a "weekend" eighteen-hour course in liposuction sponsored by organizations for teaching gynecologists how to do liposuction.

22. The expert opined that the "weekend" courses are "wholly inadequate training to do these types of procedures and certainly inadequate training for the administration of intravenous anesthesia, specifically Propofol."

23. The course was specifically for "the gynecologist" which Dr. Brito Marin is not. "The course assumes 'the gynecologist' has had at least some surgical training and experience. These courses do not provide adequate training to develop the proper surgical judgment to evaluate a suitable candidate for liposuction, adequately assess a patient's suitability to undergo intravenous sedation (or deeper) anesthesia nor the technical skills necessary to perform the operation with the minimum of complications. They also do not provide the skills and experience to properly assess and handle postoperative complications such as the one this patient had."

24. In addition to the rules on Level II office surgery, for any office surgery under Rule 64B8-9.009(2)(a), FAC, the surgeon must examine the patient immediately before the surgery to evaluate the risk of anesthesia and of the surgical procedure to be performed.

25. The medical records of R.K.-O. do not reflect a physical examination in compliance with the rule.

26. The Department's expert opined that Dr. Brito Marin practiced below the standard of care, and violated Rule 64B8-9.009, FAC, by performing the liposuction procedure, a Level II procedure, in a facility not licensed for that at the time of surgery. He further opined that it was below the standard of care, and a violation of the rule, for Dr. Brito Marin to administer Propofol without having a person qualified to provide anesthesia present, and without being ACLS certified himself. He also stated that Dr. Brito Marin practiced outside the scope of his practice, and violated the rule, by

performing the liposuction procedure with the minimal level of training he received in liposuction, given his medical background.

27. The Department's expert also found that Dr. Brito Marin failed to keep medical records that justified the course of treatment in that there was no record of a physical examination being conducted on the day of the surgery, and questioned whether the records are accurate given Dr. Brito Marin's contradictory statement to the paramedics as to the medications administered to R.K.-O.

28. Finally, the expert stated that Dr. Brito Marin administered medications inappropriately, and violated the rule, by administering Propofol without a qualified anesthesia provider. He also noted the possibility that R.K.-O. was given an excessive dose of Lidocaine given that the level of the drug present in her system was still extremely high even ten hours after she had received the last dose according to a toxicology screen done at the Cleveland Clinic Hospital.

29. Dr. Brito Marin is the only physician who worked at Weston MedSpa. Section 458.309(3), Florida Statutes (2009), provides that all physicians who perform Level II procedures lasting more than five minutes must register the office with the Department unless that office is licensed as a facility pursuant to Chapter 395. The Department shall inspect the physician's office annually unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the Board of Medicine. Weston MedSpa is not licensed as a facility pursuant to Chapter 395 and has not been inspected by the Department.

Despite performing a Level II procedure that lasted well more than five minutes, Dr. Brito Marin did not register the office with the Department.

30. Section 458.331(1)(t), Florida Statutes (2009), subjects a physician to discipline, including suspension, for committing medical malpractice as defined in Section 456.50, Florida Statutes. Section 456.50(1)g, Florida Statutes, states: Medical malpractice means the failure to practice medicine in accordance with the level of care, skill and treatment recognized in general law related to health care licensure.

31. As set forth above, Dr. Brito Marin committed medical malpractice as defined in Section 456.50, Florida Statutes, in the treatment of patient R.K.-O. by performing the liposuction, a Level II procedure, in a facility not licensed for that at the time of surgery, and by administering Propofol without having a person qualified to provide anesthesia present and not being ACLS certified himself.

32. Section 458.331(1)(q), Florida Statutes (2009), subjects a physician to discipline, including suspension, for prescribing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

33. As set forth above, Dr. Brito Marin administered drugs in an inappropriate manner and in excessive amounts to R.K.-O. in violation of Section 458.331(1)(q), Florida Statutes (2009).

34. Section 458.331(1)(m), Florida Statutes (2009), subjects a physician to discipline, including suspension, for failing to keep legible 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.

35. As set forth above, Dr. Brito Marin failed to maintain adequate medical records for R.K.-O. by failing to keep legible medical records that justify the course of treatment of R.K.-O. in that there was no record of a physical examination being conducted on the day of the surgery, and that the records are inaccurate given Dr. Brito Marin's statement to the paramedics as to the medications administered to R.K.-O.

36. Section 458.331(1)(v), Florida Statutes (2009), subjects a physician to discipline, including suspension, for practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform.

37. As set forth above Dr. Brito Marin practiced outside the scope of his practice by performing the liposuction procedure with the minimal level of training he received in liposuction given his medical background.

38. Section 458.331(1)(nn), Florida Statutes (2009), subjects a physician to discipline, including suspension, for violating any provision of Chapter 458 or Chapter 456, or any rules adopted pursuant thereto.

39. As set forth above, Dr. Brito Marin did not register the office where he performed the surgery on R.K.-O. with the Department, despite performing a Level II procedure that lasted well more than five minutes, in violation of Section 458.309(3), Florida Statutes.

40. Section 120.60(6), Florida Statutes (2009), authorizes the Department to restrict or suspend a physician's license if the Department finds that the physician presents an immediate serious danger to the public health, safety, or welfare.

41. In treating R.K.-O., Dr. Brito Marin demonstrated bad judgment and disregard for the health and welfare of his patient, as well as for the rules governing office surgery and establishing the standard of care for office surgery. The office surgery rule is in place to clearly establish the criteria that must be followed to protect the health and safety of patients and to safely perform procedures such as the one here, and to prevent tragic occurrences just such as the one that happened here.

42. Dr. Brito Marin's disregard of the rules shows his mindset is such that he either does not know, or does not care, that the rules are in place. His numerous flagrant and fundamental violations, such as performing surgery without even ensuring the presence of a "crash cart," manifests such a propensity for practicing below the standard of care that this type of conduct by Dr. Brito Marin is likely to recur and presents an immediate danger to the public health, safety, or welfare.

43. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to prescribe, administer, and dispense anesthetics by the State. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to dispense drugs with a high potential for abuse and harm. Dr. Brito Marin's failure to practice medicine with that level of care, skill, and treatment that is recognized as acceptable and his inappropriate administering of dangerous anesthetics to R.K.-O. in an unsafe manner constitute a breach of the trust and confidence that the Legislature placed in him by permitting him to practice medicine. This breach is particularly compelling in light of the fact that the patient died.

44. Dr. Brito Marin's behavior in treating R.K.-O. demonstrates a level of practice that presents a danger to the public health, safety and welfare and does not correspond to that level of professional conduct expected of one licensed to practice medicine in this state.

45. Nothing short of the immediate suspension of Dr. Brito Marin's license will protect the public from Dr. Brito Marin. This is the least restrictive means to protect the public because the reckless and flagrant disregard Dr. Brito Marin showed for the standard of care and rules put in place to protect the health and safety of the public demonstrates that his continued practice as a physician is an immediate danger to the public.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The State Surgeon General has jurisdiction over this matter pursuant to Sections 20.43 and 456.073(8), Florida Statutes, and Chapters 458 and 456, Florida Statutes.
2. Dr. Brito Marin has violated Section 458.331(1)(t), Florida Statutes (2009), by committing medical malpractice as defined in Section 456.50, Florida Statutes.
3. Dr. Brito Marin has violated Section 458.331(1)(q), Florida Statutes (2009), by administering drugs in an inappropriate manner and in excessive amounts.
4. Dr. Brito Marin has violated Section 458.331(1)(m), Florida Statutes (2009), by failing to keep legible medical records that justify the course of treatment of the patient.
5. Dr. Brito Marin has violated Section 458.331(1)(v), Florida Statutes (2009), by performing the liposuction procedure with the minimal level of training he received in liposuction, given his medical background.
6. Dr. Brito Marin has violated Section 458.331(1)(nn), Florida Statutes (2009), by not registering the office where he performed the surgery on R.K.-O. with the Department, despite performing a Level II procedure that lasted more than five minutes.


7. Dr. Brito Marin's continued unrestricted practice as a physician constitutes an immediate serious danger to the health, safety, or welfare of the public and this summary procedure is fair under the circumstances to adequately protect the public.

In accordance with Section 120.60(6), Florida Statutes (2009), it is **ORDERED THAT:**

1. The license of Omar Brito Marin, M.D., license number ME 37203, is immediately suspended.

2. A proceeding seeking formal suspension or discipline of the license of Omar Brito Marin, M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes.

DONE and ORDERED this 4th day of March, 2010.



Ana M. Viamonte Ros, M.D., M.P.H.,
State Surgeon General
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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Section 120.60(6), and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review in accordance with Rule 9.100, Florida Rules of Appellate Procedure, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within thirty (30) days of the date this Order is filed.