

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2016-14652**

**JAMES S. MCADOO, D.O.,**

**RESPONDENT.**

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**AMENDED ADMINISTRATIVE COMPLAINT**

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Complaint before the Board of Osteopathic Medicine against Respondent, James S. McAdoo, D.O., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 11955.

3. Respondent's address of record is 1850 South Ocean Drive, Unit 4401, Hallandale Beach, Florida 33009.

4. Respondent may be located at 1738 West 49<sup>th</sup> Street, Suite 8, 9, 10, Hialeah, Florida 33012.

5. At all times material to this Administrative Complaint, Respondent was practicing as an osteopathic physician at Encore Plastic Surgery (Encore) an office surgery center located in Hialeah, Florida.

6. Respondent is board-certified by the American Osteopathic Board of Surgery in General Surgery and in Plastic Surgery.

7. Respondent fell below the prevailing standard of care in his treatment of patient H.M., as detailed below.

8. On or about May 11, 2016, H.M., a then-twenty-nine year-old female, presented to Encore and/or Respondent for a "Brazilian butt lift" plastic surgery procedure (the procedure) consultation.

9. The procedure involves bilateral abdominal, flank, suction assisted lipectomy (liposuction) in combination with a free adipose graft transfer to buttocks (gluteal volume augmentation, buttock transition zone reshaping, trochanter A frame reshaping, and mid-lateral buttock depression reshaping).

10. In this procedure, liposuction is associated and directly related to another procedure.

11. The prevailing professional standard of care required Respondent to treat patient H.M. in the following manner:

a. Obtain a complete and comprehensive patient history, including dates of previous pregnancies, prior to performing the procedure;

b. Perform a complete and comprehensive physical examination of patient H.M. prior to performing the procedure;

c. Advise patient H.M. against, and/or refrain from performing, the procedure within three months postpartum;

d. Allow time between fat removal and fat transfer for separation by gravity;

e. Slowly and carefully inject the fat into the gluteus region in small aliquots; and/or

f. Carefully control the volume and rate of injection.

12. Respondent did not obtain, or did not create and maintain a record of obtaining, a complete medical history for patient H.M.

13. At the time of the procedure, patient H.M. was approximately two months postpartum.

14. The standard of care requires a three-month postpartum minimum status for the patient.

15. On or about May 12, 2016, patient H.M. presented to Encore to undergo the procedure.

16. Respondent's intra-operative records indicate that Respondent removed 4000cc of supernatant fat from patient H.M.'s abdomen.

17. Respondent's intra-operative anesthesia records indicate that patient H.M. was under anesthesia for approximately one hundred five (105) minutes, and that the procedure took approximately fifty-five (55) minutes.

18. Respondent's operating room record form indicates that patient H.M.'s procedure took approximately fifty-five (55) minutes.

19. Respondent stated that this procedure generally takes anywhere between ninety (90) minutes and two hours.

20. If Respondent accurately documented the intraoperative timing of all parts of patient H.M.'s procedure, Respondent failed to allow

adequate time between fat removal and fat transfer procedures for separation by gravity of the removed materials.

21. If Respondent allowed adequate time between fat removal and fat transfer procedures for separation by gravity of the removed materials, Respondent failed to accurately document the intraoperative timing of H.M.'s procedure.

22. Respondent failed to slowly and carefully inject the removed fat materials into the gluteus region in small aliquots for patient H.M.

23. Respondent failed to carefully control the volume and rate of injection of the removed fat materials into the gluteus region for patient H.M.

24. Respondent injected the removed fat materials into patient H.M.'s deep gluteal vein.

### **COUNT ONE**

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

26. Section 459.015(1)(x), Florida Statutes (2015), provides that, notwithstanding s. 456.072(2) but as specified in s. 456.50(2), committing medical malpractice as defined in s. 456.50, F.S., constitutes grounds for

disciplinary action. Medical Malpractice is defined in Section 456.50(g), Florida Statutes (2015), 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. For purposes of Section 459.015(1)(x), Florida Statutes (2015), the Board shall give great weight to the provisions of Section 766.102, Florida Statutes (2015), which provide 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.

27. As set forth above, Respondent committed medical malpractice by falling below the prevailing professional standard of care in his treatment of patient H.M. in one or more of the following ways:

- a. By failing to obtain a complete and comprehensive patient history for patient H.M., including dates of previous pregnancies, prior to performing the procedure;
- b. By performing the procedure on patient H.M. less than three months post-partum;

c. By failing to perform a complete and comprehensive physical examination of patient H.M. prior to performing the procedure;

d. By failing to advise patient H.M. against, and/or refrain from performing, the procedure within three months postpartum;

e. By failing to allow time between fat removal and fat transfer for separation by gravity;

f. By failing to slowly and carefully inject the fat into the gluteus region in small aliquots;

g. By failing to carefully control the volume and rate of injection; and/or

h. By injecting the fat into patient H.M.'s deep gluteal vein.

28. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statutes (2015), in his treatment of patient H.M. by committing medical malpractice, as defined in Section 456.50(g), Florida Statutes (2015), 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.

## **COUNT TWO**

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

30. Section 459.015(1)(o), Florida Statutes (2015), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteopathic physician or the osteopathic physician extender and supervising osteopathic 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.

31. During patient H.M.'s treatment period, Respondent failed to keep adequate medical records in one or more of the following ways:

- a. By failing to create or maintain records of a comprehensive patient history for patient H.M., including dates of previous pregnancies;



b. By failing to create or maintain records of performing a complete and comprehensive physical examination of patient H.M. prior to performing the procedure; and/or

c. By failing to create or maintain accurate intraoperative records, including waiting periods between fat removal and transfer.

32. Based on the foregoing, Respondent violated Section 459.015(1)(o), Florida Statutes, (2015), by failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteopathic physician [who is] responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient.

### **COUNT THREE**

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

34. Section 459.015(1)(pp), Florida Statutes (2015), provides that violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto, constitutes grounds for disciplinary action.

35. Rule 64B15-14.007, Florida Administrative Code (2015), articulates the standard of care for office surgery.

36. Rule 64B15-14.007(2)(e)2., Florida Administrative Code (2015), provides that liposuction may be performed in combination with another separate surgical procedure during a single Level II or Level III operation under certain circumstances, to include when liposuction is associated and directly related to another procedure, the liposuction may not exceed 1000cc of supernatant fat.

37. As set forth above, Respondent violated the standard of care for office surgery when he performed a liposuction procedure which was associated and directly related to another procedure on patient H.M., and the liposuction exceeded 1000cc of supernatant fat.

38. Based on the foregoing, Respondent violated Section 459.015(1)(pp), Florida Statutes, by violating Rule 64B15-14.007, Florida Administrative Code, when he failed to meet the standards of care for office surgery.

WHEREFORE, Petitioner respectfully requests that the Board of Osteopathic 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 24th day of October, 2018.**

Celeste Philip, MD, MPH  
Surgeon General and Secretary

/s/ Ann L. Prescott  
Ann L. Prescott  
Assistant General Counsel  
DOH Prosecution Services Unit  
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/ALP

PCP: 10/24/18

PCP Members: Andriole (chair) & Jackson

## **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.**

**Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.**

## **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 to any other discipline imposed.**