

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

IN RE: The Emergency Suspension of the License of
James S. Pendergraft, IV, M.D.
License Number: 59702
Case Numbers 2005-67224 and 2004-39923

ORDER OF EMERGENCY SUSPENSION OF LICENSE

M. Rony François, M.D., M.S.P.H., Ph.D., Secretary of the Department of Health, hereby ORDERS the Emergency Suspension of the license of James S. Pendergraft, IV, M.D., ("Dr. Pendergraft") to practice as a physician in the State of Florida. Dr. Pendergraft holds license number 59702. His last known address is 1103 Lucerne Terrace, Orlando, Florida 32806. The following Findings of Fact and Conclusions of Law support the emergency suspension of Dr. Pendergraft's license to practice as a physician in the State of Florida.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state department charged with regulating the practice of physicians pursuant to Chapters 20, 456, and 458, Florida Statutes. Section 456.073(8), Florida Statutes, empowers the Secretary of the Department to summarily suspend Dr. Pendergraft's license to practice as a physician in the State of Florida in accordance with Section 120.60(6), Florida Statutes.
2. At all times material to this order, Dr. Pendergraft was licensed to practice as a physician in the State of Florida, pursuant to Chapter 458, Florida Statutes.
3. Dr. Pendergraft is board certified in Obstetrics and Gynecology.

Relevant Statutory Provisions

4. Section 797.03, Florida Statutes, provides in pertinent part that:

(3) It is unlawful for any person to perform or assist in performing an abortion on a person in the third trimester other than in a hospital."

5. Section 390.0111, Florida Statutes (2005), provides in pertinent part:

(1) TERMINATION IN THIRD TRIMESTER: WHEN ALLOWED
- No termination of pregnancy shall be performed on any human being in the third trimester of pregnancy unless:

(a) Two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman; or

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of pregnancy in the third trimester, and another physician is not available for consultation.

6. Section 456.072, Florida Statutes (2005), provides in pertinent part:

456.072 Grounds for discipline; penalties; enforcement.-

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2): may be taken:

* * *

(k) Failing to perform any statutory or legal obligation placed upon a licensee....

* * *

(o) Practicing or offering to practice beyond the scope permitted by law....

* * *

(2) When the board... finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, ... it may enter an order imposing one or more of the following penalties:

* * *

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice or license....

7. Section 458.331, Florida Statutes (2005), provides in pertinent part:

458.331 Grounds for disciplinary action; action by the board and department.-

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(g) Failing to perform any statutory or legal obligation placed upon a licensed physician.

* * *

(m) 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.

* * *

(t) Notwithstanding s. 456.072(2) but as specified in s. 456.50(2):

1. Committing medical malpractice as defined in s. 456.50. The Board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph.

The term, "medical malpractice" as used in Section 458.331(1)(t), is defined in Section 456.50, Florida Statutes, 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, Florida Statutes, provides 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.

8. Section 458.331, Florida Statutes (2004), provides in pertinent part:

458.331 Grounds for disciplinary action; action by the board and department.-

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

* * *

(t) Gross or repeat malpractice or 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. The Board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph.

Facts Relating to Case 2005-67224

9. At all times material to this case, Dr. Pendergraft, alone or with one or more partners, owned and operated Orlando Women's Center (OWC), Inc., a clinic specializing in abortions.

10. The records are clear, and undisputed, that on or about July 5, 2005, when Patient R.W. presented to OWC, her pregnancy, at about 28 weeks, was in the third trimester.

11. Patient R.W. had already been to one or more hospitals where it was determined that the fetus was breech, had a swollen head, no lungs and one kidney. None of the hospital physicians would agree to perform an abortion. Nonetheless, Dr. Pendergraft performed a third trimester abortion procedure on Patient R.W.

12. Dr. Pendergraft did not certify in writing that to a reasonable degree of medical probability, that the termination of Patient R.W.'s pregnancy was necessary

to save the life or preserve the health of the pregnant woman, or obtain a concurring certification from a second physician. This was not an emergent situation that would justify proceeding without the concurring opinion of a second physician. Moreover, Dr. Pendergraft did not certify in writing that any such emergency existed.

13. Dr. Pendergraft charged Patient R.W. \$12,000 for the procedure.

14. Dr. Pendergraft did not transfer Patient R.W. to a hospital before performing the third trimester abortion in compliance with the criminal statute, Section 797.03(3), Florida Statutes. Further, Dr. Pendergraft's practitioner profile on file with the Department of Health indicates that he does not have hospital privileges in Florida.

15. In the course of the abortion procedure for Patient R.W., Dr. Pendergraft prescribed one or more drugs, including a controlled substance, by prescribing, ordering or administering Demerol and Phenergan.

16. Demerol, which contains meperidine hydrochloride, is a Schedule II controlled substance listed in Chapter 893, Florida Statutes, which is indicated for the treatment of moderate to severe pain. Demerol has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment in the United States. Abuse of Demerol may lead to severe physical and psychological dependence.

17. Phenergan is the brand name for promethazine. Promethazine is a legend drug used in the treatment of motion sickness, prevention and control of nausea and vomiting associated with certain types of anesthesia and surgery, and as an adjunct to

analgesics for the control of postoperative pain, preoperative, postoperative, and obstetric sedation.

18. At all times relevant in this matter, Dr. Pendergraft did not have a current, valid DEA number to allow him, as a licensed physician, to prescribe, order or administer controlled substances. At the time of prescribing and administering these drugs, there was no other physician with a valid DEA number present and participating in the care and treatment of Patient R.W.

19. On June 28, 2004, Dr. Pendergraft was convicted in the U.S. District Court, Middle District of Florida, Case Number 5:00-OR-21(S1)-OC-32GRJ, of "Accessory After the Fact" in a criminal case relating to a business partner. That conviction is relevant in that, together with this illegal third trimester abortion for Patient R.W. and the administering of controlled substances without a current valid DEA number, Dr. Pendergraft clearly demonstrates his disregard for complying with the laws of this country.

Facts Relating to Case 2004-39923

20. On or about November 19, 2004, Patient T.R., a twenty-two year-old female, presented to Dr. Pendergraft at EPOC Clinic, Inc., ("EPOC") a clinic in Orlando that is owned and operated by Dr. Pendergraft, alone or with one or more partners, and specializes in abortions.

21. The EPOC records indicate that the gestation period of the fetus was

about 22 weeks, allegedly determined by pelvic exam, sonogram, and/or ultrasound.

22. Patient T.R. was given Cytotec for vaginal use to initiate the spontaneous abortion.

23. Cytotec contains misoprostol. Misoprostol is a legend drug, available only by prescription. Misoprostol is chemically similar to prostaglandin, one of a number of hormone-like substances that participate in a wide range of body functions such as the contraction and relaxation of smooth muscle, the dilation and constriction of blood vessels, control of blood pressure, and modulation of inflammation. Misoprostol is most commonly used to reduce the risk of ulcers in patients taking certain medications. Misoprostol can also induce or augment uterine contractions.

24. Patient T.R. was sent home and used three of the ten pills provided. She called EPOC in the early morning of November 20, 2005, and reported severe cramping and the intention to go to an emergency room. The staff person told her to come to the office.

25. Shortly thereafter, Patient T.R. delivered the fetus on the floor in her living room.

26. On or about November 20, 2004, at 8:15 A.M., Patient T.R. presented to the emergency room at Health Central, a hospital, bringing with her a fetus, advising of the abortion and complaining of abdominal pain and she was bleeding. An IV was started.

27. The Health Central physician noted that the fetus was larger than a 22 week gestation and appeared to be 24 to 26 weeks gestational age.

28. The fetus and placenta were sent to pathology and the lab report from AmeriPath dated November 22, 2004, confirmed the physician's assessment and stated, "The weight and diameter of this placenta would correspond to a gestation period in the vicinity of 25 to 27 weeks."

29. This abortion for Patient T.R. was performed on a third trimester pregnancy.

Immediate Serious Danger

30. The Florida Legislature has recognized the inherent danger relating to third trimester abortions. Except under certain delineated circumstances, it is unlawful to do so and even within those exceptions, it is a crime to perform third trimester abortions outside of a hospital.

31. Dr. Pendergraft endangered two female patients by performing third trimester abortions outside a hospital setting and without concurring certification from a second physician. As a fetus grows, the uterus expands and significantly more blood is present in the mother's uterus and placenta. By the third trimester, it becomes significantly more dangerous to the mother to have an abortion outside of a hospital; even to remove a deformed fetus. Specific increased risks to the mother are hemorrhage, perforation of the uterus, retained placental tissue, and death. As to patient R.W., the

risks from an abortion to the patient were even greater than usual due to the swollen head of the fetus.

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

33. As a long term, Board-certified, Obstetrics/Gynecology practitioner with many years of experience in pregnancy termination, Dr. Pendergraft's actions demonstrate flagrant disregard for the laws of the State of Florida and willingness to endanger the lives and health of pregnant patients by performing third trimester abortions outside of a hospital and without obtaining concurring physician opinions. Dr. Pendergraft's continued practice as a medical doctor presents an immediate and serious danger to the public health, safety, or welfare.

34. Restricting Dr. Pendergraft's license would not be sufficient protection for the public because Dr. Pendergraft has demonstrated a willingness to disregard the lawful boundaries of his practice. He has disregarded the legal restrictions on third trimester abortions, and he prescribed controlled substances when he was not authorized by law to do so. The Department cannot devise a restriction with assurance that Dr. Pendergraft will practice within the boundaries of that restriction.

35. Dr. Pendergraft fell below the standard of care when he performed a third trimester abortion outside of a hospital for Patient R.W. and when he performed the third trimester abortion without a concurring opinion from another physician.

36. Dr. Pendergraft fell below the standard of care when, knowing that he did not possess a current, valid DEA number, he nonetheless prescribed, ordered or administered controlled substances to Patient R.W.

37. Dr. Pendergraft failed to keep adequate medical records that justified the course of treatment for Patient R.W.

38. Dr. Pendergraft fell below the standard of care when he inaccurately determined the fetus size and gestational age, and performed a third trimester abortion for Patient T.R.

CONCLUSIONS OF LAW

1. The Secretary of the Department of Health has jurisdiction over this matter pursuant to Section 456.073(8), Florida Statutes, and Section 20.43, Florida Statutes, as set forth above.

2. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Pendergraft endangered the lives of pregnant patients by performing third trimester abortions outside of a hospital and without obtaining concurring physician opinions and that he prescribes, orders and/or administers controlled substances without a valid DEA number.

3. Based on the foregoing Findings of Fact, the Secretary finds that Dr. Pendergraft has violated Section 797.03(3), Section 390.0111(1), Sections 456.072(1)(k) and (o), and Sections 458.331(1)(g), (m) and (t), Florida Statutes.

4. Based on the foregoing Findings of Fact, the Secretary finds that Dr. Pendergraft's continued practice as a physician constitutes an immediate serious danger to the health, safety, and welfare of the public and that this summary procedure is fair under the circumstances to adequately protect the public.

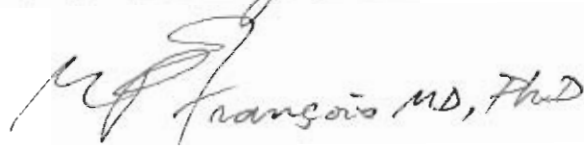
WHEREFORE, in accordance with Section 120.60(6), Florida Statutes, it is

THEREUPON ORDERED THAT:

1. The license of James S. Pendergraft, IV, M.D., license number 59702, is hereby immediately suspended.

2. A proceeding seeking formal suspension or discipline of the license of James S. Pendergraft, IV, 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 10th day of August, 2006.



M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 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 Florida Rule of Appellate Procedure 9.100, 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.