

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: The Emergency Restriction of the License of
Bernard Rachlin, M.D.
License Number: ME 5331
Case Numbers 2004-37645

ORDER OF EMERGENCY RESTRICTION OF LICENSE

M. Rony François, M.D., M.S.P.H., Ph.D., Secretary of the Department of Health, hereby ORDERS the emergency restriction of the license of Bernard Rachlin, M.D., to practice as a physician. Dr. Rachlin holds license number ME 5331, and his last known address is P.O. Box 546315, Surfside, Florida 33154. The following Findings of Fact and Conclusions of Law support the emergency restriction of Dr. Rachlin'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. Section 456.073, Florida Statutes, empowers the Secretary of the Department to summarily restrict Dr. Rachlin'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 hereto, Dr. Rachlin was licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.
3. Dr. Rachlin is not certified in any medical specialty area.
4. On or about October 6, 2004, T.S., a 24-year-old female, presented to Dr. Rachlin's office for an abortion. At that time, T.S. informed Dr. Rachlin that she had

previously had two abortions in 2002. In fact, Dr. Rachlin performed both of the 2002 abortions.

5. As part of her visit, Dr. Rachlin required T.S. to complete a patient questionnaire. T.S. indicated that 37 days had passed since the first day of her last menstrual period, and she expected her menstrual period to start on September 30, 2004. T.S.'s record also revealed that T.S. was 5'3" tall and weighed 146 pounds at the time of the October 6, 2004, visit.

6. T.S.'s medical record contains no documentation of any physical examination. There is no documentation of an abdominal examination or a pelvic examination in T.S.'s medical record.

7. Dr. Rachlin proceeded to perform a medical abortion. This procedure involved an intramuscular injection of 3.4 milliliters of 25 microgram/milliliter methotrexate. Dr. Rachlin then sent T.S. home with a prescription for 1000 milligrams of misoprostol, which Dr. Rachlin told her to place in her vagina seven days after the injection. Dr. Rachlin also gave T.S. a prescription for 24 tablets of Tylenol #3.

8. Methotrexate is a legend drug, available only by prescription. Methotrexate is classified as an antimetabolite drug, which means it is capable of blocking the metabolism of cells. As a result of this effect, it has been found helpful in treating certain diseases associated with abnormally rapid cell growth, such as cancer of the breast and psoriasis. Recently, methotrexate has been shown to be effective in inducing miscarriage, for example in patients with ectopic pregnancy. This effect of

methotrexate is attributed to its action of killing the rapidly growing cells of the placenta.

9. 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.

10. The combination of methotrexate and misoprostol is known as medication abortion. The methotrexate inhibits the implantation process, and the misoprostol stimulates cervical softening and uterine contractions, resulting in the expulsion of uterine contents.

11. Tylenol #3 is a mixture of acetaminophen, an over-the-counter pain reliever, and codeine. Codeine is a Schedule II controlled substance under Chapter 893, Florida Statutes. A substance in Schedule II has a high potential for abuse and has a currently accepted, but severely restricted medical use in treatment. Abuse of this substance may lead to severe psychological or physical dependence.

12. On or about October 13, 2004, T.S. filled the misoprostol prescription, received five pills, and inserted them as directed.

13. One-half hour after inserting the pills, T.S began to feel painful cramps. T.S.'s husband called Dr. Rachlin, who advised him to give T.S. some of the codeine Dr. Rachlin had prescribed at the office visit.

14. According to T.S., when the pain became bad in the afternoon of October 13, 2004, Dr. Rachlin instructed her to come to the office for an examination and possible suction abortion.

15. T.S.'s medical records from Dr. Rachlin reflect a visit on October 13, 2004. On examination, Dr. Rachlin noted that T.S.'s abdomen was distended, there was no blood in the vagina, and the cervix was closed. Dr. Rachlin's assessment was possible hematocolpus. Dr. Rachlin administered 50 milligrams of Demerol intramuscularly. Dr. Rachlin then sent T.S. to Jackson Memorial Hospital ("JMH") with a prescription for "pelvic sonogram STAT, ? hematometria, failed med abortion."

16. Hematocolpus is the accumulation of blood in the vagina due to an obstruction.

17. Hematometria is the accumulation of blood in the uterus due to an obstruction.

18. 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.

19. On or about October 13, 2004, T.S. presented to the emergency room at JMH. An ultrasound was performed, and T.S. was diagnosed with an intrauterine gestation at 37 weeks in active labor.

20. A full term pregnancy is 40 weeks.

21. On or about October 13, 2004, at approximately 10:49 p.m., T.S. had a normal vaginal delivery of a baby girl, weighing four pounds, thirteen ounces. The infant had a one-minute APGAR score of 6, a five-minute APGAR score of 8, and a 10-minute APGAR score of 9. The baby was sent to the neo-natal intensive care unit for respiratory distress, but was otherwise healthy, and recovered fully.

22. JMH sent a Code 15 report to the Department, which opened this case and investigated the events.

23. In response to the investigation, Dr. Rachlin responded, in part, as follows:

After review of my records, I realized that I retired from obstetrical practice **40** years ago, not 35 years ago. I have not had reason to put a woman beyond the first trimester of pregnancy on my examination table for the last 40 years. I have not done obstetrical examinations for 40 years.

I have two types of practice. [1] I see patients for general practice and minor gynecological services, and [2] I have a very early abortion practice. My abortion practice is not the usual "abortion mill" practice. I provide an inexpensive very early abortion service limited to women having missed no more than one period. . . .

If a woman is 7 weeks [49 days] or less from the first day of her last normal [regular] menstrual period, she is eligible for

the "medical abortion" or "abortion by pill" at \$120. If she is 8 weeks and has not yet missed her second monthly period, she is eligible for the hand-held syringe "Mini-Vac" at \$150. Ninety-five percent of these women come specifically for the medical abortion. In principle and practice, I do not harm fetuses. I only remove unwanted embryos.

My early abortion screening examination is . . . a focused gynecologic examination for routine pelvic screening. . . . I have used this examination for routine gynecology, and up until this case, #200437645, the screening system has never failed me in 48 years of medical practice and 32 years [and thousands of cases] of abortion practice.

The patient assumes a position on the gynecologic examination table lying on her back, with her buttocks down to the end and her knees bent and her feet in the stirrups. She is draped with a sheet from the navel down to her knees. I then stand at the foot of the table and insert a gloved lubricated finger from my right hand and then, if necessary, a second finger into the patient's vagina to feel the cervix. With my right hand in place and my two fingers in the vagina, I place the fingers of my left hand under the draped sheet on her suprapubic area to feel the size of the uterus in the pelvis. By compressing and balloting [bouncing] the uterus between the fingers in her vagina and the fingers pressing down on the lower abdomen above her pelvis, I can feel if there is a mass in the pelvis and if the uterus is enlarged beyond that expected for a 7-week pregnancy [for a medical abortion] or 8-weeks [for a Mini-Vac syringe abortion]. This examination will also allow me to detect all pregnancies in the first and second trimesters. [T.S. is the first patient in 32 years who came to me in the third trimester.]

* * *

In medical school, I was taught that the accuracy of a diagnosis is based 80% on history and 20% on examination. Medical history is of prime importance in patient evaluation. I never suspected that this mature, sensible and sensitive

woman seeking her third abortion with me would have ignored the changes that were going on in her body.

* * *

I was not negligent – my time-tested training and experience and system completely failed me, although I followed the system and my successful experience faithfully.

24. As noted by Dr. Rachlin, this was the third time T.S. presented to Dr. Rachlin for an abortion:

a. On or about January 11, 2002, T.S. first presented for an abortion by Dr. Rachlin. The medical record for that visit indicates that T.S. was 5'3" tall and weighed 116.5 pounds. T.S. reported that it had been 33 days since her last menstrual period. T.S. then underwent a successful medication abortion.

b. On or about November 12, 2003, T.S. presented for a second abortion by Dr. Rachlin. The medical record for that visit indicates that T.S. was 5'3" tall and weighed 126.5 pounds. T.S. reported that it had been 47 days since her last menstrual period. This is the maximum gestational age for which Dr. Rachlin will perform the medication abortion. The November 12, 2002, medical record also contains a handwritten note by Dr. Rachlin, "Uterus seems large – Pt. weak on dates." The note goes on to express some question as to whether the medication abortion will be

successful. On November 18, 2002, Dr. Rachlin made a note that the abortion was successful.

25. A Department expert reviewed the file, including T.S.'s medical records from Dr. Rachlin and JMH and Dr. Rachlin's statements. The Department expert opined that Dr. Rachlin failed to meet the applicable standard of care by failing to perform the appropriate physical examination required for the estimation of fetal gestational age. According to the Department expert, "[a]n abdominal and pelvic examination would have revealed that the pregnancy was more advanced than previously thought."

26. The Department expert also opined that Dr. Rachlin failed to meet the applicable standard of care when he attempted a medication abortion on a woman at 37 weeks gestation.

27. Section 458.331(1)(t), Florida Statutes (2004), subjects a licensee to discipline, including restriction, for

Gross or repeated 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.

28. Dr. Rachlin violated Section 458.331(1)(t), Florida Statutes (2004), by falling below the standard of care recognized by a reasonably prudent similar physician as follows:

a) A reasonable and prudent similar physician in similar circumstances would have performed a more extensive physical examination to determine fetal gestational age.

b) A reasonable and prudent similar physician in similar circumstances would not have administered the methotrexate/misoprostol abortion medication to a woman at 37 weeks gestation.

29. Section 120.60(6), Florida Statutes (2005), authorizes the Department to restrict a physician's license if the Department finds that the physician presents an immediate serious danger to the public health, safety, or welfare.

30. Dr. Rachlin's practice below the standard of care presents an immediate serious danger to the health, safety, and welfare of the public.

31. In a case where a doctor, after only a perfunctory examination, underestimated the gestational age of a fetus by 16 weeks and went on to attempt an abortion on a 28-week-old fetus, the appellate court found that his practice represented a danger to the public. See Ticktin v. Dep't of Prof'l Reg., 532 So. 2d 47, 48-49 (Fla. 1st DCA 1988).

32. In Ticktin, appellant's license had been revoked by the Board of Medicine based on the facts of the case. Id. at 47-48. Appellant asked the Court to stay the revocation pending his appeal of the Board's revocation. Id. At 47. The Court declined to issue the stay and explained that even though the facts before the Court included no other third trimester abortion attempts:

Given the remarkably gross nature of the appellant's violation occurring as it did in a practice requiring the utmost care and sensitivity in the making of extremely grave decisions, we believe that, should appellant be allowed to continue his medical practice pending this appeal, there is substantial risk that other violations may occur involving serious and irremediable harm to those affected by appellant's conduct and decisions as a physician.

Id. at 49.

33. Dr. Rachlin has demonstrated striking carelessness in performing the duties and responsibilities imposed upon a physician who chooses to practice in a field "requiring the utmost care and sensitivity in the making of extremely grave decisions."

Dr. Rachlin had before him, T.S.'s medical record, which contained her record of being a poor historian. Dr. Rachlin then relied heavily on T.S.'s recitation of her menstrual history, 80% by his estimation, in determining the gestational age of her fetus. Dr. Rachlin's egregious conduct of failing to perform a sufficient physical examination to determine gestational age constitutes a breach of the trust and confidence that the Legislature placed in him by issuing him a license to practice medicine. This breach is particularly compelling because T.S. was a mere three weeks from a full-term pregnancy when she presented to Dr. Rachlin.

34. Dr. Rachlin's acts forced T.S. to go into premature labor, which is dangerous to the mother and the unborn child. Because Dr. Rachlin blames his error on T.S.'s recitation of her history instead of taking responsibility for his acts, it is likely that the acts will recur. This risk of recurrence presents an unacceptable immediate serious danger to the public.

35. Dr. Rachlin's acts manifest such an inability to follow the rules and laws governing physicians that, as recognized by the Ticktin court, a continuation of this practice is likely to recur. Dr. Rachlin's failure to practice medicine with that level of care, skill, and treatment that is recognized as being acceptable poses an immediate serious danger to the public. Nothing short of the immediate restriction of Dr. Rachlin's license will protect the public from Dr. Rachlin.

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(3)(g), Florida Statutes, as set forth above.

2. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Rachlin has violated Section 458.331(1)(t), Florida Statutes (2004), by failing 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.

5. Based on the foregoing Findings of Fact, the Secretary finds that Dr. Rachlin's continued, unrestricted 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 (2005), it is

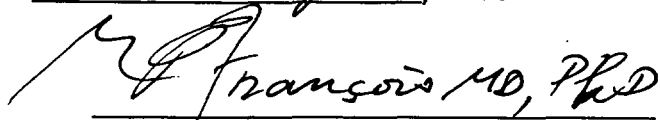
THEREUPON ORDERED THAT:

1. The license of Bernard Rachlin, M.D., license number ME 5331, is hereby immediately restricted as follows:

Dr. Rachlin shall not perform any abortion without first obtaining a verification of the gestational age of the fetus through vaginal probe ultrasound.

2. A proceeding seeking formal restriction or discipline of the license of Bernard Rachlin, 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 17th day of January, 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.