

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



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x

In the Matter of	:	DECISION
RAUL RAMON DIAZ, M.D.	:	93-A-004
(Certificate No. 016182)	:	
	:	

x

This matter came before the Louisiana State Board of Medical Examiners ("Board") for hearing on July 29, 1993, pursuant to an Administrative Complaint, charging respondent, Raul Ramon Diaz, M.D., with four violations of the Louisiana Medical Practice Act:

- 1) Preparation by Dr. Diaz of a misleading operative report to cover up a surgical error, in violation of R.S. 37:1285(A)(10), which prohibits "efforts to deceive or defraud the public".
- 2) Submission by Dr. Diaz to Medicare of claims for non-indicated surgical procedures, in violation of R.S. 37:1285(A)(11), which prohibits "making or submitting false, deceptive, or unfounded claims...".
- 3) Performance by Dr. Diaz of non-indicated and potentially disabling surgical procedure in order to cover up a surgical error, in violation of R.S. 37:1285(A)(12), which prohibits professional or medical incompetency.
- 4) Deceptive conduct, performance of non-indicated surgical procedure, and submission of fraudulent Medicare claims by Dr. Diaz, which constitutes unprofessional conduct on the part of Dr. Diaz, in violation of R.S. 37:1285(A)(13).

The case was heard before a panel of the entire Board consisting of Drs. Mary Lou Applewhite, Ike Muslow, Keith C. Ferdinand, Elmo J. Laborde, Richard M. Nunnally, F.P. Bordelon, Jr., and Bernard L. Kaplan, with Dr. Kaplan, President, presiding. Also present were Judge Frederick S. Ellis, Independent Counsel for the Board; Philip O. Bergeron, Attorney at Law, representing the complainant. Dr. Diaz, respondent, was present represented by Bruce J. Toppin, Attorney at Law.

(Diaz, August, 1993)

FINDINGS OF FACTS

The evidence offered in the case by the complainant consists of the testimony of Dr. Diaz, on cross-examination; the testimony of Kenneth C. Cranor, M.D., an expert in the field of orthopedic surgery; the deposition of Milton P. Rosenkrantz, M.D., a senior associate of Dr. Diaz, who assisted in the procedure which is the subject of this inquiry; the hospital chart of the patient, M.F.; and the Medicare claim forms filed by Drs. Diaz and Rosenkrantz with associated correspondence.

In defense, Dr. Diaz presented his own testimony; that of John Lockwood Ochsner, Jr., M.D., an expert orthopedic surgeon; a deposition by Dr. Rosenkrantz in another case; a letter from the anesthesiologist who attended the procedure done on M.F.; a letter from the Chief of Surgery at Chalmette Medical Center; and a complete set of x-rays taken of M.F., before and after the operation.

From the above, the Board finds the following relevant facts:

In March, 1988, Dr. Diaz was practicing in association with Dr. Rosenkrantz and another doctor in St. Bernard Parish, Louisiana. He had completed his residency in orthopedics about six months before, and was the junior associate in the partnership.

On March 31, 1988, Dr. Diaz was called to care for M.F., an 83 year old nursing home inmate, who had fallen and sustained a severe fracture of her right hip. M.F. had been admitted to De La Ronde Hospital in Chalmette, Louisiana, by Dr. Verrette, who called Dr. Diaz in consultation. The surgical consult note by Dr. Diaz notes a fracture of the right hip, and admission for operation and possible bone graft.

The consent to surgery form, which was signed by M.F.'s niece, authorized "open reduction and internal fixation left hip". No mention is made of a bone graft.

Dr. Diaz requested that Dr. Rosenkrantz assist him and get the patient set up for the proposed surgery. When he arrived in the operating room, Dr. Rosenkrantz first saw M.F. on the stretcher, with traction on the left leg. He looked at the chart and noted the consent for surgery on the left hip. The x-rays were brought in, and showed the fracture to be on the right side. Dr. Rosenkrantz decided that the x-rays were mislabeled, and proceeded to make the incision on the left side, where he found no fracture. Dr. Diaz testified that he had not authorized Dr. Rosenkrantz to begin the operation.

When Dr. Diaz arrived in the operating room, he found the patient on the fracture table, with the incision on her left hip. He checked with the fluoroscope and located the fracture on the right side. He then elected to take some material from the left hip for a bone graft, and did so. The incision on the left side was closed, and the patient repositioned on the table. The operation and bone graft were then performed on the right hip by Dr. Diaz. The patient recovered without incident.

After the operation, neither the patient nor her relatives were advised of the surgical error which had occurred. The services involved were billed to Medicare as though taking the bone graft from the left hip had been planned in advance. The operative note reads the same way.

CONCLUSIONS OF LAW

The Board finds, that, considering the situation found by Dr. Diaz when he entered the operating room, there were no improper procedures followed in the performance of the surgery. By using the material from the left hip, Dr. Diaz avoided having to make a third incision to get graft material from the pelvis on the right side. However, the Board is equally convinced that Dr. Diaz had an obligation to make known to the patient, or her next of kin, the full circumstances of the surgical error which occurred. His operative note should have disclosed the error which led to the incision on the left side. The Board further notes that Dr. Diaz performed surgery on the right hip, when he had consent to operate on the left hip, and did a bone graft for which he had no consent at all.

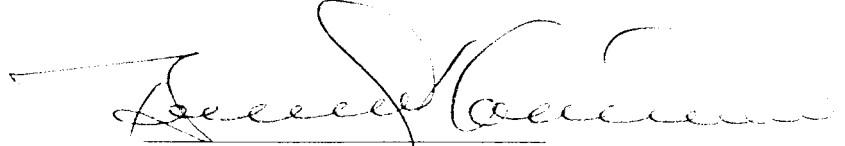
The bill submitted by Dr. Diaz to Medicare was for the procedures actually performed by him or Dr. Rosenkrantz. Medicare refused to pay for the graft, but on the ground that it was included in the charge for the reduction and fixation of the hip fracture.

Considering all of the above, the Board is of the opinion that Dr. Diaz is not guilty of the first three charges against him. However, there is no doubt that Dr. Diaz engaged in deceptive practices when he failed to reveal the circumstances surrounding the erroneous incision in the left hip, and failed to delineate fully those circumstances in his operative report. He is, therefore, guilty of charge number four, unprofessional conduct.

DECISION

Accordingly, the Board finds that Dr. Diaz shall pay a fine of \$3,000.00 and all costs of this proceeding. The Board further reprimands Dr. Diaz, and cautions him that he has a professional obligation to fully and honestly document all procedures performed by him, and to inform fully all patients, or those responsible for the patients, of all matters related to the procedures carries out on them.

AT ALEXANDRIA, LOUISIANA, this 24 day of August, 1993.

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**

Bernard L. Kaplan, M.D.
President