

FILED
DEPARTMENT OF HEALTH
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STATE OF FLORIDA
DEPARTMENT OF HEALTH

BOARD:	Medicine
CASE NUMBER:	2002-18532
COMPLAINT MADE BY:	T.G.
COMPLAINT MADE AGAINST:	Joseph Manuel Ossorio, M.D. 7801 SW 24 th St., Suite 102 Miami, FL 33155
DATE OF COMPLAINT:	May 15, 2002
INVESTIGATED BY:	Paul Randall, ISU
RECOMMENDATION BY:	Lynne A. Quimby-Pennock
RECOMMENDATION:	Dismiss (4099)

Closing Order on Reconsideration

COMPLAINT: Complainant alleges Subject prescribed medication to a patient without a physical exam, failed to maintain medical records regarding that individual, and failed to practice medicine within the standard of care, as well as inappropriate prescribed in violation of Sections 458.331(1)(t)(m)&(q), Florida Statutes.

FACTS: On 4/5/02, TG, an inspector for the Missouri Board of Pharmacy, in his undercover capacity, completed an on-line questionnaire via internet site www.e-scripts-md.com. Through this site, TG ordered 30 tablets of Phentermine 30mg, a schedule IV controlled substance used to treat morbid obesity. On 4/6/03, Subject prescribed the requested Phentermine to TG, and on 4/10/02 TG received the prescribed medication via FedEx.

Subject's Florida Physician profile indicates that Subject's primary place of business is in Miami, however, Subject also has locus tenens privileges to practice medicine Kentucky. In a responsive letter through his attorney, Subject maintains that the prescription to TG was written by him in Kentucky, under his Kentucky license, using the DEA number assigned to his Kentucky license. Furthermore, the activity in question was not illegal in the state of Kentucky at the time the prescription was written and there is no evidence that Subject wrote a prescription solicited through www.e-scripts-md.com to any Florida residents.

Subject's attorney asserts that Subject returned in Florida in June 2002 and when he saw newspaper articles about internet pharmacy and prescribing cases, he immediately stopped prescribing over the internet and has not done so since. She claims that Subject was involved in only a very limited venture only in Kentucky in 2002. Despite an intensive investigative effort by the Department, we are unable to find any evidence to dispute Subject's argument that he was in Kentucky at the time of the action.

Here we have a case where a physician was working in another state, under the auspices of that state's license and his DEA registration for that state, and did something that was legal at the time under that state's board statutes and rules. The situation would be different if the Subject had been disciplined in Kentucky for his actions, or if he had been criminally convicted. Unfortunately, as it stands, although the Florida Department of Health and the Florida Board of Medicine take a strong position against Subject's actions, and would likely render harsh discipline against a Florida licensee who engaged in the same activity in Florida, the Department is unable to pursue this particular matter further.

LAW: Section 456.073(2), Florida Statutes (2002), provides:

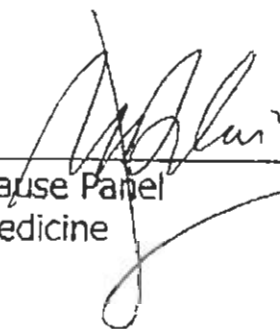
. . . At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. . . . The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department

dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

The Department has the burden of proving the factual allegations alleged in a complaint by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Pursuant to Section 456.073(2), Florida Statutes, the Department may dismiss any case, or any part thereof, if the Department determines that there is insufficient evidence to support the prosecution of the allegations contained in the case. Based upon a review of the investigative file and the evidence obtained after the finding of probable cause, the Department concludes that there is insufficient evidence to support its burden of proving the factual allegations contained in the complaint.

Therefore, this matter will be dismissed without further prosecution.

DONE AND ORDERED this 17th day of September, 2004.



Probable Cause Panel
Board of Medicine

September 17, 2004
PCP members - El-Bakai
Long
Ortiz