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Final Order No. DOH-07-2173-9-MOA
FILED DATE OCT 17 2007
Department of Health
By: Rachel B...
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2003-14477
LICENSE NO.: ME0036598

CHARLES J. DACK, M.D.,

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on October 5, 2007, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

Paragraph 1 of the Stipulated Conclusions of Law shall be clarified to state that the Respondent is a **licensed** physician. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 16 day of OCTOBER, 2007.

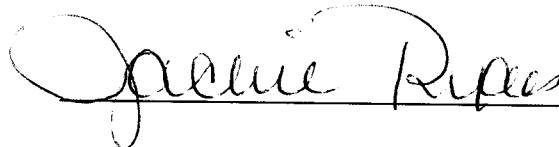
BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for H. FRANK FARMER, JR., M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to CHARLES J. DACK, M.D., 114 McDonald Street, Lakeland, Florida 33803; and 1952 East Edgewood Drive, #M3, Lakeland, Florida 33803; to Phillip Wallace, Esquire, Grower, Ketcham, et al., 390 N. Orange Avenue, Suite 1900, Orlando, Florida 32801-1677; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 17th day of October, 2007.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2003-14477

CHARLES J. DACK, M.D.

Respondent.

SETTLEMENT AGREEMENT

Charles J. Dack, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number 36598.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of

Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in her capacity as an unlicensed physician, she is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Medicine shall impose an administrative fine of seven thousand dollars (\$7,000.00) against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. All fines shall be paid by check or money order. The

Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case shall not exceed six thousand one hundred nine dollars and thirty three cents (\$6,109.33). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within thirty-days (30) from the

date of filing of the Final Order in this cause. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Drug Course** - Respondent shall complete the course, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing," sponsored by the University of South Florida, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

5. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend sixteen (16) hours of Continuing Medical Education (CME) in drug medication and pain management consults. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers,

certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

STANDARD PROVISIONS

6. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.
7. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.
8. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.
9. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the

ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

10. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

11. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

12. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board

and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

13. Waiver of attorney's fees and costs - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

14. Waiver of further procedural steps - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 23 day of AUG, 2007.

Wesley J. Dack MD
s J. Dack, M.D.

RECEIVED

AUG 28 2007

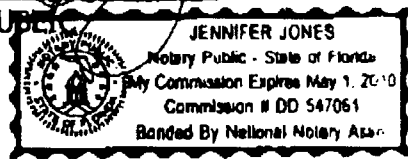
GROWER, KETCHAM, RUTHERFORD,
BRONSON, EIDE & TELAN, P.A.

Before me, personally appeared Charles Dack, whose identity is known to me by FL-1DL (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 23 day of Aug 2007.

Jennifer Jones
NOTARY PUBLIC

My Commission Expires: May 01, 2010



APPROVED this 29th day of August, 2007.

Ana M. Viamonte Ros, M.D., M.P.H.
Surgeon General, State of Florida

[Signature]

By: Dorys H. Penton
Assistant General Counsel
Department of Health

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NUMBER 2003-14477

CHARLES J. DACK, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, Charles Dack, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed physician within the state of Florida, having been issued license number ME 36598.

10-01-03

3. Respondent's address of record is 1952 East Edgewood Drive #M3, Lakeland, Florida 33803.

4. Respondent is board certified in psychiatry with subspecialty certificates in addiction psychiatry and child psychiatry.

5. From on or about October 27, 1995, through on or about March 2002, Patient M.T., a female patient, was treated by Respondent for depression and back pain following an injury.

6. Patient M.T. had been suffering from chronic back pain for several years prior to presenting to Respondent.

7. Respondent treated Patient M.T.'s depression by prescribing various medications, including but not limited to Elavil.

8. Elavil (amitriptyline) is a tricyclic antidepressant that is prescribed for the treatment of depression. Elavil is also sometimes prescribed for relief of chronic pain.

9. On or about January 1996, Respondent prescribed Methadone 10 mg., three times per day for Patient M.T. as treatment of her pain symptoms.

10. Methadone 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.

11. In or about February 1996, Respondent discontinued the Methadone based on Patient M.T.'s complaints of nausea and began to prescribe MS Contin for her pain symptoms.

12. MS Contin contains morphine sulfate, also a Schedule II controlled substance listed in Chapter 893, Florida Statutes, and indicated for the relief of moderate to severe pain.

13. On or about May 1998, Respondent prescribed 30 mg of MS-IR, to be taken as needed for pain for Patient M.T.

14. MS-IR (morphine sulfate instant release) contains morphine sulfate, a Schedule II controlled substance listed in Chapter 893, Florida Statutes, which is indicated for the relief of moderate to severe pain. Morphine has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment in the United States. Prolonged use and or abuse of morphine may lead to severe psychological or physical dependence.

15. On or about January 5, 1999, Respondent increased Patient M.T.'s prescription for MS-IR to 5 tablets, 30 mg each, every 12 hours, or a total of 150 mg every 12 hours; he prescribed 5 tablets of 100 mg each of MS Contin every twelve hours or 500 mg every 12 hours. This is a total of 1300 mg of Morphine each day.

16. Respondent continued Patient M.T.'s dose of 1300 mg of Morphine daily from January of 1999 until March of 2002. Respondent also continued to prescribe Elavil to Patient M.T., with a dosage of 300 mg per day from 1995 until 2002. Additionally and concurrently, Respondent prescribed other medications for Patient M.T., specifically: Zoloft, Desyrel, Sorbitol, Motrin, and Senakot.

17. Although Respondent suggested to Patient M.T. that she should be treated at a pain clinic, at no time during his treatment of Patient M.T. did Respondent refer her for further evaluation.

18. On or about April, 1997, Respondent received an opinion regarding Patient M.T.'s condition and treatment from A.J.F, a doctor in Psychiatry. In his opinion, A.J.F. was quite concerned about Patient M.T.'s continued use of MS Contin. A.J.F. further opined and advised that it would be better for Patient M.T. to be taken off this medication. A.J.F. also

stated that if Patient M.T. had more conventional pain management, the MS Contin could be discontinued. At the time A.J.F. rendered his opinion, Respondent was prescribing only 100 mg of MS Contin daily for Patient M.T. This is per Respondent's own records for Patient M.T., which had been provided to A.J.F. to review and on which he based his opinion.

19. In Respondent's letter of July 10, 1997 to Dina Anderson at the Liberty Mutual Group, Respondent acknowledged he concurred with A.J.F.'s opinion that Patient M.T. might benefit from a pain management program. Yet Respondent failed to take steps to make certain Patient M.T. sought the help of pain management specialists. Respondent chose to continue to prescribe high levels of the MS Contin without requiring Patient M.T. to seek conventional pain management.

20. Respondent continued the dosage of amitriptyline for approximately seven years, without checking Patient M.T.'s blood level.

21. Respondent did not properly evaluate Patient M.T.'s tolerance to opiate medications.

22. Respondent did not properly consider the possibility of Patient M.T.'s exaggeration of pain level.

23. Respondent did not properly consider Patient M.T.'s dependence to opiate medications.

24. Respondent kept Patient M.T. on high doses of MS Contin and further, at a toxic level of morphine for approximately two and a half years.

25. On or about March 13, 2002, Patient M.T. was found dead. The Medical Examiner's report stated the cause of death as "multiple drug intoxication, namely opiates and tricyclic antidepressants."

COUNT ONE

26. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

27. Rule 64B8-9.013, Florida Administrative Code (FAC), which is part of the chapter of the Florida Administrative Code where the Board of Medicine establishes standards of care for physicians, provides in relevant part:

64B8-9.013 Standards for the Use of Controlled Substances for the Treatment of Pain.

(1) Pain management principles.

(a) The Board of Medicine recognizes that principles of quality medical practice dictate that the people of the State of Florida have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity and costs associated with untreated or inappropriately treated pain. The Board encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is

especially important for patients who experience pain as a result of terminal illness. All physicians should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

(c) The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to trauma or surgery and chronic pain, whether due to cancer or non-cancer origins. The medical management of pain including intractable pain should be based on current knowledge and research and includes the use of both pharmacologic and non-pharmacologic modalities. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not synonymous with addiction.

(d) The Board of Medicine is obligated under the laws of the State of Florida to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.

(e) The Board will consider prescribing, ordering, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds. All such prescribing must be based on clear documentation of unrelieved pain and in compliance with applicable state or federal law.

(f) Each case of prescribing for pain will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these standards, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment

outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.

(g) The Board will judge the validity of prescribing based on the physician's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors. The following standards are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.

(3) Standards. The Board has adopted the following standards for the use of controlled substances for pain control:

(a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) Treatment Plan. The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(c) Informed Consent and Agreement for Treatment. The physician should discuss the risks and benefits of the use of controlled

substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician should employ the use of a written agreement between physician and patient outlining patient responsibilities, including, but not limited to:

1. Urine/serum medication levels screening when requested;
2. Number and frequency of all prescription refills; and
3. Reasons for which drug therapy may be discontinued (i.e., violation of agreement).

(d) Periodic Review. At reasonable intervals based on the individual circumstances of the patient, the physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of the patient's progress. If treatment goals are not being achieved, despite medication adjustments, the physician should reevaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

(e) Consultation. The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

1. The medical history and physical examination, including history of drug abuse or dependence, as appropriate;
2. Diagnostic, therapeutic, and laboratory results;
3. Evaluations and consultations;
4. Treatment objectives;

5. Discussion of risks and benefits;
6. Treatments;
7. Medications (including date, type, dosage, and quantity prescribed);
8. Instructions and agreements; and
9. Periodic reviews.

Records must remain current and be maintained in an accessible manner and readily available for review.

(g) Compliance with Controlled Substances Laws and Regulations: To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations. Physicians are referred to the Physicians Manual: An Informational Outline of the Controlled Substances Act of 1970, published by the U.S. Drug Enforcement Agency, for specific rules governing controlled substances as well as applicable state regulations.

28. Section 458.331(1)(t), Florida Statutes (1995-2001), provides that 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 constitutes grounds for disciplinary action by the Board of Medicine.

29. Respondent failed 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, in one or more of the following ways:

(a) By failing to properly moderate the amount of controlled substances prescribed to Patient M.T.;

(b) By failing to properly recognize Patient M.T.'s dependence and tolerance for controlled substances;

(c) By inappropriately escalating the quantity and dosage of the prescribed narcotics for Patient M.T. without objectively justifying and adequately documenting changes in the patient's condition;

(d) By failing to require Patient M.T. seek help from pain management specialist before continuing to prescribe morphine at toxic levels;

(e) By failing to properly moderate the dosage of amitriptyline prescribed to Patient M.T.;

(f) By failing to obtain an amitriptyline blood level for Patient M.T.;

30. Because Respondent failed to meet the standards of practice required for use of controlled substances for pain management as established in Rule 64B8-9.013, F.A.C., Respondent has failed 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 as to all the patients whose cases were reviewed herein.

31. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (1995-2001), 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.

COUNT TWO

32. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) as if fully set forth herein.

33. Section 458.331(1)(q), Florida Statutes, (1995-2001) provides that prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice (inappropriately or in excessive or inappropriate quantities) sets forth grounds for disciplinary action by the Board of Medicine.

34. Respondent prescribed legend drugs, including controlled substances, inappropriately or in excessive or inappropriate quantities, endangering the patient's health, and not in the best interest of the patient and not in the course of the physician's professional practice in one or more of the following ways:

(a) By failing to properly moderate the amount of controlled substances prescribed to Patient M.T.;

(b) By failing to properly recognize Patient M.T.'s dependence and tolerance for controlled substances;

(c) By inappropriately escalating the quantity and dosage of the prescribed narcotics for Patient M.T. without objectively justifying and adequately documenting changes in the patient's condition;

(d) By failing to require Patient M.T. seek help from a pain management specialist before continuing to escalate the medication during several years;

(e) By failing to properly moderate the dosage of amitriptyline prescribed to Patient M.T.

(f) By failing to obtain an amitriptyline blood level for Patient M.T.

35. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes, (1995-2001), by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the

best interest of the patient and not in the course of the physician's professional practice, without regard to his intent.

WHEREFORE, the Petitioner respectfully requests that the Board of 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, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 15 day of March, 2007.

Ana M. Viamonte Ros, M.D., M.H.P.
Secretary, Department of Health



Dorys H. Penton
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
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(850) 245-4640 Telephone
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: Rachmelski
DATE 3-13-07

PCP: March 9, 2007

PCP Members: Ashkar, Barrau & Beebe

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.

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.