Final Order No. DOH-08-0022-S-MQA
FILED DATE - 1-4-08
Department of Health
By: Rachel Kohn
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2006-04858
LICENSE NO.: ME0047885

JOSEPH JOHN ALTIERI, 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 November 30, 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, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which Respondent was given 7 days to accept. By letter dated December 27, 2007, counsel for Respondent accepted the Board's Counter Settlement Agreement on behalf of Respondent. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

1. The fine set forth in Paragraph 2 of the Stipulated Disposition shall be increased to $30,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall reflect the actual costs in this matter in the amount of $6,878.14.

3. The language in Paragraph 10 of the Stipulated Disposition shall be clarified to delete the language regarding "following the period of suspension." Respondent's license is not suspended.

4. The probation set forth in Paragraph 10 of the Stipulated Disposition shall require Respondent to be on probation for a period of two (2) years. In addition, the Respondent's monitor during the probationary period shall be located within 20 miles of Respondent.

5. Respondent undergo an evaluation by the Professionals Resource Network (PRN) within 9 months from the date of entry of the Final Order and is required to comply with any and all recommendations of PRN.

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 amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as amended.

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

DONE AND ORDERED this 3 day of January, 2008.

BOARD OF MEDICINE

Larry McPherson, Jr., Executive Director
*for* ROBERT CLINE, M.D., Vice-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 JOSEPH JOHN ALTIERI, M.D., 4025 8th Lane, Vero Beach, Florida 32960; to Sean Ellsworth, Esquire, Ellsworth Law Firm, 404 Washington Avenue, Suite 750, Miami Beach, Florida 33139; and by interoffice delivery to Ephraim Livingston, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 4 day of January, 2008.

Kellie Landis

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**Deputy Agency Clerk**

**STATE OF FLORIDA**
**DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.** **DOH Case No. 2006-04858**

**JOSEPH JOHN ALTIERI, M.D.,**

**Respondent,**

_____/

## SETTLEMENT AGREEMENT

Joseph John Altieri, 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 the 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 ME 47885.

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 his capacity as a licensed physician, he 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 fifteen thousand dollars ($15,000.00) 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 prosecution 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 includes but shall not exceed seven thousand eight hundred dollars ($7,800.00). 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. **Laws And Rules Course** - Respondent shall complete the Laws and Rules Course, administered by the Florida Medical Association, within one (1) year of the date of filing of the Final Order of the Board. In addition, 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 education course within one (1) year of the date of filing of the Final Order incorporating this Agreement. **All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be**

**in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.**

5. **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.

6. **Records Course** - Respondent shall complete the course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

7. **Community Service** - Respondent shall perform one hundred (100) hours of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

8. **Continuing Medical Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend three (3) hours of Continuing Medical Education (CME) in medical ethics. 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.

9. **Quality Assurance Consultation/Risk Management Assessment** - An independent, certified risk manager will review Respondent's current practice within sixty (60) days of the date of filing of the Final Order. Specifically, this independent consultant shall review the office procedures employed at Respondent's practice. This consultant will prepare a report addressing Respondent's practice. This report will include suggested improvements of the quality assurance of Respondent's practice. Respondent will submit this report, as well as documentation that demonstrates compliance with the suggestions

enumerated in the report, to the Probation Committee. Respondent shall bear the cost of such consultation and any necessary or appropriate follow-up consultation.

10. **Probation Language** - Effective following the completion of the suspension, Respondent's license to practice medicine shall be placed on probation for a period of one (1) year. The purpose of probation is not to prevent Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

(A) **Restrictions During Probation** - During the period of probation, Respondent's license shall be restricted as follows:

i. **Indirect Supervision** - Respondent shall practice only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "monitor", whose responsibilities are set by the Board. Indirect supervision does not require that the monitor practice on the same premises as Respondent, however, the monitor shall practice within a reasonable geographic proximity to Respondent, which shall be within 70 miles unless otherwise provided by the Board and shall be readily available for consultation. The monitor shall be Board Certified in Respondent's specialty area unless otherwise provided by the

Board. In this regard, Respondent shall allow the monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the monitor to supervise Respondent as detailed below.

ii. **Required Supervision:**

a) If the terms of the Settlement Agreement include indirect monitoring of the licensee's practice or direct monitoring of the licensee's practice, Respondent shall not practice medicine without an approved monitor/supervisor, as specified by the Agreement, unless otherwise ordered by the Board.

b) The monitor/supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board and be practicing within a reasonable distance of Respondent's practice, a distance of twenty (20) miles unless otherwise specifically provided for in the Settlement Agreement. The Board may also reject any proposed monitor/supervisor for good cause shown.

iii. **Mechanism For Approval Of Monitor/Supervisor:**

a) **Temporary Approval** - The Board confers authority on the Chairman of the Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting the Agreement is filed, Respondent shall not practice medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

b) **Formal Approval** - Respondent shall have the monitor/supervisor with Respondent at Respondent's first probation appearance before the Probation Committee. Prior to the consideration of the monitor/supervisor by the Probation Committee, Respondent shall provide to the monitor/supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vita and a description of current practice from the proposed monitor/supervisor to the Board office no later than fourteen (14) days before Respondent's first scheduled probation appearance. Respondent's monitor/supervisor shall also appear before the Probation Committee at such other times as directed by the Probation Committee. It shall be Respondent's responsibility to ensure the appearance of the monitor/supervisor as directed. Failure of the monitor/supervisor to appear as directed shall constitute a

violation of the terms of this Settlement Agreement and shall subject Respondent to disciplinary action.

iv. **Change In Monitor/Supervisor** - In the event that Respondent's monitor/supervisor is unable or unwilling to fulfill the responsibilities of a monitor/supervisor as described above, Respondent shall immediately advise the Probation Committee of this fact. Respondent shall immediately submit to the Chairman of the Probation Committee the name of a temporary monitor/supervisor for consideration. Respondent shall not practice pending approval of this temporary monitor/supervisor by the Chairman of the Probation Committee. Furthermore, Respondent shall make arrangements with his temporary monitor/supervisor to appear before the Probation Committee at its next regularly scheduled meeting for consideration of the monitor/supervisor by the Probation Committee. Respondent shall only practice under the auspices of the temporary monitor/supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Probation Committee at which the issue of the Probation Committee's approval of Respondent's new monitor/supervisor shall be addressed.

v. **Responsibilities Of The Monitor/Supervisor** - The Monitor shall:

a) Review 10% percent of Respondent's active patient records at least once every month for the purpose of ascertaining Respondent's prescribing practices and record keeping. The monitor shall go to Respondent's

office once every month and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

b) Review all of Respondent's patient records for patients treated for pain with controlled substances. In this regard, Respondent shall maintain a log documenting all such patients.

c) Submit reports on a quarterly basis, in affidavit form, which shall include:

1) A brief statement of why Respondent is on probation;

2) A description of Respondent's practice (type and composition);

3) A statement addressing Respondent's compliance with the terms of probation;

4) A brief description of the monitor's relationship with Respondent;

5) A statement advising the Probation Committee of any problems which have arisen; and

6) A summary of the dates the monitor went to Respondent's office, the number of records

reviewed, and the overall quality of the records reviewed, and the dates Respondent contacted the monitor pursuant to subsection v. a), above.

d) Report immediately to the Board any violations by Respondent of Chapters 456 or 458, Florida Statutes, and the rules promulgated thereto.

e) Respondent's monitor shall appear before the Probation Committee at the first meeting of said committee following commencement of the probation, and at such other times as directed by the Committee. It shall be Respondent's responsibility to ensure the appearance of Respondent's monitor to appear as requested or directed. If the approved monitor fails to appear as requested or directed by the Probation Committee, **Respondent shall immediately cease practicing medicine until such time as the approved monitor or alternate monitor appears before the Probation Committee.**

vi. **Reports From Respondent** - Respondent shall submit quarterly reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

a) A brief statement of why Respondent is on probation;

b) A description of practice location;

c) A description of current practice (type and composition);

d) A brief statement of compliance with probationary terms;

e) A description of the relationship with monitoring physician;

f) A statement advising the Board of any problems which have arisen; and

g) A statement addressing compliance with any restrictions or requirements imposed.

vii. **Continuity Of Practice:**

a) **Tolling Provisions** - In the event Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

1) The time period of probation shall be tolled;

2) The provisions regarding supervision whether direct or indirect by another physician, and required reports from the monitor/supervisor shall be tolled;

3) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled; and

4) Any provisions regarding community service shall be tolled.

b) **Active Practice** - In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

(B) **Obligations/Requirements Of Probation** - During the period of probation, Respondent shall comply with the following obligations and requirements:

I. Upon failure to comply with terms of probation, the Probation Committee may suspend Respondent's license until compliance of terms are demonstrated.

II. Respondent shall appear before the Probation Committee of the Board of Medicine at the first Committee meeting after probation commences, at the last meeting of the Committee preceding scheduled termination of the probation, and at such other times as requested by the Committee. Respondent shall be noticed by the Board staff of the date, time and place of the Committee meeting at which Respondent's appearance is required. Failure of

Respondent to appear as requested or directed or failure of Respondent to comply with any of the terms of this agreement shall be considered a violation of the terms of this Agreement, and shall subject Respondent to disciplinary action.

III. Respondent is responsible for ensuring that the monitor submits required reports.

## STANDARD PROVISIONS

1. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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 30th day of OCTOBER, 2007.

Joseph John Altieri, M.D.

Before me, personally appeared Joseph John Altieri, MD, whose identity is known to me by FL DL A436490564510 (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 30th day of OCTOBER, 2007.

NOTARY PUBLIC

My Commission Expires: 4/27/08



14448

APPROVED this 1ST day of November, 2007.

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

By: Diane K. Kiesling
Assistant General Counsel
Department of Health

DKK/dkk

**STATE OF FLORIDA**
**DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.** **CASE NO. 2006-04858**

**JOSEPH JOHN ALTIERI, M.D.,**

**RESPONDENT.**
_____/

**ADMINISTRATIVE COMPLAINT**

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Joseph John Altieri, 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 medical doctor within the state of Florida, having been issued license number ME 47885.

3. Respondent's address of record is 4025 8th Lane, Vero Beach, Florida 32960.

4. Respondent is board certified by the American Board of Psychiatry and Neuology.

Patient G.B.

5. Patient G.B. was seen by the Respondent beginning on June 15, 2004. He was initially seen by Respondent's physician assistant with a history of problems with pain pills, specifically Lorcet and OxyContin. G.B. had been incarcerated secondary to misuse and abuse of narcotics and he claimed to suffer from chronic knee pain. The initial treatment plan was to discontinue opioid analgesics. No complete medical history or physical examination was conducted.

6. Lorcet is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains hydrocodone bitartrate and acetaminophen, which, when mixed together, is a Schedule III controlled substance. Lorcet is indicated for the relief of moderate to moderately severe pain. Lorcet has a potential for abuse, and the abuse of Lorcet can lead to moderate or low physical dependence or high psychological dependence. Lorcet contains acetaminophen, which is contraindicated in patients who have liver problems.

7. OxyContin is a semi-synthetic opiate that contains oxycodone hydrochloride, a Schedule II controlled substance defined in Chapter 893, Florida Statutes, and 21 United States Code Section 812, which is indicated for the relief of moderate to severe pain. OxyContin has a high potential for abuse and has a currently accepted, but limited, medical use in treatment in the United States. Abuse of this substance may lead to severe physical and psychological dependence.

8. Subsequently, Respondent began prescribing methadone. From that time until G.B. was terminated on May 31, 2006, for missed appointments and repeated non-compliance, he was prescribed a constantly changing cocktail of drugs, including Zoloft, methadone (in increasing dosages), and Xanax. Even when G.B. told the Respondent that he was "intermittently" using Oxycontin off the streets, Respondent continued to prescribe methadone. Despite these increasing drug cocktails, Respondent did not perform even the most basic laboratory testing such as liver function tests.

9. Methadone is a synthetic narcotic similar to morphine. It is also known as Dolophine and is a Schedule II controlled substance defined in Chapter 893, Florida Statutes, which is indicated for the relief of

moderate to severe pain. Methadone has a high potential for abuse and has a currently accepted, but limited, medical use in treatment in the United States. Abuse of this substance may lead to severe physical and psychological dependence.

10. Zoloft contains Sertraline. Sertraline is a legend drug, available only by prescription, and is in the selective seratonin reuptake inhibitor (SSRI) class. Sertraline is effective for the treatment of depression and certain types of anxiety disorders.

11. Xanax, which contains alprazolam, is a Schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in Schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

12. No complete history and physical examination was ever conducted. Respondent did not perform any tests or order any consultations to determine the etiology of G.B.'s pain. The follow up visits contained no evidence of repeated urinalysis or assessment of comfort or functional status. No records of treatment of G.B.'s knee by any other physician were included in Respondent's records.

13. Respondent never established a diagnosis for the condition for which he was treating G.B.—"intractable pain." Respondent did not provide any medical evidence to establish that no alternatives for treatment existed. Respondent did not consult with the physician who was treating G.B.'s knee. The Respondent's treatment of G.B. is not justified by the documentation.

14. Respondent did not assess or did not document assessing the presence of aberrant drug-taking behavior even when the patient reported taking medication off the street and running out of medication inappropriately. Respondent did not document assessing G.B.'s comfort, opioid side effects, functional status or existence of drug-taking behavior.

15. Respondent did not document justification for changes in medication or dosages of medication based on described clinical symptoms.

**COUNT ONE**

16. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth herein.

17. Section 458.331(1)(t), Florida Statutes (2003-2005), 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.

18. 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.
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> (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.

19. 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 conduct a complete medical history or physical examination at any time throughout G.B.'s treatment;

b. By constantly changing the medications and dosages of those medications prescribed for G.B. without justification for doing so;

c. By continuing G.B. on methadone even when he knew that G.B. was using OxyContin off of the street;

d. By failing to perform any tests or order any consultations to determine the etiology of G.B.'s pain;

e. By failing to repeat a urinalysis on G.B.;

f. By failing to assess comfort level or functional status;

g. By failing to obtain records of treatment of G.B.'s knee by any physician or to establish a diagnosis of the intractable pain;

h. By failing to provide medical evidence that no alternative treatment existed for G.B.'s pain;

i. By failing to assess G.B.'s aberrant drug-taking behavior;

j. By failing to comply with Rule 64B8-9.013, Florida Administrative Code;

k. By failing to document justification for the course of treatment that he followed with G.B. over the two years that he saw G.B.

20. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2003-2005), 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**

21. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth in this count.

22. Section 458.331(1)(q), Florida Statutes (2003-2005), 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 constitutes grounds for disciplinary action by the Board of Medicine. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

23. Respondent inappropriately and excessively prescribed legend drugs and controlled substances to G.B. other than in the course of his professional practice by prescribing without any documented justification

for the medications, changes in medications or changes in dosages of the medications.

24. Based on the foregoing, Respondent has violated Section 458.331(1)(q), Florida Statutes (2003-2005), 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 legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

**COUNT THREE**

25. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth in this count.

26. Section 458.331(1)(m), Florida Statutes (2003-2005), provides that failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional

title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and 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 constitutes grounds for disciplinary action by the Board of Medicine.

27. Respondent failed to keep medical records that justify the course of treatment of G.B. in one or more of the following ways:

a. By failing to document the justification for prescribing methadone, Zoloft, and Xanax in the dosages and circumstances that he did;

b. By failing to document any justification for failing to perform laboratory testing;

c. By failing to document a complete medical history or complete physical examination;

d. By failing to document any tests or consultations to determine the etiology of G.B.'s "intractable pain";

e. By failing to document any attempts to obtain medical records from G.B.'s other prior or current physicians;

f. By failing to document a diagnosis for G.B.'s pain;

g. By failing to document that any attempts at or medical evidence that no alternative treatment would be effective;

h. By failing to document a justification for failing to obtain consultations regarding G.B.;

i. By failing to document assessing the presence of aberrant drug-taking behavior;

j. by failing to document the comfort level, opioid side effects, functional status or existence of drug-taking behavior of G.B.

28. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2003-2005), by failing to keep 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.

Patient L.V.

29. Patient L.V., a then 47 year-old woman, was first seen in Respondent's office on June 1, 2004. L.V. reported a history of heroin addiction beginning at age 22 and subsequent methadone addiction. She got off of those drugs three years prior to seeing Respondent. She also reported a sixteen-year addiction to Xanax which she had quit as well.

30. L.V. was diagnosed with chronic pain, history of heroin addiction and methadone therapy and withdrawal, and bipolar disorder.

31. Respondent prescribed three different mood stabilizing agents, which were continued, with the addition of Robaxin for muscle discomfort on November 30, 2004.

32. Robaxin is the brand name for methocarbamol and is a legend drug available by prescription. It is a central nervous system depressant with sedative and musculoskeletal relaxant properties. Robaxin is prescribed, along with rest, physical therapy, and other measures, for the relief of pain due to severe muscular injuries, sprains, and strains.

33. Even though she did not report "somatic complaints" on March 21, 2005, Respondent gave L.V. a prescription for Ultram 50 mg.

34. Ultram, which contains Tramadol, is an analgesic which is not currently a schedule-defined drug under Chapter 893, Florida Statutes. Ultram users experience withdrawal symptoms when use is discontinued, and treatment with Ultram is not recommended for users of opioid pain relievers.

35. L.V. was subsequently prescribed Lorcet and then OxyContin, 40 mg. in September 2005. L.V. requested an early refill on September 26, 2005. On November 17, 2005, she requested a higher dosage and was given OxyContin 60 mg. for a diagnosis of "chronic pain, musculoskeletal in origin." Between then and January 23, 2006, the patient requested and received extra prescriptions due to theft.

36. On January 23, 2006, the patient requested discontinuation and based on her prior history of drug addiction, tapering leading to discontinuation was initiated. However, the patient continued to receive prescriptions for Oxycontin until August 7, 2006, when she missed her appointment and was terminated for non-compliance.

37. Respondent failed to establish a diagnosis for the condition for which L.V. was being treated. Even though L.V. was being treated for

"chronic pain," there was no diagnosis or etiology for the cause of the pain. There was no diagnosis that justified the course of treatment.

38. Respondent provided no medical evidence to show that there were no medical alternatives for treatment of the patient. This is especially significant in a patient with a dramatic history of drug addiction, which led to redevelopment of L.V.'s iatrogenic addiction to opioids.

39. Respondent failed to document a complete medical history or physical examination, including review of past treatment for pain and underlying and coexisting diseases and conditions. Respondent failed to obtain any documentation or verification from prior or current treating physicians regarding the etiology or treatment of L.V.'s pain. If L.V. had no current treating physician, Respondent should have referred her for a consultation to determine her current physical condition underlying her pain.

40. Respondent failed to assess and document at each visit L.V.'s comfort level, opioid-related side effects, functional status, and existence of drug-related behaviors.

41. No laboratory testing, x-rays, CT-scans, MRIs, urine drug screens, and the like were ordered or reviewed related to L.V.'s treatment.

42. L.V.'s medical records lack sufficient clinical detail to determine whether any additional multi-disciplinary treatment modalities could have been utilized to treat her pain.

**COUNT FOUR**

43. Petitioner realleges and incorporates paragraphs one (1) through four (4), seventeen (17), eighteen (18), and twenty-nine (29) through forty-two (42) as if fully set forth herein.

44. 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 conduct a complete medical history or physical examination at any time throughout L.V.'s treatment;

b. By prescribing opioids to a L.V. even though she had a recent history of heroin and methadone addiction, thereby triggering redevelopment of iatrogenic addiction to opioids;

c. By failing to establish a diagnosis for the condition for which L.V. was being treatment, i.e., chronic pain, without determining the etiology of the pain;

d. By treating L.V. without a diagnosis that justified the course of treatment;

e. By treating L.V.'s unsubstantiated chronic pain with opioids without evidence that medical alternatives would not have been equally effective;

f. By failing to obtain documentation or verification from prior or current treating physicians regarding etiology or treatment of L.V.'s pain;

g. By failing to refer L.V. for a consultation to determine her current physical condition underlying her pain;

h. By failing to assess and document at each visit L.V.'s comfort level, opioid-related side effects, functional status, and existence of drug-related behaviors;

i. By failing to order or review laboratory testing, x-rays, CT-scans, MRIs, urine drug screens, and the like related to L.V.'s treatment;

j. By failing to comply with Rule 64B8-9.013, Florida Administrative Code;

k. By failing to maintain medical records with sufficient clinical detail to determine whether any additional multi-disciplinary treatment modalities could have been utilized to treat L.V.'s pain;

l. By failing to maintain medical records that justified the course of treatment.

45. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2003-2005), 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 FIVE**

46. Petitioner realleges and incorporates paragraphs one (1) through four (4), twenty-two (22), and twenty-nine (29) through forty-two (42) as if fully set forth herein.

47. Respondent inappropriately and excessively prescribed legend drugs and controlled substances to L.V. other than in the course of his

professional practice by prescribing without any documented justification for the medications, changes in medications or changes in dosages of the medications.

48. Based on the foregoing, Respondent has violated Section 458.331(1)(q), Florida Statutes (2003-2005), 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 legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

**COUNT SIX**

49. Petitioner realleges and incorporates paragraphs one (1) through four (4), twenty-six (26), and twenty-nine (29) through forty-two (42) as if fully set forth herein.

50. Respondent failed to keep medical records that justify the course of treatment of L.V. in one or more of the following ways:

a. By failing document a complete medical history or physical examination at any time throughout L.V.'s treatment;

b. By failing to document a diagnosis for the condition for which L.V. was being treatment, i.e., chronic pain, without diagnosing the etiology of the pain;

c. By treating L.V. without documenting a diagnosis that justified the course of treatment;

d. By treating L.V.'s unsubstantiated chronic pain with opioids without documenting evidence that medical alternatives would not have been equally effective;

e. By failing to obtain documentation or verification from prior or current treating physicians regarding etiology or treatment of L.V.'s pain;

f. By failing to document his reason for not referring L.V. for a consultation to determine her current physical condition underlying her pain;

g. By failing to assess and document at each visit L.V.'s comfort level, opioid-related side effects, functional status, and existence of drug-related behaviors;

h. By failing to document ordering or reviewing laboratory testing, x-rays, CT-scans, MRIs, urine drug screens, and the like related to L.V.'s treatment;

i. By failing to maintain medical records with sufficient clinical detail to determine whether any additional multi-disciplinary treatment modalities could have been utilized to treat L.V.'s pain;

j. By failing to maintain medical records that justified the course of L.V.'s treatment.

51. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2003-2005), by failing to keep 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.

Patient W.M.

52. Patient W.M. was a social friend of the Respondent prior to becoming his patient. W.M. was first seen in a professional relationship with Respondent on November 10, 2004. His diagnosis was "genetic malformation of spinal column and lumbosacral bulging discs." W.M. also reported that he had been on numerous psychotropic medications and he continued to complain of depression, anger, and irritability.

53. W.M. was diagnosed with bipolar disorder and a history of illicit polysubstance abuse was noted. W.M. reported he has been sober for four years.

54. W.M.'s initial treatment, in addition to a mood stabilizer, included Xanax 1 mg bid for anxiety and Percocet 10 mg every 4 hours as needed for pain management.

55. Percocet contains oxycodone hydrochloride, a semi-synthetic narcotic analgesic, which is a Schedule II controlled substance under Chapter 893, Florida Statutes. Percocet is indicated for relief of moderate to moderately severe pain. It has a high potential for abuse and has a currently accepted, but limited, medical use in treatment in the United

States, and abuse of the substance may lead to severe physical and psychological dependence.

56. On December 22, 2004, W.M. was prescribed oxycodone 30 mg as needed.

57. Oxycodone is a Schedule II controlled substance defined in Chapter 893, Florida Statutes, which is indicated for the relief of moderate to severe pain. Oxycodone has a high potential for abuse and has a currently accepted, but limited, medical use in treatment in the United States. Abuse of this substance may lead to severe physical and psychological dependence.

58. In a brief note on January 20, 2005, Respondent noted W.M.'s dose of Percocet was to be decreased to five a day because of the lack of efficacy. This was presumably in addition to the oxycodone.

59. On February 3, 2005, W.M. was taking oxycodone 60 mg three times a day along with Xanax 1 mg daily and other psychotropic medications.

60. By February 19, 2005, W.M. was put on a trial of Ritalin for his "severe ADD" (Attention Deficit Disorder). He was also taking Klonopin 2

mg twice a day. Notes from that day indicated W.M. had not responded adequately to a prior trial at Adderall.

61. Ritalin is the brand name for methylphenidate. Methylphenidate has the same effects as cocaine or the amphetamines. Methylphenidate is a Schedule II controlled substance under Chapter 893, Florida Statutes. Substances in Schedule II have a high potential for abuse and a currently accepted, but severely restricted, medical use in treatment in the United States. Methylphenidate is used in the treatment of excessive daytime sleepiness associated with narcolepsy as well as the treatment of Attention Deficit Hyperactivity Disorder.

62. Klonopin, the brand name for clonazepam, is a benzodiazepine. Benzodiazepines are compounds with antianxiety, hypnotic, anticonvulsant, and skeletal muscle relaxant properties. Clonazepam is a Schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in Schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

63. Adderall XR contains a mixture of dextroamphetamine and amphetamine. Dextroamphetamine and amphetamine are Schedule II

controlled substances under Chapter 893, Florida Statutes. Substances in Schedule II have a high potential for abuse and a currently accepted, but severely restricted, medical use in treatment in the United States. Adderall XR is used in the treatment of excessive daytime sleepiness associated with narcolepsy as well as the treatment of Attention Deficit Hyperactivity Disorder.

64. On March 3, 2005, W.M. complained that he was in so much pain, despite being on a high strength of OxyContin, he admitted taking more Xanax than prescribed. Respondent diagnosed "social anziety disorder. As of this visit, W.M.'s problems were listed as anxiety disorder, history of substance abuse, medical problems and back problems and recurrent major depressive disorder with psychosis. Respondent continued to treat W.M. with Geodon, Remeron and Klonopin (all phsychotropic medications) in addition to the pain medications previously described.

65. On March 11, 2005, the notes indicate that W.M. was taking 120 mg of methadone prescribed by his pain management physician, Dr. R., however he continued to complain of significant pain. W.M. reported taking more Klonopin than was prescribed, resulting in dysfunctional

behavior." He continued to be treated with Klonopin and Ritalin at the same time.

66. On March 22, 2005, W.M. complained of "mild hypomania" and was prescribed OxyContin until he could get back to Dr. R.

67. On April 1, 2005, W.M. complained of feeling sedated and fatigued since switching from methadone to OxyContin. His Adderall was increased to 30 mg twice a day to improve his energy level.

68. As of April 23, 2005, W.M. complained that his pain was not manageable and he asked to try morphine. Respondent prescribed morphine. On April 29, 2005, W.M. reported being happy with the morphine. At that time he was also taking Adderall 20 mg twice a day, Ritalin 20 mg twice a day, hydromorphone, Ristoril 30 mg and Xanax twice a day.

69. Morphine is a Schedule II controlled substance under Chapter 893, Florida Statutes, and is indicated for the management of moderate to severe pain. It has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment in the United States. Abuse of morphine may lead to severe physical and psychological dependence.

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

71. Restoril contains temazepam, a benzodiazepine. Benzodiazepines are compounds with antianxiety, hypnotic, anticonvulsant, and skeletal muscle relaxant properties. Temazepam is a Schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in Schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

72. In May 2005 Respondent adjusted the Ritalin and Adderall and noted that W.M. disclosed a DUI in December 2004 to prove that medications were stolen from his vehicle. Respondent also reviewed records of significant lumbar spinal stenosis and bulging discs on several lumbar levels.

73. On May 27, 2005, Respondent revised W.M's diagnoses to include bipolar disorder; substance abuse in remission; heroin abuse in remission; alcoholism in remission; social anxiety disorder; severe panic disorder; severe, generalized anxiety disorder; rule out parasomnia encouraging patient workup; chronic back pain, severe; GERD; peptic ulcer disease; bilateral injuries to rotator cuffs by history; and adult attention deficit disorder.

74. On September 5, 2006, W.M. was taking Adderall 40 mg twice a day alternating with Ritalin 40 mg twice a day, Xanax 2 mg as needed daily, Valium 10 mg three time a day for muscle spasms, and several other sedative medications such as promethazine, phenergan and Tigan.

75. 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.

76. Tigan is the brand name for the legend drug, trimethobenzamide, and is used to treat nausea and vomiting. Trimethobenzamide may increase the side effects of other drugs that cause

drowsiness, including antidepressants, alcohol, antihistamines, sedatives (used to treat insomnia), pain relievers, anxiety medicines, muscle relaxants, and any other drugs that produce feelings of sleepiness or relaxation.

77. Subsequently, W.M. was prescribed Dilaudid and on September 28, 2005, W.M. complained of nausea and vomiting and that he had lost his prescription for Dilaudid. Respondent noted that W.M. should not be eligible for a refill of his medication every time he alleges he lost them. A refill was provided.

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

79. On October 17, 2005, because W.M. was no longer seeing Dr. R. for pain management, Respondent recommended the W.M. see Dr. C. for pain management "advice."

80. A long progress note dated November 17, 2005, noted that W.M. reported having misplaced his bottle of Xanax. The patient was apparently found lying in the parking lot of a school and taken to the emergency room (ER) by the police. W.M.'s mother contacted Respondent, who went to the ER, had W.M. released into his care. Respondent then went with others to W.M.'s stepfather's home and removed weapons from the household. Apparently W.M. was then to meet Respondent later at the pharmacy to pick up medication

81. As the Respondent approached the pharmacy in his personal vehicle, he found W.M. in handcuffs in the custody of the police. The police were concerned that W.M. was armed. Eventually, Respondent convinced the police to release W.M. into his custody and Respondent assumed responsibility for the supervision of W.M. until the next day.

82. Respondent took W.M. to his personal residence, admittedly because W.M. was his personal friend, and medicated him so that W.M. would sleep through the night. Apparently Respondent believed that the situation was acceptable in the morning to allow W.M. to leave without further treatment.

83. On December 14, 2005, W.M. came to Respondent's office for an unscheduled visit, reporting that his medication bag had been stolen. He received replacement prescriptions.

84. Respondent was aware that W.M. was driving without a driver's license, but took no action.

85. On January 16 and 17, 2006, W.M. brought falsified prescriptions to several pharmacists. Respondent terminated treatment shortly thereafter.

86. Respondent crossed appropriate boundaries by beginning to treat a social friend initially. Additional glaring boundary violations include accompanying W.M. to the pharmacy, taking custody of W.M. from the police, taking W.M. to his home, and medicating W.M. to sleep.

87. Respondent did not perform or did not document a complete medical history or physical examination of W.M. throughout the course of treatment.

88. Respondent did not assess sufficiently and diligently for the presence of aberrant drug-taking behavior or opioid-related side effects. Instead, Respondent was capricious and careless in his prescribing practices with W.M. He prescribed multiple sedative, stimulant, and opioid

drugs in multiple combinations that were inappropriate, excessive, and not in the best interests of the patient. Respondent failed to follow recognized restrictions on prescribing in the face of known addiction.

89. Respondent failed to assess and document at each visit W.M.'s level of comfort, opioid-related side effects, functional status, and existence of aberrant drug-taking behaviors. Without this information Respondent was unable to make appropriate clinical choices.

90. Respondent failed to make a diagnosis of W.M.'s painful condition or to refer W.M. for an appropriate consultation to determine the etiology of W.M.'s pain. Lack of a diagnosis failed to justify the course of treatment.

91. Respondent provided no medical evidence to show that there were no medical alternatives for treatment of the patient. This is especially significant in a patient with a dramatic history of drug addiction.

92. W.M.'s medical records lack sufficient clinical detail to determine whether any additional multi-disciplinary treatment modalities could have been utilized to treat his pain.

93. Respondent's medical records for W.M. fail to justify his course of treatment.

## COUNT SEVEN

94. Petitioner realleges and incorporates paragraphs one (1) through four (4), seventeen (17), eighteen (18), and fifty-two (52) through ninety-three (93) as if fully set forth herein.

95. 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 prescribing multiple controlled and non-controlled drugs in multiple combinations and dosages, without adequate justification;

b. By prescribing multiple controlled and non-controlled drugs in multiple combinations and dosages, despite W.M.'s acknowledged prior polysubstance abuse;

c. By prescribing multiple controlled and non-controlled drugs in multiple combinations and dosages, even when he knew that W.M. was taking medications in greater doses than prescribed and even when he knew that W.M. was exhibiting drug-seeking behavior;

d. By failing to perform tests or order any consultations to determine the etiology of W.M.'s continued pain;

e. By failing to consider or seek medical evidence that no alternative treatment existed for W.M.'s pain;

f. By failing to comply with Rule 64B8-9.013, Florida Administrative Code;

g. By crossing appropriate boundaries related to his treatment of W.M.;

h. By failing to perform or document performing a complete medical history or physical examination of W.M. at any time during the course of treatment;

i. By failing to assess sufficiently and diligently for the presence of aberrant drug-taking behavior or opioid-related side effects;

j. By prescribing multiple sedative, stimulant, and opioid drugs in multiple combinations that were inappropriate, excessive, and not in the best interests of W.M.;

k. By failing to assess and document at each visit W.M.'s level of comfort, opioid-related side effects, functional status, and existence of aberrant drug-taking behaviors;

l. By failing to document diagnoses that justify the course of treatment;

m. By failing to maintain medical records that justify the course of treatment.

96. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2003-2005), 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 EIGHT**

97. Petitioner realleges and incorporates paragraphs one (1) through four (4), twenty-two (22), and fifty-two (52) through ninety-three (93) as if fully set forth herein.

98. Respondent inappropriately and excessively prescribed legend drugs and controlled substances to W.M. other than in the course of his professional practice by prescribing without any documented justification

for the medications, changes in medications or changes in dosages of the medications.

99. Based on the foregoing, Respondent has violated Section 458.331(1)(q), Florida Statutes (2003-2005), 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 legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

**COUNT NINE**

100. Petitioner realleges and incorporates paragraphs one (1) through four (4), twenty-six (26), and fifty-two (52) through ninety-three (93) as if fully set forth herein.

101. Respondent failed to keep medical records that justify the course of treatment of W.M. in one or more of the following ways:

a. By failing to document a complete medical history or physical examination at any time throughout W.M.'s treatment;

b. By failing to document justification for prescribing multiple controlled and non-controlled drugs in multiple combinations and dosages, even when he knew that W.M. was taking medications in greater doses than prescribed and even when he knew that W.M. was exhibiting drug-seeking behavior;

c. By failing to document any test results or orders for consultations to determine the etiology of W.M.'s pain;

d. By failing to document the medical evidence that no alternative treatment existed for W.M.'s pain;

e. By failing to document at any visit an assessment of W.M.'s level of comfort, opioid-related side effects, functional status, and existence of aberrant drug-taking behaviors;

f. By failing to document a diagnosis that justified the course of treatment;

g. By failing to document evidence that medical alternatives would not have been effective to alleviate W.M.'s pain;

h. By failing to maintain medical records that justify the course of treatment.

102. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2003-2005), by failing to keep 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.

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, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

**SIGNED this** 30th **day of** July **, 2007.**

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

Carol L. Gregg for

Diane K. Kiesling
Assistant General Counsel
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DATE 7.31.07

DKK

PCP: 7/27/07

PCP Members: EL-Bahei, Faerber, Long

Joseph John Altierei, M.D. DOH Case No. 2006-04858

## 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.**