

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICAL EXAMINERS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

CASE NO: 0059417

FERNANDO STERN, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, the Department of Professional Regulation, hereinafter-referred to as the "Petitioner", and files this Administrative Complaint before the Board of Medical Examiners, against Fernando Stern, M.D., hereinafter referred to as the "Respondent", and alleges:

1. Petitioner, the Department of Professional Regulation, is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes, Chapter 455, Florida Statutes, and Chapter 458, Florida Statutes.

2. Respondent is, and has been at all times material hereto, a licensed physician in the State of Florida, having been issued license number ME 0026446. Respondent's last known address is Post Office Box #508, Norwich, Connecticut 06361.

COUNT ONE

3. Petitioner realleges paragraphs one (1) and two (2) above as if fully set forth herein this Count One.

4. At all times material hereto, Respondent was a psychiatrist.

5. Between at least on or about October 5, 1983, and on or about August 1, 1984, Respondent prescribed at least the following substances for P W :

<u>DATE</u>	<u>SUBSTANCE</u>	<u>QUANTITY</u>
10/05/83	Percocet	50
11/02/83	Percocet	60
01/04/84	Percocet	75
02/01/84	Percocet	75
03/07/84	Percocet	100
04/03/84	Percocet	65
05/02/84	Percocet	75
06/06/84	Percocet	100
07/06/84	Percocet	100
07/25/84	Percocet	100
08/01/84	Percocet	100

6. Respondent, in his capacity as a psychiatrist, began to treat W in March, 1982, for marital problems. In 1982, W obtained a divorce and later remarried. Respondent continued to treat W as a patient through marital counselling.

7. According to W, W suffers from chronic osteomyelitis and arthritis which causes a great deal of pain. It is for this reason that Respondent prescribed the Percocet described above.

8. Respondent's medical records for patient W do not contain adequate information to justify the above-described prescriptions for Percocet. There is no indication of any records from any previous treating physicians in Respondent's records for patient W. Although Respondent has indicated that patient W has been hospitalized at the Veteran's Administration Hospital in Miami, Florida, there is no indication of such hospitalizations or records for patient W. Additionally, Respondent has indicated that W was admitted to a Stress and Behavior Management Clinic in Daytona Beach, where Stern was a Medical Director and a "specialist in pain control". However, there is no evidence in Respondent's patient records for W that W ever went to the Stress and Behavior Management Clinic in Daytona

Beach, Florida.

9. Respondent's patient records for W do not reflect any referrals of patient W to any specialists for evaluation of W's pain and recommendations as to treatment.

10. Based on the foregoing, Respondent violated Section 458.331(1)(n), Florida Statutes, by failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results.

COUNT TWO

11. Petitioner realleges paragraphs one (1) through nine (9) above as if fully set forth herein this Count Two.

12. Respondent prescribed Percocet to patient W inappropriately or in excessive or inappropriate quantities, in one, some or all of the following respects:

a. The prescriptions were not issued for a medically justifiable purpose as evidenced by the fact that the Respondent failed to properly evaluate the patient prior to prescribing the controlled substances described above, and failed to obtain adequate information from other available sources such as previous physicians and the Veteran's Administration Hospital, about Respondent's condition.

b. Respondent prescribed Percocet to W on an ongoing basis for pain without referring the patient to appropriate specialists for evaluation and treatment and without obtaining any records from other physicians or hospitals whereat W was supposed to have obtained treatment for osteomyelitis and arthritis.

13. Based on the foregoing Respondent violated Section 58.331(1)(q), Florida Statutes, 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 intent.

COUNT THREE

14. Petitioner realleges paragraphs one (1) through nine (9) and 12 above as if fully set forth herein this Count three.

15. Based on the foregoing, Respondent violated Section 58.331(1)(h), Florida Statutes, by failing to perform any statutory or legal obligation placed upon a licensed physician. The specific statutory duty which the Respondent is alleged to have failed to perform is set forth in Section 893.05, Florida Statutes, which provides that a practitioner, in good faith and in the course of his professional practice only, may prescribe, administer, dispense, mix or otherwise prepare a controlled substance.

COUNT FOUR

16. Petitioner realleges paragraphs one (1) through nine (9) and 12 above as if fully set forth herein this Count four.

17. Respondent failed to practice medicine within those levels of care, skill and practice which are recognized as being acceptable by a reasonably similar prudent physician under similar conditions and circumstances, in one, some or all of the following respects:

- a. Respondent failed to maintain adequate patient records to justify his treatment of patient Whitmyer.
- b. Respondent prescribed controlled substances for pain on an ongoing basis without referring the patient to an appropriate specialist for evaluation and treatment.
- c. Respondent prescribed controlled substances for pain on an ongoing basis without obtaining records for patient W. from other treating physicians or hospitals whereat W had been treated for the condition(s) in question.

18. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes, by gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

WHEREFORE, the Petitioner respectfully requests the Board of Medical Examiners to enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 15th day of January, 1986.

Fred Roche

FRED ROCHE, Secretary
Department of Professional
Regulation

FILED

DEPARTMENT OF PROFESSIONAL REGULATION

Melinda Higgins

CLERK

DATE January 17, 1986

COUNSEL FOR DEPARTMENT:

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PCP/ Feinstein, Bass
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STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

DOAH Case No. 86-0539
DPR Case No. 0059417

v.

FERNANDO STERN, M.D.,

Respondent.

STIPULATION

FERNANDO STERN, M.D. hereinafter referred to as Respondent, Department of Professional Regulation, hereinafter referred to as Department, hereby stipulate and agree to the following joint stipulation and a Final Order of the Board of Medicine hereinafter referred to as "Board", incorporating this stipulation and agreement in the above-style cause.

STIPULATED FACTS

1. For all times pertinent herein, Respondent was a licensed physician in the State of Florida having been issued license number ME 0026446.
2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.
3. Respondent neither admits nor denies the allegations of fact contained in paragraphs one through seven and nine of the Administrative Complaint attached hereto as Exhibit A. Respondent denies the allegations of fact contained in paragraphs twelve and seventeen of the Administrative Complaint attached hereto.
4. With respect to paragraph 8 of the Administrative Complaint, Respondent neither admits nor denies the following:

a. That Respondent's medical records for patient W do not contain adequate information to justify the above-described prescriptions for Percocet.

b. That there is no indication of any records from any previous treating physicians in Respondent's records for patient Whitmyer.

c. That Respondent's records for patient W do not reflect that W was previously hospitalized at the Veteran's Administration Hospital in Miami, Florida.

5. With respect to paragraph 8 of the Administrative Complaint, Respondent denies all allegations pertaining to Whitmyer and his participation at the Stress and Behavior Management Clinic, in Daytona Beach, Florida.

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed physician, admits that in such capacity he is subject to the provisions of Chapter 455 and 458, Florida Statutes, and the jurisdiction of the Department and Board.

2. Respondent neither admits nor denies that the facts set forth in the foregoing Stipulated Facts constitute a violation of Section 458.331(1)(n), Florida Statutes (1985), as alleged in the Administrative Complaint. The parties agree that the Respondent did not violate the provisions of Section 458.331(1)(h), (q), and (t), Florida Statutes, as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate the provisions of Chapter 455 and 458, Florida Statutes or the rules promulgated pursuant thereto or any other state or federal law.

2. The Board shall impose an administrative fine in the amount of \$250.00 against Respondent which fine shall be paid by the Respondent to the Executive Director of the Board of Medical Examiners within 30 (thirty) days of the filing of the Board's Final Order in this cause.

3. Respondent shall obtain twenty hours of Category I Medical Education in the area of record keeping. Such continuing medical education shall be obtained within one year of the issuance of a Final Order adopting the terms of this Stipulation.

4. The Board may, in its discretion, reprimand the Respondent.

5. Respondent shall appear before the Board at the meeting whereat this Stipulation is considered. Respondent, in conjunction with the consideration of this Stipulation by the Board, shall respond to questions under oath from the Board, Board Staff, or Department Staff.

6. It is expressly understood that this stipulation is subject to approval of the Board and Department and has no force and effect until an Order is based upon it by the Board.

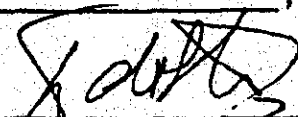
7. This Stipulation is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, the Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Stipulation. Furthermore, should this joint Stipulation not be accepted by the Board, it is agreed that the presentation to and consideration of this Stipulation 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.

8. Respondent and the Department fully understand that this joint Stipulation and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached hereto as Exhibit "A" issued in this cause.

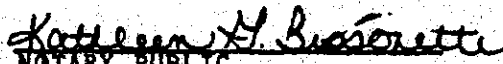
9. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the joint

Stipulation of facts, conclusions of law and imposition of discipline, and the Final Order of the Board incorporating said Stipulation.

SIGNED this 11th day of March, 1987.


Fernando Stern, M.D.
Respondent

Sworn to and subscribed
before me this 11th day
of March, 1987.


Kathleen H. Busonette
NOTARY PUBLIC

My Commission Expires: **MY COMMISSION EXPIRES**
MARCH 31, 1988

APPROVED this 31 day of March, 1987.


Van B. Poole
Secretary

SAD/11
2-19-87

FILED

Department of Professional Regulation
AGENCY CLERK

CLERK *Melinda H. [Signature]*

BEFORE THE BOARD OF MEDICINE

DATE 6/19/87

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DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

FERNANDO STERN, M.D.,

DPR CASE NO. 0059417
LICENSE NO. ME 0026446

Respondent.

FINAL ORDER

THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on June 6, 1987, 1987, in Tallahassee, Florida, for consideration of a Stipulation (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Stipulation, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Stipulation as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Stipulation.

This Order takes effect upon filing.

DONE AND ORDERED this 12 day of June, 1987.

BOARD OF MEDICINE

Emilio Echevarria
EMILIO ECHEVARRIA, M.D.
CHAIRMAN