

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICAL EXAMINERS

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

CASE NO. 0066709

EDUARDO A. GARCIA, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

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

1. Petitioner 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 0021719. Respondent's last known address is 3418 Ocean Drive, Vero Beach, Florida 32960.

COUNT ONE

3. On or about December 18, 1984, [REDACTED] visited Respondent's medical office in Vero Beach, Florida. The patient complained of chronic back pain and requested that Respondent supply him with prescriptions for Demerol. Although Respondent was aware the patient was addicted to Demerol, Respondent agreed to sell prescriptions for Demerol to the patient for a price of approximately \$1,000 per prescription. Between December 1984 and April 1986, Respondent sold approximately 127 prescriptions for Demerol to the patient. No adequate medical justification existed for the sale of the prescriptions to the patient. Demerol is a brand name for a drug or compound containing Meperidine. Meperidine is a scheduled controlled substance as defined by Chapter 893, Florida Statutes.

4. Between December 1984 and April 1986, Respondent sold the patient approximately 7 prescriptions for Percodan. Percodan is a brand name for a drug or compound containing Oxycodone. Oxycodone is a scheduled controlled substance as defined by Chapter 893, Florida Statutes. No adequate medical justification existed for the sale of Percodan to the patient.

5. Between December 1984 and April 1986, Respondent sold the patient approximately 11 prescriptions for Valium. Valium is a brand name for a drug or compound containing Diazepam. Diazepam is a scheduled controlled substance as defined by Chapter 893, Florida Statutes. No adequate medical justification existed for the sale of Percodan to the patient.

6. Between December 1984 and April 1986, the patient received medical treatment at the Doctor's Clinic, Vero Beach, Florida. The patient's treatment for chronic back pain included receiving prescriptions for Demerol, Percodan and Valium. The physicians at the Doctor's Clinic were aware of the patient's addiction to Demerol and made repeated attempts to admit the patient into a drug treatment program.

7. Respondent knew or should have known the patient was receiving medical treatment at the Doctor's Clinic and that the patient was being prescribed scheduled controlled substances by other licensed physicians. Respondent knew or should have known the patient was addicted to scheduled controlled substances and that no adequate medical justification existed for the prescriptions of scheduled controlled substances. Respondent exercised influence on the patient to exploit the patient for Respondent's financial gain.

8. For one or more of the following reasons, 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:

- (a) Respondent failed to properly examine, diagnose and treat the patient;

COUNT THREE

15. Petitioner realleges and incorporates paragraphs one through eleven.

16. Based upon the preceding, Respondent violated Section 458.331(1)(1), Florida Statutes, by making deceptive, untrue, or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine.

COUNT FOUR

17. Petitioner realleges and incorporates paragraphs one through eleven.

18. Based upon the preceding, Respondent violated Section 458.331(1)(n), Florida Statutes, by failing to keep written medical records justifying a patient's course of treatment.

COUNT FIVE

19. Petitioner realleges and incorporates paragraphs one through eleven.

20. Based upon the preceding, Respondent violated Section 458.331(1)(o), Florida Statutes, by exercising influence on a patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or of a third party.

COUNT SIX

21. Petitioner realleges and incorporates paragraphs one through eleven.

22. Based upon the preceding, Respondent violated 21 C. F. R. Section 1306.03, and therefore, violated Section 458.331(1)(h), Florida Statutes, by failing to perform any statutory or legal obligation placed upon a licensed physician.

COUNT SEVEN

23. Petitioner realleges and incorporates paragraphs one through eleven.

24. Based on the preceding, Respondent violated Section 893.02(15), Florida Statutes, and therefore violated Section 458.331(1)(h), Florida Statutes, by failing to perform any statutory legal obligation placed upon a licensed physician.

Respondent's authorized scope of practice; and/or any other relief that the Board deems just and appropriate.

DONE and ORDERED this the 17th day of April, 1986.

Fred Roche

Fred Roche, Secretary
Department of Professional
Regulation

COUNSEL FOR PETITIONER:

W. Douglas Beason, Esquire
Department of Professional Regulation
130 North Monroe Street
Tallahassee, Florida 32301
(904) 488-1813

WDB/lcm
4/16/86

PCP: EE, HRL

FILED
DEPARTMENT OF PROFESSIONAL REGULATION

Melvin H. Wagner
CLERK

DATE April 18, 1986

FILED

BEFORE THE BOARD OF MEDICINE Department of Professional Regulation

BOARD CLERK

DEPARTMENT OF PROFESSIONAL REGULATION,

CLERK

Jesse Woods

Petitioner,

DATE

2-24-87

vs.

EX: Legal Board

EDUARDO A. GARCIA, M.D.,

DPR CASE NO. 0066709
DOAH CASE NO. 86-1490
LICENSE NO. ME 0021719

Respondent.

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)(9), Florida Statutes on February 7 1987, in Jacksonville, Florida, for the purpose of considering the hearing officer's Recommended Order (a copy of which is attached hereto) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Stephanie A. Daniel, Esquire and Ray Shope, Esquire. Respondent was present and testified at the hearing.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.
2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

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2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein.

3. There is competent substantial evidence to support the conclusions of law.

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Hearing Officer be accepted and adopted. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that Respondent's license to practice medicine is REVOKED.

This Order takes effect upon filing.

Pursuant to Section 120.59, Florida Statutes the parties are hereby notified that they may appeal this final order by filing one copy of a notice of appeal with the clerk of the agency and by filing the filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this order is filed, as provided in Chapter 120, Florida Statutes, and the Florida Rules of Appellate Procedure.

DONE AND ORDERED this 24 day of February, 1987.


BOARD OF MEDICINE



JAMES N. BURT, M.D.
CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FINAL ORDER has been provided by certified mail to Eduardo A. Garcia, 3418 Ocean Drive, Vero Beach, Florida 32963, and Robert L. Pegg, Esquire, Post Office Box 1000, Vero Beach, Florida 32961; by U. S. Mail to Donald A. Alexander, Hearing Officer, Division of Administrative Hearings, 2009 Apalachee Parkway, Tallahassee, Florida 32302, and by hand delivery to Ray Shope, Esquire, Department of Professional Regulation, 130 North Monroe Street, Tallahassee, Florida 32301 at 5:00 pm this 24 day of February, 1987.



Dorothy J. Faircloth
Executive Director

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL
REGULATION, BOARD OF MEDICAL
EXAMINERS,

Petitioner,

CASE NO. 86-1490

vs.

EDUARDO A. GARCIA, M.D.

Respondent.

RECOMMENDED ORDER

Pursuant to notice, the above matter was heard before the Division of Administrative Hearings by its duly designated Hearing Officer, Donald R. Alexander, on October 27, 1986 in Vero Beach, Florida.

APPEARANCES

FOR PETITIONER: E. Raymond Shope, Jr., Esquire
Stephanie A. Daniel, Esquire
130 North Monroe Street
Tallahassee, FL 32399-0750

FOR RESPONDENT: Robert L. Pegg, Esquire
P. O. Box 1000
Vero Beach, FL 32961

BACKGROUND

By administrative complaint filed on April 18, 1986, petitioner, Department of Professional Regulation, Board of Medical Examiners, has charged that respondent, Eduardo A. Garcia, a licensed physician, had violated various provisions within Chapter 458, Florida Statutes. The underlying allegations supporting the complaint are that while treating a patient from December, 1984 until April, 1986 respondent sold various prescriptions to the patient without medical justification, and by doing so (a) committed gross or repeated malpractice or failed to practice medicine with the level of care, skill and treatment which is recognized by a reasonably prudent similar physician under similar conditions and circumstances in violation of Subsection 458.331(1)(t), F.S. (1985) (Count I); (b)

prescribed or dispensed a legend drug other than in the course of his professional practice as proscribed by subsection 458.331(1)(g), F.S. (1985) (Count II); (c) made deceptive, untrue or fraudulent representations in the practice of medicine or employed a trick or scheme in the practice of medicine in violation of subsection 458.331(1)(r), F.S. (1985) (Count III); (d) failed to keep written medical records justifying a patient's course of treatment as required by subsection 458.331(1)(n), F.S. (1985) (Count IV); (e) exercised influence on a patient in such a manner as to exploit the patient for financial gain of the licensee in violation of subsection 458.331(1)(o), F.S. (1985) (Count V); (f) violated subsection 458.331(1)(h), F.S. (1985) by failing to perform a statutory (21 CFR 1306.03) obligation imposed upon a licensee (Count VI); and (g) violated a statutory [s.893.02(17)] obligation imposed upon a licensee in contravention of subsection 458.331(1)(h), F.S. (1985) (Count VII).

Respondent disputed the above allegations and requested a formal hearing pursuant to subsection 120.57(1), Florida Statutes (1985). The matter was referred by petitioner to the Division of Administrative Hearings on May 1, 1986, with a request that a hearing officer be assigned to conduct a formal hearing. By notice of hearing dated June 3, 1986, the final hearing was scheduled on September 10 and 11, 1986, in Vero Beach, Florida. At the request of the parties, the matter was rescheduled to October 27, 1986, at the same location.

At final hearing petitioner presented the testimony of Christie Dietert, Earl Donald Tovatt and Sonia McKee. It also offered petitioner's exhibits 1-23. All were received in evidence. Petitioner was given leave to late-file the depositions of Dr. James Johnson, Kevin Martin and Vincent Laconia. Respondent testified on his own behalf and offered respondent's exhibit 1 which was received in evidence.

The transcript of hearing was filed on November 20, 1986. The late-filed depositions were filed on November 26,

1986. Proposed findings of fact and conclusions of law were filed by petitioner on December 10, 1986. A ruling on each proposed finding of fact has been made in the Appendix attached to this Recommended Order.

At issue is whether respondent's license as a medical doctor should be disciplined for the alleged violations set forth in the administrative complaint.

Based upon all of the evidence, the following findings of fact are determined:

FINDINGS OF FACT

1. At all times relevant hereto, respondent, Edwardo A. Garcia, held physician license number ME 0021719 issued by petitioner, Department of Professional Regulation, Board of Medical Examiners (DPR). Garcia is a 1936 graduate of the medical school at the University of Colombia in Bogota, Colombia. He moved to New York City in 1959 where he completed a residency in neurology and psychiatry. He was then issued a temporary license to practice medicine in the State of New York. In 1973, Garcia relocated to Vero Beach. He received his Florida license the following year and practiced in the field of family medicine until May, 1986 when he sold his practice. -He is now retired.

2. [REDACTED] a sixty-two year male whose complaint against respondent precipitated this proceeding, has a long history of back ailments. He fell off of a bunk bed in 1943, was a passenger in an Army jeep that struck a land mine in 1944, and unsuccessfully attempted to lift a 350 pound woman in 1950. As a result of these unfortunate incidents, [REDACTED] has used various back braces and orthopedic shoes, and has had at least five myelograms since 1951. He has also been treated by a shopping list of physicians over the years, most of whom were in the Detroit area where he once lived.

3. For back pain, [REDACTED] began using prescription drugs many years ago. By his own admission he became addicted to pain-killers as early as 1979. He began with codeine and

empirin, but later switched to pure codeine. He then used percodan, and finally began using demerol in 1977. Demerol is a Schedule II controlled substance and has a high potential for abuse. It can also cause addiction after a short period of use. Access to quantities of demerol was made easier by the fact that [redacted] wife was a medical doctor at the Doctor's Clinic in Vero Beach. [redacted] received demerol injections from his wife until 1981 when they divorced. Thereafter, Dr. [redacted] continued to give her former husband prescriptions of demerol (one per month) for another year.

4. Beginning in 1982, and continuing until at least December, 1984, [redacted] was treated without charge by Dr. Gold, one of his ex-wife's partners at the clinic. Initially Dr. Gold gave [redacted] one or two injections of demerol per day for pain. By December, 1984, however, Dr. Gold had reduced the injection to one-half of an ampule per day. Because he was still experiencing pain, [redacted] was advised by an unnamed clinic employee in December, 1984 to contact respondent to obtain more demerol.

5. [redacted] prior to Christmas, 1984 [redacted] telephoned Dr. Garcia's office and attempted to make an appointment. After learning that Garcia's office hours were filled, [redacted] requested that Dr. Garcia make a house call to his apartment after 5:00 p.m. That same day, Dr. Garcia visited [redacted] apartment and was told by [redacted] that he had a lot of pain in his lumbar spine and down his right leg. Without making any tests, obtaining a history, or inquiring about prior medical treatment, Dr. Garcia gave [redacted] an injection of demerol and a shot of valium. For this he charged [redacted] \$600, or \$300 per shot. [redacted] paid Dr. Garcia in cash. Garcia acknowledged that he knew [redacted] was addicted to demerol at that time.

6. After the first house visit, [redacted] went to respondent's office the next day, and received two more shots for \$150 each. When [redacted] complained that the visits were expensive, Dr. Garcia agreed to write [redacted] demerol prescriptions for \$1,000 each. Dr. Garcia also insisted that

only cash be used, and accordingly no checks were ever given to respondent. In addition, Dr. Garcia asked for and was given \$25,000 cash for "one year's privilege of having him write a prescription."

7. Approximately six weeks after the first office visit, Dr. Garcia conducted his first complete physical examination of [REDACTED]. However, he obtained a patient history from [REDACTED] during the first office visit on December 19, 1984. Even so, it was inadequate since it failed to contain any interpretations of the patient's history. On each visit he took [REDACTED] blood pressure and checked his heart. Also, he noted in his patient records that the patient had "severe back pain, history of slipped disc of 30 years duration with arthritis following a fall. Had been using demerol for long periods of time for the above. He takes biroca, which is vitamin B, for the heart condition. He has had two heart attacks."

8. For the next fourteen months or so, [REDACTED] continued to obtain one or two prescriptions per week from Dr. Garcia at a cost of \$1,000 per prescription. The prescriptions generally contained 25 ampules of demerol per box. They were filled at various pharmacies in the Vero Beach and Melbourne areas. Copies of the prescription have been received in evidence as petitioner's exhibits 3-17 and a compilation is set forth in petitioner's exhibit 18. In all, there were 137 prescriptions for demerol, 15 for valium and 9 for percodan. Valium is a Schedule IV controlled substance while percodan is a Schedule II controlled substance. Finally, ten of those prescriptions had orders for demerol and valium on the same prescription while one had an order for demerol, percodan and valium. This was inappropriate.

9. In addition to the above prescriptions, several times [REDACTED] purchased bottles or boxes of demerol directly from Dr. Garcia. Each bottle was the equivalent of twenty shots while a box had twenty-five ampules, or the equivalent of twenty-five shots. On one occasion he was charged \$7,000 for one or two

bottles, on another \$9,000 for one box of 25 ampules, and \$8,000 on another occasion for four boxes.

10. Becoming concerned that Dr. Garcia would stop writing prescriptions, [REDACTED] purchased an air dehumidifier at a cost of \$312.70 for Garcia's birthday. On several occasions Garcia suggested to [REDACTED] that he include Garcia as a beneficiary in his will. In Garcia's presence, [REDACTED] directed his attorney to prepare a codicil to his will and bequeath \$75,000 to Dr. Garcia. This was executed on November 20, 1985. The codicil is still in effect. At Dr. Garcia's request, [REDACTED] gave respondent a copy of the codicil.

11. Each time that [REDACTED] requested a prescription, Garcia provided him with one. [REDACTED] injections numbered from five to six a day when he first began seeing Dr. Garcia, and numbered around fifty per week towards the end. [REDACTED] suffered side effects from the massive amounts of pain-killers, including passing out on one occasion and being unable to move on another. He also lost an undisclosed amount of weight. In all, [REDACTED] paid Dr. Garcia approximately \$200,000 in cash over a fourteen month period, which represented his entire life savings. He is now in the process of filing a malpractice suit against respondent.

12. In early 1986 [REDACTED] obtained four final prescriptions for demerol from Dr. Garcia. When he found no drug store would honor them, he refused to pay Dr. Garcia. Dr. Garcia came to his apartment at least six times demanding payment for the same. [REDACTED] then mailed the unfilled prescriptions to a DPR investigator.

13. In February, 1986 a DPR investigator interviewed Dr. Garcia concerning the [REDACTED] prescriptions. At that time Dr. Garcia acknowledged he had treated [REDACTED] and had charged him \$1,000 per prescription for demerol. He also admitted this to his office receptionist. During the same interview, the investigator observed that Dr. Garcia's Drug Enforcement Agency (DEA) registration had expired on September 30, 1985. This was

necessary in order to write certain prescriptions. Finally, when the administrative complaint in this case was issued in April, 1986 respondent told [REDACTED] "we're in trouble" and that [REDACTED] was "going to pay for my lawyer."

14. [REDACTED] also filed a complaint with the City of Vero Beach Police Department in April, 1986. While a police officer tape recorded the call, [REDACTED] telephoned respondent on April 29 and requested a prescription of demerol. Since [REDACTED] still owed Garcia \$4,000 for the four unfilled prescriptions, Garcia demanded payment of that sum. [REDACTED] said it would take time to raise the money. [REDACTED] then told Garcia he knew of a pharmacy in Cocoa Beach that would fill a prescription. Garcia said he didn't want to use [REDACTED] name on the prescription, but agreed to use a fictitious name. Garcia also said he would require the usual amount, or \$1,000, up front before he would give [REDACTED] the prescription.

15. According to the uncontradicted testimony of a board certified family practitioner, Dr. Garcia should have taken a complete patient history on the first visit to [REDACTED] apartment and at least "a cursory examination" of the patient. Because the patient complained of persistent pain, it would have been prudent to take additional tests and refer [REDACTED] to a neurologist or orthopedist after several visits. Garcia also had insufficient records to justify the course of treatment rendered, that is, the dispensing of various pain killers and sedatives. It was further inappropriate to prescribe addictive drugs to a patient in that quantity, combination and duration of time "for anything except a terminal illness." In this case, [REDACTED] did not have a terminal illness. In short, Dr. Garcia did not practice medicine with that level of care, skill and treatment which a reasonably prudent similar physician would recognize as acceptable under similar conditions and circumstances. Finally, the fees charged by Dr. Garcia were clearly excessive and represented an exploitation of the patient for financial gain. Moreover, it is not customary in the medical community to charge a patient for writing a prescription.

16. In December, 1985 a pharmacist in Vero Beach became concerned that [REDACTED] was filling an excessive number of prescriptions for demerol and percodan. He called Dr. Garcia who explained [REDACTED] had a back condition caused by a brain tumor and that [REDACTED] needed large amounts of pain-killers until he received an operation in San Francisco. However, [REDACTED] medical records contained no reference to a brain tumor or an operation/consultation in San Francisco.

17. Until 1985 Dr. Garcia had no prior complaints filed against him by any person. Dr. Garcia portrayed [REDACTED] as a desperate man who he knew to be a drug addict. Although he contended he did not wish to treat [REDACTED] he stated he did so only because [REDACTED] constantly approached him for drugs, and because he feared [REDACTED] might harm him. Dr. Garcia denied receiving excessive fees from [REDACTED] and estimated he charged [REDACTED] only \$20,000 while he was a patient. However, this version of events is not deemed to be credible and is accordingly discredited.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties thereto pursuant to Subsection 120.57(1), F.S. (1985).

2. Respondent is charged with a multitude of violations in conjunction with his dealings with [REDACTED]. These include seven violations within Subsection 458.331(1), F.S. (1985). By clear and convincing evidence, petitioner has established that Dr. Garcia: failed to practice medicine with the level of care, skill and treatment recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances (s. 458.331(1)(t), F.S.); prescribed a drug other than in the course of the physician's professional practice (s. 458.331(1)(q), F.S.); employed a trick or scheme in the practice of medicine (s. 458.331(1)(l), F.S.); failed to keep written medical records which justified the treatment (s. 458.331(1)(n), F.S.); exploited a patient for financial gain

(s. 458.331(1)(e), F.S.); violated a statutory legal obligation in Subsection 893.02(17) by filling a prescription for a controlled substance not in good faith (s. 458.331(1)(h), F.S.); and violated the statutory obligation in 21 CFR 1306.03 by writing a prescription without a valid DEA registration (s. 458.331(1)(h), F.S.).

3. Given the nature of the violations, revocation of respondent's medical license is appropriate.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that respondent be found guilty of all violations charged in Counts I-VII of the administrative complaint and that his medical license be REVOKED.

DONE and ORDERED this 17th day of December, 1986 in Tallahassee, Leon County, Florida.



DONALD R. ALEXANDER
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, FL 32399-1550
904/488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 17th day of December, 1986.

COPIES FURNISHED:

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Dorothy J. Faircloth
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APPENDIX

Petitioner:

1. Covered in finding of fact 1.
2. Covered in finding of fact 2.
3. Covered in finding of fact 3.
4. Covered in finding of fact 4.
5. Covered in findings of fact 3 and 4.
6. Covered in finding of fact 5.
7. Covered in finding of fact 3.
8. Covered in finding of fact 5.
9. Covered in finding of fact 5.
10. Covered in finding of fact 15.
11. Covered in finding of fact 7.
12. Covered in finding of fact 15.
13. Covered in finding of fact 15.
14. Covered in finding of fact 15.
15. Covered in finding of fact 6.
16. Covered in finding of fact 6.
17. Covered in finding of fact 8.
18. Covered in finding of fact 8.
19. Covered in finding of fact 8.
20. Covered in finding of fact 9.
21. Covered in finding of fact 11.
22. Covered in finding of fact 13.
23. Covered in finding of fact 16.
24. Covered in finding of fact 16.
25. Covered in finding of fact 15.
26. Covered in finding of fact 15.
27. Covered in finding of fact 8.
28. Covered in finding of fact 8.
29. Covered in finding of fact 13.
30. Covered in findings of fact 8 and 15.
31. Covered in finding of fact 15.