

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

DOAH CASE NO.: 90-2961
DPR CASE NOS.: 0079018

MAXIMO G. PEREZ, M.D.,

Respondent.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW, the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner", and files this Amended Administrative complaint before the Board of Medicine against Maximo G. Perez, 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 0028193.

3. From on or about September 17, 1982 to on or about August 20, 1985 Respondent provided medical treatment and/or prescribed medication to patient #1 for, among other things, anxiety and depression.

4. Between June 14, 1983 through November 15, 1983

Respondent dispensed or administered the following medicinal drugs to patient #1:

<u>Date</u>	<u>Unit Size - Drug</u>	<u>Frequency</u>	<u>Quantity Dispensed</u>
06/14/83	450 mg. Lithobid		16
06/14/83	4-10 Estrafon		8
06/17/83	450 mg. Lithobid		
06/17/83	2-25 Estrafon		
06/19/83	2 mg. Cogentin	2 x daily	
06/21/83	2 mg. Cogentin	2 x daily	
06/21/83	7.5 mg. Tranxene	2 or 3 daily	
06/23/83	7.5 mg. Tranxene	2 or 3 daily	
06/29/83	7.5 mg. Tranxene	2 or 3 daily	
07/01/83	300 mg. Lithobid	2 x daily	
07/19/83	300 mg. Lithobid	2 x daily	
07/19/83	7.5 mg. Tranxene	2 or 3 x daily	
07/26/83	300 mg. Lithobid	2 x daily	
07/26/83	0.5 mg. Xanax	3 x daily	
08/08/83	25 mg. Pamelor	3 x daily	
08/10/83	25 mg. Pamelor	3 x daily	
08/26/83	50 mg. Desyrel	2 x daily	
08/26/83	0.5 mg. Halcion	1 or 2 x daily	
08/30/83	30 mg. Restoril		15
09/07/83	30 mg. Restoril		
10/19/83	10 mg. Thorazine	3 or 4 x daily	

11/11/83	10 mg. Thorazine	2 or 3 x daily
11/11/83	50 mg. Desyrel	3 x daily
11/15/83	10 mg. Thorazine	3 x daily

5. Between August 26, 1983 and November 27, 1985

Respondent prescribed the following medicinal drugs to patient #1, all of which belong to the benzodiazepine group of anti-anxiety agents:

Legend: Column A: Date of Prescription
 Column B: Quantity
 Column C: Size/Drug
 Column D: # of Refills Authorized
 Column E: Total # Authorized
 Column F: Date Filled or Refiled

<u>-A-</u>	<u>-B-</u>	<u>-C-</u>	<u>-D-</u>	<u>-E-</u>	<u>-F-</u>
08/26/83	100	7.5 mg. Tranxene	3	400	08/26/83 09/28/83 11/30/83 01/09/84
12/2/83	20	30 mg. Serax	0	20	12/04/84
02/02/84	100	5 mg. Valium	3	400	02/02/84 03/08/84 05/16/84 06/01/84
04/27/84	30	0.5 mg. Xanax	3	120	04/28/84
06/22/84	100	5 mg. Valium	3	400	07/03/84 07/26/84 08/25/84 10/03/84

12/10/84	100	5 mg. Valium	3	400	12/19/84
					02/07/85 (#50)
					03/02/85
					04/28/85 (#50)
					05/13/85 (#50)
					05/29/85
01/08/85	30	0.5 mg. Halcion	0	30	01/08/85
07/16/85	30	30 mg. Serax			07/16/85
07/19/85	40	25 mg. Librium (Chlordiazopoxide)	1	80	07/19/85
					08/07/85
08/19/85	30	30 mg. Dalmane	1	60	08/19/85
					09/23/85
08/19/85	30	25 mg Librium (Chlordiazopoxide)	1	60	08/19/85
					09/23/85
11/27/85	50	15 mg. Tranxene	4	200	11/27/85
					01/02/86
					01/21/86
					02/07/86

6. In addition, during an overlapping period of time Respondent prescribed the following other drugs which may act as analgesics, tranquilizers, sedatives, hypnotics, or antipsychotics:

<u>-A-</u>	<u>-B-</u>	<u>-C-</u>	<u>-D-</u>	<u>-E-</u>	<u>-F-</u>
08/30/83	60	Fiorinal	3	240	08/30/83 09/25/83 11/01/83
12/06/83	100	Fiorinal w/Codeine	3	400	12/07/83 04/30/84 06/15/84
04/06/84	60	50 mg. Sinequan	2	180	04/07/84 01/10/85 07/19/85 (#40)
08/15/84	100	400 mg. Meprobamate	3	300	08/15/84 11/01/84
03/24/85	10	15 mg. Phenobarbital	0	10	03/24/85
07/16/85	30	Lithobid	0	30	07/16/85
07/16/85	30	50 mg. Chlorpromazine	0	30	07/16/85
07/26/85	10	500 mg. Chloral Hydrate	1	20	07/26/85 08/16/85

7. On May 23, 1985 Respondent prescribed thirty - 30 mg. Fastin to patient #1. Fastin is a brand name of phentermine HCl, a sympathomimetic amine having anorexiatic appetite suppressant effects.

8. Respondent prescribed Fastin to patient #1 despite his knowledge that patient #1 had a dependency problem with this type of drug.

9. Medicinal drugs are those drugs commonly known as "prescription" or "legend" drugs and may be only dispensed on a prescription.

10. Tranxene is a product name for Clorazepate, a controlled substance listed in Schedule IV of Chapter 893, Florida.

11. Xanax is a product name for a product containing alprazolam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

12. Halcion is a product name for triazolam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

13. Restoril is a product name for temazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

14. Serax is a product name for oxazepam a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

15. Valium is a product name for diazepam, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

16. Librium is a product name for Chlordiazepoxide, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

17. Dalmane is a product name for flurazepam a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

18. Fiorinal is the product name of a compound which contains butalbital, a controlled substance listed in Schedule III of Chapter 893, Florida Statutes.

19. Fiorinal with Codeine, is a product name for a compound which contains butalbital and codeine and is a controlled substance listed in Schedule III, of Chapter 893, Florida Statutes.

20. Meprobamate, phenobarbital, and chloral hydrate are all

controlled substances listed in Schedule IV of Chapter 893, Florida Statutes.

21. Darvocet N 100 and Darvocet are product names of compounds containing propoxyphene, a controlled substance in Schedule IV of Chapter 893, Florida Statutes.

22. Fastin a product name of a product which contains phentermine, a controlled substance listed in Schedule IV of Chapter 893, Florida Statutes.

23. Respondent has prescribed dispensed or administered the above legend drugs and controlled substances inappropriately, or in excessive or inappropriate quantities.

COUNT ONE

24. Based upon the foregoing, Respondent has violated Section 458.331(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.

COUNT TWO

25. Petitioner realleges and incorporates by reference the allegations in paragraphs one through twenty-three and further alleges:

26. On or between December 2, 1983 and December 15, 1983, while patient #1 was under the Respondent's care, the Respondent engaged in sexual intercourse with patient #1 in the Respondent's office.

27. On or between January 6 and January 18, 1984 Respondent and

patient #1 had an additional sexual contact.

28. Respondent exercised influence within a patient/physician relationship for the purpose of engaging a patient in sexual activity.

29. Based on the foregoing, Respondent has violated Section 458.331(1)(k), Florida Statutes (1983), now Section 458.331(1)(j), Florida Statutes (1989), by exercising influence within a patient/physician relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full and informed consent to sexual activity with his physician.

COUNT THREE

30. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23), twenty-six (26) and twenty-seven (27) and further alleges:

31. Respondent has engaged in sexual misconduct in the practice of medicine by using the physician-patient relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of medicine is prohibited.

32. Based on the foregoing allegations, respondent violated Section 458.331(1)(x) Florida Statutes, by violating any provision of Chapter 458, to wit, Section 458.329, Florida Statutes.

COUNT FOUR

33. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) and further alleges:

34. Respondent failed to keep written medical records justifying the course of treatment of the patient including, but not limited to, the following: the Respondent failed to note numerous prescriptions in Patient #1's medical records: the records fail to justify the long term prescribing of medicinal drugs; the records contain no justification for prescribing Fastin; the records are insufficient to allow even Respondent to monitor the patient's drug therapy.

35. Based on the foregoing, Respondent has violated Section 458.331(1)(n), Florida Statutes (1983), now Section 458.331(1)(m), Florida Statutes (1989), by failing to keep medical records justifying the course of treatment of the patient including, but not limited to patient histories, examination results and test results.

COUNT FIVE

36. Petitioner realleges and incorporates paragraphs one (1) through twenty-three (23) and paragraphs twenty-six (26), twenty-seven (27), and thirty-four and further alleges:

37. 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.

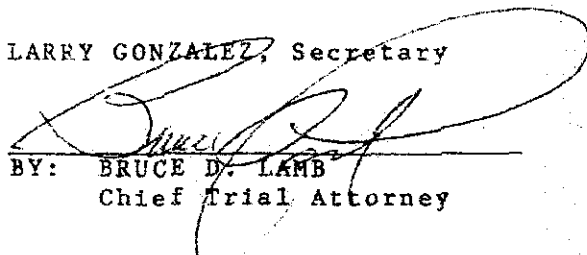
38. Based on the foregoing, Respondent has violated Section

458.331(1)(t), Florida Statutes, by committing gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment as recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances.

WHEREFORE, Petitioner respectfully requests the Board of Medicine 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 8th day of August 1990.

LARRY GONZALEZ, Secretary


BY: BRUCE D. LAMB
Chief Trial Attorney

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Department of Professional Regulation
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DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

-vs-

MAXIMO G. PEREZ, M.D.,

Respondent.

DPR CASE NUMBER: 0079018
DOAH CASE NUMBER: 90-2961
LICENSE NUMBER: ME 0028193

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)10, Florida Statutes, on February 2, 1991, in Tampa, Florida, for the purpose of considering the Hearing Officer's Recommended Order, Petitioner's Exceptions to the Recommended Order and Motion To Increase Penalty, and Respondent's Response to Petitioner's Exceptions and Motion To Increase Penalty (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Bruce D. Lamb, Attorney at Law. Respondent was present and represented by Melissa Fletcher Allaman, Attorney at Law.

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. Findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.

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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.

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.

RULINGS ON EXCEPTIONS

1. Respondent's Exception to the last sentence of Paragraph 39 of the Recommended Order is rejected on the basis that there is competent substantial evidence to support the finding of the Hearing Officer. Issues with respect to credibility are within the province of the Hearing Officer.

2. Respondent's Motion To Increase Penalty is denied.

PENALTY

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 is found guilty of violating Subsections 458.331(1)(j), (m), (q), and (t), Florida Statutes.

1. Respondent's license to practice medicine in the State of Florida is SUSPENDED for a period of one year, however, all but 30 days of said suspension shall be stayed.

2. Respondent's license to practice medicine in the State of Florida is placed on PROBATION for a period of 4 years, subject to the following terms and conditions:

a. Respondent shall comply with all state and federal statutes, rules and regulations pertaining to the practice of medicine, including Chapters 455, 458, and 893, Florida Statutes, and Rules 21M, Florida Administrative Code.

b. Respondent shall appear before the Probation Committee at the first meeting after said probation commences, at the last meeting of the Probation Committee preceding termination of probation, quarterly, and at such other times requested by the Committee. Respondent shall be noticed by Board staff of the date, time and place of the Board's Probation Committee meeting whereat Respondent's appearance is required. Failure of the Respondent to appear as requested or directed shall be considered a violation of the terms of this Order, and shall subject the Respondent to disciplinary action.

c. In the event Respondent leaves the State of Florida for a period of thirty (30) 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 said 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. Respondent must keep current residence and business addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses. Furthermore,

Respondent shall notify the Board within ten (10) days in the event that Respondent leaves the active practice of medicine in Florida.

d. In the event that Respondent leaves the active practice of medicine in this state for a period of thirty days or more, the following provisions of the probation shall be tolled:

- a. The time period of probation shall be tolled.
- b. The provisions regarding supervision whether direct or indirect by another physician, included in paragraphs f through h below
- c. The provisions regarding preparation of investigative reports detailing compliance with this Order. See paragraph l below.

e. In the event that Respondent leaves the active practice of medicine for a period of one year or more, the Probation Committee may require Respondent to appear before the Probation Committee and demonstrate his ability to practice medicine with skill and safety to patients prior to resuming the practice of medicine in this State.

f. Respondent shall not practice except under the indirect supervision of a physician fully licensed under Chapter 458 who has been approved by the Board or its Probation Committee. Absent provisions for and compliance with the terms regarding temporary approval of a monitoring physician, as provided below, Respondent shall cease practice and not practice until the Probation Committee or the Board approves a monitoring physician. Respondent shall have the monitoring physician with him at his

first probation appearance before the Probation Committee. Prior to approval of the monitoring physician by the Committee, the Respondent shall provide to the monitoring physician a copy of the Administrative Complaint and Final Order filed in this case. Failure of the Respondent or the monitoring physician to appear at the scheduled Probation Committee meeting shall constitute a violation of this Order. Prior to the approval of the monitoring physician by the Committee, Respondent shall submit to the Committee a current curriculum vitae and a description of the current practice from the proposed monitoring physician. Said materials shall be received by the Board office no later than fourteen days before Respondent's first scheduled probation appearance. The attached definition of a monitoring physician is incorporated herein. The responsibilities of the monitoring physician shall include:

- (1) Submit quarterly reports, in affidavit form, which shall include:
 - a. Brief statement of why physician is on probation.
 - b. Description of probationer's practice.
 - c. Brief statement of probationer's compliance with terms of probation.
 - d. Brief description of probationer's relationship with monitoring physician.
 - e. Detail any problems which may have arisen with probationer.

Respondent shall be responsible for ensuring that the monitoring physician submits the required reports.

- (2) Be available for consultation with Respondent whenever necessary, at a frequency of at least once per week.
- (3) Review 10 percent of Respondent's patient records selected on a random basis at least once every week. In order to comply with this responsibility of random review, the monitoring physician shall go to Respondent's

office once every week. At that time, the monitoring physician shall be responsible for making the random selection of the records to be reviewed by the monitoring physician.

- (4) Review all patient records of patients treated with III and IV controlled substance prescriptions issued for the purpose of weight control.
- (5) Report to the Board any violations by the probationer of Chapter 455 and 458, Florida Statutes, and the rules promulgated pursuant thereto.

g. The Board shall confer authority on the Chairman of the Board's Probationer's Committee to temporarily approve Respondent's supervisory/monitoring physician. In order to obtain this temporary approval, Respondent shall submit to the Chairman of the Probationer's Committee the name and curriculum vitae of the proposed supervising/monitoring physician. This information shall be furnished to the Chairman of the Probationer's Committee by way of the Board of Medicine's executive director, within 48 hours after Respondent receives the Final Order in this matter. This information may be faxed to the Board of Medicine at (904) 487-9622, or may be sent by overnight mail or hand delivery to the Board of Medicine, at the Department of Professional Regulation, 1940 North Monroe Street, Suite 60, Tallahassee, Florida 32399-0750. In order to provide time for Respondent's proposed supervisory/monitoring physician to be approved or disapproved by the Chairman of the Probationer's Committee, Respondent shall be allowed to practice medicine while approval is being sought, but only for a period of five working days after Respondent receives the Final Order. If Respondent's

supervising/monitoring physician has not been approved during that time frame, then Respondent shall cease practicing until such time as the supervising/monitoring physician is temporarily approved. In the event that the proposed monitoring/supervising physician is not approved, then Respondent shall cease practicing immediately. Should Respondent's monitoring/supervising physician be approved, said approval shall only remain in effect until the next meeting of the Probationer's Committee. Absent said approval, Respondent shall not practice medicine until a monitoring/supervising physician is approved.

h. In view of the need for ongoing and continuous monitoring or supervision, Respondent shall also submit the curriculum vitae and name of an alternate supervising/monitoring physician who shall be approved by the Board or its Probationer's Committee. Such physician shall be licensed pursuant to Chapter 458, Florida Statutes, and shall have the same duties and responsibilities as specified for Respondent's monitoring/supervising physician, during those periods of time when Respondent's monitoring/supervising physician is temporarily unable to provide supervision. Prior to practicing under the indirect supervision of the alternate monitoring physician or the direct supervision of the alternative supervising physician, Respondent shall so advise the Board in writing. Respondent shall further advise the Board in writing of the period of time during which Respondent shall practice under the supervision of the alternate monitoring/supervising physician. Respondent shall not practice unless he is under the supervision of either the

approved supervising/monitoring physician or the approved alternate.

i. Respondent shall submit quarterly reports in affidavit form, the contents of which shall be specified by the Board. The reports shall include:

- (1) Brief statement of why physician is on probation.
- (2) Practice location
- (3) Describe current practice (type and composition)
- (4) Brief statement of compliance with probation terms.
- (5) Describe relationship with monitoring/supervising physician.
- (6) Advise Board of any problems.

j. Respondent shall attend 30 hours of Category I Continuing Medical Education courses per year in the area of medical recordkeeping with 5 hours in risk management and the treatment of depression. Respondent shall submit a written plan to the Chairman of the Probationer's Committee for approval prior to completion of said courses. The Board confers authority on the Chairman of the Probationer's Committee to approve or disapprove said continuing education courses. In addition, Respondent shall submit documentation of these continuing medical education courses in his quarterly reports. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board or the Chairman of the Probationer's Committee, said continuing education courses shall consist of a formal live lecture format.

k. Respondent shall take the course offered by the University of South Florida and the Florida Medical Association entitled, "Clinical, Legal, and Ethical Issues in Prescribing Abusable Drugs," and provide documentation of his attendance to the Board.


l. During this period of probation, semi-annual investigative reports will be compiled by the Department of Professional Regulation concerning Respondent's compliance with the terms and conditions of probation and the rules and statutes regulating the practice of medicine.

m. Respondent shall pay all costs necessary to comply with the terms of the Order issued based on this proceeding. Such costs include, but are not limited to, the cost of preparation of investigative reports detailing compliance with the terms of this proceeding, the cost of analysis of any blood or urine specimens submitted pursuant to the Order entered as a result of this proceeding, and administrative costs directly associated with Respondent's probation. See Section 458.331(2), Florida Statutes.

This order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 22nd day of February, 1991.

BOARD OF MEDICINE


ZACHARIAH P. ZACHARIAH, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.