

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :

AND STATEMENT OF CHARGES AGAINST :

ORDER

JAMES E. DOLAN, M.D. :

02-81-014

RESPONDENT :

NOW ON August 3, 1990, the above

entitled matter having been filed with the Director of Public Health of the State of Iowa, for an amendment to the Order issued by the Commissioner of Public Health of Iowa on June 19, 1984 and the said Director of Public Health being fully advised in the premises FINDS:

1. That on January 16, 1990, an application was filed by James E. Dolan, M.D. (hereafter the Respondent), with the Iowa State Board of Medical Examiners (hereafter the Board) requesting the permanent prohibition against the Respondent's prescribing of anabolic steroids placed upon his, the Respondent's, medical license, as reflected in paragraph (b), page 1, of the Commissioner's Order issued July 19, 1984, be repealed.

2. That the Board finding that the said application was proper, voted to authorize the said amendment to the Commissioner's Order issued July 19, 1984 as requested.

THEREFORE IT IS HEREBY ORDERED that the permanent

prohibition against the Respondent's prescribing of anabolic steroids, placed upon the Respondent's medical license, as reflected in paragraph (b), page 1, of the Commissioner's Order issued July 19, 1984, is hereby repealed.

Ronald D Eckoff MD

Ronald D. Eckoff, M.D., M.P.H.,
Acting Director
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075

File # 02-81-014

Name **JAMES E. DOLAN, M.D.**

IN THE MATTER OF THE COMPLAINT AND STATEMENT OF CHARGES

I hereby certify that on the 7th day of August, 1990, I mailed to the Respondent, James E. Dolan, M.D. in the above referenced file, true copies of the Order Restriction Repealed of the Acting Director, Iowa Department of Public Health via U.S. First Class, certified mail, return receipt.

Name *Dennis M. Carr*
Associate Director
Date 8/8/90

P 129 293 840

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

James E. Dolan, M.D.
1226 Grand Avenue
West Des Moines, Iowa

Postage	✓
Special Delivery Fee	
Restr. and Insur. Fee	✓
Return Receipt showing Addressee and Date Delivered	✓
Return Receipt showing to whom Date, and Address of Delivery	✓
TOTAL Postage and Fees	\$

Postmark or Date
8/3/90

02-81-014

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:

RETURN RECEIPT REQUESTED
James E. Dolan, M.D.
1226 Grand Avenue
West Des Moines, Iowa 50265

4. Article Number
P 129 293 840

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X

6. Signature - Agent
X *Sandi Paulson*

7. Date of Delivery
8-6-90

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989

U.S.G.P.O. 1980 200-015

DOMESTIC RETURN RECEIPT

PS Form 3800, June 1982

OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :

AND STATEMENT OF CHARGES AGAINST : COMMISSIONER'S ORDER

JAMES E. DOLAN, M.D., :

RESPONDENT :

NOW on this 22 day of June, 1984, the above entitled matter having been filed with the Commissioner of Public Health on the 22 day of June, 1984, and the undersigned Commissioner of Public Health, having reviewed the Informal Settlement entered into by the Respondent and the Board of Medical Examiners on the 14th day of June, 1984, and being fully advised in the premises, FINDS:

1. That a Complaint and Statement of Charges was filed against Respondent, James E. Dolan, M.D., on April 12, 1984.
2. That Respondent, James E. Dolan, M.D., is currently licensed to practice medicine and surgery under license number 16665, which was issued on July 1, 1963.
3. That the Board of Medical Examiners has jurisdiction in this matter.
4. That the Informal Settlement entered into by the Respondent and the Board of Medical Examiners is an agreed upon disposition of a contested case proceeding initiated by the State Board of Medical Examiners against Respondent, and will dispose of all the matters contained in the Complaint and Statement of Charges dated April 12, 1984.

THEREFORE, IT IS HEREBY ORDERED that the Respondent shall pay a civil penalty in the sum of \$1,000.00. A check in said amount shall be payable to the Treasurer of the state of Iowa and delivered to the Executive Director of the State Board of Medical Examiners within ten (10) days from the date of the Commissioner's Order.

IT IS FURTHER HEREBY ORDERED that the Respondent shall be prohibited from ever prescribing all anabolic steroids in the future.

IT IS FURTHER HEREBY ORDERED that the Respondent's license to practice medicine and surgery in the state of Iowa shall be placed on probation for a period of two (2) years under the following terms and conditions:

1. That the Respondent shall maintain a record of all controlled substances and other medications prescribed, dispensed or administered by him and shall make such records available for inspection and copying by the State Board of Medical Examiners or its designee, upon request. The record shall contain the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of the controlled substances or medication involved, and 4) the pathology and purpose for which the medication was furnished.

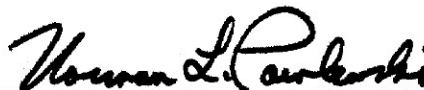
2. That the Executive Director of the State Board of Medical Examiners, or his designee, will on a regular basis, monitor and audit the practice of the Respondent to insure that the Respondent's medical practice conforms to standards acceptable to the Board and the Respondent will cooperate with the Executive Director, or his designee, by giving the assistance reasonably required in conducting these examinations and audits.

3. That during the term of probation the Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Iowa, and shall demonstrate the type of exemplary conduct required of a duly licensed physician in Iowa.

4. That the Respondent shall appear in person for an interview with the State Board of Medical Examiners upon request and with reasonable notice.

5. That during the term of probation the Respondent shall submit Quarterly Reports to the State Board of Medical Examiners stating that he has fully and faithfully complied with the terms of probation. This report shall be sworn to before a notary public.

6. That if the Respondent violates the terms and conditions of the Informal Settlement and this Order in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke or suspend the Respondent's medical license or take such other action as the Board may deem necessary in the premises.



Norman L. Pawlewski
Commissioner of Public Health

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST : COMMISSIONER'S ORDER
JAMES E. DOLAN, M.D., :
RESPONDENT :

NOW on this 19th day of JUNE, 1984, the above entitled matter having been filed with the Commissioner of Public Health, on the 19th day of JUNE, 1984 and the undersigned Commissioner of Public Health, having reviewed the Informal Settlement entered into by the Respondent and the Iowa Board of Medical Examiners on the 14th day of JUNE, 1984, and being fully advised in the premises, FINDS:

1. That the Respondent and the State Board of Medical Examiners have entered into a stipulation providing that the Order for Revocation with Probation here and after issued, shall be subject to the following terms and conditions in all matters pertaining to the revocation and probation of the Respondent's license to practice medicine and surgery in this state.

IT IS THEREFORE HEREBY ORDERED that the license and certificate to practice medicine and surgery in the state of Iowa hereto for issued to the Respondent, James E. Dolan, M.D., on the 1st day of July 1963, as evidenced by certificate number 16665 which is recorded in Book 3 at Page 642 of the records of the Iowa Department of Health, the same is hereby revoked provided, however, that the execution of this Order be and the same is hereby stayed for a period of two years upon the following terms and conditions.

(a) That the Respondent shall pay a civil penalty in the sum of \$1,000.00. A check in said amount shall be payable to the Treasurer of the State of Iowa and delivered to the Executive Director of the Iowa State Board of Medical Examiners within ten days from the date of this Commissioner's Order.

(b) That the Respondent shall be prohibited from ever prescribing all anabolic steroids in the future.

(c) That the Respondent shall maintain a record of all controlled substances and other medications prescribed, dispensed or administered by him and shall make such records available for inspection and copying by the Iowa State Board of Medical Examiners or its designee upon request. The records shall contain the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of the controlled substances or medication involved, and 4) the pathology and purpose for which the medication was furnished.

(d) That the Executive Director of the Iowa State Board of Medical Examiners, or his designee, will on a regular basis, monitor and audit the practice of the Respondent to insure that the Respondent's medical practice conforms to standards acceptable to the Board and the Respondent will cooperate with the Executive Director, or his designee, by giving the assistance reasonably required in conducting these examinations and audits.

(e) That during the term of probation the Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Iowa, and shall demonstrate the type of exemplary conduct required of a duly licensed physician in the State of Iowa.

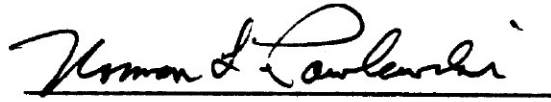
(f) The Respondent shall appear in person for an interview with the Iowa State Board of Medical Examiners upon request and with reasonable notice.

(g) That during the term of probation the Respondent shall submit Quarterly Reports to the Iowa State Board of Medical Examiners stating that he is fully and faithfully complied with the terms of probation. This report shall be sworn before a notary public.

That upon full compliance of the terms and conditions herein set forth and upon the expiration of the terms of probation herein fixed, the Respondent's license shall be restored to its full privileges free and clear of the terms of the probation herein imposed, provided however that in the event the Respondent violated or fails to comply with any of the terms and conditions within the Informal Settlement and the Commissioners Order of Probation, the Board upon receipt of satisfactory evidence thereof may forthwith terminate said probation, cancel and revoke the Commissioners stay of execution and direct that an Order of Revocation be entered and herein shall become effective immediately.

James E. Dolan, M.D.

-3-

A handwritten signature in cursive script, reading "Norman L. Pawlewski", is written above a solid horizontal line.

Norman L. Pawlewski
Commissioner of Public Health
Lucas State Office Building
Des Moines, Iowa 50319

TO: MCA
RE: 2 Commissioner's Orders on Dr. Dolan
DATE: 10-26-84

Mr. Saf came upstairs and said he had talked to Dr. Dolan's attorney; the explanation for 2 Commissioner Orders is: When Dr. Dolan saw the one that is dated 19th contained the word revoked, he went through the ceiling, so a 2nd order was prepared omitting that word.

Mr. S. says it is up to you whether we keep both or not.

He advised the attorney that Dr. Dolan should be writing in the date June 22, 1984, so you don't need a letter to him advising the same.

*Keep both
File them -
Put back in
Evolutionary Files*

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST
JAMES E. DOLAN, M.D.

Respondent

INFORMAL SETTLEMENT

COME NOW Respondent, James E. Dolan, M.D., and the Iowa Board of Medical Examiners and, pursuant to sections 17A.10 and 268A.3(4), The Code, enter into an Informal Settlement of the contested case proceeding for licensee discipline currently on file against Respondent under the following terms and conditions:

I. That a Complaint and Statement of Charges was filed against Respondent, James E. Dolan, M.D., on April 12, 1984, and a hearing has been scheduled before the Iowa Board of Medical Examiners.

II. That Respondent, James E. Dolan, M.D., is currently licensed to practice medicine and surgery under license number 16665 which was issued on July 1, 1963.

III. That the Iowa Board of Medical Examiners has jurisdiction in this matter.

IV. That the Commissioner of Public Health and the Iowa State Board of Medical Examiners shall take appropriate action to enter an order imposing the following disciplinary sanctions:

a. That the Respondent shall pay a civil penalty in the sum of \$1,000.00. A check in said amount shall be payable to the Treasurer of the state of Iowa and delivered to the Executive Director of the Iowa State Board of Medical Examiners within ten (10) days from the date of the Commissioner's Order.

b. That the Respondent shall be prohibited from ever prescribing all anabolic steroids in the future.

c. That the Respondent's license to practice medicine and surgery in the state of Iowa shall be placed on probation for a period of two (2) years under the following terms and conditions:

1. That the Respondent shall maintain a record of all controlled substances and other medications prescribed, dispensed or administered by him and shall make such records available for inspection and copying by the Iowa State Board of Medical Examiners or its designee, upon request. The record shall contain the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of the controlled substances or medication involved, and 4) the pathology and purpose for which the medication was furnished.

2. That the Executive Director of the Iowa State Board of Medical Examiners, or his designee, will on a regular basis, monitor and audit the practice of the Respondent to insure that the Respondent's medical practice conforms to standards acceptable to the Board and the Respondent will cooperate with the Executive Director, or his designee, by giving the assistance reasonably required in conducting these examinations and audits.

3. That during the term of probation the Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Iowa, and shall demonstrate the type of exemplary conduct required of a duly licensed physician in Iowa.

4. The Respondent shall appear in person for an interview with the Iowa State Board of Medical Examiners upon request and with reasonable notice.

5. That during the term of probation the Respondent shall submit Quarterly Reports to the Iowa State Board of Medical Examiners stating that he has fully and faithfully complied with the terms of probation. This report shall be sworn to before a notary public.

V. This settlement shall be deemed an agreed upon disposition of a contested case proceeding initiated by the Iowa State Board of Medical Examiners against Respondent, and will dispose of all the matters contained in the Complaint and Statement of Charges dated April 12, 1984.

VI. If Respondent violates the terms and conditions of this Informal Settlement and the Commissioner's Order in any respect, the Board, after giving Respondence notice and the opportunity to be heard, may revoke or suspend the Respondent's medical license or take such other action as the Board may deem necessary in the premises.

VII. The within Informal Settlement is subject to the approval of the Iowa State Board of Medical Examiners, and if the Board fails to approve this settlement, it shall be of no force or effect for either party and shall not be admissible for any purpose at any further proceedings in this matter.

VIII. The Respondent has proposed this Informal Settlement voluntarily and with full knowledge of its provisions and contents.

IX. That this Informal Settlement does not constitute a finding of any wrongdoing, nor an admission of any wrongdoing, by Respondent.

This Informal Settlement is entered by the Respondent, James E. Dolan, M.D., and the Iowa State Board of Medical Examiners on this 12 day of June, 1984.

James E. Dolan MD
JAMES E. DOLAN, M.D., Respondent

Gale H. Helmes
ATTORNEY FOR RESPONDENT

Subscribed and sworn to before me this 12 day of June, 1984.

D. C. McDonough
NOTARY PUBLIC in and for the STATE of IOWA

BY: John L. Garred, M.D.
JOHN L. GARRED, M.D., CHAIRMAN

Subscribed and sworn to before me this 14 day of June, 1984.

Ronald W. Saj
NOTARY PUBLIC in and for the STATE of IOWA

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT :
AND STATEMENT OF CHARGES AGAINST : COMPLAINT AND STATEMENT
JAMES E. DOLAN, M.D., : OF CHARGES
RESPONDENT. :

COMES NOW Ronald V. Saf, Executive Director of the Iowa State Board of Medical Examiners on the 12th day of April, 1984, and files this Complaint and Statement of Charges against James E. Dolan, M.D., a physician licensed pursuant to Chapter 147, Code of Iowa, and alleges:

1. That Norman L. Pawlewski is the duly appointed, qualified and acting Commissioner of Public Health of the state of Iowa.

2. That Reid E. Motley, M.D., Chairman, John L. Garred, M.D., Vice-Chairman, Kathryn E. Gammack, Secretary, Alyce M. Fanslow, Ph.D., Joseph B. Baker, D.O., Richard L. Carruthers, D.O., William R. Bliss, M.D., Dorothy J. Gildea, M.D., and Hormoz Rassekh, M.D., are the duly appointed, qualified and acting officers and members of the Iowa State Board of Medical Examiners.

3. That the Respondent is a resident of Des Moines, Iowa and was issued license number 16665 to practice medicine and surgery in the state of Iowa on July 1, 1963, as recorded in Book 3, Page 642 of the permanent records in the office of the Iowa Board of Medical Examiners.

4. That the Respondent's license is current until April 30, 1984.

5. That between the years 1978 to 1983, the Respondent prescribed anabolic steroids to 29 known male patients.

6. That on November 9, 1983, the Respondent appeared before a "Sub-Committee" of the Iowa Board of Medical Examiners to explain his reason for prescribing anabolic steroids to patients. The Respondent stated that he was conducting a "pilot study" on the use of anabolic steroids and he was prescribing anabolic steroids to athletes for the purpose of research.

7. That the Respondent submitted to the Iowa Board of Medical Examiners a paper titled "Pilot Study", a copy of which is attached and by reference herein is made a part hereof.

8. That the Respondent's protocol states "no men were accepted under age 19" and the Respondent prescribed anabolic steroids to male patient #1, Male patient #2 and male patient #3 who were under the age of 19 at the time the anabolic steroids were prescribed to them by the Respondent.

9. That upon the request of the Iowa Board of Medical Examiners the Respondent submitted 28 patient files who were involved in the study. Contained within those files were 23 falsified laboratory data sheets.

10. That the Respondent failed to obtain signed permission by all patients involved in the study which involved the use of a potentially dangerous drug.

11. That the Respondent failed to obtain, on a routine basis, appropriate laboratory studies of the patients.

12. That the Respondent documented only the weight, height and blood pressure of the patients involved in the study and there is no evidence to show that muscle strength was tested or that the patient's physical performance was tested to see if there was any change in the status of the patients.

13. That the Respondent started male patient #5 on anabolic steroids when it was documented that male patient #5 had hypertension.

14. That according to the medical records, the Respondent saw male patients #1,2,3,4,5,6,7, 9, 13, 14, 16,19,20, 21, 23, 24, 25, 27, and 29 on only one occasion.

15. That the PHYSICIANS DESK REFERENCE for the year of 1982, under the listing for Dianabol, Enavar, and Durabolin, contains a warning on the drugs which states "anabolic steroids do not enhance athletic ability".

16. That the Respondent had no medical justification for prescribing anabolic steroids to male patients #1 through male patient #29.

17. That the "pilot study" conducted by the Respondent was a departure from and a failure to conform to the minimal standards of acceptable and prevailing practices of medicine and surgery.

18. That the Respondent is guilty of a violation of section 147.55(3), 148.6(a) and (g) of the Code of Iowa.

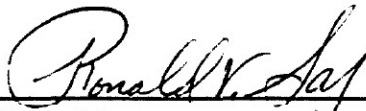
19. That the Respondent is guilty of a violation of Rules 470-135.204(3), (12) and (18) of the Iowa Administrative Code.

20. That paragraphs 17 and 18 constitute grounds for which the license issued to the Respondent, James E. Dolan, M.D., on the 1st day of July, 1963, as evidenced by certificate number 16665 which is recorded in Book 3, Page 642 of the Iowa State Board of Medical Examiners, may be suspended or revoked.

WHEREFORE, the undersigned charges that James E. Dolan, M.D., has violated Sections 147.55(3), 148.6(a) and (g) of the Code of Iowa, and Rules 470-135.204(3), (12) and (18) of the Iowa Administrative Code and prays that the Board enter an order fixing a time and place of hearing on the Complaint and Statement of Charges filed herein.

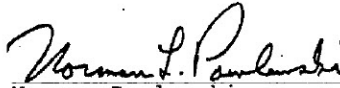
The undersigned further prays that upon final hearing the Board enter its Findings of Fact and Decision to suspend or revoke the license to practice medicine and surgery issued to James E. Dolan, M.D., on the 1st day of July, 1963. and for such other and further relief as the Board deems just in the premises.

IOWA STATE BOARD OF MEDICAL EXAMINERS



Ronald V. Saf, Executive Director
Iowa State Board of Medical Examiners
State Capitol Complex
Executive Hills West
Des Moines, Iowa 50319

provided, however, that in the event respondent violates or fails to comply with any of the terms and conditions of this order, the State Board of Medical Examiners, upon receipt of satisfactory evidence thereof, may forthwith terminate said probation, cancel and revoke said stay of execution of this order, and direct that the order of revocation herein made shall become effective immediately.



Norman Pawlewski
Commissioner of Public Health
Robert Lucas State Office Bldg.
Des Moines, Iowa 50319

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA**

IN THE MATTER OF THE COMPLAINT *
*
AND STATEMENT OF CHARGES AGAINST * **ORDER**
*
JAMES E. DOLAN, M.D., * **02-93-110**
*
RESPONDENT *
*

NOW ON February 22, 1995 BE IT REMEMBERED:

1. That James E. Dolan, M.D. (hereafter the Respondent), was issued a license to practice medicine and surgery in the state of Iowa, on July 1, 1963, as evidenced by certificate number 16665, which is recorded in the permanent records in the office of the Iowa State Board of Medical Examiners (hereafter the Board).
2. That a Complaint and Statement of Charges was filed against the Respondent, on March 31, 1994, and a hearing was held on the said Complaint and Statement of Charges before a three member panel of the Board on September 28 and 29, 1994.
3. That a Findings of Fact, Conclusions of Law, Decision and Order of the Panel (hereafter Proposed Decision of the Panel) was issued on November 8, 1994. On November 9, 1994, a copy of the same was sent to the Iowa Attorney General's Office, via LOCAL mail. The Proposed Decision of the Panel was accepted without appeal by the Board on December 1, 1994.

4. That on November 10, 1994, the Proposed Decision of the Panel was served on the Respondent via U.S. First Class, certified mail, restricted. The Proposed Decision of the Panel was appealed by the Respondent on December 6, 1994.

5. That on February 17, 1995, the Respondent withdrew the appeal.

6. That pursuant to 653 IAC 12.50(29) and no appeal of the said Proposed Decision of the Panel, having been taken by the Respondent or any other party to the proceeding the said Proposed Decision of the Panel became a final order of the Board.

7. That pursuant to Sections 148.6(1), 148.6(2) and 148.7(7) of the 1995 Code of Iowa the undersigned is authorized to enter an Order herein.

THEREFORE IT IS ORDERED that Iowa medical license number 16665 issued to the Respondent is hereby placed on a two (2) year probation under the following terms and conditions:

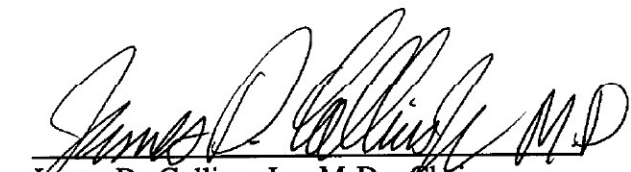
- a. The Respondent shall not treat his spouse, children, grandchildren, or any of the spouses or "significant others" of the above, by prescribing any prescription drugs on schedules II-IV.
- b. The Respondent shall maintain a list of all of his patients, under the age of sixty (60), for whom he has prescribed prescription drugs on schedules II-IV to treat chronic pain, not due to cancer. For each of these patients, the Respondent shall have a thorough, organized written treatment plan in the patient's record. These patient records shall be subject to inspection by the Board or its designee, at random unannounced visits.
- c. The Respondent shall submit quarterly reports, under penalty of perjury, stating that there has been compliance with all the conditions of this Order.
- d. The Respondent shall make a personal appearance before the Board upon request. The Respondent shall be given reasonable notice of the date, time and place for the appearances.
- e. The Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.

f. The Respondent shall notify the Board of any change of employment or address within one week of said change.

8. In the event the Respondent violates or fails to comply with any of the terms of provisions of this Order, the Board may initiate appropriate action to revoke or suspend the Respondent's license or to impose other licensee discipline as authorized in Iowa Code sections 148.6 and 272C.3(2)(a).

9. Upon full compliance with the terms and conditions set forth in this Order, and upon expiration of the period of probation, Respondent's license shall be restored to its full privileges free and clear of the terms of probation.

IT IS FURTHER ORDERED in accordance with 653 IAC 12.51, that the Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, the Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 12.51(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the date of this Order.


James D. Collins, Jr., M.D., Chair
IOWA STATE BOARD OF MEDICAL EXAMINERS
1209 East Court Avenue
Des Moines, IA 50319-0180

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE) DIA NO. 94DPHMB-7
COMPLAINT AND STATEMENT) CASE NO. 02-93-110
OF CHARGES AGAINST)
)
JAMES E. DOLAN, M.D.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
Respondent) DECISION AND ORDER
) OF THE PANEL

TO: James E. Dolan, M.D.

On March 31, 1994 the Iowa Board of Medical Examiners (Board) filed a Complaint and Statement of Charges against James E. Dolan, M.D. (Respondent) alleging that he violated Iowa Code sections 148.6(2) (g) and (i) and 653 IAC 12.4(2)(b), (c), and (d), 12.4 (3)(c), 12.4(13), (15), and (28) when he provided substandard care to five patients by inappropriately prescribing for their use various medications, including controlled drugs, over extended periods of time. The Original Notice and Order For Hearing set the hearing for June 7, 1994.

The Respondent filed his Answer on April 11, 1994. The hearing was continued at the request of the Respondent. The hearing was held before a panel of the Board on September 28 and 29, 1994 in the conference room, Executive Hills East, 1209 East Court Avenue, Des Moines, Iowa. The Respondent appeared in person and was represented by his attorney, William L. Kutmus. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. The members of the Board comprising the hearing panel were: James Collins, M.D., Chairperson; Eddie DeHaan, M.D.; and Laura Stensrud, public member. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided and was directed to prepare the panel's proposed decision, in accordance with their deliberations.

THE RECORD

The record includes the Complaint and Statement of Charges, Original Notice and Order for Hearing, Answer, Motion to Continue, Response, Order Continuing Hearing, Orders Rescheduling Hearing, the testimony of the witnesses, and the following exhibits:

State's Exhibit A: Complaint Report, 5/18/92

State's Exhibit B: excluded

State's Exhibit C: Investigative Report, 8/18/92

- State's Exhibit D: Attachment A to 8/18/92 Investigative Report
- State's Exhibit E: Attachment B to 8/18/92 Investigative Report
- State's Exhibit F: Attachment C to 8/18/92 Investigative Report
- State's Exhibit G: Attachment G to 8/18/92 Investigative Report
- State's Exhibit H: Complaint Report 2/2/93
- State's Exhibit I: Investigative Report, 8/16/93
- State's Exhibit J: Patient Record, D.G.
- State's Exhibit K: Patient Record, D.S.
- State's Exhibit L: Patient Record, R.D.
- State's Exhibit M: Patient Record, M.C.
- State's Exhibit N: Patient Record, T.F.
- State's Exhibit O: Curriculum Vitae, Donal D. Hill, D.O.
- State's Exhibit P: Curriculum Vitae, Gregory Bernard Hoverson, D.O.
- State's Exhibit Q: Curriculum Vitae, Daryl E. Doorenbos, M.D.
- State's Exhibit R: Peer Review Committee Report, 1/5/94
- State's Exhibit S: Article, "A Framework for Management of Chronic Pain", American Family Physician, November, 1988.
- State's Exhibit T: Excerpt from Article, "Management of Chronic Pain", American Family Physician, July 1987.
- State's Exhibit U: Textbook excerpt, "Symptomatic Care Pending Diagnosis", Conn's Current Therapy 1994, edited by Robert E. Rakel, M.D.
- State's Exhibit V: Article, "Management of Chronic Pain", American Family Physician, July 1987.

- State's Exhibit W: Article, "Responsible Prescribing of Controlled Substances", American Family Physician, November 1991.
- State's Exhibit X: Excerpt, Minnesota Board of Medical Practice Update, Fall 1993
- State's Exhibit Y: Excerpt, Texas State Board of Medical Examiners Newsletter, Spring/Summer 1993.
- State's Exhibit Z: Excerpts, "Prescribing Controlled Substances for Pain", Medical Board of California Action Update, April 1994 and July 1994; and draft statement.
- State's Exhibit AA: Article, "Chronic Opioid Therapy in Non Malignant Pain", Journal of Pain and Symptom Management, February 1990.
- State's Exhibit BB: Article, "Chronic Opioid Therapy for Persistent Noncancer Pain: Panacea or Oxymoron?" American Pain Society Bulletin, February 1991.
- State's Exhibit CC: Complaint and Statement of Charges, issued 4/12/84
- State's Exhibit DD: Informal Settlement 6/12/84 and related orders.
- State's Exhibit EE: Order, 8/3/90
- State's Exhibit FF: Letter of Concern, 7/2/90
- State's Exhibit GG: Letter dated 7/13/90 (Respondent to Board)
- Respondent's Exhibit 1: Record of Attendance, Intensive Controlled Substance Management, 30 credit hours, School of Medicine, Case Western Reserve University, Letter dated 6/22/94 (Parran to Respondent), Revised Agenda and Faculty List.
- Respondent's Exhibit 1A: Curriculum Vitae of Respondent
- Respondent's Exhibit 2: Letter dated 11/12/93 (Robinson to Respondent)

- Respondent's Exhibit 3: Letter dated 5/13/93 (Respondent to Iowa Academy of Family Physicians)
- Respondent's Exhibit 4: Respondent's Present Job Description
- Respondent's Exhibit 5: Biosketch: David E. Joranson
- Respondent's Exhibit 6: Article, "Recent Developments in Pain Management and Regulation", American Pain Society (APS) Bulletin, January/February 1994
- Respondent's Exhibit 7: Article, "California Sponsors Pain Summit; Maryland Fends off New Regulations" APS Bulletin, July/August 1994.
- Respondent's Exhibit 8: Article, "Painful Barriers", American Medical News, 5/9/94
- Respondent's Exhibit 9: Article, "Painful Truth", American Medical News, 3/7/94
- Respondent's Exhibit 10: Article, "New Guideline Says Chronic Pain Often Undertreated", AMA News 3/28/94
- Respondent's Exhibit 11: Letter to the editor, "Opiates for Pain: Patients' Tolerance and Society's Intolerance", Journal of the American Medical Association (JAMA) 2/9/94
- Respondent's Exhibit 12: Article, "Benzodiazepines: Issues for the Family Physician" Mental Illness, Personality Disorders, and Psychoneurosis, Vol. 12, No. 3, March 1990
- Respondent's Exhibit 13: Article, "California Protects Doctors who Prescribe For Pain" AMA Journal, 9/12/94.

Citation to Porter and Jack,
N.E.J.M. 1980, 302:123

Article, "Fear of Sanctions Limits Prescribing of Pain Drugs" Medical News 8/15/94

Respondent's Exhibit 14: Report from the annual meeting of the American Association For The Study of Headache.

Respondent's Exhibit 15: Article, "Long Term Oral Opioid Therapy in Patients With Chronic Nonmalignant Pain", Journal of Pain and Symptom Management February 1992.

Article, "Completed Suicide in Chronic Pain", The Clinical Journal of Pain, 1991.

Article, "Homicide-Suicide and Chronic Pain", The Clinical Journal of Pain, 1989.

Article, "Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases" Pain 25 (1986)

Respondent's Exhibit 16: Article, "Price of Pain Control" American Medical News, 5/16/94

Letters to the editor, American Medical News, 5/2/94

Respondent's Exhibit 17: Summary of Respondent's Prescribing Practices, first quarter 1994, prepared by John Deere Health Care and Heritage National Healthplan.

Respondent's Exhibit 18: JAMA statement by the Ethics and Judicial Council July 1993

Respondent's Exhibit 19: Respondent's summary- M.C. patient record.

Respondent's Exhibit 20: Respondent's summary- D.G. patient record.

Respondent's Exhibit 21: Respondent's summary- R.D. patient record.

Respondent's Exhibit 22: Respondent's summary- T.F. patient record.

Respondent's Exhibit 23: Respondent's summary- D.S. patient record

Respondent's Exhibit 24: Respondent's record of continuing medical education, 1/1/92 to 9/13/94

Respondent's Exhibit 25: Interrogatories and Curriculum Vitae of James Blessman, M.D.

FINDINGS OF FACT

1. The Respondent was issued license number 16665 to practice medicine and surgery in the state of Iowa on July 1, 1963, as recorded in the permanent records in the office of the Board. The Respondent's license is current and valid until May 1, 1996. The Respondent was engaged in family practice from 1963 until December 1993. He is board eligible in psychiatry and devoted approximately one-third of his practice to psychiatry. (Board file; Testimony of Respondent; Respondent's Exhibit 1A)

2. In May, 1992 the Board began an investigation of the prescribing practices of the Respondent after receiving a report from an investigator for the Iowa Board of Pharmacy Examiners. As a result of this investigation, the Board found probable cause to file a Complaint and Statement of Charges against the Respondent alleging inappropriate prescribing of controlled substances to five patients over a period of time. (Testimony of Fred Nichols; State's Exhibits A, C-I)

Patient D.G.

3. Patient D.G., a member of the Respondent's family, was treated by the Respondent from February, 1986 until his suicide in November, 1992. Initially, D.G. was treated for migraine headaches, common infections, and muscle strain and backache. On February 10, 1989 the Respondent prescribed Darvocet N-100, an opioid, by telephone. The Respondent's patient records reflect only that the prescription for 50 tablets x 2 was called in to the pharmacy. There is no documentation of the reason for the prescription. Subsequent entries in D.G.'s patient records indicate only that the prescription for Darvocet N-100 was refilled, usually by telephone, on thirteen occasions between February 10, 1989 and February 1, 1990. The entry on February 1, 1990 includes the notation "MUST LAST 1 MONTH". Further entries in the patient record indicate that the Respondent refilled the Darvocet N-100 prescription, mostly by telephone, thirteen times in the period from March 2, 1990 until September 27, 1990. None of these entries indicate the reason for the prescription or that any alternative treatment modalities were utilized. Entries dated September, 1988 refer to a fall from scaffolding which resulted in bruising and abrasions. (Testimony of Darrell Doorenbos, M.D.; Respondent; State's Exhibit J)

4. On September 28, 1990 D.G. was deliberately run over by a car and suffered extensive serious injuries. He was hospitalized for two weeks. On October 31, 1990 entries in the patient record indicate that the Darvocet N-100 prescription was refilled by telephone, and the patient was also prescribed Soma, a muscle relaxant, for muscle spasms. Thereafter, the Respondent continued to refill both the Darvocet and the Soma prescriptions, usually by telephone, and with no explanatory notes in the patient record. Between October 31, 1990 and June 10, 1991, the Darvocet N-100 prescription was filled eighteen times and the Soma prescription was filled twelve times. A patient note dated November 19, 1990 states that the patient's knee was to be "scoped by an orthopedist" and also states "see specialist", however there is no subsequent reference to these referrals and their outcomes. According to the pharmacy records, this prescribing pattern continued until at least February, 1992. (Testimony of Doorenbos; Respondent; State's Exhibit J)

5. During this time period, the patient record contains some references to chronic pain and injury related problems. A note in the patient file dated February 14, 1992 states that a discussion was held with the female pharmacist at Drug Mart. It states, "She does not wish to fill D.G.'s prescriptions as directed. We will change pharmacies as this is not her professional responsibility." In the opinion of the peer review committee, this was the pharmacist's attempt to alert the Respondent that D.G. was receiving more than the typical amounts of narcotics. (Testimony of Doorenbos; State's Exhibit J)

6. The Respondent prepared a typewritten summary of the patient record for each of the five patients at issue. These summaries contain the information listed in the actual patient record, but they also contain information from the Respondent's recollection of the treatment, which were not previously recorded in any patient record. With respect to patient D.G., the Respondent's summary contains additional detail concerning the extent of the Respondent's various injuries and subsequent surgical procedures which were performed by other physicians. However, neither the written patient record, nor the Respondent's summary, which includes his recollections, adequately explain the Respondent's treatment plan for D.G., his exploration of alternative treatments, including physical therapy and use of non-narcotics, or referral to a pain clinic for evaluation. (Testimony of Respondent; State's Exhibit J; Respondent's Exhibit 20)

7. On May 9, 1992 the two children of D.G. and their grandmother died in a house fire. On May 18, 1992 D.G. was seen by a psychiatrist. D.G.'s physical and emotional condition deteriorated. On June 11, 1992 D.G. admitted to the Respondent that he was taking more than the prescribed doses of medication. This is noted in the Respondent's summary but is not contained in the patient record.

On July 13, 1992 the Respondent referred D.G. to Dr. James Blessman, M.D. at the Pain Center. Additional referrals were made to other specialists, including a physiatrist and psychiatrists. The Respondent had D.G. committed twice; the first time he stayed seven days and the second time he ran away. On November 4, 1992 D.G. committed suicide. (Testimony of Respondent; Doorenbos; Richard Preston, M.D.; State's Exhibit J; Respondent's Exhibit 20).

8. The Respondent began prescribing Darvocet N-100 for D.G. in February, 1989. Subsequently, the Respondent refilled that prescription 26 times before the Respondent's serious accident in September, 1990. Thereafter, the Respondent prescribed repetitive doses of Darvocet N-100 (averaging 100-160 tablets a month) and Soma (averaging 200 to 300 doses a month over a three year period from 1990 to 1992). (Testimony of Respondent; Doorenbos; State's Exhibits J, R)

Patient D.S.

9. Patient D.S. was treated by the Respondent for migraine headaches from October, 1992 until July, 1993. At the patient's first visit on October 23, 1992 she reported that she had previously been treated by Dr. Brewer, neurologists, and had been assessed by Dr. Blessman for pain management. The sister of D.S. had been diagnosed with a tumor of the optic nerve. The Respondent testified that D.S. was preoccupied with the idea that she also had a tumor. D.S. had been diagnosed with mild stenosis of L5/S1. The patient record reports a family history of headaches and prior treatment with relaxation techniques, Pamelor and other medications, which the patient reported were unsuccessful. The Respondent's patient records do not contain any verification of these consultations or treatments, any results of the CT scan, or reports of the recommendations made by these physicians. The Respondent had D.S. fill out a "Forest headache questionnaire" and asked her to keep a headache diary at home. Respondent invited D.S. to join a weight loss class. (Testimony of Doorenbos; State's Exhibit K)

10. The Respondent saw D.S. approximately eight times between 10/23/92 and 5/13/93. During this time D.S. received over 800 doses of Lortab, 7 1/2 mg., an opioid, and over 780 doses of Soma, a muscle relaxant, as well as prescriptions for Darvocet N-100, Midrin and Pamelor. At her first visit, the Respondent gave D.S. prescriptions for both Midrin and Lortab, with instructions to fill the Lortab prescription only if the Midrin failed to relieve her pain. The patient record does not document these instructions to the patient. The panel is concerned that the prescribing of both of these drugs at the same time undermines the patient's effort to manage the pain with non-narcotics. In November, 1992 the Respondent referred D.S. for physical therapy. Subsequent notes in the patient record through January 1993 refer to physical therapy as ongoing, but the record does not contain any reports from the

physical therapist verifying this. (Testimony of Doorenbos; Respondent; State's Exhibit K, R; Respondent's Exhibit 23)

11. The peer review committee concluded that the Respondent should have made an effort to establish a diagnosis that explains D.S.'s symptoms. The peer review committee would have continued to use medications like Midrin and nonsteroidal and anti-inflammatory medications. In addition, the committee would have used beta blockers to prevent migraines. The committee concluded that the Respondent should have sought another opinion on the cause of the patient's pain and a pain clinic evaluation, rather than simply continue the opioids and muscle relaxants over a period of seven months. (Testimony of Doorenbos; State's Exhibit K, R)

Patient R.D.

12. R.D. is a member of the Respondent's family. The Respondent treated R.D. with Phenergan with codeine for a chronic cough due to allergies. According to the Respondent, R.D. had been desensitized as a child, but the allergy shots were ineffective. From March 1989 until March 1992, the Respondent gave R.D. repetitive refills of Phenergan with Codeine, of up to 16 ounces at a time. In January 1990 R.D. received 56 ounces in 24 days. The Respondent testified that he was providing those amounts for the whole family to use because it was more economical. The panel did not find this explanation to be credible, but notes that such a practice would violate controlled substances laws and regulations. The peer review committee concluded that the Respondent prescribed Phenergan with Codeine at an unreasonable rate and amount which could potentiate habituation. The patient record did not document routine care of R.D. by other physicians. (Testimony of Doorenbos; Respondent; State's Exhibits L, R)

13. The Respondent also prescribed Halcion 25 mg. and Valium 2 mg., due to R.D.'s trouble with sleeping. R.D. was receiving these drugs at the same time he received the Phenergan with Codeine. R.D. received a total of 342 tablets of Halcion from April 12, 1989 until March 13, 1992. R.D. received 160 tablets of Valium from June 6, 1990 until September 13, 1991. The peer review committee was concerned by the Respondent's prescription of three potentially addictive drugs simultaneously and over an extended period of time. The nightly use of Halcion for a period of years is inappropriate, due to the tolerance effect of hypnotics, and their indication for short term use only. The patient record does not document dosing trials of medications which can develop less tolerance, such as Desyrel or Elavil. The Respondent should have used other medication classes such as antidepressants and/or a sleep lab. Furthermore, there was evidence that R.D. suffered from depression. Valium and Halcion may aggravate depression in some people, and none of these three drugs benefit depression. (Testimony of

Doorenbos; Respondent; State's Exhibits L, R; Respondent's Exhibit 21)

14. In both the cases of D.G. and R.D. there is an additional concern about the prescription of potentially addictive drugs to family members. The Respondent may not exercise the same objectivity in evaluating these patients as he would with other patients in his practice. This is particularly true in this case where the family members and the Respondent were under extreme stress due to tragic family circumstances. (Testimony of Doorenbos; Respondent; Preston; Robert C. Jones, M.D.; State's Exhibits J, L; Respondent's Exhibits 20, 21)

Patient M.C.

15. M.C. was a long term patient of the Respondent, who had a history of back pain and anxiety, both of which were primarily related to his occupation. The Respondent prescribed Valium often for M.C.'s anxiety, at an interval of 100 Diazepam (Valium) 10 mg on a monthly basis. On a long term basis, Valium can promote psychologic habituation and physical dependence, particularly in people with chronic pain. M.C. also received Percocet prescriptions which allowed him an average of 3 to 4 doses per day over a period of years. At times, M.C. also received Acetaminophen with Codeine or Darvocet N-100, concurrently with his Percocet prescriptions. In the opinion of the peer review committee, the primary treatment of M.C. should have been anti-inflammatory drugs and physical therapy, with only occasional use of opioids or valium if there were extenuating circumstances. (Testimony of Doorenbos; Respondent; State's Exhibits M, R; Respondent's Exhibit 19)

16. According to the Respondent and M.C., M.C. was admitted to the Mercy Hospital Pain Clinic during the summer of 1990, but was unable to complete the treatment due to insurance problems. The only reference to this referral is contained in the Respondent's summary of his patient record. (Testimony of Respondent; M.C.)

17. On March 22, 1991 M.C. was evaluated at the Institute for Low Back Care in Minneapolis, Minnesota, on a referral from the Respondent. In a report to the Respondent, a physician from the Institute states that M.C. has taken Percocet 2-5 tablets per day and Valium, 10 mg, 1 to 2 tablets per day, for the last two years. The physician concluded that M.C.'s problems were mechanical in origin and due to degeneration in the discs. The CT Scan of lumbar spine showed some narrowing of L3-4, L4-5, and L5-S1 disc spaces which is consistent with degeneration within the discs. There was a small herniated nucleus pulposus at the L4-5 level which was central without nerve root compression. The physician recommended that M.C. attend physical therapy in his local hospital with an emphasis on stabilization exercises. He was scheduled to return to the Institute for a follow up appointment in five weeks. M.C. did

undergo physical therapy at Charter Hospital and at the Therapy Center of Central Iowa. The patient record does not indicate whether M.C. attended his follow up appointment at the Institute. In June 1991 M.C. overdosed on Percocet when he had a gum infection. (Testimony of Respondent; M.C.; Jones; State's Exhibit M; Respondent's Exhibit 19)

18. According to the Respondent and M.C., M.C. was evaluated by Dr. Robert C. Jones, M.D., a neurosurgeon, and he recommended surgery to relieve M.C.'s chronic back pain. Dr. Jones could not specifically recall M.C., and he no longer has his patient record. The Respondent's patient record does not contain any references to this referral or its outcome. M.C. testified that he was afraid of surgery and was unwilling to consider it. (Testimony of Respondent; M.C.)

19. Dr. Jones had received a number of referrals from the Respondent over the years and has known the Respondent since 1966. Dr. Jones reviewed the Respondent's summary of his treatment of M.C. Dr. Jones conceded that M.C. had received "lots of high powered narcotics." Dr. Jones testified that he uses opioids judiciously in cases of benign pain and at some point will stop prescribing for the patient. Dr. Jones prescribes only one class of opioids at a time, both due to a fear of overdosing the patient and to ensure that he can determine the drug responsible if the patient develops side effects. However, without the opportunity to observe the patient's condition, Dr. Jones could not conclude that the Respondent's treatment of M.C. was outside the standard of care in Iowa. Dr. Jones based this conclusion in large part on the Respondent's representations to him that M.C. had one to two week "drug holidays" to avoid addiction and that M.C. at times had voluntarily cut his doses. Neither the patient record nor the Respondent's summary contain any references to "drug holidays". In addition, Dr. Jones relied on Respondent's close monitoring of the patient, including counselling. (Testimony of Respondent; M.C.; Jones; Respondent's Exhibit 19)

20. M.C. last saw the Respondent as his physician on June 1, 1992. According to M.C., the Respondent advised him that if he kept up with his physical therapy he would not need the Percocet. M.C. testified that he has been taking Advil for his back pain at the present time, although his present physician has given him a prescription for Percocet which he has not filled for the last six to eight weeks. M.C. discontinued his use of Valium about one year ago, and he is presently taking Xanax for his anxiety. (Testimony of M.C.)

Patient T.F.

21. T.F. was an employee and a patient of the Respondent for five and a half years. The peer review committee expressed concern that

the patient record for T.F. has an overlap of prescription medications. For example, on December 27, 1991 T.F. was prescribed 100 Darvocet N-100 and 25 Butalbital Compound #3 (Fiornal #3), while on January 11, 1992 T.F. was prescribed 12 Talwin. T.F. was treated for a variety of conditions, including migraine headaches. The Respondent testified that these medications were not meant to be taken simultaneously. The patient was provided preprinted handouts which gave instructions to take the next medication only if the first failed to relieve the patient's pain. In this case, the patient was the Respondent's employee who was responsible for giving out the handouts to other patients. In the Respondent's opinion, she was well informed about the appropriate way to take the different medications. In addition, the Respondent was able to observe her responses to the medications on a daily basis in the office. (Testimony of Doorenbos; Respondent; State's Exhibit M; Respondent's Exhibit 22)

22. The three physicians who testified that the Respondent's treatment of the five patients at issue was not outside the standard of care for medical practice in Iowa were not persuasive. These physicians were all specialists: a gastroenterologist, a neurosurgeon, and a psychiatrist. They were not engaged in family practice. Moreover, each of these physicians were long term friends of the Respondent. The peer review committee, on the other hand, were all family practice physicians. (Testimony of James P. Gould, M.D.; Jones; Preston; Doorenbos; State's Exhibits O-Q)

23. The peer review committee acknowledged that chronic pain is one of the most difficult problems in the practice of family medicine. They gave consideration to the possibility that these were isolated cases of very difficult patients. However, the Respondent's patient records were inadequate to establish this. While some of the records indicated that the Respondent had utilized nonpharmacologic interventions, non narcotic pharmacologic agents, and referrals to specialists and consultants, the patient records do not contain adequate documentation of their use and the outcome. Additionally, the patient records do not reflect the Respondent's goal in using the narcotics. There is general consensus that the longer pain due to non malignant causes goes on, the less acceptable it becomes to treat the pain with narcotics. In the opinion of the peer review committee, a patient with chronic pain over an extended period of time should only be treated with long term narcotics if the patient has been evaluated by a pain clinic that determines the continued use of narcotics is appropriate. (Testimony of Doorenbos; State's Exhibit R)

24. Both the state and the Respondent submitted articles from medical publications concerning the use of narcotics to control chronic, non malignant pain, as well as acute pain and pain associated with terminal illness. All of the Respondent's patients at issue suffered chronic pain, and did not have terminal diseases.

Therefore, the articles which deal with pain management in cancer cases are not applicable. With respect to chronic pain, even the articles cited by the Respondent support the long term use of opioids for intractable chronic pain only in those cases where "all other therapeutic methods have failed." Zenz, Strumpf, and Tryba, "Long-Term Oral Opioid Therapy in Patients With Chronic Nonmalignant Pain" Journal of Pain and Symptom Management, February, 1992, pp. 74,76. See also Portenoy and Foley, "Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases" Pain, 25 (1986) p. 183. In California, the state medical board has issued a new guideline for physicians who prescribe opioids for intractable pain. Their guidelines include requirements that:

- 1) the patient be evaluated by the prescribing physician and one or more specialists in the treatment of the area, system or organ of the body perceived as the source of the pain,
 - 2) a history and physical examination, including assessment of the pain, physical and psychological function, substance abuse history, underlying or coexisting diseases or conditions, and the presence of a recognized medical indication for use of a controlled substance,
 - 3) a treatment plan, including objectives by which treatment success can be evaluated and an indication of whether further diagnostic evaluations or treatments are planned,
 - 4) informed consent,
 - 5) periodic treatment review,
 - 6) consultation, as necessary,
 - 7) accurate and complete records,
 - 8) compliance with controlled substances laws and regulations.
- (State's Exhibits J-BB; Respondent's Exhibits 6-16)

24. The Respondent's patient records were wholly inadequate to establish that all alternative therapeutic methods were fully utilized and failed before starting the patients on long term treatment with opioids, often in conjunction with other potentially addictive medications. Reports from consulting specialists were either incomplete or wholly lacking, and prescriptions were often refilled by telephone without any written justification in the patient record. The records contained no treatment plans or stated goals for the patient. Much of the detail in the summaries prepared by the Respondent was provided from memory, as opposed to having been documented in the patient record. (Testimony of Doorenbos; Respondent; State's Exhibits J-BB; Respondent's Exhibits 6-16)

25. The Respondent has left the private practice of medicine and is now employed as the Director of Medical Care for the Iowa Veteran's Home in Marshalltown, Iowa. The Respondent is responsible for supervising all medical care, administrative duties, and

direct medical treatment of some patients. (Testimony of Respondent; Respondent's Exhibit 4)

26. Since the Complaint and Statement of Charges were filed, the Respondent has undertaken an intense training program in the area of pain control. In June, 1994 the Respondent completed a thirty hour course, "Intensive Controlled Substance Management" at the Case Western Reserve University School of Medicine. In conjunction with this course, Respondent's knowledge was assessed in both a pre-test and a post-test. According to a letter from the Medical Director of the program, these assessments demonstrated an impressive improvement in the Respondent's knowledge following the course. The Medical Director also noted Respondent's willingness to work on new patient management skills in the Saturday workshops, and concluded that the Respondent demonstrated very good ability to incorporate new skills. In the month prior to the hearing, the Respondent completed Hospice training. (Testimony of Respondent; Respondent's Exhibit 1)

27. A prior Complaint and Statement of Charges was filed against the Respondent on April 12, 1984 which charged the Respondent with a departure from and failure to conform to the minimal standards of acceptable and prevailing practice of medicine and surgery when he prescribed anabolic steroids to twenty-nine male patients without medical justification. On June 19, 1984 a Commissioner's Order was filed, pursuant to an Informal Settlement entered into between the Respondent and the Board. The Respondent's license was placed on probation for two years, subject to certain terms and conditions, which included the payment of a \$1000.00 civil penalty. (Testimony of Fred Nichols; State's Exhibits CC; DD; EE)

28. On July 2, 1990, the Board sent the Respondent a Letter of Concern, regarding his prescribing practices for a patient who had a history of drug abuse. (Testimony of Fred Nichols; State's Exhibits FF; GG)

CONCLUSIONS OF LAW

1. Iowa Code section 148.6 (1993) provides in relevant part:

148.6 Revocation.

1. The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

...
g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, ... in which proceeding actual injury to a patient need not be established; ...

...
i. Willful or repeated violation of lawful rule or regulation adopted by the board ...

2. 653 IAC 12.4 provides in relevant part:

653-12.4(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2(272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

...
12.4(2) Professional incompetency. Professional incompetency includes but is not limited to:

...
b. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

c. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances.

d. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery ... in the State of Iowa.

12.4(3) ...practice harmful or detrimental to the public. Proof of actual injury need not be established.

c. Practice harmful or detrimental to the public includes, but is not limited to the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable prudent physician acting in the same or similar circumstances in this state ...

...
12.4(13) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, ... in which proceeding actual injury to a patient need not be established; ...

...

12.4 (15) Willful or repeated violation of lawful rule or regulation adopted by the board.

...
12.4 (28) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections ... 148.6.

3. The preponderance of the evidence established that the Respondent failed to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, in violation of Iowa Code section 148.6(2)(g), and failed to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances, in violation of 653 IAC 12.4(2)(c) with respect to his treatment of patients D.G., R.D., D.S. and M.C.

In these four cases, the Respondent prescribed long term treatment with opioids for chronic pain, often in combination with other potentially addictive medications. The Respondent's written patient record is wholly inadequate to establish that alternative therapeutic methods, (e.g. physical therapy, non-steroidal medications, anti-inflammatory medications, TENS units), were fully utilized and failed. Numerous refills of opioids and other controlled substances were provided over the phone, with no documentation in the record as to the reasons or justification for the refills. In some instances, several different classes of opioids were prescribed at the same time. Moreover, the patient records inadequately document referrals to specialists, or evaluations and recommended treatment by specialists, including pain clinics. The patient records do not contain treatment plans or state goals to be achieved by long term use of opioids and other addictive medications. The treatment of D.G. and R.D. is further aggravated by their family relationship to the Respondent, which compromises his objectivity in evaluating the needs of the patient.

The panel cannot conclude that the treatment of T.F. was outside the standard of care. While the Respondent did allow prescriptions for various controlled substances to overlap, T.F. was provided instructions to take this medications consecutively, not concurrently. More importantly, this patient was the Respondent's employee who was responsible for distributing his written instructions on medications to other patients. In addition, the Respondent had the opportunity to observe this patient extensively on a daily basis as she worked in his office. For this reason, his observations of both her pain and her response to medications would be more reliable than the self reporting he relied on with other patients.

DECISION AND ORDER

After listening to the testimony and reviewing the exhibits, the panel is satisfied that the Respondent is a generally competent and caring physician. However, in four of the cases presented, the Respondent failed to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician in Iowa under similar circumstances. The Respondent has insufficiently documented the condition and treatment of these patients. Neither the patient records nor the Respondent's explanations were adequate to justify the large amounts and combinations of controlled substances which were prescribed for extended periods of time. However, the Respondent has taken significant steps to address any deficiencies in his knowledge or practice with respect to the long term prescription of opioids for chronic pain. Specifically, the Respondent has successfully completed an intensive course at Case Western University School of Medicine, which substantially addressed his problem areas.

IT IS THEREFORE ORDERED, that when this proposed decision becomes final, that the license to practice medicine and surgery, issued to James E. Dolan, M.D., license number 16665, shall be placed on probation for a period of two (2) years, subject to the following terms and conditions:

1. The Respondent shall not treat his spouse, children, grandchildren, or any of the spouses or "significant others" of the above, by prescribing any prescription drugs on schedules II-IV.
2. The Respondent shall maintain a list of all of his patients, under the age of sixty (60), for whom he has prescribed prescription drugs on schedules II-IV to treat chronic pain, not due to cancer. For each of these patients, the Respondent shall have a thorough, organized written treatment plan in the patient's record. These patient records shall be subject to inspection by the Board or its designee, at random unannounced visits.
3. The Respondent shall submit quarterly reports, under penalty of perjury, stating that there has been compliance with all the conditions of this Order.
4. The Respondent shall make a personal appearance before the Board upon request. The Respondent shall be given reasonable notice of the date, time, and place for the appearances.
5. The Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.

6. The Respondent shall notify the Board of any change of employment or address within one week of said change.

7. In the event the Respondent violates or fails to comply with any of the terms or provisions of this Order, the Board may initiate appropriate action to revoke or suspend the Respondent's license or to impose other licensee discipline as authorized in Iowa Code sections 148.6 and 272C.3(2)(a).

8. Upon full compliance with the terms and conditions set forth in this Order, and upon expiration of the period of probation, Respondent's license shall be restored to its full privileges free and clear of the terms of probation.

IT IS FURTHER ORDERED, in accordance with 653 IAC 12.51, that the Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, the Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 12.51(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 8TH day of NOVEMBER, 1994.

James Collins M.D.
James Collins, M.D.

Eddie DeHaan, M.D.
Eddie DeHaan, M.D.

Laura Stensrud
Laura Stensrud, Public Member

cc: Theresa O'Connell Weeg
William Kutmus

In accordance with 653 IAC 12.50(29), a proposed decision becomes a final decision unless appealed to the Board by a party adversely affected by serving a notice of appeal on the executive director within thirty (30) days after service of this proposed decision. The Board may also review a proposed decision on its own motion.

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA**

IN THE MATTER OF THE COMPLAINT	*	
AND STATEMENT OF CHARGES AGAINST	*	COMPLAINT AND STATEMENT
JAMES E. DOLAN, MD,	*	OF CHARGES
RESPONDENT	*	02-93-110

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa State Board of Medical Examiners (hereafter the Board), on March 31, 1994 and at the direction of the Board, files this Complaint and Statement of Charges against James E. Dolan, MD (hereafter the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That Charlotte Cleavenger, DO, Chairperson; George G. Spellman, Sr., MD, Vice Chairperson; Laura Stensrud, Secretary; Edra Broich; James Caterine, MD; James D. Collins, Jr., MD; Eddie D. DeHaan, MD; Mary C. Hodges; and Roger F. Senty, DO are the duly appointed and qualified officers and members of the Board.
2. That the Respondent was issued license number 16665 to practice medicine and surgery in the State of Iowa on July 1, 1963, as recorded in the permanent records in the office of the Board.
3. That the Respondent's license is current and valid until May 1, 1994.

4. That the Respondent provided substandard care to Patients #1, #2, #3, #4 and #5, by inappropriately prescribing for their use various medications, including controlled drugs, over extended periods of time.

5. That the Board is authorized to take disciplinary action against the Respondent pursuant to the provisions of sections 148.6(1), 148.6(2), 148.6(2)(g), and 148.6(2)(i) of the 1993 Code of Iowa, which state in whole or in part:

148.6(1) - The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection...

148.6(2) - Pursuant to this section, the Board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

148.6(2)(g) - Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery...

148.6(2)(i) - Willful or repeated violation of lawful rule or regulation adopted by the board...

6. That the Board is authorized to take disciplinary action against the Respondent pursuant to the provisions of 653 I.A.C. 12.4, 12.4(2), 12.4(2)(b), 12.4(2)(c), 12.4(2)(d), 12.4(3), 12.4(3)(c), 12.4(13), 12.4(15) and 12.4(28) which state in whole or in part:

653-12.4 - Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

653-12.4(2) - Professional incompetency. Professional incompetency includes but is not limited to:

653-12.4(2)(b) - A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

653-12.4(2)(c) - A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the State of Iowa acting in the same or similar circumstances;"

653-12.4(2)(d) - A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery...in the State of Iowa.

653-12.4(3) - ...practice harmful or detrimental to the public...

653-12.4(3)(c) -Practice harmful or detrimental to the public includes, but is not limited to the failure of a physician to possess and exercise that degree of skill, learning and the care expected of a reasonable prudent physician acting in the same or similar circumstances in this state...

653-12.4(13) - Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery...

653-12.4(15) - Willful or repeated violation of lawful rule or regulation adopted by the board.

653-12.4(28) - Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections ... 148.6.

7. That paragraphs 5 and 6 constitute grounds for the Board to revoke, suspend or otherwise discipline the license to practice medicine and surgery issued to the Respondent on July 1, 1963.

WHEREFORE the undersigned charges that the Respondent is subject to disciplinary action pursuant to the provisions of sections 148.6(1), 148.6(2), 148.6(2)(g), and 148.6(2)(i) of the 1993 Code of Iowa, and 653 I.A.C. 12.4, 12.4(2), 12.4(2)(b), 12.4(2)(c), 12.4(2)(d), 12.4(3), 12.4(3)(c), 12.4(13), 12.4(15) and 12.4(28). The undersigned prays that the Board enter an order fixing a time and place of hearing for the Complaint and Statement of Charges. The undersigned further prays that upon final hearing, the Board enter its findings of fact and

James E. Dolan, MD
Complaint and Statement of Charges
Page 5

decision to revoke, suspend or otherwise discipline the license to practice medicine and surgery issued to the Respondent on July 1, 1963 and for such other relief as the Board deems just in the premises.

IOWA STATE BOARD OF MEDICAL EXAMINERS



ANN M. MARTINO, PhD
Executive Director
1209 East Court Avenue
Des Moines, IA 50319
Telephone: (515) 281-5171