

FILED DATE JUN 14 2013

Department of Health

By: Angel Sanders
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-22473

LICENSE NO.: ME0097569

VICTORIA MACATANGAY GAUS, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on June 7, 2013, in Tampa, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$13,340.95.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

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

DONE AND ORDERED this 13th day of June, 2013.

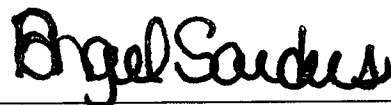
BOARD OF MEDICINE



Allison M. Dudley, J.D., Executive Director
For Zachariah P. Zachariah, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to VICTORIA MACATANGAY GAUS, M.D., 9877 Pines Boulevard, Pembroke Pines, Florida 33024; to Brian A. Newman, Esquire, Pennington, Moore, et al., 215 South Monroe Street, Second Floor, Tallahassee, Florida 32302; and by interoffice delivery to Doug Sunshine, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 14th day of June, 2013.



Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2009-22473

VICTORIA MACATANGAY GAUS, M.D.,

Respondent.

SETTLEMENT AGREEMENT

Victoria Macatangay Gaus, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 97569.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in her capacity as a licensed physician, she is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.
2. **Fine** - The Board of Medicine shall impose an administrative fine of twenty thousand dollars and no cents (\$20,000.00) against the license of Respondent, to be paid

by Respondent to Payments, Department of Health, Compliance Management Unit, Bin C-76, P.O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order accepting this Agreement. **All fines shall be paid by cashiers check or money order.** The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case is currently twelve thousand seven hundred thirteen dollars and forty-five cents (\$12,713.45), but shall not exceed fourteen thousand seven hundred thirteen

dollars and forty-five cents (\$14,713.45). Respondent will pay costs to Payments, Department of Health, Compliance Management Unit, Bin C-76, P. O. Box 6320, Tallahassee, FL 32314-6320, within thirty-days (30) from the date of filing of the Final Order in this cause. **All costs shall be paid by cashiers check or money order.** Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN 45 DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Drug Course** - Respondent shall complete the course, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing," sponsored by the University of Florida, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

5. **Restriction on Practice** -

(A) **Pain Management** - Respondent is permanently restricted from owning, operating or practicing in a "Pain Management Clinic," as that term is defined in

Section 458.3265, Florida Statutes (2012), and may from time-to-time be redefined in Florida Statutes and/or Florida Administrative Code.

(B) **Controlled Substances –**

i. Respondent's practice is restricted in that Respondent may not prescribe any controlled substance until Respondent completes the course, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing," sponsored by the University of Florida, or a Board-approved equivalent.

ii. Respondent is permanently restricted from prescribing schedule II-III controlled substances and benzodiazepines.

STANDARD PROVISIONS

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

2. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

3. **Continuing Medical Education** - Unless otherwise provided in this written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies

of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

8. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

9. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any

attorney's fees or costs from the Department and the Board in connection with this matter.

10. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 11th day of April, 2013.


Victoria Macatangay Gaus, M.D.

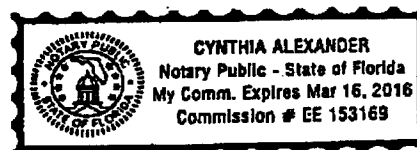
STATE OF FLORIDA
COUNTY OF Broward

Before me, personally appeared Victoria Macatangay Gaus, M.D., whose identity is known to me or by FLORIDA DRIVER'S LICENSE (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 11 day of April, 2013.


NOTARY PUBLIC


My Commission Expires: 03/16/16



DOH v. Victoria Macatangay Gaus, M.D.
Case Number 2009-22473

APPROVED this 15 day of April, 2013.

John H. Armstrong, MD, FACS, FCCP
State Surgeon General & Secretary
of Health, State of Florida

By: 
John B. Fricke, Jr.
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-22473

VICTORIA MACATANGAY GAUS, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Complaint before the Board of Medicine against Respondent, Victoria Macatangay Gaus, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 97569, on or about December 11, 2006.

3. Respondent is Board certified in Physical Medicine and Rehabilitation.

4. Respondent's address of record is 9877 Pines Boulevard, Pembroke Pines, Florida 33024.

5. During all times relevant to this complaint, Respondent was practicing at Medical Health and Wellness Center, Inc., located at 10946 Pembroke Road, Miramar, Florida 33025.

6. At all times relevant to this complaint, Respondent practiced medicine in the area of pain management. She was engaged in the treatment of pain by prescribing or dispensing controlled substance medications.

7. On or about April 2, 2010, a reasonable cause subpoena was issued in accordance with Section 456.067(9)(a)1, Florida Statutes (2009), to obtain the medical records of patients of Respondent at Medical Health and Wellness Center, Inc., including patients E.D., J.G., R.H., T.K., and B.M., to whom the Respondent had prescribed controlled substances.

8. The medical records obtained in response to the subpoena documented that Respondent had prescribed large amounts and doses of controlled substances to patients E.D., J.G., R.H., T.K., and B.M.

9. The Department submitted the medical records of patients E.D., J.G., R.H., T.K., and B.M. to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

10. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patients E.D., J.G., R.H., T.K., and B.M. without medical justification.

11. The controlled substances that Respondent had prescribed in inappropriate and excessive amounts or combinations without justification were Roxicodone, Percocet, and Xanax.

12. Roxicodone is a brand name for oxycodone. Oxycodone is a semi-synthetic opioid that is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

13. Percocet is the brand name for a drug that contains oxycodone and is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

14. Xanax is the brand name for alprazolam and is prescribed to treat anxiety. Alprazolam is a benzodiazepine. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

Facts Specific to Patient E.D.

15. From on or about January 24, 2009, through on or about March 29, 2010, Respondent provided care and treatment to patient E.D., a forty-seven year old male resident of Pompano Beach, Florida, for complaints of low back pain.

16. Respondent prescribed controlled substances to patient E.D. as

follows:

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Percocet 10/325	Xanax 2 mg.
01/24/2009	#84			
02/14/2009	#168			#28
03/14/2009	#42	#84		#28
03/14/2009	#84			
03/18/2009	#42	#84		
05/11/2009	#136			#28
05/11/2009	#32			
06/16/2009	#100			#28
06/16/2009	#68			
07/13/2009	#80		#56	#28
07/13/2009	#88			
08/10/2009	#115		#56	#28
08/10/2009	#53			
09/21/2009	#168		#56	#28
11/03/2009	#168		#56	#28
11/04/2009	#48			
12/02/2009	#168		#56	#28
12/30/2009	#168		#56	#28
01/26/2010	#168		#56	#28
03/01/2010	#180			#28
03/29/2010	#125			#28
03/29/2010	#55			

17. Patient E.D. provided a history of obtaining controlled substances illegally.

18. Patient E.D. provided a history of taking controlled substances that were prescribed to his mother.

19. Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient E.D.

20. Respondent did not obtain and document a complete medical history for patient E.D.

21. Respondent did not obtain and document adequate physical examinations of patient E.D.

22. Throughout the time of Respondent's care and treatment of patient E.D., Respondent did not adequately provide or recommend other treatment modalities to patient E.D.

23. Respondent did not adequately perform or prescribe tests for evaluation of patient E.D.'s complaints.

24. Respondent did not refer patient E.D. to specialists for evaluation or treatment.

25. The Department submitted the medical records of patient E.D to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

26. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patient E.D. without medical justification.

Facts Specific to Patient J.G.

27. From on or about June 19, 2009, through on or about August 8, 2009, Respondent provided care and treatment to patient J.G., a forty-seven year old male resident of Fort Lauderdale, Florida, for complaints of neck and low back pain.

28. Respondent prescribed controlled substances to patient J.G. as follows:

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Xanax 2 mg.
06/19/2009	#126	#42	#42
07/11/2009	#168	#84	#56
08/08/2009	#168	#84	#56

29. Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient J.G.

30. Respondent did not obtain and document a complete medical history for patient J.G.

31. Respondent did not obtain and document adequate physical examinations of patient J.G.

32. Throughout the time of Respondent's care and treatment of patient J.G., Respondent did not adequately provide or recommend other treatment modalities to patient J.G.

33. Respondent did not adequately perform or prescribe tests for evaluation of patient J.G.'s complaints.

34. Respondent did not refer patient J.G. to specialists for evaluation or treatment.

35. The Department submitted the medical records of patient J.G. to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

36. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patient J.G. without medical justification.

Facts Specific to Patient R.H.

37. From on or about June 13, 2009, through on or about December 28, 2009, Respondent provided care and treatment to patient

R.H., a fifty-one year old female resident of Sunrise, Florida, for complaints of lower leg pain, foot pain, and right arm pain.

38. Respondent prescribed controlled substances to patient R.H. as follows:

Date	Roxicodone 30 mg.	Xanax 0.25 mg.	Xanax 2 mg.
06/13/2009	#100		
06/13/2009	#84		
07/22/2009	No amount written on prescription. Instructions: One to two tabs every 4 to 6 hours for pain not to exceed 8 tabs/day X 28 days.		
08/15/2009	#100		
08/15/2009	#36		
09/12/2009	#80		
09/12/2009	#144		
10/15/2009	#100		
10/15/2009	#124		
11/09/2009	#224		
11/28/2009	#214	#28	
12/28/2009	#200		#14
01/18/2010	#120		#14
01/18/2010	#80		
02/12/2010	#200		#28
03/05/2010	#160		#21
04/03/2010	#180		#28

39. Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient R.H.

40. Respondent did not obtain and document a complete medical history for patient R.H.

41. Respondent did not obtain and document adequate physical examinations of patient R.H.

42. Throughout the time of Respondent's care and treatment of patient R.H., Respondent did not adequately provide or recommend other treatment modalities to patient R.H.

43. Respondent did not adequately perform or prescribe tests for evaluation of patient R.H.'s complaints.

44. Respondent did not refer patient R.H. to specialists for evaluation or treatment.

45. The Department submitted the medical records of patient R.H. to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

46. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patient R.H. without medical justification.

Facts Specific to Patient T.K.

47. From on or about March 9, 2009, through on or about November 21, 2009, Respondent provided care and treatment to patient T.K., a thirty-four year old male resident of Fort Lauderdale, Florida, for complaints of low back pain, at Medical Health and Wellness Center, Inc. Respondent previously provided care to patient T.K. at Boca East Pain Management, LLC, located at 880 N.W. 13th Street, Suite 2-A, Boca Raton, Florida, beginning on or about August 13, 2008, through on or about February 6, 2009.

48. Respondent prescribed controlled substances to patient T.K. as follows:

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Xanax 2 mg.
08/13/2008	#168	#84	#56
01/05/2009	#168	#84	#56
02/06/2009	#168	#84	#56
03/19/2009			#56
03/21/2009	#42	#21	
03/21/2009	#126	#63	
05/06/2009	#120	#84	#56
05/06/2009	#48		

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Xanax 2 mg.
06/06/2009	#103	#90	#60
06/06/2009	#77		
07/06/2009	#168	#84	#56
08/03/2009	#168	#84	#56
09/11/2009	#100	#84	#56
09/11/2009	#68		
10/23/2009	#168	#84	#56
11/21/2009	#168	#84	#56

49. On or about August 13, 2008, patient T.K. provided a history to Respondent of taking Roxicodone (a brand name for oxycodone) and Xanax (a brand name for alprazolam, which is a benzodiazepine).

50. On or about August 13, 2008, patient T.K. provided a history of taking controlled substances that were prescribed to his wife.

51. On or about August 15, 2008, laboratory analysis of urine collected from patient T.K. on or about August 13, 2008, was negative for oxycodone and benzodiazepines.

52. Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient T.K.

53. Respondent did not obtain and document a complete medical history for patient T.K.

54. Respondent did not obtain and document adequate physical examinations of patient T.K.

55. Throughout the time of Respondent's care and treatment of patient T.K., Respondent did not adequately provide or recommend other treatment modalities to patient T.K.

56. Respondent did not adequately perform or prescribe tests for evaluation of patient T.K.'s complaints.

57. Respondent did not refer patient T.K. to specialists for evaluation or treatment.

58. The Department submitted the medical records of patient T.K. to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

59. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patient T.K. without medical justification.

Facts Specific to Patient B.M.

60. From on or about December 10, 2008, through on or about March 11, 2009, Respondent provided care and treatment to patient B.M.,

a fifty-two year old male resident of Davie, Florida, for complaints of low back pain.

61. Respondent prescribed controlled substances to patient B.M. as follows:

Date	Roxicodone 30 mg.	Xanax 2 mg.
12/10/2008	#168	
12/31/2008	#168	
01/21/2009	#168	
02/11/2009	#168	#21
03/04/2009	#112	
03/04/2009	#50	
03/30/2009	#168	#12
05/11/2009	#168	#12
05/11/2009	#56	

62. Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient B.M.

63. Respondent did not obtain and document a complete medical history for patient B.M.

64. Respondent did not obtain and document adequate physical examinations of patient B.M.

65. Throughout the time of Respondent's care and treatment of patient B.M., Respondent did not adequately provide or recommend other treatment modalities to patient B.M.

66. Respondent did not adequately perform or prescribe tests for evaluation of patient B.M.'s complaints.

67. Respondent did not refer patient B.M. to specialists for evaluation or treatment.

68. The Department submitted the medical records of patient B.M. to an expert Board certified in Physical Medicine and Rehabilitation, with a subspecialty certification in Pain Medicine, for review.

69. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled substances to patient B.M. without medical justification.

COUNT I – Pt. E.D.

70. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-six (26) as if fully set forth herein.

71. Section 458.331(1)(t), Florida Statutes (2008-2009), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section

456.50(g), Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), Florida Statutes, the Board shall give great weight to the provisions of Section 766.102, Florida Statutes, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

72. Respondent failed to practice medicine with that level of care, skill and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in the treatment of patient E.D. in one or more of the following ways:

- a. By failing to obtain a complete medical history;
- b. By failing to perform a complete physical examination;
- c. By prescribing excessive and/or inappropriate amounts of controlled substances without medical justification;
- d. By failing to develop an appropriate treatment plan;
- e. By failing to refer the patient to specialists;

- f. By failing to adequately provide or recommend other treatment modalities; and
- g. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient E.D.

73. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2008-2009), by committing medical malpractice in her care and treatment of patient E.D.

COUNT II – Pt. E.D.

74. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-six (26) as if fully set forth herein.

75. Section 458.331(1)(q), Florida Statutes (2008-2009), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For purposes of Section 458.331(1)(q), It shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best

interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

76. Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patient's best interests or in excessive or inappropriate quantities to patient E.D. on or about the above described dates and in the above described quantities and combinations.

77. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient E.D.

COUNT III – Pt. J.G.

78. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and twenty-seven (27) through thirty-six (36) as if fully set forth herein.

79. Section 458.331(1)(t), Florida Statutes (2008-2009), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section

456.50(g), Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), Florida Statutes, the Board shall give great weight to the provisions of Section 766.102, Florida Statutes, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

80. Respondent failed to practice medicine with that level of care, skill and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in the treatment of patient J.G. in one or more of the following ways:

- a. By failing to obtain a complete medical history;
- b. By failing to perform a complete physical examination;
- c. By prescribing excessive and/or inappropriate amounts of controlled substances without medical justification;
- d. By failing to develop an appropriate treatment plan;
- e. By failing to refer the patient to specialists;

- f. By failing to adequately provide or recommend other treatment modalities; and
- g. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient J.G.

81. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2008-2009), by committing medical malpractice in her care and treatment of patients J.G.

COUNT IV – Pt. J.G.

82. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and twenty-seven (27) through thirty-six (36) as if fully set forth herein.

83. Section 458.331(1)(q), Florida Statutes (2008-2009), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For purposes of Section 458.331(1)(q), it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances,

inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her Intent.

84. Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patients' best interests or in excessive or inappropriate quantities to patient J.G. on or about the above described dates and in the above described quantities and combinations.

85. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient J.G.

COUNT V – Pt. R.H.

86. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and thirty-seven (37) through forty-six (46) as if fully set forth herein.

87. Section 458.331(1)(t), Florida Statutes (2008-2009), provides that committing medical malpractice constitutes grounds for disciplinary

action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(g), Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), Florida Statutes, the Board shall give great weight to the provisions of Section 766.102, Florida Statutes, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

88. Respondent failed to practice medicine with that level of care, skill and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in the treatment of patients R.H. in one or more of the following ways:

- a. By failing to obtain a complete medical history;
- b. By failing to perform a complete physical examination;
- c. By prescribing excessive and/or inappropriate amounts of controlled substances without medical justification;
- d. By failing to develop an appropriate treatment plan;

- e. By failing to refer the patient to specialists;
- f. By failing to adequately provide or recommend other treatment modalities; and
- g. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient R.H.

89. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2008-2009), by committing medical malpractice in her care and treatment of patients R.H.

COUNT VI – Pt. R.H.

90. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and thirty-seven (37) through forty-six (46) as if fully set forth herein.

91. Section 458.331(1)(q), Florida Statutes (2008-2009), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For purposes of Section 458.331(1)(q), it shall be legally presumed that prescribing, dispensing, administering, mixing, or

otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

92. Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patients' best interests or in excessive or inappropriate quantities to patients R.H. on or about the above described dates and in the above described quantities and combinations.

93. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient R.H.

COUNT VII – Pt. T.K.

94. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and forty-seven (47) through fifty-nine (59) as if fully set forth herein.

95. Section 458.331(1)(t), Florida Statutes (2008-2009), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(g), Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), Florida Statutes, the Board shall give great weight to the provisions of Section 766.102, Florida Statutes, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

96. Respondent failed to practice medicine with that level of care, skill and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, in the treatment of patients T.K. in one or more of the following ways:

- a. By failing to obtain a complete medical history;
- b. By failing to perform a complete physical examination;

- c. By prescribing excessive and/or inappropriate amounts of controlled substances without medical justification;
- d. By failing to develop an appropriate treatment plan;
- e. By failing to refer the patient to specialists;
- f. By failing to adequately provide or recommend other treatment modalities; and
- g. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient T.K.

97. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2008-2009), by committing medical malpractice in her care and treatment of patients T.K.

COUNT VIII – Pt. T.K.

98. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and forty-seven (47) through fifty-nine (59) as if fully set forth herein.

99. Section 458.331(1)(q), Florida Statutes (2008-2009), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any

controlled substance, other than in the course of the physician's professional practice. For purposes of Section 458.331(1)(q), it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

100. Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patients' best interests or in excessive or inappropriate quantities to patients T.K. on or about the above described dates and in the above described quantities and combinations.

101. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient T.K.

COUNT IX – Pt. B.M.

102. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and sixty (60) through sixty-nine (69) as if fully set forth herein.

103. Section 458.331(1)(t), Florida Statutes (2008-2009), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(g), Florida Statutes, as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. For purposes of Section 458.331(1)(t), Florida Statutes, the Board shall give great weight to the provisions of Section 766.102, Florida Statutes, which provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

104. Respondent failed to practice medicine with that level of care, skill and treatment, which is recognized by a reasonably prudent similar

physician as being acceptable under similar conditions and circumstances, in the treatment of patient B.M. In one or more of the following ways:

- a. By failing to obtain a complete medical history;
- b. By failing to perform a complete physical examination;
- c. By prescribing excessive and/or inappropriate amounts of controlled substances without medical justification;
- d. By failing to develop an appropriate treatment plan;
- e. By failing to refer the patient to specialists;
- f. By failing to adequately provide or recommend other treatment modalities; and
- g. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the controlled substances prescribed to patient B.M.

105. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2008-2009), by committing medical malpractice in her care and treatment of patients B.M.

COUNT X – Pt. B.M.

106. Petitioner re-alleges and incorporates paragraphs one (1) through fourteen (14) and sixty (60) through sixty-nine (69) as if fully set forth herein.

107. Section 458.331(1)(q), Florida Statutes (2008-2009), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. For purposes of Section 458.331(1)(q), it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

108. Respondent prescribed, dispensed, and/or administered controlled substances other than in the course of his professional practice by prescribing, dispensing, and/or administering controlled substances inappropriately, without regard to the patients' best interests or in excessive or inappropriate quantities to patients B.M. on or about the

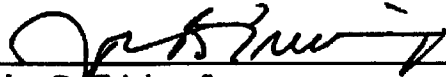
above described dates and in the above described quantities and combinations.

109. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient B.M.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 28 day of September, 2012.

John H. Armstrong, M.D.
Surgeon General and Secretary of Health
Florida Department of Health


John B. Fricke, Jr.
Assistant General Counsel

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE OCT 02 2012

DOH Prosecution Services Unit
4052 Bald Cypress Way, BIN C-65
Tallahassee, FL 32399-3265
Florida Bar #0901910
Telephone (850) 245-4640
Fax (850) 245-4681

JBF/crv

PCP: September 28, 2012

PCP: Members: Dr. Thomas, Dr. Winchester & Mr. Levine

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.