

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NUMBER 2017-05214

RUBEN BERROCAL TIMMONS, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Ruben Berrocal Timmons, M.D., and alleges:

1. Petitioner is the state agency 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 42993.

3. Respondent's address of record is P.O. Box 30332, Pensacola, Florida 32503.

4. The allegations in this Complaint concern events which were ongoing during a period of time beginning no later than March 15, 2015 until approximately January 2017.

5. At all times relevant to this Complaint, Respondent was the sole physician employed at Comprehensive Pain Management ("CPM"), a pain management clinic located in Pensacola.

6. At some point during the relevant time period, CPM employed K.W. as an office manager, who worked directly under Respondent's supervision. At no time relevant to this Complaint did K.W. possess any professional healthcare license.

7. At some point during the relevant time period, CPM employed L.S., a registered nurse, who worked directly under Respondent's supervision.

8. At certain times during the relevant time period, Respondent regularly gave his "hard token" and password for electronically prescribing controlled substances to both K.W. and L.S¹. Both K.W. and L.S. used these

¹Beginning in 2010, the U.S. Drug Enforcement Administration began allowing electronic prescribing of controlled substances with a two-factor credential process. Electronic Prescriptions for Controlled Substances, 75 Fed. Reg. 16,236 (Mar. 31, 2010). One of the factors can be a hard token, which is a cryptographic key stored on a physical hardware device (e.g., a cell phone, smart card, or USB drive) which is kept in the practitioner's possession. A second factor can be a piece of information, such as a password. Under this rule, the practitioner must retain sole possession of the hard token and cannot share a password or any other authentication factor with another individual. *See* 21 C.F.R. §§ 1306-1311.

credentials to prescribe controlled substances. Some of these prescriptions were entered at the direction of Respondent. Other prescriptions were entered without authorization from Respondent.

9. At certain times during the relevant time period, Respondent directed L.S. to automatically re-issue controlled substance prescriptions upon their expiration without an office visit or telephone encounter.

10. At some point during the relevant time period, Respondent pre-signed numerous blank prescription pads, which were kept in areas of the office accessible to employees. These prescription pads were found by CPM's owner, Sheridan Healthcorp, Inc., during an inspection in approximately January 2017.

Count I

11. Petitioner realleges and incorporates Paragraphs one (1) through ten (10) as if fully set forth herein.

12. Section 458.331(1)(f), Florida Statutes (2014-2016), subjects a licensee to discipline for aiding, assisting, procuring, or advising any unlicensed person to practice medicine.

13. Respondent aided, assisted, procured, or advised an unlicensed person to practice medicine in one or more of the following ways:

- a. By allowing K.W. to access his hard token and password for prescribing controlled substances;
- b. By allowing L.S. to access his hard token and password for prescribing controlled substances;
- c. By directing L.S. to re-issue controlled substance prescriptions upon their expiration without an office visit or telephone encounter; and/or
- d. By pre-signing blank prescription forms which were accessible to office staff.

14. Based on the foregoing, Respondent has violated Section 458.331(1)(f), Florida Statutes (2014-2016), by aiding, assisting, procuring, or advising one or more unlicensed persons to practice medicine.

Count II

15. Petitioner realleges and incorporates Paragraphs one (1) through nine (9) as if fully set forth herein.

16. Section 458.331(1)(w), Florida Statutes (2014-2016), subjects a licensee to discipline for delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to

know that such person is not qualified by training, experience, or licensure to perform them.

17. Respondent unlawfully delegated professional responsibilities to an unqualified person when he directed L.S. to electronically issue controlled substance prescriptions upon their expiration.

18. Based on the foregoing, Respondent violated Section 458.331(1)(w), Florida Statutes (2014-2016).

Count III

19. Petitioner realleges and incorporates Paragraphs one (1) through five (5) and ten (10) as if fully set forth herein.

20. Section 458.331(1)(aa), Florida Statutes (2014-2016), subjects a licensee to discipline for presigning blank prescription forms.

21. Respondent presigned multiple blank prescription forms during the time period relevant to this Complaint.

22. Based on the foregoing, Respondent violated Section 458.331(1)(aa), Florida Statutes (2014-2016).

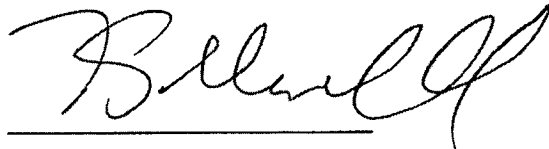
WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of

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.

Signatures appear on next page

SIGNED this 9th day of March, 2018.

Celeste Philip, MD, MPH
Surgeon General and Secretary of Health



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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Angel Sanders**
DATE **MAR 12 2018**

PCP Date: March 9, 2018

PCP Members: Dr. Mark Avila; Dr. Steven Rosenberg

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. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.

Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.

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 any other discipline imposed.