

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-23424

PAUL HENRY WAND, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Complaint before the Board of Medicine against Respondent, Paul Henry Wand, 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 41117.

3. Respondent does not hold any certifications from specialty boards recognized by the Florida Board of Medicine.

4. Respondent's address of record is 2855 North University Drive, Suite 210, Coral Springs, Florida 33065.

5. During all times relevant to this complaint, Respondent was practicing at 2855 North University Drive, Suite 210, Coral Springs, Florida 33065.

6. Respondent is engaged in the treatment of pain by prescribing or dispensing controlled substance medications.

7. On or about April 5, 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 C.V., R.D., L.M., A.C., D.C., and R.L. 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 C.V., R.D., L.M., A.C., D.C., and R.L.

9. The Department submitted the medical records of patients C.V., R.D., L.M., A.C., D.C., and R.L. to an expert Board certified in Anesthesiology.

10. The Expert opined that Respondent had prescribed inappropriate and excessive quantities or combinations of controlled

substances and legend drugs to each of patients C.V., R.D., L.M., A.C., D.C., and R.L. without medical justification.

11. The controlled substances that Respondent had prescribed in inappropriate and excessive amounts or combinations with other controlled substances or legend drugs without justification were methadone, Kadian, Duragesic patches, Opana, Roxicodone, OxyContin, Oxydose, Valium, Xanax, and Ativan.

12. Methadone is an opioid prescribed to treat pain. According to Section 893.03(2), Florida Statutes, methadone 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 methadone may lead to severe psychological or physical dependence.

13. Kadian is a brand name for morphine sulfate extended release capsules. Morphine is an opiate prescribed to treat pain. According to Section 893.03(2), Florida Statutes, morphine 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 morphine may lead to severe psychological or physical dependence.

14. Duragesic is a transdermal patch that delivers the drug fentanyl through the skin and is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, fentanyl 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 fentanyl may lead to severe psychological or physical dependence.

15. Opana is a brand name for oxymorphone. Oxymorphone is an opioid prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxymorphone 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 oxymorphone may lead to severe psychological or physical dependence.

16. Roxicodone is a brand name for oxycodone. Oxycodone is an opioid 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.

17. OxyContin is a brand name for a time-released formula of the above described drug oxycodone.

18. Oxydose is a brand name for a liquid oral solution containing oxycodone.

19. Valium is the brand name for diazepam. Diazepam is a benzodiazepine prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, diazepam 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 diazepam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

20. Xanax is the brand name for alprazolam. Alprazolam is a benzodiazepine prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance as described in the above paragraph.

21. Ativan is the brand name for lorazepam. Lorazepam is a benzodiazepine prescribed to treat anxiety. According to Section

893.03(4), Florida Statutes, lorazepam is a Schedule IV controlled substance as described in the above paragraph nineteen.

Facts Specific to Patient C.V.

22. From on or about June 11, 2008, through on or about August 4, 2008, Respondent provided care and treatment to patient C.V., a forty-two year old female, for complaints of headache, neck, back, wrist, hand, and foot pain.

23. Respondent prescribed controlled substances to patient C.V. as follows:

Date	Kadian 20 mg. (morphine sulfate)	Kadian 30 mg. (morphine sulfate)
06/11/08	#60	
06/23/08	#60	
07/07/08	#60	
08/04/08		#60

24. The quantity, dosage, and instructions for taking the medications prescribed to patient C.V. on June 11, 2008, including a controlled substance, were sufficient to last patient C.V. for a thirty day period of time.

25. The quantity, dosage, and instructions for taking the medications prescribed to patient C.V. on June 23, 2008, including a

controlled substance, were sufficient to last patient C.V. for a thirty day period of time.

26. In addition to a controlled substance, the Respondent prescribed two muscle relaxers to patient C.V. at the same time.

27. The Respondent did not obtain testing for patient C.V.'s urine or serum medication levels.

28. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including a controlled substance, prescribed to patient C.V.

Facts Specific to Patient R.D.

29. From on or about March 6, 2007, through on or about May 31, 2007, Respondent provided care and treatment to patient R.D., a fifty-two year old male, for complaints of neck and back pain.

30. Respondent prescribed controlled substances to patient R.D. as follows:

Date	Roxicodone 15 mg.	Roxicodone 30 mg.	Xanax 1 mg.	Ativan 1 mg.
03/06/07	#120	#180	#60	
04/03/07	#120	#180		#90
05/01/07	#120	#180		#90
05/31/07	#120	#180		#90

31. On or about March 6, 2007, patient R.D. provided a medical history of currently receiving oxycodone, Percocet, and Xanax.

32. Percocet is the brand name for a drug that contains the above described opioid oxycodone and is prescribed to treat pain.

33. Xanax is the brand name for the above described benzodiazepine alprazolam.

34. On or about March 6, 2007, patient R.D. provided a urine sample for drug screen analysis that tested negative for oxycodone and opiates.

35. On or about April 3, 2007, patient R.D. provided a urine sample for drug screen analysis that tested negative for oxycodone and the benzodiazepine alprazolam prescribed by the Respondent, and positive for cocaine.

36. According to Section 893.03(2), Florida Statutes, cocaine 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 cocaine may lead to severe psychological or physical dependence.

37. Respondent did not prescribe cocaine to patient R.D.

38. On or about May 1, 2007, patient R.D. provided a urine sample for drug screen analysis that tested negative for oxycodone and the benzodiazepine lorazepam prescribed by the Respondent.

39. On or about May 29, 2007, patient R.D. provided a urine sample for drug screen analysis that tested negative for the benzodiazepine lorazepam prescribed by the Respondent, and positive for cocaine.

40. The Respondent continued to prescribe drugs for the treatment of pain to patient R.D., including controlled substances, following receipt of the above described drug screen analyses.

41. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including controlled substances, prescribed to patient R.D.

42. Respondent did not provide or recommend other treatment modalities to patient R.D., such as message, physical therapy, TENS, and acupuncture.

Facts Specific to Patient L.M.

43. From on or about January 18, 2007, through on or about May 31, 2007, Respondent provided care and treatment to patient L.M., a forty-seven year old female, for complaints of right upper extremity pain.

44. Respondent prescribed controlled substances to patient L.M. as follows:

Date	Roxicodone 30 mg.	Xanax 2 mg.	Valium 10 mg.
01/18/07	#120	#30	#30
02/15/07	#120	#30	#30
03/20/07	#120	#30	#30
04/17/07	#120	#30	#30
05/15/07	#120	#30	#30
06/14/07	#120	#30	#30
07/03/07	#120	#30	#30
08/07/07	#120	#30	#30
09/06/07	#120	#30	#30
10/04/07	#120	#30	#30
10/16/07		#30	
11/01/07	#120	#30	#30
11/29/07	#120	#30	#30
12/27/07	#120	#30	#30
01/24/08	#120	#30	#30
02/21/08	#120	#30	#30
03/20/08	#120	#30	#30
04/17/08	#120	#30	#30

45. Respondent did not obtain copies of medical records for patient L.M. prior to prescribing pain medications.

46. Respondent did not obtain copies of pharmacy records for patient L.M. prior to prescribing pain medications.

47. The Respondent did not obtain testing for patient L.M.'s urine or serum medication levels.

48. From on or about January 18, 2007, through on or about April 17, 2008, patient L.M. reported to Respondent that she was receiving Percocet for her pain.

49. Percocet is the brand name for a drug that contains the above described opioid oxycodone and is prescribed to treat pain.

50. Respondent did not prescribe Percocet to patient L.M. at any time during his care and treatment of patient L.M.

51. On or about April 17, 2008, patient L.M. reported to Respondent that she had obtained Percocet from another physician.

52. On or about April 17, 2008, patient L.M. reported to Respondent that she had obtained medications from more than one doctor.

53. From on or about May 15, 2007, through on or about April 17, 2008, patient L.M. reported to Respondent that she was receiving Ritalin for her pain.

54. Ritalin is the brand name for the drug methylphenidate, commonly prescribed to treat attention deficit disorder. According to Section 893.03(2), Florida Statutes, methylphenidate 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 methylphenidate may lead to severe psychological or physical dependence.

55. Respondent did not prescribe Ritalin to patient L.M. at any time during his care and treatment of patient L.M.

56. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including controlled substances, prescribed to patient L.M.

57. Respondent did not provide or recommend other treatment modalities to patient L.M., such as message, physical therapy, TENS, and acupuncture.

58. The Respondent did not prescribe a trial of non-steroidal anti-inflammatory drugs (NSAID) or less potent medications.

59. Patient L.M. tested positive for Hepatitis C virus. Respondent did not appropriately order laboratory blood analysis tests in light of patient L.M.'s positive Hepatitis C virus test results.

Facts Specific to Patient A.C.

60. From on or about February 13, 2007, through on or about November 27, 2008, Respondent provided care and treatment to patient A.C., a thirty-seven year old female, for complaints of headache, neck, left upper extremity, low back, and left lower extremity pain.

61. Respondent prescribed controlled substances to patient A.C. as follows:

Date	Methadone 10 mg.	Duragesic Patch 50 mcg.	Roxicodone 30 mg.	Opana ER 20 mg.	Valium 10 mg.
02/13/07			#300		#30
03/12/07			#300		#30
03/16/07			#250		#30
04/12/07			#300		#30
05/10/07			#300		#30
06/07/07			#300		#30
07/03/07			#300		#30
07/31/07			#300		#30
08/28/07			#300		#30
09/25/07			#300		#30
10/22/07			#300		#30
11/19/07			#300		#30
12/20/07			#300		#30
01/14/08			#300		#30

Date	Methadone 10 mg.	Duragesic Patch 50 mcg.	Roxicodone 30 mg.	Opana ER 20 mg.	Valium 10 mg.
02/14/08			#300	#10	#30
03/10/08			#300	#10	
04/03/08					#30
04/07/08		#10	#300		
05/01/08		#10	#300		#30
05/29/08		#10	#300		#30
06/02/08	#200				
06/26/08	#200		#300		
07/24/08	#200		#300		#30
08/21/08	#200		#300		#30
09/18/08	#200		#300		#30
10/16/08	#200		#170		#30
10/16/08			#130		
11/13/08	#200		#170		
11/20/08			#170		
11/20/08			#130		
11/27/08			#130		

62. On or about May 29, 2008, patient A.C. provided urine for drug screen analysis that tested positive for alprazolam.

63. Alprazolam is the generic of the brand name drug Xanax. Alprazolam is a benzodiazepine prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance as described above.

64. The Respondent did not prescribe the brand name drug Xanax or the generic alprazolam to patient A.C.

65. On or about August 21, 2008, patient A.C. provided a urine sample for drug screen analysis that tested positive for hydromorphone.

66. Hydromorphone is the generic of the brand name drug Dilaudid. Hydromorphone is an opioid prescribed to treat pain. According to Section 893.03(2), Florida Statutes, hydromorphone 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 hydromorphone may lead to severe psychological or physical dependence.

67. The Respondent did not prescribe the brand name drug Dilaudid or the generic hydromorphone to patient A.C.

68. On or about July 5, 2008, and October 16, 2008, patient A.C. provided urine samples for drug screen analyses that tested higher than expected for the drug oxycodone prescribed by the Respondent.

69. The Respondent continued to prescribe drugs for the treatment of pain to patient A.C., including controlled substances, following receipt of the above described drug screen analyses.

70. On or about November 28, 2008, Respondent's office was notified that patient A.C. was "doctor shopping."

71. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including controlled substances, prescribed to patient A.C.

72. Respondent did not provide or recommend other treatment modalities to patient A.C., such as message, physical therapy, TENS, and acupuncture.

Facts Specific to Patient D.C.

73. From on or about October 18, 2007, through on or about February 7, 2008, Respondent provided care and treatment to patient D.C., a forty-seven year old female, for complaints of neck, right knee, low and middle back pain.

74. Respondent prescribed controlled substances to patient D.C. as follows:

Date	Roxicodone 30 mg.	OxyContin 80 mg.	Duragesic Patch 100 mcg.	Xanax 2 mg.	Valium 10 mg.
10/18/07	#240	#120	#10		#90
11/15/07	#240	#120	#10	#60	
12/13/07	#240	#120	#10	#60	
01/10/08	#240	#120	#10	#60	
02/07/08	#240	#120	#10	#60	

75. On or about October 18, 2007, patient D.C. reported to the Respondent that she had previously been discharged from his care because analysis of her urine was negative for the drugs he had prescribed to her.

76. On or about December 12, 2007, patient D.C. underwent a MRI of the spine that showed no evidence of significant abnormalities.

77. The Respondent did not obtain a urine sample from patient D.C. for drug screen analysis until on or about January 10, 2008.

78. On or about January 10, 2008, patient D.C. provided a urine sample for drug screen analysis that tested positive for nordiazepam and oxazepam. Nordiazepam and oxazepam are indicative of the use of Valium, Librium, or Tranxene.

79. On or about January 10, 2008, the Respondent had last prescribed ninety Valium to patient D.C. on or about October 18, 2007, with instructions to take one every six to eight hours for spasm. Patient D.C. did not have a current prescription from the Respondent for Valium.

80. The Respondent did not prescribe Librium or Tranxene to patient D.C.

81. On or about January 10, 2008, patient D.C. provided a urine sample for drug screen analysis that tested positive for cocaine.

82. According to Section 893.03(2), Florida Statutes, cocaine 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 cocaine may lead to severe psychological or physical dependence.

83. Respondent did not prescribe cocaine to patient D.C.

84. On or about January 10, 2008, patient D.C. provided a urine sample for drug screen analysis that tested positive for the cannabinoid tetrahydrocannabinol (THC), the active hallucinogenic substance in cannabis, also known as marijuana.

85. According to Section 893.03(1), Florida Statutes, cannabis is a Schedule I controlled substance that has a high potential for abuse and has no currently accepted medical use in treatment in Florida. Its use under medical supervision does not meet accepted safety standards.

86. The Respondent continued to prescribe drugs for the treatment of pain to patient D.C., including controlled substances, following receipt of the above described MRI test results.

87. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including controlled substances, prescribed to patient D.C.

88. Respondent did not provide or recommend other treatment modalities to patient D.C., such as message, physical therapy, TENS, and acupuncture.

Facts Specific to Patient R.L.

89. From on or about June 12, 2007, through on or about November 19, 2007, and on June 17, 2009, Respondent provided care and treatment to patient R.L., a thirty-seven year old male, for complaints of neck, right upper extremity, low back, and lower extremities pain.

90. Respondent prescribed controlled substances to patient R.L. as follows:

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Oxydose 20 mg./ml.	Valium 10 mg.
06/12/07	#120		30 ml.	#90
07/09/07	#150			#150
08/02/07	#150			#150
08/30/07	#150			#150
09/25/07	#40			#40
10/01/07	#110			#110
10/22/07	#150			#150
10/29/07	#30			
11/19/07	#150			#150

Date	Roxicodone 30 mg.	Roxicodone 15 mg.	Oxydose 20 mg./ml.	Valium 10 mg.
06/17/09	#170	#120		

91. The Respondent did not obtain a urine sample from patient R.L. for drug screen analysis at any time during patient R.L.'s care and treatment.

92. The Respondent did not employ or document diligent efforts for the prevention of misuse or diversion of the medications, including controlled substances, prescribed to patient R.L.

93. Respondent did not provide or recommend other treatment modalities to patient R.L., such as message, physical therapy, TENS, and acupuncture.

94. The Respondent did not prescribe a trial of non-steroidal anti-inflammatory drugs (NSAID) or less potent medications to patient R.L.

COUNT I – Pt. C.V.

95. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-eight (28) as if fully set forth herein.

96. Section 458.331(1)(t), Florida Statutes (2007-2008), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section

456.50(1)(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.

97. 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 C.V. in one or more of the following ways:

- a. By failing to perform or obtain urine or serum drug level testing;
- b. By failing to employ diligent efforts for the prevention of misuse or diversion of the medications prescribed;

- c. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;
- d. By failing to recommend other treatment modalities;
- e. By failing to develop an appropriate treatment plan.

98. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2007-2008), by committing medical malpractice in treating patient C.V.

COUNT II – Pt. C.V.

99. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-eight (28) as if fully set forth herein.

100. Section 458.331(1)(q), Florida Statutes (2007-2008), 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.

101. 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 C.V. on or about the above described dates and in the above described quantities and combinations.

102. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007-2008), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient C.V.

COUNT III – Pt. R.D.

103. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and twenty-nine (29) through forty-two (42) as if fully set forth herein.

104. Section 458.331(1)(t), Florida Statutes (2007), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section

456.50(1)(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.

105. 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 R.D. in one or more of the following ways:

- a. By continuing to prescribe controlled substances after urine drug level testing was negative for the drugs prescribed by Respondent and positive for cocaine;
- b. By failing to discharge the patient following urine drug level testing that was positive for a controlled substance that was not prescribed by the Respondent;

- c. By failing to employ diligent efforts for the prevention of misuse or diversion of the medications prescribed;
- d. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;
- e. By failing to recommend other treatment modalities;
- f. By failing to develop an appropriate treatment plan.

106. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2007), by committing medical malpractice in treating patient R.D.

COUNT IV – Pt. R.D.

107. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and twenty-nine (29) through forty-two (42) as if fully set forth herein.

108. Section 458.331(1)(q), Florida Statutes (2007), 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.

109. 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 R.D. on or about the above described dates and in the above described quantities and combinations.

110. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient R.D.

COUNT V – Pt. L.M.

111. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and forty-three (43) through fifty-nine (59) as if fully set forth herein.

112. Section 458.331(1)(t), Florida Statutes (2006-2007), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(1)(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.

113. 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 L.M. in one or more of the following ways:

- a. By failing to perform or obtain urine or serum drug level testing;

- b. By failing to employ diligent efforts for the prevention of misuse or diversion of the medications prescribed;
- c. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;
- d. By failing to recommend other treatment modalities;
- e. By failing to attempt more conservative drug treatment with NSAID therapy or less potent medications.
- f. By failing to develop an appropriate treatment plan.

114. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2006-2007), by committing medical malpractice in treating patient L.M.

COUNT VI – Pt. L.M.

115. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and forty-three (43) through fifty-nine (59) as if fully set forth herein.

116. Section 458.331(1)(q), Florida Statutes (2006-2007), 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.

117. 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 L.M. on or about the above described dates and in the above described quantities and combinations.

118. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006-2007), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient L.M.

COUNT VII – Pt. A.C.

119. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and sixty (60) through seventy-two (72) as if fully set forth herein.

120. Section 458.331(1)(t), Florida Statutes (2006-2008), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(1)(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.

121. 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 A.C. in one or more of the following ways:

- a. By failing to perform or obtain an initial urine or serum drug level testing;
- b. By continuing to prescribe controlled substances after urine drug level testing was positive for controlled substances that were not prescribed by the Respondent;
- c. By failing to discharge the patient following urine drug level testing that was positive for controlled substances that were not prescribed by the Respondent;
- d. By failing to employ diligent efforts for the prevention of misuse or diversion of the medications prescribed;
- e. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;
- f. By prescribing very dangerous combinations of drugs;
- g. By failing to recommend other treatment modalities;
- h. By failing to attempt more conservative drug treatment with NSAID therapy or Schedule III opiates;

- i. By failing to develop an appropriate treatment plan.

122. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2006-2008), by committing medical malpractice in treating patient A.C.

COUNT VIII – Pt. A.C.

123. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and sixty (60) through seventy-two (72) as if fully set forth herein.

124. Section 458.331(1)(q), Florida Statutes (2006-2008), 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.

125. The 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 A.C. on or about the above described dates and in the above described quantities and combinations.

126. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006-2008), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient A.C.

COUNT IX – Pt. D.C.

127. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and seventy-three (73) through eighty-eight (88) as if fully set forth herein.

128. Section 458.331(1)(t), Florida Statutes (2006-2008), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section 456.50(1)(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.

129. 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 D.C. in one or more of the following ways:

- a. By failing to timely perform or obtain urine or serum drug level testing;
- b. By failing to employ and document diligent efforts for the prevention of misuse or diversion of the medications prescribed;
- c. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;

- d. By failing to recommend other treatment modalities;
- e. By failing to attempt more conservative drug treatment with NSAID therapy;
- f. By failing to develop an appropriate treatment plan.

130. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2007-2008), by committing medical malpractice in treating patient C.V.

COUNT X – Pt. D.C.

131. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and seventy-three (73) through eighty-eight (88) as if fully set forth herein.

132. Section 458.331(1)(q), Florida Statutes (2007-2008), 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.

133. 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 D.C. on or about the above described dates and in the above described quantities and combinations.

134. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007-2008), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient D.C.

COUNT XI – Pt. R.L.

135. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and eighty-nine (89) through ninety-four (94) as if fully set forth herein.

136. Section 458.331(1)(t), Florida Statutes (2006-2008), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Medicine. Medical Malpractice is defined in Section

456.50(1)(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.

137. 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 R.L. in one or more of the following ways:

- a. By failing to perform or obtain urine or serum drug level testing;
- b. By failing to employ diligent efforts for the prevention of misuse or diversion of the medications prescribed;

- c. By prescribing excessive and inappropriate amounts or combinations of drugs, including controlled substances, without medical justification;
- d. By failing to recommend other treatment modalities;
- e. By failing to attempt more conservative drug treatment with NSAID therapy;
- f. By failing to develop an appropriate treatment plan.

138. Based on the foregoing, Respondent violated Section 458.331(1)(t), Florida Statutes (2006-2008), by committing medical malpractice in treating patient R.L.

COUNT XII – Pt. R.L.

139. Petitioner re-alleges and incorporates paragraphs one (1) through twenty-one (21) and eighty-nine (89) through ninety-four (94) as if fully set forth herein.

140. Section 458.331(1)(q), Florida Statutes (2006-2008), 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.

141. 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 R.L. on or about the above described dates and in the above described quantities and combinations.

142. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006-2008), by inappropriately prescribing excessive and inappropriate quantities of controlled substances to patient R.L.

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
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

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

JBF/crv

PCP Date: September 28, 2012

PCP Members: Dr. Thomas, Dr. Winchester and 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.