

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2010-09934

MICHAEL MOYER, M.D.,

RESPONDENT.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Michael Moyer, M.D., and in support thereof 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 61609.

3. Respondent's address of record is 7823 Shane Ct., Orlando, Florida 32822.

4. Respondent is board certified in Family Medicine.

5. On about December 9, 2008, a Costco Pharmacy reported to the Metropolitan Bureau of Investigation (MBI) that Respondent was inappropriately prescribing excessive amounts of controlled substances including but not limited to Oxycodone, Xanax, and Soma.

DEFINITIONS OF CONTROLLED SUBSTANCES

6. Oxycodone is commonly 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, and abuse of oxycodone may lead to severe psychological or physical dependence.

7. Xanax is the brand name for alprazolam, which is prescribed to treat anxiety. According to Section 893.03(2), 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 and abuse of the substance

may lead to limited physical or psychological dependence relative to the substances in Schedule III.

8. Lortab is the brand name for a drug that contains hydrocodone and is prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in Lortab, is a Schedule III controlled substance that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

9. Soma (muscle relaxant, Schedule IV) is the brand name for carisoprodol, a muscle relaxant commonly prescribed to treat muscular pain. According to Section 893.03(4), Florida Statutes, carisoprodol 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, and abuse of carisoprodol may lead to limited physical or psychological dependence relative to the substances in Schedule III.

FACTS SPECIFIC TO PATIENT SL

10. Respondent provided treatment for chronic pain to Patient SL from November 4, 2008, through May 5, 2010.

11. Patient SL presented to Respondent for an initial visit on November 4, 2008, with a history of a motor vehicle accident, complaints of neck and back pain as well as anxiety and fatigue associated with pain.

12. During follow-up visits between November 4, 2008, and May 5, 2010, Patient SL presented to Respondent with complaints of exacerbation of neck and back pain.

13. During follow-up visits between February 11, 2010, and May 5, 2010, Patient SL presented with complaints of ankle pain.

14. On or about February 11, 2010, Respondent documented that Patient SL reported complaints of anxiety. During all other follow-up visits, there is no record that Patient SL reported complaints of anxiety during Respondent's provision of chronic pain treatment to Patient SL.

15. On May 12, 2009, Patient SL was arrested for possession of a Schedule I substance with intent to distribute. The charges against Patient SL were dismissed on June 4, 2009. Respondent continued to prescribe controlled substances to Patient SL after the charges were dismissed.

16. Respondent did not order any urine drug screens to monitor Patient SL's compliance with the medication prescribed despite the fact that she had been arrested for possession with intent to distribute narcotics on June 4, 2009.

17. Respondent's medical records reflect that he prescribed to patient SL multiple prescriptions for excessive amounts of Oxycodone, Soma and Xanax as described in the following table:

Date of Prescription	Medication Prescribed	Type of Medication	Quantity
11/4/08	Oxycodone 30 mg	Schedule II	180
11/4/08	Soma 350 mg	Schedule IV	30
11/4/08	Xanax 2 mg	Schedule IV	30
12/4/09	Oxycodone 30 mg	Schedule II	180
12/4/09	Soma 350 mg	Schedule IV	30
12/4/09	Xanax 2 mg	Schedule IV	30
1/8/09	Oxycodone 30 mg	Schedule II	180
1/8/09	Soma 350 mg	Schedule IV	30
1/8/09	Xanax 2 mg	Schedule IV	30
2/9/09	Oxycodone 30 mg	Schedule II	180
2/9/09	Soma 350 mg	Schedule IV	60
2/9/09	Xanax 2 mg	Schedule IV	45
3/10/09	Oxycodone 30 mg	Schedule II	180
3/10/09	Soma 350 mg	Schedule IV	60
3/10/09	Xanax 2 mg	Schedule IV	30

4/8/09	Oxycodone 30 mg	Schedule II	180
4/8/09	Soma 350 mg	Schedule IV	60
4/8/09	Xanax 2 mg	Schedule IV	30
5/6/09	Oxycodone 30 mg	Schedule II	180
6/24/09	Oxycodone 30 mg	Schedule II	180
6/24/09	Soma 350 mg	Schedule IV	60
6/24/09	Xanax 2 mg	Schedule IV	60
7/23/09	Oxycodone 30 mg	Schedule II	180
7/23/09	Soma 350 mg	Schedule IV	60
7/23/09	Xanax 2 mg	Schedule IV	60
7/23/09	Lortab 10/500	Schedule II	60
8/24/09	Oxycodone 30 mg	Schedule II	162
8/24/09	Soma 350 mg	Schedule IV	60
8/24/09	Xanax 2 mg	Schedule IV	40
9/24/09	Oxycodone 30 mg	Schedule II	210
9/24/09	Soma 350 mg	Schedule IV	60
9/24/09	Xanax 2 mg	Schedule IV	60
10/22/09	Oxycodone 30 mg	Schedule II	210
10/22/09	Soma 350 mg	Schedule IV	60
10/22/09	Xanax 2 mg	Schedule IV	60
11/19/09	Oxycodone 30 mg	Schedule II	210
11/19/09	Soma 350 mg	Schedule IV	60
11/19/09	Xanax 2 mg	Schedule IV	60
12/17/09	Oxycodone 30 mg	Schedule II	210
12/17/09	Soma 350 mg	Schedule IV	60
12/17/09	Xanax 2 mg	Schedule IV	60
1/14/10	Oxycodone 30 mg	Schedule II	210

1/14/10	Soma 350 mg	Schedule IV	60
1/14/10	Xanax 2 mg	Schedule IV	60
2/11/10	Xanax 2 mg	Schedule IV	75
3/11/10	Xanax 2 mg	Schedule IV	75
3/11/10	Oxycodone 30 mg	Schedule II	210
4/8/10	Oxycodone 30 mg	Schedule II	210
5/6/10	Oxycodone 30 mg	Schedule II	210

18. Respondent prescribed a high dosage of the above-described controlled substances without titrating the dosage to obtain the desired effect.

19. Respondent also prescribed a high dosage of Xanax 2 mg in combination with a high dosage of Oxycodone and Soma.

20. Respondent also prescribed a high dosage of controlled substances in high frequency to Patient SL without regularly obtaining urine drug screen tests in view of the large volume of highly addictive controlled substances being prescribed.

21. Respondent failed to document his basis for prescribing Xanax to Patient SL.

22. Respondent failed to obtain medical records from previous physicians who treated and prescribed to Patient SL.

23. Respondent also failed to refer the patient to other healthcare specialists for treatment.

24. Respondent failed to refer the patient for alternative treatment including, but not limited to, surgical consultation, acupuncture, physical or massage therapy.

25. Respondent failed to switch the patient to longer acting controlled substances.

26. Respondent's medical records do not contain medical justification for the high frequency simultaneous prescription of such high quantities of Oxycodone, Xanax, and Soma between November 4, 2008 until May 6, 2010.

COUNT ONE

27. Petitioner incorporates and realleges paragraph one through twenty-six as if fully set forth herein.

28. Section 458.331(1)(t)1, 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, Florida Statutes (2008, 2009), 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.

29. For purposes of Section 458.331(1)(t)1, Florida Statutes (2008, 2009), the level of care, skill, and treatment recognized in general law related to health care licensure means the standard of care specified in Section 766.102, Florida Statutes (2008, 2009), 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. . . ."

30. Respondent failed to meet the prevailing standard of care by failing to do one or more of the following:

- a. By failing obtain medical records from previous physicians;
- b. By failing to obtain regular urine drug screens of Patient SL;
- c. By failing to refer the patient to other healthcare specialists for evaluation and treatment;
- d. Respondent failed to refer the patient for alternative treatment including surgical consultation, acupuncture, physical or massage therapy;

- e. By failing to document the patient's medical records to justify the high frequency of simultaneous prescriptions of large quantities of Xanax, Oxycodone, and Soma to Patient SL;
- f. By failing to document support for prescription of excessive amounts of controlled substances as referenced in the table above without documentation to support the prescriptions; and/or
- g. Respondent failed to switch the patient to longer acting substances.

31. Respondent violated Section 458.331(1)(t)1, Florida Statutes (2008, 2009), by failing to practice medicine with the level of care of a reasonably prudent similar physician as being acceptable under similar conditions and circumstances in the treatment of Patient SL.

COUNT TWO

32. Petitioner realleges and incorporates paragraphs one through twenty-six as if fully set forth herein.

33. Section 458.331(1)(q)1, 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 this paragraph, 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 intent.

34. Respondent prescribed, dispensed, or otherwise prepared a legend drug, other than in the course of his professional practice, by inappropriately and excessively prescribing the controlled substances as referenced in the table above.

35. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008, 2009), when he prescribed, any controlled substance, other than in the course of his professional practice by inappropriately and excessively prescribing the controlled substances as set forth in the table above.

COUNT THREE

36. Petitioner incorporates and realleges paragraphs one through twenty-six as if fully set forth herein.

37. Section 458.331(1)(m), Florida Statutes (2008, 2009), subjects a licensee to discipline for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the

licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.


38. Respondent failed to maintain medical records that justified the course of treatment for Patient SL.

39. On or about the dates set forth above, Respondent violated Section 458.331(1)(m), Florida Statutes (2008, 2009), by failing to maintain medical records to justify the course of treatment for Patient SL.

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 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 14 day of October, 2011.

H. Frank Farmer, Jr., MD, PhD, FACP
State Surgeon General



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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.