

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: The Emergency Suspension of the License of
George Kubski, M.D.
License Number: ME 38198
Case Number 2002-14787

ORDER OF EMERGENCY SUSPENSION OF LICENSE

John O. Agwunobi, M.D., M.B.A., Secretary for the Department of Health, hereby ORDERS the Emergency Suspension of the license to practice as a physician of, George Kubski, M.D. Dr. Kubski holds license number ME 38198 and his last known address is 7742 Spring Creek Drive, West Palm Beach, Florida 33411. The following Findings of Fact and Conclusions of Law support the Emergency Suspension of Dr. Kubski's license to practice as a physician.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state agency charged with regulating the practice of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes. Section 456.073, Florida Statutes, empowers the Secretary of the Department to summarily suspend Dr. Kubski's license to practice as a physician in the State of Florida in accordance with Section 120.60(6), Florida Statutes.
2. Dr. Kubski is, and has been at all times material hereto, licensed to practice medicine in the state of Florida under license number ME 38198, pursuant to Chapter 458, Florida Statutes.
3. Dr. Kubski is certified by the American Board of Psychiatry and Neurology.

4. On or about August 11, 1998, Patient J. M. ("JM"), a 26 year-old female, first presented to Dr. Kubski with complaints of anxiety.

5. Dr. Kubski continued to treat JM for anxiety and chronic pain until April 11, 2002.

6. Dr. Kubski's medical records for JM are sparse and consist primarily of copies of prescriptions he issued to JM and of template diagnosis forms, the majority of which were never completed. The few hand-written notes that are contained in JM's medical records are, for the most part, illegible.

7. JM's medical records and records obtained from pharmacies located in the vicinity of Dr. Kubski's office reflect that between April 4, 2001 and April 4, 2002, Dr. Kubski prescribed the following medications to JM:

4/4/01	100 Hydrocodone 10/650
4/9/01	30 Percocet 10/650
4/10/01	100 Oxazepam 30 mg
4/11/01	100 Hydrocodone 10/650
4/16/01	100 Oxazepam 30 mg
4/18/01	60 Ambien 10 mg
4/20/01	100 Hydrocodone 10/650
4/23/01	50 Percocet 10/650
4/24/01	100 Oxazepam 30 mg
4/27/01	100 Hydrocodone 10/650
	200 Oxazepam 30 mg
5/5/01	100 Hydrocodone 10/650
5/6/01	200 Oxazepam 30 mg
5/14/01	100 Hydrocodone 10/650
5/15/01	200 Oxazepam 30 mg
5/17/01	60 Ambien 10 mg
5/23/01	100 Oxazepam 30 mg
5/25/01	240 Hydrocodone 10/650
6/08/01	200 Hydrocodone 10/650
	200 Oxazepam 30 mg
6/27/01	200 Hydrocodone 10/650
	200 Oxazepam 30 mg

6/29/01	240 Hydrocodone 10/650 200 Oxazepam 30 mg 60 Ambien 10 mg
7/16/01	200 Oxazepam 30 mg
7/21/01	240 Hydrocodone 10/650
8/1/01	200 Oxazepam 30 mg 60 Ambien 10 mg
8/6/01	62 Ambien 10 mg 200 Oxazepam 30 mg 240 Hydrocodone 10/650
8/17/01	240 Hydrocodone 10/650
8/22/01	200 Oxazepam 30 mg
8/30/01	60 Ambien 10 mg
8/31/01	200 Oxazepam 30 mg
9/12/01	240 Hydrocodone 10/650 62 Ambien 10 mg 200 Oxazepam 30 mg
9/17/01	62 Ambien 10 mg 540 Oxazepam 30 mg 240 Hydrocodone 10/650
9/28/01	200 Oxazepam 30 mg
10/03/01	62 Ambien 10 mg 240 Hydrocodone 10/650
10/08/01	240 Hydrocodone 10/650
10/15/01	540 Oxazepam 30 mg 240 Hydrocodone 10/650 62 Ambien 10 mg
10/18/01	60 Ambien 10 mg 240 Hydrocodone 10/650 200 Oxazepam 30 mg
11/03/01	540 Oxazepam 30 mg
11/05/01	240 Hydrocodone 10/650
11/11/01	62 Ambien 10 mg
11/12/01	60 Ambien 10 mg 240 Hydrocodone 10/650 200 Oxazepam 30 mg
11/21/01	62 Ambien 10 mg
11/23/01	240 Hydrocodone 10/650
11/28/01	500 Oxazepam 30 mg
12/05/01	60 Ambien 10 mg 240 Hydrocodone 10/650
12/10/01	540 Oxazepam 30 mg
12/20/01	62 Ambien 10 mg
12/21/01	500 Oxazepam 30 mg

12/26/01	240 Hydrocodone 10/650
1/7/02	540 Oxazepam 30 mg
1/10/02	240 Hydrocodone 10/650
1/14/02	60 Ambien 10 mg
	500 Oxazepam 30 mg
1/21/02	240 Hydrocodone 10/650
	62 Ambien 10 mg
1/28/02	240 Hydrocodone 10/650
	500 Oxazepam 30 mg
2/7/02	540 Oxazepam 30 mg
2/12/02	240 Hydrocodone 10/650
	62 Ambien 10 mg
2/14/02	60 Ambien 10 mg
2/19/02	62 Ambien 10 mg
2/21/02	500 Oxazepam 30 mg
2/22/02	240 Hydrocodone 10/650
3/11/02	540 Oxazepam 30 mg
3/14/02	240 Hydrocodone 10/650
3/15/02	62 Ambien 10 mg
3/18/02	60 Ambien 10 mg
3/19/02	50 Lorazepam .5 mg
3/25/02	50 Lorazepam .5 mg
	62 Ambien 10 mg
3/26/02	50 Lorazepam 2 mg
	140 Hydrocodone 10/650
	30 Zyprexa 2.5 mg
4/4/02	540 Oxazepam 30 mg

8. The total quantity of medications prescribed by Dr. Kubski to JM between April 4, 2001 and April 4, 2002 was 1466 Ambien 10 mg, 7,960 Hydrocodone 10/650, 100 Lorazepam .5 mg, 50 Lorazepam 2 mg, 10,180 Oxazepam 30 mg, 80 Percocet 10/650, and 30 Zyprexa 2.5 mg. In order for JM to have ingested all of the pills prescribed to her by Dr. Kubski between April 4, 2001 and April 4, 2002, she would have had to consume an average of approximately 51.6 pills per day. In order for JM to have consumed all of the Ambien, Hydrocodone, and Oxazepam prescribed to her by Dr. Kubski between April 4, 2001 and April 4, 2002, she would have needed to take a

daily average of about 4 Ambien 10 mg, 19 Hydrocodone 10/650, and 27 Oxazepam 30 mg.

9. Ambien contains zolpidem tartrate, a Schedule IV controlled substance. The abuse of ambien can lead to physical and psychological dependence. Ambien is indicated for the short-term treatment of insomnia and should generally be limited to seven to ten days of use. Ambien should not be prescribed in quantities exceeding a one-month supply. According to the Physicians Desk Reference, the total daily dosage for Ambien should not exceed 10 mg. According to the Department's investigation, the average daily dosage of Ambien prescribed to JM by Dr. Kubski over a one-year period was 40 mg.

10. Hydrocodone contains Hydrocodone Bitartrate, a Schedule III controlled substance indicated for the relief of moderate to moderately severe pain. The abuse of Hydrocodone can lead to physical or psychological dependence. According to the Physicians Desk Reference, the total daily dosage for Hydrocodone 10/650 should not exceed 6 tablets. According to the Department's investigation, the average daily dosage of Hydrocodone prescribed to JM by Dr. Kubski over a one-year period was 19 tablets.

11. Lorazepam is a Schedule IV controlled substance indicated for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety or anxiety associated with depressive symptoms. Abuse of Lorazepam may lead to limited physical or psychological dependence.

12. Oxazepam is a Schedule IV controlled substance indicated for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety. Abuse of Oxazepam may lead to limited physical or psychological dependence. According to the Physicians Desk Reference, the recommended daily dosage of Oxazepam for the treatment of severe anxiety syndrome is 15 to 30 mg, 3 or 4 times daily. According to the Department's investigation, the average daily dosage of Oxazepam prescribed to JM by Dr. Kubski over a one-year period was 30 mg 27 times daily.

13. Percocet contains oxycodone hydrochloride, a semi-synthetic narcotic analgesic, which is a Schedule II controlled substance. Percocet is indicated for relief of moderate to moderately severe pain. It has a high potential for abuse and has a currently accepted but limited medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

14. Zyprexa is indicated for the treatment of schizophrenia and for the short-term treatment of acute manic episodes associated with Bipolar I Disorder.

15. In spite of the extremely large quantity of medications that Dr. Kubski prescribed to JM, JM's medical records do not reflect that Dr. Kubski ever performed a physical or psychiatric evaluation of JM.

16. JM's medical records also do not reflect that Dr. Kubski ever recorded a diagnosis, patient history, or treatment plan for JM. JM's medical records do not contain previous physician records and study results for JM.

17. On April 11, 2002, JM died.

18. The medical examiner assigned to perform the autopsy of JM's body ruled that JM died as a result of combined drug toxicity (Nordiazepam, Oxazepam, Hydrocodone, and Acetaminophen) with bilateral bronchopneumonia, severe pulmonary edema and congestion, multifocal centrilobular necrosis of the liver, cerebral edema, and bilateral pleural effusions. The medical examiner determined that JM's death was accidental.

19. The toxicology portion of the medical examiner's report indicates that the level of Oxazepam in JM's body at the time of her death was toxic. This is consistent with the quantity of Oxazepam Dr. Kubski prescribed to JM just before her death. During the 87-day period prior to JM's death, Dr. Kubski prescribed approximately 4160 Oxazepam 30 mg to JM.

20. On July 22, 2002, a Department expert reviewed the medical records of JM and submitted a written report of his findings.

21. The Department expert opines that Dr. Kubski did not meet the applicable standard of care in his examination, diagnosis, and treatment of JM. The Department expert specifically notes that the medical records for JM fail to contain an initial psychiatric evaluation, a differential diagnosis, or a treatment plan. The Department expert also observes the lack of any specialized notes in JM's medical records addressing JM's pain management issues.

22. With regard to Dr. Kubski's prescription practices, the Department expert observes that Dr. Kubski prescribed legend drugs to JM in inappropriate doses and without clinical indication. He further notes that Dr. Kubski did not follow the Guidelines

adopted by the Board of Medicine for the use of controlled substances for treatment of pain as set forth in Rule 64B8-9.013 of the Florida Administrative Code.

23. In his report, the Department expert makes clear that the medical records maintained by Dr. Kubski for JM are "abysmal." He comments that: "In twenty years of reviewing cases for the State I have never seen such inadequate records." The Department expert notes that JM's records do not accurately and completely document and justify the course of treatment utilized in the care of JM.

24. The Department expert concludes his report by opining that Dr. Kubski fell below the standard of care in his treatment and care of JM.

25. Dr. Kubski failed to practice medicine with an acceptable level of care in the treatment of patient JM by failing to perform adequate initial and follow-up psychiatric and physical examinations of JM; by inappropriately and excessively prescribing controlled substances to JM without documenting a treatment plan or evaluation of the appropriateness of the continued treatment by controlled substances; by failing to ascertain the etiology of JM's pain; and by failing to obtain previous physician records and study results for JM.

26. Dr. Kubski inappropriately and excessively prescribed controlled substances by prescribing controlled substances to JM over a long period of time without ascertaining the etiology of JM's pain and by prescribing controlled substances to JM in quantities, combinations, and dosages that were not in JM's best interest.

27. Dr. Kubski failed to keep medical records justifying his course of treatment of JM in that JM's records fail to document an adequate history and assessment of JM's

physical and psychiatric condition, a description of the nature and intensity of JM's pain, a complete psychiatric and physical examination for JM, counseling regarding the use of controlled substances, a justification for the prolonged use of highly addictive controlled substances, a long-term treatment plan, and a reevaluation of the appropriateness of continued treatment by controlled substances.

28. Dr. Kubski's inappropriate prescribing practices, his practice below the standard of care, and his failure to maintain adequate medical records for JM presents an immediate and serious danger to the health, safety, and welfare of the public.

29. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to prescribe, administer, and dispense controlled substances in the State. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to prescribe drugs with a high potential for abuse and harm. Excessive and inappropriate prescribing of highly addictive controlled substances to patients presents a danger to the public health and does not correspond to that level of professional conduct expected of one licensed to practice medicine in this state.

30. Dr. Kubski has demonstrated a flagrant disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of his patients. Dr. Kubski's egregious conduct of excessive and inappropriate prescribing of highly addictive and dangerous drugs, as well as his failure to practice medicine with that level of care, skill, and treatment that is recognized as acceptable, constitutes a breach of the trust and confidence that the Legislature placed

in him by issuing him a license to practice medicine. This breach is particularly compelling in Dr. Kubski's case because of the gravity of the consequences to his patient.

31. Dr. Kubski's acts manifest such a propensity to excessively and inappropriately prescribe controlled substances that a continuation of this practice is likely to recur. In addition, his egregious failure to practice medicine with that level of care, skill, and treatment that is recognized as being acceptable poses a serious and immediate danger to the public.

32. Nothing short of immediate suspension of Dr. Kubski's license will protect the public from Dr. Kubski. Dr. Kubski has demonstrated in the treatment of at least one of his patients his inability to practice with an acceptable standard of care. He has demonstrated a willingness to excessively and inappropriately prescribe dangerous and addictive narcotic drugs – with dire consequences to his patient. Dr. Kubski has abused his privilege of practicing medicine in this state.

CONCLUSIONS OF LAW

1. The Secretary of the Department of Health has jurisdiction over this matter pursuant to Section 456.073, Florida Statutes, and Section 20.43(3)(g), Florida Statutes, as set forth above.

2. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Kubski has violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible, as defined by Department rule in consultation with the board, medical records that justify the

course of treatment of patients, including, but not limited to, patient histories, examination results, test results, or treatment plans.

3. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Kubski has violated Section 458.331(1)(q), Florida Statutes, by 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 in that Dr. Kubski prescribed excessive and inappropriate quantities of controlled substances to JM.

4. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Kubski has violated Section 458.331(1)(t), Florida Statutes, by failing 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.

5. The Secretary finds that based on the facts set forth above, Dr. Kubski's continued practice as a physician constitutes an immediate and serious danger to the health, safety and welfare of the public and that this summary procedure is fair under the circumstances to adequately protect the public.

WHEREFORE, in accordance with Section 120.60(6), Florida Statutes it is

THEREUPON ORDERED THAT:

1. The license of George Kubski, M.D. License Number ME 38198 is hereby immediately suspended.

2. A proceeding seeking formal suspension or revocation of the license to practice as a physician of George Kubski, M.D. will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes.

3. Dr. Kubski shall comply with the rules regarding the closing of a practice as set forth in Rule 64B8-10, Florida Administrative Code.

DONE and ORDERED this 1st day of August, 2002.



John O. Agwunobi, M.D., M.B.A.
Secretary, Department of Health

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Section 120.60(6), and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review in accordance with Rule 9.100, Florida Rules of Appellate Procedure, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within thirty (30) days of the date this Order is filed.