

FILED
DEPARTMENT OF HEALTH
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DATE 12/26/03

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

BOARD: Board of Medicine
CASE NUMBER: 2002-20985
COMPLAINT MADE BY: DOH-West Palm Beach
DATE COMPLAINT RECEIVED: August 12, 2002
COMPLAINT MADE AGAINST: George Kubski, M.D.
2001 Palm Beach Lakes Blvd.
Suite 501
West Palm Beach, Florida 33409
INVESTIGATOR: Bonnie Schaffrick (W. Palm Beach)
REVIEWED BY: Irving Levine
RECOMMENDATION: DISMISS (PL-01)

**NOTICE OF DISMISSAL/CLOSING ORDER
ON RECONSIDERATION**

COMPLAINT Subject is alleged to have violated Sections 458.331(1)(m), (q) and (t), Florida Statutes (2000), inadequate medical records, prescribing legend drugs other than in the course of professional practice, and/or gross or repeated malpractice or the failure 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.

FACTS: At the time of the complaint, Respondent was a licensed physician in the State of Florida, license #ME 38198. On October 20, 2003, a Final Order was issued in Department of Health, Case Number 2003-04685 accepting Respondent's Voluntary Relinquishment of his license to practice medicine in the State of Florida.

LAW: Based on the foregoing, since Subject's license has been voluntarily relinquished, the Board has no jurisdiction and the case should be dismissed.

It is therefore ORDERED that this case should be and is DISMISSED.

DONE and ORDERED this 19th day of December, 2003.



Chairperson, Probable Cause Panel
Board of Medicine

December 19, 2003 - North

PPM members: Et-Bahei
Davies
Dyckes

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2002-20985

GEORGE KUBSKI, M.D.,

RESPONDENT.

_____ /

8/27/03

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, George Kubski, 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 medical doctor within the state of Florida, having been issued license number ME38198.
3. Respondent's address of record is 2001 Palm Beach Lakes Boulevard, Suite 501, West Palm Beach, Florida 33409.
4. Respondent is board certified in psychiatry and neurology.
5. On or about July 30, 1997, Patient M.L., a 31 year-old female, first presented to Respondent for a psychiatric evaluation pursuant to a referral from the

insurance carrier handling Patient M.L.'s Worker's Compensation claim arising from a 1993 accident.

6. On July 30, 1997, Patient M.L.'s medical history included a cervical fusion in 1990, and pain and headaches with temporo-mandibular joint pain treated by a dental surgeon. Her then current prescriptions included MS-Contin, three times a day, Soma, 1 tablet three times a day, Ultram 50 mg. twice a day.

7. On July 30, 1997, Respondent diagnosed Patient M.L. with psychiatric illness of adjustment reaction with depression and pain disorder, and recommended therapy with pain management techniques and trial of psychoactive medication.

8. Respondent provided therapy with pain management techniques and trials of psychoactive and sedative medication such as Zoloft, Ambien and Wellbutrin until November 1998, when Patient M.L. stopped seeing Respondent.

9. Respondent's treatment of Patient M.L. resumed on December 30, 1999, but Respondent's medical records do not describe any new physical or mental conditions. Respondent's medical records indicate that Patient M.L. had another accident and additional surgeries, but do not contain copies of medical records from physicians who treated Patient M.L. during the same period.

10. Respondent's medical records for Patient M.L. reflect that, in January 2001, Respondent assumed responsibility to provide all pain medication that he deemed appropriate for Patient M.L.

11. Patient M.L.'s medical records and records obtained from pharmacies located in the vicinity of Respondent's office reflect that between January 12, 2001, and

January 19, 2002, Respondent prescribed the following medications to Patient M.L.:

	<u>DATE</u>	<u>MEDICATION</u>	<u>QUANTITY</u>
1.	1/12/01	Stadol Nasal Spray	3
2.	1/21/01	Stadol Nasal Spray	3
3.	1/30/01	Stadol Nasal Spray	3
4.	1/30/01	Diazepam (10mg tab)	50
5.	2/12/01	Stadol Nasal Spray	3
6.	2/19/01	Stadol Nasal Spray	3
7.	3/05/01	Diazepam (5mg tab)	15
8.	3/09/01	Diazepam (5mg tab)	15
9.	3/21/01	Oxycodone	60
10.	3/21/01	Diazepam (10mg tab)	50
11.	4/09/01	Percocet (7.5/500mg)	30
12.	4/09/01	Diazepam (10mg)	50
13.	4/09/01	Oxycontin (20mg)	30
14.	5/02/01	Stadol Nasal Spray	3
15.	5/21/01	Oxycodone	30
16.	5/21/01	Remeron (15mg)	30
17.	5/21/01	Oxycontin (20mg)	60
18.	5/21/01	Diazepam (10mg) tab	50
19.	5/21/01	Stadol Nasal Spray	3
20.	6/07/01	Stadol Nasal Spray	3
21.	6/18/01	Oxycontin (20mg)	60
22.	6/18/01	Oxycodone	30
23.	6/18/01	Stadol Nasal Spray	3
24.	6/25/01	Diazepam (10mg)	50
25.	6/25/01	Stadol Nasal Spray	3
26.	7/07/01	Stadol Nasal Spray	3
27.	7/14/01	Stadol Nasal Spray	3
28.	7/20/01	Oxycontin (20mg)	60
29.	7/20/01	Oxycodone	60
30.	7/20/01	Diazepam (10mg)	50
31.	7/20/01	Stadol Nasal Spray	3
32.	8/01/01	Stadol Nasal Spray	3
33.	8/08/01	Diazepam (10mg)	50
34.	8/10/01	Risperdal (0.25mg)	30
35.	8/10/01	Trileptal (150mg)	60
36.	8/10/01	Oxycontin (20mg)	20
37.	8/10/01	Stadol Nasal Spray	6
38.	8/10/01	Oxycodone	60
39.	8/27/01	Oxycodone	30
40.	8/27/01	Oxycontin (20mg)	60

41.	8/27/01	Trileptal (300mg)	30
42.	8/30/01	Stadol Nasal Spray	3
43.	9/07/01	Stadol Nasal Spray	3
44.	9/11/01	Oxycodone	90
45.	9/11/01	Oxycontin (20mg)	60
46.	9/12/01	Diazepam (10mg)	50
47.	9/25/01	Butorphanol Nasal Spray	3
48.	10/10/01	Oxycodone	60
49.	10/10/01	Oxycontin (20mg)	60
50.	10/11/01	Butorphanol Nasal Spray	2.5
51.	10/23/01	Butorphanol Nasal Spray	2.5
52.	10/29/01	Diazepam (10mg)	50
53.	10/29/01	Butorphanol Nasal Spray	2.5
54.	11/02/01	Oxycodone	90
55.	11/16/01	Butorphanol Nasal Spray	2.5
56.	11/19/01	Oxycontin (40mg)	60
57.	11/19/01	Butorphanol Nasal Spray	5
58.	11/19/01	Oxycodone	60
59.	12/07/01	Diazepam (10mg)	50
60.	12/10/01	Oxycontin (40mg)	60
61.	12/10/01	Butorphanol Nasal Spray	2.5
62.	12/10/01	Seroquel (25mg)	90
63.	12/10/01	Lamictal (25mg)	90
64.	12/11/01	Vioxx (25mg)	30
65.	12/11/01	Somnote (500mg)	10
66.	12/26/01	Diazepam (10mg)	50
67.	1/03/02	Oxycodone	20
68.	1/08/02	Seroquel (25mg)	60
69.	1/08/02	Zanaflex (2mg)	50
70.	1/08/02	Lamictal (25mg)	30
71.	1/08/02	Oxycontin (40mg)	50

12. Percocet, Oxycodone and Oxycontin contain oxycodone hydrochloride, a semi-synthetic narcotic analgesic, which is a Schedule II controlled substance pursuant to Chapter 893, Florida Statutes. Oxycodone hydrochloride 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. Abuse of the substance may lead to severe physical and psychological dependence.

13. Stadol is a nasal spray containing butorphanol, a synthetic narcotic analgesic, which is a Schedule IV controlled substance pursuant to Chapter 893, Florida Statutes.

14. Diazepam is a Schedule IV controlled substance pursuant to Chapter 893, Florida Statutes, commonly known by the trade name "Valium." It is a sedative used for management of anxiety disorders and as a muscle relaxant. The concurrent use of diazepam with opioids may produce cognitive psychomotor defects more often than use of either class of drugs without concurrent medication.

15. During the period of January 2001 to January 2002, Respondent's medical treatment of Patient M.L. focused substantially on the use of narcotic medicines for pain management.

16. Patient M.L.'s medical records do not reflect that Respondent recorded an adequate diagnosis of Patient M.L.'s physical problems or a treatment plan with stated treatment objectives addressed to the use of controlled substances for treatment of pain arising from those problems.

17. Patient M.L.'s medical records do not reflect that Respondent reevaluated the appropriateness of the pain medication in light of the etiology of the pain and lack of progress toward stated treatment objectives.

18. Respondent failed to seek consultation with physical medicine specialists or other medical professionals for evaluation of the physical etiology of Patient M.L.'s pain.

19. Respondent failed to obtain laboratory studies to monitor Patient M.L.'s liver and pancreatic function.

COUNT ONE

20. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth herein.

21. Section 458.331(1)(t), Florida Statutes (2000), provides that the following acts are grounds for disciplinary action by the Board of Medicine: gross or repeated malpractice or the failure 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.

22. 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 one or more of the following ways:

- a) by failing to record a diagnosis of Patient M.L.'s physical problems and a treatment plan addressed to those problems;
- b) by failing to reevaluate the appropriateness of the pain medication for Patient M.L. in light of the etiology of the pain and lack of progress toward stated treatment objectives;
- c) by failing to seek consultation with physical medicine specialists or other medical professionals for evaluation of the physical etiology of Patient M.L.'s pain; or

d) by failed to obtain laboratory studies to monitor Patient M.L.'s liver and pancreatic function.

23. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2000), 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.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth herein.

25. Section 458.331(1)(m), Florida Statutes (2000), provides that failing to keep legible medical records 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 is grounds for discipline by the Board of Medicine.

26. Respondent failed to keep legible medical records that justify the course of treatment of Patient M.L., in one or more of the following ways:

a) by failing to document a diagnosis of Patient JM's physical problems;

b) by failing to document a treatment plan addressed to Patient M.L.'s physical problems;

c) by failing to document reevaluation of the appropriateness of the pain medication in light of lack of progress toward stated treatment objectives;

- d) by failing to document a reason for not seeking consultations with physical medicine specialists or other medical professionals; or
- e) by failing to document reasons for not ordering laboratory studies to monitor Patient M.L.'s liver and pancreatic function.

27. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible medical records 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.

COUNT THREE

28. Petitioner realleges and incorporates paragraphs one (1) through nineteen (19) as if fully set forth herein.

29. Section 458.331(1)(q), Florida Statutes (2000), provides the following acts are ground for discipline by the Board of Medicine: 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 the purposes of Section 458.331(1)(q), Florida Statutes (2000), it is 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.

30. Respondent prescribed controlled substances to Patient M.L. other than in the course of the physician's professional practice, in one or more of the following ways:

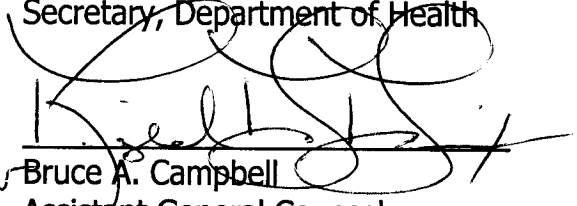
- a) by prescribing controlled substances to Patient M.L. without adequately diagnosing Patient M.L.'s physical problems;
- b) by not adopting a treatment plan addressed to Patient M.L.'s physical problems;
- c) by failing to reevaluate the appropriateness of the pain medication for Patient M.L. in light of the etiology of the pain and lack of progress toward stated treatment objectives.

31. Based on the foregoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2000), 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.

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.

SIGNED this 25th day of August, 2003.

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



for Bruce A. Campbell
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DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE 8/27/03

BAC

Reviewed and approved by: DKK (initials) 7/10/03 (date)

PCP: 8/22/03

PCP Members: El-Bahri, Long, Davies

George Kubski, M.D.

Case No: 2002-20985

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.

George Kubski, M.D.

Case No: 2002-20985