

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2007-10901

RAYMOND FAILER, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Osteopathic Medicine against Respondent, Raymond Failer, D.O., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 1920.

3. Respondent's address of record is 1899 N.E. 164th Street, North Miami Beach, Florida 33162

4. During all times relevant to this order, Respondent was practicing pain management at the Wellness Center of North Miami Beach and Compass Health Systems.

5. Respondent is board certified in family medicine.

6. According to Respondent's Department of Health on-line profile, Respondent has a Board certification from the American Society of Addiction Medicine.

7. On or about October 16, 2009, the Department of Health received information from the Agency for Health Care Administration indicating that Respondent appeared to be prescribing excessive quantities of controlled substances without medical justification.

8. Reasonable cause subpoenas were issued, in accordance with Section 456.057(9)(a)1, Florida Statutes (2010), to obtain the medical records of the patients who were being prescribed high

dosages of controlled substances by Respondent.

9. The types of controlled substances in question that were prescribed by Respondent are as follows:

a) Oxycodone is a semi-synthetic opiate that is 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.

b) Roxicodone is the brand name for a drug that contains oxycodone, which is described above.

c) OxyContin is the brand name for a drug that contains oxycodone, which is described above.

d) Endocet is the brand name for a drug that contains oxycodone, which is described above.

e) Percocet is the brand name for a drug that contains oxycodone, which is described above.

f) Dilaudid is the brand name for hydromorphone and is 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.

g) Xanax is the brand name for alprazolam and is prescribed to treat anxiety. According to Section 893.03(4), 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. Abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

h) Soma 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. Abuse of carisoprodol may lead to limited physical or psychological dependence relative to the substances in Schedule III.

10. The medical records received in response to the Reasonable Cause Subpoenas prompted the Department to have an osteopathic medicine expert review Dr. Failer's records for patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M. and E.H.

11. The expert's medical opinion of the treatment records for each of these nine patients was that in each case Respondent was inappropriately prescribing excessive and inappropriate quantities and combinations of controlled substances without proper medical record documentation to justify these prescriptions.

Facts Specific to Patient J.A.

12. From on or about December 6, 2006, through on or about March 17, 2009, patient J.A., a 52 year-old male when he first started treatment, presented to Respondent with complaints of anxiety, disc displacement, disc degeneration, osteoarthritis and HIV.

13. Respondent's medical records indicate that he wrote multiple prescriptions for large amounts of Dilaudid, alprazolam, oxycodone, and OxyContin for patient J.A. on the dates, dosages, and in the quantities described in the following table:

| Dilaudid | Alprazolam | Oxycodone | OxyContin |
|----------|---------------------------------|--------------------------------|-------------------------------|
| | 12/6/06 .25 mg. 180 tabs. | 12/6/06 30 mg. 90 tabs. | 12/6/06 80 mg. 90 tabs. |
| | 1/9/07 .25 mg. 150 tabs. | 1/9/07 30 mg. 90 tabs. | 1/9/07 80 mg. 90 tabs. |
| | 2/7/07 .25 mg. 150 tabs. | 2/7/07 30 mg. 90 tabs. | 2/7/07 80 mg. 80 tabs. |
| | 3/7/07 .25 mg. 150 tabs. | 3/7/07 30 mg. 90 tabs. | 3/7/07 80 mg. 90 tabs. |
| | 4/6/07 .25 mg. 150 tabs. | 4/6/07 30 mg. 90 tabs. | 4/6/07 80 mg. 90 tabs. |
| | | 5/11/07 30 mg. 150 tabs. | |
| | | 6/11/07 30 mg. 240 tabs. | |
| | 7/11/07 .25 mg. 120 tabs. | 7/11/07 30 mg. 240 tabs. | |
| | 8/14/07 .25 mg. 120 tabs. | 8/14/07 30 mg. 240 tabs. | |

| Dilaudid | Alprazolam | Oxycodone | OxyContin |
|------------------------------|----------------------------------|---------------------------------|-----------|
| | 9/18/09 .25 mg. 120 tabs. | 9/18/07 30 mg. 240 tabs. | |
| | 10/12/07 .25 mg. 120 tabs. | 10/12/07 30 mg. 240 tabs. | |
| | 11/12/07 .25 mg. 120 tabs. | 11/12/07 30 mg. 240 tabs. | |
| | 12/10/07 .25 mg. 120 tabs. | 12/10/07 30 mg. 240 tabs. | |
| | 1/7/08 .25 mg. 120 tabs. | 1/7/08 30 mg. 240 tabs. | |
| | 2/5/08 .25 mg. 120 tabs. | 2/5/08 30 mg. 240 tabs. | |
| | 3/4/08 .25 mg. 120 tabs. | 3/4/08 30 mg. 240 tabs. | |
| | 4/8/08 .25 mg. 120 tabs. | 4/8/08 30 mg. 240 tabs. | |
| | 8/29/08 .25 mg. 120 tabs. | 8/29/08 30 mg. 240 tabs. | |
| | 9/26/08 2 mg. 140 tabs. | | |
| | 10/27/08 .25 mg. 160 tabs. | | |
| 3/17/09 2 mg. 90 tabs. | | | |

14. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

15. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone together with alprazolam, OxyContin and Dilaudid.

16. According to the expert, the medications prescribed to patient J.A. were excessive and inappropriate.

17. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with alprazolam, OxyContin and Dilaudid and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Specific to Patient E.N.

18. From on or about November 20, 2006, through on or about September 17, 2009, patient E.N., a 37 year-old male when he

first began treatment, presented to Respondent with complaints of neck and back pain, anxiety, and HIV.

19. Respondent's medical records indicated that he wrote multiple simultaneous prescriptions for large amounts of oxycodone, OxyContin, alprazolam, and Soma for patient E.N. on the dates and in the quantities and dosages described in the following table:

| Oxycodone | OxyContin | Alprazolam | Soma |
|---------------------------------|--------------------------------|--------------------------------|------|
| 11/20/06 30 mg. 180 tabs. | 11/20/06 80 mg. 90 tabs. | 11/20/06 2 mg. 100 tabs. | |
| 12/14/06 30 mg. 180 tabs. | 12/14/06 80 mg. 90 tabs. | 12/14/06 2 mg. 100 tabs. | |
| 1/12/07 30 mg. 180 tabs. | 1/12/07 80 mg. 90 tabs. | 1/12/07 2 mg. 100 tabs. | |
| 2/9/07 30 mg. 180 tabs. | 2/9/07 80 mg. 90 tabs. | 2/9/07 2 mg. 100 tabs. | |
| 3/23/07 30 mg. 180 tabs. | 3/23/07 80 mg. 90 tabs. | 3/23/07 2 mg. 100 tabs. | |
| 4/19/07 30 mg. 180 tabs. | 4/19/07 80 mg. 90 tabs. | | |
| 5/17/07 30 mg. 180 tabs. | 5/17/07 80 mg. 120 tabs. | 5/17/07 2 mg. 100 tabs. | |
| 6/13/07 30 mg. 180 tabs. | 6/13/07 80 mg. 120 tabs. | 6/13/07 2 mg. 100 tabs. | |

| Oxycodone | OxyContin | Alprazolam | Soma |
|---------------------------------|---------------------------------|--------------------------------|---------------------------------|
| 7/12/07 30 mg. 180 tabs. | 7/12/07 80 mg. 100 tabs. | 7/12/07 2 mg. 100 tabs. | |
| 9/6/07 30 mg. 180 tabs. | 9/6/07 80 mg. 120 tabs. | 9/6/07 2 mg. 100 tabs. | |
| 10/3/07 30 mg. 150 tabs. | 10/3/07 80 mg. 120 tabs. | 10/3/07 2 mg. 100 tabs. | |
| 12/3/07 30 mg. 150 tabs. | 12/3/07 80 mg. 120 tabs. | 12/3/07 2 mg. 100 tabs. | 12/3/07 350 mg. 90 tabs. |
| 12/28/07 30 mg. 150 tabs. | 12/28/07 80 mg. 120 tabs. | 12/28/07 2 mg. 100 tabs. | 12/28/07 350 mg. 30 tabs. |
| 1/25/08 30 mg. 150 tabs. | 1/25/08 80 mg. 120 tabs. | 1/25/08 2 mg. 100 tabs. | 1/25/08 350 mg. 90 tabs. |
| 2/25/08 30 mg. 150 tabs. | 2/25/08 80 mg. 120 tabs. | 2/25/08 2 mg. 100 tabs. | 2/25/08 350 mg. 90 tabs. |
| 4/22/08 30 mg. 150 tabs. | 4/22/08 80 mg. 120 tabs. | | 4/22/08 350 mg. 90 tabs. |
| 8/14/08 30 mg. 150 tabs. | 8/14/08 80 mg. 120 tabs. | | |
| 9/11/08 30 mg. 150 tabs. | 9/11/08 80 mg. 120 tabs. | | |
| 10/10/08 30 mg. 150 tabs. | 10/10/08 80 mg. 120 tabs. | | |
| 11/7/08 30 mg. 240 tabs. | | | |

| Oxycodone | OxyContin | Alprazolam | Soma |
|--------------------------------|-------------------------------|------------------------------|------|
| | 12/9/08 80 mg. 75 tabs. | | |
| 8/19/09 30 mg. 200 tabs. | 8/19/09 80 mg. 90 tabs. | 8/19/09 2 mg. 90 tabs. | |
| 9/17/09 30 mg. 200 tabs. | 9/17/09 80 mg. 90 tabs. | 9/17/09 2 mg. 90 tabs. | |

20. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

21. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities oxycodone together with alprazolam, OxyContin and Soma.

22. According to the expert, the medications prescribed to patient E.N. were excessive and inappropriate.

23. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with alprazolam, OxyContin and Soma and would have

performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Specific to Patient D.W.

24. From on or about October 10, 2006 through on or about June 26, 2007, patient D.W., a 32 year-old female when she when she first started treatment, presented to Respondent with complaints of chronic pain, osteoarthritis, and HIV.

25. Respondent’s medical records indicate that he wrote multiple, simultaneous prescriptions for large amounts of oxycodone, alprazolam, OxyContin and Soma for patient D.W. on the dates and in the quantities and dosages described in the following table:

| Oxycodone | Alprazolam | OxyContin | Soma |
|---------------------------------|-------------------------------|--------------------------------|--------------------------------|
| 10/10/06 30 mg. 120 tabs. | 10/10/06 2 mg. 60 tabs. | 10/10/06 80 mg. 90 tabs. | |
| 11/6/06 30 mg. 120 tabs. | 11/6/06 2 mg. 60 tabs. | 11/6/06 80 mg. 90 tabs. | |
| 12/4/06 30 mg. 120 tabs. | 12/4/06 2 mg. 60 tabs. | 12/4/06 80 mg. 90 tabs. | 12/4/06 350 mg. 90 tabs. |
| 1/2/07 30 mg. 120 tabs. | 1/2/07 2 mg. 60 tabs. | 1/2/07 80 mg. 90 tabs. | |
| 2/1/07 30 mg. 120 tabs. | 2/1/07 2 mg. 60 tabs. | 2/1/07 80 mg. 90 tabs. | |

| Oxycodone | Alprazolam | OxyContin | Soma |
|--------------------------------|------------------------------|-------------------------------|------|
| 3/1/07 30 mg. 120 tabs. | 3/1/07 2 mg. 90 tabs. | 3/1/07 80 mg. 90 tabs. | |
| 3/30/07 30 mg. 120 tabs. | 3/30/07 2 mg. 60 tabs. | 3/30/07 80 mg. 90 tabs. | |
| 4/30/07 30 mg. 120 tabs. | 4/30/07 2 mg. 60 tabs. | 4/30/07 80 mg. 90 tabs. | |
| 6/19/07 30 mg. 30 tabs. | 6/19/07 2 mg. 15 tabs. | | |
| 6/26/07 30 mg. 30 tabs. | 6/26/07 2 mg. 15 tabs. | | |

26. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

27. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone together with alprazolam, OxyContin and Soma.

28. According to the expert, the medications prescribed to patient D.W. were excessive and inappropriate.

29. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with alprazolam, OxyContin and Soma and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

30. According to Respondent's medical records for June 19, 2007, patient D.W. tested positive for cocaine and THC.

31. 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.

32. THC is the active ingredient in cannabis, commonly known as marijuana. 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.

33. A reasonably prudent physician under similar circumstances would not have continued to prescribe patient D.W. oxycodone, alprazolam, OxyContin, and Soma in light of patient D.W.'s positive drug test for cocaine and THC.

Facts Specific to Patient M.L.

34. From on or about October 13, 2006, through on or about May 1, 2007, patient M.L., a 48 year-old female when she first began treatment, presented to Respondent with HIV, chronic pain, and osteoarthritis.

35. Respondent's medical records indicate that he prescribed multiple prescriptions for large amounts of OxyContin, Percocet/Endocet, Soma, and alprazolam for patient M.L. on the dates and in the quantities and dosages described in the following table:

| OxyContin | Perc./Endo. | Soma | Alprazolam |
|---------------------------------|-------------------------------------|------|-------------------------------|
| 10/13/06 80 mg. 120 tabs. | 10/13/06 10/650 mg. 120 tabs. | | |
| 11/8/06 80 mg. 120 tabs. | 11/8/06 10/650 mg. 120 tabs. | | |
| 12/6/06 80 mg. 120 tabs. | 12/6/06 10/650 mg. 120 tabs. | | 12/6/06 2 mg. 120 tabs. |

| OxyContin | Perc./Endo. | Soma | Alprazolam |
|-------------------------------|-----------------------------------|-------------------------------|------------------------------|
| 1/4/07 80 mg. 120 tabs. | 1/4/07 10/680 mg. 120 tabs. | | 1/4/07 2 mg. 120 tabs. |
| 2/5/07 80 mg. 120 tabs. | 2/5/07 10/650 mg. 120 tabs. | | |
| 3/5/07 80 mg. 120 tabs. | 3/5/07 10/650 mg. 120 tabs. | 3/5/07 350 mg. 90 tabs. | 3/5/07 2 mg. 120 tabs. |
| 4/2/07 80 mg. 120 tabs. | 4/2/07 10/650 mg. 120 tabs. | 4/2/07 350 mg. 90 tabs. | 4/2/07 2 mg. 120 tabs. |
| 4/5/07 80 mg. 30 tabs. | | | |
| 5/1/07 80 mg. 120 tabs. | 5/1/07 10/650 mg. 120 tabs. | 5/1/07 350 mg. 90 tabs. | 5/1/07 2 mg. 120 tabs. |

36. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

37. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of OxyContin together with Percocet/Endocet, Soma and alprazolam.

38. According to the expert, the medications prescribed to patient M.L. were excessive and inappropriate.

39. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of OxyContin together with Percocet/Endocet, Soma and alprazolam and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Specific to Patient M.K.

40. From on or about May 28, 2009, through on or about July 28, 2009, patient M.K., a 48 year-old female when she first started treatment, presented to Respondent with anxiety and bipolar disorder.

41. Respondent's medical records indicate that he wrote prescriptions for Percocet and Xanax for patient M.K. on the date and in the dosages and quantities described in the following table:

| Percocet | Xanax |
|-----------|----------|
| 5/28/09 | 5/28/09 |
| 5/325 mg. | 1 mg. |
| 50 tabs. | 90 tabs. |

42. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

43. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of Percocet together with Xanax.

44. According to the expert, the medications prescribed to patient M.K. were excessive and inappropriate.

45. A reasonably prudent osteopathic physician would not have simultaneously prescribed Percocet together with Xanax and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Specific to Patient P.T.

46. From on or about April 7, 2006, through on or about March 2, 2007, patient P.T., a 27 year-old female when she first started treatment, presented to Respondent with osteoarthritis of the spine.

47. Respondent's medical records indicate that he wrote multiple prescriptions for large amounts of oxycodone, OxyContin, and alprazolam on the dates and in the dosages and quantities described in the following table:

| Oxycodone | OxyContin | Alprazolam |
|-------------------------------|-------------------------------|------------------------------|
| 4/7/06 30 mg. 120 tabs. | 4/7/06 80 mg. 90 tabs. | 4/7/06 2 mg. 120 tabs. |
| 1/4/07 30 mg. 120 tabs. | 1/4/07 80 mg. 100 tabs. | 1/4/07 2 mg. 120 tabs. |
| 2/2/07 30 mg. 120 tabs. | 2/2/07 80 mg. 100 tabs. | 2/2/07 2 mg. 120 tabs. |
| 3/2/07 30 mg. 120 tabs. | 3/2/07 80 mg. 100 tabs. | 3/2/07 2 mg. 120 tabs. |

48. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

49. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone together with OxyContin and alprazolam.

50. According to the expert, the medications prescribed to patient P.T. were excessive and inappropriate.

51. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with OxyContin and alprazolam, and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Related to Patient E.J.

52. From on or about December 6, 2006, through on or about August 14, 2007, patient E.J., a 36 year-old female when she first started treatment, presented to Respondent with osteoarthritis and HIV.

53. Respondent's medical records indicate that he wrote multiple prescriptions for large amounts of oxycodone, OxyContin, Alprazolam and Endocet/Percocet on the dates and in the dosages and quantities described in the following table:

| Oxycodone | OxyContin | Alprazolam | Endocet | Percocet |
|-----------|---------------------------------|------------------------------|-----------------------------------|--------------------------------------|
| | 12/6/06 80 mg. 90 tablets | 12/6/06 2 mg. 30 tabs. | 12/6/06 10/650 mg. 90 tabs. | 12/6/06 10/650 mg. 90 tabs. |

| Oxycodone | OxyContin | Alprazolam | Endocet | Percocet |
|--------------------------------|-------------------------------|------------------------------|---------|----------|
| 5/17/07 30 mg. 90 tabs. | 5/17/07 80 mg. 90 tabs. | 5/17/07 2 mg. 30 tabs. | | |
| 6/15/07 30 mg. 200 tabs. | | 6/15/07 2 mg. 30 tabs. | | |
| 7/16/07 30 mg. 180 tabs. | | 7/16/07 2 mg. 30 tabs. | | |
| 7/31/07 30 mg. 90 tabs. | | | | |
| 8/14/07 30 mg. 180 tabs. | | 8/14/07 2 mg. 30 tabs. | | |

54. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

55. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone together with OxyContin, alprazolam, and Percocet/Endocet.

56. According to the expert, the medications prescribed to patient E.J. were excessive and inappropriate.

57. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with OxyContin, alprazolam, and Percocet/Endocet would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

Facts Related to Patient F.M.

58. From on or about November 21, 2006, through on or about October 5, 2009, patient F.M., a 42 year-old female when she first began treatment, presented to Respondent with HIV, anxiety and lower back pain.

59. Respondent's medical records indicate that he wrote multiple prescriptions for large amounts of oxycodone, OxyContin, alprazolam and Percocet on the dates and in the dosages and quantities described in the following table:

| Oxycodone | OxyContin | Alprazolam | Percocet |
|-----------|--------------------------------|-------------------------------|------------------------------------|
| | 11/21/06 80 mg. 90 tabs. | 11/21/06 2 mg. 90 tabs. | 11/21/06 5/325 mg. 100 tabs. |
| | 12/20/06 80 mg. 90 tabs. | 12/20/06 2 mg. 90 tabs. | 12/20/06 5/325 mg. 100 tabs. |

| Oxycodone | OxyContin | Alprazolam | Percocet |
|--------------------------------|--------------------------------|-------------------------------|------------------------------------|
| | 1/19/07 80 mg. 90 tabs. | 1/19/07 2 mg. 90 tabs. | 1/19/07 5/325 mg. 100 tabs. |
| | 2/20/07 80 mg. 90 tabs. | 2/20/07 2 mg 90 tabs. | 2/20/07 5/325 mg. 100 tabs. |
| | 3/20/07 80 mg. 90 tabs. | 3/20/07 2 mg. 90 tabs. | 3/20/07 5/325 mg. 100 tabs. |
| 4/20/07 30 mg. 360 tabs. | | 4/20/07 2 mg. 90 tabs. | 4/20/07 10/650 mg. 100 tabs. |
| | | 5/18/07 2 mg. 90 tabs. | |
| 6/19/07 30 mg. 90 tabs. | 6/19/07 80 mg. 25 tabs. | 6/19/07 2 mg. 25 tabs. | |
| | | 6/26/07 2 mg. 25 tabs. | |
| 7/26/07 30 mg. 100 tabs. | | 7/26/07 2 mg. 25 tabs. | |
| 8/14/07 30 mg. 100 tabs. | | 8/14/07 2 mg. 25 tabs. | |
| 9/4/07 30 mg. 100 tabs. | 9/4/07 80 mg. 25 tabs. | 9/4/07 2 mg. 50 tabs. | |
| 9/21/07 30 mg. 60 tabs. | 9/21/07 80 mg. 50 tabs. | 9/21/07 2 mg. 30 tabs. | |
| | 10/18/07 80 mg. 30 tabs. | 10/18/07 2 mg. 30 tabs. | 10/18/07 10/650 mg. 90 tabs. |

| Oxycodone | OxyContin | Alprazolam | Percocet |
|--------------------------------|--------------------------------|-------------------------------|------------------------------------|
| | 11/14/07 80 mg. 90 tabs. | 11/14/07 2 mg. 30 tabs. | 11/14/07 10/650 mg. 90 tabs. |
| | 12/11/07 80 mg. 90 tabs. | 12/11/07 2 mg. 90 tabs. | 12/11/07 10/650 mg. 90 tabs. |
| 4/7/08 30 mg. 120 tabs. | 4/7/08 80 mg. 90 tabs. | 4/7/08 2 mg. 30 tabs. | |
| 8/5/08 30 mg. 120 tabs. | 8/5/08 80 mg. 90 tabs. | 8/5/08 2 mg. 30 tabs. | |
| 9/3/08 30 mg. 150 tabs. | 9/3/08 80 mg. 60 tabs. | 9/3/08 2 mg. 30 tabs. | |
| 10/3/08 30 mg. 170 tabs. | | | |
| | | | 11/3/08 7.5/325 mg. 50 tabs. |
| | | 12/1/08 2 mg. 60 tabs. | |
| | | | 3/5/09 10/325 mg. 30 tabs. |
| 4/3/09 30 mg. 120 tabs. | 4/3/09 80 mg. 90 tabs. | 4/3/09 2 mg. 30 tabs. | |
| 8/4/09 30 mg. 150 tabs. | 8/4/09 80 mg. 60 tabs. | | |
| 9/2/09 30 mg. 140 tabs. | 9/2/09 80 mg. 60 tabs. | | |

| Oxycodone | OxyContin | Alprazolam | Percocet |
|--------------------------------|-----------|------------|----------|
| 10/5/09 30 mg. 180 tabs. | | | |

60. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

61. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of oxycodone together with OxyContin, alprazolam, and Percocet.

62. According to the expert, the medications prescribed to patient F.M. were excessive and inappropriate.

63. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of oxycodone together with OxyContin, alprazolam and Percocet, and would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

64. According to Respondent's records, on or about May 18, 2007, his office received a phone call from a pharmacy indicating that

patient F.M. was seeing another doctor for pain management, a practice commonly referred to as doctor shopping.

65. Despite receiving this warning, Respondent continued to prescribe controlled substances to patient F.M.

66. A reasonably prudent physician under similar circumstances would not have continued to prescribe controlled substances to patient F.M. in light of the allegations of doctor shopping.

67. According to Respondent's medical records for April 3, 2009, patient F.M. tested positive for cocaine and THC.

68. A reasonably prudent physician under similar circumstances would not have continued to prescribe patient F.M. oxycodone, OxyContin, and alprazolam in light of patient F.M.'s positive drug test for cocaine and THC.

Facts Related to Patient E.H.

69. From on or about November 21, 2006, through on or about February 6, 2008, patient E.H., a 51 year-old female when she first started treatment, presented to Respondent with HIV, osteoarthritis and diabetes.

70. Respondent's medical records indicate that he wrote multiple prescriptions for large amounts of OxyContin, Endocet/Percocet and alprazolam on the dates and in the dosages and quantities described in the following table:

| OxyContin | Endocet/Percocet | Alprazolam |
|--------------------------------|-------------------------------------|-------------------------------|
| 11/21/06 80 mg. 90 tabs. | 11/21/06 10/650 mg. 120 tabs. | 11/21/06 2 mg. 90 tabs. |
| 12/19/06 80 mg. 90 tabs. | 12/19/06 10/650 mg. 120 tabs. | 12/19/06 2 mg. 90 tabs. |
| 1/18/07 80 mg. 90 tabs. | 1/18/07 10/650 mg. 120 tabs. | 1/18/07 2 mg. 90 tabs. |
| 2/19/07 80 mg. 90 tabs. | 2/19/07 10/650 mg. 120 tabs. | 2/19/07 2 mg. 90 tabs. |
| 3/23/07 80 mg. 90 tabs. | 3/23/07 10/650 mg. 120 tabs. | 3/23/07 2 mg. 90 tabs. |
| 5/21/07 80 mg. 90 tabs. | 5/21/07 10/650 mg. 120 tabs. | 5/21/07 2 mg. 90 tabs. |
| 7/19/07 80 mg. 90 tabs. | 7/19/07 10/650 mg. 120 tabs. | 7/19/07 2 mg. 90 tabs. |
| 8/16/07 80 mg. 90 tabs. | 8/16/07 10/650 mg. 120 tabs. | 8/16/07 2 mg. 90 tabs. |
| 9/17/07 80 mg. 90 tabs. | 9/17/07 10/650 mg. 120 tabs. | 9/17/07 2 mg. 90 tabs. |

| OxyContin | Endocet/Percocet | Alprazolam |
|--------------------------------|-------------------------------------|-------------------------------|
| 10/15/07 80 mg. 90 tabs. | 10/15/07 10/650 mg. 120 tabs. | 10/15/07 2 mg. 90 tabs. |
| 11/13/07 80 mg. 90 tabs. | 11/13/07 10/650 mg. 120 tabs. | |
| 12/11/07 80 mg 90 tabs. | 12/11/07 10/650 mg. 120 tabs. | 12/11/07 2 mg. 90 tabs. |
| 1/8/08 80 mg. 90 tabs. | 1/8/08 10/650 mg. 120 tabs. | 1/8/08 2 mg. 90 tabs. |
| 2/6/08 80 mg. 90 tabs. | 2/6/08 10/650 mg. 120 tabs. | 2/6/08 2 mg. 90 tabs. |

71. Prior to and while prescribing these drugs, Respondent failed to perform and/or document the performance of a minimally adequate examination appropriate for the condition complained of by the patient.

72. According to the expert, Respondent's medical records do not contain medical justification for the frequency and simultaneous prescription of such large quantities of OxyContin together with Endocet/Percocet, and alprazolam.

73. According to the expert, the medications prescribed to patient E.H. were excessive and inappropriate.

74. A reasonably prudent osteopathic physician would not have simultaneously prescribed such large quantities of OxyContin together with Percocet/Endocet and alprazolam, would have performed at least minimally adequate physical examinations appropriate for the condition complained of by the patient.

75. A Department medical expert reviewed all of the medical records obtained from Respondent's office for the above-described patients and opined that the records demonstrate that Respondent routinely prescribed an excessive amount of highly divertible and abusable controlled substances based solely on the patients' subjective complaints without conducting proper examinations to objectively substantiate the veracity of the patients' complaints. Further, the Expert indicated that Respondent clearly established a pattern of prescribing narcotics inappropriately and in excessive quantities and is clearly a risk and danger to patients and society.

Count One

76. Petitioner re-alleges paragraphs one (1) through seventy-five (75) as if fully set forth within this paragraph.

77. Section 459.015(1)(x), Florida Statutes (2006-2009), provides that committing medical malpractice constitutes grounds for disciplinary action by the Board of Osteopathic Medicine. Medical Malpractice is defined in Section 456.50, Florida Statutes (2006-2009), 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. For purposes of Section 459.015(1)(x), Florida Statutes (2006-2009), the Board shall give great weight to the provisions of Section 766.102, Florida Statutes (2006-2009), 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.

78. 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 and appropriate under similar conditions and circumstances, in the treatment of patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H. in one or more of

the following ways: by failing to conduct appropriate examinations; by prescribing excessive and/or inappropriate amounts of controlled substances; by continuing to prescribe controlled substances in light of positive drug tests for cocaine and THC; by continuing to prescribe controlled substances in light of receiving information patients were doctor shopping; or by failing to show in the medical record the justification for controlled substances prescribed including, but not limited to type, dosage and quantity.

79. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statutes (2006-2009), by committing medical malpractice in treating Patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

Count Two

80. Petitioner re-alleges paragraphs one (1) through seventy-five (75) as if fully set forth within this paragraph.

81. Section 459.015(1)(t), Florida Statutes (2006-2009), 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 osteopathic 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 or her intent.

82. 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 patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H. on or about the dates and in the quantities and combinations more particularly described above.

83. Based on the foregoing, Respondent violated Section 459.015(1)(t), Florida Statutes (2006-2009), by inappropriately prescribing excessive and inappropriate quantities of controlled

substances to patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

Count Three

84. Petitioner re-alleges paragraphs one (1) through seventy-five (75) as if fully set forth within this paragraph.

85. Section 459.015(1)(pp), Florida Statutes (2006-2009), provides that violating any provision of chapters 456 or 459, Florida Statutes, or any rules adopted pursuant thereto, is grounds for discipline by the Board of Osteopathic Medicine.

86. Rule 64B15-14.005(3), Florida Administrative Code, provides as follows:

The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control:

- (a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.
- (b) Treatment Plan. The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and

psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the osteopathic physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including osteopathic manipulative treatment and applications, or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

(c) Informed Consent and Agreement for Treatment. The osteopathic physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one osteopathic physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the osteopathic physician may employ the use of a written agreement between physician and patient outlining patient responsibilities, including, but not limited to:

1. Urine/serum medication levels screening when requested;
2. Number and frequency of all prescription refills; and
3. Reasons for which drug therapy may be discontinued (i.e., violation of agreement).

(d) Periodic Review. At reasonable intervals based on the individual circumstances of the patient, the osteopathic physician should review the course of treatment and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the osteopathic physician's evaluation of progress toward stated treatment objectives such as improvement in patient's pain intensity and improved physical and/or psychosocial function, i.e., ability to work, need of health care resources, activities of daily living, and quality of social life. If treatment goals are not being achieved,

despite medication adjustments, the osteopathic physician should reevaluate the appropriateness of continued treatment. The osteopathic physician should monitor patient compliance in medication usage and related treatment plans.

(e) Consultation. The osteopathic physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

87. On or about the dates set forth above, Respondent violated Rule 64B15-14.005(3), Florida Administrative Code, by prescribing one or more of controlled substances to patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H. in the quantities and combinations particularly described above, without conducting or documenting complete medical histories or physical examinations of J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

89. Based on the foregoing, Respondent violated Section 459.015(1)(pp), Florida Statutes (2006-2009), by violating a rule adopted pursuant to Chapter 459 because he failed to document and adhere to the Florida Board of Osteopathic Medicine standards for

the use of controlled substances for pain control contained within Rule 64B15-14.005(3), Florida Administrative Code (2006-2009) in his treatment of patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

Count Four

90. Petitioner re-alleges paragraphs one (1) through seventy-five (75) as if fully set forth within this paragraph.

91. Section 459.015(1)(o), Florida Statutes (2006-2009), 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 osteopathic physician or the osteopathic physician extender and supervising osteopathic 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.

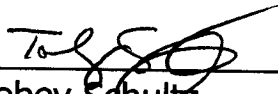
92. On or about the dates set forth above, Respondent violated Section 459.015(1)(o), Florida Statutes (2006-2009), by failing to keep medical records that justified the course of treatment of patients J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

93. Based on the foregoing, Respondent violated Section 459.015(1)(o), Florida Statutes (2006-2009), by failing to keep medical records that justified the course of treatment of patient J.A., E.N., D.W., M.L., M.K., P.T., E.J., F.M., or E.H.

WHEREFORE, Petitioner respectfully requests that the Board of Osteopathic 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 31st day of August, 2011.

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



Tobey Schultz
Assistant General Counsel
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, FL 32399-3265
Florida Bar No. 0542131
(850) 245-4640, Ext. 8176
(850) 245-4684 Fax

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Melisa Nobles*
DATE 8/31/2011

PCP: 8/30/11
Andriole & Malan

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.