

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

Case No. 2007-18402

v.

DAVID G. MALEN, M.D.,

Respondent.

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ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, David G. Malen, 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 physician within the state of Florida, having been issued license number ME 48230.

3. Respondent's address of record is Post Office Box 11593, Naples, Florida 34101-1593.

4. In June of 2008, the Department received information from the Professionals Resource Network (PRN) that Respondent had a long-term history of stimulant abuse and was writing prescriptions for himself. Respondent had been counseled by family and professional friends to get help but he had refused.

5. The Professionals Resource Network is the impaired practitioners program for the Board of Medicine, pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care, and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between the treatment providers, PRN, and the Department for the protection of the public.

6. In January of 2008, at the request of the Department and PRN, Respondent voluntarily submitted for evaluation by Martha E. Brown, M.D. Dr. Brown is a board-certified psychiatrist who specializes in psychiatry and behavioral medicine.

7. On or about January 14, 2008, Dr. Brown prepared a report on her evaluation of Respondent. Dr. Brown indicated in the report that Respondent had a history of taking "extraordinary" doses of amphetamines with extreme difficulties resulting from the drugs, including depression, suicide attempts, and psychosis.

8. Amphetamine is a stimulant and used to treat attention deficit disorder (ADD). According to Section 893.03(2), Florida Statutes, amphetamine 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 amphetamine may lead to severe psychological or physical dependence

9. According to Dr. Brown, Respondent was continuing to take large quantities of stimulants and that Respondent appeared to be addicted to both stimulants and sedatives-hypnotics.

10. In addition, Dr. Brown found that Respondent minimized the effects of taking large quantities of stimulants and that he was in denial about what had been going on in his life as a result of the quantity of stimulants he was taking, including psychiatric hospitalization.

11. Dr. Brown's diagnoses of Respondent included amphetamine dependency, hypnotic- sedative dependency, history of substance induced psychotic disorder, depressive disorder NOS (not otherwise specified).

12. Dr. Brown concluded that Respondent could not currently practice with reasonable skill and safety. Dr. Brown recommended that Respondent participate in PRN and that he follow all PRN recommendations. Dr. Brown opined that Respondent needed to immediately attend a residential treatment program for further assessment, detoxification, and treatment. Respondent should get off all stimulants and sedative hypnotics.

13. Respondent did not follow the recommendations of Dr. Brown. Respondent did not obtain residential treatment for detoxification and treatment. He continued to take large quantities of prescribed stimulants and hypnotic-sedatives and he continued to practice medicine.

14. On March 3, 2011, the State Surgeon General ordered Respondent to submit to a mental and physical examination to determine his ability to practice medicine with reasonable skill and safety pursuant to the authority granted in Section 458.331(1)(s), Florida Statutes.

15. On or about April 6, 2011, Respondent presented to Scott Permesly, M.D., a board certified psychiatrist, for a physical and mental evaluation regarding his ability to practice medicine with skill and safety to patients.

16. On or about May 5, 2011, Dr. Permesly prepared a report of his evaluation of Respondent. Dr. Permesly diagnosed Respondent with amphetamine abuse, benzodiazepine abuse (reported self-prescribing), depression, attention deficit disorder (by history), personality disorder, and rule out Asperger's Disorder.

17. Dr. Permesly opined that Respondent required sufficient substance abuse treatment and psychotherapy to begin to develop appropriate coping skills. He also opined that Respondent needed a more aggressive approach for the treatment of his depression than he was currently receiving. Dr. Permesly opined that Respondent should be evaluated further by The University of Florida Addictions Physician's Specialty Unit and that he should comply with the recommendations of the program.

18. On or about May 23 through May 27, 2011, Scott A. Teitelbaum, M.D., an addiction medicine specialist in the Department of Psychiatry,

University of Florida College of Medicine, and Michael J. Herkov, Ph.D., a clinical psychologist specializing in addiction psychology in the Department of Psychiatry, University of Florida College of Medicine, and both practitioners in The University of Florida Addictions Physician's Specialty Unit, conducted a four-day mental and physical evaluation of Respondent. Both Dr. Teitelbaum and Dr. Herkov prepared reports following their evaluations of Respondent.

19. Dr. Teitelbaum diagnosed Respondent with psychostimulant dependence, sedative-hypnotic abuse, depression, NOS, anxiety disorder, NOS, history of substance induced psychotic disorder and history of attention deficit disorder.

20. During his evaluation, Respondent acknowledged to Dr. Teitelbaum that he has had significant problems associated with his psychostimulants, including psychosis and depression, both cases leading to psychiatric hospitalizations.

21. In his report, Dr. Teitelbaum expressed concerns about Respondent's diagnosis of attention deficit. Dr. Teitelbaum indicated that during Respondent's evaluation, he drastically improved within a few days after his psychostimulants were discontinued. Dr. Teitelbaum further

opined that "it is difficult to make a clear psychiatric diagnosis other than his psychostimulant dependence as this clouds all other diagnoses."

22. Dr. Teitelbaum opined that for all of the above reasons, "I would recommend that he immediately enter into a residential or partial hospitalization level of treatment. This is necessary to help him confront his significant and overwhelming denial."

23. Dr. Teitelbaum concluded Respondent was not able to practice with reasonable skill and safety and is in dire need of treatment. Respondent is a great risk for developing a psychosis again if exposed to any amount of psychostimulants.

24. Dr. Herkov opined that in addition to any substance issues, results from the present evaluation indicate that Respondent is currently experiencing significant affective distress. Respondent behavioral observations, psychological testing and history suggest a diagnosis of depressive disorder NOS.

25. Dr. Herkov concluded that Respondent's mental health symptoms are not adequately controlled at the present time and that they are resulting in impairment in his ability to practice medicine in a safe and competent manner.

26. As of this date, Respondent has not entered into residential treatment or a hospital treatment program.

27. Physicians are required to assess the condition of their patients and make complex decisions regarding patient care. Mental fitness and emotional stability are essential traits that a licensed medical doctor must possess in order to competently practice medicine.

28. Section 458.331(1)(s), Florida Statutes (2011), provides that being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition constitutes grounds for discipline of a licensee by the Board of Medicine.

29. As set forth above, Respondent is unable to practice medicine with reasonable skill and safety to patients due to his amphetamine dependence and sedative hypnotic abuse and due to his failure to participate in residential treatment to address the issues surrounding his dependence and the effect it has on him.

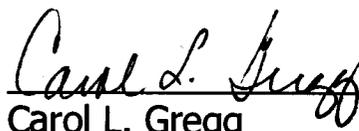
30. Based on the foregoing, Respondent violated Section 458.331(1)(s), Florida Statutes (2011), by being unable to practice

medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.

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 22nd day of December, 2011.

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



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DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Angel Sanders
DATE DEC 27 2011

PCP: Dec. 22, 2011
PCP Members: Mr. Mullins and Dr. Stringer

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.