

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2008-16022

PEREZ BEAUVIL, M.D.,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, Perez Beauvil, 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 physician within the State of Florida, having been issued license number ME 70546.

3. Respondent's address of record is 4194 Bahia Isle Circle, Lake Worth, Florida 33467.

4. On or about March 2, 2006, Patient M.R., a then fifty-seven year old female, presented to Meditox of Palm Beach (Meditox), for treatment of addiction to Lortab. At all times material to this complaint M.R. resided in Wisconsin.

5. Respondent asserts that he was employed by Meditox as a signatory on a professional service agreement. Respondent states that his duties included medically supervising patients who were in an outpatient detoxification program that was supposed to last forty-two (42) days; he was available on an on call basis should clinical decisions need to be made.

6. Respondent never met Patient M.R. in person. Respondent asserts that he was only a contracted physician with Meditox but was not involved in scheduling their patients.

7. On or about February 24, 2006, Respondent prescribed the following medications to Patient M.R.: Subutex 2mg tablets #21, Prochlorperazine 10mg tablets #14, Promethazine 50mg tablets #14, Clonidine HCL 0.1mg tablets #14, Ambien 10mg tablets #7, Lorazepam 1 mg tablet #7, and Trimethobenzamide 200 mg #3.

8. M.R. had not presented to Meditox, and was not seen by Respondent.

9. Subutex is the brand name for buprenorphine, and is prescribed to treat pain. According to Section 893.03(5), Florida Statutes, buprenorphine is a Schedule V controlled substance that has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of buprenorphine may lead to limited physical or psychological dependence relative to the substances in Schedule IV.

10. Prochlorperazine is an antipsychotic and antiemetic drug used to treat schizophrenia and to combat nausea and vomiting.

11. Promethazine is a legend drug used in the treatment of motion sickness, prevention and control of nausea and vomiting associated with certain types of anesthesia and surgery, and as an adjunct to analgesics for the control of postoperative pain, preoperative, postoperative, and obstetric sedation.

12. Clonidine, generic for Catapres, is an agonist drug originally prescribed to treat hypertension. It has now been approved for use during

opioid detoxification due to its ability to combat rapid heartbeat and hypertension, common during the first few days of withdrawal.

13. Ambien contains zolpidem tartrate, a legend drug. Zolpidem tartrate is a hypnotic agent used to promote and preserve deep sleep.

14. Lorazepam 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.

15. Trimethobenzamide, generic for Tigan, is a legend drug, used to treat nausea and vomiting. Trimethobenzamide may increase the side effects of other drugs that cause drowsiness, including antidepressants, alcohol, antihistamines, sedatives (used to treat insomnia), pain relievers, anxiety medicines, muscle relaxants, and any other drugs that produce feelings of sleepiness or relaxation.

16. Patient M.R. was provided the above referenced medications during her physical visit on or about March 2, 2006, at which time it is asserted that she was seen by Dr. M.A.; this was the first and only time that Patient M.R. ever physically presented to Meditox.

17. On or about March 7, 2006, Respondent prescribed M.R. #69 Subutex 2mg tablets. Respondent also advised M.R., through correspondence with a staff member, to not completely discontinue her use of Xanax.

18. Xanax, which contains alprazolam, is a Schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in Schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

19. On or about March 21, 2006, Respondent prescribed M.R. #42 Subutex 2mg tablets and #30 Provigil 200mg tablets.

20. Provigil is an anlyptic drug used to treat various sleep disorders, and also excessive daytime sleepiness.

21. On or about April 10, 2006, Respondent prescribed M.R. #21 Subutex 2mg tablets.

22. On or about April 18, 2006, Respondent prescribed M.R. #30 Subutex 8mg tablets.

23. On or about May 2, 2006, Respondent prescribed M.R. #45 Subutex 8mg tablets.

24. On or about June 27, 2006, Respondent prescribed M.R. #60 Subutex 8mg tablets.

25. On or about July 27, 2006, Respondent prescribed M.R. #60 Subutex 8mg tablets.

26. On or about September 11, 2006, Respondent prescribed M.R. #90 Subutex 8mg tablets. M.R. specifically inquired about using Subutex for pain in her jaw. Respondent stated that she could increase her use of Subutex to combat the jaw pain; Respondent did not say this directly to M.R. but instead through T.B.

27. M.R.'s correspondence with Meditox was almost always through T.B., an administrative staff person. Presumably T.B. would take M.R.'s calls and/or email, or call her and then relay that information to someone at Meditox. At that time a prescription for Subutex and other drugs would be sent to a pharmacy and then delivered Federal Express to M.R. in Wisconsin.

28. On or about October 30, 2006, Respondent prescribed M.R. #90 Subutex 8mg tablets. Respondent instructed M.R. to increase her use of Subutex to combat her jaw pain prior to receiving Botox treatment to attempt to deaden a nerve.

29. On or about October 31, 2006, Respondent prescribed M.R. #90 Subutex 8mg tablets.

30. Respondent never performed or documented a physical examination of Patient M.R.

31. Respondent never performed or documented a mental health examination or status of Patient M.R.

32. Respondent did not order any laboratory testing at any time while prescribing medications to Patient M.R. Respondent was unaware of the effects the medication may or may not have had on M.R.

33. During several of the medication phone calls and/or emails, M.R. was advised that if she didn't present to the clinic for an assessment that her prescriptions would not be refilled.

34. However, M.R.'s prescriptions were refilled each time by Respondent or other doctors at Meditox, after M.R. paid a five hundred dollar monthly maintenance fee for medication management.

35. M.R. was billed each month for medication management by Dr. M.A. however, other than her first encounter, there are no records to reflect that M.R. was ever treated by or saw Dr. M.A.

36. M.R.'s prescriptions were either filled by Dr. J.G. and/or Respondent. Respondent continuously prescribed medications to M.R. however he did not monitor her clinically.

37. Respondent did not inform M.R. that Subutex should not be used for management of acute pain, and did not obtain or correct the lack of clinical examinations to establish the etiology of M.R.'s pain.

38. Respondent asserts that he served in a supervisory capacity for M.R.'s attending physicians at Meditox but that he did not treat M.R. Prescriptions records for M.R. reflect that prescriptions for Subutex, Lasix, and potassium chloride were written and/or authorized by Respondent.

39. The record does not contain information as to why Respondent was supervising physicians at Meditox or what his supervisory duties were; there is no information that explains why Respondent prescribed medications for M.R.

COUNT ONE

40. Petitioner realleges and fully incorporates paragraphs one (1) through thirty-nine (39) as if fully stated herein.

41. Section 458.331(1)(t), Florida Statutes (2005-2007), subjects a doctor to discipline for committing medical malpractice as defined in

Section 456.50, Florida Statutes (2005-2007). Section 456.50, Florida Statutes (2005-2007), defines medical malpractice 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.

42. 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 (2005-2007). Section 766.102(1), Florida Statutes (2005-2007), defines the standard of care to mean “. . . 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. . . .”

43. Respondent failed to meet the prevailing standard of care in regard to Patient M.R. in one or more of the following ways:

- a) by prescribing Subutex to Patient M.R. without a justified medical basis for doing so.
- b) by failing to provide adequate clinical monitoring for M.R.

- c) by continuing to prescribe a class II opioid medication for M.R. when she failed to present back to Meditox on several occasions;
- d) by failing to perform appropriate laboratory testing including but not limited to periodic toxicology tests for drug self-abuse and liver function tests;
- e) by specifically authorizing the management of M.R.'s chronic pain with Subutex and failing to inform M.R. of the limitations associated with usage of Subutex for acute pain;
- f) by failing to obtain a complete and/or adequate patient history for M.R. prior to prescribing controlled substance medications;
- g) by failing to conduct a complete physical examination of M.R. throughout the course of treatment;
- h) by failing to adequately and appropriately diagnose M.R. with a chronic pain condition before treating her for such condition.

- i) by continuing opioid analgesic treatment for M.R. without proper work up and/or follow up.
- j) by recommending M.R. use Subutex for treatment of both her chronic and acute pain;
- k) by failing to appropriately track M.R.'s physical and mental conditions while being prescribed medications through Meditox;
- l) by increasing opioid analgesic treatment in M.R. in the course of treating her for opioid dependency detoxification;
- m) by treating Patient M.R. without maintaining a patient-physician relationship with her;
- n) by treating Patient M.R. with inappropriate and/or excessive amounts of controlled substances;
- o) by allowing unlicensed staff members to assess M.R.'s physical condition and be the only point of contact for M.R..

44. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2005-2007).

COUNT TWO

45. Petitioner realleges and fully incorporates paragraphs one (1) through thirty-seven (37) as if fully stated herein.

46. Section 458.331(1)(q), Florida Statutes (2005-2007), provides that 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 is grounds for disciplinary action by the board and/or Department. For the 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.

47. Respondent prescribed Subutex, a controlled substance, in an inappropriate and/or excessive manner to Patient M.R., which is outside the course of Respondent's professional practice.

48. Based on the foregoing, Respondent has violated Section 458.331(1)(q), Florida Statutes (2005-2007), by prescribing controlled substances other than in the course of his professional practice.

COUNT THREE

49. Petitioner realleges and fully incorporates paragraphs one (1) through thirty-nine (39) as if fully stated herein.

50. Section 458.331(1)(m), Florida Statutes (2005-2007), provides that 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 is grounds for disciplinary action by the board and/or department.

51. Respondent failed to maintain complete medical records for Patient M.R. in one or more of the following ways:

- a) by using similar or identical language to characterize what medical direction and/or advice was provided to M.R.;
- b) by failing to contain information justifying the prescribing of Subutex, Lasix, and/or potassium chloride to M.R.;

- c) by failing to document a complete physical examination and mental health examination of M.R.;
- d) by failing to justify billing M.R. for medication management visits of less than fifteen minutes, when M.R. never visited or spoke to a physician;
- e) by failing to contain information justifying the entire course of treatment provided to M.R.
- f) by failing to contain a complete patient history for M.R.

52. Based on the foregoing, Respondent has violated Section 458.331(1)(m), Florida Statutes (2005-2007), by failing to maintain complete medical records for Patient M.R.

COUNT FOUR

53. Petitioner realleges and fully incorporates paragraphs one (1) through thirty-nine (39) as if fully stated herein.

54. Section 458.331(1)(w), Florida Statutes (2005-2007), provides that delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them is grounds for disciplinary action by the board and/or Department.

55. Respondent delegated professional responsibilities, such as refilling prescriptions for Subutex, interpreting M.R.'s medical status through phone calls, and/or having sole contact with Patient M.R., to office staff members including but not limited to T.B., when he knew or should have known they were not qualified by training or experience to perform such duties.

56. Based on the foregoing, Respondent has violated Section 458.331(1)(w), Florida Statutes (2005-2007).

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: 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 March, 2011.

State Surgeon General



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FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: Melissa Nalwa

DATE: 3-28-2011

PCP: March 25, 2011

PCP Members: El-Bahri, J. Rosenberg, Mullins

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.