

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

IN RE: The Emergency Restriction of the License of  
Michael I. Rose, M.D.  
License Number: ME 10792  
Case Numbers: 2009-06687

**ORDER OF EMERGENCY RESTRICTION ON LICENSE**

Ana M. Viamonte Ros, M.D., M.P.H., State Surgeon General,  
ORDERS an Emergency Restriction on the license of Michael I. Rose, M.D.  
to practice as a physician in Florida. Dr. Rose holds license number ME  
10792. His address of record is 2001 Secoffee Street, Coconut Grove,  
Florida 33133. The following Findings of Fact and Conclusions of Law  
support the Emergency Restriction of Dr. Rose's license to practice as a  
physician in the State of Florida.

**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, 458 and 465, Florida Statutes. Section 456.073(8), Florida Statutes  
(2009), empowers the Department to summarily restrict Dr. Rose's license  
to practice as a physician in the State of Florida in accordance with Section

120.60(6), Florida Statutes (2009).

2. At all times material to this Order, Dr. Rose was licensed to practice as a physician, in the State of Florida, pursuant to Chapter 458, Florida Statutes.

3. At all times material, Dr. Rose was registered as a dispensing practitioner in the State of Florida pursuant to Section 465.0276, Florida Statutes.

4. At all times material, Dr. Rose was board certified in psychiatry and in forensic psychiatry by the American Board of Psychiatry and Neurology.

5. At all times material, Dr. Rose treated patients at the 163<sup>rd</sup> Street Pain Clinic, Inc., located at 1131 NE 163<sup>rd</sup> Street, North Miami, Florida 33162. Dr. Rose has been the director of this pain clinic since sometime in 2008.

6. On or about March 9, 2009, a Department investigator conducted an annual inspection of a pharmacy named Generic Depot 2, Inc. The Department inspected the pharmacy pursuant to Section 465.017, Florida Statutes.

7. During the inspection, the investigator discovered pharmacy

logs of what appeared to be excessive prescribing of controlled substances by Dr. Rose for patients, B.D. and R.F.

8. Dr. Rose prescribed the following controlled substances in high doses to B.D.: Xanax, Oxycontin, Roxicodone and Percocet. Dr. Rose prescribed the following controlled substances in high doses to R.F.: Oxycontin, Roxicodone, Endocet and Percocet.

9. Xanax is the brand name for alprazolam, which is a depressant and is often prescribed to treat anxiety. According to Section 893.03(4)(a), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse relative to the substances in Schedule III; has a currently accepted medical use in treatment in the United States; and abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

10. Oxycontin and Roxicodone are the brand names of a drug that contains oxycodone hydrochloride. Oxycodone is prescribed to treat pain. According to Section 893.03(2)(a), Florida Statutes, oxycodone, or any salt, compound, derivative, or preparation of oxycodone, is a Schedule II controlled substance that has a high potential for abuse; has a currently accepted but severely restricted medical use in treatment in the United

States; and abuse of oxycodone may lead to severe psychological or physical dependence.

11. Percocet and Endocet are the brand names of a drug that contains oxycodone hydrochloride and acetaminophen. (Acetaminophen is the drug in the brand named Tylenol.) Percocet and Endocet are prescribed to treat pain. Oxycodone hydrochloride and acetaminophen pills are manufactured in different formulations. For example, the formulation '10/650' indicates that each pill contains 10 mg of oxycodone hydrochloride and 650 mg of acetaminophen.

12. Percocet and Endocet are Schedule II drugs because they contain oxycodone, which is described in paragraph 10.

13. Oxycodone is an opioid. Opioid, or opiate, drugs have similar actions as the drug opium and are typically prescribed to treat pain. Opioid drugs are synthetically manufactured while opiate drugs are naturally occurring, but the terms opioid and opiate are often used interchangeably. Opioid drugs are addictive and subject to abuse.

14. The Department made several attempts to contact B.D. and R.F. to obtain patient release authorizations for their patient information, but neither B.D. nor R.F. replied to the Department's requests.

15. On or about June 15, 2009, the Department issued reasonable cause subpoenas for both patients' medical records in accordance with Section 456.057(9)(a)1, Florida Statutes (2008).

16. Dr. Rose provided copies of the patients' medical records and a Certification of Completeness of Patient Records (Obtained by Subpoena) for each set of records.

17. The Certification of Completeness of Patient Records (Obtained by Subpoena), provides that Dr. Rose is the official custodian for patient records at 163<sup>rd</sup> Street Pain Clinic, located at 1131 NE 163<sup>rd</sup> Street, North Miami, Florida 33162; the copies are true and correct; the medical records were made at or near the time of the patient's visit; and the clinic kept the medical records in its regular course of business. Dr. Rose signed each Certification of Completeness of Patient Records (Obtained by Subpoena), and had both notarized.

18. On or about September 18, 2009, the Department sent B.D. and R.F.'s medical records to an expert for review.

19. The Department's expert is a medical doctor who is board certified in psychiatry and in pain management by the American Board of Psychiatry and Neurology. The expert is aa specialist in pain management.

20. The Department received the expert's opinion on or about October 2, 2009.

Facts Related to Patient B.D.

21. Dr. Rose treated patient B.D. on or about the following dates: October 20, 2008, November 17, 2008, and December 16, 2008.

22. B.D. was a 50 year old man and a roofer at the time of his first visit. B.D. presented to Dr. Rose for pain in the center of his back and down his right side. B.D.'s medical history states he had a "shot" in the time frame of "last year" at "Jackson Mem."

23. The medical records indicate that B.D. had a magnetic resonance imaging (MRI) study performed on or about January 29, 2008, but it is unclear if B.D. brought the MRI report to his first visit. B.D. brought no other medical records with him.

24. Dr. Rose never attempted to get B.D.'s medical records from any previous health care provider.

25. On or about October 20, 2008, Dr. Rose performed the initial evaluation and diagnosis.

26. B.D.'s psychiatric examination is on the same document that includes: a treatment plan, a neurological examination-cranial nerves, and spinal cord levels.

27. A very similar, and in fact almost identical, set of examination findings are included in the medical records of the second patient, R.F. The wording and findings for the treatment plan, neurological examination-cranial nerves, and for the spinal cord levels appear to be identical with the exception of the correction of a grammatical error. The documents appear to be photocopies of boilerplate documents.

28. The expert observed that, "the results of the neurological examinations are identical in both patients, as is the results of the mental status examinations. This by itself is an unusual finding."

29. According to the patient evaluation, B.D. had no disability due to pain. However, Dr. Rose prescribed for B.D.: 60 pills of Xanax (2 mg), 240 pills of Roxicodone (30 mg), and 90 pills of Oxycontin (80 mg).

30. On or about November 17, 2008, Dr. Rose prescribed for B.D.: 60 pills of Xanax (2 mg), 240 pills of Roxicodone (30 mg) and 180 pills of Percocet (10/650).

31. On or about December 16, 2008, Dr. Rose prescribed for B.D.: 60 pills of Xanax (2 mg), 240 pills of Roxicodone (30 mg) and 60 pills of Oxycontin (80 mg).

32. The Department's expert expressed concern about the high doses of medication that Dr. Rose had prescribed for B.D. According to the expert, Dr. Rose prescribed for B.D. a daily dose of 540 mg of opioids and Xanax 2 mg. The expert stated:

"[T]he documentation of [B.D.'s] examination is so poor I cannot determine whether at the time of his evaluation he was taking any medication or not. . . . If Dr. Rose gave this patient that amount of medication as his starting therapy without any prior titration then I would have to conclude that not only did Dr. Rose practice outside the standards of care but also that his practice put the patient at immediate risk of mortality."

33. Drug titration is the measured increase or decrease of doses of a drug given to a patient until the desired effect is achieved. In this case, the patient was at risk of death from overdose if he took the medications as prescribed and the patient had insufficient tolerance of opioids and Xanax.

34. Dr. Rose also fell below the standard of care by prescribing Xanax to B.D., "without any indication or any diagnosis. According to [the] generic psychiatric examination, there is no evidence of any mental



dysfunction. He had not established any diagnosis of any anxiety disorder and still prescribed to the patient a controlled substance.”

35. The expert stated, “[t]he sedative effects of both opioids and Xanax are addictive. Therefore the patient who takes both is at the highest risk of impairment in psychomotor functions and respiratory depression.”

36. Psychomotor function relates to movement or muscular activity associated with mental processes or relates to the combination of psychic and motor events, including disturbances.

#### Facts Related to Patient R.F.

36. R.F. sought treatment at the 163<sup>rd</sup> Street Pain Clinic from November 3, 2008, through July 14, 2009.

37. R.F. was a 45 year old female when she initially presented to Dr. Rose.

38. R.F. presented with a constant sharp, burning pain. The records indicate that she had experienced pain for 15 years. R.F.’s medical records indicate that she tested positive for human immunodeficiency virus (HIV) and had hepatitis C.

39. Hepatitis is inflammation of the liver characterized by jaundice, fever, liver enlargement and abdominal pain. Hepatitis C is a type of hepatitis caused by a virus that tends to persist in the blood serum and is usually transmitted by infected blood (as by injection of an illicit drug, blood transfusion, or exposure to blood or blood products), which accounts for most cases of non-A, non-B hepatitis.

40. Dr. Rose treated R.F. on or about the following dates: November 3, 2008, December 2, 2008, January 30, 2009, April 21, 2009, May 19, 2009, June 16, 2009, and on her last visit on or about July 14, 2009.

41. Other doctors at the 163<sup>rd</sup> Street Pain Management Clinic treated R.F. on December 29, 2008, February 27, 2009, and March 24, 2009.

42. The initial assessment indicates that R.F. had blood tests and received antibiotics from her previous physicians. The only medical records R.F. brought with her appear to be a pharmacy print out of the drugs that she had been prescribed from November 5, 2007, to January 14, 2008. The doctors named in the initial assessment were not the same physicians as indicated on the pharmacy printout.

43. Despite the fact that numerous doctors had previously treated the patient, Dr. Rose appears to have made only one attempt to get medical records; it was a facsimile dated November 3, 2008, requesting R.F.'s MRI. The fax did not name a health care provider, nor was there a confirmation sheet indicating that the fax was successfully received. No MRI or MRI report appears in the patient's records.

44. The Department's expert states that there is, "no history to establish the patient's symptoms, condition, past medical history, [or] history of treatment for pain."

45. On or about January 6, 2009, R.F. had a computerized tomography (CT) scan performed on her lower extremities. At some point unknown to the Department, R.F. brought the CT report to Dr. Rose's office. The Department's expert who reviewed the CT report stated that the CT showed no significant findings.

46. Despite the lack of medical history, medical justification, or investigations of other possible medical conditions, Dr. Rose prescribed the following medications to R.F.:

Date	Drug and Dosage		
November 3, 2008	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80mg)	120 pills of Endocet (10/650)
December 2, 2008	240 pills of Roxicodone (30mg)	60 pills of Oxycontin (80 mg)	180 pills of Endocet (10/650)
January 30, 2009	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80 mg)	180 pills of Percocet (10/650)
April 21, 2009	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80 mg)	90 pills of Percocet (10/650)
May 19, 2009	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80 mg)	90 pills of Percocet (10/650)
June 16, 2009	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80 mg)	90 pills of Percocet (10/650)
July 14, 2009	240 pills of Roxicodone (30 mg)	60 pills of Oxycontin (80 mg)	90 pills of Percocet (10/650)

47. Other doctors at the 163<sup>rd</sup> Street Pain Management Clinic prescribed medications to R.F. on December 29, 2008, February 27, 2009, and March 24, 2009.

48. The Department's expert stated that a patient with a history of hepatitis who is taking 3 mgs of Tylenol a day, "needs to have a baseline liver function test as well as follow up liver function tests." Dr. Rose ordered no tests.

49. Section 458.331(1)(m), Florida Statutes (2008), subjects a licensee to discipline, including suspension for failing to keep legible 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.

50. Dr. Rose's medical records for B.D. and R.F. do not include adequate patient histories or medical examinations. Dr. Rose made no attempt to obtain B.D.'s medical history and no serious attempt to get R.F.'s medical records.

51. The expert opined that there was an absence of any history that would establish a proper diagnosis and determination of the cause of the pain.

52. Section 458.331(1)(q), Florida Statutes (2008), 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 physician's professional practice. 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.

53. Dr. Rose improperly prescribed opioid medication to his patients without first establishing that either of the patients suffered from intractable pain. The expert stated that documentation of intractable pain is "essential and should include documentation of therapeutic trials and treatment modalities which were employed previously."

54. Dr. Rose prescribed Xanax even though B.D. did not need the medication. Dr. Rose prescribed high doses of controlled substances for B.D. without any evidence of whether B.D.'s body could tolerate such high doses of medication. Dr. Rose prescribed excessively high doses of controlled substances to R.F. without medical justification and without medically necessary liver function testing. Dr. Rose prescribed high doses of controlled substances without investigating the root causes of the pain and alternative methods of treating the patients' pain.

55. Section 458.331(1)(t), Florida Statutes (2008), subjects a licensee to discipline, including suspension for committing medical malpractice as defined in Section 456.50, Florida Statutes. Section 456.50(1)(g), Florida Statutes (2008), 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.

56. Dr. Rose fell below the standard of care by performing inadequate physical examinations. The expert stated, "there is no record of direct examination of the physical spine or direct examination of the muscle system. One would certainly suspect that there is a significant myofascial component present in both patients."

57. Dr. Rose did not perform any laboratory assessments of the patients. Nor did he monitor the safety of his treatment of the patients.

58. Section 120.60(6), Florida Statutes (2009), authorizes the Department to suspend or restrict a physician's license if the Department finds that the physician presents an immediate, serious danger to the public health, safety, or welfare.

59. A physician licensed in the State of Florida is one of small number of licensed professionals allowed to prescribe, administer, and dispense controlled substances. The Legislature has vested 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 a person licensed to practice medicine in this state.

60. Considering that Dr. Rose demonstrated a propensity to excessively and inappropriately prescribe dangerous and addictive opioids, and Xanax, and practiced below the standard of care, a continuation of this practice is likely to recur. An immediate restriction of Dr. Rose's license from prescribing controlled substances is necessary to protect the public because he performed inadequate physical examinations, did not perform proper testing, did not monitor the safety of his treatment, and prescribed Xanax without any reasonable indication or diagnosis. Dr. Rose indiscriminately prescribed Xanax, in addition to opioids, which demonstrates that his prescribing of any controlled medications, not just opioids, is a danger to the public.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The Department has jurisdiction pursuant to Sections 20.43 and 456.073(8), Florida Statutes, and Chapter 458, Florida Statutes.



2. Dr. Rose violated Section 458.331(1)(q), Florida Statutes (2008), by excessively and inappropriately prescribing high doses of controlled substances to B.D. and R.F.

3. Dr. Rose violated Section 458.331(m), Florida Statutes (2008), by failing to keep legible and adequate medical records.

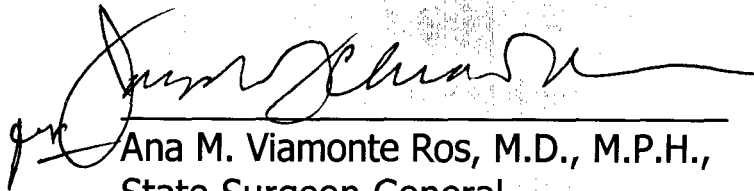
4. Dr. Rose violated Section 458.331(1)(t), Florida Statutes (2008), by practicing below the standard of care.

WHEREFORE, in accordance with Section 120.60(6), Florida Statutes, it is **ORDERED THAT:**

1. The license of Michael I. Rose, M.D., license number ME 10792, is restricted in the following manner: Dr. Rose is not permitted and will not prescribe or dispense controlled substances.

2. A proceeding seeking formal restriction or discipline of the license of Michael I. Rose, M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2009).

DONE and ORDERED this 23<sup>RD</sup> day of October, 2009.



Ana M. Viamonte Ros, M.D., M.P.H.,  
State Surgeon General  
Department of Health

**PREPARED BY:**

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## **NOTICE OF RIGHT TO JUDICIAL REVIEW**

Pursuant to Sections 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. Proceedings are commenced by filing one copy of a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, 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 30 days of the date this Order is filed.