

RN-04

FILED

DEPARTMENT OF HEALTH
DEPUTY CLERK

CLERK: *Sandra Soto*

DATE: 4/12/2012

STATE OF FLORIDA
DEPARTMENT OF HEALTH

BOARD: Medicine

CASE NUMBER: 2010-00099

COMPLAINT MADE BY: DOH

DATE OF COMPLAINT: 2/26/2010

SUBJECT: Michael I. Rose, M.D.

SUBJECT'S ATTORNEY: Julia Ingle, Esquire
Lubell & Rosen
Museum Plaza
200 S. Andrews Avenue
Suite 900
Ft. Lauderdale, FL 33301

INVESTIGATED BY: Rosa M. Suarez
MMI

REVIEWED BY: Ian Brown
Assistant General Counsel

STAFF RECOMMENDATION: Dismiss (4099)

NOTICE OF RECONSIDERATION/CLOSING ORDER

THE COMPLAINT: Complainant alleges that the Subject of the investigation violated 458.331(1)(q)(t)(m)(nn), Florida Statutes (2008)(2009), for prescribing, dispensing.....any controlled substance other than in the course of the physician's professional practice; committing medical malpractice; by failing to keep legible medical records that justify the course of treatment of the patient; by violating any provision of chapters 456 or 458, Florida Statutes, or any rules pursuant thereto.

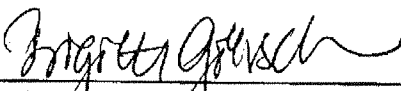
THE FACTS: The Subject had an Administrative Complaint filed against him on 11/18/2011 alleging that Subject inappropriately prescribed the controlled substance drugs roxicodone, percocet and xanax to patient KW beginning 12/1/2008 through 10/21/2009. The Administrative Complaint alleges that subject did not perform a complete medical history and physical exam on patient KW and did not determine the effect of pain on patient KW's physical or psychological function, failed to complete any history of substance abuse, drug screens, or any current diagnostic studies prior to prescribing a high dosage of opioids to patient KW.

The Department was notified by Subject's attorney that the Respondent had expired on or about 12/31/2011. A copy of the Death Certificate number 2011-172515 was provided by Consumer Services Unit.

THE LAW: Pursuant to Section 456.073(2), Florida Statutes, the Department, pursuant to the provisions of Section 20.43(3), Florida Statutes, has determined the Subject of this complaint is deceased, and that the case should be closed.

It is, therefore, ORDERED that this matter should be and the same is hereby DISMISSED.

DONE AND ORDERED this 23rd day of March, 2012.



Chairman, Probable Cause Panel

IB/jb

PCP: 3/23/12

DATE: _____, Stringer & Goersch

A-13
IB

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO: 2010-00099

MICHAEL ROSE, 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 the Respondent, Michael Rose, 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 10792.

3. Respondent's address of record is 2001 Secoffee Street, Coconut Grove, Florida 33133.

4. 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.

5. Percocet is the brand name for a drug that contains oxycodone and 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, and abuse of oxycodone may lead to severe psychological or physical dependence.

6. Roxycodone contains oxycodone and is a Schedule II controlled substance, pursuant to Chapter 893, Florida Statutes. A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use for the relief of moderate to severe

pain. Abuse of the substance may lead to severe psychological or physical dependence.

7. Rule 64B8-9.013(3), Florida Administrative Code, provides as follows:

The Board has adopted the following standards for 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 physician should adjust drug therapy to the Patient medical needs of each patient. Other treatment modalities 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.

8. On or about December 1, 2008, patient KW, a 25 year-old male with a history of a herniated disc on the lumbar spine presented to

Respondent with complaints of severe lower back pain that traveled to his legs which resulted in KW suffering insomnia and being unable to work.

9. Respondent prescribed roxicodone, percocet and xanax for KW, on the dates and in the strengths and quantities described in the following table:

KW

Roxicodone 15 Mg. & 30 Mg	Percocet 10/650 Mg.	Xanax/ Alprazolam 2 Mg.
12/1/2008 30 mg. 240 Tablets	12/1/2008 10/650 Mg. 180 Tablets	
1/29/2009 30 Mg. 240 Tablets	1/29/2009 10/650 Mg. 240 Tablets	
4/29/2009 30 Mg. 240 Tablets	4/29/2009 10/650 Mg. 90 Tablets	4/29/2009 2 Mg. 60 Tablets
6/12/2009 30 Mg. 240 Tablets	6/12/2009 10/650 Mg. 90 Tablets	6/12/2009 2 Mg. 60 Tablets
7/10/2009 30 Mg. 240 Tablets	7/10/2009 10/650 Mg. 90 Tablets	7/10/2009 2 Mg. 60 Tablets
9/23/2009 30 Mg. 240 Tablets	9/23/2009 10/650 Mg. 90 Tablets	9/23/2009 2 Mg. 60 Tablets
10/21/2009 30 Mg. 240 Tablets	10/21/2009 10/650 Mg. 90 Tablets	10/21/2009 2 Mg. 60 Tablets

10. The strengths and quantities of roxicodone, percocet and xanax which Respondent prescribed were potentially lethal and were prescribed

without justification and without documenting justification in the medical record of patient KW.

11. Respondent did not refer or did not document a referral for KW to a psychiatrist, an orthopedic surgeon, a physical therapist, or an interventional pain management specialist.

12. Respondent did not document or did not perform a complete medical history and physical exam on KW prior to prescribing a high dosage of opioids.

13. Respondent did not document or did not determine the following:

- a. The effect of pain on KW's physical or psychological function;
- b. Any history of substance abuse for KW;
- c. Whether KW was taking the prescribed medications or whether KW was taking illicit drugs by performing any drug screens by an outside laboratory during the course of treatment;
- d. Obtaining any current diagnostic studies on KW;

- e. Obtaining any consultations from other specialists on KW;
- f. Counsel KW on the potential danger of addiction and abuse of the medication being prescribed.

COUNT ONE

14. Petitioner realleges and incorporates paragraphs 1 through 13 as if fully set forth herein.

15. Section 458.331(1)(q), Florida Statutes (2008)(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 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 intent.

16. Respondent prescribed controlled substances inappropriately or in excessive or inappropriate quantities in one or more of the following ways:

- a. By prescribing the controlled substances roxicodone, percocet and xanax without justification to patient KW, as outlined in paragraphs 1 through 13;
- b. By prescribing the controlled substances, roxicodone, percocet and xanax in potentially lethal doses to Patient KW, as outlined in paragraphs 1 through 13.

17. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008)(2009) when he prescribed the controlled substances, without justification and in potentially lethal doses, to patient KW, as outlined in paragraphs 1 through 13.

COUNT TWO

18. Petitioner realleges and incorporates paragraphs 1 through 13 as if fully set forth herein.

19. Section 458.331(1)(m), Florida Statutes (2008)(2009), 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, constitutes grounds for disciplinary action by the Board of Medicine.

20. Respondent failed to keep legible medical records justifying the course of treatment for Patient KW in one or more of the following ways:

- a. By failing to document justification for prescribing roxicodone, percocet and xanax to KW;
- b. By failing to document referrals for KW to a psychiatrist, an orthopedic surgeon, a physical therapist, or an interventional pain specialist;
- c. By failing to document the effect of pain on KW's physical or psychological function;
- d. By failing to document any history of substance abuse for KW;
- e. By failing to document a medication management agreement on any visits but still prescribing controlled substances;
- f. By failing to document a urine drug screen from an outside laboratory on KW;

g. By failing to document any current diagnostic studies on KW.

21. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes (2008)(2009), by failing to keep legible medical records that justify the course of treatment for Patient KW.

COUNT THREE

22. Petitioner realleges and incorporates paragraphs 1 through 13 as if fully set forth herein.

23. Section 458.331(1)(t), Florida Statutes (2008)(2009), subjects a doctor to discipline for committing medical malpractice as defined in Section 456.50. Section 456.50, Florida Statutes (2008)(2009), 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.

24. 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. Section 766.102(1), Florida Statutes, 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