

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STATE OF FLORIDA, DEPARTMENT OF )  
PROFESSIONAL REGULATION (BOARD )  
OF MEDICAL EXAMINERS), )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 82-799  
 )  
TEOTIMO D. BONZON, M.D., )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before Charles C. Adams, Hearing Officer with the Division of Administrative Hearings. This hearing was conducted on August 9 and 10, 1983, in Jacksonville, Florida.

APPEARANCES

For Petitioner: Henry M. Coxe, III, Esquire  
204 Washington Street  
Jacksonville, Florida 32302

For Respondent: J. Clark Hamilton, Jr., Esquire  
801 Blackstone Building  
233 East Bay Street  
Jacksonville, Florida 32202

ISSUES

The matters presented for consideration in this case concern an administrative complaint brought by the Petitioner against the Respondent. That complaint alleges violations of various provisions of Chapter 458, Florida Statutes. Those sections of law are more particularly described in the conclusions of law in this Recommended Order. In summary, Respondent is alleged, in the course of his relationship with patients under his care, to have prescribed numerous controlled substances which were in excessive amounts, and were not appropriate prescriptions for the medical problems experienced by the patients, and were not prescribed in the course of the Respondent's professional practice. In the face of these circumstances, Respondent is accused of having committed gross or repeated malpractice in failing to recognized by reasonably prudent similar physicians in his community. Respondent is also accused of having failed to keep written medical records justifying the course of treatment.

FINDINGS OF FACT

1. Teotimo D. Bonzon, M.D., is a physician licensed to practice medicine in Florida through licensure by the State of Florida, Department of Professional

Regulation, Board of Medical Examiners, license No. MF0016786. He has held this license at all times relevant to this inquiry and during this period has practiced medicine at 830 Gary Street, Jacksonville, Florida, and 6229 Merrill Road, Jacksonville, Florida. At present, Respondent does general surgery approximately three times a week and sees 30-35 patients a day in his general office practice.

2. Dr. Bonzon is a graduate of the medical school, Far Eastern University, Manila, the Philippines. The date of his graduation was 1961. In 1962, he took his internship at St. Francis Hospital in Jersey City, New Jersey. There followed five years of general surgery training at Booth Medical Center in Flushing, New York, and York Hospital in York, Pennsylvania. Respondent then took a year of surgical fellowship at the Community General Hospital of Syracuse, New York. Following this practice, Respondent stood examination for medical license to practice in the State of Florida, and in the States of Pennsylvania and Indiana. Having passed those examinations, the decision was made to move to Florida. Respondent arrived in Florida in June of 1971 and has been involved in the practice of general surgery and general office practice since that time. The initial two years in practice in Florida were primarily concerned with general surgery and industrial medicine, which relates to provision of care for those persons who have been injured in industrial accidents.

3. The administrative complaint, which is the subject of this controversy, dates from March 10, 1982, and is the result of a survey made by the State of Florida, Department of number of Schedule II controlled substances per Chapter 893, Florida Statutes, which had been prescribed by physicians who practice in the Jacksonville, Florida, area. This survey transpired over a period of approximately six months, beginning in the fall of 1981. After being properly served with the administrative complaint, Respondent made a timely request for a formal hearing pursuant to Subsection 120.57(1), Florida Statutes.

ARTHUR LEE SCHEIDER

(Counts I, II, IV, V)

4. Dr. Bonzon first saw Arthur Scheider in his office on May 29, 1979. At that time, the chief complaints of the patient had to do with "nerves, that the patient could not sleep, that he itched and broke out in a rash." These matters are reflected on the copy of the patient's records, which are admitted as Petitioner's Exhibit C. Additionally, it was noted that the patient had been utilizing methaqualone or Quaaludes for one year prior to being seen by Dr. Bonzon. Scheider had also been receiving Valium in 10 milligram amounts. On this date, Dr. Bonzon prescribed 100, 300-milligram Quaaludes to assist the patient in sleeping and 100, 10-milligram Valium tablets related to the nervous problem being experienced by the patient. Both of these drugs are Schedule II controlled substances with a potential for abuse by those persons for whom the prescription has been given. Methaqualone is a sleep producer. Valium is a muscle relaxer.

5. Scheider was again seen on August 20, 1979, still complaining of nervousness and problems with sleep together with a rash condition on his torso and extremities. At that time, a further prescription of Quaaludes in the amount of 100 at 300-milligram each and Valium in the amount of 100 at 10-milligram each were prescribed for the patient with the opportunity for one refill related to the Valium.

6. On November 1, 1979, the patient returned and based upon a diagnostic note in the patient's records to the effect that the patient needed nerve medicine, a further prescription Valium with opportunity for one refill was prescribed. These prescriptions were given on November 1, 1979, before the amounts related to the August 20, 1979, prescription for Quaaludes and Valium had been exhausted. This is based upon Dr. Bonzon's appropriate recommendation that no more than one Valium and one Quaalude tablet be taken per day.

7. On January 7, 1980, a brother of the patient Scheider asked for Quaalude medication and was denied. The request for medication is reflected in the aforementioned exhibit related to patient records of Scheider.

8. Scheider was again seen on March 14, 1980, complaining of laryngitis, cough, and of a fever in the range of 100 degrees. On that date, in addition to other medication, 100, 300-milligram Quaaludes and 100, 10-milligram Valium were prescribed for the patient. No explanation is made as to why Quaaludes and Valium were prescribed.

9. On May 19, 1980, the patient record reflects that 50, 10-milligram Valium were prescribed for the patient Scheider; no indication is made as to the reason for this prescription. The Valium prescription was given at a time prior to the exhaustion of the March 14, 1980, prescription for Valium based upon a utilization rate of one Valium tablet per day.

10. On June 11, 1980, a sister of Arthur Lee Scheider's called and spoke to the Respondent and told the Respondent that Arthur Lee Scheider had been selling Valium to Scheider's mother. As a consequence, Dr. Bonzon noted in the patient record that he would not prescribe Valium for Scheider in the future and in fact abided by this choice. Respondent did prescribe 100, 300-milligram strength methaqualone tablets on this date.

11. On September 12, 1980, Scheider was again seen by the Respondent reference an examination which led to the conclusion that the patient needed an operation related to a circumcision. At that time, 100 additional 300-milligram Quaaludes were prescribed for the patient. Prescribed methaqualone or Quaaludes for the patient Scheider, it was always on the basis that Dr. Bonzon felt that the patient needed assistance in sleeping. Although not reflected in the medical record, Bonzon had suggested to Scheider that he see a psychiatrist in trying to combat his problem with sleep; however, Scheider declined this suggestion and the Respondent continued to prescribe methaqualone or Quaaludes. These prescriptions of 100 were made, notwithstanding the fact that the Physicians' Desk Reference indicated that methaqualone or Quaaludes should be prescribed in "small quantities." Respondent believes that this suggestion is a relative matter and really intends that the patients not be allowed to take more than one methaqualone tablet per day, an erroneous assumption.

12. Respondent learned of Scheider's trafficking in the controlled substance, methaqualone, on November 25, 1980, and made a note in the patient's file that the patient had been arrested for this activity and that no more medication should be prescribed for this patient for drugs which were under "narcotic control." It was also indicated that appointments for this patient should pertain to other medical problems unrelated to controlled substances.

13. Dr. Ensor R. Dunsford practices medicine in Jacksonville, Florida. He has, during his career, practiced in general surgery and is board certified in that field. His present practice involves emergency treatment in a freestanding emergency care facility. Upon examination of the patient records related to

Arthur Lee Scheider, involving the prescription of methaqualone and Valium over the period May 19, 1979, through September 12, 1980, Dr. Dunsford was of the opinion that the act of prescribing was "grossly overdone." Further, Dr. Dunsford felt that this amount prescribed was risky for a patient because of the potential for abuse. If the patient has an emotional need for the substance, then the risk is there that a physical need might be created. In summary, Dr. Dunsford felt that the number of Valium and methaqualone tablets which were in the best interest of the patient. Moreover, Dr. Dunsford felt that the amounts of methaqualone and Valium which Respondent prescribed for Scheider over the period of time were not acts of a "reasonably prudent physician" related to practicing medicine with a level of care, skill and treatment performed by a similar physician in the community. Dr. Dunsford also expressed the opinion that the decision to prescribe the additional methaqualone or Quaaludes on June 11, 1980, and September 12, 1980, after receiving information that the patient was selling a controlled substance (the information of June 11, 1980, from patient's sister related to Valium) was inappropriate and a reflection of substandard medical judgment. To Dr. Dunsford, the information that was given by the sister of patient Scheider was a "red flag" waving in the face of the practitioner, Dr. Bonzon. Dr. Dunsford also states that the September 12, 1980, medical record does not establish a basis for prescribing Quaaludes related to symptomology of the patient. The record makes no reference to the problem with sleeping and pertains only to scrotal erythema, parietitis and the need for circumcision. Finally, given the facts of the prescriptions from May 29, 1979, through September 12, 1980, with emphasis on the information related to suspected drug sales which was imparted on June 11, 1980, Dr. Dunsford feels that a reasonably prudent physician would not want to be involved with that type of situation, i.e. prescribing the drugs on June 11, 1980, and September 12, 1980. All opinions, as expressed by Dr. Dunsford found above are accepted.

14. Dr. Apolinar C. Ilano gave testimony. Dr. Ilano practices in Jacksonville, Florida, as a general surgeon. Dr. Ilano agrees with Dr. Dunsford that methaqualone has a potential for abuse. Following review of the patient records of Arthur Lee Scheider, Dr. Ilano's opinion was that some record had been made which justified the prescription of methaqualone for the sleep problem of Scheider and Valium related to the nervous problem of that patient. The justification found by Dr. Ilano does not satisfactorily explain the lack of explanation for prescribing methaqualone on September 12, 1980, as referred to by Dr. Dunsford. Dr. Ilano did not feel that the amounts of methaqualone and Valium that were prescribed to Scheider were excessive or inappropriate or contrary to good judgment by reasonably prudent similar physicians in that there was some justification for prescribing the medication to be found in the record; no indication in the record that the patient was abusing Valium, as opposed to sticking to the amount or dosage prescribed, and the rationalization that Dr. Bonzon was attempting to limit the number of office visits by prescribing the high amounts of methaqualone and Valium. The opinion expressed in the prior sentence is not compelling in the face of facts presented and the more acceptable explanation offered by Dr. Dunsford. Even Dr. Ilano was concerned about prescribing methaqualone after learning that the patient was possibly selling Valium, although his opinion did not reach the level of finding fault with the quality of care offered by Dr. Bonzon in prescribing methaqualone after being informed of the possible sale of Valium, as Dr. Dunsford had. Again, Dr. Dunsford's opinion is accepted on this topic. Dr. Ilano correctly states that if the patient is selling Valium he might in turn sell methaqualone.

15. Dr. Osbey L. Saylor gave testimony related to the care and treatment of Arthur Lee Scheider. Dr. Saylor practices in Orange Park, Florida, and is a board-certified general surgeon. The sum and substance of Dr. Saylor's opinion

of Dr. Bonzon's care and treatment of Arthur Lee Scheider was to the effect that Dr. Bonzon had done nothing inappropriate as alleged in the various counts pertaining to that patient. After considering this opinion testimony and that of the other physicians, Dr. Saylor's opinions are accepted to the extent that they describe methaqualone as being an addictive or habit-forming drug which has been resorted to by persons attempting suicide and which is sold on the street as a "downer" and his opinion that Valium has a potential for abuse and can be addictive. Otherwise Dr. Saylor's opinions are rejected.

GLADYS KNIGHT

(Counts VI, XII, and XIII)

16. Respondent treated the patient Gladys Knight over a period of years. During that time, the patient was seen on April 28, 1981, and was prescribed 30, 10-milligram Ritalin tablets. Ritalin is a Schedule II controlled substance. A notation of the prescription may be found in Petitioner's Exhibit D admitted into evidence, a copy of the patient records kept by the Respondent related to Gladys Knight. As established through the testimony of Dr. Dunsford, no indication is made in those records of an acceptable reason for prescribing Ritalin which is in the category of amphetamine or sympathomimetic amine drugs, spoke to in Section 458.331(1)(cc), Florida Statutes. The underlying diagnostic impression upon the April 28, 1981, visit, according to the patient records related to complaints of the inability to get out of bed because of fatigue and insomnia. Remarks are also made in that entry that the patient is without energy and is complaining of arthritis pain in her right shoulder. None of these matters comport with a justifiable basis for prescribing ritalin as allowed in Section 458.331(1)(cc), Florida Statutes.

17. In discussing the prescription of Ritalin, Dr. Bonzon indicated in the course of the hearing that he recognized Ritalin to be a central nervous system stimulant, which it is, and that he prescribed it for Mrs. Knight on April 28, 1981, because of his perception of signs of depression in that patient. More particularly, Dr. Bonzon indicated that she had claimed she didn't have energy, didn't want to get out of bed and was recalling a time when her husband was still alive. As a consequence, Bonzon felt that on this one occasion, in his medical judgment, Knight would benefit from a short term use of Ritalin. This was the only prescription of that substance for the patient. No mention was made in the patient record of the depressed condition; however, this impression which was given of the patient's condition in the course of the hearing is not sufficient justification for the prescription of Ritalin, "depressed state" not being one of the accepted bases for prescribing Ritalin as related in Section 458.331(1)(cc), Florida Statutes.

18. Respondent also prescribed Preludin to the patient, Gladys Knight, commencing February 22, 1979. Preludin is a Schedule II controlled substance. This drug was prescribed for purposes of weight control. On the initial date, the patient was provided with 30 tablets with the opportunity for three refills. At that time, the patient weighed 148 pounds. The patient was seen again on August 14, 1979, for weight control and 50 Preludin tables were prescribed with the opportunity for one refill. This visit was made with a Dr. Lagman. At that time, the patient weighed 145 pounds. On September 27, 1979, the patient was seen by the Respondent and was given a further prescription of Preludin to control her weight. She weighed 143 pounds upon that visit. On December 3, 1979, the Respondent saw the patient again and prescribed Preludin in the amount of 100 tablets for weight control. At that time, the patient weighed 146 pounds. Finally, the patient was seen by the Respondent on February 14, 1980,

her weight was shown to be 143 pounds and she was given a further prescription of Preludin in the amount of 100 tablets. This was on prescription by Respondent. Knight had been instructed by the Respondent on the occasion of prescribing Preludin on the question of how to utilize the Preludin tablets. At the time Respondent prescribed Preludin for patient Knight, he was unaware that the drug was an amphetamine or sympathomimetic amine drug. Respondent also discovered that Preludin prescriptions could not be refilled when a pharmacist contacted him in August of 1979 reference an effort by Knight to refill a prescription.

19. Dr. Dunsford had reviewed the patient records related to Gladys Knight, particularly as it related to the prescription of Preludin. He identified that Preludin has been prescribed to assist obese people in weight control through the device of suppressing the appetite of those patients. Because of a potential for abuse, Preludin is only prescribed for utilization over a period approximating a few weeks, per Dr. Dunsford. His testimony about Preludin, related to utilization, appropriate limits of its use, and potential for abuse is accepted.

20. Dr. Dunsford felt that the Preludin had been over prescribed in the sense of amounts being too large on each prescription and over too long a period of time. Dr. Dunsford placed particular emphasis on the lack of wisdom in prescribing 100 tablets of Preludin on one occasion and felt that would be excessive and inappropriate. These opinions are accepted. Moreover, the opinion by Dr. Dunsford that the pattern of prescribing Preludin for Knight were not the actions of a reasonably prudent physician, under similar conditions and circumstances, is found to be correct.

21. Dr. Ilano did not feel that the amount of Preludin was excessive nor did he feel that the actions of the Respondent constituted a failure to practice medicine with the care and skill that a reasonably prudent physician, under similar conditions and circumstances, would pursue. Dr. Ilano's opinion is not accepted. Nor is the opinion of Dr. Saylor related to the treatment of Mrs. Knight utilizing Preludin found to be compelling when he speaks favorably to treatment choices by the Respondent.

JOHN BROUGHTON

(Counts VIII, IX, X and XI)

22. John Broughton was a patient of the Respondent in the time period August 13, 1979, through February 16, 1981. Records related to the treatment of Broughton are found as part of the Petitioner's Exhibit E admitted into evidence. During the treatment of Broughton, beginning on August 13, 1979, 40 Preludin, 75-milligram tablets were provided for weight control. Preludin, 75-milligrams was again prescribed for control on September 21, 1979, following examination by Respondent. On October 31, 1979, Dr. Bonzon saw Broughton and prescribed Preludin 75-milligram in the amount of 60 tablets related to weight control. On December 31, 1979, an additional 80 tablets of 75-milligrams Preludin was prescribed by Respondent for the benefit of Broughton. On March 13, 1980, 100, 75-milligram Preludin tablets were given to Broughton on prescription issued by Respondent. On June 4, 1980, 50, 75-milligram Preludin tablets were prescribed by Respondent for Broughton. Respondent denied Broughton a request for Preludin upon an office visit on July 28, 1980, to see how the patient would react without the drug. On November 3, 1980, Preludin, 75-milligrams in the amount of 40 tablets was prescribed by Respondent for Broughton for weight control and a notation made that no further prescription

would be written unless 40 days had transpired. On December 11, 1980, without examining the patient, Preludin was prescribed for an unidentified condition. The strength of the Preludin was 75-milligrams and 50 tablets were authorized by the prescription issued by Respondent for the benefit of Broughton. Other evidence in the hearing demonstrates that this Preludin was prescribed for weight control on that visit.

23. During the course of the treatment, Broughton lost approximately 20 pounds in weight. In the interval of treatment, Broughton had requested Respondent to prescribe additional Preludin tablets and had been advised by Respondent that they would not be forthcoming based upon the fact that sufficient time had not transpired to have utilized one tablet per day on the previous prescription. In addition, the Preludin was not prescribed for Broughton if his blood pressure was too high upon examination by Dr. Bonzon. At the time Dr. Bonzon prescribed Preludin in November and December, 1980, as identified before, he was unaware that Preludin, an amphetamine or sympathomimetic amine drug, could not be prescribed for weight control after July 3, 1980. 1/

24. On August 13, 1979, Talwin was prescribed for Broughton by the Respondent upon an office visit. The explanation for this prescription says for "hip." In particular, it related to the provision of pain medication. Talwin, as with the case of Preludin, is a Chapter 893, Florida Statutes, controlled substance with addictive qualities. Talwin is, in effect, a pain medication. On September 21, 1979, a further prescription of Talwin was prescribed by Respondent for Broughton upon an office visit. This Talwin in 15-milligram strength, 40 tablets with opportunity for a single refill. No indication was made in the record as to the basis for prescribing this pain medication. Between August 13, 1979, and September 21, 1979, there is a notation in the patient records effective August 28, 1979, of a refill of Talwin in 50-milligram strength, 30 tablets and a further indication of Talwin being prescribed, 50-milligram strength, 30 tablets on September 13, 1979. On November 8, 1979, the patient record shows a refill of Talwin in the amount of 50 tablets. On November 16, 1979, the file establishes that the patient said he had been caught in the rain and his bottle got wet and that the Talwin turned to mush and a prescription was written in the amount of 50 Talwins to replenish Broughton. Broughton verified this story in the course of his testimony at hearing. The pills had not been destroyed but the Respondent did not know this at the time the prescription was written on November 16, 1979. The records reflect a notation on that date that no refills of Talwin should be given until November 28, 1979. On December 31, 1979, the patient was seen by Respondent for a problem he was experiencing with a hernia condition and a cough, congestion, and headaches. On that date, Talwin in, the 50-milligram strength, 50 tablets was prescribed. On the dates January 22, 1980; February 10, 1980; and February 28, 1980, patient records show prescription of Talwin in the 50-milligram strength, 50 tablets on each of those dates. The patient was seen by Dr. Bonzon on March 30, 1980, complaining of the hernia condition and a prescription was written for 50 Talwin, 50-milligram tablets. On June 4, 1980, the Respondent saw Broughton and prescribed 50 Talwin in 50-milligram strength. On July 28, 1980, Respondent saw Broughton and discussion was made of establishing surgery for hernia repair. Talwin was prescribed in a 50-milligram strength, 50 tablets with an indication of no refill, as established in the patient records. On August 25, 1980, an indication is made in the patient records that Talwin, 50-milligram strength in the amount of 40 tablets was prescribed for the patient. On October 10, 1980, patient records show that Talwin was refilled. On November 10, 1980, patient records reflect that a Pic N Save Drug Store had received a request for refill of Talwin in the amount of 40 tablets and this request was denied by the

doctor's office based upon the fact that a refill had just been given on November 3, 1980. On November 20, 1980, the records reflect that the Pic N Save at Sandlewood was given a prescription of Talwin, 50-milligram strength in the amount of 40 tablets for benefit of Broughton. On December 8, 1980, the patient was seen by Respondent. It was noted in the record that Talwin in the strength of 50-milligrams, 20 tablets had been prescribed two days before. Other evidence does not clarify whether that prescription was indeed written. On December 19, 1980, the patient records reflect that Talwin in the strength of 50-milligrams, 50 tablets was prescribed. On January 9, 1981, the records reflect Talwin, 50-milligram strength, 40 tablets was prescribed. On January 19, 1981, the record reflects Talwin, 50-milligram strength, 40 tablets was prescribed. On February 2, 1981, a notation is given that the patient has injured his leg and had received a night appointment and has reported using all the Talwin due to intense pain. Further indication is that Talwin in the amount of 50-milligram strength, 10 tablets was prescribed. A second entry related to February 2, 1981, is made having to do with a visit in which Respondent examined Broughton. He found the leg on the right calf highly inflamed and two large hematomas and that the patient was experiencing pain and for this condition, Talwin in the amount of 50-milligram strength, 50 tablets was prescribed. On February 11, 1981, a final notation indicates a refill of Talwin and the establishment of an appointment for the following day. That appointment was not kept. On February 16, 1981, the Talwin was ordered refilled. A notation was made at that time that the patient had not been keeping his appointments because of money owed and an expression of the importance to come in even if he could only pay a portion of the bill and a notation that the patient was using too much Talwin. All record notations are accepted as accurate depictions of events reported.

25. Eventually, Broughton was picked up for criminal offenses related to controlled substances and was imprisoned. Unknown to Respondent, Broughton had given Talwin and Preludin which had been prescribed for him through Respondent to other persons. Following his release from incarceration, Respondent has refused to see Broughton.

26. Although the records do not reflect the specific basis for prescribing Talwin in the questioned period, August 13, 1979, through February 16, 1981, other than the occasions of the hip and leg injury to his calf, it has been extrinsically established that Talwin was prescribed for pain related to a hernia condition, at times beginning December 31, 1979, and forward. There is other indication that the patient Broughton had sustained an injury to his coccyx and had some sacro coccygeal pain; however, it is unclear whether the Talwin was prescribed for that condition in the questioned period. Moreover, by May 20, 1980, Dr. Bonzon is expressing the opinion that physical examination of Broughton was negative regarding sacro coccygeal pain. The patient's records do indicate on March 11, 1977, complaints of Broughton with his tail bone or coccyx because of a fall in a Pantry Pride store in San Diego, California.

27. On the subject of Broughton's involvement with drugs, in an interview held in November 1981, Respondent told John E. Danson, an investigator with the Department of Professional Regulation, that he thought Broughton was a drug addict because on one occasion, Broughton had offered him \$50 to prescribe Dilaudid, a Schedule II controlled substance, at which time Broughton had been asked to leave Bonzon's office.

28. Dr. Dunsford examined the records of treatment received by Broughton found in Petitioner's Exhibit E and gave the opinion that the amounts of Preludin and Talwin prescribed to Broughton in the time frame described were



excessive and inappropriate. The prescription of those drugs over this period of time was not in the best interests of the patient according to Dr. Dunsford and not the actions of a reasonably prudent similar physician dealing with a patient under similar circumstances and conditions, on the subject of the skill and treatment afforded to this patient. As described by Dr. Dunsford, both Talwin and Preludin have addictive qualities. Dr. Dunsford did not feel that the pain the patient Broughton had experienced was sufficiently severe to warrant the number of Talwin tablets received. Continued response to the patient's request for more Talwin was in the words of Dr. Dunsford "bad." Dr. Dunsford also observed that the prescription of Preludin in November and December 1980, was not based upon any of the health conditions described in Section 458.331(1)(cc), Florida Statutes. The overall records of Dr. Bonzon related to the prescriptions of Talwin and Preludin, with particular emphasis on the December 11, 1980, prescription were deficient as it relates to a justification of continuing the regimen of prescribing these substances, according to Dr. Dunsford. The observations and opinions of Dr. Dunsford found in this paragraph are accepted.

29. Dr. Ilano examined the records related to Broughton and did not find that Respondent's treatment was unacceptable. Likewise, Dr. Saylor did not find the treatment of Broughton to be unacceptable. The opinions by these doctors are not accepted.

#### COUNTS XIV and XV

30. Between July 1, 1980, and December 31, 1980, Respondent prescribed approximately 15,260 controlled substances constituted of Percodan, Percocet, Tuinal, Preludin, Tylox, Quaalude, Ritalin, Demerol, Merperganfortis, Biphedamine, Sopor, Eskatrol and Dilaudid. With the exception of these substances related to the patients Scheider, Knight, and Broughton, no notation has been made that these drugs were prescribed, dispensed or administered in excessive or inappropriate amounts i.e., the 15,000 number is not excessive and inappropriate "on its face," nor is this raw number an indication that Respondent has failed to practice medicine with a level of care, skill and treatment which is recognized by a reasonably prudent, similar physician as being acceptable under similar conditions and circumstances.

#### CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action. See Subsection 120.57 (1), Florida Statutes.

32. Count I in the administrative complaint alleges that Respondent prescribed methaqualone and Valium to Arthur Lee Scheider other than in the course of his professional practice in violation of Section 458.331(1)(q), Florida Statutes. This violation has been proven in that the controlled substances prescribed were inappropriate and in excessive quantities. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

33. Count II accuses Respondent of gross or repeated malpractice or the failure to practice medicine with the level of care, skill and treatment which is recognized by a reasonably prudent, similar physician as being acceptable under similar conditions and circumstances, related to the treatment afforded Scheider in prescribing methaqualone and Valium in violation of Section 458.331(1)(t), Florida Statutes. The evidence establishes this violation. As a

consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

34. Count III of the administrative complaint has been voluntarily dismissed.

35. Count IV of the administrative complaint relates to the prescription of Quaaludes on June 11, 1980, and September 12, 1980, after the Respondent had been advised by Scheider's sister that he was selling Valium, such advice being made on June 11, 1980. In particular, it is alleged that the Respondent prescribed, dispensed or administered a controlled substance other than in the course of his professional practice. It was inappropriate for Respondent to prescribe on the dates in question after receiving the information from his sister and that action constitutes a violation of Section 458.331(1)(q) Florida Statutes. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes. This penalty should be concurrent with any penalty associated with Count I.

36. Count V relates to those facts in Count IV having to do with prescribing Quaaludes to Scheider after learning of the possible sale of Valium, and alleges that Respondent has engaged in gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by reasonably prudent similar physicians as being acceptable under similar circumstances and conditions, per Section 458.331(1)(t), Florida Statutes. A violation of that provision has been shown related to this count. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

37. Count VI in its operative terms found at paragraph 15 has been dismissed.

38. Count VII accuses the Respondent on April 28, 1981, of prescribing Ritalin for the patient Gladys Knight which is an amphetamine or sympathomimetic amine drug or a compound designated as a Schedule II controlled substance under Chapter 893, Florida Statutes. Ritalin falls into the category of amphetamine or sympathomimetic amine drug and is designated as a Schedule II drug within Chapter 893, Florida Statutes. The drug was prescribed after July 3, 1980, at which time only select conditions could be treated by that type of drug and not violate Section 458.331(1)(cc), Florida Statutes. The purpose of the prescription of the drug for Ms. Knight did not fit one of the acceptable categories. Therefore, Respondent has violated that provision. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

39. Count VIII relates to the treatment of the patient John Broughton related to a weight condition, hernia, and leg injury with the substances Preludin related to weight and Talwin related to the other conditions. It is alleged that excessive and inappropriate amounts of those substances were prescribed for John Broughton and as a result, Respondent is accused of violating Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, or administering a controlled substance other than in the course of his professional practice. Those drugs were prescribed in excessive and inappropriate amounts in violation of of the questioned provision. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

40. Count IX restates facts related in Count VIII pertaining to the patient Broughton and accuses Respondent of violating Section 458.331(1)(t) , Florida Statutes, in that Respondent has engaged in gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable on similar conditions and circumstances. This violation has been shown. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

41. Count X to the administrative complaint accuses Respondent of issuing a prescription of Preludin to Broughton on December 12, 1980, in an instance in which there is no justification in the records of the Respondent for that prescription. For this action, Respondent is alleged to have violated Section 458.331(1)(n) , Florida Statutes, in that he failed to keep written medical records justifying the course of treatment. This violation has been shown. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

42. Count XI accuses the Respondent on November 3, 1980, and December 12, 1980, of issuing Preludin to Broughton for weight control. Further, it is indicated that Preludin is an amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance pursuant to Chapter 893, Florida Statutes. Based upon these actions, Respondent is said to have violated Section 458.331(1)(cc), Florida Statutes in that the Preludin was not prescribed for any of the conditions set forth in that section before July 3, 1980, which is the effective date of the subject section. Respondent has violated that provision by issuing the prescriptions on the questioned dates for unauthorized purposes and in view of the fact that Preludin falls within the category of amphetamine or sympathomimetic amine drug or is a compound designated as a Schedule II controlled substance in Chapter 893, Florida Statutes. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

43. Count XII accuses Respondent of prescribing Preludin for weight control for the patient Gladys Knight in excessive or inappropriate amounts and by that action violating Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, or administering a controlled substance other than in the course of his professional practice. This violation has been proven. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

44. Count XIII sets out those factual allegations in Count XII and based upon that pleading, accuses the Respondent of a violation of Section 458.331(1)(t), Florida Statutes, by engaging in gross or repeated malpractice with a failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. This violation has been proven. As a consequence, Respondent is subject to the penalties set forth in Section 458.331(2), Florida Statutes.

45. Count XIV accuses the Respondent of prescribing in excess of approximately 15,000 controlled substances under Chapter 893, Florida Statutes, namely Percodan, Percocet, Tuinal, Preludin, Tylox, Quaalude, Ritalin, Demerol, Merperganfortis, Biphedamine, Sopar, Eskatrol and Dilaudid. Based upon the amounts, in and of themselves, Respondent is accused of violating Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, or administering a controlled substance other than in the course of his professional practice.

This general violation has not been shown. Violations related to some of these controlled substances have been demonstrated in previous counts. Likewise, the accusation that based upon those total amounts of the prescribed materials, as alleged in Count XV, the Respondent is in violation of Section 458.331(1)(t) , Florida Statutes, by engaging in gross or repeated malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances, has not been established.

Based upon a full consideration with the facts and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered dismissing Counts III, VI, XIV and XV and imposes the following disciplinary action for violations found in Counts I, II, IV, V, VII, VIII, IX, X, XI, XII and XIII:

1. Respondent's license is suspended for 3 years.
2. Service of the last 2 years of the suspension is stayed, provided the Respondent successfully meets conditions of a 2-year probation which runs concurrent with the last 2 years of the suspension term. Violation of the probation will bring about the imposition of the entire 3 years of the suspension.
3. The conditions related to probation include attendance and successful completion of a course selected by the Board of Medical Examiners related to treatment by use of controlled substances. Furthermore, Respondent shall not violate any statute or rule during the course of his probation.

DONE and ENTERED this 15th day of November, 1983, in Tallahassee, Florida.

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CHARLES C. ADAMS, Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, Florida 32301  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of November, 1983.

ENDNOTE

1/ After that date only those matters set forth in Section 458.331(I)(cc), Florida Statutes, could be treated by Preludin and weight control was not in those categories.

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