

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF)
MEDICINE,)
)
Petitioner,)
)
vs.) Case No. 03-2690PL
)
JAMES COKER, P.A.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 3 and 4, 2003, in Tampa, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kim M. Kluck, Esquire
Joy L. Doss, Esquire
Department of Health
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265

For Respondent: Jon M. Pellet, Esquire
Barr, Murman, Tonelli,
Slother & Sleet, P.A.
201 East Kennedy Boulevard, Suite 1700
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STATEMENT OF THE ISSUES

Whether Respondent violated Subsections 458.331(1)(q),
458.331(1)(t), 458.331(1)(nn), 458.347(4), and 456.072(1)(o),

Florida Statutes (2001), and Florida Administrative Code Rule 64B8-30.008, and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On April 4, 2003, Petitioner, Department of Health (Department), filed a four-count Administrative Complaint against Respondent, James Hilton Coker, P.A. (Coker), alleging that Coker violated Subsections 458.331(1)(q), 458.331(1)(t), 458.331(1)(nn), 458.347(4), and 456.072(1)(o), Florida Statutes (2001), and Florida Administrative Code Rule 64B8-30.008. Coker requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on July 23, 2003, for assignment to an Administrative Law Judge.

The parties entered into a Joint Prehearing Stipulation in which they agreed that at all material times relevant to this proceeding that Coker was a licensed physician assistant with the added qualification as a prescribing physician assistant in the State of Florida, having been issued license number PA3151.

Official recognition was taken of Florida Administrative Code Rule 64B8-30.008 (11/13/00 version); Florida Administrative Code Rule 64B8-30.008 (2/15/02 version); Florida Administrative Code Rule 64B8-30.015 (4/9/01 version); and Florida Administrative Code Rule 64B8-9.013 (12/21/99 version).

At the final hearing, the Department called the following witnesses: Jaceson Yandell, Theresa Garnett, Margaret Grow,

Heinz Bachman, Donald Bowling, Anthony Bordonaro, and Keith Arndt. Petitioner's Exhibits 1, 2B, 2C, 2D, 2E, 4A, 4B, 5, 6, 7A, 8, 9A, 9B, 9D, 10C, 10D, 10E, 10F, 11C, 11D, 11E, 11F, 12, 13A, 13B, 13C, 13D, 14A, 14B, 14C, 14D, 15, 16, and 18 were admitted in evidence.

At the final hearing, Coker called John Barsa, M.D., as his witness. Respondent's Exhibits 2 through 11 were admitted in evidence. Coker proffered the transcript of his testimony in his criminal trial, and the transcript was marked as Respondent's Exhibit 12.

The parties agreed to the late filing of the depositions of Joanne McGregor, Stephan Mikell, Dan Mathis, and Herly Ramos, P.A.-C., which depositions are admitted in evidence. Coker filed the depositions of Joanne McGregor and Stephan Mikell on September 22, 2003. Respondent's Exhibits 13 through 17 were submitted at the deposition of Ms. McGregor and are admitted in evidence. The Department filed the deposition of Dan Mathis on September 15, 2003. Petitioner's Exhibits 3A, 3B, 10A, 10B, 11A, 11B, and 17 were submitted at the deposition of Mr. Mathis and are admitted in evidence. The depositions of Herly Ramos were filed on September 22, 2003.

The parties agreed to file their proposed recommended orders within ten days of the filing of the transcript. On September 29, 2003, the last volume of the two-volume Transcript

was filed with the Division of Administrative Hearings. The parties timely submitted their Proposed Recommended Orders, which have been considered in rendering this Recommended Order.

All statutory references in this Recommended Order are to the 2001 codification of the Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

1. At all material times relevant to this proceeding, Coker was a licensed physician assistant with an additional qualification as a prescribing physician assistant in the State of Florida, having been issued license number PA3151.

2. A physician assistant is a dependent practitioner, who practices under a supervising physician. A physician assistant acts as a supplement or extension of the supervising physician and is trained to do histories and physicals, to diagnose, and to treat patients. In Florida, a physician assistant is permitted to prescribe certain medications after completion of a prescriptive practice seminar and an application process.

3. Beginning in June 2001, Coker began working as an independent contractor for Dr. Rosetta V. Cannata, an anesthesiologist who practices in pain management. Dr. Cannata was Coker's supervising physician. Dr. Cannata maintained an office in Englewood, Florida, and decided to expand her business to adult entertainment clubs in Tampa, Florida. The purported

purpose was to provide medical services to persons who were working in the adult entertainment business. She made arrangements with various clubs to provide space to her at the clubs for use as examining rooms.

4. Dr. Cannata and Coker began seeing patients at adult clubs such as the Pink Pony and Diamond's Men's Club. Patients other than those from the adult entertainment business began to come to the clubs to see Dr. Cannata and Coker. Dr. Cannata opened an office on Martin Luther King, Jr. Boulevard in Tampa to take care of the increased business. Coker saw patients at the new office and also continued to see patients at the adult clubs.

5. In 2001, the Hillsborough Sheriff's Office began an investigation of Coker's activities in Tampa. Jaceson Yandell (Yandell) was the lead investigator. Yandell used a confidential informant (CI) to make contact with Coker. On July 14, 2001, the CI took Detective Dan Mathis (Mathis),¹ an undercover officer, to Diamond's Men's Club to see Coker. Mathis and the CI were fitted with either recording or transmitting devices so that their conversations with Coker were recorded. Yandell was stationed in a nearby vehicle, which contained devices that could receive and record the transmission of the conversation between Mathis and Coker.

6. Mathis was introduced to Coker by the CI as Dee Tucker. Coker asked Mathis to fill out a medical history form. Mathis filled out the form, indicated no to all the questions, and stated that he was not currently taking any medication, had no previous surgeries, and was not allergic to any medications. He did not list a name for his medical doctor.

7. After asking Mathis his height and weight and whether he was allergic to any medicine, Coker asked, "What am I seeing you for today, Dee?," and the following conversation took place:

Mathis: I ain't got nothing wrong with me.

CI: Tell him what you want, shit that's the only way you're gonna get it.

Mathis: Some Z's.²

Coker: So you are having some anxiety is what you're telling me?

Mathis: Yeah, yeah.

CI: Say yes.

Mathis: Yes.

Coker: Has this been going on long?

Mathis: Shit. Well, it's been a long. It's been a while. I've been kinda acting like that.

8. Coker also asked Mathis whether he had ever been in the military, had a car wreck, or been injured in anyway, including any football injuries. Coker also asked him whether he had a

family history or had any surgeries. Mathis replied negatively to all of these inquiries.

9. Mathis did advise Coker that his mother, who had smoked for 45 years, had recently died of hypertension and congestive heart failure at the age of 62. Coker did not check Mathis' heart, lungs, ears, nose, throat, or glands. Coker took Mathis' blood pressure and found that it was high, and advised Mathis that he needed to take medication for the high blood pressure. He prescribed hydrochlorothiazide for the high blood pressure and ordered some laboratory work to rule out causes for the elevated blood pressure. Coker also advised Mathis to eat more foods that were high in potassium.

10. Coker had two prescription pads. One pad contained prescription forms that were pre-signed on the physician's signature line, and the other pad contained prescription forms that were not pre-signed. Coker wrote the prescriptions for the hydrochlorothiazide and the laboratory work on the prescription forms that were not pre-signed.

11. Coker prescribed 30 two-milligram bars of Xanax for Mathis for anxiety. The prescription could be refilled two times. The prescription was written on one of the pre-signed prescription forms. During the July 14 office visit, there was no discussion of the possible cause of Mathis' anxiety, no discussion of a plan of treatment for the anxiety, and no

discussion of alternative treatments for anxiety, such as counseling. The only discussion of directions of use or warnings concerning Xanax was that taking Xanax in the bar, rather than pill form, could save the patient money, because the bar could be broken into smaller doses and that Coker would prefer that a patient not take a whole bar unless it was necessary.

12. Xanax contains Alprazolam which is a schedule IV controlled substance.

13. Mathis did not see Dr. Cannata during his July 14 office visit. Coker did not leave the examining room or make any telephone calls during Mathis' office visit.

14. Mathis paid Coker \$50 for the visit. After leaving the Diamond's Men's Club, Mathis went to the vehicle where Yandell was located and gave Yandell the prescriptions.

15. On August 17, 2001, Mathis returned alone to Diamond's Men's Club to see Coker. Mathis was wired with a transmitting device so that the conversation between Coker and Mathis was recorded.

16. Coker took Mathis' blood pressure and found it to be lower. Other than taking Mathis' blood pressure, Coker did not perform any physical examination of Mathis. Mathis advised Coker that he had an injury due to bench pressing and that he felt some discomfort when he bench-pressed during a work out.

Coker did not ask Mathis how often he experienced the pain, nor did he ask Mathis if he was taking any other medication for the pain. Coker and Mathis discussed the use of anabolic steroids, and Coker discouraged the use of steroids.

17. During the August 17, 2001, office visit, Coker did not ask Mathis how the Xanax was working, did not inquire whether Mathis was still experiencing anxiety, did not discuss alternatives to Xanax, did not discuss the causes of anxiety or ways to address the anxiety, did not discuss a medical diagnosis with Mathis, and did not discuss a plan of treatment.

18. On August 17, 2001, Coker wrote Mathis a prescription for 30 two-milligram bars of Xanax, which could be refilled two times, and a prescription for Lortab, which could be refilled one time. Lortab contains Hydrocodone which is a Schedule III controlled substance. Coker wrote the prescriptions on prescription forms which had been pre-signed on the line for the physician's signature. Mathis did not see Dr. Cannata on the August 17, 2001, visit, and Coker did not leave the room. Other than a telephone call to his family, Coker did not talk on the telephone during Mathis' visit.

19. Mathis paid Coker \$50 for the office visit and left the adult club. He met Yandell at a predetermined location and turned over the prescriptions to Yandell.

20. On August 21, 2001, Mathis and another undercover officer, Detective Peggy Grow (Grow), met with Coker at an office located on Martin Luther King, Jr. Boulevard in Tampa. Mathis and Grow were outfitted with transmitting and recording devices so that the conversations of Mathis, Coker, and Grow were recorded.

21. Grow was introduced to Coker as Peggy Lane.³ As an undercover officer, Grow played the role of a call girl or escort. Upon meeting Grow, Coker explained that he was a physician assistant and worked with Dr. Cannata, who was an anesthesiologist. He stated that the practice included primary care, pain management, and management of anxiety and depression. He asked Grow to fill out a medical history questionnaire. She checked no to all the questions except for the use of alcohol and tobacco. Grow did not list the name of her medical doctor and told Coker that she had not seen a doctor in a long time.

22. Coker asked Grow the reason for her visit, and the following conversation took place:

Grow: I just need something to keep going. I work a lot of hours, you know, sometimes I'm up real late and then you know I get up again and, sometimes, you know, it's hard.

Coker: Okay. Define keep me going 'cause I don't prescribe any kind of amphetamines or any speed or anything like

Mathis: I told you doc. He, he, he's straight. Tell him you want some Zees.

Coker: Tell me . . .

Grow: I want some Zees.

Coker: Xanax. Okay. Xanax is an anti-anxiety. Okay?

Grow: Will that help like stress and stuff like that?

Coker: Oh, absolutely.

Grow: Okay. I think that keeps . . .

Coker: Any time dealing with anxiety. It's actually a wonderful medicine and it works very well.

Grow: Okay.

Coker: Um, it either can be dosed, you can, like I always prescribe the bars because you can break them into four pieces or you can break them into two pieces or you can take the whole thing. It just depends on what your need is.

Grow: Okay.

Coker: Okay? And I have folks, you know, I tell them take it as needed. Um, but usually it's just an anxiety kind of thing, so . . . you know, you got to talk English to me otherwise I don't understand.

23. The medical records which Coker generated for Grow contained the following notes, as they related to Grow's anxiety:

CHIEF COMPLAINT: Describes being tense, on edge, tremulous, difficulty relaxing, tachycardia-palpitations, dyspnea, symptoms present for "years."

* * *

PLAN: advised Referral - To therapist of choice for chronic recurring anxiety
Advised If hyper-ventilating, then teach "brown paper lunch bag" re-breathing technique.
Avoid caffeine and plan for regular physical activity. Practicing a relaxation exercise regularly as well. Discussed stress reduction.

Grow did not describe the symptoms listed above, and Coker did not give the advice listed above.

24. Grow told Coker that she had never had any surgeries and that she had taken some of Mathis' Xanax. Coker took Grow's blood pressure, listened to her heart and lungs, and checked the glands on her neck. Coker gave Grow a prescription for Xanax and advised her not to drink, drive, or operate machinery while she was taking the Xanax. He told her the prescription included one refill and not to call him saying that she needed another refill. He told her to "[g]o get some of his (meaning Mathis)." Coker wrote the prescription for Xanax on a prescription form which had been pre-signed on the physician's signature line.

25. During Grow's visit on August 21, 2001, Mathis asked Coker about giving him a prescription for Vicodin. Coker explained that Vicodin was the same medication as the Lortab, which he had prescribed to Mathis on Mathis' last visit. Mathis explained that the Lortab was actually for him, and Coker asked him for whom was the Vicodin. Mathis replied that it was for himself, after which the following conversation took place:

Coker: Well, see I can't give them to you then 'cause I gave script for a hundred on the 17th.

Grow: How about me?

Coker: Yeah, I can give them for her.

Mathis: Well, do that. Alright, I get, I get ah Craig hooked up.

Coker: For your, your neck pain, huh?

Mathis: Yeah.

Coker: After the motor vehicle accident two weeks ago.

There had been no mention of Grow having any neck pain until Coker stated that it was for her neck pain. There is nothing in the recorded conversation between Grow and Coker from which Coker could make a determination that Grow had neck pain resulting from a motorcycle or motor vehicle accident. Coker invented the symptoms for Grow to give support for a prescription for pain medication.

26. Coker asked Mathis, not Grow, about the Vicodin prescription in the following conversation:

Coker: Which Vicodins are we talking about here, Dee?

Mathis: A stronger one.

Coker: Well, if you want the tens you have to go really with the Lortabs 'cause you're going to get generic anyhow.

Mathis: I'm going to get generic?

Coker: Right.

Mathis: As opposed to what?

Coker: Well, if I wrote it for Vicodin HP, which is not generic, then you pay a lot of money.

Mathis: I ain't paying it. I ain't worried about that.

Coker: What I'm saying somebody's going to pay a lot of money versus . . . the thing about it is it's no difference than the generic.

Mathis: Is, I mean, Craig going to be able to take of that, I'm not as far as . . .

Based on the recorded conversations between Mathis and Coker, it is clear that Mathis wanted the Vicodin prescription for someone named Craig, and that Coker was going to prescribe the pain medication for Grow in order to get around the problem that it was too soon for Coker to give Mathis another prescription for pain medication.

27. On August 21, 2001, Coker gave Grow a prescription for 50 Lortab, which could be refilled one time. The prescription was written on a prescription form, which was pre-signed on the physician's signature line. During the August 21 office visit, Grow did not see Dr. Cannata; Coker did not leave the room; and Coker did not make any telephone calls.

28. On August 24, 2001, Grow and another undercover officer, Detective Heinz Bachman (Bachman),⁴ went to Diamond's Men's Club to see Coker. Both Grow and Bachman were outfitted with electronic devices that allowed the conversations during the visit to be monitored and recorded.

29. Grow introduced Bachman to Coker as Hank Richardson. When Coker asked Bachman the reason for the visit, Bachman told him pain. Grow told Coker that Bachman wanted some Vicodin.

30. Coker asked Bachman what kind of pain he had, the cause of the pain, and the duration of the pain. Bachman told Coker that he had injured his back a week ago while throwing a fish net. Coker asked Bachman if he had had any surgeries, was on any medication, was allergic to any medicine, or smoked. Bachman answered all the questions in the negative. Bachman also filled out a medical history questionnaire, indicating no to all the questions. Later, when he told Coker that he had back pain, the form was changed to reflect that condition. Bachman did not list the name of his medical doctor.

31. Coker took Bachman's blood pressure and listened to his lungs and heart with a stethoscope. Bachman was requested to stand up. Coker then palpated Bachman's lower back and asked if that was where he had pain. Bachman replied that it was.

32. Coker told Bachman that he was going to give him a prescription for pain medicine and that Bachman should take an

anti-inflammatory, over-the-counter medication and put ice on his back. Coker advised Bachman that if the pain did not go away that Bachman should come back for a shot of cortisone. Coker told him not to drink, drive, operate machinery, or drive a boat while he was taking the medication.

33. During the visit, Grow asked Coker if he could give Bachman some Xanax during the following conversation:

Grow: Very cool. While's we're here can, can you give him one for Zees for me and Dee [Mathis] to take?

Coker: Ah-yi-yi-yi-yi-yi-yi

Grow: Can you give him some Zees?

Coker: Maybe.

Grow: Okay. Okay. (Laughs.)

Coker: (Laughs.)

Grow: Well, you gotta ask, right?

Coker: Ay-yi-yi-yi-yi-yi

Grow: You told me last time to ask.

34. Bachman did not tell Coker that he was experiencing any anxiety or any symptoms of anxiety or stress. Coker did not ask what might be causing Bachman to have anxiety or describe a plan of treatment for anxiety. Coker did tell Bachman that the Xanax was for mild anxiety. It is clear that Bachman was not experiencing anxiety and that the reason for prescribing Xanax was for Grow's use and not Bachman's.

35. Coker wrote a prescription for Bachman for 50 Lortab with no refill, and a prescription for 60 Xanax with one refill. Both of the prescriptions were written on prescription forms which had been pre-signed on the physician's signature line. During the visit, Bachman did not see Dr. Cannata, and Coker did not leave the room or discuss anything with Dr. Cannata. Bachman paid Coker \$50 for the visit.

36. On September 27, 2001, Grow went to see Coker and brought along another undercover officer, Anthony Bordonaro (Bordonaro).⁵ Both Grow and Bordonaro were outfitted with electronic devices that allowed the conversations during the office visit to be recorded.

37. Grow told Coker that she was there for refills of her prescriptions. Coker asked her how her back and neck were, to which she replied the "same." He asked if she were okay with her medications and she said "Love 'em."

38. Coker took Grow's blood pressure and listened to her heart. He felt her neck and palpated her back. Coker found a knot in her back area, and suggested that she have some massage therapy, stating that he was also a massage therapist. He wrote prescriptions for Grow for 45 Xanax with one refill and for 50 Lortab with one refill.

39. Coker asked Bordonaro his height and weight. Bordonaro stated he was not taking any medications and that he

was allergic to penicillin. He told Coker that he piloted tug boats, had hurt his arm in a fall on a boat, and had to have surgery on his arm five years ago, resulting in a screw being placed in his arm. Bordonaro stated that he had no other medical problems. He denied smoking, but indicated he did drink alcohol.

40. When Coker asked Bordonaro what was the purpose of the visit, Bordonaro said that he wanted some Vicodin, which he had taken when he had hurt his arm. According to Bordonaro, it was "some good stuff." Coker's computer medical notes for Bordonaro's visit indicate that Bordonaro was currently taking pain medication; however, Bordonaro did not indicate that he was currently taking any pain medications.

41. Coker took Bordonaro's blood pressure and listened to his lungs. Coker told Bordonaro that his blood pressure was high. Bordonaro told Coker that the last time that he had gone to his doctor in Pensacola, his blood pressure was 112/80. Coker told Bordonaro that they would keep an eye on his blood pressure.

42. When Coker asked Bordonaro what he did that caused pain in his arm, Bordonaro replied, "Like all in, all in here." Coker had him lift his wrist up and down, spread his fingers apart and push them together, and touch his thumb and little finger.

43. Coker wrote Bordonaro a prescription for 50 Vicodin with one refill. Vicodin contains Hydrocodone, which is a Schedule III controlled substance. Coker told Bordonaro to avoid doing anything that would exacerbate the pain and not to drink, drive, or operate any machinery while taking the medication.

44. The prescriptions that Coker wrote for Grow and Bordonaro on September 27, 2001, were written on prescription forms which were pre-signed on the physician's signature line. Dr. Cannata was not present during the office visit, and Coker did not leave the room or make any telephone calls during the visit. Coker charged Bordonaro \$100 for his and Grow's visit.

45. On November 15, 2001, Grow returned to see Coker and took along undercover officer Donald Bowling.⁶ Both officers carried electronic devices that allowed the conversations during the visit to be recorded.

46. Grow indicated that she was there because she wanted refills on her Lortab prescription. Coker asked her how she was feeling, to which she replied, "Oh, pretty good." When asked about her neck, Grow told Coker that it was about the same. Coker asked if ever got any better, and she told him it did, but that sometimes she slept funny.

47. Coker took Grow's blood pressure, listened to her heart, and felt her neck. He asked Grow her weight and height.

Coker indicated that she could get her medications from him, rather than getting prescriptions and having them filled at a pharmacy. He gave her a bottle of 100 Hydrocodone and a bottle of 180 one-milligram tablets of Alprazolam, the generic name for Xanax. He told her to take two of the Xanax instead of one because the dosage was smaller.

48. When Coker asked Bowling the reason for his visit, Bowling told him that he had injured his knee in high school and that the knee would get really sore every now and then. He said that when he bent his knee he could feel something, but he did not know how to describe it. Bowling said that someone wanted to do a "scope thing" on his knee and that he had refused.

49. Coker took Bowling's blood pressure and listened to his heart. Coker had Bowling lie down on the examination table. While Coker felt around Bowling's knee, he asked where the pain was. Bowling said that he could feel the pain when he was moving in a certain way. Coker had him tighten his muscle and lift his leg. Coker advised Bowling that his condition was early wear and tear on the knee, which was common. The condition, Coker said, would come and go. Coker told Bowling that in addition to taking the pain medication, he should take over-the-counter, anti-inflammatory medications such as Ibuprofen and Aleve. He told Bowling to put ice on the knee and

to avoid actions that would tend to make the knee worse, such as squatting on the knee.

50. Coker asked Bowling his height and weight. When asked by Coker, Bowling said that he had not had any major surgery and was not allergic to any medication. He told Coker that his father had recently been diagnosed with colon cancer. Bowling said that he smoked tobacco and drank alcohol.

51. During the visit Grow told Coker that Bowling wanted some Zees. After examining Bowling, Coker asked, "You said you wanted Xanax also?" to which Bowling replied "Yes. Please." There was no other mention of a reason for giving Bowling Xanax. In Bowling's medical records, Coker indicated that Bowling had "Anxiety syndrome (tense or nervous)"; however, Bowling never said that he had anxiety or was tense or nervous.

52. Coker gave Bowling a bottle of Alprazolam and a bottle containing 100 Hydrocodone tablets. Bowling paid Coker \$310 for his and Grow's visit and medications.

53. Dr. Cannata was not present during the visit of Grow and Bowling on November 15, 2001. Coker did not leave the room or contact Dr. Cannata during the visit.

54. On December 13, 2001, Bordonaro went to see Coker to get a refill of his pain medication. Bordonaro carried an electronic device which allowed their conversation to be recorded.

55. Even though Coker had told Bordonaro during their last visit that Bordonaro's blood pressure was high, Coker did not examine Bordonaro or take his blood pressure. Coker asked Bordonaro how he was doing, and Bordonaro replied, "Good. Good." After explaining the difference between Vicodin ES and Hydrocodone, Coker gave Bordonaro a bottle of 100 Hydrocodone tablets, and charged Bordonaro \$115 for the visit and medication.

56. On January 11, 2002, Bordonaro visited Coker at an adult club to get more medication. Again, Bordonaro wore a device which allowed the conversation to be recorded. He told Coker that he was having to take more of the Vicodin and asked if he could get something stronger.

57. Bordonaro also asked if he could get some Xanax. At first, Coker told him no, but then gave him a form and told him to place a checkmark by everything that applied to him. Bordonaro checked the first three items on the form and gave it back to Coker. Coker did not discuss with Bordonaro any symptoms of anxiety that Bordonaro checked on the form or any plan of treatment for anxiety.

58. Coker did not perform an examination of Bordonaro. Although Coker's computer-generated medical records for Bordonaro's January 11 visit indicate that Bordonaro's blood pressure was taken, it was not.

59. Coker gave Bordonaro a bottle of 100 tablets of Hydrocodone/Acetaminophen, and a bottle of 90 Alprazolam bars for anxiety. Coker did not contact Dr. Cannata during the visit. The total charge for the visit and medications was \$155.

60. On February 12, 2002, Bordonaro returned to see Coker to get refills of his pain medication. The undercover officer wore an electronic device which allowed the conversation to be recorded. Bordonaro told Coker that the pain pills he had gotten at the last visit were not working and asked if he could get something stronger. Coker told him that he could write a prescription for Percocet, but that Bordonaro would have to get it filled at a pharmacy. Coker suggested that he get the prescription filled at Wal-Mart or Target because those pharmacies are not computer interconnected as Eckerds and Walgreens are. Coker gave Bordonaro a prescription for 100 Percocet with no refills. Percocet contains Oxycodone, which is a Schedule II controlled substance. Coker wrote the prescription on a prescription form which was pre-signed on the physician's signature line.

61. Coker did not examine Bordonaro during the visit. Although Bordonaro complained that the pain medication that he had been given on his last visit was not working, Coker put in Bordonaro's medical records that Bordonaro was "[d]oing well with current medication and treatment plan."

62. Coker asked Bordonaro if he wanted the Xanax medication refilled, and Bordonaro replied that his girl was out of town so he did not need the Xanax. Bordonaro paid Coker \$75 for the visit.

63. On April 25, 2002, Bordonaro again visited Coker for the purpose of getting refills of his medications. Again, Bordonaro wore a device which allowed the conversation to be recorded.

64. Coker gave Bordonaro 120 tablets of Hydrocodone, the generic for Lortab, and 90 bars of two-milligram Alprazolam for anxiety. Bordonaro asked if he could double up on his medication, and the following conversation took place:

Coker: No.

Bordonaro: No?

Coker: That's what I have to tell you.

Bordonaro: Okay.

Coker: Remember with these don't drink, drive, operate any machinery while you're taking it. Don't mix with other medicines or share them with anyone else.

When Coker told Bordonaro that he could not double up on the medication, Coker winked at Bordonaro.

65. Bordonaro was not examined on the April 25 visit. Coker charged Bordonaro \$165 for the visit and medications.

66. John Barsa, M.D., a board certified physician in pain medicine, testified as an expert witness on Coker's behalf. Dr. Barsa practices in the Tampa area. Approximately nine or ten years ago, Dr. Barsa employed a physician assistant for about six months to one year. He currently employs three nurse practitioners.

67. Dr. Barsa gave his opinions on the care that Coker provided to the undercover officers. However, his opinions were based in part on the medical records made by Coker. Much of those medical records do not accurately reflect what occurred during the visits of the undercover officers.

68. Herly Ramos, P.A.-C., is a physician assistant and has passed the national board certification examination for general medicine. He is presently employed as a surgical assistant. Previously he practiced for nine years with the Orlando Orthopedic Center, which is primarily an orthopedic practice. While with the Orlando Orthopedic Center, Mr. Ramos routinely took medical histories, performed physical examinations, made assessments, developed treatment plans, did discharge evaluations, and wrote progress reports.

69. A large component of the orthopedic practice involves evaluating patients for complaints of pain. Common orthopedic ailments include back or neck pain, extremity pain from strains, sprains, or fractures. The first line of treatment for such

ailments includes nonsteroidal, anti-inflammatory drugs, muscle relaxers, and physical therapy. Patients with fresh fractures or other conditions involving severe pain often require narcotic analgesics or controlled substances.

70. Mr. Ramos credibly opined on the standard of care for a physician assistant in evaluating a patient on the initial visit and follow-up visits. It is his opinion that when performing an initial evaluation of a patient complaining of pain, a detailed medical history should be taken, and a thorough physical examination should be conducted. The medical history should include a personal medical history, social history, family medical history, allergies, surgical history, name of current physician, current medications, review of systems, and any diagnoses.

71. According to Mr. Ramos, the initial physical examination for a patient complaining of pain should include taking the patient's vital signs (blood pressure, pulse, respiration, and temperature), heart and lung examination, assessment for any obvious abnormalities, examination of the abdomen, and a detailed examination of the portion of the body about which the patient is complaining. During the physical examination, the physician assistant should be looking for anything that might indicate a cause for the patient's complaint.

72. A limited examination is a less detailed examination, and it is Mr. Ramos' opinion that a limited examination is indicated when the physician assistant is treating the patient for a recurring complaint and wants to determine if there was any interval change.

73. Dr. Barsa and Mr. Ramos agree that a physician assistant could recommend to the supervising physician that controlled substances be prescribed for a patient, but that a physician assistant could not prescribe controlled substances for a patient. It is the opinion of Dr. Barsa that a physician assistant who prescribes controlled substances is practicing beyond the scope permitted by law for a physician assistant.

74. According to Dr. Barsa, the prescribing of controlled substances should be based upon a clear documentation of unrelieved pain that is unmanageable with simple Tylenol or aspirin. For example, it would be a violation of the standard of care to prescribe a controlled substance for neck pain when the patient has no complaints of neck pain.

75. Mr. Ramos credibly opined that Coker's treatment of the undercover officers fell below the level of care, skill, and treatment which is recognized by a reasonably prudent physician assistant as being acceptable under the conditions and circumstances.

CONCLUSIONS OF LAW

76. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57, Florida Statutes (2003).

77. The Department has the burden to establish the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (1996).

78. Section 458.347(7)(g), provides that the Board of Medicine may discipline a physician assistant for a violation of Chapter 458. In Count I of the Administrative Complaint, the Department alleged that Coker violated Subsection 458.331(1)(t), which provides that the following act constitutes grounds for a disciplinary action:

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. The board shall give great weight to the provisions of s. 766.102 when enforcing this paragraph. As used in this paragraph, "repeated malpractice" includes but is not limited to, three or more claims for medical malpractice within the previous 5-year period resulting in indemnities being paid in excess of \$25,000 each to the claimant in a judgment or settlement and which incidents involved negligent conduct by the physician. As used in this paragraph, "gross 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," shall not be construed so as to require more than one instance, event, or act. Nothing in this paragraph shall be construed to require that a physician be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.

79. The Department alleged that Coker violated Subsection 458.331(1)(t) by failing to perform initial and follow-up examinations of the undercover officers; failing to document and evaluate the current treatment plan for the undercover officers; failing to ascertain the history of the pain of the undercover officers; failing to obtain past medical records prior to treating the undercover officers; and inappropriately and excessively prescribing controlled substances to the undercover officers.

80. The standard of care for a physician assistant requires that the physician assistant do examinations on initial and follow-up visits of patients. The initial examination requires that a detailed medical history be taken and a physical examination be done. The physical examination should include checking the patient's vital signs, heart, and lungs; performing a general assessment of abnormalities; examining the abdomen; examining each of the patient's systems; and performing a detailed examination of the portion of the body about which the

patient is complaining. On a follow-up examination, the physician assistant may perform a limited examination to determine if there is any interval change.

81. The standard of care for a physician assistant requires the physician assistant to prescribe based on a clear documentation of the patient's complaint.

82. On Mathis' initial visit, Coker took Mathis' medical history, checked his blood pressure, asked him if he had anxiety and for how long. That was the extent of the examination. There was no discussion of anxiety symptoms Mathis was experiencing or a treatment plan for anxiety. Coker fell below the standard of care on July 14, 2001, in his examination of Mathis.

83. On Mathis' second visit, Mathis had a new complaint of pain. The only physical examination that Coker performed was to take Mathis' blood pressure. There was no discussion of how often Mathis experienced the pain, and there was no discussion of Mathis's anxiety. Coker fell below the standard of care on August 17, 2001, in failing to do a physical examination of Mathis as it related to Mathis's complaint of pain, and in failing to ascertain the status of Mathis's anxiety.

84. Coker fell below the standard of care in prescribing pain medication for neck pain for Grow on the August 21, 2001, visit. Grow was not complaining of neck pain. The pain

medication was originally requested by Mathis during the visit, and when Coker indicated that it was too soon to prescribe any more pain medication, he concocted a complaint for Grow so that Mathis could obtain the medications through Grow. Additionally, the evidence indicated that Mathis wanted the pain medication for someone other than himself.

85. Coker fell below the standard of care in his treatment of Bachman during the August 24, 2001, visit. During the visit, Grow indicated that she wanted some more Xanax and asked if Coker could give Bachman a prescription for Xanax. Bachman made no complaints of anxiety or symptoms of anxiety. Coker prescribed Xanax for Bachman ostensibly for Grow's use and not based on any complaints from Bachman.

86. Coker fell below the standard of care in his treatment of Bowling on November 15, 2001. Coker prescribed Alprazolam (Xanax) for Bowling for anxiety. Bowling had no complaints of anxiety and did not indicate that he was experiencing any symptoms of anxiety.

87. Coker fell below the standard of care in his examination and treatment of Bordonaro on December 13, 2001, January 11, 2002, February 12, 2002, and April 25, 2002. Coker did not do any examination of Bordonaro on these visits and continued to prescribe pain medication for Bordonaro.

88. Coker violated Subsection 458.331(1)(t) by failing to practice medicine with that level of skill, care, and treatment which is recognized by a reasonably prudent physician or physician assistant as being acceptable under the circumstances.

89. There was no indication by Mathis, Grow, Bachman, and Bowling that they were currently seeing a physician or that they had a primary care physician. Bordonaro did indicate that the last time that he had seen a physician, his blood pressure was not high; however, Bordonaro did not indicate when that visit was, what the purpose of the visit was, or the name of the doctor. Based on the information supplied to Coker by the undercover officers, Coker would have no reason to know that Mathis, Grow, Bachman, or Bowling would have medical records that could be requested. Bordonaro did not give enough information to Coker so that Coker could request medical records.

90. In Count II of the Administrative Complaint, the Department alleged that Coker violated Subsection 458.331(1)(q), which provides that the following acts constitute grounds for discipline:

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 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.

91. The Department alleged that Coker violated Subsection 458.331(1)(q) by prescribing controlled drugs to the undercover officers without any medical justification; prescribing excessive quantities of controlled drugs to the undercover officers where there was no indication for medical treatment; and prescribing drugs to the undercover officers without conducting a physical examination.

92. For the reasons stated in the above-discussion of violations of Subsections 458.331(1)(t), Coker also violated Subsection 458.331(1)(q).

93. In Count III of the Administrative Complaint, the Department alleged that Coker violated Subsection 458.347(4) and Florida Administrative Code Rule 64B8-30.008, and, thus, violated Subsection 458.331(1)(nn), which provides that discipline may be imposed for a violation of Chapter 458 and the rules adopted pursuant thereto. Subsection 458.347(4)(e) provides that "[a] supervisory physician may delegate to a fully licensed physician assistant the authority to prescribe any medication used in the supervisory physician's practice unless

such medication is listed on the formulary created pursuant to paragraph (f)." The formulary is codified in Florida Administrative Code Rule 64B8-30.008, which prohibits a physician assistant from prescribing controlled substances as defined in Chapter 893.⁷

94. In Count III, the Department alleged that Coker violated Subsections 458.347(4) and 458.331(1)(nn) and Florida Administrative Code Rule 64B8-30.008 by the following acts:

- a. On July 14, 2001, the Respondent gave [Mathis] a prescription for Xanax.
- b. On or about August 17, 2001, the Respondent, at the Diamonds Club, gave [Mathis] a prescription for Xanax and Lortab.
- c. On or about August 21, 2001, the Respondent, in the office, gave [Grow] a prescription for Lortab and Xanax.
- d. On or about August 24, 2001, the Respondent at the Diamond's Club gave [Bachman] a prescription for Lortab and Xanax.
- e. On about September 27, 2001, the Respondent gave [Grow] a prescription for Lortab and Xanax.
- f. On or about September 27, 2001, the Respondent gave [Bordonaro] a prescription for Vicodin.
- g. On or about November 15, the Respondent gave [Grow] and [Bowling] each two factory-sealed prescription bottles, one containing 100 hydrocodone 10 mg and the other containing 180 Alprazolam 2 mg, for a total of 200 hydrocodone 10 mg and 360 alprazolam 2 mg.
- h. On or about December 13, 2001, the Respondent gave a factory-sealed prescription bottle to [Bordonaro] containing 100 hydrocodone 7.5 mg.

l. On or about January 11, 2002, at the Diamonds Club, the Respondent gave two factory-sealed prescription bottles to [Bordonaro], one containing 100 hydrocodone 10 mg and the other containing 90 alprazolam 2 mg.

j. On or about February 11, 2002, the Respondent gave a prescription for oxycodone to [Bordonaro].

k. On or about April 25, 2002, the Respondent gave two factory-sealed prescription bottles to [Bordonaro], one containing hydrocodone and the other containing alprazolam.

95. Pursuant to Chapter 893, Alprazolam, which is the generic name for Xanax; Hydrocodone, which is the generic name for Lortab, Lorcet and Vicodin; and Oxycodone, which is the generic name for Percocet, are controlled substances. As a physician assistant, Coker was prohibited from prescribing controlled substances. He violated Florida Administrative Code Rule 64B8-30.008 and Subsection 459.331(1)(nn) by prescribing Xanax and Lortab to Mathis; by prescribing Xanax and Lortab to Grow; by prescribing Xanax and Lortab to Bachman; by prescribing Xanax, Vicodin, Percocet, Hydrocodone, and Alprazolam to Bordonaro; and by prescribing Hydrocodone and Alprazolam to Bowling.

96. The prescriptions were written on prescription forms, which had been pre-signed. Even if the prescription had been pre-signed by Dr. Cannata, Subsection 458.347(4) prohibits a supervising physician from delegating the authority to a

physician assistant to prescribe controlled substances. A physician assistant may make recommendations to the supervising physician that controlled substances be prescribed, after which the supervising physician may accept or reject the recommendation by signing or not signing the prescription. Coker did not contact Dr. Cannata during any of the visits of the undercover officers. Coker was not making a recommendation to Dr. Cannata; he was prescribing the medications himself.

97. In Count IV of the Administrative Complaint, the Department alleged that Coker violated Subsection 456.072(1)(o), which provides that discipline may be imposed for "[p]racticing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform."

98. Coker violated Subsection 456.072(1)(o) by prescribing controlled substances to the undercover officers.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a Final Order be entered finding James Coker guilty of violating Subsections 458.331(1)(t), 458.331(1)(q), 459.331(1)(nn), and 456.072(1)(o) and Florida

Administrative Code Rule 64B8-30.008, and revoking his license as a physician assistant.

DONE AND ENTERED this 31st day of October, 2003, in Tallahassee, Leon County, Florida.

S

SUSAN B. KIRKLAND
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2003.

ENDNOTES

- 1/ Detective Mathis is identified in the Administrative Complaint as U01.
- 2/ Zee's or Z's is the street name for the prescription medicine Xanax.
- 3/ Detective Grow is identified in the Administrative Complaint as U02.
- 4/ Detective Bachman is identified in the Administrative Complaint as U03.
- 5/ Detective Bordonaro is identified in the Administrative Complaint as U05.
- 6/ Sergeant Bowling is identified in the Administrative Complaint as U04.

7/ The versions of Florida Administrative Code Rule 64B8-30.008, which were in effect from July 1, 2001, through April 30, 2002, prohibited a physician assistant from prescribing controlled substances as defined in the then current version of Chapter 893.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.