

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF	)	
MEDICINE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-1918PL
	)	
NIMA HESHMATI, M.D.,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 13, 14, and 17, 2006, in Viera, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Donald Freeman, Esquire  
Ephraim Livingston, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3250

For Respondent: Gregory W. Eisenmenger, Esquire  
Eisenmenger, Berry & Peters, P.A.  
5450 Village Drive  
Viera, Florida 32955

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Subsections 458.331(1)(m), 458.331(1)(q), 458.331(1)(t), and 458.331(1)(nn), Florida Statutes (2004),<sup>1</sup> and Florida Administrative Code

Rules 64B8-9.003 and 64B8-9.013(3), and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On September 9, 2005, Petitioner, Department of Health, Board of Medicine (Department), filed a 13-count Administrative Complaint against Respondent, Nima Heshmati, M.D.

(Dr. Heshmati), alleging that he violated Subsections 458.331(1)(m), 458.331(1)(q), 458.331(1)(t), and 458.331(1)(nn), Florida Statutes, and Florida Administrative Code Rules 64B8-9.003 and 64B8-9.013(3). On June 1, 2006, the Department filed its First Amended Administrative Complaint, in which the undercover agents referenced in the Administrative Complaint were identified by their initials.

Dr. Heshmati requested an administrative hearing, and the case was forwarded to the Division of Administrative Hearings on May 25, 2006, for assignment to an administrative law judge.

On July 3, 2006, the parties filed a Joint Pre-Hearing Stipulation, in which the parties stipulated to certain facts. To the extent relevant, those facts have been incorporated in this Recommended Order.

On July 11, 2006, the Department filed Petitioner's Motion for Official Recognition, requesting that official recognition be taken of Subsections 458.331(1)(m), 458.331(1)(q), 458.331(1)(t), 458.331(1)(nn), and 893.03, Florida Statutes, and

Florida Administrative Code Rules 64B8-9.003 and 64B8-9.013.

The motion was granted at the final hearing.

At the final hearing, Petitioner's Exhibits 2 through 15 were admitted in evidence. The Department called the following witnesses: John Pasko; Deborah George; John L. King; S.K.S.; D.C.; R.D.M.; Wendy Yokey; J.E.B.; David Webster, M.D.; Scott Mostert; Kimberly Harmen; and John Schultz.

At the final hearing, Respondent's Exhibits 1 through 5 were admitted in evidence. Dr. Heshmati testified on his own behalf and called the following witnesses: Richard Paul Bonfiglio, M.D.; Stephen Kenneth Badolato, M.D.; and Donna Saliba.

The last volumes of the five-volume Transcript were filed on September 25, 2006. The parties agreed to file their proposed recommended orders within ten days of the filing of the transcript. The parties timely filed their proposed recommended orders which have been considered in the rendering of this Recommended Order.

#### FINDINGS OF FACT

1. The Department is the state department charged with regulating the practice of medicine pursuant to Section 20.43 and Chapters 456 and 458, Florida Statutes.

2. At all material times to this proceeding, Dr. Heshmati was a licensed medical doctor within the State of Florida,

having been issued license number ME84360. Dr. Heshmati is board-certified in Family Practice.

3. In 2004, there existed a related group of three walk-in clinics, which included the Melbourne Walk-In Clinic (Melbourne Clinic) located in Melbourne, Florida; the Cocoa Walk-In Clinic located in Cocoa, Florida; and the Palm Bay Walk-In Clinic located in Palm Bay, Florida.

4. During July through December 2004, Dr. Heshmati was working part-time as a physician at two of the walk-in clinics: Melbourne Clinic and Palm Bay Walk-In Clinic. During this same time period, he was also working part-time as an emergency room doctor in emergency rooms in Osceola and Kissimmee, Florida.

5. In 2004, the Melbourne Police Department began an undercover investigation of the three walk-in clinics concerning the prescribing of controlled substances to patients of the clinics. The investigation was led by John Pasko, who had considerable experience in investigating pharmaceutical diversion cases.

6. Mr. Pasko enlisted the assistance of four persons who acted as undercover operatives in the investigation. The undercover operatives were S.K.S., D.C., R.D.M, and J.E.B. S.K.S. was a detective with the Saint Lucie County Sheriff's Office and used the alias of Aaron Joseph for the investigation. D.C. is a licensed pharmacist and a practicing attorney. She

did not use an alias during the investigation. R.D.M. is employed by the Department of Health and investigates allegations against health care professionals. She used the alias Stephanie Vzatek for the investigation. J.E.B. is a medical malpractice investigator for the Department of Health. The alias he used for the investigation was Jerry Thompson. For purposes of this Recommended Order, the undercover operatives will be referred to by the aliases they used, with the exception of D.C. who will be referred to by her initials.

7. Each of the undercover operatives met with Mr. Pasko prior to presenting themselves at the walk-in clinics. The operatives were told to go to the clinics, to make general complaints of pain, such as back pain or headaches, and to be as vague as possible about their symptoms. The operatives were to ask for controlled substances for the pain. None of the operatives was actually experiencing the symptoms of which they complained. Each operative was wired with an electronic communication device prior to visiting the clinics for the purpose of recording the conversations that took place during the visits. Each operative was given money to pay for the visits in cash.

8. At the end of each visit, the operatives returned to the police station for a debriefing and gave sworn statements concerning what transpired during their visits. Some of the

taped recordings of the visits were inaudible, but the operatives were not aware of the problems with the tapes prior to giving their sworn statements. The operatives gave the prescriptions they received and the receipts for payments of their visits to Mr. Pasko. The prescriptions were never filled.

9. Aaron Joseph first visited the Melbourne Clinic on July 9, 2004. He told the person in the reception area that he had back pain and wanted to see a doctor. Mr. Joseph was given some forms to fill out, which he did. He returned the forms to the person in the reception.

10. Mr. Joseph was taken to the back of the clinic where he was weighed. He was placed in a room, where a woman in scrubs took his blood pressure and pulse. She advised him that his blood pressure was a little high. She asked why he was at the clinic to which he replied that he was a window washer and had a bad back. He told the woman that he was taking cholesterol medication. He also stated that he had no known allergies.

11. Mr. Joseph was taken to another room, where he was seen by Dr. Heshmati. He told Dr. Heshmati that he washed windows for a living which required him to sit in a Bosun's chair for long periods of time, resulting in lower back pain. He advised the doctor that he had been taking a dose of hydrocodone in the mornings and another dose after work for two

years for the back pain. Mr. Joseph told the doctor that he was under the care of a doctor in Fort Pierce, but that he was in Melbourne on a temporary job. He told Dr. Heshmati that he had had an MRI done in Ft. Pierce and that as soon as his boss let him have some time off he would go to Fort Pierce, get the MRI, and bring it to Dr. Heshmati.

12. Dr. Heshmati asked Mr. Joseph to stand up and bend over. Mr. Joseph bent over and said, "ugh" after he bent over a little. Mr. Joseph's grunt when he bent over was a sign to Dr. Heshmati that Mr. Joseph did have pain in his lower back. He sat back down on the examining table, and Dr. Heshmati listened to his chest with a stethoscope, tapped Mr. Joseph's knees with the stethoscope, and rubbed Mr. Joseph's back, legs, and heels.

13. Dr. Heshmati's records for Mr. Joseph's visit on July 9, 2004, indicate that Dr. Heshmati did a review of Mr. Joseph's systems and that the review did not reveal any coughing, congestion, Rhinorrhea, sinus pain, sneezing, sore throat, ear ache, nausea, vomiting, diarrhea, abdominal pain, chest pain, headache, dizziness, weakness, or numbness. The records do not document that Dr. Heshmati listened to Mr. Joseph's chest, tapped Mr. Joseph's knees, or rubbed Mr. Joseph's back, legs, and heels. Dr. Heshmati claims that a form recording his examination is missing from Mr. Joseph's

file; however, his testimony is not credible given that the records of patients D.C. and Ms. Vzatek contained similar forms as the one used for Mr. Joseph's first visit.

14. Mr. Joseph's history, as recorded on July 9, 2004, shows that he was not a smoker and did drink alcohol occasionally.

15. Dr. Heshmati advised Mr. Joseph that his blood pressure was a little high and that they needed to keep an eye on it. It is not unusual for a patient who is experiencing pain to have a slightly elevated blood pressure. He diagnosed Mr. Joseph as having chronic back pain.

16. Dr. Heshmati wrote Mr. Joseph a prescription for 30 tablets of Lorcet, 10-650 milligrams. The generic name for Lorcet is hydrocodone, which is a controlled substance with a potential for abuse and physical or psychological dependence. Dr. Heshmati told Mr. Joseph to refrain from heavy lifting and to use ice packs on his back. Mr. Joseph was to return as needed.

17. Mr. Joseph returned to the Melbourne Clinic on July 23, 2004, again complaining of lower back pain. He was weighed and his temperature, pulse rate, and blood pressure were taken. The woman taking his blood pressure advised him that it was still a little high.



18. Dr. Heshmati examined the patient and asked him to bend over. Mr. Joseph complied with the request and expressed discomfort when he bent over a short distance. Dr. Heshmati touched Mr. Joseph's back. He noted that Mr. Joseph had good range of motion. Dr. Heshmati asked Mr. Joseph about bringing in the MRI. Again, Dr. Heshmati told Mr. Joseph that his blood pressure was elevated and that they needed to watch it.

19. Dr. Heshmati discussed Mr. Joseph's window washing occupation with him, and Mr. Joseph explained how he used a Bosun's chair while washing the windows. High-rise window washers often experience back pain from sitting in a Bosun's chair each day and from the positions that they have to take while washing windows.

20. While Mr. Joseph was at the Melbourne Clinic on July 23, 2004, he signed a contract stating that while he was under treatment by the Melbourne Clinic that he would not seek narcotic or any other type of pain medication anywhere else for his medical condition. Although Mr. Joseph signed the contract, stating that he had been informed of the side effects of the pain medication regarding physical addiction and psychological dependence, the only counseling that he had received from anyone at the clinic was that the medication could damage his liver.

21. Dr. Heshmati prescribed 25 tablets of Lorcet for Mr. Joseph's back pain at the July 23, 2004, visit.

22. Mr. Joseph returned to the Melbourne Clinic on August 12, 2004, again complaining of back pain. One of the staff at the clinic weighed him and took his temperature, pulse rate, and blood pressure. His blood pressure had improved since his last visit.

23. Dr. Heshmati examined Mr. Joseph again on August 12, 2004. The doctor asked Mr. Joseph to bend over as he had done at the two previous visits, and Mr. Joseph reacted in the same manner, indicating that he had pain after bending a short distance. Dr. Heshmati asked Mr. Joseph to raise his legs about 14 inches off the ground, which Mr. Joseph did. Dr. Heshmati noted in the medical records that Mr. Joseph had good range of motion and a negative straight-leg test. The doctor wrote in his notes that Mr. Joseph would be in Melbourne for another month and that Mr. Joseph was waiting for his records from his doctor in Fort Pierce.

24. Mr. Joseph indicated to Dr. Heshmati that he was frustrated because Dr. Heshmati had prescribed only 25 tablets of Lorcet at the previous visit. Dr. Heshmati wrote Mr. Joseph a prescription for 30 tablets of Lortab.

25. On August 27, 2004, Mr. Joseph returned to see Dr. Heshmati again complaining of back pain. He was weighed, and his pulse rate and blood pressure were checked. Dr. Heshmati examined Mr. Joseph's back and noted that

Mr. Joseph had no tenderness and a good range of motion.

Mr. Joseph was required to sign an agreement during this visit, agreeing to have a ten-panel blood test done.

26. Dr. Heshmati wrote a prescription for Mr. Joseph for 25 tablets of Lortab. He did not return to Dr. Heshmati's office for another visit.

27. On each visit to the Melbourne Clinic, Mr. Joseph paid the receptionist \$60 in cash prior to seeing Dr. Heshmati. He was given a receipt for each visit.

28. On July 16, 2004, D.C. went to the Melbourne Clinic complaining of lower back pain and trouble sleeping. D.C. indicated that she had not injured her back, but had been having the pain off and on for two to three months with a fairly recent onset of pain. Staff at the clinic weighed her and recorded her temperature, pulse rate, and blood pressure. She gave her family medical history, indicating that her mother had heart disease, but denying a family history of cancer, diabetes, and hypercholesterolemia. Her social history showed that she did not smoke and drank alcohol socially. D.C. advised that she was allergic to sulfa and had no previous surgeries.

29. On July 16, 2004, D.C. signed a patient contract, agreeing that while she was being treated at the Melbourne Clinic that she would not seek narcotic or any other type of pain medication anywhere else for her medical condition. The

contract stated that she had been informed of the side effects of that type of medication regarding physical addiction and psychological dependence. She was asked by staff to sign the contract prior to her seeing Dr. Heshmati. Neither staff nor Dr. Heshmati counseled her during that visit on the side effects of the medications that she had been prescribed.

30. Dr. Heshmati examined D.C., asking her to bend over and touch her toes, which she did with no difficulty and without expressing any pain. He asked her where her pain was located, and she pointed to her lower sacral back. She told Dr. Heshmati that she had seen a doctor in Palm Bay for pain in her back, but that she could not remember the name of the doctor.

Dr. Heshmati checked the side of D.C.'s leg and asked her if she had any numbness. He also hit her knee with the end of the stethoscope. The doctor listened to D.C.'s heart and lungs. He told her that she had a heart murmur and that she needed to have someone look at the heart murmur. Dr. Heshmati inquired whether D.C. had had a MRI or an X-ray of her back, and she replied that she had not. Dr. Heshmati's notes indicate that he did a review of her systems and noted no coughing, congestion, Rhinorrhea, sinus pain, sneezing, sore throat, ear ache, nausea, vomiting, diarrhea, abdominal pain, chest pain, shortness of breath, headache, dizziness, weakness, or numbness.

31. Based on his examination, Dr. Heshmati concluded that D.C. had an acute musculoskeletal event. She had indicated the pain was in her lower back. Her straight-leg test was negative, indicating no radiation of pain and no nerve impingement. Her range of motion was good, which eliminated a lot of conditions associated with the spine.

32. D.C. told Dr. Heshmati that in the past Lortab and Xanax had worked for her. He wanted to prescribe another pain medication for her, but she told him that she wanted to stay with the Lortab. He prescribed 20 tablets of Lortab and 20 tablets of Flexeril, which is a non-narcotic muscle relaxer. D.C. told him that those drugs would not help her sleep and asked him for Xanax. He refused to prescribe the Xanax. He told her to do some back exercises, but did not tell her what specific back exercises she should do. Dr. Heshmati told her to return in two weeks if she was not better.

33. D.C. returned to the Melbourne Clinic on July 30, 2004, complaining that her back still hurt and that she was having trouble sleeping. Staff at the clinic weighed her and recorded her temperature, blood pressure, and pulse rate.

34. Dr. Heshmati saw D.C. and asked her whether she had done her exercises, to which she replied that she had not. He ran his hand along her spine, checked the sides of her legs, and

pushed on her feet. He asked her to push towards him with her foot on his hand.

35. D.C. asked him twice during the visit for a prescription of Xanax to help her sleep. She told him that the Flexeril did not help her. He was hesitant about prescribing the Xanax, indicating that he did not want to prescribe two narcotics, but he eventually prescribed 15 tablets of Xanax, along with 20 tablets of Lortab and 20 tablets of Naproxen, which is an anti-inflammatory medication. He told her to take the Naproxen during the day because it did not cause drowsiness. Dr. Heshmati also told her that the Xanax could be habit-forming.

36. Dr. Heshmati wanted D.C. to have an X-ray, wrote a prescription for an X-ray of her lumbar sacral for chronic back pain, and recommended a couple of places where she could have the X-ray done. She asked him how many more times she come return for a visit without having the X-ray done, and he told her that he could not continue to prescribe pain medication for more than two months without her having an X-ray done. D.C. did not return to visit Dr. Heshmati after her July 30, 2004, visit.

37. Stephanie Vzatek first presented at the Palm Bay Walk-In Clinic on December 1, 2004, complaining of a current lower back pain towards her right side. She stated that the

back pain had been coming and going for about two years and that she did not know how she had hurt her back.

38. Staff at the clinic took Ms. Vzatek's weight, pulse rate, and blood pressure. She advised staff that she had no allergies and that she was taking Lortab, Xanax, and Soma.

39. Prior to seeing Dr. Heshmati, Ms. Vzatek was asked to sign a patient contract on December 1, 2004, in which she agreed that while she was being treated at the clinic that she would not seek narcotic or any other type of pain medication anywhere else for her medical condition. The contract, which she signed, also stated that she had been informed of the effects of those types of medication regarding physical addiction and psychological dependence; however, she was never counseled on the side effects of any pain medications that Dr. Heshmati prescribed for her.

40. Dr. Heshmati asked Ms. Vzatek whether she had had a MRI or an X-ray done, to which she replied that she had not. He asked her if she had seen a doctor, and she told him that she had seen Dr. Ryan out of Orlando. Dr. Heshmati reached under Ms. Vzatek's jacket, felt of her back, and asked her if her back hurt. She told him that her back did hurt. He checked her reflexes by hitting around her knee with the stethoscope. Dr. Heshmati also checked her heart and lungs and recorded his findings as normal. Dr. Heshmati's notes indicate that he did a

review of systems and noted that Ms. Vzatek had no abdominal pain, weakness, or numbness. Her straight-leg test was negative, and she had good range of motion.

41. Ms. Vzatek told Dr. Heshmati that she was currently taking Soma to help her sleep and Lortab for her back pain and that occasionally she took Xanax. Dr. Heshmati asked Ms. Vzatek what strength of Lortab that she was taking, and she told him 10/500. He prescribed 15 Lortab tablets in that strength for her. He also prescribed 20 tablets of Naproxen, but did not prescribe Xanax or Soma. Dr. Heshmati told Ms. Vzatek that she needed to get a MRI or an X-ray, and that if she wanted to have refills of the prescriptions that she would have to have the tests done. He also advised her to get physical therapy. She told him that she did not have insurance and could not afford a MRI or physical therapy.

42. Ms. Vzatek returned to Dr. Heshmati's office on December 29, 2004. She advised the staff that she had seen Dr. Heshmati before and that she wanted to get refills of her prescriptions. A staff person asked her whether she had brought any X-rays with her, and Ms. Vzatek replied that she had not because she could not afford to get them done. The staff person advised Ms. Vzatek that she could go to the Beach Walk-In Clinic and get a back X-ray for \$50.



43. The staff person also advised Ms. Vzatek that she could get only four refills unless she had blood tests done and that she would have to get a physical after her fifth visit. Ms. Vzatek was given a form to sign indicating that she agreed to get blood tests done starting with the next visit and that all tests were to be done over the next three months.

44. When Ms. Vzatek saw Dr. Heshmati, she told him that she still hurt. He also asked whether she had X-rays made, and when she told him that she had not had the X-rays taken, he wrote a prescription for a lumbar sacral X-ray and referred her to the Beach Walk-In Clinic. Dr. Heshmati asked Ms. Vzatek what her occupation was, and she responded that she was a cocktail waitress and worked an eight-hour shift and occasionally a double shift.

45. Dr. Heshmati asked Ms. Vzatek to bend over and asked her if her back hurt when she bent over. He asked her whether she had been using ice packs and doing lower back exercises. Neither he nor his staff demonstrated, instructed about, or provided literature on lower back exercises that she was to perform. Dr. Heshmati prescribed 30 tablets of Naproxen and 15 tablets of Lortab.

46. Ms. Vzatek's paid \$60 in cash up front for each of her visits and received a receipt. She did not return to see Dr. Heshmati after her December 29, 2004, visit.

47. On December 2, 2004, Jerry Thompson presented at the Melbourne Clinic complaining of lower back pain. Prior to going to the Melbourne Clinic, he had been seen by Dr. Wang at the Cocoa Walk-In Clinic. The receptionist asked Mr. Thompson if this was his first visit to the Melbourne Clinic to which he replied that it was.

48. A staff person weighed Mr. Thompson, took his blood pressure, and recorded his height. She asked him whether he had any allergies and took a social history. He told her that he had been having pain in his lower back for about six months and that he took Lortab and Xanax when he had pain.

49. Dr. Heshmati asked Mr. Thompson whether he had seen another doctor for his back pain. Mr. Thompson told Dr. Heshmati that he had seen a doctor in Orlando, but that he did not remember his name. The evidence did not establish that Mr. Thompson told Dr. Heshmati or his staff that Mr. Thompson had seen Dr. Wang at the Cocoa Walk-In Clinic. Nothing in the medical records for Mr. Thompson's visit on December 2, 2004, indicate that he informed anyone at the Melbourne Clinic that he had been seen by Dr. Wang. Dr. Heshmati asked Mr. Thompson whether he had brought any medical records, X-rays, or MRI reports with him, and Mr. Thompson told him that he had not. Dr. Heshmati advised Mr. Thompson that he would have to get those.

50. Mr. Thompson said that he had hurt his back when he tripped and fell. Dr. Heshmati listened to Mr. Thompson's chest and back with a stethoscope. The doctor told Mr. Thompson to bend over as far as he could. Mr. Thompson stood up and bent over and groaned when his outstretched fingers were about a foot-and-a-half from the ground. Dr. Heshmati had Mr. Thompson to get up on the examining table and lie on his back. Dr. Heshmati grabbed Mr. Thompson's ankles one at a time and raised them to approximately 40 or 50 degrees. Each time Mr. Thompson would groan. Dr. Heshmati then had Mr. Thompson sit on the side of the examining table and hang his feet over the side while Dr. Heshmati tapped his legs with a stethoscope. Dr. Heshmati noted that Mr. Thompson had tenderness in the mid-lower back and had a negative straight-leg test. Dr. Heshmati's notes indicate that he did a review of Mr. Thompson's systems and did not find any abdominal pain, weakness, or numbness.

51. Dr. Heshmati asked what the doctor in Orlando had prescribed, and Mr. Thompson told him that he had been given Lortab and Xanax. Dr. Heshmati seemed concerned about the Xanax and told him there were other medications that he could take. The doctor told Mr. Thompson that Lortab could be habit forming and could lead to drowsiness. Mr. Thompson replied that he was not worried because he frequently took antihistamines, which did

not make him drowsy. Dr. Heshmati would not prescribe both Lortab and Xanax. He did prescribe 30 tablets of Lortab and 30 tablets of Naproxen and told Mr. Thompson that he should have a MRI or at least an X-ray done before he returned for another visit.

52. Mr. Thompson paid \$60 in cash for his visit when he first came into the clinic. He was given a receipt for the payment. He did not return to see Dr. Heshmati.

53. Normally, patients do not use walk-in clinics as their primary medical care provider. When a patient presents on an initial visit with musculoskeletal back pain, the physician, at a minimum, must perform a focused examination, which would include an examination on the lumbar spine, and a neurological examination, especially findings in the lower extremities. The physician would ask the patient if the patient had any gallbladder problems, any weakness in the legs, and any history of back pain. Acute back pain will typically resolve in six to eight weeks with conservative treatment. Conservative treatment would include prescribing small amounts of pain medication with follow-up visits from two-and-a-half to three weeks. Lortab, Lorcet, and Naproxen are acceptable medications for the treatment of back pain.

54. It is common and appropriate for a physician in a walk-in clinic setting to prescribe small amounts of medication

with quick follow-up visits. When a physician in a walk-in clinic setting prescribes a two-week supply of pain medication for a patient and intends to follow up with the patient in two weeks, the physician would be considered to have prescribed a small amount of medication.

#### CONCLUSIONS OF LAW

55. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2005).

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

57. The Department has alleged that Dr. Heshmati violated Subsections 458.331(1)(m), 458.331(1)(q), 458.331(1)(t), and 458.331(1)(nn), Florida Statutes, which provide that the following acts constitute grounds for disciplinary action:

(m) Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and

reports of consultations and hospitalizations.

\* \* \*

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of a 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.

\* \* \*

(t) 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 weight to the provisions of s. 766.102 when enforcing this paragraph. . . . 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 so as to require that a physician shall be incompetent to practice medicine in order to be disciplined pursuant to this paragraph.

\* \* \*

(nn) Violating any provision of this chapter, chapter 456, or any rules adopted pursuant thereto.

58. The Department alleged that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.003, which states:

(1) Medical records are maintained for the following purposes:

(a) To serve as a basis for planning patient care and for the continuity in the evaluation of the patient's condition and treatment.

(b) To furnish documentary evidence of the course of the patient's medical evaluation, treatment, and change in condition.

(c) To document communication between the practitioner responsible for the patient and any other health care professional who contributes to the patient's care.

(d) To assist in protecting the legal interest of the patient, the hospital, and the practitioner responsible for the patient.

(2) A licensed physician shall maintain patient medical records in English, in a legible manner and with sufficient detail to clearly demonstrate why the course of treatment was undertaken or why an apparently indicated course of treatment was not undertaken.

(3) The medical record shall contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, the patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and hospitalizations; and copies of record or reports or other documentation obtained from other health care practitioners at the request of the physician and relied upon by the physician

in determining the appropriate treatment of the patient.

(4) All entries made into the medical records shall be accurately dated and timed. Late entries are permitted, but must be clearly and accurately noted as late entries and dated and timed accurately when they are entered into the record. However, office records do not need to be timed, just dated.

(5) In situations involving medical examinations, tests, procedures, or treatments requested by an employer, an insurance company, or another third party, appropriate medical records shall be maintained by the physician and shall be subject to Section 456.061, F.S. However, when such examinations, tests, procedures, or treatments are pursuant to a court order or rule or are conducted as part of an independent medical examination pursuant to Section 440.13 or 627.736(7), F.S., the record maintenance requirements of Section 456.061 and this rule do not apply. Nothing herein shall be interpreted to permit the destruction of medical records that have been made pursuant to any examination, test, procedure, or treatment except as permitted by law or rule.

59. The Department alleged that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.013(3), which states:

(3) Standards. The Board has adopted the following standards for 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 psychological function, and should indicate if any further diagnostic evaluation or other treatments are planned. After treatment begins, the physician should adjust drug therapy to the individual 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 the physical and psychosocial impairment.

(c) Informed Consent and Agreement for Treatment. The physician should discuss the risks and benefits of the use of controlled substances with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is incompetent. The patient should receive prescriptions from one physician and one pharmacy where possible. If the patient is determined to be at high risk for medication abuse or have a history of substance abuse, the physician should employ the use of a written agreement between the physician and patient outlining patient responsibilities, including, but not limited to:

1. Urine/serum medication levels screening when requested.
2. Number and frequency of all prescription refills; and
3. Reasons for which drug therapy may be discontinued (i.e., violation of agreement).

(d) Periodic Review. At reasonable intervals based on the individual circumstances of the patient, the physician should review the course of treatment, and any new information about the etiology of the pain. Continuation or modification of therapy should depend on the physician's evaluation of the patient's progress. If

treatment goals are not being achieved, despite medication adjustments, the physician should reevaluate the appropriateness of continued treatment. The physician should monitor patient compliance in medication usage and related treatment plans.

(e) Consultation. The physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

1. The medical history and physical examination, including history of drug abuse or dependence, as appropriate;
2. Diagnostic, therapeutic, and laboratory results;
3. Evaluation and consultations;
4. Treatment objectives;
5. Discussion of risks and benefits;
6. Treatments;
7. Medications (including date, type, dosage, and quantity prescribed);
8. Instructions and agreements; and
9. Periodic reviews. Records must remain current and be maintained in an accessible manner and readily available for review.

(g) Compliance with Controlled Substances Laws and Regulations. To prescribe, dispense, or administer controlled substances, the physician must be licensed in the state and comply with applicable federal and state regulations. Physicians

are referred to the Physicians Manual: An Information Outline of the Controlled Substances Act of 1970, published by the U.S. Drug Enforcement Agency, for specific rules governing controlled substances as well as applicable state regulations.

60. The standards for the use of controlled substances for pain control set forth in Florida Administrative Code Rule 64B8-9.013(3) are applicable to all physicians and are not limited to physicians who are treating in a pain management clinic setting. However, Florida Administrative Code Rule 64B8-9.013(1)(f) provides:

Each case of prescribing for pain will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for failing to adhere strictly to the provisions of these standards, if good cause is shown for such deviation. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.

61. The Department alleged that Dr. Heshmati violated Subsection 458.331(1)(m), Florida Statutes, and Florida Administrative Code Rule 64B8-9.003, by failing to keep written medical records justifying the course of treatment of D.C., Mr. Joseph, Ms. Vzatek, and Mr. Thompson. The Department alleged that Dr. Heshmati failed to keep medical records that

document an adequate medical history or that justify the treatment of the patients with controlled substances. The Department did establish by clear and convincing evidence that Dr. Heshmati violated Subsection 458.331(1)(m), Florida Statutes, by failing to document his examination of Mr. Joseph during Mr. Joseph's visit on July 9, 2004. Dr. Heshmati's claim that part of Mr. Joseph's file containing the result of his examination is missing is not credible. The Department failed to establish by clear and convincing evidence that Dr. Heshmati violated Subsection 458.331(1)(m), in his treatment of D.C., Ms. Vzatek, and Mr. Thompson.

62. The Department alleged that Dr. Heshmati violated Subsection 458.331(1)(q), Florida Statutes, by prescribing controlled substances inappropriately in one or more of the following ways:

- a. By failing to perform adequate physical examinations of Mr. Joseph, D.C., Ms. Vzatek, and Mr. Thompson;
- b. By repeatedly prescribing controlled substances to Mr. Joseph, D.C., Ms. Vzatek, and Mr. Thompson without ascertaining the etiology of his/her pain; and
- c. By prescribing controlled substances to Mr. Joseph, D.C., Ms. Vzatek, and Mr. Thompson without medical justification.

63. The Department failed to establish by clear and convincing evidence that Dr. Heshmati violated Subsection 458.331(1)(q), Florida Statutes, by prescribing Lortab

inappropriately for Mr. Joseph. Dr. Heshmati did ascertain the etiology of Mr. Joseph's pain based on Mr. Joseph's explanation that he sat in a Bosun's chair for long periods of time while washing high-rise windows. Dr. Heshmati did a review of Mr. Joseph's systems and determined that Mr. Joseph had no complaints of abdominal pain, weakness, or numbness. He asked Mr. Joseph to bend over, and Mr. Joseph bent over and expressed pain, indicating that the pain was in his lower back. He tapped Mr. Joseph's knees and felt of Mr. Joseph's back, legs, and heels. The examinations for Mr. Joseph met the requirements for a focused examination. The prescription of a controlled substance in the amount prescribed was justified.

64. The Department failed to establish by clear and convincing evidence that Dr. Heshmati violated Subsection 458.331(1)(q), Florida Statutes, by prescribing controlled substance for D.C. Dr. Heshmati did a review of D.C.'s systems, noting that she had no abdominal pain, no weakness, and no numbness. Her straight-leg tests were negative, and she had good range of motion. She indicated that she had pain in her lower back. The examinations met the requirement for a focused examination. D.C. told Dr. Heshmati that she had been having the pain on and off for two to three months with a recent onset of pain. Based on his examination and the history given by

D.C., Dr. Heshmati reasonably concluded that D.C. had an acute musculoskeletal event.

65. On D.C.'s first visit, he refused to prescribe Xanax, which D.C. had requested as a sleep-aid. He prescribed a non-narcotic muscle relaxer. On her second visit, D.C. told Dr. Heshmati that the muscle relaxer was not helping her sleep. He prescribed a small amount of Xanax along with an anti-inflammatory medication to be taken during the day and Lortab. His prescriptions for controlled substance were justified.

66. The Department failed to establish by clear and convincing evidence that Dr. Heshmati violated Subsection 458.331(1)(q), Florida Statutes, by prescribing controlled substances for Ms. Vzatek. He did a review of Ms. Vzatek's systems, finding that she had no abdominal pain, weakness, or numbness. He felt her back, and she indicated that her back was hurting. Her straight-leg test was negative, and she had good range of motion. She told him that the pain had been coming and going for about two years, she was currently having pain, but she did not know how she had hurt her back. Dr. Heshmati's prescription for controlled substances for Ms. Vzatek was justified.

67. The Department failed to establish by clear and convincing evidence that Dr. Heshmati violated Subsection

458.331(1)(q), Florida Statutes, by prescribing controlled substances for Mr. Thompson. Dr. Heshmati did a review of systems with no findings of abdominal pain, numbness, or weakness. Dr. Heshmati asked Mr. Thompson to bend over, and Mr. Thompson bent over and groaned when his outstretched fingers were about a foot-and-a-half above the ground. When Dr. Heshmati raised Mr. Thompson's ankles to approximately 40 or 50 degrees, Mr. Thompson groaned as if in pain. Dr. Heshmati tapped Mr. Thompson's legs with a stethoscope. Mr. Thompson's straight-leg test was negative. Dr. Heshmati's prescription for controlled substances for Mr. Thompson was justified.

68. The Department alleged that Dr. Heshmati violated Subsection 458.331(1)(t), Florida Statutes, by failing 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 circumstances in one or more of the following ways:

- a. By failing to perform comprehensive physical examinations on D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson prior to prescribing a controlled substance;
- b. By failing to obtain a complete history on D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson prior to prescribing a controlled substance;
- c. By failing to make a diagnosis or treatment plan for D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson prior to prescribing a controlled substance;

- d. By failing to maintain the medical records of D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson with sufficient detail to demonstrate their condition, history, diagnosis and/or treatment plan such to warrant the prescription of a controlled substance;
- e. By inappropriately and excessively prescribing controlled substances to D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson;
- f. By failing to ascertain the etiology of D.C.'s, Aaron Joseph's, Stephanie Vzatek's, and Jerry Thompson's pain;
- g. By failing to order and follow up on diagnostic testing;
- h. By failing to obtain previous physician records and study results to document the accuracy of the medical and physical history reported by D.C., Aaron Joseph, Stephanie Vzatek, and Jerry Thompson;
- i. By failing to maintain the practices required for use of controlled substances for pain management as described in Florida Administrative Code Rule 64B8-9.013(3), Florida Statutes.

69. Florida Administrative Code Rule 64B8-9.013(3)(a) requires that a complete physical examination must be conducted and documented in the medical record when prescribing controlled substances. Both the expert for the Department and an expert for Dr. Heshmati agreed that, at a minimum, a focused examination was warranted for each of the undercover agents who presented to Dr. Heshmati. Dr. Heshmati did do a focused examination on each of the patients; however, Dr. Heshmati did fail to document a physical examination of Mr. Joseph on his initial visit.



70. Florida Administrative Code Rule 64B8-9.013(3)(a) requires that a complete medical history be taken and documented in the medical record. The Department failed to establish by clear and convincing evidence that Dr. Heshmati failed to take and document a complete medical history of the undercover agents.

71. Mr. Joseph advised Dr. Heshmati that he washed high-rise windows and sat in a Bosun's chair for long periods of time, resulting in lower back pain. He told Dr. Heshmati that he had seen a doctor in Fort Pierce about his back and had a MRI taken in Fort Pierce. According to Mr. Joseph, he had been having the pain for at least two years and took hydrocodone two times a day for the relief of the pain and that he was currently taking medication for cholesterol. He was able to work by taking the hydrocodone. Dr. Heshmati also did a review of Mr. Joseph's systems. A sufficient medical history was taken and documented for Mr. Joseph.

72. D.C. advised Dr. Heshmati that she had been having lower back pain on and off for two to three months with a recent onset of pain. She had seen a doctor in Palm Bay concerning her back pain. According to D.C., she had taken Lortab and Xanax in the past, and they had worked for her. She gave a family medical history. D.C. advised that she had had no previous surgeries and that she was allergic to sulfa. Dr. Heshmati

asked her whether she had had a MRI or X-ray taken of her back, and she advised that she had not. Dr. Heshmati also did a review of D.C.'s systems. A sufficient medical history was taken and documented for D.C.

73. Ms. Vzatek told Dr. Heshmati that she had been having lower back pain toward her right side on and off for about two years with a recent recurrence of pain. She stated that she did not know how she had hurt her back. She told Dr. Heshmati that she had seen a doctor in Orlando about her back and that she was taking Lortab, Xanax, and Soma. When queried, she told Dr. Heshmati that she had not had a MRI or X-ray taken because she did not have insurance and could not afford to have the tests performed. Dr. Heshmati did a review of Ms. Vzatek's systems. A sufficient medical history was taken and documented for Ms. Vzatek.

74. Mr. Thompson told Dr. Heshmati that he hurt his back when he tripped and fell and that he had been having lower back pain for about six months. He advised Dr. Heshmati that he had seen a doctor in Orlando and that he took Lortab and Xanax when he had pain. Dr. Heshmati did a review of Mr. Thompson's systems. A sufficient medical history was taken and documented for Ms. Thompson.

75. The Department has failed to establish by clear and convincing evidence that Dr. Heshmati failed to make a diagnosis

or treatment plan for each of the undercover agents. On Mr. Joseph's initial visit, Dr. Heshmati diagnosed Mr. Joseph with chronic back pain and told him that his blood pressure was elevated. Dr. Heshmati told Mr. Joseph to avoid heavy lifting and to use ice packs and prescribed 30 tablets of Lorcet. Mr. Joseph was to get his MRI from his doctor in Fort Pierce and return as needed.

76. Mr. Joseph returned in two weeks, still complaining of lower back pain. Dr. Heshmati prescribed 25 tablets of Lorcet, and told Mr. Joseph to do no heavy lifting, apply ice packs, try back exercises, and to get the MRI from the doctor in Fort Pierce.

77. Almost three weeks later, Mr. Joseph returned to see Dr. Heshmati again complaining of lower back from washing high-rise windows. By this time, Mr. Joseph's blood pressure was down, indicating that Mr. Joseph was getting some relief from the pain. Dr. Heshmati recommended back exercises, prescribed 30 tablets of Lorcet, and noted that Mr. Joseph was waiting for his MRI to come from the doctor in Fort Pierce.

78. Two weeks later, Mr. Joseph went to Dr. Heshmati for his final visit. He was again diagnosed with chronic back pain and was prescribed 25 tablets of Lorcet. Mr. Joseph was required to sign an agreement that he would undergo blood screening tests.

79. On D.C.'s July 16, 2004, visit, Dr. Heshmati diagnosed D.C. as having back pain that was musculoskeletal in nature. He prescribed 20 tablets of Lortab and 20 tablets of Flexeril, but refused to prescribe Xanax as she had requested. He recommended that she do some back exercises but did not tell her what specific exercises to do. He also recommended that she get an X-ray. D.C. was told to return in two weeks if she was not better.

80. D.C. returned to see Dr. Heshmati two weeks later. Based on D.C.'s contention that the Flexeril was not helping her to sleep, Dr. Heshmati changed her medication and prescribed Naproxen to be taken during the day and Xanax to help her sleep. She was continued with Lortab. Dr. Heshmati also wrote a prescription for an X-ray of her lumbar sacral and told her that he could not continue to prescribe pain medication for more than two months unless she had an X-ray done. He continued to recommend back exercises. D.C. was to return in three weeks.

81. On Ms. Vzatek's December 1, 2004, visit, Dr. Heshmati diagnosed her as having recurrent back pain. He recommended that she get some physical therapy and that she have either a MRI or an X-ray done. He prescribed 15 tablets of Lortab and 20 tablets of Naproxen, but refused to prescribe Xanax or Soma, which she told him that she had been taking.

82. Ms. Vzatek returned to Dr. Heshmati's office four weeks later, complaining of back pain. Dr. Heshmati discussed exercises with her and asked whether she was using an ice pack. He wrote a prescription for a lumbar sacral X-ray and prescribed 15 tablets of Lortab and 30 tablets of Naproxen. Ms. Vzatek was required to sign a contract agreeing to have blood tests done.

83. Dr. Heshmati diagnosed Mr. Thompson with chronic back pain that was musculoskeletal in nature. Dr. Heshmati told Mr. Thompson that he would have to get a MRI or an X-ray before he returned for a visit. Dr. Heshmati prescribed 30 tablets of Lortab and 30 tablets of Naproxen, but he refused to prescribe Xanax. Mr. Thompson was to return if his pain continued.

84. The Department did establish by clear and convincing evidence that Dr. Heshmati failed to maintain adequate medical records of his examination of Mr. Joseph on his initial visit and, therefore, did establish that Dr. Heshmati failed to practice medicine with that level of skill, care, and treatment, which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions in violation of Subsection 458.331(1)(t), Florida Statutes.

85. The Department failed to establish that Dr. Heshmati failed to maintain the medical records of D.C., Ms. Vzatek, and Mr. Thompson with sufficient detail to demonstrate their

condition, history, or diagnosis and/or treatment plan such to warrant the prescription of controlled substances.

86. The Department failed to establish that Dr. Heshmati inappropriately and excessively prescribed controlled substances to Mr. Joseph, D.C., Ms. Vzatek, and Mr. Thompson. The use of Lortab and Lorcet for back pain is an accepted treatment. The use of Naproxen is also an accepted medication for such a condition. Dr. Heshmati prescribed the controlled substances in small amounts and followed up with the patients in a timely manner. Dr. Heshmati treated each of the patients conservatively.

87. The Department failed to establish that Dr. Heshmati failed to establish the etiology of the pain of the four patients as discussed above concerning the allegations of violations of Subsection 458.331(1)(q), Florida Statutes.

88. The Department failed to establish that Dr. Heshmati failed to order and follow up on diagnostic testing. The record is clear that Dr. Heshmati requested Mr. Joseph, on several occasions, to get his MRI from his doctor in Fort Pierce. Dr. Heshmati wrote prescriptions for X-rays for D.C. and Ms. Vzatek and told Mr. Thompson that he would have to have a MRI or an X-ray done before he could return for treatment.

89. The Department failed to establish that in a walk-in clinic setting that Dr. Heshmati was required to get medical

records from previous treating physicians. He did request Mr. Joseph to get the MRI, which had been done in Fort Pierce, and he did tell Mr. Thompson that he needed to bring his medical records. None of the patients at issue were seeing Dr. Heshmati for long-term treatment. Mr. Joseph saw Dr. Heshmati four times, but made it clear that he was in the area on a temporary job and would be following up with his own physician when he returned to Fort Pierce. D.C. and Ms. Vzatek saw Dr. Heshmati two times each, and Mr. Thompson saw Dr. Heshmati one time.

90. The Department alleged that Dr. Heshmati failed to follow the practices contained in Florida Administrative Code Rule 64B8-9.013(3)(c). One of the requirements of the rule is that the physician is to discuss the risks and benefits of the use of controlled substances with the patient. Dr. Heshmati did not tell Mr. Joseph on his first visit that Lorcet could be addictive, but he did ask what medication Mr. Joseph had been taking. Mr. Joseph had been taking Lorcet for two years, and the medication enabled him to continue working with his pain. On Mr. Joseph's second visit, he signed a contract stating that he would not seek narcotic medications from other doctors while under Dr. Heshmati's care. A staff person advised Mr. Joseph on the second visit that continued use of the medication could damage his liver. On Mr. Joseph's last visit, he was required to sign an agreement to obtain blood tests. The evidence on the

whole does not establish that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.013(3)(c) in his treatment of Mr. Joseph.

91. On D.C.'s first visit with Dr. Heshmati, she was required to sign the same agreement that Mr. Joseph signed concerning seeking narcotics from other physicians. She told Dr. Heshmati that she had previously taken Lortab and Xanax and that they had worked for her. Dr. Heshmati refused to prescribe both Lortab and Xanax as requested by D.C. On her second visit, D.C. again requested Xanax. Dr. Heshmati was hesitant about prescribing both Lortab and Xanax, but did prescribe the Xanax with the warning that the Xanax could be habit forming. He also prescribed Naproxen, which D.C. was to take during the day. Dr. Heshmati also told D.C. that he could not prescribe pain medication for more than two months without her having an X-ray done. On the whole, the record does not establish that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.013(3)(c) in his treatment of D.C.

92. On Ms. Vzatek's initial visit to Dr. Heshmati, she also signed the same agreement that Mr. Joseph and D.C. signed agreeing to restrict their requests for pain medication to Dr. Heshmati. Ms. Vzatek stated that she was currently taking Lortab, Xanax, and Soma and that she had been having back pain on and off for about two years. He prescribed Lortab for her,



but would not prescribe Xanax or Soma as requested. He also advised Ms. Vzatek that if she wanted refills of her pain medication that she would have to have a MRI or an X-ray done. On her second visit, Ms. Vzatek signed an agreement to get blood tests performed. On the whole, the record does not establish that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.013(3)(c) in his treatment of Ms. Vzatek.

93. When Mr. Thompson requested that Dr. Heshmati prescribe Xanax and Lortab, Dr. Heshmati was concerned about the use of Xanax and told Mr. Thompson that there were other medications that he could take. He also informed Mr. Thompson that Lortab could be habit forming and could lead to drowsiness. Mr. Thompson indicated that he frequently took antihistamines and that they did not make him drowsy. Dr. Heshmati refused to prescribe both Xanax and Lortab. He also told Mr. Thompson that he would have to have a MRI or an X-ray done before he came for another visit. On the whole, the record does not establish that Dr. Heshmati violated Florida Administrative Code Rule 64B8-9.013(3)(c) in his treatment of Mr. Thompson.

94. The Department has established that Dr. Heshmati violated Subsection 458.331(1)(nn), Florida Statutes, in that he violated Subsections 458.331(1)(m) and 458.331(1)(t), Florida Statutes, in relation to Mr. Joseph.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding that Dr. Heshmati violated Subsections 458.331(1)(m), 458.331(1)(t), and 458.331(1)(nn), Florida Statutes, by failing to document his physical examination of Mr. Joseph on Mr. Joseph's initial visit; finding that Dr. Heshmati is not guilty of the other allegations set forth in the Amended Administrative Complaint; and suspending his license for one year and crediting him with the time that his license has been under emergency suspension.

DONE AND ENTERED this 7th day of December, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th of December, 2006.

ENDNOTE

1/ Unless otherwise indicated, all references to the Florida Statutes are to the 2004 version.

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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.