

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



830 Union Street, Suite 100
Telephone: (504) 524-6763
New Orleans, LA 70112-1499

-----X

In the Matter Of	:	No. 88-I-010
MARK DUANE LINGER, M.D.	:	
(CERTIFICATE NO. 03447R),	:	CONSENT
	:	ORDER
Respondent.	:	_____
	:	

-----X

Information was provided to the Louisiana State Board of Medical Examiners ("Board") indicating that Mark Duane Linger, M.D. ("Dr. Linger"), was charged with several violations of Florida law arising out of, inter alia, allegedly excessive and/or inappropriate prescriptions for Preludin Endurets (phenmetrazine hydrochloride USP), given to a patient diagnosed by Dr. Linger as suffering from narcolepsy.¹ A formal hearing was convened before the Florida Board of Medicine, but prior to any final determination by the Florida Board, a stipulation was entered between the Department of Professional Regulation, Board of Medicine (DPR) and Dr. Linger,² which stipulation was formally approved and adopted by the Florida Board of Medicine in an Order dated February 6, 1988.³

¹Administrative Complaint "Department of Professional Regulation versus Mark D. Linger, M.D." (Case No. 0068404, December 1, 1986). A copy of the Administrative Complaint, pp. 1-6 inclusive, is attached as Exhibit "A."

²Stipulation "Department of Professional Regulation, Board of Medicine, versus Mark D. Linger, M.D." (Case No. 87-0941, January 12, 1988). A copy of the Stipulation, pp. 1-4 inclusive, is attached hereto as Exhibit "B."

³Final Order "Department of Professional Regulation versus Mark D. Linger, M.D." (Case No. 0068404, February 6, 1988). A copy of the Final Order, pp. 1-2 inclusive, is

Under the terms of the stipulation, incorporated by reference into the Final Order of the Florida Board, Dr. Lenger neither admitted nor denied the allegations made in the Administrative Complaint, but accepted an administrative fine, reprimand, and continuing medical education requirements.⁴

Alternative to formal institution of investigative and adjudicatory proceedings under the Louisiana Medical Practice Act,⁵ the Board determined that the public interest may be properly and adequately served by Dr. Lenger's execution of a consent order by virtue of which the physician's Louisiana license would be subject to the conditions provided hereunder. As evidenced by his subscription hereto, Dr. Lenger has accepted the disposition proposed by the Board in lieu of formal administrative proceedings.

Recognizing his right to notice of charges specified against him, to have such charges adjudicated pursuant to LSA-R.S. 49:955-58, to be represented therein by legal counsel of his choice, and to a final decision rendered upon written findings of fact and conclusions of law, Dr. Lenger, nonetheless, hereby waives his right to notice and formal adjudication of charges, pursuant to LSA-R.S. 49:959D and acknowledges, accepts and consents to entry of the following orders.

Accordingly, in consideration of the foregoing, and pursuant to the authority vested in the Board by LSA-R.S. 37:1285 and LSA-R.S. 49:955D,

attached hereto as Exhibit "C."

⁴See Exhibit "B."

⁵LSA-R.S. 37:1261-91. The Board is empowered to suspend, revoke or impose probationary conditions on the license of any physician for "[p]rescribing, dispensing or administering legally controlled substances or any dependency-inducing medication without legitimate justification therefore or in other than a legal or legitimate manner." LSA-R.S. 37:1285A(6). Likewise, the Board is authorized to suspend, revoke or restrict the license of a physician whose license to practice medicine in another state has been restricted by the licensing authority of that state. LSA-R.S. 37:1285A(30).

IT IS ORDERED that, until and unless this Order is modified or rescinded by written order of this Board:

- a) Strict adherence to the terms and conditions of the Florida Stipulation: Dr. Lenger shall strictly adhere to, abide by, and comply with all of the terms and stipulations to which he agreed with the Florida Board to adhere, as evidenced by his subscription to Exhibit "B", attached hereto, on January 12, 1988 and incorporated herein by reference.
- b) Notification of relocation and personal appearance: Should Dr. Lenger at any time before March 1, 1990, decide to relocate his practice of medicine to the state of Louisiana, he shall, in that instance, provide written notification to the Board at least sixty (60) days prior to his relocation to practice medicine in the state of Louisiana. Dr. Lenger shall also personally appear before the Board prior to the time that he commences the practice of medicine in the state of Louisiana.

IT IS FURTHER ORDERED that any violation of or failure of strict compliance with any of the terms and conditions of the Stipulation entered between Dr. Lenger and the Florida Board or of this Order, shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the suspension or revocation of the medical license of Mark Duane Lenger, M.D. or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in LSA-R.S. 37:1285.

New Orleans, Louisiana, this 6 day of October, 1988.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS



IKE MUSLOW, M.D.
PRESIDENT

ACKNOWLEDGEMENT AND CONSENT

I, MARK DUANE LINGER, M.D., hereby acknowledge, approve, accept and consent to entry of the above and foregoing Order, this 27 day of Sept., 1988.

WITNESS:

Carly Axelson

Mark Duane Linger M.D.
MARK DUANE LINGER, M.D.

BEFORE THE BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

MARK D. LINGER, M.D.,

Respondent.

FILED

Department of Professional Regulation
AGENCY CLERK

CLERK *Melinda H. Wagner*

DATE *2/16/88*

DPR CASE NO. 0068404
LICENSE NO. ME 0038880

FINAL ORDER

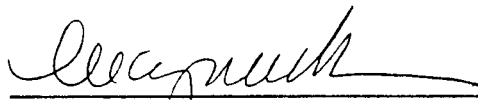
THIS MATTER came before the Board of Medicine (Board) pursuant to Section 120.57(3), Florida Statutes, on February 6, 1988, in Tampa, Florida, for consideration of a Stipulation (attached hereto as Exhibit A) entered into between the parties in the above-styled case. Upon consideration of the Stipulation, the documents submitted in support thereof, the arguments of the parties, and being otherwise advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Stipulation as submitted be and is hereby approved and adopted in toto and incorporated by reference herein. Accordingly, the parties shall adhere to and abide by all of the terms and conditions of the Stipulation.

This Order takes effect upon filing.

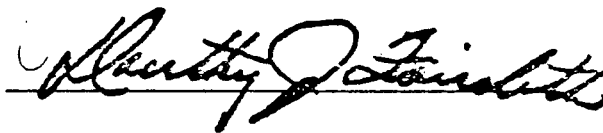
DONE AND ORDERED this 6 day of February 1988.

BOARD OF MEDICINE


MARGARET C.S. SKINNER, M.D.
VICE CHAIRMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by certified mail to Mark D. Lenger, M.D., Suite 733, 1820 Barrs Street, Jacksonville, Florida 32204 and Michael J. Dewberry, Attorney at Law, Rogers, Towers, Bailey, Jones & Gay, 1300 Gulf Life Drive, Jacksonville, Florida 32207 and by interoffice delivery to Robert D. Newell, Jr., Esquire, Department of Professional Regulation, 130 North Monroe Street, Tallahassee, Florida 32399-0750, at or before 5:00 P.M., this 16th day of February, 1988.



STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL
REGULATION, BOARD OF MEDICINE,

Petitioner,

vs.

CASE NO. 87-0941
(DPR No. 0068404)

MARK D. LINGER, M.D.,

Respondent.

STIPULATION

Petitioner, DEPARTMENT OF PROFESSIONAL REGULATION, BOARD OF MEDICINE ("DPR"), and Respondent, MARTIN D. LINGER, M.D., ("Respondent"), hereby stipulate and agree to the following joint stipulation and an informal hearing by the BOARD OF MEDICINE ("BOARD") for the purpose of issuing a Final Order incorporating this stipulation and agreement in the above-styled cause:

STIPULATED FACTS

1. For all times pertinent herein, Respondent was a licensed physician in the state of Florida having been issued license number ME 0038880.
2. Respondent was charged by an Administrative Complaint filed by DPR and properly served upon Respondent with violations of Chapter 458, Fla. Stat., and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by referenced as Exhibit "A".
3. Respondent neither admits nor denies the facts contained in the Administrative Complaint attached hereto as Exhibit "A".

STIPULATED CONCLUSIONS OF LAW

1. Respondent, in his capacity as a licensed physician, admits that in such capacity he is subject to the provisions of Chapters 455 and 458, Fla. Stat., and the jurisdiction of DPR and the BOARD.
2. Respondent neither admits nor denies that the facts set forth in the foregoing Stipulated Facts constitute a violation of

Chapter 458, Fla. Stat. (1985), as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. Respondent shall not in the future violate the provisions of Chapters 455 and 458, Fla. Stat., or the rules promulgated pursuant thereto or any other state or federal law governing the practice of medicine.

2. The BOARD shall impose an administrative fine in the amount of One Thousand Dollars (\$1,000) against Respondent which fine shall be paid by the Respondent to the Executive Director of the Board of Medicine within thirty (30) days of the filing of the BOARD's Final Order in this cause.

3. The BOARD shall reprimand the Respondent.

4. Respondent shall appear before the BOARD when the BOARD meets to consider this stipulation. Respondent, in conjunction with the consideration of this stipulation by the BOARD, shall respond to questions under oath from the BOARD, Board staff, or Department staff.

5. Respondent shall attend thirty (30) hours of Category I Continuing Medical Education courses on the subjects of narcolepsy, pharmacology, and controlled substance abuse, in addition to the amount required for renewal of his license. The Respondent shall advise the BOARD, in writing and prior to course attendance, of those courses Respondent considers appropriate to satisfy this requirement. The BOARD, at its next regularly scheduled meeting subsequent to receipt of written notice, shall consider the courses proposed by Respondent. The BOARD shall either approve the courses or recommend substitute or alternative courses to the Respondent which are acceptable to the BOARD. Respondent shall complete all thirty (30) hours of Continuing Medical Education required by this paragraph within the two-year period commencing March 1, 1988 and ending March 1, 1990.

6. It is expressly understood that paragraph 3 of the Stipulated Facts, and paragraph 2 of the Stipulated Conclusions of Law, and paragraphs 1-5 of the Stipulated Disposition in this stipulation are subject to approval of the BOARD and DPR and have

no force and effect until the BOARD enters an order approving this stipulation.

7. This stipulation is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the BOARD to review and examine all investigative file materials concerning Respondent prior to, or in conjunction with, consideration of the stipulation. Furthermore, should this joint stipulation not be accepted by the BOARD, it is agreed that presentation to and consideration of this stipulation and other documents and matters by the BOARD shall not unfairly or illegally prejudice the BOARD or any of its members from further participation, consideration or resolution of these proceedings.

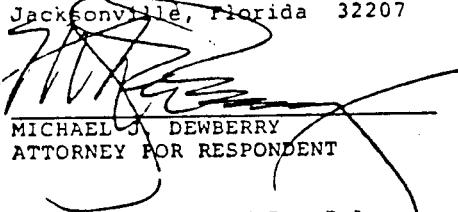
8. Respondent and DPR fully understand that this joint stipulation and any subsequent Final Order incorporating it will in no way preclude additional proceedings by the BOARD or DPR against the Respondent for other acts or omissions not set forth in the Administrative Complaint attached hereto as Exhibit "A" in this cause.

9. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the joint stipulation of facts, conclusions of law and imposition of

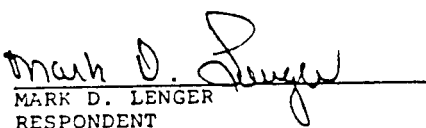
discipline in the Final Order of the BOARD incorporating said stipulation.

Signed this 13th day of January, 1988.

ROGERS, TOWERS, BAILEY,
JONES & GAY
1300 Gulf Life Drive
Jacksonville, Florida 32207


MICHAEL J. DEWBERRY
ATTORNEY FOR RESPONDENT

MARK D. LINGER, M.D., P.A.
Dillon Professional Building
Suite 733
1820 Barrs Street
Jacksonville, Florida 32204


MARK D. LINGER
RESPONDENT

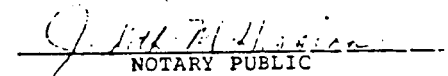
NEWELL & STAHL, P.A.
102 South Monroe Street
Tallahassee, Florida 32301


ROBERT D. NEWELL, JR.
ATTORNEY FOR PETITIONER

STATE OF FLORIDA)
COUNTY OF Tallahassee)

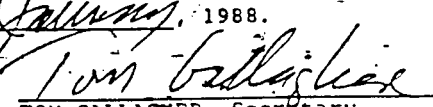
BEFORE ME, a Notary Public authorized to take
acknowledgements in the state and county set forth above,
personally appeared MARK D. LINGER, M.D., known to be and known
to me to be the person who executed the foregoing Stipulation,
and he acknowledged before me that he executed same.

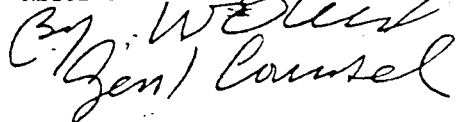
IN WITNESS WHEREOF, I have set my hand and seal in the state
and county above, this 13th day of January, 1988.


NOTARY PUBLIC

My Commission Expires: January 1988 Notary Public, State of Fl-
My Commission Expires Dec. 19
Board of Notaries Public, State of Fl

APPROVED THIS 13th day of January, 1988.


TOM GALLAGHER, Secretary
DEPARTMENT OF PROFESSIONAL
REGULATION


Genl Counsel

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

CASE NUMBER: 0068404

MARK D. LINGER, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW the Petitioner, the Department of Professional Regulation, hereinafter referred to as the "Petitioner", and files this Administrative Complaint before the Board of Medicine, against MARK D. LINGER, M.D., hereinafter referred to as the "Respondent", and alleges:

1. Petitioner, the Department of Professional Regulation, is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes; Chapter 455, Florida Statutes; and Chapter 458, Florida Statutes.

2. Respondent is, and has been at all times material hereto, a licensed physician in the State of Florida, having been issued license number ME 0038880. Respondent's last known address is 1820 Barrs Street, Suite 733, Jacksonville, Florida 32204.

3. Between at least on or about March 8, 1985 and on or about January 27, 1986, Respondent was the treating physician for patient J.M. On or about March 8, 1985, Respondent diagnosed J.M. as suffering from narcolepsy based on an inadequate patient history.

4. Between on or about March 8, 1985 and on or about January 27, 1986, Respondent excessively or inappropriately prescribed Preludin Endurettes 75 mg. for J.M. The prescriptions were for "narcolepsy".

5. Preludin is the brand name for the chemical substance phenmetrazine hydrochloride. Because it contains phenmetrazine, Preludin is a Schedule II controlled substance pursuant to the provisions of Section 893.03, Florida Statutes. Preludin is also a sympathomimetic amine with a pharmacological activity similar to that class of drug known as amphetamines.

6. Between at least on or about March 8, 1985 and on or about January 27, 1986, Respondent failed to keep medical records justifying the course of treatment for patient J.M.

7. Although Respondent diagnosed patient J.M. as suffering from narcolepsy, Respondent failed to obtain an adequate medical history to confirm or rule out the condition. Respondent also failed to order Electrophysiological Testing which would document an abnormal sleep pattern necessary to diagnose narcolepsy.

8. Respondent, in reference to patient J.M., failed to practice medicine with that level of care, skill and treatment of which is recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances.

COUNT I

9. Petitioner realleges paragraphs one through eight above as if fully set forth herein this Count One.

10. Based on the foregoing allegations, Respondent violated Section 458.331(1)(cc), Florida Statutes, by prescribing, ordering, dispensing, administering, supplying, selling or giving any drug which is an amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance, pursuant to Chapter 893, Florida Statutes, to or for any person except for authorized purposes.

COUNT II

11. Petitioner realleges paragraphs one through six above as if fully set forth herein this Count Two.

12. Based on the foregoing allegations, Respondent violated Section 458.331(1)(n), Florida Statutes, (1983), [now Section 458.331(1)(m), Chapter 86-245, Laws of Florida], by failing to keep written medical records, justifying the course of treatment of the patient, including but not limited to patient histories, examination results and test results.

COUNT III

13. Petitioner realleges paragraphs one through seven above as if fully set forth herein this Count Three.

14. Based on the foregoing allegations, Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substances, 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 intent.)

COUNT IV

15. Petitioner realleges paragraphs one through eight above as if fully set forth herein this Count Four.

16. Based on the foregoing allegations, Respondent violated Section 458.331(1)(t), Florida Statutes, by 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.

COUNT V

17. Petitioner realleges paragraphs one, two and five above as if fully set forth herein this Count Five.

18. Between on or about August 22, 1985 and on or about February 21, 1986, Respondent was the treating physician for patient P.B. On or about August 22, 1985, Respondent diagnosed P.B. as suffering from narcolepsy based on an inadequate patient history.

19. Between on or about August 22, 1985 and on or about January 15, 1986, Respondent excessively or inappropriately prescribed Preludin Endurettes 75 mg. for P.B. The prescriptions were for "narcolepsy".

20. Between at least on or about August 22, 1985 and on or about January 15, 1986, Respondent failed to maintain adequate records to justify his treatment of P.B.

21. Although Respondent diagnosed patient P.B. as suffering from narcolepsy, Respondent failed to obtain an adequate medical history to confirm or rule out the condition, Respondent also failed to order Electrophysiological Testing which would document an abnormal sleep pattern to diagnose narcolepsy.

22. Respondent, with respect to patient P.B., failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances.

23. Based on the foregoing allegations, Respondent violated Section 458.331(1)(cc), Florida Statutes, by prescribing, ordering, dispensing, administering, supplying, selling or giving any drug which is an amphetamine or sympathomimetic amine drug or compound designated as a Schedule II controlled substance, pursuant to Chapter 893, Florida Statutes, to or for any person except for authorized purposes.

COUNT VI

24. Petitioner realleges paragraphs one, two, five and eighteen through twenty above as if fully set forth herein this Count Six.

25. Based on the foregoing allegations, Respondent violated Section 458.331(1)(n), Florida Statutes, (1983), [now Section 458.331(1)(m), Chapter 86-245, Laws of Florida], by failing to keep written medical records, justifying the course of treatment of the patient, including but not limited to patient histories, examination results and test results.

COUNT VII

26. Petitioner realleges paragraphs one, two, five, and eighteen through twenty-one as if fully set forth herein this Count Seven.

27. Based on the foregoing allegations, Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing or otherwise preparing a legend

drug, including any controlled substances, 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 intent.)

COUNT VIII

28. Petitioner realleges paragraphs one, two, five, and eighteen through twenty-two above as if fully set forth herein this Count Eight.

29. Based on the foregoing allegations, Respondent violated Section 458.331(1)(t), Florida Statutes, by 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.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 26 day of November, 1986.

Fred Roche
FRED ROCHE, Secretary
Department of Professional
Regulation

FILED

DEPARTMENT OF PROFESSIONAL REGULATION

CLERK

DATE

Melinda Wagner
December 1, 1986

COUNSEL FOR DEPARTMENT:

Stephanie A. Daniel
Senior Attorney
Department of Professional
Regulation
130 North Monroe Street
Tallahassee, Florida 32301
(904) 488-0062

SAD/11
10-26-86

PCP/Echevarria & O'Bryan