

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130
Mailing Address: Post Office Box 30250, New Orleans, LA 70190-0250
www.lsbme.la.gov



Department of Investigations
Telephone: (504) 568-6820
FAX: (504) 568-5754

BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

NUMBER 12-A-010

IN THE MATTER OF

GARY ALAN GOLDBARD, M.D.

[CERTIFICATE NO. MD.012388]

OPINION AND ORDER

This matter comes before the Board pursuant to an Administrative Complaint which charges Respondent Gary Alan Goldbard, M.D. with violating the Board's Pain Management Rules, Louisiana Admin. C. 46:6921 and 6923 and the Medical Practices Act, Louisiana Revised Statutes 37:1285 A (6), (13), (14) and (30) The matter was heard before a panel of the Board consisting of Drs. Farris, Burdine and Bourgeois, President.

The violations alleged arise out of Respondent's treatment of eleven patients while he was in the employment of Elite Pain Management, L.L.C., an unlicensed pain management clinic, which is owned by a non-physician.

Respondent testified that he did all that was required of him by the Board's Pain Management Rules. He carefully screened each patient before being accepted for treatment. Only those with present radiological evidence of multiple level disc disease or symptoms were accepted as patients. He testified that a great majority of potential patients are not accepted for treatment. The only patients who were accepted had a documented history of being treated for their pain by other doctors through controlled substance theory. He testified further that every

GOLDBARD, February 2014

patient he treated had been on a similar combination of medication from other physicians. He chose no patients that required him to write their first prescriptions for these medications. He stated that he was willing to refer his patients to other modalities if it was appropriate. He described his patients as "...the worst of the worst."

Respondent testified that he recognized when he first started practicing at Elite that it had been functioning as a pain management clinic probably for two years or more. Recognizing the risk of working at this clinic, he hired counsel to assure he was treating patients properly, receiving what he felt was a positive response. He developed four simple criteria he consistently used during the entire time with Elite, which he reviewed with every patient he accepted. The first criteria was not to accept any patient under 30 years old; second, his policy was to review the MRIs, which he claims were closely verified by the clinic manager calling the source of the MRI to ascertain its legitimacy and that the MRI was for that individual patient; third, that the patients had availed themselves of other modalities; fourth, that the patient had no history of drug abuse. He determined lack of drug abuse by physical examination, patient interview and the patient's pharmacy records, but did no urine drug screens. He stated that all patients had physical exams "...when they were indicated..., so a physical exam would depend on what their symptoms were."

Respondent further testified that his initial interview lasted roughly an hour and the follow up visits usually lasted an average of ten minutes. He saw an average of six patients per hour for six hours a day, three days a week. However, excerpts of the many PMPs in the record, which contain a listing of drugs administered on a given day, do not support Respondent's testimony. For example, the PMPs on December 8, 2010 shows Respondent prescribing 49 patients drugs on that date and the PMP on May 4, 2001 shows Respondent prescribing 57 patients drugs on that date. The Board accepts the information in these PMPs over the testimony of Respondent. The Board finds that the Record supports that Respondent administered controlled dangerous substances to well over fifty percent of his patients.

Dr. Alan Kaye, Board Certified in Pain Medicine, reviewed Respondent's medical records and observed some of his treatment of patients. His following observations were based primarily on what Respondent told him and patient records, which he felt lacked documentation

of treatments. He testified that Respondent conducted initial evaluations of patients and took their medical history. He found that these patients had attempted multiple modalities before treatment. He further testified that the Respondent's adequacy of documentation of the initial visit was debatable. He was also of the opinion that Respondent did not adequately document the patients' treatment plan.

Dr. Kaye further testified concerning the use of THC, marijuana, which is illegal in Louisiana. In order to follow the law, he stated that a physician would have to counsel the patient who was using THC and at some point would have to discharge the patient. Respondent testified that he did not tell his patients using THC to stop, but would advise them of the risks.

Dr. Kaye concluded that a review of Respondent's records shows he did not meet the basic standards of someone practicing pain management in Louisiana.

The record establishes that, with slight variations, every patient was prescribed Lorcet, Soma and Xanax during the entire course of treatment of each patient in the Complaint. Every one of these medications for all patients in the Complaint were pre-printed on an office form. Respondent testified that these medications were not pre-printed, but were printed on the visitation form after determining what was going to be prescribed. The Board finds that the record supports that the medications prescribed were pre-printed and Respondent's testimony here to be untruthful.

These patients were treated for periods from 6 months to over 4 years, with the usual treatment period being from 1 to 2 years. Dr. Kaye was of the opinion that it is inappropriate to treat patients with Soma for more than 3 weeks. The Board agrees with Dr. Kaye that Respondent's treatment with Soma over long periods of time was contradictory to the standard of care.

The Board has examined each of the eleven patient's charts in question which constitute part of the record and note the following:

F.B. became a patient of Respondent on August 6, 2008, with complaints of back and neck pain. F.B. signed an Elite Medical Group Prescription Policy, Controlled Substance

Contract and an Informed Consent form. Respondent received a brief history of his medical problems and performed a physical examination.

The record supports that Respondent obtained this type of information at the initial examination of each of the patients he treated.

Respondent did not obtain any records during his treatment of F.B. from any other physicians who had treated the patient and did not consult with them. Respondent testified that he took the patient's word on his medical history as he does on all his patients.

The record also supports that Respondent had no documentation of any individualized treatment plan for this patient. Other than a brief physical examination on the first visit, Respondent did not document subsequent physical examinations.

Respondent treated this patient from August 6, 2008 to August 11, 2009, prescribing Lorcet, Soma and Xanax at each visit. These controlled substances are the only medications appearing on the pre-printed form for each office visit. Respondent did not document the medical necessity for the use of more than one type of controlled substance.

Patient E. S. was initially seen by Respondent on November 13, 2008 with back and neck pain. The patient reported on his history only surgical, gall bladder and appendix with no history of pain. Respondent testified that this patient reported headaches, swollen joints and chronic fatigue. Respondent did not formulate an individualized treatment plan for this patient.

E. S. had been seeing Dr. Michael, a pain management doctor, but Respondent did not get any records from this doctor. Although E. S. reported anxiety and panic attacks, there is no recordation of the manifestations that led Respondent to conclude the reasons for severe anxiety and panic attacks. He did not refer E. S. to a psychologist, but referred to a sign on the wall indicating that every patient will have a complete psychological evaluation by a psychologist.

At the visit on March 19, 2009 E. S. reported complaints of pain in both shoulders. On October 29, 2009, E.S. complained of left and right arm pain and reported a fall. There is no

recordation of any exam for these problems; however, Respondent felt these problems stemmed from the herniated disc disease in the neck which determination was not recorded. The patient also had high blood pressure, but no documentation is shown of an evaluation or referral to another physician.

E. S. tested positive for THC, marijuana. Respondent did not terminate E. S. as a patient, but counseled him on the use of THC. He testified that he has no problem with his patients using THC.

E. S. complained of joint pain. Respondent made no recordation of any examination regarding joint pain, nor did he refer this patient to any other physicians, although he referred to his long standing referral to a primary care physician.

Respondent saw E. S. fifty-one times from November 13, 2008 to December 8, 2010, with no physical examinations documented since the initial visit. He prescribed Lorcet, Soma and Xanax each time, which are the only medications appearing on the pre-printed form for each office visit. The record does not support that Respondent documented the medical necessity of the use of more than one controlled substance.

Patient L.C. age 21 was initially seen on November 13, 2007. She presented records showing low back pain. Respondent diagnosed severe anxiety and panic attacks but did not record the details of what triggered this problem and recorded no further examination or evaluation of this condition.

Respondent did not create an individualized treatment plan for L. C. He documented no physical exams subsequent to his initial examination.

Respondent received a letter from Dr. Wayne Celestine, dated November 12, 2007, stating that L. C. was released from his care recently, on October 19, 2007, at L. C.'s request. Respondent never contacted Dr. Celestine although Dr. Celestine's letter was dated one day before L.C.'s first visit with Respondent.. He also never contacted Dr. Jennifer Garrett, who

performed an MRI on L. C. on November 6, 2007, which was a week before first seeing this patient.

Respondent treated L. C. fifty-two times from November 13, 2007 until November 3, 2009, prescribing Lorcet, Soma and Xanax on each occasion. These were the only medications pre-printed on each office visit record. No consideration was documented of any possible use of a non-narcotic treatment. He also did not document the need for the use of more than one controlled substance.

Respondent also prescribed Zovirox and Keflex medications for different medical problems without any documentation. On March 10, 2009, he increased this patient's Xanax prescription without recording the basis for this increase.

Patient D. C. was initially seen by Respondent on February 14, 2008, with back problems, severe anxiety and panic disorder. D. C. provided him with four MRIs. He did not consult with any other physicians, nor did he document the basis for her anxiety and panic attacks. The record further establishes that Respondent did not document subsequent physical examinations after the initial examination. He also did not formulate an individualized treatment plan. There is no thorough evaluation of D. C. in the record.

Respondent treated D. C. sixty-three times from February 14, 2008 to November 23, 2010, each time prescribing Lorcet, Soma and Xanax, which appear as the only medications in printed form for each visit, although on March 13, 2010 he switched from Xanax to Valium, recording no reason for the change. There was no documentation for the use of more than one controlled substance.

Patient D. F. was initially seen by Respondent on February 8, 2006 with lower back complaints. After the initial physical examination there was no documentation of any subsequent physical examinations. He did not formulate an individualized treatment plan.

The record supports that this patient tested positive for marijuana on March 21, 2008 and August 6, 2010. There were no other drug screens performed. Respondent did not tell the

patient to stop smoking marijuana. He simply advised this patient of the risks involved. He did not terminate his treatments.

Respondent treated D. F. 124 times from February 8, 2006 to December 1, 2010 prescribing Lorcet, Soma and Xanax each time, with pre-printed forms showing Lorcet, Soma and Xanax as the only pre-printed medications. Additionally, the record contains no documentation for the necessity of prescribing more than one controlled substance.

Patient D. J. was initially seen by Respondent on November 11, 2009 with back and neck pain. He testified that he did not record an individualized treatment plan, although he stated that his treatment objective for everyone was to be able to perform activities of daily living. He did not record any referrals to other physicians for additional evaluation and treatment because he felt the patient had been seen by appropriate specialists prior to seeing him; however, other than the prescription printout, he received no records from these physicians and did not consult them. He also did not document any further physical examinations of this patient after his initial examination.

Respondent treated D. J. twenty-seven times from November 11, 2009 to November 30, 2010. He prescribed Lorcet, Soma and Xanax on pre-printed forms at each visit, although on a number of occasions he switched from Lorcet to Percocet without documenting the medical necessity for the changes. The only medications appearing pre-printed on the form for each visit was Lorcet, Soma and Xanax. The record contains no documentation for the necessity of prescribing more than one controlled substance.

Patient D. B. was initially seen by Respondent on June 25, 2010 with back pain. He testified that he did not formulate an individualized treatment plan; did not document any other medically reasonable alternative treatments for relief of patient's pain other than physical therapy; and did not record any subsequent physical exams after the initial exam.

Respondent treated D. B. twelve times from June 25, 2010 until December 9, 2010, prescribing Lorcet, Soma and Xanax each time with only these three medications on pre-printed

forms. As in Respondent's treatment of this and all the other patients in the Complaint, the record does not support that he documented the necessity for using more than one type of controlled substance.

Patient S. B. was initially seen by Respondent on March 31, 2010 with back and neck pain. Respondent testified that he did not form an individualized treatment plan. Other than the patient's report of prior physical therapy, there is no record of other alternative treatments. Other than the initial physical examination there is no documentation of any subsequent physical examinations.

Respondent saw S. B. sixteen times between March 31, 2010 and December 8, 2010, prescribing Lorcet, Soma and Xanax each time with the exception of April 14, 2010, when Valium was substituted for Xanax. There is no documentation as to why Valium was substituted for Xanax. With the exception of the Valium prescription, which was hand written, only Lorcet, Soma and Xanax are pre-printed on the forms for each office visit. Once again, the record does not support that he documented the necessity for using more than one type of controlled substance.

Patient W. W. was initially seen by Respondent on May 26, 2009 with complaints of back and neck pain. Respondent testified that he did not formulate an individualized treatment plan. In addition, no physical examinations were recorded subsequent to the initial visit.

The record shows that W. W. did not test positive for Xanax even though he should have since Respondent prescribed this medication for him. Nevertheless Respondent continued to prescribe this medication even though he had evidence that the patient was not taking it.

Respondent saw W. W. thirty-eight times between May 26, 2009 and November 23, 2010, each time prescribing Lorcet, Soma and Xanax using pre-printed forms showing only these three medications.. The record does not establish the necessity of prescribing more than one type of controlled substance.

Patient J. G. was initially seen by Respondent on March 27, 2007, suffering from pain. Respondent did not formulate an individualized treatment plan. After the initial physical exam, there was no recordation of subsequent physicals.

J. G. reported high blood pressure and asked Respondent for medication that had been started by a primary care physician. The record does not support that Respondent conferred with any other physician on the issue of high blood pressure or referred the patient to another doctor.

Respondent saw J.G. ninety- one times from March 27, 2007 to November 23, 2010, each time prescribing Lorcet, Xanax and Soma using pre-printed forms showing only these three medications. The record does not establish the necessity of prescribing more than one type of controlled substance.

Patient T. G. was initially seen by Respondent on April 10, 2008 with back and neck pain. Respondent did not formulate an individualized treatment plan for this patient. The record does not support any physical examinations performed subsequent to the initial exam.

The patient reported seeing a neurosurgeon with a note of no surgery indicated; however, Respondent did not receive his name and did not attempt to contact him to ask what recommendation this physician would or would not have made.

Respondent treated T. G. sixty-five times from April 10, 2008 to November 23, 2008, each time prescribing Lorcet, Soma and Xanax using pre-printed forms showing only these three medications for each office visit. The record does not support that Respondent documented the medical necessity for using more than one type of controlled substance.

Count 16 alleges Respondent was employed by Elite Pain Management L.L.C., which does not possess a license issued by the Louisiana Department of Health and Hospitals. The Board finds Elite is engaged in the practice of pain management. During the hearing, reference was made that Elite should not be classified a pain management clinic due to operating before the Pain Management Rules were in existence; however, the record does not establish that Elite

is exempted from this licensing requirement. The board finds also that Respondent, as a physician, was practicing pain management and thus subject to the Pain Management Rules. Therefore, the record supports and the Board unanimously finds Respondent guilty of violating the Louisiana Medical Practice Act, Louisiana Revised Statute 37:1285 (A) 13.

The various violations of the Pain Management Rules committed by Respondent in the treatment of each patient in the Complaint have been set forth. Respondent failed to document an individualized treatment plan for any of these patients. Other than the initial physical examination, he documented no further medical examinations. He also did not document the medical necessity for the use of more than one controlled substance. He substituted one pain medication for the medication he had been administering with no documentation of the reason. Respondent did not follow the Pain Management Rules when confronted with substance abuse and diversion of medication prescribed. He prescribed Soma for longer periods than medically recommended. In contradiction to the standard of care.

Additionally, Respondent recorded no manifestations when a patient exhibited severe anxiety and panic attacks and never referred the patient to a psychologist. He expected the patient to refer to a sign on the wall of the clinic which directed every patient to have a complete psychological examination by a psychologist. If a patient had high blood pressure, there is no documentation that Respondent evaluated this problem or referred the patient to another physician.

The Board also has found that Respondent prescribed, with few exceptions, the same three controlled substances for all these patients which were pre-printed on the visitation forms. No consideration was documented of any possible use of a non-narcotic treatment. He also increased a medication without recording the basis for this increase.

Accordingly, the record supports and the Board unanimously finds Respondent guilty of violating the Pain Management Rules as well as the Medical Practice Act, Louisiana Revised Statutes 37: 1285 A (6), (14) and (30).

In view of the foregoing finding, the Board imposes the following sanctions:

The license of Gary Alan Goldbard, M.D., Certificate No. 012388, to practice medicine in the State of Louisiana is hereby **SUSPENDED** for a period of one (1) year and at the conclusion of one year, Respondent is placed on **PROBATION** for a period of three years, subject to the general conditions of probation heretofore adopted by the Board, a copy of which is attached hereto as Exhibit A and subject to the following terms and special conditions:

[A] Respondent shall not, from the date of this order, prescribe, administer, or dispense any state or federally designated controlled substance for a period of five years. Three years from the date of this opinion he may apply for reinstatement of his privilege to prescribe controlled substances.

[B] Respondent shall not practice chronic pain management or weight loss management for the rest of his life.

[C] For a period of one year from the date of his reinstatement, Respondent's practice shall be monitored by a physician, satisfactory to the Board who shall examine at least fifty charts per month and shall report to the Board quarterly on Respondent's performance and his ability to practice medicine with reasonable skill and safety to the patients.

[D] Respondent shall attend not less than fifty hours of Continuing Medical Education per year for each year that he remains on probation, which courses of study shall be approved by the Board, and shall provide written certification each year that he has satisfactorily completed such studies.

[E] In addition to the foregoing requirement, Respondent shall satisfactorily complete, within one year of the date hereof a Board approve course in Medical Ethics and shall provide written certification thereof.

[F] Respondent shall pay a fine of \$5,000 and all costs of this proceeding since the filing of the Administrative Complaint within one year.

[G] Ninety (90) days prior to the completion of the above suspension, Respondent shall make a personal appearance before the Board and may at that time apply for reinstatement of his license, provided he presents documentation that he has completed all of the requirements of this opinion. The Board may reinstate the license with or without additional probation upon whatever terms and conditions it may deem appropriate.

IT IS FURTHER ORDERED that this Decision shall be, and shall be deemed to be, a public record.

NEW ORLEANS, LOUISIANA, THIS 10th DAY OF FEBRUARY, 2014.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

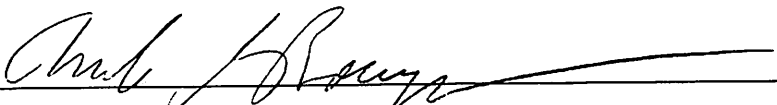

BY: MELVIN BOURGEOIS, MD., BOARD PRESIDENT

EXHIBIT A"
GENERAL PROBATIONARY TERMS
FOR PHYSICIANS

- 1. Prohibitions on the Prescribing of Controlled Substances for the Treatment of Chronic Pain or Obesity.** At no time following the effective date of this Order shall Dr. Goldbard prescribe controlled substances for the treatment of non-cancer related chronic pain or obesity. Furthermore, he shall not receive any remuneration from, have any ownership interest in or association with any clinic or practice setting or arrangement that advertizes or holds itself out to the public as a clinic or practice for the care and/or treatment of patients for the management of chronic pain or obesity. Until and unless otherwise modified by the Board, in its sole discretion, the restrictions contained in this provision shall survive the probationary period and remain in effect so long as Dr. Goldbard shall hold any form of license or permit to practice medicine in the state of Louisiana.
- 2. Collaboration With Nurse Practitioners, Supervision of Physician Assistants Prohibited.** During the probationary term, Dr. Goldbard shall not enter into nor continue in a collaborative or supervisory practice agreement with a mid-level provider, *e.g.*, nurse practitioner or physician assistant. This restriction shall not preclude Dr. Goldbard from employing nurses or other medical personnel to assist in his practice, as long as he is present and directing their activities appropriate to their level of expertise and ability.
- 3. Treatment of Self/Family Members Prohibited.** Except as may be necessitated by an emergency or life threatening medical condition, Dr. Goldbard shall not, for the remainder of his career, undertake to treat, dispense, prescribe or administer any medication, nor render any medical care to any member of his immediate family. In addition, Dr. Goldbard shall arrange for other physicians to attend to his own health care needs.
- 4. Continuing Medical Education.** Dr. Goldbard shall obtain not less than fifty (50) credit hours per year for each of the three (3) years of his probationary period through attendance at and participation in continuing medical education ("CME") programs accredited by the American Medical Association. On or before the anniversary date of the effective date of this Consent Order, for each of the three (3) years of the probationary period, Dr. Goldbard shall cause to be submitted to the Board written certification of the CME programs and credits completed by him during the preceding twelve (12) months.
- 5. Absence from the State/Practice/Effect on Probation.** Should Dr. Goldbard at anytime during the period of probation ordered herein be absent from the state of Louisiana, relocate to and/or take up residency in another state or country, or discontinue practicing as a physician, for a period of thirty (30) days or more, he will so advise the Board in writing. In such instance, the probationary period ordered herein shall be deemed interrupted and extended for no less than the period of time during which he was not engaged in practice or was absent from the state of

EXHIBIT A"
GENERAL PROBATIONARY TERMS
FOR PHYSICIANS

Louisiana; however, all terms and conditions may continue to be in effect as ordered or may be modified or altered as needed at the Board's discretion.

- 6. Notification.** Dr. Goldbard shall provide a complete copy of this Order to each hospital, clinic, facility or other employer or prospective employer at which or for whom he provides services as a physician in this state.
- 7. Cooperation with Board's Probation and Compliance Officer.** Dr. Goldbard shall immediately notify the Board's Probation and Compliance Officer of any change in his current home and professional addresses and telephone numbers and he shall direct all matters required pursuant to this Consent Order to the attention of the Probation and Compliance Officer, with whom he shall cooperate on all matters and inquiries pertaining to his compliance with the terms and conditions of this Consent Order.
- 8. Probation Monitoring Fee.** For each year of the probationary period Dr. Goldbard shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the effective date of this Order. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.
- 9. Effect of Violation/Sanction/Resolution.** Any violation or failure of the probationer to abide by each of the general terms and special conditions of probation shall be considered a violation of probation, and shall constitute sufficient cause for the revocation, suspension, or further disciplinary action against the license of the probationer.
- 10. Certification of Compliance with Probationary Terms/Personal Appearance.** At least sixty (60) days prior to the conclusion of the probationary period imposed herein, Dr. Goldbard shall provide the Board with an affidavit certifying that he has complied with each of the terms of probation imposed by this Order and he shall contact the Board and arrange for a personal appearance before the Board at its meeting preceding the expiration of his probationary period. The probationary period and all of its terms and conditions shall be, and shall be deemed to be, extended and continued in full force and effect pending Dr. Goldbard's compliance with the requirements of this provision.