

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS



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DECISION  
In the Matter of :  
LUCAS ANTHONY DILEO, M.D. 92-A-007  
(Certificate No. 005895)  
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An administrative hearing was convened before the Louisiana State Board of Medical Examiners ("Board") on Friday, February 26, 1993, and continued on Friday, March 26, 1993. Present representing the Board was a quorum of its membership including Drs. Mary Lou Applewhite, Ike Muslow, Keith C. Ferdinand, Elmo J. Laborde, and F.P. Bordelon, Jr. with Dr. Bordelon presiding. Also present were Judge Frederick S. Ellis, Independent Counsel for the Board; L. Thomas Styron, Attorney at Law, representing the complainant. Respondent was present represented by Lawrence J. Smith, Attorney at Law.

## FINDINGS OF FACTS

This matter comes before the Board on an Administrative Complaint, which charges that Lucas A. DiLeo, M.D. violated the Medical Practice Act by improperly prescribing controlled substances. Specifically he is charged with prescribing various substances to eight patients which were in excess of legitimate medical justification in amounts, frequency, and duration, in violation of R.S. 37:1285(A)(6); with continuing and recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in this state, in violation of R.S. 37:1285(A) 14; and with medical incompetency, in violation of R.S. 37:1285(A)(12).

The evidence offered in support of the complaint was Dr. DiLeo's charts and records pertaining to each of the patients, certain pharmacy records and prescriptions written by Dr. DiLeo for the patients, and the expert testimony of Linda Carlson Stewart, M.D., a board certified family practitioner, with a subspecialty of addictionology.

In defense, Dr. DiLeo offered his own testimony, the testimony of five of the patients involved, two of his office employees, and the expert testimony of Patrick Edward Mottram, M.D., a board certified internist and endocrinologist.

Dr. DiLeo, through counsel, advised the Board that, in his opinion, the proceedings before the Board were quasi criminal in nature, and that the complainant was therefore obligated to prove the case beyond a reasonable doubt as in criminal cases. This contention is incorrect. The standard applied by the Board is that the complainant must prove his case by clear and convincing evidence. This burden is greater than that applied in civil cases, preponderance of the evidence, but not so heavy as the burden of proof required in criminal cases, as contended by Dr. DiLeo.

Dr. DiLeo also contends that the Board is bound by the so called "locality rule" which was formerly applied in medical malpractice cases. This is also incorrect. The Board enforces the standards required by the Medical Practice Act, and applies them equally to all physicians practicing in Louisiana, regardless of the locality of their practices.

In this case, the Board has for consideration eight cases out of a fairly extensive practice. In seven of the cases, the patient was being treated for chronic non-malignant pain, of varying degrees of severity. In those seven cases, the patient was given a Schedule II narcotic analgesic, such as Percodan for pain, in combination with drugs such as Valium and Xanax, for anxiety or nervousness. Some of the patients were also given Halcion, a hypnotic drug for insomnia. All of those drugs were prescribed over months and years, although all of them are intended for short term use.

Expert testimony in the case, as well as information contained in the Physicians Desk Reference, reveals that there is danger of addiction and habituation if these drugs are given on a long term basis. Five of the eight patients involved testified before the Board, and stated that they were satisfied with the treatment they got from Dr. DiLeo, thought he was a fine doctor, and that they had never had any addiction or withdrawal problems because of the drugs prescribed for them.

It was further shown that none of the daily doses of the various drugs were excessive. There was no evidence that any of the patients involved became addicted to the drugs they were given, although two of the patients exhibited some withdrawal symptoms when the drugs were withdrawn.

The eighth patient was prescribed Didrex, an anorectic, in conjunction with Xanax. Dr. Stewart, the expert witness, was of the opinion that it was improper to prescribe Didrex, a central nervous system stimulant, with Xanax, a central nervous system depressant.

Dr. Patrick Edward Mottram, the expert who testified on behalf of Dr. DiLeo, was of the opinion that the treatment offered in each case was not unreasonable in the community where Dr. DiLeo practiced, at the time that the treatment was given.

Dr. Mottram also testified that he does not treat patients in this fashion, and that he stopped treating chronic pain with narcotic analgesics before 1980, because there were better ways of dealing with chronic pain. He further stated that he could not confirm Dr. DiLeo's diagnosis from the charts because they were not complete or thorough. Finally, he testified that he did not have "an observation of the way they (meaning St. Bernard Parish general practitioners) practiced medicine." He stated that he was only familiar with the way he and the people with whom he practices work.

Dr. DiLeo is a general practitioner, and has been practicing in St. Bernard Parish for over 40 years. He has done no continuing medical education, other than reading the journals which came to his office.

He staunchly defended his treatment of the various patients involved in this case, but now realized that he should be more circumspect in prescribing narcotic analgesics and other habit forming drugs. He voluntarily surrendered his DEA license to prescribe Schedule II and III drugs in 1990, for reasons which are not altogether clear.

In support of the propriety of his prescribing practices, Dr. DiLeo offered two articles from the medical journals: "Chronic Opioid Therapy in Nonmalignant Pain" by Russell K. Portenoy, M.D.,

published in the Journal of Pain and Symptom Management, Vol. 5, No. 1, February, 1990; and "The APA Task Force Report on Benzodiazepine Dependence, Toxicity, and Abuse", an editorial in the American Journal of Psychiatry, February, 1991.

The former articles suggest that "a selected subgroup of patients with chronic nonmalignant pain may be able to obtain sustained improvement and comfort from opioid drugs without the development of significant toxicity or addiction." However, it is clear from the article that "direct evidence in favor of this proposition is meager," and strict and complicated guidelines for the management of such cases are suggested, none of which were followed by Dr. DiLeo.

The latter editorial stressed that toxicity and dependence may increase with long term use of benzodiazepines, and that, although not drugs of abuse, benzodiazepine abuse is common among those who are actively abusing alcohol, opiates, cocaine or sedative hypnotics.

These articles do not support the proposition that there is a recognized school of thought which endorses Dr. DiLeo's prescribing practices.

### CONCLUSIONS OF LAW

Our review of the testimony and other evidence makes it clear that Dr. DiLeo violated accepted medical standards in the cases reviewed by the Board. Dr. Stewart's expert opinion was that Dr. DiLeo's prescribing practices were not medically justified. Dr. Mottram did not endorse Dr. DiLeo's practices. The affirmative part of his testimony was to the effect that what Dr. DiLeo did was not unreasonable at that time and place. This, of course, is an application of the locality rule, which is not the standard observed by the Board.

It is fortunate, but of no moment, that none of the patients involved in this case came to harm. The Board does not focus on malpractice per se, which involves injury to a patient, but rather on the ability of a physician to practice good medicine under the standard which applies to all physicians alike, the Medical Practice Act.

Considering all of the above, the Board now finds Dr. DiLeo to be guilty of charges one and two: prescribing controlled substances which were, in amount, frequency, and duration, in excess of any legitimate medical justification; and, for the same practices, engaged in recurring medical practice which failed to satisfy prevailing and usually accepted standards of medical practice in this state.

On the third charge, professional and medical incompetency, the Board finds that Dr. DiLeo is a physician who has failed to maintain any program of continuing medical education, other than reading the journals which came to his office, and who has therefore not kept abreast of developments in this profession; who keeps records so inadequate that his own expert witness was unable to verify the diagnoses made in the cases involved herein; and whose DEA license to prescribe the types of drugs involved in this case has been revoked. Without further and immediate medical education, Dr. DiLeo is not competent to practice medicine in this State. He is, therefore, guilty of the third charge.

### DECISION

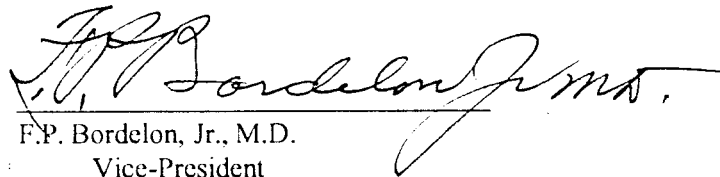
The Board finds the following sanctions to be appropriate.

- 1) Dr. DiLeo's license to practice medicine in this State, No. 005895, is suspended for one year, commencing June 1, 1993.

- 2) The last nine months of the suspension is hereby stayed, subject to the following terms and conditions:
- A) Dr. DiLeo shall obtain, during the three month period beginning June 1, 1993, 150 hours of continuing medical education credits, subject to prior approval by the Board of the subject matter thereof;
  - B) Dr. DiLeo shall pay a fine of \$5,000.00 and all costs of this proceeding;
  - C) Dr. DiLeo shall not, at any time following the date of execution hereof, and for the duration of his medical career, prescribe, dispense, or administer any Schedule II or III controlled substance or any other substance which may be designated as a Schedule II or III controlled substance as defined, enumerated, or included in 21 C.F.R. Subsection 1308.11-15 and/or LSA-R.S. Subsection 40:964. Furthermore, Dr. DiLeo shall not write any substance of the benzodiazepine class regardless of any federal or state schedule it might be included in. Dr. DiLeo, shall, moreover, surrender for cancellation to the issuing authorities, any existing state or federal controlled substances registrations or certificates which he may possess for Schedule II or III controlled substances within thirty days of the execution of this Decision, providing photocopies of the same to the Board's Probation and Compliance Officer within such period;
  - D) Dr. DiLeo's license is placed on three years probation, beginning September 1, 1993;
  - E) Dr. DiLeo shall obtain 100 credit hours per year of continuing medical education programs accredited by and qualifying for Physicians Recognition Award of the American Medical Association, and he shall obtain such an award within three years of the date hereof. On or before June 1, 1994, 1995, and 1996, Dr. DiLeo shall submit to the Board written certification of the CME programs completed by him during the preceding 12 months.

At Marksville, Louisiana, this 26 day of May, 1993.

LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS

  
F.P. Bordelon, Jr., M.D.  
Vice-President