

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

**NUMBER: 08-A-004
IN THE MATTER OF:**

**DANIEL RAY BAKER, M. D.
(Certificate No. 016153)**

OPINION AND RULING

This matter comes before the Board pursuant to an Administrative Complaint which charges Respondent Daniel Ray Baker, M. D., with a number of violations of the Medical Practice Act, R. S. 37:1261 *et seq.*, and of the Board's Pain Management Rules, La. Admin. C. 46:6915 *et seq.* The matter was heard before a panel of the Board consisting of Kweli J. Amusa, M. D., Kim Edward LeBlanc, M. D., Ph. D, Cynthia G. Montgomery, M. D., Melvin G. Bourgeois, M. D., and Mark Dawson, M. D., Vice-President, presiding.

The record reveals that Dr. Baker, a board certified anesthesiologist, had been forced to discontinue his practice because of a vision problem in 2002. In 2004, he answered an advertisement by Maximum Pain Management, and entered into a relationship with them, which lasted only three or four months. He then set up his own pain clinic. This case focuses on his treatment, and his documentation thereof, of some ten patients whom he saw during the period he was practicing pain medicine.

Dr. Baker's charts for each of the patients is in the record, and we have examined them in detail. Each exhibits numerous, and serious violations of the Board's Pain Rules, *supra*, a copy of which is attached hereto as Exhibit A.

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In each of the ten cases, Respondent failed to establish a medical diagnosis, as required by Section 6921A(2). Instead, he would usually just list the patient's symptoms. He did not make an assessment of co-existing illnesses, diseases, or conditions, or perform an appropriate physical examination, as required by Section 6921A(1). Generally, he would accept what the patient told him, or perform a cursory examination. He did not formulate and document in the patient's chart, and did not include medical justification for, controlled substance therapy; and did not include in the plan documentation that other medically reasonable alternative treatments for relief of the patient's pain had been considered or attempted without adequate or reasonable success, all in violation of Section 6921A(3).

In seven of the cases, Respondent failed to evaluate the patient's progress toward treatment objectives, in violation of Section 6921B(1); failed to document in the patient's chart the medical necessity for the use of more than one type or schedule of controlled substance in the management of the patient's pain, in violation of Section 6921B(5); and failed to maintain the treatment records required by Section 6921B(6).

In the case of patients C. G. And G. L., Respondent failed to document in the patients' charts the medical necessity for the use of more than one type or schedule of controlled substance in the management of the patients' pain, in violation of Section 6921B(5).

In the case of P. C., Dr. Baker failed to evaluate the patient's progress toward treatment objectives, in violation of Section 6921B(1); failed to evaluate whether the patient was diverting his medications or obtain a consultation when a drug screen was negative for Lortab, which had been continuously prescribed for the patient, in violation of Section 6921B(4); and failed to document in the patient's chart the medical necessity for the use of more than one type or schedule of controlled substance in the management of the patient's pain, in violation of Section 6921B(5).

We further note from the record that five of the patients whose charts we examined died as a result of drug overdose, although one of them was classified as a suicide. In a number of cases, Dr. Baker increased the dosage of controlled substances, although his chart shows that there was no reason to do so. Respondent testified that he was seeing fifty to sixty patients per day.

Because of the foregoing deficiencies in his treatment and record keeping for the ten patients, Dr. Baker is charged with the following violations of the Medical Practice Act. *supra*:

R. S. 1285A(6) for prescribing, dispensing, or administering legally controlled substances or any dependency inducing medication without legitimate medical justification therefor, or in other than a legal or legitimate manner;

R. S. 1285A(14) which proscribes continuing or recurring medical practice which fails to satisfy the prevailing or usually accepted standards of medical practice in this state;

R. S. 1285A(13) which proscribes unprofessional conduct; and

R. S. 1285A(30) which proscribes violation of any rules and regulations of the Board, or any provisions of this Part.

The pain rules, which are attached hereto, were adopted by the Board in an effort to protect both the physicians who practice in this field, and the patients who are treated by them. There is nothing complicated about them. They merely reflect what is considered good medicine under any circumstances. Dr. Baker testified that he was unaware of those rules, and his standard of practice of pain medicine, as reflected by the charts in the record, certainly bears this out. In response to a question by one of the Board members, he stated that many of his charts, which were not before us, were similar to those in evidence.

Dr. Baker testified that he was aware that a high percentage of the people who seek treatment for chronic pain are either drug seekers or diverters. However, his charts indicate no effort on his part to diagnose the condition complained of, or to verify the information concerning prior diagnoses or

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treatment allegedly received by his patients. He never performed an appropriate physical examination, not even taking the complete vital signs of his patients. Except in the case of R. C., he never attempted to contact prior treating physicians, or obtain copies of the patients' charts. He would continue, or increase, the controlled substances which the patient would say he was taking. None of these practices constitute good medicine, whether Respondent was aware of the pain rules or not.

We therefore find him guilty of the violations set forth above, as well as of the specific provisions of the pain rules, which are attached hereto. We are aware that Dr. Baker has not renewed his license to practice medicine in this state. However, he does retain the right to apply for renewal within four years, even if he fails to renew. Therefore we retain the right to discipline his license. We therefore sanction Dr. Baker's license as follows:

First: The license of Daniel Ray Baker II, M. D., as evidenced by Certificate No. 016153, is hereby **SUSPENDED** for a period of three years, effective immediately.

Second: Respondent shall be barred from the treatment and or management of chronic pain for life.

Third: Should Respondent ever apply for reinstatement of his license he shall:

1. Demonstrate that he has completed fifty hours of Continuing Medical Education for each year of his suspension.
2. Demonstrate that he has completed courses, satisfactory to the Board, in medical record keeping, and proper prescribing practices.
3. Demonstrate, in a manner satisfactory to the Board, that he is competent to practice medicine.

Fourth: Respondent shall pay a fine of \$5000.00, as well all costs of this proceeding since the filing of the Administrative Complaint.

NEW ORLEANS, LOUISIANA, THIS 7th DAY OF FEBRUARY, 2010.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

Mark Dawson MD

BY: MARK DAWSON, VICE-PRESIDENT

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice

Chapter 69. Prescription, Dispensation, and Administration of Medications
Subchapter B. Medications Used in the Treatment of Non-Cancer-Related Chronic or Intractable Pain

§6915. Scope of Subchapter

A. The rules of this Subchapter govern physician responsibility for providing effective and safe pain control for patients with noncancer-related chronic or intractable pain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:693 (April 2000).

§6917. Definitions

A. As used in this Subchapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners.

Chronic Pain—pain which persists beyond the usual course of a disease, beyond the expected time for healing from bodily trauma, or pain associated with a long term-incurable or intractable medical illness or disease.

Controlled Substance—any substance defined, enumerated or included in federal or state statute or regulations 21 C.F.R. §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

Diversion—the conveyance of a controlled substance to a person other than the person to whom the drug was prescribed or dispensed by a physician.

Intractable Pain—a chronic pain state in which the cause of the pain cannot be eliminated or successfully treated without the use of controlled substance therapy and, which in the generally accepted course of medical practice, no cure of the cause of pain is possible or no cure has been achieved

after reasonable efforts have been attempted and documented in the patient's medical record.

Noncancer-Related Pain—that pain which is not directly related to symptomatic cancer.

Physical Dependence—the physiological state of neuroadaptation to controlled substance which is characterized by the emergence of a withdrawal syndrome if the controlled substance use is stopped or decreased abruptly, or if an antagonist is administered. Withdrawal may be relieved by readministration of the controlled substance.

Physician—physicians and surgeons licensed by the Board.

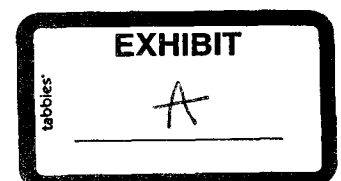
Protracted Basis—utilization of any controlled substance for the treatment of noncancer-related chronic or intractable pain for a period in excess of 12 weeks during any 12-month period.

Substance Abuse (may also be referred to by the term *Addiction*)—a compulsive disorder in which an individual becomes preoccupied with obtaining and using a substance, despite adverse social, psychological, and/or physical consequences, the continued use of which results in a decreased quality of life. The development of controlled substance tolerance or physical dependence does not equate with substance abuse or addiction.

Tolerance—refers to the physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce the same effect or a reduced effect is observed with a constant dose. Controlled substance tolerance refers to the need to increase the dose of the drug to achieve the same level of analgesia. Controlled substance tolerance may or may not be evident during controlled substance treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:693 (April 2000).



§6919. General Conditions/Prohibitions

A. The treatment of noncancer-related chronic or intractable pain with controlled substances constitutes legitimate medical therapy when provided in the course of professional medical practice and when fully documented in the patient's medical record. A physician duly authorized to practice medicine in Louisiana and to prescribe controlled substances in this state shall not, however, prescribe, dispense, administer, supply, sell, give, or otherwise use for the purpose of treating such pain, any controlled substance unless done in strict compliance with applicable state and federal laws and the rules enumerated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6) and 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners LR 23:727 (June 1997), amended LR 26:694 (April 2000).

§6921. Use of Controlled Substances, Limitations

A. Requisite Prior Conditions. In utilizing any controlled substance for the treatment of noncancer-related chronic or intractable pain on a protracted basis, a physician shall comply with the following rules.

1. Evaluation of the Patient. Evaluation of the patient shall initially include relevant medical, pain, alcohol and substance abuse histories, an assessment of the impact of pain on the patient's physical and psychological functions, a review of previous diagnostic studies, previously utilized therapies, an assessment of coexisting illnesses, diseases, or conditions, and an appropriate physical examination.

2. Medical Diagnosis. A medical diagnosis shall be established and fully documented in the patient's medical record, which indicates not only the presence of noncancer-related chronic or intractable pain, but also the nature of the underlying disease and pain mechanism if such are determinable.

3. Treatment Plan. An individualized treatment plan shall be formulated and documented in the patient's medical record which includes medical justification for controlled substance therapy. Such plan shall include documentation that other medically reasonable alternative treatments for relief of the patient's noncancer-related chronic or intractable pain have been considered or attempted without adequate or reasonable success. Such plan shall specify the intended role of controlled substance therapy within the overall plan, which therapy shall be tailored to the individual medical needs of each patient.

4. Informed Consent. A physician shall ensure that the patient and or his guardian is informed of the benefits and risks of controlled substance therapy. Discussions of risks and benefits should be noted in some format in the patient's record.

B. Controlled Substance Therapy. Upon completion and satisfaction of the conditions prescribed in §6921.A. and upon a physician's judgment that the prescription, dispensation, or administration of a controlled substance is medically warranted, a physician shall adhere to the following rules.

1. Assessment of Treatment Efficacy and Monitoring. Patients shall be seen by the physician at appropriate intervals, not to exceed 12 weeks, to assess the efficacy of treatment, assure that controlled substance therapy remains indicated, and evaluate the patient's progress toward treatment objectives and any adverse drug effects. Exceptions to this interval shall be adequately documented in the patient's record. During each visit, attention shall be given to the possibility of decreased function or quality of life as a result of controlled substance treatment. Indications of substance abuse or diversion should also be evaluated. At each visit, the physician should seek evidence of under treatment of pain.

2. Drug Screen. If a physician reasonably believes that the patient is suffering from substance abuse or that he is diverting controlled substances, the physician shall obtain a drug screen on the patient. It is within the physician's discretion to decide the nature of the screen and which type of drug(s) to be screened.

3. Responsibility for Treatment. A single physician shall take primary responsibility for the controlled substance therapy employed by him in the treatment of a patient's noncancer-related chronic or intractable pain.

4. 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 may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

5. Medications Employed. A physician shall document in the patient's medical record the medical necessity for the use of more than one type or schedule of controlled substance employed in the management of a patient's noncancer-related chronic or intractable pain.

6. Treatment Records. A physician shall document and maintain in the patient's medical record, accurate and complete records of history, physical and other examinations and evaluations, consultations, laboratory and diagnostic reports, treatment plans and objectives, controlled substance and other medication therapy, informed consents, periodic assessments, and reviews and the results of all other attempts at analgesia which he has employed alternative to controlled substance therapy.

7. Documentation of Controlled Substance Therapy. At a minimum, a physician shall document in the patient's medical record the date, quantity, dosage, route, frequency of administration, the number of controlled substance refills authorized, as well as the frequency of visits to obtain refills.

C. Termination of Controlled Substance Therapy. Evidence or behavioral indications of substance abuse or diversion of controlled substances shall be followed by tapering and discontinuation of controlled substance therapy. Such therapy shall be

reinitiated only after referral to and written concurrence of the medical necessity of continued controlled substance therapy by an addiction medicine specialist, a pain management specialist, a psychiatrist, or other substance abuse specialist based upon his physical examination of the patient and a review of the referring physician's medical record of the patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6), and 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:727 (June 1997), amended LR 26:694 (April 2000).

§6923. Effect of Violation

A. Any violation of or failure of compliance with the provisions of this Subchapter, §§6915-6923, shall be deemed a violation of R.S. 37:1285.A(6) and (14), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license held or applied for by a physician to practice medicine in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6), and 37:1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:728 (June 1997), amended LR 26:695 (April 2000).