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4500 MAGNOLIA STREET  
NEW ORLEANS, LA 70115

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MEDICAL CENTER  
SHREVEPORT, LA 71130

F. P. BORDELON, JR., M.D.  
P. O. BOX 154  
MARKSVILLE, LA 71351



## OFFICE OF THE SECRETARY-TREASURER

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NEW ORLEANS, LA 70112

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4226 CHEF MENTEUR HIGHWAY  
NEW ORLEANS, LA 70128

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In the Matter of

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JOBIE CREAR, M.D.

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FINAL DECISION

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A formal administrative hearing was convened before the Louisiana State Board of Medical Examiners ("Board") on February 25, 1982 to adjudicate alleged, specified violations of the Louisiana Medical Practice Act by Jobie F. Crear, M.D. ("Dr. Crear"), to-wit: "[p]rescribing, dispensing, or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner," La. Rev. Stat., Title 37, Section 1285(6), and "[p]rofessional or medical incompetency," La. Rev. Stat., Title 37, Section 1285(12). A quorum of the Board was present. Dr. Crear was present and was represented by legal counsel, Kern A. Reese, Esq.

Upon consideration of the evidence presented, pursuant to La. Rev. Stat., Title 49, Section 958, the Board renders

the following findings of fact, conclusions of law and decision.

Findings of Fact

1

Dr. Crear is a physician duly licensed by the Board to practice medicine in the State of Louisiana. By virtue of state licensure and Federal registration, he is authorized, as a practitioner, to prescribe, dispense or administer controlled substances. At all times material to the conduct and activities which this administrative proceeding concerns, Dr. Crear was so licensed and authorized, and while a full-time resident in ophthalmology at Charity Hospital, engaged in the practice of medicine in New Orleans, Louisiana.

2

Dr. Crear conducted a general practice in offices located within three New Orleans metropolitan area pharmacies from January, 1979 through September, 1981. He conducted this practice up to five days per week for approximately one to four hours per day, and never more than thirty-five hours per week. Dr. Crear testified he spent from five to fifteen minutes with every patient and

performed a physical examination and took a blood pressure and a weight on each patient. Dr. Crear testified that only overweight patients were issued a prescription for Preludin (phenmetrazine hydrochloride), 75 mg., or Desoxyn, 15 mg., one tablet to be taken each day. He estimated that 20% of his patients were seen for weight control.

3

An investigation was conducted by the Division of Narcotics and Dangerous Drugs ("DNDD") of the Louisiana Department of Health and Human Resources into the Schedule II prescription files of seven New Orleans pharmacies. The investigation was initiated after a local television station broadcast an investigative report suggesting that drug abusers were obtaining controlled substances through prescriptions written by physicians who practiced in pharmacy clinics.

4

In the course of the investigation, DNDD agents seized 1,322 Schedule II prescriptions written by Dr. Crear from January, 1979 to September, 1981. Of this number, 737 were written for Preludin (phenmetrazine hydrochloride), 75 mg. tablets, 226 were written for Desoxyn (methamphetamine

hydrochloride), and 106 were written for Quaaludes.

5

Further analyses of the seized Schedule II prescriptions revealed that on at least fifteen separate occasions, Dr. Crear wrote prescriptions for Preludin or Desoxyn within a few days of writing a prescription for either drug for that patient. Each prescription contained directions for the patient to take one capsule per day.

6

The evidence further established that Dr. Crear maintained one patient on a combination of Preludin, Desoxyn and Quaalude for one year.

7

The evidence also revealed that in numerous instances, Dr. Crear failed to insert the date that he wrote the prescription.

8

Preludin (phenmetrazine hydrochloride), is a sympathomimetic amine with pharmacologic actions similar to the amphetamines, acting as a central nervous system and cardiovascular system stimulant. Its exclusive indication is as an appetite suppressant or anorexiatic therapy in the management of exogenous obesity as a short-term (a few

weeks) adjunct in a regimen of weight reduction based on caloric restriction, exercise and behavior modification.

9

Desoxyn (methamphetamine hydrochloride) is a member of the amphetamine group of sympathomimetic amines and acts as a central nervous system stimulant. It is indicated for use as a short-term (a few weeks) adjunct in a regimen of weight reduction in patients whose obesity is refractory to all alternative therapy. Because tolerance to the anorectic effect of Desoxyn usually develops within a short period of time, use of the drug should not exceed a few weeks.

10

In prescribing Preludin and Desoxyn, a physician must be cognizant of their known contraindications, possible adverse side effects and potential dangers and weigh such risks against their limited usefulness. Preludin and Desoxyn, thus, may produce untoward cardiovascular and central nervous system stimulation. The substances also produce tachyphylaxis and tolerance, which appear in most patients with administration of the drug over four to six weeks. Continued administration beyond such a term carries a substantial risk of physical or psychological dependence.

11

Preludin and Desoxyn, like the amphetamines and other

stimulant drugs, have been extensively abused. Preludin, in particular, is a stimulant of preference among drug abusers as it is water soluble and its stimulatory effect may be enhanced by parenteral administration, or injection, in lieu of oral administration. In the estimate of a narcotics investigative officer, the current illicit market value of a single tablet of Preludin ranges, in Louisiana, from \$20.00 to \$25.00, while the retail price currently charged by pharmacies in filling prescriptions is 30¢-40¢ per tablet. Because of their known high potential for abuse, Preludin and Desoxyn are controlled by both state and federal law as Schedule II substances.

12

Quaalude (methaqualone) is a hypnotic agent useful as a short-term treatment for insomnia.

13

In prescribing Quaalude, a physician should be cognizant that patients become rapidly tolerant to the sleep-inducing effects of the drug and that illegal use of the drug or abuse may lead to severe psychological dependence. Accordingly, the drug should be prescribed with caution.

14

Because of Quaalude's known high potential for abuse,

it is controlled by both state and federal law as a Schedule II substance.

15

Dr. Carl King, an assistant professor of pharmacology at LSU Medical School, was qualified as an expert in pharmacology and medical education as it relates to pharmacology. He testified that a typical second year medical student would be aware that Preludin, Desoxyn and Quaalude are to be avoided because they are highly addictive and have become popular street drugs. Dr. King testified that even the manufacturers of the drugs warned of rapid tolerance to the drugs, requiring ever-increasing dosages, as well as drug dependence and drug addiction. While recognizing that the drugs may be legally prescribed, Dr. King expressed his opinion that there is no pharmacological justification for Preludin, Desoxyn or Quaalude to be used under any circumstances, given their dangers and the availability of alternatives.

16

In reviewing the prescriptions written by Dr. Jobie Crear, Dr. King testified that there was no pharmacological or medical justification for the prescribing of Preludin, Desoxyn and Quaalude in the quantities that Dr. Crear prescribed and that, if they were to be used at all, they

should have been used only on a short-term basis and certainly not more than a few weeks. Further, there was absolutely no pharmacological or medical justification for prescribing Preludin 75 mg. or Desoxyn 15 mg. in such a manner that a patient could consume more than one tablet per day for prolonged periods.

17

The Board finds as a matter of medical fact, consistent with the opinions of experts who testified in this matter and the unanimous teachings of the medical authorities, that Preludin, Desoxyn and Quaalude cause rapid tolerance, are highly addictive and should be avoided because of their potential for abuse. The Board further finds that there is no conceivable medical justification, in any case, for the prescribing of Preludin or Desoxyn in excess of one tablet per day.

18

Dr. Brobson Lutz, an internist in private practice in New Orleans, was qualified as an expert in internal medicine. Dr. Lutz testified that approximately twenty percent of his patients were seen for weight control and that he has occasionally prescribed anorectic drugs to his overweight patients.



19

Dr. Lutz stated he never prescribed Schedule II drugs in the treatment of weight control because patients became rapidly tolerant and because of their known potential for abuse.

20

Dr. Lutz testified that Quaalude, if prescribed at all, should not be given over several months because it is known to cause rapid tolerance and it is known to be an abused drug.

21

Further, Dr. Lutz testified that there is no medical justification for maintaining patients on both hypnotics, like Quaalude, and anorectic drugs, like Preludin and Desoxyn, at the same time. There was also no medical justification for prescribing Preludin or Desoxyn in the number and frequency that Dr. Crear prescribed or for failing to date his prescriptions.

22

In his defense, Dr. Crear testified that he was aware of the abuse potential of Preludin, Desoxyn and Quaalude and that he never prescribed Preludin or Desoxyn for more than three months at a time.

23

Dr. Crear denied writing prescriptions in excessive frequency. He testified he did not insert a date on many prescriptions in order to allow the pharmacist to fill the prescription at a later date. Dr. Crear stated that he was aware that prescriptions for scheduled substances were to be filled within 48-72 hours after they were written but was not certain there was any medical justification for that regulation.

24

Dr. Crear testified that the medical records were kept on index cards and, due to space limitations, were periodically summarized. Accordingly, Dr. Crear did not always have a complete running history of previously prescribed medications at the time he saw a patient.

25

Wendy Ann Gayno, Dr. Crear's receptionist, appeared in Dr. Crear's behalf. She began working for Dr. Crear in 1979 and testified that Dr. Crear often turned away patients, particularly those who requested a specific medication.

#### Conclusions of Law

Based on the foregoing findings of fact, the Board concludes, as a matter of law, that:

1

Preludin (phenmetrazine hydrochloride), Desoxyn (methamphetamine hydrochloride) and Quaalude (methaqualone)

are controlled substances under Louisiana and Federal law.

2

State and federal law, recognizing the substantial hazards inherent in controlled substances,\* uniformly condition their use by physicians on strict adherence to statutes and regulations governing records, security, and the form of and cause for prescriptions. Federal regulations, for example, provide that

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual scope of his professional practice . . . . An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 390 of the Act (21 U.S.C. 829) and the . . . person issuing it shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

21 C.F.R. § 1306.04(a). A virtually identical policy is embraced by Louisiana law.\*

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\*A drug is classified as a Schedule II controlled dangerous substance upon a considered, empirical finding that "[t]he drug or other substance has a high potential for abuse" and "[a]buse of the drug or other substance may lead to severe psychological or physical dependence." The definition is identical under federal and Louisiana law. 21 U.S.C. §812(b)(2)(A), (C); LSA-R.S. 40:963(A), (C).

\*LSA-R.S. 40:961(30) defines "prescription" as a written request for a drug or therapeutic aid issued by a licensed physician . . . for a legitimate medical purpose, for the purpose of correcting a physical, mental or bodily ailment, and acting in good faith in the usual course of his professional practice.

Thus, the law severely circumscribes a physician's privilege to make controlled substances available by explicitly requiring that a prescription may be issued (1) only within the usual scope of a physician's professional practice, (2) only for a legitimate medical purpose, and (3) only when the physician is acting in good faith in the administration of a bona fide treatment for a physical, mental or bodily ailment. Together, these requirements make it clear that controlled substances licensure and registration do not license a physician to disregard the demonstrated abuse and dependency inducing potential of dangerous drugs. When a physician does so, he can no longer claim that the treatment is bona fide or that his prescription is issued in good faith with medical justification.

3

As a matter of course, Dr. Crear has indiscriminately issued prescriptions for controlled substances without legitimate medical basis or justification and not in the good faith administration of a bona fide treatment for a physical, mental or bodily ailment. In issuing such prescriptions, Dr. Crear was prescribing legally controlled substances in other than a legal or legitimate manner, and, therefore, just cause exists for action against his license as provided for by LSA-R.S. 37:1285(6).

4

Dr. Crear's failure to date his prescriptions as an explanation for the numerous prescriptions written in

excessive frequency is indicative of medical incompetence in that respect. Dr. Crear's failure to keep adequate patient records and failure to take precautions to prevent abuse of scheduled substances further supports a conclusion of medical incompetence. Accordingly, just cause exists for action against his license as provided for by LSA-R.S. 37:1285(12).

Decision

Considering the foregoing,

IT IS ORDERED that the license of Jobie F. Crear, M.D. to practice medicine in the State of Louisiana, as evidenced by Certificate No. 14556, be, and the same is hereby suspended for a period of six (6) months commencing March 19, 1982, or, in the alternative, the same is hereby suspended for a period of three (3) months commencing March 19, 1982, provided that Dr. Crear, at the termination of the three month suspension, will serve without pay screening Orleans Parish school children for eye diseases two days per week (Monday through Friday) for one year.

It is further provided that Dr. Crear's year of service for the Orleans Parish school children will commence at the end of the three (3) month suspension. Additionally, Dr. Crear will close his private practice office on the two days a week that he is screening school children. Dr. Crear will not engage in the private practice of medicine on those days except to make rounds on hospitalized patients.

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IT IS FURTHER ORDERED that the license of Jobie F. Crear, M.D. to practice medicine will remain on probation for a period of three (3) years.

IT IS FURTHER ORDERED that Jobie F. Crear surrender his Federal and State controlled substances permits for a period of three (3) years from the date hereof.

IT IS FURTHER ORDERED that any violation of the probationary terms, conditions and restrictions set forth herein shall be deemed just cause for the suspension or revocation of the medical licensure of Jobie F. Crear, 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 20 day of July,  
1984.

LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS

By: Charles B. Odom M.D.  
CHARLES B. ODOM, M.D.  
President