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In The Matter Of *

FRANK L. FAZIO, 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 April 15, 1982 to adjudicate alleged, specified violations of the Louisiana Medical Practice Act by Frank L. Fazio, M.D. ("Dr. Fazio"), to-wit: "[p]rescribing, dispensing of administering habit forming or other legally controlled substance 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. Fazio was present and was represented by a legal counsel, William J. Wegmann, Jr., Esquire.

Upon consideration of the evidence presented, and 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. Fazio is a physician duly licensed by the Board to practice medicine in the State of Louisiana. At all times material to the conduct and activities which this administrative proceeding concerns, Dr. Fazio was so licensed and authorized, and while participating in a full-time residency program in otolaryngology at Charity Hospital, was engaged in the practice of medicine in New Orleans, Louisiana.

2.

During an 8 month period, from August, 1980 through April, 1981, Dr. Fazio conducted a general practice in an office located within a New Orleans pharmacy. This practice was conducted one to two days per week, approximately two to three hours a day, during which Dr. Fazio saw approximately thirteen patients each day.

3.

As described by Dr. Fazio, his position at the clinic had been "passed on" to him by another physician who had completed his otolaryngology training. In addition to himself, Dr. Fazio identified two other otolaryngology residents who also conducted part-time practices at the pharmacy.*

4.

Prior to accepting his position at the clinic, Dr. Fazio was informed as to the nature of the existing practice. He was also forewarned of the practice of individuals seeking to obtain controlled substances from the clinic physicians, for non-medical reasons.

5.

Neither a nurse nor a receptionist was employed at the clinic. Rather, Dr. Fazio stated that individuals desiring to see the physicians were required to register with the pharmacist in the drug store adjoining the clinic. As described by Dr. Fazio, it was a duty of the pharmacist to screen and identify those individuals who had been examined

* Thomas A. Hansbrough, M.D. and Michael E. Vidrine, M.D.

and had obtained controlled substances from more than one of the several physicians practicing at the clinic. Dr. Fazio admitted, however, that several pharmacists were employed at the pharmacy. Thus, on any given day the on-duty pharmacist was not in a position to determine if a patient had been seen by another clinic physician during the same week or, for that matter, on the previous evening.

6.

Dr. Fazio testified that the conditions under which he worked at the drug store clinic made it difficult to keep accurate profiles and records on the patients. There existed no single record on each patient who visited the pharmacy clinic; rather, each physician maintained his own set of records. Therefore, Dr. Fazio testified that he was not able to determine when or how often a patient had been examined at the clinic, nor could he determine the type, dosage and strength of any medications which had been prescribed to patients by other clinic physicians. Dr. Fazio estimates that 8% of his patients were seen for the treatment of obesity at the pharmacy clinic. As described by Dr. Fazio, he conducted an initial physical examination

and medical history on weight control patients, after which he obtained the patient's blood pressure, height and weight. Dr. Fazio testified that he did not perform any blood testing nor urinalysis on weight control patients. Weight control patients were, however, counseled on the necessity of restricting caloric intake, as well as exercise. Dr. Fazio's program consisted, essentially, of the prescribing of an anorexiant medication, Ionamin (phentermine resin), 30 mg. or Fastin (phentermine-hydrochloride), one tablet to be taken each day.

7.

An investigation was conducted by the Office of Narcotics and Dangerous Drugs ("NDD") of the Louisiana Department of Health and Human Resources, into the scheduled prescription files of seven New Orleans pharmacies. In the course of the investigation, NDD agents seized 39 prescriptions for controlled scheduled substances written by Dr. Fazio from August 18, 1980 through April 20, 1981. Of this number, the majority of the prescriptions were for the Schedule II controlled substances of the amphetamine or sympathomimetic amine class and within this class, primarily

Fastin, 580 30 mg. capsules; Ionamin, 665 30 mg. capsules; and Ionamin, 420 15 mg. capsules. Numerous other prescriptions were issued for the Schedule II substance Seconal.

8.

An analysis of the seized Schedule II prescriptions reveals that Dr. Fazio wrote prescriptions for Seconal and Ionamin for patients within days and weeks of writing identical prescriptions for the same patients, thus allowing the patients access to several times the prescribed daily dosages over extended periods of time.

9.

In one instance, the evidence revealed that Dr. Fazio issued prescriptions to one patient sufficient for a 14 week supply of Seconal over a 3 week period of time.

10.

The evidence further established that Dr. Fazio issued prescriptions to one patient sufficient for a 5 month regimen of Ionamin therapy in less than an 8 week period.

11.

In addition, the evidence further revealed that Dr. Fazio failed to employ less hazardous substances in his treatment therapy; rather, he consistently prescribed

Ionamin and Fastin, both Schedule II anorexiant under Louisiana law, as the primary method of treating obesity.

12.

Seconal is a Schedule II controlled substance. This substance possesses a high potential for abuse and a high potential for psychological or physiological dependency or addiction. Seconal is a potent oral hypnotic and sedative and is indicated in the short-term management of insomnia. As such, this substance must be administered with the utmost caution only upon legitimate, clinically established medical cause and with close attention to the dosages administered, the period over which the substance has been prescribed, development of and tolerance to the substance and the possibility of induced or maintained dependency or addiction.

13.

The indications enunciated in the "Physicians' Desk Reference," 36th Edition, 1982, as well as the American Medical Association's publication entitled "Drug Evaluations," chapter 56, reveal that Ionamin and Fastin are sympathomimetic amines with pharmacologic actions similar to the amphetamines,

acting as central nervous and cardiovascular systems' stimulants. Their exclusive indication is as an appetite suppressant or anorexiant 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.

14.

In prescribing Ionamin and Fastin, a physician must be cognizant of the known contraindications, possible adverse side-effects and their potential dangers and he must weigh such risks against the limited usefulness of the substances. Both Ionamin and Fastin, thus, may produce untoward cardiovascular and central nervous systems' stimulation. The substances also produce tachyphylaxis and tolerance which appears in most patients within several weeks following administration of the drug. Continued administration beyond such a term carries a substantial risk of physical or psychological dependency.

15.

The Board finds as a matter of medical fact that Ionamin and Fastin cause rapid tolerance, are potentially addictive and should be avoided because of their potential for abuse.

16.

The Board further finds, consistent with the indications set forth in the "Physicians' Desk Reference," that the administration of Seconal has not been shown to be effective for a period of more than 14 days. The Board further finds that there is no conceivable medical justification in any case for prescribing Ionamin 30 mg., in such a manner as to afford a patient access to more than one capsule per day, nor for the prescribing of Ionamin for five or more continuous months. Nor is there any conceivable medical justification for prescribing Seconal, 100 mg., in excess of one tablet per day or for the continuous prescribing of Seconal for three or more months.

17.

In his defense, Dr. Fazio testified that at all times pertinent hereto, he was under the belief that both Ionamin and Fastin were Schedule IV controlled substances under both State and Federal laws. It was not until he received notice of the instant proceeding that Dr. Fazio discovered the above mentioned substances to be Schedule II substances under Louisiana law. Although he and the other

residents who practiced at the pharmacy clinic were aware that individuals sought to illegitimately obtain controlled substances for non-medical reasons, Dr. Fazio stated that the physicians at the clinic attempted to identify those individuals who were not "legitimate" patients. Admittedly, however, Dr. Fazio stated that the methods employed to identify such individuals were severely lacking. Finally, Dr. Fazio testified that several of his prescriptions for Seconal and Ionamin were not prescribed consistent with the manufacturers' recommended daily dosages.

18.

Dr. Fazio further testified that the conditions under which he worked in the drug store clinic made it difficult to keep accurate profiles and records of patients. Therefore, he was not always aware of what medications a patient had received, nor was he always aware of the length of time a patient had received the medications.

Conclusions of Law

Based on the foregoing Findings of Fact, the Board concludes, as a matter of law, that:

1.

Seconal (secobarbital sodium) is a Schedule II controlled substance under Federal law. 21 C.F.R. § 1308.12. Fastin (phentermine hydrochloride) and Ionamin (phentermine resin) are classified as Schedule II substances under Louisiana law and Schedule IV under Federal law. LSA-R.S. 40:964; 21 C.F.R. § 1308.14.

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

* 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); LSA-R.S. 40:963(B).

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.*

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

* 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.

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.

Dr. Fazio has 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. Fazio 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 by LSA-R.S. 37:1285(6).

Decision

Considering the foregoing:

IT IS ORDERED that the license of Frank L. Fazio, M.D., to practice medicine in the State of Louisiana, as evidenced by Certificate No. 13781, be and the same is hereby placed on probation for a period of six (6) months.

IT IS FURTHER ORDERED that the foregoing order of probation be and the same is hereby suspended, PROVIDED, however, that Dr. Fazio accept and strictly comply with the following probationary terms and conditions:

Dr. Fazio shall, for a period of six (6) months, from June 14, 1982 through December 14, 1982, provide, without compensation or remuneration of any kind, medical services to the community in which he resides and practices, providing one full day of such services bimonthly. The nature and location of such community medical services shall be subject to approval by the Board, and Dr. Fazio shall provide the Board with satisfactory evidence of completion of such services.

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 Frank L. Fazio, M.D. or

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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 31 day of May, 1982.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

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