

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

COMMISSIONER'S
SUMMARY
ORDER

OF

ASUNCION T. LUYAO, M.D.
CO-02-04-1622-A

TO: ASUNCION T. LUYAO, M.D.
1873 SE Elrose Street
Port St. Lucie, FL 34952

ASUNCION T. LUYAO, M.D.
Fort Pierce County Jail
900 Rock Road
Port St. Lucie, FL 34945

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction (The Florida Department of Health, Division of Medical Quality Assurance) has made a finding substantially equivalent to a finding that the continued practice of medicine by ASUNCION T. LUYAO, M.D., (Respondent) in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in documents of The Florida Department of Health, Division of Medical Quality Assurance, that are attached, hereto, as Appendix "A" and made a part of hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, ASUNCION T. LUYAO, M.D., (license no. 115212), Respondent, shall not

115242

practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine.

Any practice of medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine in violation of this Commissioner's Summary Order shall constitute Professional Misconduct within the of N.Y. Educ. Law §6530 and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

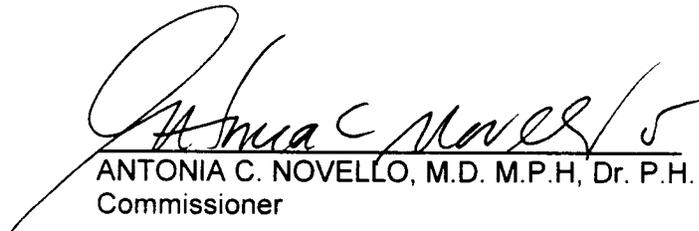
This Order shall remain in effect until the final conclusion of a hearing that shall commence within thirty days after the final conclusion of the disciplinary proceeding in the State of Florida. The hearing will be held pursuant to the provisions of NY. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing, together with a Statement of Charges to be provided to the Respondent after the final conclusion of the Florida proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than those set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299 via Certified Mail, Return Receipt Requested, of the final conclusion of the Florida proceeding immediately upon such conclusion.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU MAY BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW SECTION 230-A. YOU ARE URGED TO OBTAIN AN ATTORNEY FOR THIS MATTER.

DATED: Albany, New York

May 7, 2002


ANTONIA C. NOVELLO, M.D. M.P.H., Dr. P.H.
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828



Jeb Bush
Governor

John O. Agwunobi, M.D., M.B.A.
Secretary

CERTIFICATION

I, Shawn Canfield, Deputy Agency Clerk and Custodian of Records, HEREBY certify the following to be true and correct as on file with the Department of Health.

Attached is a true and correct copy of the Emergency Suspension of License by the Department of Health. The attached is a regularly received and retained record of the Department of Health vs. Asuncion Luyao, M.D. and is received and retained in the ordinary course of business of the Department of Health.


Shawn P. Canfield
Deputy Agency Clerk



4

Personally appeared before me, the undersigned authority, Shawn Canfield, Deputy Agency Clerk, Department of Health, Division of Medical Quality Assurance, who being sworn, says that this is a true and correct copy from the official file of the Department of Health.


Shawn P. Canfield
Deputy Agency Clerk

STATE OF FLORIDA
COUNTY OF LEON

Before me, personally appeared Shawn P. Canfield, whose identity is personally known to me as Deputy Agency Clerk, and who, acknowledges that his/her signature appears above.

Sworn and Subscribed to, before me, this April 17, 2002.


Notary Public-State of Florida



Vicki Rena Kenon
MY COMMISSION # CC968725 EXPIRES
September 19, 2004
BONDED THRU TROY FAIN INSURANCE INC

Type or Print Name

STATE OF FLORIDA
DEPARTMENT OF HEALTH

Final Order No. DOH-02-0424-ES0-MQA
FILED DATE - 3/22/02
Department of Health

By: Wili R. Kerwin
Deputy Agency Clerk

In Re: Emergency Suspension of License of
ASUNCION LUYAO, M.D. License No.: ME 31572
Case Numbers: ME 2001-20884, ME 2001-20886,
ME 2001-20887, ME 2001-20888, ME 2001-20889,
ME 2001-20890, ME 2001-20891, ME 2001-20892,
ME 2001-20893, ME 2001-20895, ME 2001-20897,
ME 2001-22336.

ORDER OF EMERGENCY SUSPENSION OF LICENSE

John O. Agwunobi, M.D., M.B.A., Secretary for the Department of Health, hereby ORDERS the Emergency Suspension of the license to practice as a physician of, Asuncion Luyao, M.D. Dr. Luyao holds license number ME 31572 and her last known address is 9474 S. U.S. Hwy. 1, Port St. Lucie, Florida. The following Findings of Fact and Conclusions of Law support the Emergency Suspension of Dr. Luyao's license to practice as a physician.

FINDINGS OF FACT

1. The Department of Health ("the Department") is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapters 456 and 458, Florida Statutes. Section 456.073, Florida Statutes, empowers the Secretary of the Department of Health ("the Department") to summarily suspend Dr. Luyao's license to practice as a physician in the State of Florida, in accordance with Section 120.60(6), Florida Statutes.

2. Dr. Luyao is and has been at all times material hereto licensed to practice medicine in the state of Florida under license number 31572, pursuant to Chapter 458, Florida Statutes.

3. Dr. Luyao is board certified in the area of internal medicine.
4. Between December of 2000 and November of 2001, twelve of Dr. Luyao's patients died from drug intoxication or polydrug intoxication.
5. On January 7, 2000, Dr. Roger Mittleman, Chief Medical Examiner of the 19th Judicial Circuit, initiated twelve complaints with the Department after performing autopsies on the bodies of Dr. Luyao's twelve deceased patients. In each of his complaints, Dr. Mittleman opines that the combination of medications prescribed by Dr. Luyao to each of the deceased patients caused or contributed to their deaths.
6. In or about June of 2001, the Medicaid Fraud Control Unit of the State of Florida Office of the Attorney General received information that Dr. Luyao was prescribing controlled substances and other drugs to patients with no medical justification for the prescriptions. Based on that information, the Medicaid Fraud Control Unit, in coordination with the Port St. Lucie Sheriff's Office, commenced an ongoing investigation into the allegations made against Dr. Luyao.
7. On December 6, 2001, the Medicaid Fraud Control Unit seized the medical records of Dr. Luyao's patients.

FACTS PERTAINING TO PATIENT K. N. (Complaint No. 2001-20890)

8. On or about July 3, 1997, Patient K. N. ("KN"), a 48 year-old male, first presented to Dr. Luyao's office with complaints of leg and foot pain related to an injury KN received during a 1997 motorcycle accident.

9. KN's medical records reflect that during the time that he was being treated by Dr. Luyao, he was represented by two law firms in connection with a personal injury suit and a social security disability claim.

10. KN's medical records reflect that during KN's first visit, Dr. Luyao performed a limited physical examination of KN and documented a limited medical history for KN in the form of a template patient questionnaire. KN's history reflects that KN underwent a right leg surgery in 1978 and two left shoulder procedures in 1995 and 1996. KN's records do not reflect that Dr. Luyao documented the reason why KN underwent the above procedures or how KN has progressed since the procedures.

11. Between July 3, 1997 and December 22, 2000, Dr. Luyao saw KN during approximately forty-two office visits.

12. During a December 31, 1997 visit, KN complained of wrist and neck pain. Dr. Luyao performed a brief examination of KN and diagnosed cervical radiculopathy and a rotator cuff tear of the right shoulder. Dr. Luyao did not document a history of present illness pertaining to KN's neck pain. At the conclusion of the visit, Dr. Luyao prescribed Percocet to KN.

13. On February 4, 1998, KN returned with further complaints of cervical pain and rotator cuff pain. Dr. Luyao again performed a very brief examination and prescribed Percocet. There is no indication in KN's records that Dr. Luyao performed strength, reflex, or range-of-movement testing on KN.

14. On November 6, 1998, Dr. Luyao saw KN with regard to KN's complaints of lower back pain. This is the first time that Dr. Luyao documents that KN underwent

MRIs of the cervical spine and shoulder in December 1997. The MRI of KN's cervical spine was ordered by William Grogan, M.D. and reflects degenerative changes at C5-6 with posterior spurring, a likely left lateral disc protrusion, and mild posterior bulging at C6-7. The MRI of KN's shoulder was likewise ordered by William Grogan, M.D. and reflects moderate to severe narrowing of the acromial arch, partial inferior thickness tear anterior 1/2 of the supraspinatus tendon, and small joint effusion. KN's records for this visit do not reflect that Dr. Luyao examined KN's back or performed any type of reflex or range-of-movement testing on KN. Dr. Luyao prescribed Percocet at the end of the visit.

15. On July 20, 1999, KN went to Dr. Luyao with complaints of severe depression. On August 3, 1999, KN advised Dr. Luyao that he had been admitted to Savannas, a private psychiatric hospital located in Port St. Lucie, Florida. KN's records do not reflect that Dr. Luyao addressed KN's depression in any way.

16. On March 16, 2000, KN went to Dr. Luyao's office with neck, back, and knee pain. Dr. Luyao performed a very limited examination, which did not include an examination of the neck or a neurologic exam. KN was given a prescription for Percocet.

17. During KN's visit on May 17, 2000, KN complained of leg and back pain. Dr. Luyao performed a brief examination and prescribed Percocet and Soma. No assessment is apparent from the records.

18. KN's records for July 28, 2000, indicate that KN fell down and injured his knee. Although KN's records reflect that Dr. Luyao prescribed Percocet and a Duragesic

patch for KN's pain, the records do not reflect that Dr. Luyao performed an examination of KN's knee.

19. On December 22, 2000, KN advised Dr. Luyao that he wanted to change his medications because he could not "stand the pain." In response, Dr. Luyao discontinued KN's prescriptions for Percocet, Valium, and Soma and wrote KN a prescription for Methadone 10 mg.

20. KN's medical records do not indicate that Dr. Luyao attempted to independently confirm KN's increased pain in any way and they do not offer any explanation as to the source of KN's increased pain. The records also do not describe the nature and intensity of KN's pain.

21. From January 1998 through December 2000, Dr. Luyao regularly wrote multiple prescriptions for controlled substances, including Percocet, Valium, Oxycontin, and Hydrocodone, to KN without conducting adequate physical or mental examinations of KN, without recording diagnoses or treatment plans for KN, and without adequately assessing KN to justify the prescriptions.

22. Percocet is a legend drug as defined by Section 465.003(8), Florida Statutes. Percocet contains oxycodone hydrochloride, a semi-synthetic narcotic analgesic, which is a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Percocet is indicated for relief of moderate to moderately severe pain. It has a high potential for abuse and has a currently accepted but limited medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

23. Oxycontin is a legend drug as defined by Section 465.003(8), Florida Statutes. Oxycontin is semi-synthetic opiate that contains oxycodone hydrochloride, a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Oxycontin is an opioid analgesic indicated for relief of moderate to severe pain. It has a high potential for abuse and has a currently accepted but limited medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

24. Valium is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains diazepam, a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Diazepam is a benzodiazepine anxiolytic (anti-anxiety drug) and muscle relaxant. The abuse of diazepam can lead to physical or psychological dependence.

25. Methadone is a legend drug as defined by Section 465.003(8), Florida Statutes. Methadone Hydrochloride, a narcotic, is a schedule II controlled substance pursuant to Chapter 893, Florida Statutes. Methadone Hydrochloride is indicated for relief of severe pain, for detoxification treatment of narcotic addiction, or for temporary maintenance treatment of narcotic addiction. Methadone can produce drug dependence of the morphine type. Psychological dependence, physical dependence, and tolerance may develop upon repeated administration of methadone. The recommended starting dose is between 7.5 and 40 milligrams per day.

26. Soma contains Carisoprodol. Carisoprodol is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with

acute, painful, musculoskeletal conditions. Since the effects of Carisoprodol and alcohol or Carisoprodol and other CNS depressants or psychotropic drugs may be additive, appropriate caution should be exercised with patients who take more than one of these agents simultaneously.

27. On December 27, 2000, KN died of accidental acute multiple drug intoxication.

28. When contacted after KN's death by a representative of the Port St. Lucie Police Department, Dr. Luyao stated that KN had "some suicide problems" before becoming her patient.

29. KN's "suicide problems" are not documented in KN's medical records.

30. On March 1, 2002, a Department expert reviewed the medical records of KN and submitted a written report of his findings.

31. The Department expert opines that Dr. Luyao did not meet the applicable standard of care in her examination, diagnosis, and treatment of KN. As an example, the expert notes that the records for KN reflect that KN suffered from persistent neck and shoulder pain. However, Dr. Luyao never referred KN to an orthopedist or to a Neurologist for this pain.

32. The Department expert indicates that Dr. Luyao's assessments of KN's complaints and symptoms were not adequate. The expert notes that KN suffered from lower back pain, but Dr. Luyao never ordered an X-ray or MRI of KN's lower back. Similarly, the expert notes that KN also complained of persistent ankle pain, but Dr. Luyao never requested an X-ray or MRI of the ankle.

33. With regard to Dr. Luyao's prescription practices, the Department expert remarks that Dr. Luyao prescribes narcotics on a regular basis without attempting other alternative modalities. In particular, the expert notes the lack of referrals to pain clinics and the absence of any significant physical therapy for KN. The expert opines that KN would have benefited from a neurology consultation for evaluation of his ongoing neck and back pain, a physiatrist for wellness and physical therapy, and a pain management physician. Finally, the expert opines that Dr. Luyao prescribed, dispensed, or administered legend drugs or other substances to KN in an inappropriate manner.

34. The Department expert concludes his report by stating his opinion that Dr. Luyao fell below the standard of care in her treatment and management of KN.

FACTS PERTAINING TO PATIENT W. A. (Complaint No. 2001-20884)

35. On November 9, 2000, Patient W. A. ("WA"), a 57 year-old male, first presented to Dr. Luyao's office with complaints of lower back and hand pain. During this first visit, WA completed a template history of his medical problems. (WA's record for this visit does not reflect that Dr. Luyao reviewed WA's history). Dr. Luyao performed a limited physical examination of WA, which did not include a neurological examination. Dr. Luyao prescribed Xanax and Lortab to WA.

36. On November 14, 2000, WA returned to Dr. Luyao's office alleging that he re-injured his lower back. Dr. Luyao performed a brief examination of WA's heart, lungs, and abdomen, but not of WA's back. Dr. Luyao gave WA a Demerol and Phenergan injection along with a prescription for Oxycontin.

37. WA returned on November 15, 2000 with similar complaints of pain. Again, Dr. Luyao performed just a limited examination, which did not include an examination of the source of WA's pain, his back. This time, Dr. Luyao gave WA a Demerol and Vistaril injection.

38. On November 21, 2000, WA returned once again with the same complaint of lower back pain. Dr. Luyao performed the same brief physical examination of WA and gave WA a Demerol injection and a prescription for Oxycontin and Zanaflex. An MRI was recommended for WA. (WA's records reflect that WA was scheduled to undergo the MRI on January 3, 2001, but there is no indication that WA ever actually underwent the procedure or that Dr. Luyao took any measures to ensure that WA received the MRI).

39. On December 28, 2000, WA presented with his left leg wrapped and dressed with antibiotic cream. There is no mention in WA's record of any trauma to the leg or an identification of the problem with WA's leg.

40. From November 9, 2000 through December 28, 2000, Dr. Luyao wrote multiple prescriptions for WA for controlled substances, including Xanax, Oxycontin, Demerol, and Lortab, without conducting adequate physical examinations of WA, without recording diagnoses or treatment plans for WA, and without adequately assessing WA to justify the prescriptions.

41. Demerol contains meperidine hydrochloride and is a legend drug as defined by Section 465.003(8), Florida Statutes. Demerol is a Schedule II controlled substance pursuant to Chapter 893, Florida Statutes. Demerol is effective in the

treatment of moderate to severe pain. Psychological dependence, physical dependence, and tolerance may develop upon repeated use.

42. Xanax is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains alprazolam, a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. Alprazolam is a benzodiazepine anxiolytic, and the abuse of alprazolam can lead to physical and psychological dependence. Xanax is indicated for the short-term relief of symptoms of anxiety. It produces additive CNS (Central Nervous System) depressant effects when co-administered with other CNS depressants.

43. Lortab is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains hydrocodone bitartrate, a Schedule III controlled substance listed in Chapter 893, Florida Statutes. Lortab is indicated for the relief of moderate to moderately severe pain. The abuse of Lortab can lead to physical or psychological dependence.

44. Phenergan contains Promethazine, which is used as an adjunct to analgesics for the control of postoperative pain.

45. Vistaril contains Hydroxyzine pamoate, which is indicated for symptomatic relief of anxiety and tension associated with psychoneurosis and as an adjunct in organic disease states in which anxiety is manifested. The potentiating action of hydroxyzine must be considered when the drug is used in conjunction with central nervous system depressants such as narcotics, non-narcotic analgesics and barbiturates. Therefore, when central nervous system depressants are administered concomitantly with hydroxyzine, their dosage should be reduced.

46. Zanaflex contains tizanidine, which is indicated for the acute and intermittent management of increased muscle tone associated with spasticity.

47. On January 5, 2001, WA died of accidental acute multiple drug intoxication.

48. On March 2, 2002, a Department expert reviewed WA's medical records and submitted a report containing his findings.

49. Based on his review of WA's medical records, the Department expert determines that Dr. Luyao fell below the standard of care in her treatment and management of WA. The expert notes that Dr. Luyao failed to document a history of WA's back pain; that Dr. Luyao failed to utilize other modalities of therapies to control WA's pain; and that Dr. Luyao's examinations of WA were inadequate in that they were confined to the core organs only. The expert states that a reasonably prudent physician would not have treated WA with ongoing narcotics without first diagnosing WA's pain, reviewing WA's past medical records, and attempting alternative approaches to pain control.

50. The Department expert opines that Dr. Luyao prescribed controlled substances to WA in an inappropriate manner. In this regard, the expert notes that in a period of just twelve days, Dr. Luyao prescribed 100 tablets each of Hydrocodone, Xanax, Diazepam, and Oxycontin to WA.

FACTS PERTAINING TO PATIENT J. H. (Complaint No. 2001-20891)

51. Dr. Luyao treated Patient J. H. ("JH"), a 53 year-old female, for hip and shoulder pain, hypertension, menopausal symptoms, insomnia, and arthritis from about June 12, 1996 until about March 3, 2001.

52. JH's medical records indicate that Dr. Luyao performed one limited physical examination of JH during the entire time that JH was her patient.

53. JH's medical records do not reflect that Dr. Luyao ever obtained a laboratory or diagnostic test for JH. JH's medical records also lack a physical history and records from JH's previous doctors.

54. JH's medical records do not indicate that Dr. Luyao attempted to independently confirm JH's pain in any way. The records also do not describe the nature and intensity of JH's pain.

55. Between June, 1996 and March, 2001, Dr. Luyao prescribed controlled substances to JH, which included Xanax, Hydrocodone, Valium, Oxycontin, Ambien, Methadone, and Percocet.

56. Ambien is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains zolpidem tartrate, a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. The abuse of ambien can lead to physical and psychological dependence. Ambien is indicated for the short-term treatment of insomnia and should generally be limited to seven to ten days of use. Ambien should not be prescribed in quantities exceeding a one-month supply.

57. On April 8, 1998, JH went to Dr. Luyao's office with complaints of pain to the right shoulder. JH's records reflect that Dr. Luyao performed a very brief examination of JH but did not examine JH's shoulder. Dr. Luyao prescribed Hydrocodone to JH.

58. Caremark Prescription Service managed JH's prescription drug benefit. In a letter dated June 9, 1998, Caremark advised Dr. Luyao that it had reason to believe that JH was overusing Ambien and suggested that Dr. Luyao discontinue JH's use of Ambien.

59. On October 6, 1999, JH presented to Dr. Luyao with pain to his right shoulder. Although, there is no indication in JH's records that Dr. Luyao performed a physical examination of JH, Dr. Luyao prescribed Vicodin to JH.

60. On February 7, 2000, JH complained to Dr. Luyao that without her pain medications, she was anxious, shaky, and unable to work. At the time, Dr. Luyao was prescribing Oxycontin, Xanax, Ambien, Prozac, and Maxzide to JH.

61. Maxzide contains triamterene, which is indicated for the treatment of hypertension or edema. Triamterene is not indicated for the initial therapy of edema or hypertension except in individuals in whom the development of hypokalemia cannot be risked.

62. In June 2000, JH's son advised Dr. Luyao that JH was ingesting more medications than JH was being prescribed. In response, Dr. Luyao reduced JH's Oxycontin prescription from 40 mg three times per day to 40 mg two times per day.

63. On August 28, 2000, Dr. Luyao added Methadone to JH's medications and decreased JH's Oxycontin prescription.

64. A note made by Dr. Luyao on September 11, 2000 in JH's records indicate that JH was being taken off of Methadone because JH was complaining of itching. However, on September 29, 2000, JH was again prescribed Methadone in addition to Oxycontin.

65. On February 28, 2001, JH filled prescriptions issued to her by Dr. Luyao for Prozac, 40 mg, 60 tablets, Ambien, 10 mg, 60 tablets, Methadone, 10 mg, 300 tablets, and Alprazolam, 1 mg, 120.

66. On March 3, 2001, JH died of acute multiple drug intoxication.

67. In a letter dated March 9, 2001, Caremark Prescription Service again warned Dr. Luyao that it had reason to believe that JH was overusing Alprazolam, Methadone, and Ambien and suggested that Dr. Luyao discontinue JH's use of these controlled substances.

68. On March 8, 2002, a Department expert reviewed the medical records of JH and submitted a written report of his findings.

69. In his report, the Department expert states his opinion that JH's medical records absolutely do not justify Dr. Luyao's course of treatment of JH. JH's history and records from prior doctors are lacking, and Dr. Luyao's physical examinations of JH are incomplete and inadequate, according to the expert. The Department expert notes that JH's records reflect that Dr. Luyao did not pursue diagnostic testing as a means of determining the source of JH's pain.

70. The Department expert opines that Dr. Luyao did not meet the applicable standards of care in her examination, diagnosis, and treatment of JH. As an example, the expert remarks that a reasonable physician would not have treated JH with the polypharmacy that was dispensed by Dr. Luyao without an attempt to first diagnose JH's alleged chronic pain and without first attempting alternative approaches for pain control. It is the expert's opinion that Dr. Luyao inappropriately prescribed legend drugs to JH.

71. JH's medical records indicate that Dr. Luyao never obtained a complete history of JH's back pain and that Dr. Luyao never prepared a plan for treating JH's pain. The expert notes that Dr. Luyao never performed a musculoskeletal or neurological examination of JH and never referred JH to a physical therapist or any other specialist for alternative treatment. The Department expert observes that due to JH's self-reported psychiatric problems, Dr. Luyao should have referred JH to a psychiatrist and coordinated JH's care accordingly.

72. Of particular concern to the Department expert is that JH initially presented to Dr. Luyao with only shoulder pain, and without an examination or x-ray, Dr. Luyao prescribed Lorcet. The expert notes that several months later, Dr. Luyao diagnosed JH with back pain without ever obtaining a history for JH; and later, Dr. Luyao continued JH on Oxycontin even when JH's son reported that JH was abusing her medications.

73. The Department expert concludes his report by stating that Dr. Luyao lacks professional judgment and represents a concern for the public.

FACTS PERTAINING TO PATIENT E. S. Complaint No. 2001-20888

74. On February 16, 2001, Patient E. S. ("ES"), a 35 year-old male, first presented to Dr. Luyao's office with complaints of lower back pain related to various automobile accidents. ES completed a standard history form in which he stated that his medications included Oxycontin, Oxyfast, Xanax, and Soma. ES' records do not reflect that ES provided Dr. Luyao with any past medical records.

75. During this initial visit, Dr. Luyao performed a brief examination of ES' heart, lungs, abdomen, and extremities. ES' records do not reflect that Dr. Luyao examined ES' general appearance, neck, or back. The records also do not reflect that Dr. Luyao performed an examination of ES' vascular or neurological systems. Dr. Luyao prescribed Oxycontin, Xanax, and Oxyfast to ES. Dr. Luyao did not prepare a plan, make a referral, or order any diagnostic studies during this visit.

76. ES returned on April 3, 2001 for follow-up care of his back pain. Dr. Luyao performed another superficial examination of ES' core organs, but did not examine ES' back. During this visit, Dr. Luyao prescribed Oxycontin, Xanax, Oxyfast, and Soma to ES. Dr. Luyao recommended that ES undergo an MRI of his back. ES' records do not reflect that ES ever actually underwent the procedure or that Dr. Luyao followed up on her recommendation to ensure ES received the MRI.

77. Oxyfast is a legend drug as defined by Section 465.003(8), Florida Statutes. Oxyfast is semi-synthetic opiate that contains oxycodone hydrochloride, a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Oxyfast is an opioid analgesic indicated for relief of moderate to severe pain. It has a high potential

for abuse and has a currently accepted but limited medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

78. On April 4, 2001, ES died of accidental acute multiple drug intoxication.

79. On April 4, 2001, the Medical Examiner for the 19th Judicial Circuit performed an autopsy on the body of ES. During an external examination of the body, the Medical Examiner noticed several needle track marks on ES' left arm.

80. ES' medical records do not reflect that Dr. Luyao ever examined ES' skin. Had Dr. Luyao examined ES' skin she would have noticed the needle track marks on ES' arm and treated ES accordingly.

81. On March 2, 2002, a Department expert reviewed ES' medical records and submitted a report containing his findings.

82. Based on his review of ES' records, the Department expert finds that Dr. Luyao fell below the standard of care in her treatment and management of ES.

83. With regard to ES' medical records, the Department expert notes that there is no documentation of the past history of ES' back condition or of previous treatments received by ES for his back condition. The expert also notes the lack of documentation of associated neurological symptoms.

84. Several deficiencies are noted by the expert with regard to Dr. Luyao's examinations of ES. In particular, the expert comments that Dr. Luyao should have performed an examination of ES' skin and general appearance given the number and combination of controlled substances that ES admitted to using during his initial visit to

Dr. Luyao. The expert also opines that Dr. Luyao should have evaluated ES in the standing, sitting, and supine positions and that Dr. Luyao should have documented ES' posture, range of motion, and performed a neurological examination.

85. The Department expert opines that Dr. Luyao prescribed controlled substances to ES in an inappropriate manner and remarks that Dr. Luyao appears to simply refill narcotics and tranquilizers without justification.

86. The Department expert concludes his report by commenting that Dr. Luyao should have been suspicious of ES when he self-reported using Oxycontin and Oxyfast during his initial visit. The expert believes that Dr. Luyao should have referred ES to a pain management specialist or to a psychiatrist for assistance with polydrug abuse instead of simply refilling ES' medications.

FACTS PERTAINING TO PATIENT T. S. Complaint No. 2001-20887

87. On November 27, 2000, Patient T. S. ("TS"), a 27 year old female, first presented to the office of Dr. Luyao with complaints of lower back pain. During her first visit, TS completed a template history form. TS' records do not reflect that Dr. Luyao ever reviewed this history form. TS advised Dr. Luyao that she was also seeing Dr. Dalilli, a neurosurgeon.

88. During TS' first visit, Dr. Luyao performed a very brief physical examination of TS confined to the heart, lungs, abdomen, and extremities. There is no documented physical examination of the musculoskeletal or neurologic systems. In addition, Dr. Luyao reviewed TS' X-rays from 1994. Dr. Luyao's diagnosis for TS was

lower back pain, acute and chronic. Dr. Luyao gave TS an injection of Demerol and Phenergan and a prescription for Oxycontin and Zanaflex.

89. TS' medical records do not reflect that Dr. Luyao ever recorded a treatment plan for ES.

90. Although Dr. Luyao was aware that TS was also under the care of Dr. Dalilli, she did not attempt to obtain Dr. Dalilli's records for TS, and she never attempted to contact Dr. Dalilli to discuss TS' case.

91. Between December 2000 and July 2001, Dr. Luyao saw TS on a monthly basis. TS' records for these visits show that during each visit, Dr. Luyao performed only a very brief examination of TS that was limited to TS' heart, lungs, abdomen, and extremities. Dr. Luyao never performed an examination of TS' musculoskeletal or neurological systems. TS' records for these visits do not reflect any plans, referrals, or diagnostic studies. During these visits, Dr. Luyao issued multiple prescriptions to TS for various medications that included Oxycontin, Zanaflex, Soma and Xanax.

92. On July 13, 2001, TS died of accidental acute multiple drug intoxication.

93. A review of the medical examiner's records for TS indicate that on May 7, 2001, TS underwent a laminectomy and discectomy procedure that was performed by Dr. Dalilli. TS' records do not reflect that Dr. Luyao ever contacted Dr. Dalilli about this surgery.

94. On March 3, 2002, a Department expert reviewed TS' medical records and submitted a report containing his findings.

95. With regard to TS' medical records, the Department expert notes the following deficiencies: it does not appear that Dr. Luyao ever reviewed TS' history; the history of present illness documented by Dr. Luyao for TS is unsatisfactory; the initial physical examination documented for TS is unsatisfactory; TS' records do not reflect a musculoskeletal or neurological system examination; and TS' records fail to reflect whether Dr. Luyao ever coordinated her care of TS with Dr. Dalilli. The expert finally notes that there is no documentation in TS' records justifying the use of Oxycontin for TS.

96. The Department expert opines that Dr. Luyao failed to meet the applicable standard of care in her treatment of TS and that Dr. Luyao did not adequately assess or diagnose TS' condition.

97. The Department expert further opines that Dr. Luyao prescribed, dispensed, or administered legend drugs or other substances to TS in an inappropriate manner.

98. In concluding his report, the expert states that Dr. Luyao fell below the standard of care in her treatment of TS, in particular, because Dr. Luyao chose to continue TS on narcotics without a diagnosis and without seeking consultations with other specialties.

FACTS PERTAINING TO PATIENT D. W. Complaint No. 2001-20886

99. On May 19, 2000, Patient D. W. ("DW"), a 48 year-old male, presented to Dr. Luyao. DW completed a template history form in which he indicated that his chief complaint was lower back pain. DW's records for this visit do not reflect that Dr. Luyao

performed a physical examination of DW. Dr. Luyao prescribed Oxycontin at the end of the visit.

100. Between June 2000 and August 2001, Dr. Luyao saw DW on a monthly basis. During each of these visits, Dr. Luyao's examination of DW consisted of a brief review of DW's heart, lungs, abdomen, and extremities. DW's records for these visits do not reflect that Dr. Luyao ever performed a musculoskeletal or neurological systems examination of DW. There are no plans, referrals, or diagnostic studies referenced in DW's records for the above visits. During these visits, Dr. Luyao prescribed controlled substances to DW including Oxycontin, Methadone, Xanax, and Percocet without ever adequately assessing DW to justify the prescriptions she wrote for DW.

101. On July 5, 2001, Dr. Luyao made a notation in DW's record that she was discontinuing DW's use of Methadone. Dr. Luyao prescribed Percocet and Oxycontin as a substitute. No explanation for Dr. Luyao's decision to change DW's medications is apparent from the records.

102. On August 3, 2001, DW returned to request that Dr. Luyao return him to Methadone. Dr. Luyao again performed a very brief examination of DW and prescribed Methadone and Xanax to DW. DW's records do not provide any explanation for Dr. Luyao's decision to return DW to Methadone.

103. On August 4, 2001, DW died of accidental acute multiple drug intoxication.

104. On March 5, 2002, a Department expert reviewed DW's medical records and submitted a report containing his findings.

105. The Department expert finds that Dr. Luyao did not meet the applicable standard of care in her examination, diagnosis, assessment, and treatment of DW. The expert notes that there is no documentation in DW's records, which reflect that Dr. Luyao ever attempted to diagnose DW or independently identify the source of DW's pain in any way. The expert also notes a lack of referrals by Dr. Luyao to other specialists.

106. It is the Department expert's opinion that Dr. Luyao also fell below the standard of care with regard to the maintenance of DW's medical records and that DW's records do not justify the course of treatment taken by Dr. Luyao. In particular, the expert comments that Dr. Luyao failed to document a complete and adequate history and physical examination for DW. The expert also notes that there are no plans to delineate the etiology of DW's pain and that no referrals were made. Finally, the expert notes that there is no justification in DW's records for continued use of narcotic therapy.

107. The Department expert observes that the treatment of DW should have involved a multi-disciplinary approach instead of prescriptions for Oxycontin and Methadone for pain of unknown etiology. The expert also opines that Dr. Luyao prescribed legend drugs to DW in an inappropriate manner.

FACTS PERTAINING TO PATIENT R. G. Complaint No. 2001-20892

108. Between August 20, 2001 and October 5, 2001, Dr. Luyao treated Patient R. G. ("RG"), a 40 year-old male, for back, hip, and knee pain.

109. RG was referred to Dr. Luyao by his sister, CG, who also died while under Dr. Luyao's care.

110. At the time he first presented to Dr. Luyao, RG admitted to purchasing Oxycontin illegally and using between six and ten tablets of Oxycontin 80 mg each day. Dr. Luyao's assessment of RG was Oxycontin abuse. Dr. Luyao prescribed Methadose to RG and continued RG on Methadose until RG's death.

111. RG's medical records do not reflect that Dr. Luyao ever conducted more than a cursory physical examination of RG or that she ever obtained a laboratory or diagnostic test for RG. RG's medical records also lack records from RG's previous doctors. RG's records do contain a template physical history form, which RG completed during his initial visit. However, RG's records do not reflect that Dr. Luyao actually reviewed the history form.

112. RG's medical records do not indicate that Dr. Luyao attempted to independently confirm RG's pain in any way. The records also do not describe the nature and intensity of RG's pain.

113. RG's medical records indicate that Dr. Luyao was aware that RG had a history of abusing Oxycontin and that Dr. Luyao prescribed Methadose and Xanax to RG as a substitute for Oxycontin.

114. Between August 20, 2001 and October 5, 2001, Dr. Luyao prescribed Methadose and Xanax to RG with no documented plan or evaluation and without first obtaining previous physician records to document the accuracy of the medical and physical history that RG reported to her.

115. Methadose is a legend drug as defined by Section 465.003(8), Florida Statutes. Methadose contains methadone hydrochloride, which is a schedule II

controlled substance pursuant to Chapter 893, Florida Statutes. Methadone Hydrochloride is indicated for relief of severe pain, for detoxification treatment of narcotic addiction, or for temporary maintenance treatment of narcotic addiction. Methadone can produce drug dependence of the morphine type. Psychological dependence, physical dependence, and tolerance may develop upon repeated administration of methadone.

116. On October 29, 2001, RG died of methadone toxicity with severe bilateral bacterial pneumonia.

117. RG's medical records reveal that Dr. Luyao failed to recognize that RG was suffering from severe bilateral bacterial pneumonia.

118. On March 10, 2002, a Department expert reviewed the medical records of RG and submitted his findings to the Department.

119. The expert found that RG's records do not justify the course of treatment utilized by Dr. Luyao in her care of RG. The Department expert notes that although RG initially complained of knee and hip pain, neither of these problems is addressed in RG's medical records. Of particular concern to the Department expert, RG's records do not indicate whether the Methadone was being prescribed for pain control or for detoxification purposes. The expert also observed that Dr. Luyao's notes do not indicate that she reviewed a physical history for RG – this despite the fact that RG was a narcotics abuser, which should have led Dr. Luyao to conduct a very thorough review of RG's history and to request RG's previous medical records.

120. The Department expert remarked that a reasonably prudent physician would have referred RG to an addiction specialist or worked in conjunction with a psychiatrist in an attempt to detoxify RG. In addition, the expert opined that Dr. Luyao prescribed, dispensed, or administered legend drugs or other substances to RG in an inappropriate manner.

121. The Department expert concluded by opining that due to the absence of any documentation in RG's medical records justifying the use of Methadose, Dr. Luyao fell below the standard of care in her treatment and care of RG.

FACTS PERTAINING TO PATIENT J. B. Complaint No. 2001-20895

122. On or about August 3, 2000, Patient J. B., a 41 year-old female, ("JB") registered as Dr. Luyao's patient. JB completed a template history form in which she indicated her complaints of lower back and neck pain.

123. During her initial visit with Dr. Luyao, Dr. Luyao noted that JB "obtains pain meds from friends and family" and that JB has a history of cervical and lumbar pain due to spousal abuse. Dr. Luyao noted that JB had scars on her head and neck. During this initial visit, Dr. Luyao prescribed Oxycontin and Valium to JB. JB's records do not reflect that Dr. Luyao performed an examination of JB's musculoskeletal or neurological systems.

124. On October 23, 2000, JB visited Dr. Luyao to advise that the medications Dr. Luyao prescribed to her during her prior office visit of October 20, 2000 had been stolen. Without investigating the truth of this allegation and without counseling JB about medication theft, Dr. Luyao again prescribed Oxycontin and Valium to JB.

125. On December 28, 2000, JB again reported to Dr. Luyao that her pain medications had been stolen from her. Dr. Luyao noted that JB seemed intoxicated, that JB's story about her medications was not adding up, and that it was JB's second attempt to obtain medications using this story. Despite her concerns, Dr. Luyao again issued new prescriptions to JB for Oxycontin and Demerol without obtaining independent confirmation that JB's medications had been stolen. Dr. Luyao's notes for this visit indicate that a urinalysis drug screen for JB was ordered. However, there is no indication in the records that JB actually underwent the procedure or that Dr. Luyao took any measures to ensure JB received the drug screen.

126. Several office visits later, on April 25, 2001, JB presented to Dr. Luyao's office. Portions of Dr. Luyao's notes for this visit are not legible, however, it is clear that her notes make reference to an incident in which someone went to JB's home to purchase Oxycontin. Dr. Luyao's notes go on to reference something about a police investigation related to the incident. Once again, Dr. Luyao prescribed Oxycontin and Valium to JB.

127. JB returned to Dr. Luyao's office on June 18, 2001. During this visit, Dr. Luyao noted that she would order an MRI of JB's cervical spine and lower spine. JB's records do not reflect that the MRI was ever performed or that Dr. Luyao attempted to ensure that JB received the procedure.

128. Over the course of the fifteen-month period during which JB was Dr. Luyao's patient, Dr. Luyao issued multiple prescriptions to JB for controlled substances that included Oxycontin and Valium without ever conducting a complete physical

examination of JB or obtaining a laboratory or diagnostic test for JB. JB's medical records also lack a physical history for JB and records from JB's previous doctors.

129. JB's medical records do not indicate that Dr. Luyao attempted to independently confirm JB's pain in any way. The records also do not describe the nature and intensity of JB's pain.

130. On November 17, 2001, JB died of accidental acute oxycodone and benzodiazepine intoxication.

131. On March 7, 2002, a Department expert reviewed the medical records of JB and submitted a written report containing his findings.

132. The Department expert found that the medical records maintained by Dr. Luyao for JB do not document and justify the course of treatment Dr. Luyao utilized in the care of JB. Several deficiencies that were noted by the Department expert include inadequate and incomplete history and physical examination results and no documentation of a musculoskeletal or neurological exam. The Department expert notes that there is no justification in the records for continuing JB's use of Oxycontin given JB's reports of having medications stolen and illegally selling medications.

133. As to Dr. Luyao's prescribing practice, the Department expert opined that Dr. Luyao's practice of dispensing Oxycontin to JB in the absence of an adequate evaluation, etiology, or alternative therapy was unacceptable. The expert states that Dr. Luyao appeared to simply refill JB's Oxycontin prescription on a monthly or earlier basis without ever obtaining JB's old medical records or undertaking to ascertain the etiology of JB's continued pain. Finally, the expert opines that Dr. Luyao prescribed,

dispensed, or administered legend drugs or other substances to JB in an inappropriate manner.

134. The Department expert notes that JB fits none of the criteria of a candidate for opioid analgesia, namely, an established diagnosis, reliability, compliance with treatment, prior alternative treatment, and lack of addiction to narcotics.

135. Based on his review of JB's records, the Department expert concluded that Dr. Luyao fell below the standard of care in her treatment and management of JB.

FACTS PERTAINING TO PATIENT A. P. Complaint No. 2001-20889

136. On November 15, 2001, Patient A. P. ("AP"), a 34 year-old male, presented to Dr. Luyao with complaints of a work-related back injury. This was the first of only two visits by AP to Dr. Luyao; AP's second visit occurred on November 16, 2001.

137. Dr. Luyao's initial examination of AP on November 15, 2001 was limited to AP's heart, lungs, abdomen, and extremities. AP's records do not reflect that Dr. Luyao examined AP's back, which was the source of AP's chief complaint. AP's records also do not indicate that Dr. Luyao performed a neurological examination of AP. During his initial visit, AP completed a template history form. On the form, AP indicated that he was using Oxycontin 80 mg and Percocet. (AP's records do not reflect that Dr. Luyao ever reviewed this history form).

138. AP's records contain the results of an MRI dated April 14, 2001 and the results of a discography that AP underwent on September 5, 2001. AP's records do not reflect that Dr. Luyao ever reviewed these studies.

139. AP's records do not show that Dr. Luyao ever ordered any laboratory or diagnostic tests for AP or that Dr. Luyao ever obtained any prior medical records for AP, with the exception of the MRI and discography records referenced above.

140. During AP's November 15, 2001 visit, Dr. Luyao assessed AP with C3/C4 disc disease, lower back pain, and chronic L5/S1 disc disease. However, as stated above, AP's records for November 15, 2001 do not reflect that Dr. Luyao examined AP's cervical or lumbar spine or that Dr. Luyao performed a neurologic examination of AP.

141. Despite never examining the source of AP's pain, on November 15 and 16, 2001, Dr. Luyao prescribed various controlled substances to AP as treatment for AP's pain. Among these medications were Morphine Sulphate, Dilaudid, Xanax, and Oxycontin.

142. Morphine Sulfate is a legend drug as defined by Section 465.003(8), Florida Statutes. Morphine Sulfate is a Schedule II Controlled Substance pursuant to Chapter 893, Florida Statutes and is indicated for the management of moderate to severe pain. It has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

143. Dilaudid is a legend drug as defined by Section 465.003(8), Florida Statutes. Dilaudid contains hydromorphone, which is a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Hydromorphone is a powerful narcotic analgesic indicated for the relief of moderate to severe pain. It has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the

United States, and abuse of the substance may lead to severe physical and psychological dependence.

144. On November 16, 2001, just one day after his first visit to see Dr. Luyao, AP died of accidental polydrug toxicity.

145. On March 3, 2002, a Department expert reviewed AP's medical records and submitted a report on his findings.

146. In his findings, the Department expert initially notes that there are several deficiencies in AP's medical records. In particular, the expert comments that Dr. Luyao relied on the patient to complete a templated history, which Dr. Luyao fails to indicate that she has reviewed. The expert believes that if Dr. Luyao had reviewed AP's history, she would have noted that AP was a potential abuser of narcotics. The expert notes that there is no review of systems documented by Dr. Luyao. With regard to chronic pain syndrome, a review of systems is an important part of a patient's history that must be documented, according to the Department expert. In addition, the expert notes that Dr. Luyao failed to document a plan for treating AP's pain.

147. The Department expert is critical of Dr. Luyao's physical examination of AP. The expert notes that the examination Dr. Luyao performed was inadequate and points to the absence of any examination by Dr. Luyao of AP's musculoskeletal or neurologic systems. The Department expert goes on to opine that Dr. Luyao did not meet the applicable standard of care in her examination, assessment, and treatment of AP.

148. The expert opines that Dr. Luyao prescribed controlled substances to AP in an inappropriate manner.

149. The Department expert concludes his report by stating that Dr. Luyao fell below the standard of care in her initial management of AP. Most notably, the expert notes that it was inappropriate for Dr. Luyao to dispense the number and types of medications she dispensed to AP during AP's first visit.

FACTS PERTAINING TO PATIENT C. G. Complaint No. 2001-20893

150. On January 25, 2001, Dr. Luyao first saw Patient C. G. ("CG"), a 51 year-old female. CG completed a template history form in which she complained of neck, knee, shoulder, and back pain. Dr. Luyao performed a brief examination of CG's heart, lungs, abdomen, and extremities. CG's record for this visit does not reflect that Dr. Luyao performed a musculoskeletal or neurological examination of CG. CG's record indicates that Dr. Luyao examined CG's old medical records. Dr. Luyao prescribed Oxycontin to CG. There is no treatment plan reflected in CG's record for this visit or for any subsequent visits.

151. CG returned to Dr. Luyao's office on February 19, 2001. CG explained that she was early because she had used all of the Oxycontin prescribed to her during the prior visit. CG indicated that she had been taking four Oxycontin 80 mg daily. Dr. Luyao performed a brief examination of CG's heart, lungs, abdomen, and extremities and prescribed Oxycontin 80 mg, Soma, Valium, and Zoloft.

152. Zoloft contains sertraline, which is indicated for the treatment of depression.

153. On March 14, 2001, Dr. Luyao increased CG's Oxycontin prescription to 160 mg without explanation for the increase.

154. Dr. Luyao maintained CG on a regimen of Oxycontin and other narcotics for several months. Then on July 5, 2001, CG asked to be taken off of Oxycontin because she was afraid of the bad press Oxycontin was receiving. Dr. Luyao again performed a brief examination of CG's core organs and prescribed Lortab, Soma, Dilantin, and Desyrel.

155. Dilantin contains phenytoin sodium, which is indicated for the control of generalized tonic-clonic (grand mal) and complex partial seizures. Abrupt withdrawal of phenytoin in epileptic patients may precipitate status epilepticus. When, in the judgment of the clinician, the need for dosage reduction, discontinuation, or substitution of alternative antiepileptic medication arises, this should be done gradually.

156. Desyrel contains trazodone HCl, which is indicated for the treatment of depression.

157. On July 30, 2001, CG returned to Dr. Luyao's office with complaints of tingling and headaches. Dr. Luyao noted that CG mentioned having an electromyogram, however, there is no indication in CG's records that Dr. Luyao reviewed the results of this procedure. Dr. Luyao performed a brief examination limited to CG's core organs and diagnosed seizure disorder and neuritis. Dr. Luyao prescribed Neurontin and Methadone. There is no explanation in the record for how Dr. Luyao arrived at her diagnosis of seizure disorder.

158. Neurontin contains Gabapentin, which is indicated as adjunctive therapy in the treatment of partial seizures with and without secondary generalization in adults with epilepsy.

159. On August 14, 2001, CG returned complaining that she had been vomiting green bile for one week and that she had not been feeling well since she began taking the Methadone and Neurontin. Dr. Luyao performed a brief examination of CG's core organs and noted an assessment of neuritis and Oxycontin overuse. Dr. Luyao prescribed Methadone and Xanax.

160. On September 13, 2001, CG returned with complaints of severe pain. Dr. Luyao noted that CG was anxious about having to go to court. Dr. Luyao performed a brief exam and prescribed Methadone, Xanax, and Lortab.

161. On October 3, 2001, CG returned to Dr. Luyao's office and advised Dr. Luyao that beginning that weekend, she would have to spend her weekends in jail. Dr. Luyao performed a brief examination of CG and noted a diagnosis of seizure disorder and right rotator cuff tear. Dr. Luyao prescribed Methadone, Xanax, Lortab, Zoloft, Lorazepam, and Inderal. CG's record for this visit does not reflect how Dr. Luyao arrived at her diagnosis of rotator cuff tear and seizure disorder.

162. Lorazepam is indicated for the management of anxiety disorders or for the short-term relief of the symptoms of anxiety or anxiety associated with depressive symptoms.

163. Inderal contains propranolol hydrochloride and is indicated for the management of hypertension.

164. Clonazepam is a legend drug as defined by Section 465.003(8), Florida Statutes and is a Schedule IV controlled substance listed in Chapter 893, Florida Statutes. The abuse of clonazepam can lead to physical and psychological dependence. Clonazepam is indicated for the treatment of seizures.

165. On November 20, 2001, CG died of accidental hydrocodone toxicity with bilateral bronchial pneumonia. Less than one month earlier, CG's brother, RG, died under similar circumstances while under Dr. Luyao's care.

166. CG's medical records do not reflect that Dr. Luyao was aware of CG's bilateral bronchial pneumonia.

167. On March 14, 2002, a Department expert reviewed CG's medical records and submitted a report containing his findings to the Department.

168. The Department expert finds that Dr. Luyao fell below the applicable standard of care in her examination, diagnosis, assessment, and treatment of CG. The expert found no plans for treatment or referrals in CG's records. The expert remarks that long-term use of Oxycontin in the absence of alternative modalities and additional consultations is unacceptable. The expert further notes that if Dr. Luyao was interested in managing CG's pain, she would have involved other disciplines in the care of CG.

169. The Department expert notes several deficiencies in CG's medical records. According to the expert, CG's medical records do not justify Dr. Luyao's course of treatment of CG. The expert notes that Dr. Luyao simply refills pain medications and anxiolytics on a regular basis without ever documenting a medical justification for the prescriptions. Of particular concern to the expert were Dr. Luyao's diagnoses for

seizure disorder and rotator cuff tear, which the expert believes are not supported by CG's records in any way.

170. The expert opines that Dr. Luyao prescribed legend drugs to CG in an inappropriate manner given the inadequacy of Dr. Luyao's physical examinations of CG and Dr. Luyao's failure to document a complete physical and medical history for CG.

171. The Department expert concludes his report by stating that Dr. Luyao's approach to the management of CG's chronic pain fell below the standard of care.

FACTS PERTAINING TO PATIENT S. B. Complaint No. 2001-20897

172. On or about May 5, 2000, Patient S. B. ("SB"), a 29 year-old male, registered as Dr. Luyao's patient with complaints of back pain related to an automobile accident that occurred in 1994. SB completed a templated history form. Dr. Luyao performed a superficial physical examination of SB that was limited to SB's heart, lungs, abdomen, and extremities. Dr. Luyao's assessment of SB was lower back pain, for which she prescribed Percocet, Voltaren, and Zanaflex.

173. On May 23, 2000, SB returned to Dr. Luyao's office with complaints of back and right upper arm pain. Dr. Luyao performed another examination of SB, also limited to SB's heart, lungs, abdomen, and extremities. Again, Dr. Luyao's assessment was lower back pain. SB's records do not reflect that Dr. Luyao addressed SB's right upper arm pain in any way. Dr. Luyao prescribed Percocet.

174. On June 30, 2000, SB visited Dr. Luyao to seek treatment for chronic pain to the top of his leg. Dr. Luyao performed another brief examination of SB and

assessed SB with lower back pain. SB's records do not reflect that Dr. Luyao addressed SB's leg pain. SB was prescribed Lorcet.

175. On October 25, 2000, SB was arrested by a detective of the St. Lucie police department for attempting to obtain a controlled substance by fraud.

176. On November 28, 2000, SB advised Dr. Luyao that he had been arrested for attempting to obtain a controlled substance by fraud. SB's medical records do not indicate that Dr. Luyao addressed SB's arrest in any way. Instead, after learning of SB's recent arrest, Dr. Luyao prescribed Lorcet, Valium, and Soma to SB.

177. Over the course of the nineteen-month period during which SB was Dr. Luyao's patient, Dr. Luyao issued multiple prescriptions to SB for controlled substances that included Percocet, Hydrocodone, Oxycontin, Valium, Roxicet, Methadone, and Lorcet without ever conducting more than a cursory physical examination of SB and without ever obtaining a laboratory or diagnostic test for SB. SB's medical records also lack any records from SB's previous doctors.

178. SB's medical records do not indicate that Dr. Luyao attempted to independently confirm SB's pain in any way. The records also do not describe the nature and intensity of SB's pain.

179. Roxicet is a legend drug as defined by Section 465.003(8), Florida Statutes. Roxicet contains oxycodone hydrochloride, a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Roxicet is indicated for relief of moderate to severe pain. It has a high potential for abuse and has a currently accepted but limited

medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

180. Lorcet is a legend drug as defined by Section 465.003(8), Florida Statutes, and contains hydrocodone bitartrate, a Schedule III controlled substance listed in Chapter 893, Florida Statutes. Lorcet is indicated for the relief of moderate to moderately severe pain. The abuse of Lorcet can lead to physical or psychological dependence.

181. On November 24, 2001, SB died of accidental polydrug toxicity (hydrocodone, methadone).

182. On March 7, 2002, a Department expert reviewed the medical records of SB and submitted a written report regarding those records.

183. The Department expert opines that Dr. Luyao fell below the standard of care in her maintenance of SB's medical records. Specifically, the Department expert notes that SB's records do not adequately document SB's patient history and physical examination results. The expert also notes that SB's records reflect that Dr. Luyao did not attempt to procure SB's prior medical records, that Dr. Luyao performed only inadequate and superficial exams of SB, that SB's records lack any significant entries with regard to SB's office visits, and that SB's records fail to justify Dr. Luyao's decision to continue SB on narcotics in light of SB's arrest for prescription fraud.

184. With regard to Dr. Luyao's prescribing practice, the Department expert opined that Dr. Luyao appeared to simply refill SB's prescriptions without justification. In particular, the Department expert notes that Dr. Luyao failed to delineate the cause

of SB's pain in that she did not take an adequate history from SB, perform an adequate physical exam of SB, or request a diagnostic study for SB. The Department expert notes that Dr. Luyao did nothing to obtain an etiology for SB's pain or to seek alternative pain modalities for SB. The Department expert also questions Dr. Luyao's professional judgment in continuing to prescribe narcotics to SB after SB was arrested for prescription fraud. Finally, the expert opines that Dr. Luyao prescribed legend drugs to SB in an inappropriate manner.

185. The Department expert concludes his report by opining that Dr. Luyao fell below the standard of care in her treatment and management of SB's chronic back pain.

FACTS PERTAINING TO PATIENT M. K. Complaint No. 2001-22336

186. On June 11, 2001, an investigator from the Medicaid Fraud Control Unit of the office of the Attorney General acting in an undercover capacity presented to Dr. Luyao's office posing as Patient M.K. ("MK") and asked to see Dr. Luyao.

187. After filling out a brief medical history form, MK was taken to an examining room where Dr. Luyao's assistant recorded MK's weight and blood pressure.

188. Several minutes later, Dr. Luyao entered the examining room and inquired about the source of MK's pain. MK advised Dr. Luyao that he had suffered a hip and leg injury during a work-related accident. Dr. Luyao did not perform a physical examination of MK to confirm MK's injuries.

189. Dr. Luyao proceeded to ask MK to provide her with his medical records, which MK agreed to do. MK asked Dr. Luyao to prescribe pain medications to him until

he could return with his medical records in two weeks. Dr. Luyao wrote MK prescriptions for Oxycontin, 80 mg., 30 tablets, Roxicodone, 30 mg., 30 tablets, and Xanax, 2 g., 15 tablets.

190. During MK's visit on June 11, 2001, Dr. Luyao did not conduct a physical examination of MK and did not obtain a physical history or document a diagnosis or treatment plan justifying the medications prescribed to MK.

191. On June 25, 2001, MK made his second undercover visit to Dr. Luyao's office.

192. Dr. Luyao's assistant recorded MK's weight, blood pressure, and pulse and instructed MK to wait for Dr. Luyao in an examining room. Dr. Luyao entered after several minutes.

193. MK provided Dr. Luyao with a copy of some medical records he had obtained during an undercover investigation in 1999. These records indicated that MK had some heart-related problems, but did not reflect that MK suffered from hip or leg pain.

194. Dr. Luyao reviewed MK's records and commented about the lack of notes in the records regarding MK's hip or leg pain. MK explained to Dr. Luyao that his medical records pre-dated the accident which caused his hip and leg pain.

195. MK's medical records do not indicate that Dr. Luyao attempted to independently confirm MK's pain in any way. The records also do not describe the nature and intensity of MK's pain.

196. Dr. Luyao briefly listened to MK's lungs using a stethoscope and then

wrote MK prescriptions for Oxycontin, 80 mg., 60 tablets, Roxicodone, 30 mg., 90 tablets, and Xanax, 2 g., 30 tablets.

197. Roxicodone is a legend drug as defined by Section 465.003(8), Florida Statutes. Roxicodone is semi-synthetic opiate that contains oxycodone hydrochloride, a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Roxicodone is an opioid analgesic indicated for relief of moderate to severe pain. It has a high potential for abuse and has a currently accepted but limited medical use in treatment in the United States, and abuse of the substance may lead to severe physical and psychological dependence.

198. Cipro contains Ciprofloxacin and is indicated for the treatment of infections caused by susceptible strains of certain microorganisms. Convulsions, increased intracranial pressure, and toxic psychosis have been reported in patients receiving quinolones, including ciprofloxacin. Ciprofloxacin may also cause central nervous system events including: dizziness, confusion, tremors, hallucinations, depression, and, rarely, suicidal thoughts or acts.

199. Viagra contains Sildenafil citrate and is indicated for the treatment of erectile dysfunction.

200. During MK's visit on June 25, 2001, Dr. Luyao did not conduct a physical examination of MK and did not obtain a physical history or document a diagnosis or treatment plan justifying the medications prescribed to MK.

201. On July 24, 2001, MK made his third undercover visit to Dr. Luyao's office.

202. As with the previous visits, a medical assistant recorded MK's weight, blood pressure, and pulse and Dr. Luyao listened to MK's lungs.

203. During this visit, MK asked Dr. Luyao for a prescription for Viagra.

204. Dr. Luyao wrote MK prescriptions for Oxycontin, 80 mg., 60 tablets, Roxicodone, 30 mg., 90 tablets, Xanax, 2 g., 30 tablets, and Viagra, 100 mg., 6 tablets.

205. During MK's visit on July 24, 2001, Dr. Luyao did not conduct a physical examination of MK and did not obtain a physical history or document a diagnosis or treatment plan justifying the medications prescribed to MK.

206. On August 23, 2001, MK made his fourth undercover visit to Dr. Luyao's office during which Dr. Luyao prescribed Oxycontin, 80 mg., 60 tablets and Roxicodone, 30 mg., 90 tablets to MK without conducting a physical examination of MK or obtaining a laboratory or diagnostic test for MK.

207. On September 21, 2001, MK made his fifth undercover visit to Dr. Luyao's office. During this visit, Dr. Luyao prescribed Roxicodone, 30 mg., 120 tablets, Viagra, 100 mg., 7 tablets, Xanax, 2 mg., 30 tablets, and Oxycontin, 80 mg., 60 tablets to MK without conducting a physical examination of MK or obtaining a laboratory or diagnostic test for MK.

208. At the end of MK's September 21, 2001 visit, Dr. Luyao proceeded to schedule MK's next visit. When MK requested that Dr. Luyao schedule his next visit for a date which was later than the one recommended by Dr. Luyao, Dr. Luyao advised MK that he would "run out of dope by then."

209. On October 19, 2001, MK made his final undercover visit to Dr. Luyao's

office.

210. In addition to prescribing Oxycontin, 80 mg., 60 tablets and Roxicodone, 30 mg., 120 tablets to MK, Dr. Luyao also prescribed Cipro, 500 mg., 20 tablets to MK.

211. When MK initially asked Dr. Luyao for a Cipro prescription, Dr. Luyao laughed and told MK that he did not need Cipro. MK responded that he knew that he did not need Cipro, but that Medicaid would pay for it. Dr. Luyao prescribed the Cipro to MK.

212. During MK's October 19, 2001 visit, Dr. Luyao did not perform a physical examination of MK or obtain a laboratory or diagnostic test for MK.

213. Dr. Luyao failed to practice medicine with an acceptable level of care in the treatment of patients KN, WA, JH, ES, TS, DW, RG, JB, AP, CG, SB, and MK as follows: by failing to perform adequate initial and follow-up physical examinations of said patients; by inappropriately and excessively prescribing controlled substances to said patients without documenting treatment plans or evaluations of the appropriateness of the continued treatment by controlled substances; by failing to maintain updated histories for said patients; by failing to ascertain the etiology of each patient's pain; and by failing to obtain previous physician records and study results to document the accuracy of the medical and physical histories said patients reported.

214. Dr. Luyao inappropriately and excessively prescribed controlled substances to patients KN, WA, JH, ES, TS, DW, RG, JB, AP, CG, SB, and MK as follows: by prescribing controlled substances to said patients over a long period of time without ascertaining the etiology of their pain; by prescribing controlled substances over a long

period of time to patients which Dr. Luyao knew to be drug abusers; by prescribing controlled substances to said patients in quantities, combinations, and dosages that were not in the patients' best interest.

215. Dr. Luyao failed to keep medical records justifying the course of treatment of patients KN, WA, JH, ES, TS, DW, RG, JB, AP, CG, SB, and MK in that she failed to document the following: adequate histories and assessments of said patients' physical conditions, descriptions of the nature and intensity of said patients' pain, complete physical examinations for said patients, counseling regarding use of controlled substances, justifications for the prolonged use of highly addictive controlled substances, long-term treatment plans, and reevaluations of the appropriateness of continued treatment by controlled substances.

216. Dr. Luyao's inappropriate prescribing practices, her practice below the standard of care, and her failure to maintain adequate medical records for her patients presents an immediate and serious danger to the health, safety, and welfare of the public.

217. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to prescribe, administer, and dispense controlled substances in the State. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to prescribe drugs with a high potential for abuse and harm. Excessive and inappropriate prescribing of highly addictive controlled substances to patients presents a danger to the public health and does not correspond

to that level of professional conduct expected of one licensed to practice medicine in this state.

218. Dr. Luyao has demonstrated a flagrant disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of her patients. Dr. Luyao's egregious and repeated conduct of excessive and inappropriate prescribing of highly addictive and dangerous drugs, as well as her failure to practice medicine with that level of care, skill, and treatment that is recognized as acceptable, constitutes a breach of the trust and confidence that the Legislature placed in her by issuing her a license to practice medicine. This breach is particularly compelling in Dr. Luyao's case because of the gravity of the consequences to her patients.

219. Dr. Luyao's acts manifest such a pattern and propensity to excessively and inappropriately prescribe controlled substances that a continuation of this practice is likely to recur. In addition, her repeated acts of failure to practice medicine with that level of care, skill, and treatment that is recognized as being acceptable pose a serious and immediate danger to the public.

220. Nothing short of immediate suspension of Dr. Luyao's license will protect the public from Dr. Luyao. Dr. Luyao has demonstrated in the treatment of at least ten patients her inability to practice within an acceptable standard of care. She has repeatedly demonstrated a willingness to excessively and inappropriately prescribe dangerous and addictive narcotic drugs – with dire consequences to her patients. Dr. Luyao has abused the privilege of practicing medicine in this state.

CONCLUSIONS OF LAW

1. The Secretary of the Department of Health ("Secretary") has jurisdiction over this matter pursuant to Section 456.073, Florida Statutes, and Section 20.43(3)(g), Florida Statutes, as set forth above.

2. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Luyao has violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible, as defined by department rule in consultation with the board, medical records that justify the course of treatment of patients, including, but not limited to, patient histories, examination results, test results, or treatment plans.

3. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Luyao has violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice in that Dr. Luyao prescribed excessive and inappropriate quantities of controlled substances for patients KN, WA, JH, ES, TS, DW, RG, JB, AP, CG, SB, and MK. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

4. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Luyao has violated Section 458.331(1)(t), Florida Statutes, by failing to practice medicine

with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

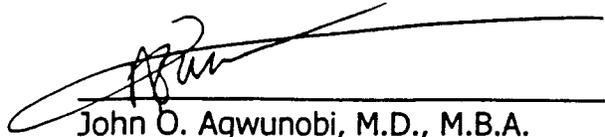
5. The Secretary finds that based on the facts set forth above, Dr. Luyao's continued practice as a physician constitutes an immediate and serious danger to the health, safety and welfare of the public and that this summary procedure is fair under the circumstances to adequately protect the public.

WHEREFORE, in accordance with Sections 120.54(4) and 120.60(6), Florida Statutes it is

THEREUPON ORDERED THAT:

1. The license of ASUNCION LUYAO, M.D. License Number ME 31572 is hereby immediately suspended.
2. A proceeding seeking formal suspension or revocation of the license to practice as a physician of ASUNCION LUYAO, M.D. will be promptly instituted and acted upon in compliance with Section 120.60(6), Florida Statutes and this order shall be filed in accordance with Section 120.54(4), Florida Statutes.
3. Dr. Luyao shall comply with the rules regarding the closing of a practice as set forth in Rule 64B8-10, Florida Administrative Code.

DONE and ORDERED this 22nd day of March, 2002.



John O. Agwunobi, M.D., M.B.A.
SECRETARY
Department of Health
2020 South East Capital Circle
Tallahassee, Florida 32399-0700

PREPARED BY:

Carol L. Gregg
Contract Attorney
Florida Bar No. 181515
Daniel Hernandez
Senior Attorney
Florida Bar No. 176834
Agency for Health Care
Administration
P.O. Box 14229
Tallahassee, Florida 32308
(850) 414-7166 - Telephone
(850) 488-7723 - Telefax

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Section 120.54(4)(a)3, 120.60(6), and 120.68, Florida Statutes, the Department's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Petition for Review in accordance with Rule 9.100, Florida Rules of Appellate Procedure, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within thirty (30) days of the date this Order is filed.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Kenon*
DATE 4/1/02

DEPARTMENT OF HEALTH

Petitioner,

v.

ASUNCION LUYAO, M.D.

Respondent.

AHCA CASE NOS.

ME 2001-20884, ME 2001-20886,
ME 2001-20887, ME 2001-20888,
ME 2001-20889, ME 2001-20890,
ME 2001-20891, ME 2001-20892,
ME 2001-20893, ME 2001-20895,
ME 2001-20897, ME 2001-22336.

LICENSE NO. ME 31572

NOTICE OF SCRIVENER'S ERROR

COMES NOW the Department of Health, hereinafter referred to as "the Department," and files this Notice of Scrivener's Error in regards to the Order of Emergency Suspension of License filed on March 22, 2002 against Dr. Luyao's license and states:

1. On March 22, 2002, the Department issued an Emergency Order of Suspension of License of Asuncion Luyao, M.D., license number ME 31572, hereinafter referred to as the "Order."

2. Thereafter, the Department discovered that typographical errors appear on Page 2, paragraphs 4 and 5 of the Order.

3. Specifically, paragraph 4 of the Order appears as follows:

Between December of 2000 and November of 2001, twelve of Dr. Luyao's patients died from drug intoxication or polydrug intoxication.

4. Paragraph 4 of the Order should be changed as follows:

Between December of 2000 and November of 2001, eleven of Dr. Luyao's patients died from drug intoxication or polydrug intoxication.

5. In addition, paragraph 5 of the Order appears as follows:

On January 7, 2000, Dr. Roger Mittleman, Chief Medical Examiner of the 19th Judicial Circuit, initiated twelve complaints with the Department after performing autopsies on the bodies of Dr. Luyao's twelve deceased patients. In each of his complaints, Dr. Mittleman opines that the combination of medications prescribed by Dr. Luyao to each of the deceased patients caused or contributed to their deaths.

6. Paragraph 5 of the Order should be changed as follows:

Since December 2000, Dr. Roger Mittleman, Chief Medical Examiner of the 19th Judicial Circuit, has initiated eleven complaints with the Department with respect to Dr. Luyao's eleven deceased patients. In each of his complaints, Dr. Mittleman opines that the combination of medications prescribed by Dr. Luyao to each of the patients caused or contributed to their deaths.

7. These changes, when inserted, do not add or delete to the meaning of the order. The changes are not substantive and are only a correction of a scrivener's error and thus are of no prejudice to Dr. Luyao.

8. This Notice takes effect upon filing with the Clerk of the Agency Nunc Pro Tunc.


Carol L. Gregg F/B/N 181515
Contract Attorney
Daniel Hernandez F/B/N 176834
Senior Attorney
Agency for Health Care Administration
P. O. Box 14229
Tallahassee, FL 32308
(850) 414-7166 - Telephone
(850) 488-7723 - Telefax

COUNSEL FOR DEPARTMENT:

Ephraim D. Livingston

Senior Attorney

Agency for Health Care Administration

P. O. Box 14229

Tallahassee, Florida 32317-4229

Florida Bar # 0121347

EDL/jlm

PCP Date: Nov. 9, 2001

PCP Members: Ashkar, Glotfelty, Rodriguez