

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2009-21428
LICENSE NO.: ME0083619

STEPHEN DUNCAN, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on August 5, 2011, in Jacksonville, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise full advised in the premises, the Board rejected the Settlement Agreement and offered a Counter Settlement Agreement which Respondent was given 7 days to accept. By email dated August 11, 2011, counsel for Respondent accepted the Board's Counter Settlement Agreement on behalf of Respondent. The Counter Settlement Agreement incorporates the original Settlement Agreement with the following amendments:

1. The fine set forth in Paragraph 2 of the Stipulated Disposition shall be amended to require a fine in the amount of \$50,000.00.

2. The costs set forth in Paragraph 3 of the Stipulated Disposition shall be set at \$9,956.88.

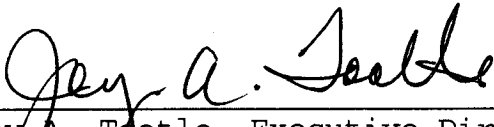
3. Respondent license shall be permanently restricted as follows: Respondent is permanently restricted from practicing weight loss outside of his customary OB/GYN practice.

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as amended.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 17th day of August, 2011.

BOARD OF MEDICINE



Joy A. Tootle, Executive Director
For GEORGE THOMAS, M.D., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to STEPHEN DUNCAN, M.D., 4321 Jackson View Drive, Tallahassee, Florida 32303; and 1845 Jaclif Court, Tallahassee, Florida 32308; to William E. Whitney, Esquire, Dunlap & Shipman, 1414 County Highway 283 South, Suite B, Santa Rosa Beach, Florida 32459; and by interoffice delivery to Veronica Donnelly, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 18th day of August, 2011.

Sandra Soto

Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2009-21428

STEPHEN W. DUNCAN, M.D.,

Respondent,

SETTLEMENT AGREEMENT

Stephen W. Duncan, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 83619.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of

Chapter 458, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Reprimand** - The Board shall reprimand the license of Respondent.
2. **Fine** - The Board of Medicine shall impose an administrative fine of \$25,000.00 against the license of Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer, within ninety (90) days from the date of filing of the Final Order accepting this Agreement, or within sixty (60) days from the date of the Probation Committee meeting scheduled on or about September 2, 2011, which ever is later, so that Respondent may request an extension of the payment term at the September 2, 2011, Probation Committee meeting. All fines shall be paid by check or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN NINETY (90) DAYS FROM THE DATE OF FILING OF THE FINAL ORDER ACCEPTING THIS AGREEMENT, OR WITHIN SIXTY (60) DAYS FROM THE DATE OF THE PROBATION COMMITTEE MEETING SCHEDULED

ON OR ABOUT SEPTEMBER 2, 2011, WHICH EVER IS LATER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case is currently ***seven thousand nine hundred fifty- six dollars and eighty- eights cents (\$7,956.88), but shall not exceed nine thousand nine hundred fifty- six dollars and eighty-eights cents (\$9,956.88).*** Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within ninety (90) days from the date of filing of the Final Order accepting this Agreement, or within sixty (60) days from the date of the Probation Committee meeting scheduled on or about September 2, 2011, which ever is later, so that Respondent may request an extension of the payment term at the September 2, 2011, Probation Committee meeting. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN NINETY (90) DAYS FROM THE DATE OF FILING OF THE FINAL ORDER ACCEPTING THIS AGREEMENT, OR WITHIN SIXTY (60) DAYS FROM THE DATE OF THE PROBATION COMMITTEE MEETING SCHEDULED ON OR ABOUT SEPTEMBER 2, 2011, WHICH EVER IS LATER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **Laws And Rules Course** - Respondent shall complete course, "Legal and Ethical Implications in Medicine Physician's Survival Guide-Laws and Rules" administered by the Florida Medical Association, or a Board-approved equivalent, within eighteen (18) months of the date of filing of the Final Order of the Board. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within eighteen (18) months of the date of filing of the Final Order incorporating this Agreement.

5. **Drug Course** - Respondent shall complete the course, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Misprescribing," sponsored

by the University of South Florida, or a Board-approved equivalent, within one year of the date of filing of the Final Order.

6. **Community Service** - Respondent shall perform **100 hours** of community service, within one year of the date of filing of the Final Order. Community Service shall be defined as the delivery of medical services directly to patients, or the delivery of other volunteer services in the community, without fee or cost to the patient or the entity, for the good of the people of the State of Florida. Community service shall be performed outside the physician's regular practice setting. Respondent shall submit a written plan for performance and completion of the community service to the Probation Committee for approval prior to performance of said community service. Affidavits detailing the completion of community service requirements shall be filed with the Board as required by the Probation Committee.

7. **Continuing Medical Education – "Risk Management"** - Respondent shall complete five (5) hours of Continuing Medical Education in "Risk Management" within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Medicine meeting.

8. **Restrictions** - Respondent shall not provide obesity / weight-loss treatment recommendations, including issuing a prescription, unless Respondent has:

(a) Performed or obtained a documented patient evaluation, including a history and physical examination, to establish the diagnosis for which any legend drug is to be prescribed; and

(b) Engaged in a discussion with the patient regarding the treatment options and the risks and benefits of the treatment.

Respondent shall maintain contemporaneous medical records meeting the requirements of Rule 64B8-9.003, Fla. Admin. Code, and any other applicable rule.

9. **Probation Language** - Effective on the date of the filing of the Final Order incorporating the terms of this Agreement, Respondent's license to practice medicine shall be placed on probation for a period of **2 years**. The purpose of probation is not to prevent Respondent from practicing medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and the profession and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

a) Restrictions During Probation - During the period of probation, Respondent's license shall be restricted as follows:

i. Indirect Supervision - Respondent shall practice obesity/weight loss medicine only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "supervisor", whose

responsibilities are set by the Board. The supervising physician shall be board certified in Respondent's specialty area unless otherwise provided by the Board.

ii. The monitor/supervisor must be a licensee under Chapter 458, Florida Statutes, in good standing and without restriction or limitation on his license. In addition, the Board may reject any proposed monitor/supervisor on the basis that he has previously been subject to any disciplinary action against his medical license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The monitor/supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board and be practicing within a reasonable distance of Respondent's practice, a distance of twenty (20) miles unless otherwise specifically provided for in the Settlement Agreement. The Board may also reject any proposed monitor/supervisor for good cause shown.

iii. **Temporary Approval** - The Board confers authority on the Chairman of the Probation Committee to temporarily approve Respondent's monitor/supervisor. To obtain this temporary approval, Respondent shall submit to the Chairman of the Probation Committee the name and curriculum vitae of the proposed monitor/supervisor at the time this agreement is considered by the Board. **Once a Final Order adopting the Agreement is filed, Respondent shall not practice obesity/weight loss medicine without an approved monitor/supervisor. Temporary approval shall only remain in effect until the next meeting of the Probation Committee.**

iv. The monitor/supervisor shall review 25% percent of Respondent's active obesity and/or weight-loss patient records at least once every quarter for the purpose of ascertaining compliance with standards applicable to obesity / weight-loss treatment. The monitor shall go to Respondent's office once every quarter and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

v. The monitor/supervisor shall submit reports on a quarterly/semiannual basis, in affidavit form, which shall include:

- 1) A brief statement of why Respondent is on probation;
- 2) A description of Respondent's practice (type and composition);
- 3) A statement addressing Respondent's compliance with the terms of probation;
- 4) A brief description of the monitor's relationship with Respondent;
- 5) A statement advising the Probation Committee of any problems which have arisen; and
- 6) A summary of the dates the monitor went to Respondent's office, the number of records reviewed, and the overall quality of the records reviewed, and the dates Respondent contacted the monitor.

vi. The monitor/supervisor shall report immediately to the Board any violations by Respondent of Chapters 456 or 458, Florida Statutes, and the rules promulgated thereto.

vii. **Reports From Respondent** - Respondent shall submit quarterly reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

- a) A brief statement of why Respondent is on probation;
- b) A description of practice location;
- c) A description of current practice (type and composition);
- d) A brief statement of compliance with probationary terms;
- e) A description of the relationship with monitoring physician;
- f) A statement advising the Board of any problems which have arisen; and
- g) A statement addressing compliance with any restrictions or requirements imposed.

viii. **Tolling Provisions** - In the event Respondent leaves the State of Florida for a period of thirty days or more or otherwise does not engage in the active practice of medicine in the State of Florida, then certain provisions of Respondent's probation (and only those provisions of the probation) shall be tolled

as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

- 1) The time period of probation shall be tolled;
- 2) The provisions regarding supervision whether direct or indirect by another physician, and required reports from the monitor/supervisor shall be tolled;
- 3) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled; and
- 4) Any provisions regarding community service shall be tolled.

b) Obligations/Requirements Of Probation - During the period of probation, Respondent shall comply with the following obligations and requirements:

- i. Respondent shall appear before the Probation Committee of the Board of Medicine at the first Committee meeting after probation commences, at the last meeting of the Committee preceding scheduled termination of the probation, and at such other times as requested by the Committee. Respondent shall be noticed by the Board staff of the date, time and place of the Committee meeting at which Respondent's appearance is required. Failure of Respondent to appear as requested or directed or failure of Respondent to comply with **any** of the terms of this agreement shall be considered a violation of the terms of this Agreement, and shall subject Respondent to disciplinary action.

ii. Respondent shall be responsible for ensuring that the monitor submits all required reports.

STANDARD PROVISIONS

1. **Appearance:** Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

2. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

3. **Continuing Medical Education** - Unless otherwise provided in this written agreement Respondent shall first submit a written request to the Probation Committee for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one (1) year of the date of filing of the Final Order in this matter. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the

Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

6. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

7. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

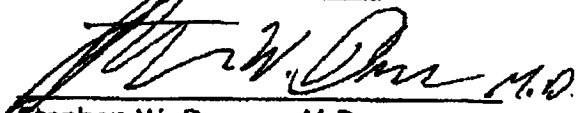
Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

8. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

9. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

10. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

SIGNED this 7th day of June, 2011.


Stephen W. Duncan, M.D.

Before me, personally appeared Stephen W. Duncan, whose identity is known to me by FLDL (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 7th day of June, 2011.

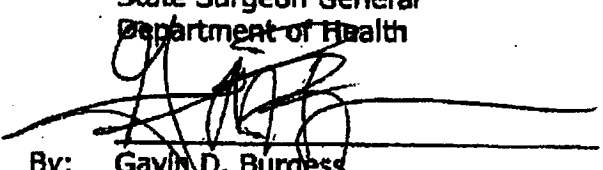



NOTARY PUBLIC

My Commission Expires: 12/9/11

APPROVED this 13th day of June, 2011.

H. Frank Farmer, Jr., M.D., Ph.D.
State Surgeon General
Department of Health


By: Gavin D. Burgess
Assistant General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2009-21428

STEPHEN DUNCAN, M.D.,

RESPONDENT.

AMENDED ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Amended Administrative Complaint before the Board of Medicine against the Respondent, Stephen Duncan, M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 83619.

3. Respondent's address of record is 1845 Jaclif Ct., Tallahassee, Florida, 32308.

4. Respondent is board certified in Obstetrics and Gynecology.

5. At all times material to this Complaint, Respondent was a registered dispensing practitioner as defined and authorized pursuant to Section 465.0276, Florida Statutes (2006-(2009).

6. At all times material to this Complaint, Respondent practiced medicine at various weight-loss clinics.

7. An investigation began against the Respondent after the Tallahassee Police Department (TPD), the Florida Department of Law Enforcement (FDLE), and the Florida Department of Health (DOH) all received complaints regarding the manner in which weight loss clinics were dispensing Phendimetrazine to patients seeking weight loss.

8. Phendimetrazine is a controlled substance that is a derivative of barbituric acid. This drug is a schedule III controlled substance under Chapter 893, Florida Statutes. A substance in schedule III has a potential for abuse less than the substances contained in schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence

or high psychological dependence.

9. From about late 2006 until May of 2008, the Respondent leased a portion of his obstetric/gynecology office located at Jaclif Court in Tallahassee, Florida, to K.W. and J.W., who then established the First Impression Weight Loss (First Impression) weight loss clinic. K.W. and J.W. are not licensed physicians, nurses, physician's assistants, or advanced registered nurse practitioners (ARNPs).

10. First Impression was one of the clinics being investigated by FDLE.

11. Respondent worked for K.W. and J.W. by issuing prescriptions to patients of First Impression. However, K.W., J.W., and the Respondent severed their professional relationship in or about May 2008.

12. After this professional relationship with K.W. and J.W. ended, Respondent established three Resolutions Weight Loss (Resolutions) clinics located in Tallahassee, Florida, Jacksonville, Florida, and Panama City, Florida.

13. Rule 64B8-9.012, Florida Administrative Code (FAC), establishes the Board of Medicine's standards for the prescribing of obesity drugs, as follows:

The prescription of medication for the purpose of enhancing weight loss should only be performed by physicians qualified by training and experience to treat obesity. All licensees are expected to abide by the following guidelines and standards in the utilization of any drug, any synthetic compound, any nutritional supplement, or herbal treatment, for the purpose of providing medically assisted weight loss.

(1) To justify the use of weight loss enhancers as set forth above, the patient must have a Body Mass Index (BMI) of 30 or above, or a BMI of greater than 27 with at least one comorbidity factor, or a measurable body fat content equal to or greater than 25% of total body weight for male patients or 30% of total body weight for women. The prescription of such weight loss enhancers is not generally appropriate for children. Any time such prescriptions are made for children, the prescribing physician must obtain a written informed consent from the parent or legal guardian of the minor patient in addition to complying with the other guidelines and standards set forth in this rule. BMI is calculated by use of the formula $BMI = kg/m^2$.

(2) Physicians in Florida are prohibited from prescribing, ordering, dispensing, or administering any weight loss enhancer that is both a serotonergic and anorexic agent unless the drug has been approved by the Food and Drug Administration (FDA) specifically for use in weight loss management. Selective serotonin re-uptake inhibitors (SSRIs) that have not been approved by the FDA for weight loss may not be prescribed, ordered, dispensed, or administered for such purposes.

(3) An initial evaluation of the patient shall be conducted prior to the prescribing, ordering, dispensing, or administering of any drug, synthetic compound, nutritional supplement or herbal treatment and such evaluation shall include an appropriate physical and complete history; appropriate tests related to medical treatment for weight loss; and appropriate medical referrals as indicated by the physical, history, and testing; all in accordance with general medical standards of care.

(a) The initial evaluation may be delegated to an appropriately educated and trained physician's assistant licensed pursuant to Chapter 458, F.S., or an appropriately educated and trained advanced registered nurse practitioner licensed pursuant to Chapter 464, F.S.

(b) If the initial evaluation required above is delegated to a physician's assistant or to an advanced registered nurse practitioner, then the delegating physician must personally review the resulting medical records prior to the issuance of an initial prescription, order, or dosage.

(4) Prescriptions or orders for any drug, synthetic compound, nutritional supplement or herbal treatment for the purpose of assisting in weight loss must be in writing and signed by the prescribing physician. Initial prescriptions or orders of this type shall not be called into a pharmacy by the physician or by an agent of the physician. Even if the physician is registered as a dispensing physician, a hard copy of the written prescription must be maintained in the patient's medical records for each time such weight loss enhancers are prescribed, ordered, dispensed, or administered.

(5) At the time of delivering the initial prescription or providing the initial supply of such drugs to a patient, the prescribing physician must personally meet with the patient and personally obtain an appropriate written informed consent from the patient. Such consent must state that there is a lack of scientific data regarding the potential danger of long term use of combination weight loss treatments, and shall discuss potential benefits versus potential risks of weight loss treatments. The written consent must also clearly state the need for dietary intervention and physical exercise as a part of any weight loss regimen. A copy of the signed informed consent shall be included in the patient's permanent medical record.

(6) Each physician who is prescribing, ordering, or providing weight loss enhancers to patients must assure that such patients undergo an in-person re-evaluation within 2 to 4 weeks of receiving a prescription, order, or dosage. The re-evaluation shall include the elements of the initial evaluation and an assessment of the medical effects of the treatment being provided. Any patient that continues on a drug, synthetic compound, nutritional supplement or herbal treatment assisted weight loss program shall be re-evaluated at least once every 3 months.

(7) Each physician who prescribes, orders, dispenses, or administers any drug, synthetic compound, nutritional supplement or herbal treatment for the purpose of assisting a patient in weight loss shall maintain medical records in compliance with Rule 64B8-9.003, F.A.C., and must also

reflect compliance with all requirements of this rule.

(8) Each physician who prescribes, orders, dispenses, or administers weight loss enhancers for the purpose of providing medically assisted weight loss shall provide to each patient a legible copy of the Weight-Loss Consumer Bill of Rights as set forth in Sections 501.0575(1)(a) through (e)3., F.S. The physician shall also conspicuously post said document in those rooms wherein patients are evaluated for weight loss treatment.

(9) Any physician who advertises practice relating to weight loss or whose services are advertised by another person or entity shall be responsible for assuring that such advertising meets the requirements of Rule 64B8-11.001, F.A.C. In addition advertising of weight loss treatment shall be considered false, deceptive, or misleading if it contains representations that:

- (a) Promise specific results;
- (b) Raise unreasonable expectations;
- (c) Claim rapid, dramatic, incredible, or safe weight loss;
- (d) State or suggest that diets or exercise are not required; or
- (e) Suggest that weight loss is effortless or magical.

14. Failure to comply with Rule 64B8-9.012, FAC, constitutes a violation of the Board's standards for the prescribing of obesity drugs.

Facts Specific to Patient C.E.

15. On or about October 25, 2006, Patient C.E. presented to First Impression for weight loss treatment.

16. During C.E.'s initial visit, a First Impression employee took Patient C.E.'s blood pressure and administered an electrocardiogram (EKG) to him. C.E. presented documents relating to recent blood work he had undergone.

17. At the end of C.E.'s initial visit, a First Impression employee

gave him a prescription for Phendimetrazine that was dispensed under Respondent's name.

18. From October 25, 2006, through May 2007, C.E. routinely presented to First Impression for weight loss treatment, at which times he received prescriptions for Phendimetrazine, which contained Respondent's name as the prescribing physician.

19. Respondent never evaluated, examined, or reevaluated C.E. In addition, Respondent never met or even spoke to C.E.

20. Respondent's medical records for Patient C.E. do not contain adequate information to determine which employees performed the initial evaluation and reevaluations, the licensure status of those employees, or who provided the Phendimetrazine prescriptions to the patient.

COUNT ONE

21. Petitioner realleges and incorporates paragraphs 1 through 20 as if fully set forth herein.

22. Section 458.331(1)(q), Florida Statutes (2006), subjects a physician to discipline for 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. For

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 intent.

23. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient C.E. in an inappropriate manner in one or more of the following ways:

- a. By failing to personally meet with Patient C.E. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance; and/or
- b. By continuing to prescribe Phendimetrazine without conducting an adequate reevaluation of Patient C.E. to assess the medical effects of the medication.

24. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006), by inappropriately prescribing Phendimetrazine to Patient C.E.

COUNT TWO

25. Petitioner realleges and incorporates paragraphs 1 through 20 as if fully set forth herein.

26. Section 458.331(1)(t), Florida Statutes (2006), subjects a physician to discipline for medical malpractice, which is defined in Section 456.50, Florida Statutes (2006), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

27. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "... The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. ..."

28. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to personally meet with Patient C.E. before prescribing and/or dispensing the initial prescription of Phendimetrazine to the patient; and/or
- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine.

29. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2006), by committing medical malpractice.

COUNT THREE

30. Petitioner realleges and incorporates paragraphs 1 through 20 as if fully set forth herein.

31. Section 458.331(1)(nn), Florida Statutes (2006), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

32. Between October 25, 2006, through May of 2007, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to personally obtain written informed consent from the patient before prescribing and/or dispensing the initial

prescription of Phendimetrazine; and/or

b. Failing to personally obtain informed consent from the patient prior to dispensing Phendimetrazine.

33. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006), by violating Rule 64B8-9.012, FAC.

COUNT FOUR

34. Petitioner realleges and incorporates paragraphs 1 through 20 as if fully set forth herein.

35. Section 458.331(1)(nn), Florida Statutes (2006), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

36. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

37. Respondent failed to keep adequate medical records regarding Patient C.E. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s)

who performed the initial evaluation and the follow-up evaluations;

b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who performed the initial evaluation and the follow-up evaluations; and/or

c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient.

38. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient D.B.

39. On or about November 3, 2006, Patient D.B. presented to First Impression for weight loss treatment.

40. Patient D.B. is an Advanced Registered Nurse Practitioner (ARNP), who began as a patient at First Impression at the request of K.W.

41. At D.B.'s initial visit, a First Impression employee took Patient

D.B.'s blood pressure, took a blood sample, and administered an EKG. Patient D.B. received a physical and history examination from a registered medical assistant.

42. At the conclusion of D.B.'s initial visit, A.W. provided him with 42 Phendimetrazine tablets, which contained Respondent's name as the prescribing physician. A.W. is not a physician, physician's assistant, or an ARNP.

43. Subsequent to Patient D.B.'s initial visit, First Impression received the laboratory results, which revealed abnormal glucose and cholesterol levels. However, medical records do not indicate that these abnormal results were considered during the course of treatment provided to D.B.

44. D.B. received weight loss treatment at First Impression between November 3, 2006, and February 2007, and received multiple prescriptions for Phendimetrazine, which were prescribed and/or dispensed under Respondent's name.

45. Respondent's medical records for Patient D.B. do not contain adequate information to determine which employee(s) performed the follow-up reevaluations, the licensure status of the employee(s), or who

provided the Phendimetrazine prescription(s) to the patient.

COUNT FIVE

46. Petitioner realleges and incorporates paragraphs 1 through 14 and 39 through 45 as if fully set forth herein.

47. Section 458.331(1)(q), Florida Statutes (2006), subjects a physician to discipline for 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. For 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 intent.

48. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient D.B. in an inappropriate manner in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation or by failing to delegate an appropriate medical professional to

conduct the initial evaluation;

- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine; and/or
- c. By failing to personally meet with Patient D.B. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance.

49. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006), by inappropriately prescribing Phendimetrazine to Patient D.B.

COUNT SIX

50. Petitioner realleges and incorporates paragraphs 1 through 14 and 39 through 45 as if fully set forth herein.

51. Section 458.331(1)(t), Florida Statutes (2006), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2006), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

52. The "level of care, skill, and treatment recognized in general

law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean " . . . The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

53. Respondent failed to meet the required standard of care by in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation or by failing to delegate an appropriate medical professional to conduct the initial evaluation;
- b. By prescribing medications to Patient D.B. prior to receiving the laboratory evaluation results;
- c. By failing to consider abnormal glucose and cholesterol levels in his treatment of D.B.;
- d. By failing to personally meet with Patient D.B. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance; and/or

e. By continuing to prescribe Phendimetrazine without adequately reevaluating Patient D.B.

54. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2006), by committing medical malpractice.

COUNT SEVEN

55. Petitioner realleges and incorporates paragraphs 1 through 14 and 39 through 45 as if fully set forth herein.

56. Section 458.331(1)(nn), Florida Statutes (2006), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

57. Between November 2006 and February 2007, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to conduct, or failing to delegate to an appropriately trained licensee to conduct, an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine;
- b. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of

Phendimetrazine;

- c. Failing to personally meet with Patient D.B. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance; and/or
- d. Continuing to prescribe Phendimetrazine without conducting an adequate reevaluation of Patient D.B.

58. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006), by violating Rule 64B8-9.012, FAC.

COUNT EIGHT

59. Petitioner realleges and incorporates paragraphs 1 through 14 and 39 through 45 as if fully set forth herein.

60. Section 458.331(1)(nn), Florida Statutes (2006), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

61. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

62. Respondent failed to keep adequate medical records regarding Patient D.B. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the follow-up evaluations;
- b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who performed the follow-up evaluations; and/or
- c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient.

63. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient T.C.

64. In or around February 2007, Patient T.C. first presented to First

Impression to receive weight loss treatment.

65. During T.C.'s initial visit, a First Impression's employee took Patient T.C.'s blood pressure, took a blood sample, and administered an EKG.

66. At the end of T.C.'s initial visit, a First Impression employee dispensed to Patient T.C. a prescription for Phendimetrazine, which contained Respondent's name as the prescribing physician.

67. T.C. presented to First Impression for weight loss treatment from February 2007 through approximately March 26, 2008. During that time, Patient T.C. routinely received prescriptions for Phendimetrazine prescribed and/or dispensed under Respondent's name.

68. Patient T.C. obtained a laboratory evaluation, which revealed an elevated liver function, glucose level, and triglycerides level. The liver metabolizes medications and may affect the safety of prescribed medications. However, medical records fail to indicate that Respondent considered these laboratory results in his treatment of T.C.

69. Patient T.C. was never evaluated by Respondent, and never met or spoke to Respondent.

70. Respondent's medical records for Patient T.C. do not contain

adequate information to determine which employee(s) performed the initial evaluation and reevaluations, the licensure status of the employee(s), or who provided the Phendimetrazine prescription(s) to the patient.

COUNT NINE

71. Petitioner realleges and incorporates paragraphs 1 through 14 and 64 through 70 as if fully set forth herein.

72. Section 458.331(1)(q), Florida Statutes (2006-2007), subjects a physician to discipline for 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. For 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 intent.

73. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient T.C. in an inappropriate manner in one or more of the following ways:

- a. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine; and/or
- b. By failing to personally meet with Patient T.C. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance.

74. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006-2007), by inappropriately prescribing Phendimetrazine to Patient T.C.

COUNT TEN

75. Petitioner realleges and incorporates paragraphs 1 through 14 and 64 through 70 as if fully set forth herein.

76. Section 458.331(1)(t), Florida Statutes (2006-2007), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2006-2007), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

77. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified

in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean " . . . The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

78. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to adequately assess T.C.'s laboratory results, which revealed an elevated liver function, which could affect the safety of the prescribed medication; and/or
- b. By failing to personally meet with Patient T.C. before having the initial prescription of Phendimetrazine dispensed to the patient.

79. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2006-2007), by committing medical malpractice.

COUNT ELEVEN

80. Petitioner realleges and incorporates paragraphs 1 through 14 and 64 through 70 as if fully set forth herein.

81. Section 458.331(1)(nn), Florida Statutes (2006-2007), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

82. Between February 2007 through approximately March 26, 2008, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- b. Failing to personally meet with Patient T.C. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance;
- c. By failing to adequately assess T.C.'s laboratory results, which revealed an elevated liver function, which could affect the safety of the prescribed medication; and/or
- d. Continuing to prescribe Phendimetrazine without conducting an adequate reevaluation of Patient T.C.

83. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006-2007), by violating Rule 64B8-

9.012, FAC.

COUNT TWELVE

84. Petitioner realleges and incorporates paragraphs 1 through 14 and 64 through 70 as if fully set forth herein.

85. Section 458.331(1)(nn), Florida Statutes (2006-2007), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

86. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

87. Respondent failed to keep adequate medical records regarding Patient T.C. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the initial evaluation and the follow-up evaluations;
- b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of

individual(s) who performed the initial evaluation and the follow-up evaluations;

c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient; and/or

d. By failing to document the course and treatment of the patient, by failing to document the consideration of Patient T.C.'s laboratory results as it pertained to his treatment.

88. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006-2007), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient B.F.

89. Between March 15, 2007, and July 3, 2008, Patient B.F. presented to First Impression for weight loss treatment.

90. During B.F.'s initial visit, a First Impression's employee took Patient B.F.'s blood pressure, took a blood sample, and administered an EKG.

91. Patient B.F. was not initially evaluated by Respondent, a

physician, ARNP, or trained physician's assistant.

92. At the end of B.F.'s initial visit, an employee told Patient B.F. that her blood work needed to be evaluated prior to receiving any medications. Patient B.F.'s laboratory results ultimately revealed an elevated glucose and borderline high normal thyroid function. Medical records do not indicate that Respondent considered these laboratory results in his treatment of Patient B.F.

93. Approximately one week after her initial presentation to First Impressions, B.F. went back to First Impression and was provided a prescription for Phendimetrazine, which contained Respondent's name as the prescribing physician.

94. During Patient B.F.'s treatment at First Impression, she routinely received prescriptions for Phendimetrazin, which contained Respondent's name as the prescribing physician.

95. Respondent's medical records for Patient B.F. do not contain adequate information to determine which employee(s) performed the initial evaluation and reevaluations, the licensure status of the employee(s), or who provided the Phendimetrazine prescription(s) to the patient.

COUNT THIRTEEN

96. Petitioner realleges and incorporates paragraphs 1 through 14 and 89 through 95 as if fully set forth herein.

97. Section 458.331(1)(q), Florida Statutes (2006-2008), subjects a physician to discipline for 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. For 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 intent.

98. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient B.F. in an inappropriate manner in one or more of the following ways:

- a. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;

b. By failing to personally meet with Patient B.F. before having the initial prescription of Phendimetrazine dispensed to the patient; and/or

c. By continuing to prescribe Phendimetrazine without adequately reevaluating Patient B.F.

99. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2006-2008), by inappropriately prescribing Phendimetrazine to Patient B.F.

COUNT FOURTEEN

100. Petitioner realleges and incorporates paragraphs 1 through 14 and 89 through 95 as if fully set forth herein.

101. Section 458.331(1)(t), Florida Statutes (2006-2008), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2006-2008), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure.

102. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the

standard of care to mean " . . . The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

103. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to conduct an adequate physical examination of the patient;
- b. By failing to adequately assess and/or consider the results of Patient B.F.'s laboratory results, which revealed an elevated glucose and borderline high normal thyroid function;
- c. By failing to personally meet with Patient B.F. before having the initial prescription of Phendimetrazine dispensed to the patient; and/or
- d. By continuing to prescribe Phendimetrazine without adequately reevaluating Patient B.F.

104. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2006-2008), by committing medical

malpractice.

COUNT FIFTEEN

105. Petitioner realleges and incorporates paragraphs 1 through 14 and 89 through 95 as if fully set forth herein.

106. Section 458.331(1)(nn), Florida Statutes (2006-2008), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

107. March 15, 2007, and July 3, 2008, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- b. Failing to personally meet with Patient B.F. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance; and/or
- c. Continuing to prescribe Phendimetrazine without conducting an adequate reevaluation of Patient B.F.

108. Based on the foregoing, Respondent has violated Section

458.331(1)(nn), Florida Statutes (2006-2008), by violating Rule 64B8-9.012, FAC.

COUNT SIXTEEN

109. Petitioner realleges and incorporates paragraphs 1 through 14 and 89 through 95 as if fully set forth herein.

110. Section 458.331(1)(nn), Florida Statutes (2006-2008), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

111. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

112. Respondent failed to keep adequate medical records regarding Patient B.F. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the initial evaluation and the follow-up evaluations;
- b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of

individual(s) who performed the initial evaluation and the follow-up evaluations;

- c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient; and/or
- d. By failing to indicate a consideration of the patient's elevated glucose and borderline high normal thyroid function, and the effects of such on the patient's treatment.

113. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006-2008), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient R.W.

114. Between August 9, 2007, and June 8, 2009, Patient R.W. received weight loss treatment at First Impression.

115. During R.W.'s initial visit, a First Impression employee took her blood pressure, took a blood sample, and administered an EKG.

116. R.W. presented to First Impression for approximately two years, during which time she received prescriptions for Phendimetrazine,

which contained Respondent's name as the prescribing physician.

117. On or about the tenth week of R.W.'s treatment, R.W.'s Body Mass Index (BMI) fell below 30. However, Respondent continued to prescribe Phendimetrazine to R.W.

118. Respondent's medical records for Patient R.W. do not contain adequate information to determine which employee(s) performed the initial evaluation and reevaluations, the licensure status of the employee(s), or who provided the Phendimetrazine prescription(s) to the patient. In addition, Respondent's medical records for Patient R.W. do not contain adequate documentation as required by Rule 64B8-9.012, FAC.

COUNT SEVENTEEN

119. Petitioner realleges and incorporates paragraphs one 1 through 14 and 114 through 118 as if fully set forth herein.

120. Section 458.331(1)(q), Florida Statutes (2007-2008), subjects a physician to discipline for 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. For 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 intent.

121. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient R.W. in an inappropriate manner in one or more of the following ways:

- a. By failing to personally meet with Patient R.W. before having the initial prescription of Phendimetrazine dispensed to the patient;
- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine; and/or
- c. By continuing to prescribe or failing to justify the continued prescription of Phendimetrazine after Patient R.W.'s BMI fell below 30.

122. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007-2008), by inappropriately prescribing Phendimetrazine to Patient R.W.

COUNT EIGHTEEN

123. Petitioner realleges and incorporates paragraphs one 1 through 14 and 114 through 118 as if fully set forth herein.

124. Section 458.331(1)(t), Florida Statutes (2007-2008), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2007-2008), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

125. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "... The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

126. Respondent failed to meet the required standard of care in one or more of the following ways:

a. By failing to personally meet with Patient R.W. before having

the initial prescription of Phendimetrazine dispensed to the patient; and/or

b. By continuing to prescribe Phendimetrazine after Patient R.W.'s BMI fell below 30.

127. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007-2008), by committing medical malpractice.

COUNT NINETEEN

128. Petitioner realleges and incorporates paragraphs one 1 through 14 and 114 through 118 as if fully set forth herein.

129. Section 458.331(1)(nn), Florida Statutes (2007-2008), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

130. Between August 9, 2007, and June 8, 2009, Respondent violated Rule 64B8-9.012, FAC, by:

a. Failing to personally obtain written Informed consent from the patient before delivering the initial prescription of Phendimetrazine;

- b. Failing to personally meet with Patient R.W. before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance; and/or
- c. Failing to maintain a copy of the written prescription in Patient R.W.'s medical file.

131. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2007-2008), by violating Rule 64B8-9.012, FAC.

COUNT TWENTY

132. Petitioner realleges and incorporates paragraphs one 1 through 14 and 114 through 118 as if fully set forth herein.

133. Section 458.331(1)(nn), Florida Statutes (2007-2008), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

134. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

135. Respondent failed to keep adequate medical records regarding Patient R.W. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the initial evaluation and the follow-up evaluations;
- b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who performed the initial evaluation and the follow-up evaluations; and/or
- c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient.

136. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2007-2008), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient T.W.

137. Between August 14, 2007, and October 9, 2007, Patient T.W. presented to First Impression for weight loss treatment.

138. At T.W.'s initial visit, a First Impression employee took T.W.'s

blood pressure and a blood sample, and administered an EKG to him.

139. The physical examination performed on Patient T.W. was insufficient in that it failed to assess Patient T.W.'s heart rate or the clarity of his lungs.

140. Between August 14, 2007, and October 9, 2007, T.W. was prescribed Phendimetrazine, which contained Respondent's name as the prescribing physician.

141. Respondent's medical records for Patient T.W. do not contain adequate information to determine which employee(s) performed the initial evaluation and reevaluations, the licensure status of the employee(s), or who provided the Phendimetrazine prescription(s) to the patient. In addition, Respondent's medical records for Patient T.W. do not contain adequate documentation as required by Rule 64B8-9.012, FAC.

COUNT TWENTY ONE

142. Petitioner realleges and incorporates paragraphs 1 through 14 and 137 through 141 as if fully set forth herein.

143. Section 458.331(1)(q), Florida Statutes (2007), subjects a physician to discipline for 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. For 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 intent.

144. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient T.W. in an inappropriate manner in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation of Patient T.W.; and/or
- b. By prescribing Phendimetrazine without evaluating Patient T.W.'s heart rate or lungs.

145. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007), by inappropriately prescribing Phendimetrazine to Patient T.W.

COUNT TWENTY TWO

146. Petitioner realleges and incorporates paragraphs 1 through 14 and 137 through 141 as if fully set forth herein.

147. Section 458.331(1)(t), Florida Statutes (2007), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2007), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

148. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "... The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

149. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation or by failing to delegate an appropriate medical professional to conduct the initial evaluation; and/or
- b. By prescribing Phendimetrazine without assessing the patient's heart rate.

150. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007), by committing medical malpractice.

COUNT TWENTY THREE

151. Petitioner realleges and incorporates paragraphs 1 through 14 and 137 through 141 as if fully set forth herein.

152. Section 458.331(1)(nn), Florida Statutes (2007-2008), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

153. Between August 14, 2007, and October 9, 2007, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to conduct an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine; and/or
- b. Failing to maintain a copy of the written prescription in

Patient T.W.'s medical file.

154. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2007), by violating Rule 64B8-9.012, FAC.

COUNT TWENTY FOUR

155. Petitioner realleges and incorporates paragraphs 1 through 14 and 137 through 141 as if fully set forth herein.

156. Section 458.331(1)(nn), Florida Statutes (2007-2008), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

157. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

158. Respondent failed to keep adequate medical records regarding Patient T.W. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the initial evaluation and the follow-up evaluations;

b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who performed the initial evaluation and the follow-up evaluations; and/or

c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient.

159. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2007-2008), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient J.B.

160. Between November 3, 2007, and approximately December 2007, Patient J.B. presented to First Impression for weight loss treatment.

161. During J.B.'s initial visit, a First Impression employee took her blood pressure and administered an EKG. However, Patient J.B. did not receive a physical examination.

162. At the end of J.B.'s initial visit, and every weekly visit thereafter, office staff provided J.B. a prescription for Phendimetrazine,

which contained Respondent's name as the prescribing physician.

163. J.B. continued to receive weight loss treatment at First Impression for approximately four to six more weeks and continued to receive prescriptions for Phendimetrazine, which contained Respondent's name as the prescribing physician.

164. Respondent's medical records for Patient J.B. do not contain adequate information to determine which employee(s) performed the initial evaluation and reevaluations, the licensure status of the employee(s), or who provided the Phendimetrazine prescription(s) to the patient. In addition, Respondent's medical records for Patient R.W. do not contain adequate documentation as required by Rule 64B8-9.012, FAC

COUNT TWENTY FIVE

165. Petitioner realleges and incorporates paragraphs 1 through 14 and 160 through 164 as if fully set forth herein.

166. Section 458.331(1)(q), Florida Statutes (2007), subjects a physician to discipline for 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. For 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 intent.

167. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient J.B. in an inappropriate manner in one or more of the following ways:

- a. Failing to conduct, or failing to delegate to an appropriately trained licensee to conduct, an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine;
- b. By failing to personally meet with Patient J.B. before having the initial prescription of Phendimetrazine dispensed to the patient;
- c. By failing to obtain personally obtain written informed consent from the patient before prescribing and/or dispensing the initial prescription of Phendimetrazine; and/or
- d. By continuing to prescribe Phendimetrazine without

adequately reevaluating Patient J.B. to assess the medical effects of the medication.

168. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2007), by inappropriately prescribing Phendimetrazine to Patient J.B.

COUNT TWENTY SIX

169. Petitioner realleges and incorporates paragraphs 1 through 14 and 160 through 164 as if fully set forth herein.

170. Section 458.331(1)(t), Florida Statutes (2007), subjects a physician to discipline for medical malpractice, which is defined in Section 456.50, Florida Statutes (2007), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

171. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "... The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is

recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

172. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation or failing to delegate an appropriate medical professional to conduct the initial evaluation;
- b. By failing to personally meet with Patient J.B. before having the initial prescription of Phendimetrazine dispensed to the patient; and/or
- c. By continuing to prescribe Phendimetrazine without adequately reevaluating Patient J.B.

173. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2007), by committing medical malpractice.

COUNT TWENTY SEVEN

174. Petitioner realleges and incorporates paragraphs 1 through 14 and 160 through 164 as if fully set forth herein.

175. Section 458.331(1)(nn), Florida Statutes (2006), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted

pursuant thereto.

176. Between November 3, 2007, and approximately December 2007, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to conduct, or failing to delegate to an appropriately trained licensee to conduct, an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine;
- b. Failing to personally meet with the patient before prescribing and/or dispensing the initial prescription of Phendimetrazine, a controlled substance;
- c. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- d. Continuing to prescribe Phendimetrazine without conducting an adequate reevaluation of the patient; and/or
- e. By failing to maintain copies of the prescriptions provided to the patient.

177. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2007), by violating Rule 64B8-9.012,

FAC.

COUNT TWENTY EIGHT

178. Petitioner realleges and incorporates paragraphs 1 through 14 and 160 through 164 as if fully set forth herein.

179. Section 458.331(1)(nn), Florida Statutes (2006), subjects a physician to discipline for violating any provision of Chapters 456 or 458, or any rules adopted pursuant thereto.

180. Rule 64B8-9.003, FAC, sets forth the standards for the adequacy of medical records.

181. Respondent failed to keep adequate medical records regarding Patient J.B. in violation of Rule 64B8-9.003, FAC, in one or more of the following ways:

- a. By failing to document the course and treatment of the patient, by failing to adequately identify the individual(s) who performed the initial evaluation and the follow-up evaluations;
- b. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of

individual(s) who performed the initial evaluation and the follow-up evaluations; and/or

- c. By failing to document the course and treatment of the patient, by failing to adequately identify the licensure of individual(s) who prescribed and/or dispensed the Phendimetrazine to the patient.

182. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2006), by violating Rule 64B8-9.003, FAC.

Facts Specific to Patient R.J.

183. On or about June 9, 2009, an undercover investigation was initiated jointly by several law enforcement entities at the office of Respondent known as Resolutions Weight Loss, located at 639 South Point Parkway, #103, Jacksonville, Florida.

184. An undercover agent posed as Patient R.J. for purposes of this investigation.

185. Patient R.J. was issued a device utilized to record conversations within the clinic.

186. Patient R.J. presented to Respondent's Jacksonville clinic, at

which time an office staff person took his height, weight, and blood pressure, and administered an EKG to Patient R.J. However, Patient R.J. refused to submit to a blood test.

187. Subsequently, staff person made contact with Respondent in Tallahassee, Florida, by way of videoconference.

188. At that time, Respondent introduced himself to Patient R.J. over the video and provided a brief overview of the weight loss program, including the medication and its effects. Respondent informed Patient R.J. only that the prescription medication he would be prescribed was safe and had been approved for 47 years. The videoconference meeting between Patient R.J. and Respondent lasted approximately six minutes.

189. The staff person in Respondent's office then discussed the diet plan in detail with Patient R.J.

190. At the conclusion of the June 9, 2009, initial visit, Patient R.J. was provided with 21 Phendimetrazine tablets. The Phendimetrazine prescription was provided to Patient R.J. under Respondent's name and filled by Alphameds Pharmacy Inc. in Tallahassee, Florida, on or about June 4, 2009. Thus, Respondent prescribed and filled the schedule III controlled substance Phendimetrazine to Patient R.J., five days before the

initial evaluation.

191. Respondent routinely instructed staff in Jacksonville that when a new patient called for an appointment, staff were to fax a request for Phendimetrazine to Alphameds in Tallahassee, Florida, which would then fill the prescription and mail the drugs back to the Jacksonville office to await the patient's first office visit.

192. Respondent routinely did not review the Jacksonville office's patient charts prior to prescribing Phendimetrazine.

193. The only employee at the Resolutions clinic located in Jacksonville was neither a licensed ARNP nor a physician's assistant.

COUNT TWENTY NINE

194. Petitioner realleges and incorporates paragraphs 1 through 14 and 183 through 193 as if fully set forth herein.

195. Section 458.331(1)(q), Florida Statutes (2008), subjects a physician to discipline for 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. For 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 intent.

196. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient R.J. in an inappropriate manner in one or more of the following ways:

- a. By failing to conduct an adequate initial examination prior to prescribing and/or dispensing medication;
- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- c. By failing to personally dispense Phendimetrazine to Patient R.J.;
- d. By prescribing Phendimetrazine to Patient R.J. prior to evaluating the patient;
- e. By filling the prescription for Phendimetrazine prior to evaluating Patient R.J.; and/or
- f. By prescribing Phendimetrazine to Patient R.J. prior to

obtaining laboratory results.

197. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008), by inappropriately prescribing Phendimetrazine to Patient R.J.

COUNT THIRTY

198. Petitioner realleges and incorporates paragraphs 1 through 14 and 183 through 193 as if fully set forth herein.

199. Section 458.331(1)(t), Florida Statutes (2008), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2008), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

200. The "level of care, skill, and treatment recognized in general law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean " . . . The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar

health care providers. . . ."

201. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to conduct an adequate initial evaluation or by failing to delegate an appropriate medical professional to conduct the initial evaluation;
- b. By prescribing Phendimetrazine to Patient R.J. prior to evaluating the patient;
- c. By filling the prescription for Phendimetrazine prior to evaluating Patient R.J.; and/or
- d. By prescribing Phendimetrazine to Patient R.J. without obtaining laboratory results.

202. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2008), by committing medical malpractice.

COUNT THIRTY ONE

203. Petitioner realleges and incorporates paragraphs 1 through 14 and 183 through 193 as if fully set forth herein.

204. Section 458.331(1)(nn), Florida Statutes (2008), allows the Board of Medicine to impose discipline against a physician for violating any

provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

205. On June 9, 2009, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to conduct, or failing to delegate to an appropriately trained licensee to conduct, an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine;
- b. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- c. Failing to personally dispense the medication to the patient; and/or
- d. Failing to maintain a copy of the prescriptions provided to the patient in the medical records.

206. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2008), by violating Rule 64B8-9.012, FAC.

COUNT THIRTY TWO

207. Petitioner realleges and incorporates paragraphs 1 through 14 and 183 through 193 as if fully set forth herein.

208. Section 458.331(1)(w), Florida Statutes (2008), subjects a physician to discipline for delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

209. Respondent instructed his employees of Resolutions in Jacksonville, Florida, none of whom were licensed as a physician, physician's assistant or ARNP, to conduct an adequate initial evaluation on, and dispense Phendimetrazine to, Patient R.J. when Respondent was not present.

210. Based on the foregoing, Respondent has violated Section 458.331(1)(w), Florida Statutes (2008), by delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

Facts Specific to Patient E.R.

211. On or about June 10, 2009, an undercover investigation took place at the Respondent's Resolutions Weight Loss clinic in Panama City, located at 1212 West 23rd Street, Panama City, Florida.

212. An undercover agent posed as Patient E.R. for purposes of this investigation, and utilized a devise to record conversations within the clinic.

213. Nurse A.W., a Licensed Practical Nurse (LPN), tended to Patient E.R. inside the clinic. Nurse A.W. was not an ARNP or physician's assistant.

214. Nurse A.W. performed height and weight checks, conducted an EKG, and checked Patient's E.R.'s blood pressure, which was slightly elevated.

215. Nurse A.W. administered a B-12 injection to Patient E.R. and obtained a blood sample. A B-12 shot is often called an "energy vitamin" because it has a major source of nutrients and provides an energy boost for the body. Nurse A.W. stated the results of the blood test would be available the following day.

216. Nurse A.W. informed Patient E.R. of the proposed diet plan and advised E.R. to inform her if he had any breakthrough hunger, at which time she would increase his pill dosage.

217. At the conclusion of his initial visit, Patient E.R. was provided with 21 Phendimetrazine tablets by an employee of Resolutions. The Phendimetrazine prescription was signed by the Respondent for Patient E.R. and filled by Alphameds Pharmacy Inc. in Tallahassee, Florida, on or about June 5, 2009. Thus, Respondent prescribed the schedule III controlled substance Phendimetrazine to Patient R.J., five days before the initial evaluation.

218. Respondent routinely instructed staff in Panama City that when a new patient called for an appointment, staff were to fax a request for Phendimetrazine to Alphameds in Tallahassee, Florida, which would then fill the prescription and mail the drugs back to the Panama City office to await the patient's first office visit.

219. Respondent did not participate in E.R.'s initial evaluation, nor did a physician, ARNP or a physician's assistant. None of Respondent's staff in the Panama City office was licensed as a physician, ARNP or physician's assistant.

COUNT THIRTY THREE

220. Petitioner realleges and incorporates paragraphs 1 through 14 and 211 through 219 as if fully set forth herein.

221. Section 458.331(1)(q), Florida Statutes (2008) subjects a physician to discipline for 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. For 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 intent.

222. Respondent prescribed and dispensed Phendimetrazine, a controlled substance, to Patient E.R. in an inappropriate manner in one or more of the following ways:

- a. By failing to conduct an adequate initial examination prior to prescribing and/or dispensing medication
- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- c. By failing to personally dispense Phendimetrazine to Patient

E.R.;

- d. By prescribing Phendimetrazine to Patient E.R. prior to evaluating the patient;
- e. By filling the prescription for Phendimetrazine prior to evaluating Patient E.R.; and/or
- f. By prescribing Phendimetrazine to Patient E.R. without obtaining laboratory results.

223. Based on the forgoing, Respondent violated Section 458.331(1)(q), Florida Statutes (2008), by inappropriately prescribing Phendimetrazine to Patient E.R.

COUNT THIRTY FOUR

224. Petitioner realleges and incorporates paragraphs 1 through 14 and 211 through 219 as if fully set forth herein.

225. Section 458.331(1)(t), Florida Statutes (2008), subjects a physician to discipline for committing medical malpractice, which is defined in Section 456.50, Florida Statutes (2008), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure

226. The "level of care, skill, and treatment recognized in general

law related to health care licensure" means the standard of care specified in Section 766.102. Section 766.102(1), Florida Statutes, defines the standard of care to mean "... The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers. . . ."

227. Respondent failed to meet the required standard of care in one or more of the following ways:

- a. By failing to conduct an adequate initial examination prior to prescribing and/or dispensing medication
- b. By failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;
- c. By failing to personally dispense Phendimetrazine to Patient E.R.
- d. By prescribing Phendimetrazine to Patient E.R. prior to evaluating the patient;
- e. By filling the prescription for Phendimetrazine prior to

evaluating Patient E.R.; and/or

f. By prescribing Phendimetrazine to Patient E.R. without obtaining laboratory results.

228. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2008), by committing medical malpractice.

COUNT THIRTY FIVE

229. Petitioner realleges and incorporates paragraphs 1 through 14 and 211 through 219 as if fully set forth herein.

230. Section 458.331(1)(w), Florida Statutes (2008), subjects a physician to discipline for delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

231. Respondent instructed his employees of Resolutions in Panama City, Florida, none of whom were licensed as a physician, physician's assistant or ARNP, to conduct an initial evaluation on E.R. and dispense Phendimetrazine to the patient, when Respondent was not present.

232. Based on the foregoing, Respondent has violated Section 458.331(1)(w), Florida Statutes (2008), by delegating professional

responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

COUNT THIRTY SIX

233. Petitioner realleges and incorporates paragraphs 1 through 14 and 211 through 219 as if fully set forth herein.

234. Section 458.331(1)(nn), Florida Statutes (2008), allows the Board of Medicine to impose discipline against a physician for violating any provision of Chapters 456 or 458, Florida Statutes, or any rules adopted pursuant thereto.

235. On June 10, 2009, Respondent violated Rule 64B8-9.012, FAC, by:

- a. Failing to conduct, or failing to delegate to an appropriately trained licensee to conduct, an adequate initial evaluation before prescribing, ordering, dispensing, or administering Phendimetrazine;
- b. Failing to personally obtain written informed consent from the patient before delivering the initial prescription of Phendimetrazine;

c. Failing to personally dispense the medication to the patient;
and/or

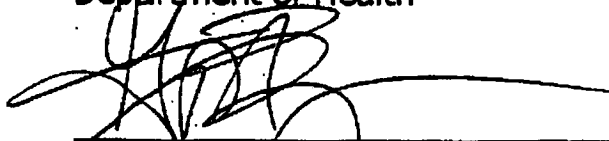
d. Failing to maintain a copy of the prescriptions provided to
the patient in the medical records.

236. Based on the foregoing, Respondent has violated Section 458.331(1)(nn), Florida Statutes (2008), by violating Rule 64B8-9.012, FAC.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 14th day of January, 2011.

State Surgeon General
Department of Health



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PCP Date: January 14, 2011

PCP Members: Ashkar, Chizner, Levine, Gerbert

DOH v. STEPHEN DUNCAN, M.D.

Case No. 2009-21428

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.