

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: The Emergency Restriction of the License of
Stephen Duncan, M.D.
License Number: ME 83619
Case Number: 2009-21428

ORDER OF EMERGENCY RESTRICTION OF LICENSE

Ana M. Viamonte Ros, M.D., M.P.H., State Surgeon General, ORDERS an Emergency Restriction on the license of Stephen Duncan, M.D. to practice as a physician in Florida. Dr. Duncan holds license number ME 83619. His address of record is 4321 Jackson View Drive, Tallahassee, Florida 32303. The following Findings of Fact and Conclusions of Law support the Emergency Restriction of Duncan's license to practice as a physician in the State of Florida.

FINDINGS OF FACT

1. The Department of Health (DOH) is the state agency charged with regulating the practice of medicine pursuant to Chapters 20, 456, and 458, Florida Statutes. Section 456.073(8), Florida Statutes (2009), empowers DOH to summarily restrict Dr. Duncan's license to practice as a physician in accordance with Section 120.60(6), Florida Statutes (2009).

2. At all times material to this Order, Dr. Duncan was licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes. Dr. Duncan is recognized by the Board of Medicine as board certified in obstetrics and gynecology.

3. At all times material to this Order, Dr. Duncan was registered as a dispensing practitioner, in Florida, pursuant to Section 465.0276, Florida Statutes.

4. At all times material, Dr. Duncan practiced at various weight loss businesses.

5. On or about October 21, 2009, DOH received a legally sufficient complaint against Dr. Duncan from DOH's Investigative Services Unit. The complaint alleged that Dr. Duncan was writing prescriptions and dispensing Phendimetrazine to patients seeking weight loss without meeting the patients for a face to face evaluation and, in some instances, never meeting the patients.

6. The investigation began after the Tallahassee Police Department (TPD), the Florida Department of Law Enforcement (FDLE), and DOH all received different complaints about the manner in which weight loss clinics were dispensing Phendimetrazine to patients seeking weight loss.

7. Phendimetrazine is a controlled substance that is a derivative of barbituric acid, and 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, 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.

8. On or about April 15, 2008, TPD received an anonymous complaint on their Crime Stoppers website indicating that Dr. Duncan was ordering large doses of Phendimetrazine and was not keeping proper records as to where the drugs were going. The complaint also alleged that Dr. Duncan was not meeting with the patients.

9. On or about June 2, 2008, FDLE contacted a Drug Enforcement

Administration (DEA) agent regarding the anonymous complaint. The DEA agent had already spoken to Dr. Duncan concerning his excessive ordering of Phendimetrazine.

10. On or about June 3, 2008, FDLE and DOH discussed the manner in which Dr. Duncan ordered and dispensed Phendimetrazine. The complaint was investigated jointly by FDLE and DOH.

11. From about late 2006 until May of 2008, Dr. Duncan leased a portion of his obstetric/gynecology office, at Jaclif Court in Tallahassee, Florida, to K.W. and J.W. for First Impression Weight Loss (First Impression), a weight loss clinic. K.W. and J.W. are not licensed physicians, doctors, nurses, or physician assistants.

12. First Impression was one of the clinics investigated by FDLE.

13. Dr. Duncan worked for K.W. and J.W. by issuing prescriptions to patients of First Impression. However, in about May 2008, K.W., J.W., and Dr. Duncan severed their professional relationship.

14. After his professional relationship with K.W. and J.W. ended, Dr. Duncan began his own chain of weight loss clinics. Three known clinics are in Tallahassee, Jacksonville, and Panama City, Florida, operating under the name Resolutions Weight Loss (Resolutions).

PATIENT D.B.

15. On or about November 3, 2006, Patient D.B. began as a patient at First Impression.

16. DOH obtained D.B.'s medical records and D.B. was interviewed by FDLE and DOH.

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

18. At D.B.'s first screening visit, D.B. had his blood pressure evaluated, gave blood work, and was given an electrocardiogram (EKG). An EKG measures the electrical activity of a person's heart.

19. At the end of D.B.'s first visit, he was given 42 Phendimetrazine tablets by A.W who was not a physician assistant or ARNP.

20. D.B. continued to visit First Impression until February 2007. All D.B.'s Phendimetrazine prescriptions were written by Dr. Duncan.

21. D.B. was never evaluated by Dr. Duncan and never met Dr. Duncan.

PATIENT C.E.

22. On or about October 25, 2006, Patient C.E. began as a patient at First Impression. C.E. was interviewed by FDLE and DOH.

23. During the investigation, DOH obtained C.E.'s medical records.

24. At C.E.'s first screening visit, he had his blood pressure evaluated, was given an EKG by office staff, and presented documents relating to recent blood work.

25. At the end of C.E.'s first visit, he was given a prescription for Phendimetrazine written by Dr. Duncan.

26. C.E. continued at First Impression for many months, and Dr. Duncan wrote C.E.'s Phendimetrazine prescriptions.

27. C.E. was never evaluated by Dr. Duncan and never met Dr. Duncan.

PATIENT T.C.

28. On or about February 21, 2007, Patient T.C. began as a Patient with First Impression. T.C. was interviewed by DOH and FDLE.

29. During the investigation, DOH obtained T.C.'s medical records.

30. At T.C.'s first screening visit, her blood pressure was evaluated and she was given an EKG by office staff.

31. At the end of T.C.'s first visit, she was given a prescription for Phendimetrazine written by Dr. Duncan.

32. T.C. continued at First Impression for approximately a year, and Dr. Duncan wrote T.C.'s Phendimetrazine prescriptions.

33. T.C. was never evaluated by Dr. Duncan and never met Dr. Duncan.

PATIENT J.B.

34. On or about November 3, 2007, Patient J.B. began as a patient of First Impression. J.B. was interviewed by DOH and FDLE.

35. During the investigation, DOH obtained J.B.'s medical records.

36. During J.B.'s visit to the clinic, her blood pressure was evaluated and she was given an EKG by office staff.

37. At the end of J.B.'s first visit, and every weekly visit thereafter, J.B. was given a prescription for Phendimetrazine written by Dr. Duncan.

38. J.B. continued at First Impression for approximately four to six more weeks, and Dr. Duncan wrote J.B.'s Phendimetrazine prescriptions.

39. J.B. was never evaluated by Dr. Duncan and never met Dr. Duncan.

PATIENT R.J.

40. On or about June 9, 2009, an undercover operation took place at the office of Dr. Duncan, also known as Resolutions, at 639 South Point Parkway, #103, Jacksonville, Florida.

41. The undercover agent's name for purposes of this operation was Patient R.J.

42. During this investigation, DOH obtained R.J.'s medical records.

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

44. R.J. was evaluated by an unidentified female who took his height, weight, and blood pressure. R.J. then refused to give blood stating he is "deathly afraid of needles." The unidentified female gave Patient R.J. an EKG.

45. The unidentified female stated that R.J.'s EKG test is a "good one," and made contact with Dr. Duncan in Tallahassee, Florida via video link.

46. Dr. Duncan introduced himself to R.J. over the video link and gave a brief overview of the weight loss program including the medication and its effects. Dr. Duncan only informed R.J. that the prescription medication he was given is safe and had been approved for 47 years. The internet meeting between R.J. and Dr. Duncan was approximately six minutes long.

47. The unidentified female went over the diet plan, in detail, with R.J.

48. At the end of his visit, R.J. received 21 Phendimetrazine tablets. A Phendimetrazine prescription was written by Dr. Duncan for R.J., but had been filled by Alphameds Pharmacy Inc. in Tallahassee, Florida on or about June 4, 2009.

49. As the initial visit of R.J. was June 9, 2009, Dr. Duncan prescribed the Schedule III controlled substance Phendimetrazine to R.J., five days before his initial evaluation.

50. During the investigation, C.N., an employee of Resolutions in Jacksonville, Florida was interviewed.

51. C.N. indicated that, per Dr. Duncan's instructions, when a new patient called for an appointment, C.N. would fax a request for Phendimetrazine to Alphameds in Tallahassee, Florida, for that prescription, which was then filled and mailed back to C.N. to await the patient's first time office visit.

52. C.N. stated that in 12 months working with Dr. Duncan, C.N. never saw Dr. Duncan in the Jacksonville office, nor was C.N. ever advised by Dr. Duncan that he wanted to review any patient charts.

53. C.N. is not a licensed ARNP or physician assistant. C.N. is the only full time employee of Resolutions in Jacksonville, Florida.

PATIENT E.R.

54. On or about June 10, 2009, an undercover operation took place at the office of Dr. Duncan, also known as Resolutions, at 1212 West 23rd Street, Panama City, Florida.

55. The undercover agent's name for purposes of this operation was Patient E.R.

56. During this investigation, DOH obtained E.R.'s medical records.

57. E.R. was issued a device utilized to record conversations within the clinic.

58. A.W., a Licensed Practical Nurse (LPN) but not an ARNP, performed height and weight checks on E.R. A.W. also gave Patient E.R. an EKG, and proclaimed it a "perfect EKG." A.W. checked E.R.'s blood pressure and noted that it was a "tad high."

59. A.W. gave E.R. a B-12 shot and obtained a blood sample. She explained the results of the blood test would be available the following day. A B-12 shot is often called an "energy vitamin" because it is a major source of nutrients and provides an energy boost for the body.

60. A.W. explained the diet plan, and advised E.R. to tell her if he had any breakthrough hunger because then she would increase his pill dosage.

61. At the end of his visit, E.R. was provided with 21 Phendimetrazine tablets by W.W., an employee of Resolutions. The Phendimetrazine prescription was written by Dr. Duncan for E.R., and had been filled by Alphameds Pharmacy Inc. in Tallahassee, Florida, on or about June 5, 2009.

62. As the initial visit of E.R. was on or about June 10, 2009, Dr. Duncan prescribed the Schedule III controlled substance Phendimetrazine to E.R., five days before his initial evaluation.

63. Dr. Duncan had not participated in E.R.'s initial evaluation, nor had an ARNP or a physician assistant.

64. During the investigation, A.W. and L.W., employees of Resolutions in Panama City, Florida were interviewed and indicated that, per Dr. Duncan's instruction, when a new patient called for an appointment, either one of them would fax a request for Phendimetrazine to Alphameds in Tallahassee, Florida for that prescription, which

was then filled and mailed back to the Panama City office to await the patient's first time office visit.

65. Neither A.W. nor L.W. are licensed as an ARNP or physician assistant.

GENERAL ALLEGATIONS

66. Section 458.331(1)(nn), Florida Statutes (2008) subjects a licensee to discipline, including restriction, for "[v]iolating any provision of Chapter 458 or Chapter 456, Florida Statutes, or any rules adopted pursuant thereto."

67. Dr. Duncan failed to comply with the Standards for the Prescription of Obesity Drugs in Rule 64B8-9.012(3), Florida Administrative Code, which requires:

(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, Florida Statutes, or an appropriately educated and trained advanced registered nurse practitioner licensed pursuant to Chapter 464, Florida Statutes.

(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.

68. Dr. Duncan prescribed the controlled substance Phendimetrazine to patients, at Resolutions without personally conducting an initial evaluation or delegating the initial evaluation to a physician assistant or an ARNP.

69. Dr. Duncan also failed to comply with the Standards for the Prescription of Obesity Drugs in Rule 64B8-9.012(5), Florida Administrative Code, which requires:

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.

70. Dr. Duncan prescribed and his office provided Phendimetrazine without personally meeting the patients.

71. Section 120.60(6), Florida Statutes, authorizes DOH to restrict a physician's license if DOH finds that the physician presents an immediate and serious danger to the public health, safety, or welfare.

72. Dr. Duncan's prescribing practices related to obesity drugs present an immediate serious danger to the health, safety, or welfare of the public because he has been prescribing a controlled substance to patients without personally evaluating them or assessing their medical history to determine the potential dangers and health risks from use of this medication.

73. A physician licensed in the State of Florida is one of a small number of licensed professionals allowed to prescribe, administer, and dispense controlled substances in this state. The Legislature has vested a trust and confidence in these licensed professionals by permitting them to prescribe drugs with a potential for abuse and harm. Careless prescribing of a controlled substance that can lead to physical and psychological dependence to patients presents a danger to the public health and does not correspond to that level of professional conduct expected of one licensed to practice medicine.

74. Dr. Duncan has demonstrated a disregard for the duties and responsibilities imposed upon a physician practicing in Florida and for the health and welfare of his patients. His conduct will likely continue without an immediate restriction of Dr. Duncan's license. This is evidenced by the fact that Dr. Duncan's conduct began in 2006, and continues in 2009.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. DOH has jurisdiction pursuant to Sections 20.43, Florida Statutes, and 456.073(8), Florida Statutes, and Chapter 458, Florida Statutes.
2. Dr. Duncan violated Section 458.331(1)(nn), Florida Statutes (2008), contrary to Rule 64B8-9.012(3), Florida Administrative Code, by failing to obtain an initial evaluation of the patient prior to prescribing, ordering, dispensing, or administering any drug, synthetic compound, nutritional supplement or herbal

treatment, and Rule 64B-9.012(5), Florida Administrative Code, by failing to personally meet with the patient at the time of the initial prescription or when providing the initial supply of drugs to the patient.

3. Dr. Duncan's continued, unrestricted practice as a physician constitutes an immediate serious danger to the health, safety, or welfare of the public, and this summary procedure is fair under the circumstances to adequately protect the public.

WHEREFORE, in accordance with Section 120.60(6), Florida Statutes, it is ORDERED THAT:

1. The license of Dr. Duncan, M.D., license number ME 83619, is restricted and Dr. Duncan is prohibited from prescribing, dispensing, or administering any medication, drug, synthetic compound, nutritional supplement, or herbal treatment for the purpose of weight loss.

2. A proceeding seeking formal restriction or discipline of the license of Stephen Duncan, M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes.

DONE and ORDERED this 3 day of November, 2009.



Ana M. Viamonte Ros, M.D., M.P.H.,
State Surgeon General
Department of Health

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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