

*Public*

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

IN THE MATTER

OF

JEROME WERNER, M.D.  
CO-05-02-0868-A

COMMISSIONER'S  
SUMMARY  
ORDER

TO: JEROME WERNER, M.D.  
6450 Griffis Way  
West Palm Beach, FL 33415

JEROME WERNER, M.D.  
2925 10<sup>th</sup> Avenue North  
Suite 201  
Lake Worth, FL 33461

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of Florida, Department of Health (hereinafter "Florida Board") has made a finding substantially equivalent to a finding that the practice of medicine by **JEROME WERNER, M.D.**, Respondent, licensed to practice medicine in New York state on July 13, 1979, by license number 138856, in that jurisdiction, constitutes an imminent danger to the health, safety, and welfare of its people, as is more fully set forth in documents of the State of Florida, attached hereto, as "Appendix A," and made a part hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law Section 230(12)(b), that effective immediately, the license of, **JEROME WERNER, M.D.**, Respondent, is restricted to prohibit him from prescribing any controlled substances in the state of New York or in any other jurisdiction where that practice is dependent on a valid New York state license to practice medicine.

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

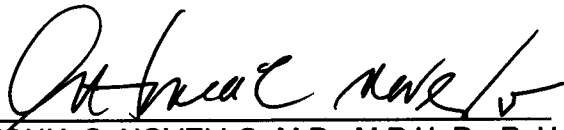
This Order shall remain in effect until the final conclusion of a hearing that shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in the state of Florida. The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct, on a date and at a location to be set forth in a written Notice of Referral Proceeding, together with a Statement of Charges, to be provided to Respondent after the final conclusion of the Florida proceeding. Said written Notice may be provided in person, by mail or by other means. If Respondent wishes to be provided said written notice at an address other than those set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

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

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

DATE: Albany, New York

*July 6*, 2005



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

Inquires should be addressed to:

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

By: Heather Coleman  
Deputy Agency Clerk

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

IN RE: The Emergency Restriction of the License of  
Jerome Werner, M.D.  
License Number: ME 37449  
Case Number 2004-19928

**ORDER OF EMERGENCY RESTRICTION OF LICENSE**

John O. Agwunobi, M.D., M.B.A., M.P.H., Secretary for the Department of Health, hereby ORDERS the emergency restriction of the license of Jerome Werner, M.D. to practice medicine. Dr. Werner holds license number ME 37449. His last known address is 2925 10th Avenue North, Lake Worth, Florida 33461. The following Findings of Fact and Conclusions of Law support the emergency restriction of Dr. Werner's license to practice medicine.

**FINDINGS OF FACT**

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

2. At all times material hereto, Dr. Werner was licensed to practice medicine in the State of Florida under license number ME 37449, pursuant to Chapter 458, Florida Statutes.

3. On or about August 12, 2000, Patient B. Y., a 19 year-old female, first

presented to Community Medical Center with a chief complaint of low back pain secondary to a fall, and was seen by Mujahed Ahmed, M.D., partner of Dr. Werner at Community Medical Center. During this visit, Dr. Ahmed prescribed Lorcet and Xanax to B.Y.

4. Lorcet contains hydrocodone bitartrate, a schedule III controlled substance listed in Chapter 893, Florida Statutes, which is indicated for the relief of moderate to moderately severe pain. The abuse of hydrocodone bitartrate can lead to physical and psychological dependence.

5. Xanax, which contains alprazolam, is a schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

6. Dr. Ahmet continued to treat B.Y. with Lorcet and Xanax, and on or about February 14, 2001, Dr. Werner began treatment of B.Y., continuing her regimen of Lorcet and Xanax. B.Y. was not given any more than a cursory examination on her visits, according to information in her medical chart. B.Y. presented to Dr. Werner on a monthly basis.

7. On or about November 21, 2002, Dr. Werner added prescriptions for Restoril and Soma to B.Y., along with her prescriptions for Lorcet and Xanax.

8. Restoril contains temazepam, a schedule IV controlled substance indicated for the relief of insomnia. The abuse of temazepam can lead to physical or

psychological dependence.

9. Soma, which contains carisoprodol, is a schedule IV controlled substance under Chapter 893, Florida Statutes. A substance in schedule IV has a low potential for abuse, and a currently accepted medical use in treatment. Abuse of this substance may lead to limited physical or psychological dependence.

10. Dr. Ahmet ordered x-rays of the lumbar spine of B.Y. on or about July 7, 2003, three years after she began treatment. The x-rays show no degenerative changes or other pathology.

11. Dr. Werner continued to treat B.Y. with Lorcet, Xanax, Restoril and Soma until her visit on or about January 3, 2004, when he added Methadone to B.Y.'s medication regimen.

12. Methadone is a schedule II controlled substance under Chapter 893, Florida Statutes. A substance in schedule II has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment. Abuse of this substance may lead to severe psychological or physical dependence.

13. Dr. Werner continued to prescribe Lorcet, Xanax, Restoril and Soma to B.Y., along with Methadone. The dosage of the Methadone prescribed to B.Y. was increased monthly, until on or about March 25, 2004.

14. On or about April 17, 2004, B.Y. was admitted to JFK Medical Center in Atlantis, Florida, for treatment of a drug overdose.

15. Dr. Werner's medical records for B.Y. are sparse and consist of many incomplete records.

16. Dr. Werner's medical records on B.Y. do not reflect that he ever performed a full physical or psychiatric evaluation of B.Y. for her complaints of back pain and anxiety, notwithstanding the extremely large quantity of medications he prescribed for her.

17. On June 16, 2004, a Department expert reviewed the medical records of B.Y. and submitted a written report of his findings.

18. The Department expert opined that Dr. Werner did not meet the applicable standard of care in his examination, diagnosis, and treatment of B.Y. The Department expert specifically noted that the work up of B.Y.'s pain complaints was inadequate, and that on many visits, a physical examination was not documented. The expert further stated that over time, B.Y.'s problem became addiction to the medications prescribed, which eventually led to a drug overdose.

19. With regard to Dr. Werner's prescription practices, the Department expert observed that Dr. Werner prescribed legend drugs to B.Y. in inappropriate doses over a prolonged period and without clinical indication.

20. The Department expert concluded his report by opining that Dr. Werner had fallen below the appropriate standard of care in his treatment and care of B.Y. by overprescribing medications and failing to keep proper medical records. Further, the Department's expert indicated that an order restricting Dr. Werner's license to prohibit

him from prescribing controlled substances was appropriate to protect the public.

21. Section 458.331(1)(t), Florida Statutes (2001) (2002) (2003), provides in pertinent part the following ground for discipline of a license:

Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances.

22. Dr. Werner failed to practice medicine with an acceptable level of care in violation of Section 458.331(1)(t), Florida Statutes (2001) (2002) (2003), by failing to perform adequate initial and follow-up physical examinations of B.Y.; by inappropriately and excessively prescribing controlled substances and legend drugs to B.Y. over a prolonged period, which were medically unnecessary; and by failing to ascertain the etiology of B.Y.'s pain.

23. Section 458.331(1)(q), Florida Statutes (2001) (2002) (2003), provides the following ground for discipline of a license:

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 the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his or her intent.

24. Dr. Werner inappropriately and excessively prescribed legend drugs and controlled substances in violation of Section 458.331(1)(q), Florida Statutes (2001) (2002) (2003), by prescribing controlled substances to B.Y. over a prolonged period of



time without ascertaining the etiology of B.Y.'s pain and by prescribing controlled substances to B.Y. in quantities, combinations, and dosages that were not in B.Y.'s best interest and were not in the course of Dr. Werner's professional practice.

25. Section 458.331(1)(m), Florida Statutes (2001) (2002) (2003), provides the following ground for discipline of a license:

Failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed physician or the physician extender and supervising physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

26. Dr. Werner failed to keep medical records justifying his course of treatment of B.Y. in violation of Section 458.331(1)(m), Florida Statutes (2001) (2002) (2003), in that B.Y.'s records fail to document an adequate history and assessment of B.Y.'s physical condition, a description of the nature and intensity of B.Y.'s pain, a complete physical examination for B.Y., counseling regarding the use of controlled substances, a justification for the prolonged use of highly addictive controlled substances, a long-term treatment plan, and a reevaluation of the appropriateness of continued treatment by controlled substances.

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

28. Dr. Werner's inappropriate prescribing practices, his practice below the standard of care, and his failure to maintain adequate medical records for B.Y. presents an immediate and serious danger to the health, safety, and welfare of the public.

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

30. Dr. Werner has demonstrated a flagrant disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of his patients. Dr. Werner's egregious conduct of excessive and inappropriate prescribing of highly addictive and dangerous drugs, as well as his failure to practice medicine with that level of care, skill, and treatment that is recognized as acceptable, constitutes a breach of the trust and confidence that the Legislature placed in him by issuing him a license to practice medicine.

31. Dr. Werner has demonstrated, in the treatment of at least one of his patients, his inability to practice with an acceptable standard of care. He has demonstrated a willingness to excessively and inappropriately prescribe dangerous and

addictive controlled substances – with dire consequences to his patient. Nothing short of the immediate restriction of Dr. Werner’s license to prohibit him from prescribing controlled substances will protect the public.

CONCLUSIONS OF LAW

32. The Secretary of the Department of Health has jurisdiction over this matter pursuant to Section 456.073, Florida Statutes, and Section 20.43(2)(a), Florida Statutes, as set forth above.

33. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Werner has violated Section 458.331(1)(m), Florida Statutes (2001) (2002) (2003), by failing to keep legible, as defined by Department rule in consultation with the board, medical records that justify the course of treatment of patients, including, but not limited to, patient histories, examination results, test results, or treatment plans.

34. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Werner has violated Section 458.331(1)(q), Florida Statutes (2001) (2002) (2003), by prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

35. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Werner has violated Section 458.331(1)(t), Florida Statutes (2001) (2002) (2003), by failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and

circumstances.

36. Based on the foregoing Findings of Fact, the Secretary finds that Dr. Werner's continued unrestricted practice as a physician constitutes an immediate and serious danger to the health, safety, and welfare of the public and that this summary procedure is fair under the circumstances to adequately protect the public.


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

THEREUPON ORDERED THAT:

1. The license of Jerome Werner, M.D., license number ME 37449, is hereby immediately restricted to prohibit him from prescribing any controlled substance listed in Chapter 893, Florida Statutes.

2. A proceeding seeking formal restriction or discipline of the license of Jerome Werner, 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 26<sup>th</sup> day of December, 2004.

  
John O. Agwunobi, M.D., M.B.A., M.P.H.  
Secretary, Department of Health

PREPARED BY:  
Mari M. Presley F/B/N 172741  
Assistant General Counsel  
Jennifer Joy Westermann  
DOH, Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
(850) 414-8126 - Telephone  
(850) 414-1989 - Telefax

IN RE: The Emergency Restriction of the License of Jerome Werner, M.D. 9  
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Case Number 2004-19928  
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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. Such proceedings are commenced by filing one copy of a Petition for Review in accordance with Rule 9.100, Florida Rules of Appellate Procedure, with the Department of Health and a second copy of the petition accompanied by a filing fee prescribed by law with the District Court of Appeal within thirty (30) days of the date this Order is filed.