

Florida Board Of Medicine

**PCP South
August 16, 2013**

**Meet-Me #: (888) 670-3525
Participation Code: 125-528-7056**

Notice of Meeting/Workshop Hearing

DEPARTMENT OF HEALTH Board of Medicine

The Board of Medicine - Probable Cause Panel South announces a public meeting to which all persons are invited.

DATE AND TIME: Friday, August 16, 2013, 2:00 p.m.

PLACE: Meet-Me #: (888) 670-3525, Participation Code: 125-528-7056

GENERAL SUBJECT MATTER TO BE CONSIDERED: To conduct a public meeting to reconsider disciplinary cases with prior findings of probable cause.

A copy of the agenda may be obtained by contacting: Sheila Autrey at (850) 245-4444 ext. 8210 or email her at sheila_autrey@doh.state.fl.us.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 10 days before the workshop/meeting by contacting: Sheila Autrey at (850) 245-4444 ext. 8210 or email her at sheila_autrey@doh.state.fl.us.

If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

**Florida Board of Medicine
South Probable Cause
Agenda**

**August 16, 2013
2:00 pm**

**Meet-Me-Number: 888-670-3525
Conference Code: 125-528-7056**

RECONSIDERATIONS

RN-01 Mark A. Newberry, M.D.

2012-11500

RECONSIDERATIONS:

RN-01

RECONSIDERATION

RN-01 Mark A. Newberry, M.D.

2012-11500

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-11500

MARK A. NEWBERRY, M.D.,

RESPONDENT.

AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel files this Amended Administrative Complaint before the Board of Medicine against the Respondent, Mark A. Newberry, M.D., and 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 55545.

3. Respondent's address of record is 602 East Fifth Avenue, Havana, Florida 32333.

4. Respondent is board certified in family medicine by the American Board of Family Medicine.

5. At all times material to this Complaint, Respondent operated a family practice at 602 East Fifth Avenue, Havana, Florida 32333.

6. Between on or about May 2012 and on or about July 2012, Respondent presigned blank prescriptions from his prescription pad.

7. Section 458.331(1)(aa), Florida Statutes (2011-2012), provides that presigning blank prescription forms constitutes grounds for disciplinary action by the Board of Medicine.

8. Respondent presigned blank prescription forms from his prescription pad.

9. Based on the foregoing, Respondent has violated Section 458.331(1)(aa), Florida Statutes (2011-2012), by presigning blank prescription forms.

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 _____ day of _____, 2013

John H. Armstrong, MD, FACS, FCCP
State Surgeon General & Secretary
of Health, State of Florida

André Ourso
Assistant General Counsel
Fla. Bar No. 91570
Florida Department of Health
Office of the General Counsel
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
Telephone: (850) 245-4640
Facsimile: (850) 245-4681
Email: Andre_Ourso@doh.state.fl.us

ACO/

PCP: 8/16/13
PCP Members:

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 any other discipline imposed.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

MEMORANDUM

TO: Probable Cause Panel

FROM: André Ourso, Assistant General Counsel *AO*

DATE: 6/6/13

RE: Reconsideration of Case No. 2012-11500; Mark A. Newberry, M.D.

This memorandum concerns reconsideration of the above referenced case. On April 19, 2013 the Department presented this case to the Probable Cause Panel with the recommendation that probable cause be found for a two-count Administrative Complaint alleging Respondent presigned blank prescriptions and delegated professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them. The panel found probable cause on the same date. On April 22, 2013, the Department filed an Administrative Complaint against the Respondent alleging violations of Sections 458.331(1)(w) and (aa), F.S. (2011-2012).

After the Administrative Complaint was filed, Respondent, through counsel, elected a formal hearing. Respondent denied that he delegated professional responsibilities to an LPN who was not qualified to perform them.

Based on a review of the evidence, the Department is recommending dropping the count alleging a violation of Section 458.331(1)(w), F.S., as previously alleged. There is insufficient evidence to show that Respondent actually delegated a responsibility that the LPN was unqualified to perform. According to witness interviews and the Respondent's statement the prescriptions at issue were completed under the authorization and in the direct presence of the Respondent. The LPN never utilized her own judgment or made an independent medical assessment in completing the prescriptions (See Respondent's response letter dated 5/24/13, petition for formal hearing dated the same, and interview of LPN B.B on pg. 4 of the investigative file.

The Department is now presenting this case for reconsideration, requesting that probable cause be found for the count alleged in the proposed Amended Administrative Complaint.



MARK A. NEWBERRY, M.D.

602 East Fifth Avenue
Havana, Florida 32333

Telephone: (850) 539-4747
Fax: (850) 539-4744

PRACTITIONER REGULATION
LEGAL

2013 MAY 29 PM 1:13

Andre C. Ourso, Esq.
Florida Department of Health
4052 Bald Cypress Way #C65
Tallahassee, Florida 32399-7017

4 May 2013

Dear Mr. Ourso and colleagues,

It is my understanding that I am about to receive disciplinary action for pre-signing prescriptions for emergency use during my annual vacation time. This action will almost certainly result in the closure of my practice. I would therefore like to take this opportunity to explain to you the context of what happened. I know that my attorney William Dillon has corresponded with you, but I would like to tell you in my own words exactly what transpired.

I was initially recruited to come to the small town of Havana by the Medical Director of the TMH residency program and the Havana town manager in 1993. I left in the year 2000, but returned at the Havana Town Council's request in 2002. (Most of the Town Council members were (are) my patients.) It has been a long, arduous struggle to build a successful private medical practice in the sparsely populated, poor town of Havana. It is also challenging in the respect that we have many sick, elderly patients who have many needs. I spend most of my time attending to patients between the ages of 65 and 98 years old. This is not your typical family practice. Many of these patients have multiple medical problems and have to take many medications. We provide many medical services that your average family physician would not even consider, due to the time and effort required, and the lack of financial compensation. Not only is it challenging from a medical perspective, but from a nursing perspective as well. My nurses provide nursing and social services that go uncompensated. They spend hours every day on the phone getting patients their medications for free – and sometimes go to the homes of patients who are bed-bound to draw blood for lab testing (for example). We have many patients who are elderly, isolated, and unable to drive to Tallahassee. We have many Hospice and Home Health Care patients that require considerable management via telephone. In fact, much of what we do goes uncompensated in this impoverished area. We have no specialists, lab or imaging facility, urgent care center, emergency room, social service or psychiatric facilities nearby. Elderly patients often walk into our office without appointments, in need of immediate attention. Of course, we cannot defer treatment of difficult medical problems to

specialists, if the patients are unable to obtain transportation to Tallahassee. Since we accept virtually any type of insurance, the paperwork required is quite challenging. Insurance companies often require prior authorization for MRIs, CT scans, medications, etc. (which is time consuming). During my typical 11-hour day, my only break is the five minutes that I take to eat a sandwich. Being in this rural area, we have no back-up for my nurses or myself (in case one of us is sick). My office staff works very hard to ensure that we are in compliance with the various governing bodies.

Please be aware that I am conservative in prescribing controlled drugs. My staff and patients have always been aware of this; and this attitude is reflected in the climate of my practice. We discourage use of controlled drugs unless there are no other options. I never prescribe a controlled substance casually. Writing controlled drug prescriptions accounts for only a tiny fraction of the work that we do. The vast majority of prescriptions that I write are for non-controlled drugs used to treat various medical conditions.

One of the challenges of practicing in a rural area is the ability to find and keep good staff and to have back-up nurses and physicians (for when someone is sick or takes a vacation). For me personally, it is a challenge in that I am in solo practice and rely on my nurse practitioner and fellow on-call physicians to cover my practice responsibilities when I am away. For the past ten years, my yearly vacation has consisted of taking 4 business days to visit my family in Kansas and 4 business days to visit my wife's family in Maine. So, how do we provide controlled drug prescriptions for my patients while I am away – especially for the isolated elderly who do not have the means to travel to Tallahassee to my on-call partners' offices to pick up a prescription – or to the emergency room? (Our call group does not like to fill controlled substance prescriptions for patients other than their own anyway.) The first thing we do is keep a list of patients who take controlled substances. Then we review the chart to see if they will have a prescription that will come due when I will be out of town. Then, I write those prescriptions before I leave to go out of town; and patients pick them up from my office on the day they are due to be filled at the pharmacy. Unfortunately, however, we cannot always predict when a patient (including our house-bound elderly) will have an unexpected medical need for a controlled drug.

This issue became more pressing about 2 ½ years ago when 2 of my elderly patients complained to me that they were unable to acquire essential controlled medications while I was away. This was quite disturbing to me, as I hate being unreliable. After checking around, I learned that other physicians (respectable physicians in Tallahassee) manage the problem by providing one or two signed prescriptions for the nurse to have in safe-keeping in the event of an emergency while the physician is away. Should such a need occur, the nurse or ARNP would then call the primary care physician (or the on-call physician) to discuss whether or not the prescription should be given. When the doctor returns from vacation, the nurse returns the unused prescription(s) and pertinent charts of the patient(s) that did receive a prescription – for the

doctor's review. I assumed that the practice must be legal, or the other physicians would not be doing it. In all of my years of training, I have never been taught that there are actual laws that govern the specifics of prescription writing. When I was in medical school, I was taught certain *guidelines* for writing prescriptions. Since then, I do not recall a single conference or home study program that discussed prescription writing, much less the legal aspects of prescription writing. I was certainly never informed about the 2006 Practitioner's Manual. (I'm not sure if other doctors know of its' existence either.)

Although I am in generally good health, I did have 5 surgical procedures (in 3 operations) on my right shoulder, elbow, forearm, wrist and hand over the past 2 years. Before one procedure, I pre-signed about 20 prescriptions for my own use and put them in a locked drawer (the one and only time I have done this). I anticipated not being able to write for several days after my surgery. My plan was to continue seeing patients, and bring the nurse with me into the patient exam room during each visit. I would give her instructions on how to complete the prescription under my direct supervision. These prescriptions were NOT intended for controlled drugs only, but for general prescribing. Ultimately, I did not need them. However, it was these prescriptions that were reported by the disgruntled employee.

It is very difficult to build and keep a good, high-functioning staff in a poor, rural area such as Havana. Last July, I advertised for an office manager in CareerBuilder.com. We received about 50 applications from inexperienced individuals. Finally, I did receive a resume from an individual moving from South Dakota who seemed competent. After several telephone interviews and a number of e-mails, I hired her without actually meeting her in person (the first time I have done this). As it turned out, she proved to be highly unprofessional even during her probationary period. She knew that I did not condone her bad conduct and must have known that she was about to be terminated. It was untimely that I had to leave on a scheduled vacation at the same time I knew that her employment would have to be terminated for unethical conduct towards my-employees and in regards to the business bank account. While I was out of town, she reported the pre-signed prescriptions (as a vengeful act, I am sure). If she had informed me that this practice was illegal, I certainly would have put a stop to it immediately.

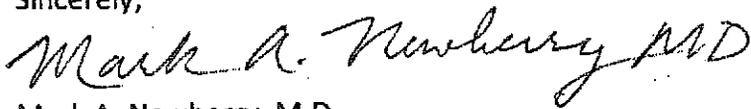
Group Supervisor Stephen L. Utt and Diversion Investigator Anthony Richards made me realize that pre-signing prescriptions is not allowed by the DEA; and doing so created an opportunity for diversion (no matter how secure I thought the prescriptions might be). I have learned my lesson and will NEVER pre-sign a prescription again. My staff has been made aware that this practice is forbidden. From now on, all patients who need controlled substances while I am away from the office will have to go to the emergency room to obtain a temporary prescription. Hospice patients will have to obtain an emergency prescription from the medical director of Hospice (in my absence). Please be aware that the only reason for pre-signing prescriptions was out of concern for patient care. There was absolutely no other reason.

Should I be given disciplinary action, my reputation will be ruined; and Capital Health Plan will likely cancel my contract. The Town of Havana is insured by Capital Health Plan; and about 30 percent of our patients have Capital Health Plan. So, loss of this single plan (out of 30 or so that we accept) will force me to close the practice.

Please take these facts into consideration before you take action.

With kind regards.

Sincerely,

A handwritten signature in cursive script that reads "Mark A. Newberry MD". The signature is written in dark ink and is positioned above the typed name.

Mark A. Newberry, M.D.



HEALTH LAW

William P. Dillon

MESSER  CAPARELLO

Attorneys At Law

Strategically Positioned in Florida's Capital

May 24, 2013

**Via Hand Delivery and Facsimile
(850) 245-4684**

Andre C. Ourso, Esq.
Florida Department of Health
4052 Bald Cypress Way #C65
Tallahassee, FL 32399-7017

Re: **For Settlement Purposes:**

Florida Department of Health vs. Mark A. Newberry, M.D.
Complaint #2012-11500

Dear Mr. Ourso:

Please allow this correspondence to serve as Dr. Newberry's timely notice of his intent to dispute the allegations of fact contained in the Administrative Complaint that was received on May 8, 2013. Dr. Newberry's Petition for Administrative Hearing is attached. Per our discussion, Dr. Newberry is interested in pursuing settlement discussions with the Department and as such he waives the requirement that the attached be submitted to DOAH within the normal time frame.

The Administrative Complaint, alleges that Dr. Newberry: 1) improperly presigned blank prescriptions; and 2) delegated his professional responsibilities to his nurse. I will briefly address each issue below.

As you are aware, Dr. Newberry has been very transparent with the Department during the investigation of this matter. From the initial interview requests by both the DEA and the Department, Dr. Newberry has consistently been candid and contrite.

While Dr. Newberry cannot dispute the fact that the investigators obtained blank presigned prescriptions in his office, it is important to understand that Dr. Newberry was not being careless nor did he have any improper intent. In fact, his intent was to make certain that care for his patients would not be interrupted in the event he was physically incapacitated. As indicated to the investigators, Dr. Newberry was scheduled to undergo a surgical procedure in May 2012 which he believed could result in an inability to use his arm. Anticipating that he would not be at

Regional Center Office Park / 2618-Centennial Place / Tallahassee, Florida 32308

Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317

Main Telephone: (850) 222-0720 / Fax: (850) 224-4359

May 24, 2013

Page 2

full capacity when he returned from surgery, Dr. Newberry presigned some prescriptions and placed them in a secure location. In the event he was unable to write he would have had his nurse complete the body of the prescription, under his full supervision and control, thereby avoiding any possible issues in delivering patient care. The presigned prescriptions were under Dr. Newberry's control and office controls were in place to ensure that nothing improper would occur. Interestingly, there has been no allegation that there was ever any inappropriate use of these or any other prescriptions. I would opine that this is something that was clearly evident to the DEA when it made its decision not to take action against Dr. Newberry.

With regard to the second count in the Administrative Complaint, (delegation of professional responsibility), we believe that our response in the Petition speaks for itself. To briefly summarize, at no point in time did Dr. Newberry's nurse have the discretion to make medical decisions. All of the nurse's actions were under the direction and control of Dr. Newberry.

We understand the Department's and the Board's obligation to protect the citizens of the State of Florida and ensure that they receive high quality health care. However, this matter is not one in which there was any improper intent and/or danger to the public. In fact, the actions of Dr. Newberry, perhaps misguided, were meant to benefit his patients.

Dr. Newberry has spent the larger part of his career caring for patients living in a rural and medically underserved community. Despite the obstacles present for any physician practicing in a rural location, Dr. Newberry has provided excellent patient care and has never been the subject of any discipline. We would, respectfully, submit that the facts and circumstances surrounding this matter clearly do not call for the imposition of formal discipline.

We thank you in advance for your consideration and we look forward to discuss the resolution of this matter.

Very truly yours,

Messer Caparello, P.A.



William P. Dillon

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case Number: 2012-11500

MARK A. NEWBERRY, M.D.,

Respondent.

**PETITION FOR FORMAL ADMINISTRATIVE HEARING PURSUANT TO
SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND
RULE 28-106.201, FLORIDA ADMINISTRATIVE CODE**

Respondent MARK A. NEWBERRY, M.D. hereby files this Petition for Formal Administrative Hearing to resolve disputed issues of material fact related to the DEPARTMENT OF HEALTH's Administrative Complaint filed with the Board of Medicine. Dr. Newberry requests a formal hearing before the Division of Administrative Hearings and the assignment of an independent administrative law judge and in support thereof, states:

1) Petitioner is the Department of Health (DOH), Board of Medicine (BOM). The DOH offices are located at: 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265. The BOM offices are located at 4052 Bald Cypress Way, Bin C-03, Tallahassee, Florida 32399-3265. The case number is reflected above.

2) Respondent is Mark A. Newberry, M.D. (Dr. Newberry). Dr. Newberry is a licensed physician in the State of Florida holding license number: ME 55545. His current address of record is: c/o 602 East Fifth Avenue, Havana, Florida 32333. His phone number is: (850) 539-4747.

3) Dr. Newberry is represented by William P. Dillon of Messer Caparello, P.A., 2618 Centennial Place, Tallahassee, Florida 32308. The phone number of the Messer Caparello, P.A., law firm is: (850) 222-0720.

4) Dr. Newberry's substantial interests are affected because on or about April 22, 2013 the DOH filed a two (2) count Administrative Complaint against him seeking one or more of the following penalties: permanent revocation or suspension of his current medical license, restriction of practice, imposition of an administrative fine, reprimand, probation, corrective action, refund of fees billed or collected, remedial education, or other relief deemed appropriate by the BOM. Dr. Newberry is a Board Certified Family Practice Physician who provides primary health care services to patients presenting to the Havana Medical Center. It is alleged that Dr. Newberry violated Florida's medical practice standards in one or more of the following ways: (1) By presigning blank prescriptions from his prescription pad; and (2) By delegating his professional responsibilities to a nurse who completed a presigned prescription.

5) Dr. Newberry received notice of the filing of DOH's administrative complaint by certified mail on May 8, 2013. Consequently, this Petition is timely filed.

6) The disputed issues of material facts are as follows:

a. Dr. Newberry disputes that Nurse B.B., improperly completed prescriptions, presigned by Dr. Newberry, for OxyContin for patient J.O.;

b. Dr. Newberry disputes that Nurse B.B., improperly completed prescriptions, presigned by Dr. Newberry, for OxyContin for patient F.B.;

7) Other disputed issues of material fact may surface during discovery. Dr. Newberry reserves the right to contest and dispute any such issues of material fact.

8) The ultimate facts that warrant reversal or modification of DOH's action are as follows:

a. Dr. Newberry's practice is located in rural Havana, Florida, a location with limited access to primary health care services. Dr. Newberry's practice consists largely of elderly patients many of whom are medically needy. Many of these patients lack adequate access to transportation and as such traveling outside of the Havana area is difficult.

b. Dr. Newberry scheduled a week off in July of 2012. Due to the critical needs of his patients and their limited access to other health care providers, Dr. Newberry wanted to ensure that his established patients with upcoming controlled substance prescription due dates were able to receive their medication while he was out of the office. As such, prior to the commencement of his time off, Dr. Newberry reviewed the files of patients whose prescription for a controlled substance would be due for refill during this time period. Two of the prescriptions that needed to be filled during Dr. Newberry's time off were that of J.O., an elderly patient suffering from multiple myeloma and other serious ailments, and F.B., a patient suffering from neuropathy of the

legs and feet. Accordingly, once Dr. Newberry ensured that the refill prescriptions were medically necessary, he had his nurse write out the body of the prescriptions along with the date that the prescriptions would come due. Upon reviewing the completed prescription, in which his nurse was merely the scrivener, Dr. Newberry signed the prescriptions. The prescriptions were then placed in the patients' files so they could pick them up when due for refill.

c. At no time did Dr. Newberry ever delegate any professional responsibilities to his nurse. At no time did Dr. Newberry's nurse make an independent medical assessment or judgment regarding any of Dr. Newberry's patients.

9) Other material facts that warrant reversal or modification of the DOH's action may surface during discovery. Dr. Newberry reserves the right to present all such facts.

10) The following statutes and rules require reversal or modification of the agency's action:

- a. Subsection 458.331(1)(aa), Florida Statutes;
- b. Subsection 458.331(1)(w), Florida Statutes;
- c. Section 120.569, Florida Statutes; and,
- d. Rule 28-106.201, Fla. Admin. Code.

WHEREFORE, based upon the foregoing, Dr. Newberry requests dismissal of the administrative complaint filed against him by the DOH.

Respectfully submitted, this 24TH day of May, 2013.



William P. Dillon
Florida Bar No.: 146544
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
(850) 222-0720 - telephone
(850) 224-4359 - facsimile

Counsel for Mark A. Newberry, M.D.

ELECTION OF RIGHTS

DOH v. Mark A. Newberry, M.D.

Case No. 2012-11500

PLEASE SELECT ONLY 1 OF THE 3 OPTIONS

An Explanation of Rights is attached. If you do not understand these options, please consult with your attorney or contact the attorney for the Prosecution Services Unit at the address/phone number listed at the bottom of this form.

OPTION 1. I do not dispute the allegations of fact in the Administrative Complaint, but do wish to be accorded a hearing, pursuant to Section 120.57(2), Florida Statutes, at which time I will be permitted to submit oral and/or written evidence in mitigation of the complaint to the Board.

OPTION 2. I do not dispute the allegations of fact contained in the Administrative Complaint and waive my right to object or to be heard. I request that the Board enter a final order pursuant to Section 120.57, Florida Statutes.

OPTION 3. I do dispute the allegations of fact contained in the Administrative Complaint and request this to be considered a petition for formal hearing, pursuant to Sections 120.569(2)(a) and 120.57(1), Florida Statutes, before an Administrative Law Judge appointed by the Division of Administrative Hearings. I specifically dispute the following paragraphs of the Administrative Complaint:

SEE ATTACHED PETITION (with Counsel for Newberry)

In addition to the above selection, I also elect the following:

- I accept the terms of the Settlement Stipulation, have signed and am returning the Settlement Stipulation or I am interested in settling this case.
- I do not wish to continue practicing, have signed and returned the voluntary relinquishment of licensure form, if it has been provided.

Regardless of which option I have selected, I understand that I will be given notice of time, date, and place when this matter is to be considered by the Board for Final Action. Mediation under Section 120.573, Florida Statutes, is not available in this matter.

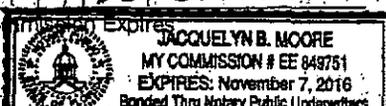
(Please sign and complete all the information below.)

Mark A. Newberry M.D.
 Mark A. Newberry M.D.
 Address: OFFICE 602 E. FIFTH AVE HAVANA, FL 32333
HOME 3104 BRANDYWINE DR TALLAHASSEE FL 32308
 Lic. No. ME 55545
 Phone No. OFFICE 850 539 4747
 Fax No. 850 539 4749

STATE OF Florida
 COUNTY OF Leon

Before me, personally appeared Mark Alan Newberry whose identity is known to me by FDN160541510890 (type of identification) and who, acknowledges that his/her signature appears above.
 Sworn to or affirmed by Affiant before me this 24th day of May, 2013.

Jacquelyn B. Moore
 Notary Public-State of Florida
Jacquelyn B. Moore
 Type or Print Name

My Commission Expires 11/7/2016


PLEASE MAIL AND/OR FAX COMPLETED FORM TO: Andre G. Gurev, Assistant General Counsel, DOH, Prosecution Services Unit, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265. Telephone Number: (850) 245-4444, x 8144; FAX (850) 245-4684; TDD 1-800-955-8771.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2012-11500

MARK A. NEWBERRY, M.D.,

RESPONDENT.

_____ /

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel files this Administrative Complaint before the Board of Medicine against the Respondent, Mark A. Newberry, M.D., and 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 55545.

3. Respondent's address of record is 602 East Fifth Avenue, Havana, Florida 32333.

4. Respondent is board certified in family medicine by the American Board of Family Medicine.

5. At all times material to this Complaint, Respondent operated a family practice at 602 East Fifth Avenue, Havana, Florida 32333.

6. Between on or about May 2012 and on or about July 9, 2012, Respondent presigned blank prescriptions from his prescription pad.

7. On or about July 9, 2012, Nurse B.B., completed prescriptions, presigned by Respondent, for OxyContin, 15 mg, 60 tablets for patient J.O. and for OxyContin, 10 mg, 90 tablets for patient F.B.

8. OxyContin is the brand name for a time release formula of oxycodone. Oxycodone is a semi-synthetic opioid that is prescribed to treat pain. According to Section 893.03(2), Florida Statutes, oxycodone is a Schedule II controlled substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of oxycodone may lead to severe psychological or physical dependence.

COUNT I

9. Petitioner re-alleges and incorporates paragraphs one (1) through eight (8) as if fully set forth herein.

10. Section 458.331(1)(aa), Florida Statutes (2011-2012), provides that presigning blank prescription forms constitutes grounds for disciplinary action by the Board of Medicine.

11. Respondent presigned blank prescription forms from his prescription pad.

12. Based on the foregoing, Respondent has violated Section 458.331(1)(aa), Florida Statutes (2011-2012), by presigning blank prescription forms.

COUNT II

13. Petitioner re-alleges and incorporates paragraphs one (1) through eight (8) as if fully set forth herein.

14. Section 458.331(1)(w), Florida Statutes (2012), provides that 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, constitutes grounds for disciplinary action by the Board of Medicine.

15. Respondent delegated, to B.B., the completion of presigned prescriptions for OxyContin for patients J.O. and F.B.

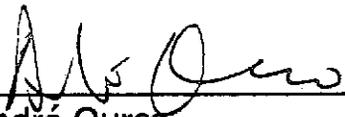
16. Based on the foregoing, Respondent has violated Section 458.331(1)(w), Florida Statutes (2012), by delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them.

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.

[signature appears on the following page]

SIGNED this 19th day of April, 2013

John H. Armstrong, MD, FACS, FCCP
State Surgeon General & Secretary
of Health, State of Florida



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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Angel Sanders*
DATE APR 22 2013

ACO/

PCP: 4/19/13

PCP Members: Dr. Avila, Dr. Thomas, Me. Dyches

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 any other discipline imposed.



STATE OF FLORIDA
DEPARTMENT OF HEALTH
INVESTIGATIVE REPORT

Office: Area 2 Tallahassee		Date of Case: 8/07/12		Case Number: ME 201211500	
Subject: MARK A. NEWBERRY, M.D. 602 East Fifth Avenue Havana, Florida 32333 (850) 539-4747			Source: DEPARTMENT OF HEALTH/ INVESTIGATIVE SERVICES UNIT		
Prefix: ME	License #: 55545	Profession: Medical Doctor	Board: Medicine	Report Date: 11/05/12	
Period of Investigation: 8/07/12-11/05/12			Type of Report: FINAL		
<p>Alleged Violation: FS 456.072 Grounds for disciplinary action ... (1) The following acts constitute grounds for denial of a license or disciplinary action ...: (a) Making misleading, deceptive, or fraudulent representation... (b) Intentionally violating any rule... (i)...failing to report to the Department any person who the licensee knows is in violation... (k) Failing to perform any statutory or legal obligation... (m) Making deceptive, untrue, or fraudulent representations... (p) Delegating or contracting for the performance of professional responsibilities by a person...(dd) Violating any provision of this chapter...and FS 458.331(1)(e)Failing to report...(g) Failing to perform any statutory... (k) Making deceptive, untrue...(m) Failing to keep legible...medical records...(t)...Medical Malpractice...(w) Delegating professional responsibilities...(aa) Presigning blank prescriptions...(ii) Failing to report to the Department...(nn) Violating any provision of this chapter...</p>					
<p>Synopsis: This investigation is predicated upon receipt of a complaint (Case Summary and attachments) (EXHIBIT 1) submitted by THE DEPARTMENT OF HEALTH/INVESTIGATIVE SERVICES UNIT in regard to NEWBERRY. It is alleged NEWBERRY pre-signed blank prescriptions at his practice in Havana, Florida. He allowed a Licensed Practical Nurse (LPN) to fill in the prescriptions and provide to patients while NEWBERRY was out of the office. NEWBERRY was out of town the week of 7/09/12 and the LPN provided controlled substance prescriptions to patients using the pre-sign prescriptions.</p> <p>NEWBERRY was notified of the investigation by letter dated 8/07/12 (EXHIBIT 2) and was provided a copy of the Case Summary and originating documentation from EXHIBIT 1.</p> <p>A check of DOH computer licensure records revealed NEWBERRY is currently licensed as a Medical Doctor. NEWBERRY specializes in Family Practice and is board-certified (1989) in same per his curriculum vitae (EXHIBIT 4).</p> <p>There is no patient involved in this case; therefore, notification is not required.</p> <p>NEWBERRY is represented by attorney WILLIAM P. DILLON, with Messer, Caparello & Self, PA, 2618 Centennial Place, Tallahassee, Florida 32317. (EXHIBIT 4). <u>DILLON requested a copy of the final investigative report.</u></p> <p>On 8/07/12, Investigator MCBRIDE interviewed NEWBERRY along with DEA Diversion Agents. NEWBERRY did not deny the allegations.</p>					
Related Case:					
Investigator/Date: Martha McBride, CI-52, Investigator			Approved By/Date: Jim Cooksey, Investigation Manager		
Distribution: HQ/ISU					

11/5/12
 9-NOV 21 11 53 AM '12
 RECEIVED-LEGAL

Received
 Investigative Services

NOV 05 2012 Page 1

DOH/MQA
 Tallahassee HQ

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* EXHIBITS CONTAIN INFORMATION WHICH IDENTIFIES PATIENT(S) BY NAME AND ARE SEALED PURSUANT TO SECTION 456.057(10)(a), FLORIDA STATUTES.

** THESE RECORDS ARE SEALED PURSUANT TO SECTION 456.057(10)(a), FLORIDA STATUTES, AND COPIES OF SAME ARE NOT MAINTAINED IN THE TALLAHASSEE INVESTIGATIVE OFFICE.

INVESTIGATIVE DETAILS

Investigator MCBRIDE received notification from the Drug Enforcement Administration (DEA) about a complaint received from a previous employee alleging NEWBERRY is pre-signing blank prescriptions and allowing a Licensed Practical Nurse to write in the prescriptions and give to patients when NEWBERRY is out of the office. NEWBERRY was on vacation from 7/09/12 to 7/14/12 and left pre-signed prescriptions and blank pre-signed prescriptions with the LPN to distribute to patients. NEWBERRY is the sole physician at the office with one ARNP.

SUMMARY OF EXHIBITS/RECORDS/DOCUMENTS

EXHIBIT 1 is information forwarded by the Consumer Services Unit (CSU) with the case. This information consists of a Case Summary, Complaint Form, and copy of a signed blank prescription.

EXHIBIT 2 is a copy of a letter dated 8/07/12 to NEWBERRY informing him of this complaint.

EXHIBIT 3 contains documentation obtained from [REDACTED], LPN during her interview on 8/02/12. This documentation from HAVANA MEDICAL CENTER includes: a list of employees, list of patients who receive regular controlled substance prescriptions, chart of a patient (J.O.) seen on 7/09/12 and copy of a prescription for Oxycontin dated 7/09/12, copies of prescription dated 7/05 for Cymbalta and 7/09/12 for Oxycontin for another patient (F.B.), copy of a blank prescription signed by NEWBERRY, and a copy of an internal monthly calendar from January 2012 to September 2012 reflecting the schedules of NEWBERRY and the on-call doctors.

EXHIBIT 4 is a fax and letter dated 8/10/12 from Attorney WILLIAM DILLON with Messer, Caparello and Self stating the firm will represent NEWBERRY in the investigation. DILLON requested a copy of the completed investigation prior to the matter being submitted to the Probable Cause Panel. DILLON also provided a copy of NEWBERRY's Curriculum Vitae.

INTERVIEW OF [REDACTED] LPN-WITNESS:**Employment:**

Havana Medical Center
602 E. Fifth Avenue
Havana, Florida 32333
Office: (850) 539-4747
Cell: 850) 294-1101

On 8/02/12, Investigator MCBRIDE accompanied DEA Supervisor UTT and DEA Diversion Agent RICHARDS to HAVANA MEDICAL CENTER, office of NEWBERRY. UTT requested to speak with NEWBERRY and was told he was not in the office. He therefore asked for the person in charge. [REDACTED] LPN presented herself and was interviewed.

BULLOCK stated staff members at the facility are: [REDACTED] ARNP; [REDACTED]-radiology; [REDACTED]- Medical Assistant/Lab Technician; [REDACTED]-front office; and [REDACTED] front office. NEWBERRY's wife also works at the facility. They had an office manager, but there is no one in that position at this time. No other physicians work at this facility, however there are other doctors who share "on-call" duties. These are: CERIO, KAUFMAN, and ENOCH. [REDACTED] stated her daughter has been helping out with the billing since they lost their office manager. Her daughter works for ENOCH. [REDACTED] LPN fills in for [REDACTED] when she is off. She is a relief nurse for the other doctors. [REDACTED] later stated NEWBERRY's wife runs the office. She does payroll, pays bills, answers the telephones in the mornings, and makes the business decisions.

[REDACTED] stated NEWBERRY was out of the office for the week. He left Friday, 7/27/12 and was to return to the office on Monday, 8/06/12. After reviewing the schedule, [REDACTED] stated NEWBERRY was also out of the office from 7/09/12 to 7/14/12. During this time, no other physicians saw patients at the facility, though they have on-call doctors. Patients are treated by ARNP FLORIN. If she has a question, she will call the "on-call" doctor.

[REDACTED] has worked at the facility for 7 ½ to 8 years. NEWBERRY hired her. She had previously worked for 15 years with [REDACTED] (Tallahassee). She works 4 days a week, 12 hour shifts. Her duties include: triage patients, call patients back, refills of medications, blood draws if needed, patient referrals and pre-authorizations. She does not handle billing.

UTT showed [REDACTED] pharmacy records showing controlled substance prescriptions that were filled at various pharmacies for the dates when NEWBERRY was out of the office. [REDACTED] stated they keep a list of patients who are regularly prescribed controlled substances (page 15). NEWBERRY will leave completed prescriptions for these patients to be able to pick up when he is out of town. [REDACTED] stated they are dated for the date the patient is due, not for the date he writes them. She said he will also post date some prescriptions.

UTT then requested that [REDACTED] provide prescriptions which are signed by NEWBERRY, but the body is not filled in (pre-signed prescriptions). [REDACTED] brought from her office a partial prescription pad with NEWBERRY's signature (approx 20 blank prescriptions with signature only). She stated NEWBERRY left it on her desk.

INTERVIEW OF [REDACTED] LPN-WITNESS: (continued)

[REDACTED] stated the signed blank prescriptions are used in case someone comes in needing their medication while NEWBERRY is out. Again she referred to a list they keep of patients who regularly get medications.

When asked if she thought this was alright, [REDACTED] stated "not really because she never had to do this before when she worked for [REDACTED]. She indicated she's not in charge and does what she's instructed to do.

From reviewing the pharmacy information [REDACTED] stated many of the prescriptions filled while NEWBERRY was out of town were 'call-in' prescriptions for refills. In expanding on the call-in prescriptions, [REDACTED] stated they receive many faxes from pharmacies requesting refills of prescriptions for their patients. They are for patients who get routine refills, without having to come into the office. NEWBERRY authorizes her to call in refills of routine prescriptions without his knowledge. When she gets these faxed requests, [REDACTED] checks the chart to make sure the patient meets all the required criteria, ie: has been seen within last six months, is current on lab work, etc. and makes sure the prescription is not an early refill. She will then sign off on the fax request and will usually call the pharmacy back to authorize the refill, instead of faxing it back. She leaves the message on voicemail. [REDACTED] stated they then shred the fax requests. These do not go in patient charts, however they chart the prescription on the patient's Medication List.

In clarifying 'refills,' [REDACTED] stated the requests are faxed to their office from pharmacies, once a patient has already filled all of their refills. [REDACTED] explained the request then becomes a new prescription and should only be signed by the prescribing practitioner. Also, the document should be kept as a record.

[REDACTED] stated NEWBERRY makes a copy of his hard copy prescriptions and these are placed in the chart. All call-in prescriptions are put on the Medication List. When asked how many blank prescriptions she has filled out in NEWBERRY's absence, [REDACTED] didn't know. She thought she had only filled in one prescription this week. On 7/30/12, she filled in a prescription for Adderall. When asked if patients just picked up their prescriptions (regarding the pre-signed), or if they are seen first by a practitioner, [REDACTED] stated the patients just pick up the prescription. [REDACTED] stated she didn't know if the ARNP exams patients, and then gives them a completed pre-signed prescription for a controlled substance*.

*Investigator's Note: In reviewing the medical chart of patient J.O. for date of service 7/09/12, FLORIN examined the patient and he was prescribed Oxycontin. The chart states; "prescription for Oxycontin was filled, signed by NEWBERRY." [REDACTED] admitted to writing in the body of the prescription for Oxycontin (pages).

When asked if anyone else completes and gives out pre-signed prescriptions, [REDACTED] stated [REDACTED] probably does also.

When asked about a patient on the pharmacy data with the same last name as her's [REDACTED] stated this was her husband (page 18). He takes Oxycontin for neuropathy of the legs/feet. She said NEWBERRY always pre-writes her husband's prescriptions.

INTERVIEW OF [REDACTED] LPN-WITNESS: (continued)

[REDACTED] stated three weeks ago, she turned in her resignation. She loves her job and the patients, but was tired of dealing with personnel issues. She indicated she was handling the bulk of the work without another nurse to assist her and had to drive from Crawfordville each day. She said the patients are needy. NEWBERRY told her things would get better and he would hire another nurse. [REDACTED] seemed to indicate NEWBERRY talked her into staying. She said however changes need to be made and she would not be signing anymore prescription documentation.

INTERVIEW OF [REDACTED] ARNP -WITNESS:

Employment:

Havana Medical Center

602 E. Fifth Avenue

Havana, Florida 32333

Office: (850) 539-4747

On 8/02/12, Investigator MCBRIDE accompanied DEA Supervisor UTT and DEA Diversion Agent RICHARDS to HAVANA MEDICAL CENTER, office of NEWBERRY. After introductions, [REDACTED] was interviewed.

[REDACTED] an ARNP, has worked for the facility for 2 years. She stated she only has a current protocol under NEWBERRY. She provides routine patient care at the facility. She mostly writes hard copy prescriptions and will sometimes call in prescriptions if she gets lab work at the end of the day and determines a patient may need medication, ie: antibiotics [REDACTED] stated she can not write any controlled substance prescriptions. She handles refill requests from pharmacies and signs off on them. [REDACTED] reviews the patient charts to make sure the patient meets certain criteria, for patient who are generally healthy, who are on routine medications (example: for high cholesterol). [REDACTED] will process the request, and [REDACTED] will sign off on them. She said she signs most of the refill requests, except for controlled substances. If she gets one for a controlled substance, [REDACTED] gives it back to the nurse [REDACTED] or her replacement.) [REDACTED] stated if she signed off on a controlled prescription using her MPI #, the pharmacists wouldn't fill the prescription.

[REDACTED] stated if she feels a patient needs a controlled substance she will write out the prescription and bring it to NEWBERRY to sign. If he is not at the facility, they keep a roster of patients, who are chronic and on routine controlled substance medications. NEWBERRY attempts to sign these prescriptions before he leaves the office. If [REDACTED] feels a patient needs a controlled substance, when NEWBERRY is not there, she will call the "on-call" physician. She first indicated she used one of NEWBERRY's pre-signed prescriptions for a patient with a severe headache. She wrote it for Demoral tablets (3 or 4). She then stated maybe she just called in a prescription for pain medication after receiving the "ok" from the on-call physician. She knew there were pre-signed prescriptions available since she's been employed there.

[REDACTED] did not admit to having any of NEWBERRY's pre-signed prescriptions. She indicated she previously had one or two, but not anymore. She didn't want to use them. She stated she wasn't sure if the guidelines were different for rural clinics for ancillary staff to handle refills.

STATEMENT OF MARK A. NEWBERRY, M.D.—SUBJECT:

Address of Record/Employment:
602 East Fifth Avenue
Havana, Florida 32333
(850) 539-4747

On 8/07/12, Investigator MCBRIDE, along with DEA Supervisor UTT and DEA Agent RICHARDS interviewed NEWBERRY at his practice in Havana, Florida. Present were NEWBERRY's Attorneys, THOMAS M. FINDLEY and WILLIAM P. DILLON with Messer Caparelo and Self, P.A.

UTT explained to NEWBERRY the concern of the allegation of pre-signed prescriptions and asked NEWBERRY to provide an explanation.

NEWBERRY stated he wasn't sure how many prescriptions he had pre-signed. He stated it has been his practice if he is going to be out of the office and one of his patients, who is on a regular schedule of medications is due for a new prescription, he will complete the prescription, sign it and date it for the due date, not the date he writes the prescription. He questioned whether this was not appropriate because he has done it for 2-3 years. He stated he has many geriatric patients who are on maintenance medications and he doesn't need to see them every time their prescription runs out.

Regarding the blank, pre-signed prescriptions, NEWBERRY stated he had surgery in May 2012 and wasn't sure he would have full use of his arm, so he pre-signed prescriptions. They were kept in a locked drawer in his office. These were to be used when he was in the office and he could get his nurse to fill in the body of the prescriptions. He also admitted to leaving some for the LPN to fill out when he was out of the office, if there was a need. He said he now knows this was a mistake. NEWBERRY stated he would leave 1 or 2 signed blank prescriptions. The nurse could then call him or the on-call doctor if needed. They try to provide care to local patients who have no transportation to Tallahassee and he has tried to do his best to accommodate them. He now realizes it isn't legal.

NEWBERRY stated if he takes time off, he has to cover patients who are taking controlled substances on a regular basis. The nurse will fill out the prescription, bring the chart to him and he'll sign the prescription so she can hand it out when the patient is due.

NEWBERRY explained that his is a rural practice with mostly geriatric patients. He questioned both DEA and DOH what process he needed to use to handle prescriptions when he is out of the office. Continuing education on the regulations was suggested. He asked if there were special guidelines for rural physicians.

Regarding a specific patient, J.O., who has bone cancer, prostate cancer and a tumor in his spine, NEWBERRY stated he couldn't see his oncologist, so NEWBERRY wrote Oxycontin for him. They have a list of patients such as J.O., and they try to see them prior to him leaving town. He also stays in contact with his staff by phone or sometimes they call his on-call partner. Rarely will the on-call doctor write prescriptions for his patients.

RICHARDS explained to NEWBERRY about the Title 21 violations he noted.

STATEMENT OF MARK A. NEWBERRY, M.D.-SUBJECT: (continued)

When asked about the role of the ARNP, NEWBERRY stated she doesn't handle the controlled substance prescriptions. The pre-signed prescriptions were only picked up by the patients, not normally examined. However, in the case of J.O., he had his prescription written out for pickup, but the patient had a urinary issue and requested to be seen for it and the ARNP conducted an examination.

They have so many patients who are prescribed medications, the nurse handles all the refill requests.

EXHIBIT 5 is the confidential Index of names



RECEIVED
AUG 07 2012
BY: _____

HEALTHCARE PRACTITIONER COMPLAINT FORM

COMPLAINANT/REPORTER

Your Name: DOH/ISU/Tallahassee
Last First M.I.

Address: _____
Street Address Apartment/Unit #
City State ZIP Code

Home Telephone: () Work Telephone: () Best Time to Call: _____

SUBJECT OF COMPLAINT/REPORT HEALTHCARE PRACTITIONER INFORMATION

Provider's Name: Newberry Mark A
Last First M.I.

Practice Address: 602 E. 5th Ave
Street Address Apartment/Unit #
Havana FL 32333
City State ZIP Code

Home Telephone: () Work Telephone: ()

Profession: Physician (i.e. doctor, dentist, nurse, etc.)

License Number: ME 55545 (if known)

PATIENT INFORMATION (Complete this section if Patient is not the same as Complainant/Reporter)

Name of Patient: _____
Last First M.I.

Address: _____
Street Address Apartment/Unit #
City State ZIP Code

Home Telephone: () Work Telephone: ()

YOUR RELATIONSHIP TO PATIENT

Self Parent Son/Daughter Spouse Brother/Sister Friend Other Practitioner

*** Legal Guardian/provide court documents Other _____

NATURE OF COMPLAINT/REPORT (Please check all that apply.)

- Quality of care
- Misdiagnosis of condition
- Substance abuse
- Advertising violation
- Unlicensed
- Inappropriate prescribing
- Sexual contact with patient
- Insurance fraud
- Misfilled prescription
- Problem other than listed: Pre-signing scripts/delegating to unqualified person _____
- Excessive test or treatment
- Failure to release patient records
- Impairment/medical condition
- Patient abandonment/neglect

Have you attempted to contact the practitioner concerning your complaint? Yes Date: _____ No

Would you be willing to testify if this matter goes to a formal hearing? Yes No

If the incident involved criminal conduct, you should contact your local law enforcement authority. Have you contacted your local law enforcement authority? Yes No

If yes, state the name of the person or office that you contacted. DEA When did you make this contact? _____ Please give case number if available. _____

***NOTE: If other than patient or parent of a minor patient, please provide documentation indicating appointment of Legal Authority/Guardianship or Personal Representative.

PLEASE LIST ANY PRIOR AND/OR SUBSEQUENT TREATING PRACTITIONERS RELATIVE TO YOUR COMPLAINT.

Full Name:	Address:	Telephone Number:
_____	_____	_____
		<input type="checkbox"/> Prior Treating <input type="checkbox"/> Subsequent Treating
Full Name:	Address:	Telephone Number:
_____	_____	_____
		<input type="checkbox"/> Prior Treating <input type="checkbox"/> Subsequent Treating
Full Name:	Address:	Telephone Number:
_____	_____	_____
		<input type="checkbox"/> Prior Treating <input type="checkbox"/> Subsequent Treating

WITNESSES (PLEASE GIVE FULL NAME, ADDRESS AND TELEPHONE NUMBER)

Full Name:	Address:	Telephone Number:
_____	_____	_____
Full Name:	Address:	Telephone Number:
_____	_____	_____
Full Name:	Address:	Telephone Number:
_____	_____	_____

Please give full details of your complaint/report: include facts, details, dates, locations, etc. Please attach copies of medical records, correspondence, contracts, and any other documents that will help support your complaint. (attach additional sheets if necessary).

I have attached copies of medical records, correspondence, contracts, and any other documents that will help support your complaint.

Information received from DEA on or about 8/01/12 alleging Newberry was pre-signing blank prescriptions and allowing an LPN fill-in the prescriptions and provide to patients when he was out of the office. Newberry was on vacation the week of July 9, 2012 and the LPN at the practice provided controlled substance prescriptions to patients using the pre-signed prescriptions.

WHAT WOULD SATISFY YOUR COMPLAINT?

Florida Statutes 837.06, False Official Statements: Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

Signature:  Date: 8/6/12
 (Required to file complaint)



Please mail this form to:
 Florida Department of Health
 Consumer Services Unit
 4052 Bald Cypress Way, Bin C-75
 Tallahassee, Florida 32399-3275

DEA # _____ LIC # _____ NPI # _____
 MARK A. NEWBERRY, M.D.
 DIANA FLOREN, A.R.N.P.
FAMILY MEDICINE
HAWAII MEDICAL CENTER
802 EAST FIFTH AVENUE
HAWAII, FL 32333
850-838-4747 FAX 850-838-4744



NAME _____ DOB _____

ADDRESS _____ DATE _____

(PLEASE PRINT)

LABEL

REFILL _____ TIMES _____ PER _____ NR _____
Mark A. Newberry MD

TO INSURE BRAND NAME DISPENSING, PRESCRIBER MUST WRITE "MEDICALLY NECESSARY"
ON THE PRESCRIPTION

The front side of this document must have a blue background.
See reverse side for additional security features.

HPC12080611554



Rick Scott
Governor

John H. Armstrong, M.D.
State Surgeon General

August 7, 2012

CONFIDENTIAL TO:

Mark A. Newberry, M.D.
602 E. Fifth Avenue
Havana, Florida 32333

Case Number: 2012-11500

Dear Dr. Newberry:

We are currently investigating the enclosed document received by the Department of Health. This investigation was initiated after it was determined that you may have violated your Practice Act.

Within **45 days** of receiving this letter, you may:

- * submit a **written response** to the address below; or
- * call our office to schedule an **interview**.

Please provide a copy of your **curriculum vitae** and identify your **specialty** even if you choose not to submit a response. Include the above-referenced case number in any correspondence that you send.

Florida law requires that this case and all investigative information remain confidential until 10 days after the Probable Cause Panel has determined that a violation occurred or you give up the right to confidentiality. Therefore, the contents of the investigation cannot be disclosed to you or the general public. You may make a written request for a copy of the investigative file and it will be sent to you when the investigation is complete. You may submit an additional written response to the information in the investigative file within 20 days of receipt.

You are not required to answer any questions or give any statement, and you have the right to be represented by an attorney. It is not possible to estimate how long it will take to complete this investigation because the circumstances of each investigation differ.

The mission of the Department of Health is to protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties. If you have any questions please call me at (850) 413-7035. In addition, if you have any concerns or suggestions about our complaint process, please fill-out our *Customer Concerns or Suggestions* form at www.floridashealth.com/mqa/survey.html.

Sincerely,

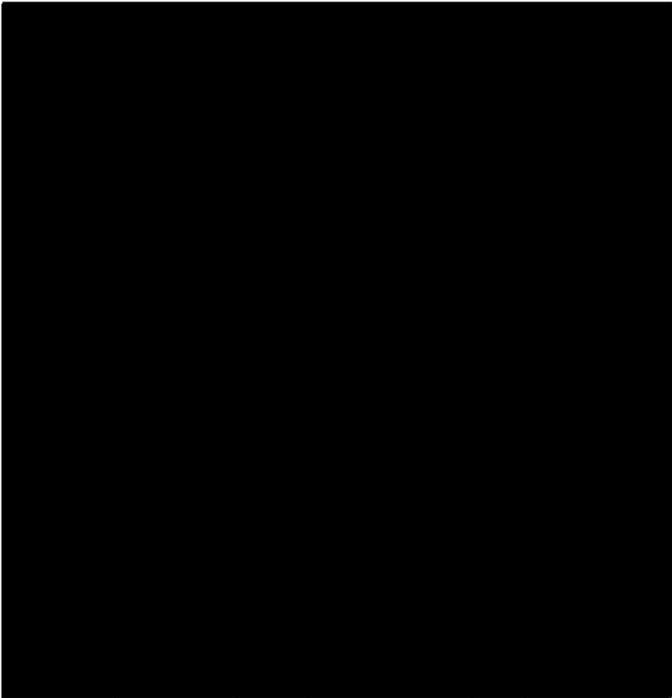

Martha McBride
Investigator

/mm
Enclosures

Inv Form 437
Created 06/07

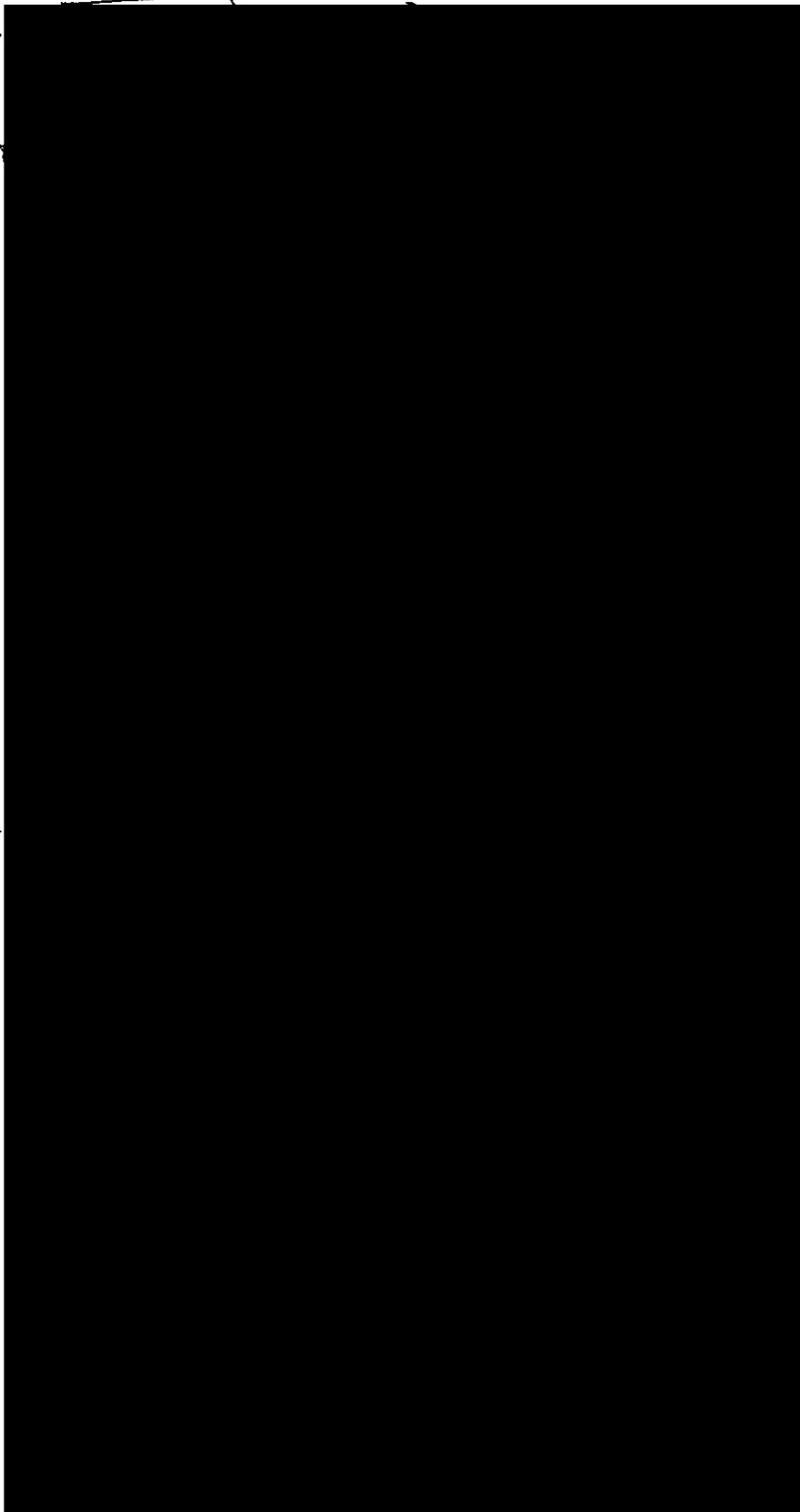
Division of Medical Quality Assurance, Investigative Services Unit
4052 Bald Cypress Way, Bin C70, Tallahassee, FL 32399-3270

REPORT
EXHIBIT # 2
PAGE # _____
: 00013



MA / Lab
- Radiology
Grant
Grant
Grant
Grant

Patients - Controlled Rx



Mark A. Newberry, M.D.

NAME: [REDACTED]

DOB: [REDACTED]

DATE: 07/09/12

S: Patient presents for urgent work-in appointment for dysuria and urinary frequency. He reports that symptoms started about three week ago with urgency and frequency. He took AZO over-the-counter and felt like his symptoms were relieved. He then developed some left low back pain approximately one week ago. He is also requesting a refill of OxyContin and wanted to discuss options for stopping the pain medication. He feels that he should no longer have pain because his cancer has been removed with radiation by his report.

O: VITAL SIGNS: Noted. BP: 130/60. P: 72. WT: 198. O2-SAT: 95%. GENERAL: Well-developed, well-nourished male in no acute distress. HEART: Regular rate and rhythm without murmur, rub or gallop. LUNGS: Clear. No wheezes, rales or rhonchi. BACK: Spine is straight. He has slight discomfort at about L2 or L3 area approximately in the area one inch above the SI joint. He has pain with deep palpation only but no pain with range of motion.

LABS: Urinalysis shows specific gravity 1.025, negative ketones, negative bilirubin, negative glucose, negative blood, PH 6.0, trace protein, negative nitrite, small leukocytes.

- A:
1. Urinary tract infection.
 2. Chronic pain.
 3. Multiple myeloma.

- P:
1. For the urinary tract infection will treat with Macrobid 100 mg 1 p.o. b.i.d. x 7 days (#14 with 0 refills).
 2. For chronic pain patient's prescription for OxyContin 15 mg (#60 with 0 refills) 1 p.o. b.i.d. was filled, signed by Dr. Newberry. He is to take 1 pill b.i.d. p.r.n. We discussed options for decreasing use of pain medication. He reports that he tried to stop taking it completely and did not do well. I did recommend that he try to spread out the length of time in between dosages if he feels he wants to begin coming off the medication. I did explain that he may have other reasons for continued pain and may need pain relief. He is planning to follow up with Dr. [REDACTED] in Tallahassee for oncology. He has not followed up at Moffitt after his last cancer treatment. He will follow up with Dr. [REDACTED] and advise us as to his plan for following up at Moffitt.

[REDACTED] A.R.N.P.-C
with Mark A. Newberry, M.D.

TO THE
ON THE PRESCRIPTION
The front side of this document must have a blue background.
See reverse side for additional security features.

HPC12020511554

REPLICA
[Redacted]

7/2/05
7:00 PM
b.i.s. pain
surgery
#600
Oxycodone 15mg
July 9, 2005
Date

Name
[Redacted]

DEA #
LIC #
D. MARCA, NEWBERRY, M.D.
D. DYANA FLOREN, A.R.N.P.
Family Medicine
Hawaii Medical Center

[Redacted] Time: 10:30 AM/PM [Redacted]
6112 Patient [Redacted] D.O.B. [Redacted]

illness injury ref. test result call back billing other
Was to call Dec to Disposition: AS
out. He is no better. AS
He believes its a
tumor & going
to an Amazin
: ghr.
Completed by: ..

or: Marca Time: 2:10 AM/PM
te: 712417 Patient: [Redacted] D.O.B. [Redacted]
one: [Redacted]

med. illness injury ref. test result call back billing other
message: Disposition: Dr. [Redacted] taking
question about meds. forward 2 1/2 of Doc
Meds - Thins Amazin
Sug 6-70d
Completed by: ..
st.

DEA [REDACTED] NPI # [REDACTED]
D.D.
 DIANA FLORIN, A.R.N.P.
FAMILY MEDICINE
NAME [REDACTED]
ADDRESS [REDACTED]
DATE July 9, 2012
R (PLEASE PRINT)

Oxycontin 10mg T TID
prn pain
Disp # 90
(ninety)

TO INSURE BRAND NAME DISPENSING, PRESCRIBER MUST WRITE "BRAND NAME" ON THE PRESCRIPTION
The front side of this document must have a blue background.
See reverse side for additional security features.
HPC120206115

[REDACTED] NPI # [REDACTED]
M.D.
 MARK A. NEWBERRY, M.D.
 DIANA FLORIN, A.R.N.P.
FAMILY MEDICINE
HAVANA MEDICAL CENTER
602 EAST FIFTH AVENUE
HAVANA, FL 32333
NAME [REDACTED]
ADDRESS [REDACTED]
DATE July 5, 2012
R (PLEASE PRINT)

Cymbalta 60mg
Sig: T tab P.O. daily
Disp # 30 (thirty)
* pt. bringing 30 day Coupon
FREE

TO INSURE BRAND NAME DISPENSING, PRESCRIBER MUST WRITE "BRAND NAME" ON THE PRESCRIPTION
The front side of this document must have a blue background.
See reverse side for additional security features.
HPC12020611554

7.1.12 As for her and my given

DEA # _____ LIC # _____ NPI # _____

MARK A. NEWBERRY, M.D.

DIANA FLORN, A.R.N.P.

FAMILY MEDICINE

HAWAII MEDICAL CENTER

802 EAST FIFTH AVENUE

HAWAII, HI 96813

860-539-4747 FAX: 860-539-4744



NAME _____ DOB _____

ADDRESS _____ DATE _____

R (PLEASE PRINT)

LABEL

TO INSURE BRAND NAME DISPENSING, PRESCRIBER MUST WRITE **MEDICALLY NECESSARY** ON THE PRESCRIPTION

The front side of this document must have a blue background.
See reverse side for additional security features.

HPC 12020811554

September 2012

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																				
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Printed by Calendar Creator for Windows on 7/25/2012

August 2012

Monthly Planner

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Printed by Calendar Creator for Windows on 7/25/2012

Dr. serio@serio.md.com

July 2012

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
			Newberry			
8	9	10	11	12	13	14
			Newberry out			
15	16	17	18	19	20	21
			out			
22	23	24	25	26	27	28
29	30	31				
			Newberry out			

Jun 2012

S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Aug 2012

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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June 2012

Monthly Planner

Sunday
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday

May 2012

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Jul 2012

S	M	T	W	T	F	S
1	2	3	4	5	6	7
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

<p>1</p> <p>Newberry</p>	<p>2</p> <p>Newberry</p>
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3	4	5	6	7	8	9
					out	

10	11	12	13	14	15	16

17	18	19	20	21	22	23
		<u>See out</u> →				

24	25	26	27	28	29	30

Printed by Calendar Creator for Windows on 12/15/2011

May 2012

Monthly Planner

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																											
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April 2012

Monthly Planner

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March 2012

Monthly Planner

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February 2012

Monthly Planner

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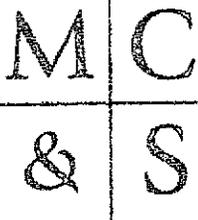
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January 2012

Monthly Planner

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MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

www.lawfla.com

William P. Dillon

August 10, 2012

Via Certified Mail Return
Receipt Requested and Facsimile
(850)488-0796

Martha McBride
Medical Malpractice Investigator
Florida Department of Health
Division of Medical Quality Assurance
4052 Bald Cypress Way, Bin C70
Tallahassee, Florida 32399-3270

Re: Case Number: 2012-11500
Mark A. Newberry, MD

Dear Ms. McBride:

As you know from our recent meeting at Dr. Newberry's office, our firm has been retained to represent Dr. Newberry in the above matter. Please allow this correspondence to serve as our timely response to your notice of investigation dated August 7, 2012. Please direct any communications regarding this matter to my attention. Per your request, a copy of Dr. Newberry's C.V. has been enclosed for your review.

Our office will be investigating the Department's allegations of a number of "possible violations" of Chapters 456 and 458 of the Florida Statutes. Although Dr. Newberry, willing and candidly, participated in an in-person interview at his office, at which you and Agents from the Drug Enforcement Administration were present, it is our belief that the "possible violations" in the above referenced case can only be fully responded to with the benefit of our having the opportunity to review the Department's completed investigation materials.

Therefore, we respectfully request, after your office forwards the completed investigation for legal review, that a complete copy of the Investigative Report be provided to our office prior to

Regional Center Office Park / 2618 Centennial Place / Tallahassee, Florida 32308
Mailing Address: P.O. Box 15579 / Tallahassee, Florida 32317
Main Telephone: (850) 222-0720 / Fax: (850) 224-4359

August 10, 2012

Page 2

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Upon our review of the investigative file, we will promptly submit, if appropriate, a complete formal response to be fully considered by the PCP. If you require anything further, please do not hesitate to contact my office. It is our understanding that this matter will not be forwarded to the PCP without our client having a reasonable opportunity to fully review and respond to all matters contained within the Department's investigative materials.

Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,

Messer, Caparello & Self, P.A.



William P. Dillon

cc: Mark Newberry, M.D.

RESUME

MARK A. NEWBERRY, M.D., M.A., ~~C.C.D.~~
3104 Brandywine Drive
Tallahassee, Florida 32308

- EDUCATION:** 5/88 M.D. degree with Honors; University of Colorado Health Sciences Center, Denver, Colorado
- Scholarship: Adler Scholarship (1988) for "creativity, originality, initiative and academic excellence in the field of medicine".
- 12/81 M.A. degree; Medical Anthropology (3.9/4.0 GPA)
- 8/78 B.A. degree; Anthropology
- TRAINING:** 88-91 Internship/Residency in Family Medicine; Tallahassee Memorial HealthCare Residency Program, Tallahassee, Florida; BLS, ACLS, ATLS
- CERTIFICATIONS:** Board Certified, American Academy of Family Practice (1989 – present); Certified Clinical Densitometrist, International Society for Clinical Densitometry, 2007; Certified Medical Review Officer (AAMRO), 2004
- AFFILIATIONS:** *Fellow*, American Academy of Family Physicians; *Diplomate*, American Board of Family Practice; FL Academy of Family Physicians; Capital Med. Society
- RESEARCH:** 81-83 Bilirubin metabolism at high altitude: Epidemiology of neonatal hyperbilirubinemia at high altitude (University of Colorado Health Sciences Center)
- WORK EXPERIENCE:** 02- Private practice. Location: 602 E. Fifth Ave., Havana, Fl – with active staff privileges at Tallahassee Memorial HealthCare, Tallahassee, FL
- 00-02 Private practice. Location: 300 E. Jefferson St., Quincy, Fl with active staff privileges at Tallahassee Memorial HealthCare, Tallahassee, FL
- 93-00 Medical Director, Tallahassee Memorial Family Medicine, Havana - with privileges at Tallahassee Memorial HealthCare, Tallahassee, FL
- 91-93 Dartmouth-Hitchcock Medical Center; Keene, New Hampshire – with privileges at Cheshire Medical Center; Keene, New Hampshire
- 89-91 Part-time during residency: ER physician (various hospitals); Capital Health Plan Urgent Care; Student Health Center (FSU); Health Dept., etc.
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PERSONAL
INFORMATION:

Birthdate:
Marital Status:
Wife's Name:
Children: -
Telephone: () - - - - - 1
E-mail
mgw.news

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MESSER CAPARELLO & SELF, P.A.

& S

Attorneys At Law

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HEALTH LAW

William P. Dillon

Received

AUG 13 2012

MQA ISU DOH

August 10, 2012

Via Certified Mail Return
Receipt Requested and Facsimile
(850)488-0796

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Medical Malpractice Investigator
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PERSONAL
INFORMATION:

Birthdate: --
Marital Status:
Wife's Name: -
Children: -
Telephone:
E-mail mgw.newb

00038

M|C MESSER CAPARELLO & SELF, P.A.

& S

Attorneys At Law

P.O. Box 15579
Tallahassee, Florida 32317

Handwritten signature: MESSER

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Medical Malpractice Investigator
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4052 Bald Cypress Way, Bin C20
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32399-3270 0001



CONFIDENTIAL INDEX OF NAMES

██████████ - Patient (J.O.)

██████████ - Patient (F.B.)