STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-8454

April 14, 1995

Frank DiBenedetto, D.O.
421 S. Georgesville Road
Columbus, OH 43228

Dear Doctor DiBenedetto:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 1995, including a Motion approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 124 388
RETURN RECEIPT REQUESTED
cc: Judith A. Berman, Esq.
Certified Mail No. P 741 124 389
Return Receipt Requested

Douglas R. Jennings, Esq.
Certified Mail No. P 741 124 390

Mailed 5-5-95

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 1995, including a Motion approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Frank DiBenedetto, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)

Thomas E. Gretter, M.D.
Secretary

4/23/95
Date

STATE MEDICAL BOARD OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

FRANK W. DIBENEDETTO, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of April, 1995.

Upon the Report and Recommendation of R. Gregory Porter, Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. The certificate of Dr. DiBenedetto to practice osteopathic medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is STAYED, and Dr. DiBenedetto's osteopathic certificate is hereby SUSPENDED for an indefinite period of time, but not less than one year.

2. The State Medical Board shall not consider reinstatement of Dr. DiBenedetto's osteopathic certificate to practice unless and until all of the following minimum requirements are met:

    a. Dr. DiBenedetto shall submit an application for reinstatement, accompanied by appropriate fees.

    b. Dr. DiBenedetto shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances, such course to be approved in advance by the Board or its designee, and shall be in addition to the regular Continuing Medical Education requirements for relicensure under Section 4731.281, Ohio Revised Code.

c. Doctor DiBenedetto shall provide acceptable documentation of successful completion of a minimum of sixty (60) hours of Continuing Medical Education courses in medical record keeping and pharmacology. Such courses shall be approved in advance by the Board or its designee and shall be in addition to the Continuing Medical Education requirements for relicensure under Section 4731.281, Ohio Revised Code.

d. Doctor DiBenedetto shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. DiBenedetto fails this examination, Dr. DiBenedetto must wait one (1) month between re-examinations.

e. In the event that Dr. DiBenedetto has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. DiBenedetto's fitness to resume practice.

3. Upon reinstatement and commencement of practice in Ohio, Dr. DiBenedetto certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years.

a. Dr. DiBenedetto shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.

b. Dr. DiBenedetto shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether there has been compliance with all the conditions of this probation.

c. Dr. DiBenedetto shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

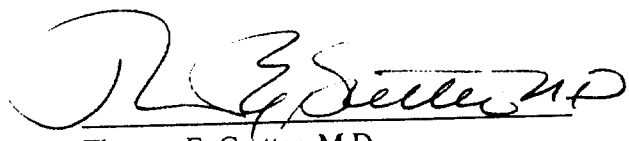
d. In the event that Dr. DiBenedetto should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. DiBenedetto must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

e. In the event Dr. DiBenedetto is found by the Secretary of the Board to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the probationary period under this Order.

f. Dr. DiBenedetto shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. DiBenedetto's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. DiBenedetto shall make Dr. DiBenedetto's patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.

4. Dr. DiBenedetto shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.

5. This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. DiBenedetto shall not undertake the care of any patient not already under his care.



Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/23/95
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF FRANK W. DIBENEDETTO, D.O.

The Matter of Frank W. DiBenedetto, D.O., originally came on for hearing before Wanita J. Sage, Esq., former Hearing Examiner for the State Medical Board of Ohio, on April 5, 6, 7, and 9, 1993. No Report and Recommendation having been issued by Ms. Sage prior to her leaving the Board's employ, this Matter was reassigned to me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, pursuant to Chapters 119. and 4731., Ohio Revised Code.

INTRODUCTION

I. Basis for Hearing

A. By letter of September 9, 1992 (State's Exhibit 1), the State Medical Board notified Frank W. DiBenedetto, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio, based upon the following allegations:

1. Citing Dr. DiBenedetto's care of Patients 1 through 5 (identified in a Patient Key to be withheld from public disclosure) as examples, the Board alleged that Dr. DiBenedetto "excessively prescribed controlled substances. His prescribing was frequently done without utilization of appropriate diagnostic testing or other methods of evaluating the validity of the complaints or the nature or severity of the patients' reported pain, illness or injury, or without indication that such prescribing was warranted. Further, this prescribing was often initiated and continued without employing or exhausting other conservative measures or modalities. Furthermore, [Dr. DiBenedetto's] records failed to reflect the symptoms, observations, assessments, dosage units of drugs prescribed, or treatment plans for the individual patients." Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, were alleged to constitute "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate,

directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. A violation of paragraph C of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22, Ohio Revised Code, shall also constitute a violation of 4731.22(B)(3), Ohio Revised Code.

2. The Board alleged that Dr. DiBenedetto "excessively prescribed controlled substance of narcotics and anorectic agents (including Fiorinal #3, Esgic with codeine and Adipex-P) to Patient 6 for headaches and weight loss from 1980 until 1990." He did so without an appropriate referral for a neurological workup. Dr. DiBenedetto prescribed Adipex-P to Patient 6 in greater than 14-day supplies, and continued prescribing Adipex-P to Patient 6 after learning that she had been receiving the drug from another physician and in spite of the fact that she failed to lose weight.

3. The Board alleged that Dr. DiBenedetto "excessively prescribed controlled substance anorectic agents (including Adipex-P and Biphetamine) to Patient 7 from 1975 to 1990. At the time of her first visit, Patient 7 weighed 141 1/2 lb.; at her last visit in July, 1990, the patient weighed 181 lb."

The Board alleged that Dr. DiBenedetto's acts, conduct, and/or omissions as alleged in paragraphs 2 and 3, above, individually and/or collectively, constituted "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1), (2), (3), and (5)(a), (b), and (d), Ohio

Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

4. Citing Dr. DiBenedetto's care of Patients 8 through 13 (identified in a Patient Key to be withheld from public disclosure) as examples, the Board alleged that, in his course of practice, Dr. DiBenedetto, "while prescribing controlled substances for weight loss for Patients 8 through 13, [Dr. DiBenedetto] failed to utilize the controlled substances as an adjunct in the treatment of obesity, failed to follow FDA approved labeling for the products, failed to determine if the patient made a substantial good-faith effort to lose weight in a treatment program according to the utilization of controlled substances, failed to obtain a thorough physical examination or rule out the existence of any recognized contraindications, and/or failed to discontinue the controlled substances when the patient did not lose weight. Further, these patients were seen and prescriptions for controlled substances issued in [Dr. DiBenedetto's] absence but with his authority. In addition, [Dr. DiBenedetto] retrospectively signed the patient records for the visits for which [he was] absent." The Board alleged that Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively,. constituted "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code; "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "'(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731.41, Ohio Revised Code, practice of medicine or surgery without certificate and Rules 4731-11-02(A), (C), and (B), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of this rule, as

determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. A violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22 of the Revised Code, shall also constitute a violation of Section 4731.22(B)(3), Ohio Revised Code. Further, your acts, conduct, and/or omissions committed after November 11, 1986, ... individually and/or collectively, constitute '(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1), (2), (3), and (5)(a) and (b), Ohio Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code."

5. The Board alleged that, in his course of practice, Dr. DiBenedetto "continually authorized non-physician staff members to prescribe controlled substances for weight loss to patients in [Dr. DiBenedetto's] absence." Instances of such conduct included prescriptions authorized to individuals listed on the confidential Patient Key. Such acts, conduct, and/or omissions, individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code; "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate and therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; "commission of act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 473.22(B)(12), Ohio Revised Code, to wit: Section 3719.06(A), Ohio Revised Code, Prescription and dispensing by practitioner. Pursuant to Section 3719.99(B), Ohio

Revised Code, a violation of this Section shall constitute the misdemeanor of the third degree.

Dr. DiBenedetto was advised of his right to request a hearing in this Matter.

B. By letter received by the State Medical Board on October 6, 1992 (State's Exhibit 2), Terry Tataru, Esq., requested a hearing on behalf of Dr. DiBenedetto.

II. Appearances

A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Anne B. Strait, fka Anne C. Berry, Assistant Attorney General.

B. On behalf of the Respondent: Judith A. Berman, Esq., and John T. Ryerson Jr., Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Frank W. DiBenedetto, D.O. (as if on cross-examination)

2. Richard Longshore, M.D.

3. Robert E. Orum, D.O.

4. Peter Martin, D.O.

5. Stephen Fulton

6. Beth Shaffer

7. Charlene Saxe

B. Presented by the Respondent

1. William Malarkey, M.D.

2. Eljorn Don Nelson, Pharm.D.

3. Steven Delaveris, D.O.

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit 3: October 8, 1992 letter to Terry Tataru, Esq., from the Board, advising him that a hearing initially set for October 21, 1992 was postponed pursuant to Section 119.09, Ohio Revised Code.

2. State's Exhibit 4: October 13, 1992 letter to Attorney Tataru from the Board, scheduling the hearing for December 10, 1992.

3. State's Exhibit 5: October 22, 1992 Entry rescheduling the hearing for January 13-15, 1993, for administrative reasons.

4. State's Exhibit 6: October 26, 1992 Entry rescheduling the hearing to January 20-22, 1993.

5. State's Exhibit 7: November 3, 1992 Motion of Appearance of Counsel of Terry Tataru, Esq., as counsel for the Respondent.

6. State's Exhibit 8: Respondent's November 3, 1992 request for witness and documents list.

7. State's Exhibit 9: State's November 5, 1992 Notice of Appearance of Anne C. Berry, Assistant Attorney General, as counsel for the State.

8. State's Exhibit 10: State's November 5, 1992 request for list of witness and documents.

9. State's Exhibit 11: State's list of witnesses and documents, filed on December 18, 1992.

10. State's Exhibit 12: Respondent's December 30, 1992 Motion for Continuance.

11. State's Exhibit 13: State's January 4, 1993 Memorandum Contra Motion for Continuance.

12. State's Exhibit 14: Respondent's January 11, 1993 agreement to five limitations on his practice until such time as the Board renders its final order in this Matter, consisting of: "1. Respondent shall comply with all requirements of Ohio ADM Code Chapter 4731-11. 2. Respondent must personally examine each patient and may not delegate any patient care responsibilities to any unlicensed assistant. Respondent shall personally sign all chart entries. This provision is not intended to hold Respondent to a higher standard of practice and is required by the applicable sections of the Ohio Revised Code and Ohio Administrative Code. 3. Respondent shall not accept any new weight control patients. 4. Respondent shall keep a log of all controlled substances which he prescribes. 5. Respondent shall issue prescriptions for controlled substances only in writing; he shall not authorize any such prescriptions to be phoned into pharmacies, nor shall he pre-sign prescription blanks." The document is signed by Frank W. DiBenedetto, D.O., and dated January 11, 1993. It is also signed by Terry Tataru, Esq., attorney for the Respondent, and Anne C. Berry, Assistant Attorney General.

13. State's Exhibit 15: January 11, 1993 Entry granting the Respondent's Motion for Continuance, and rescheduling the hearing for March 15-17, 1993.

14. State's Exhibit 16: Respondent's February 25, 1993 Notice of Appearance of Judith A. Berman, Esq., and John T. Ryerson, Jr., Esq., as counsel.

15. State's Exhibit 17: Respondent's February 25, 1993 Motion for Continuance, Request for Discovery, Affidavit of Judith A. Berman, Esq., and Affidavit of Frank W. DiBenedetto, D.O.

16. State's Exhibit 18: March 1, 1993 Notice of Withdrawal of Terry Tataru, Esq., as counsel for Respondent.

17. State's Exhibit 19: State's March 3, 1993 Memorandum Contra Motion for Continuance.

18. State's Exhibit 20: State's March 3, 1993 Motion to Quash Respondent's Request for Discovery.

19. State's Exhibit 21: March 4, 1993 Entry granting the Respondent's Motion for Continuance, and rescheduling the hearing for April 5-7, 1993, and denying Respondent's Request for Discovery.

20. State's Exhibit 22: Respondent's March 20, 1993 list of witnesses and documents.

21. State's Exhibit 23-A: Respondent's March 26, 1993 supplemental list of witnesses and documents.

22. State's Exhibit 24-A: State's March 29, 1993 amended list of witnesses and documents.

* 23. State's Exhibit 23: Medical records of Patient 1.

* 24. State's Exhibit 24: Medical records of Patient 2.

* 25. State's Exhibit 25: Medical records of Patient 3.

* 26. State's Exhibit 26: Medical records of Patient 4.

* 27. State's Exhibit 27: Medical records of Patient 5.

* 28. State's Exhibit 28: Medical records of Patient 6.

* 29. State's Exhibit 29: Medical records of Patient 7.

* 30. State's Exhibit 30: Medical records of Patient 8.

* 31. State's Exhibit 31: Medical records of Patient 9.

* 32. State's Exhibit 32: Medical records of Patient 10.

* 33. State's Exhibit 33: Medical records of Patient 11.

* 34. State's Exhibit 34: Medical records of Patient 12.

* 35. State's Exhibit 35: Medical records of Patient 13.

* 36. State's Exhibit 36: Prescription list of Dr. DiBenedetto, with shaded areas indicating pre-signed prescriptions.

* 37. State's Exhibit 37: Copies of numerous prescriptions issued from Dr. DiBenedetto's office, which correspond to the prescription list in State's Exhibit 36.

38. State's Exhibits 38-43: Materials given to weight control patients by Dr. DiBenedetto.

39. State's Exhibit 44: 1983 Metropolitan height and weight tables.

* 40. State's Exhibit 45: Transcript of December 14, 1988 investigative deposition of Dr. DiBenedetto.

* 41. State's Exhibit 46: Corrections to the transcript of the December 14, 1988 investigative deposition of Dr. DiBenedetto.

42. State's Exhibit 47: Curriculum vitae of Richard E. Longshore, M.D.

43. State's Exhibit 48: Withdrawn.

44. State's Exhibit 49: Listing of dates on which Robert Forum, D.O., covered Dr. DiBenedetto's practice during 1988 as locum tenens.

45. State's Exhibit 50: Copy of Dr. Forum's calendar.

* 46. State's Exhibit 51: Transcript of November 30, 1988 investigative deposition of Steven L. Fulton.

47. State's Exhibit 52: Curriculum vitae of Beth Shaffer.

48. State's Exhibit 53: Article from an unknown publication containing the partial excerpt of an article titled *Taking a Fat Chance: When Does a Weight Problem Become a Health Hazard?* by Ronald Kotulak, Chicago Tribune. It contains the 1959 and 1983 Height-Weight Tables of the Metropolitan Life Insurance Company, and 1985 weight recommendations from the National Institute of Aging.

49. State's Exhibit 54: April 5, 1993 certification of the Secretary of the State Medical Board of Ohio, that Steve Fulton does not hold a certificate to practice medicine and surgery or any of its branches or as a physician's assistant.

50. State's Exhibit 55: Collection of documents from the Ohio Army National Guard, regarding Dr. DiBenedetto's national guard service, and July 26, 1989 cover letter.

* 51. State's Exhibits 56-68: Summary lists of the prescriptions given to Patients 1 through 13, respectively. These exhibits were found by the successor Hearing Examiner to contain some inaccuracies, but are being left in the record because they were reviewed by witnesses Dr. Longshore and Dr. Malarky in preparing for the hearing.

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum of vitae of Francis William DiBenedetto, D.O.

* 2. Respondent's Exhibit B: Summary of Dr. DiBenedetto's old weight patients, listing the starting date, name, prescription, date last seen, and weight loss.

* 3. Respondent's Exhibit C: Summary of Dr. DiBenedetto's current weight control patients, with the same information as Respondent's Exhibit B.

4. Respondent's Exhibits D1-E2: Samples of literature given to Dr. DiBenedetto's patients.

5. Respondent's Exhibit F: Weight control packet given to Dr. DiBenedetto's weight control patients, consisting of the following: calorie guide with brand names of basic foods, by Barbara Krouse, 1992 revised edition, signet; booklet entitled Trimright Nutrition Program, a complete weight control system; booklet entitled Trimright Nutrition Program, Maintenance Meal Program for maintenance meal planning; a listing of calories of certain foods; booklet entitled The Personal Weight Loss Record and Fitness Guide, from Gate Pharmaceuticals, collection of documents from Westside Health Center, Inc.; collection of documents from Gate Pharmaceuticals. (NOTE: DUE TO THE IMPRACTICALITY OF COPYING SOME OF THE ITEMS CONTAINED IN THIS PACKET, THE PACKET WILL BE MADE AVAILABLE FOR VIEWING BY BOARD MEMBERS AT THE BOARD OFFICE)

6. Respondent's Exhibit G: Listing of continuing medical education activity of Dr. DiBenedetto.

7. Respondent's Exhibit H: Curriculum vitae of William B. Malarkey, M.D.

8. Respondent's Exhibit I: Article entitled *Long-term weight control: The National Heart Lung and Blood Institute Funded Multimodal Intervention Study*, by Michael Weintraub, M.D., Clinical Pharmacological Therapy, Vol. 51, No. 5, May 1992.

9. Respondent's Exhibit J: Curriculum vitae of Eljorn Don Nelson, Pharm. D.

10. Respondent's Exhibit K: Curriculum vitae of Stepnen L. Delaveris, D.O.

* NOTE: THOSE EXHIBITS LISTED ABOVE WITH AN ASTERISK (*) HAVE BEEN SEALED TO PROTECT PATIENT CONFIDENTIALITY.

III. Post-Hearing Exhibits

A. On the motion of the Respondent, the following additional exhibit is admitted to the record:

Respondent's Exhibit L: Letters of support for Dr. DiBenedetto from professional colleagues, a patient, and cover document.

B. On the Hearing Examiner's own motion, the following additional exhibits are admitted to the record:

1. Board Exhibit A: November 3, 1994 Entry notifying the parties that the hearing record would close on November 16, 1994, and notifying the parties that a successor hearing examiner had been appointed.

2. Board Exhibit B: Respondent's November 15, 1994 Motion to Continue the Close of the Administrative Record.

3. Board Exhibit C: Respondent's November 16, 1994 Notice Withdrawing Motion to Continue Close of Administrative Hearing Record.

4. Board Exhibit D: November 16, 1994 Joint Notice of Intent to Continue Settlement Negotiations, reopening the hearing record until December 15, 1994.

5. Board Exhibit E: February 10, 1995 Entry requesting that the State supply State's Exhibit 48, which was not been supplied at the hearing; admitting the supplemental evidence in support of the Respondent as

Respondent's Exhibit L; declining to admit Respondent's post-hearing brief, holding it as a proffer, and marking it Respondent's Exhibit M.

6. Board Exhibit F: Excerpt from Facts and Comparisons, dated May 1985, regarding anorexiants, including Adipex-P, Didrex, Preludin, Statobex, and Tenuate.

7. Board Exhibit G: Excerpt from Facts and Comparisons, dated April 1987, regarding narcotic agonist analgesics and narcotic analgesic combinations, including Fiorinal #3 and Darvocet-N 100.

8. Board Exhibit H: Excerpt from Facts and Comparisons, dated February 1984, regarding amphetamines, including Dexedrine.

9. Board Exhibit I: Excerpt from Facts and Comparisons, dated February 1984, regarding Benzodiazepines as antianxiety agents, including Xanax, Valium, and Tranxene.

10 Board Exhibit J: Excerpt from Facts and Comparisons, dated December 1986, regarding Benzodiazepines as sedatives and hypnotics, including Dalmane and Halcion.

11. Board Exhibit K: Excerpt from Facts and Comparisons, dated February 1987 regarding barbiturates.

12. Board Exhibit L: Excerpt from Facts and Comparisons, dated February 1985, regarding methylphenidate (Ritalin).

13. Board Exhibit M: Excerpt from Facts and Comparisons, dated May 1984 regarding loop diuretics, including Lasix and Bumex.

14. Board Exhibit N: Excerpts from Physicians' Desk Reference (40th Ed. 1986) regarding Adipex-P and Didrex, the title page and Forward to the 40th Edition are attached.

15. Board Exhibit O: Excerpts from Physicians' Desk Reference (42nd Ed. 1988) regarding Adipex-P and Didrex; the title page and Forward to the 42nd Edition are attached.

16. Board Exhibit P: Excerpts from Physicians' Desk Reference (43rd Ed. 1989) regarding Adipex-P and Didrex; the title page and Forward to the 43rd Edition are attached.

17. Board Exhibit Q: Excerpts from Physicians' Desk Reference (44th Ed. 1990) regarding Adipex-P and Didrex; the title page and Forward to the 44th Edition are attached.

18. Board Exhibit R: Excerpts from Physicians' Desk Reference (45th Ed. 1991) regarding Adipex-P and Didrex; the title page and Forward to the 45th Edition are attached.

19. Board Exhibit S: Excerpts from Physicians' Desk Reference (46th Ed. 1992) regarding Adipex-P and Didrex; the title page and Forward to the 46th Edition are attached.

20. Board Exhibit T: Excerpts from Physicians' Desk Reference (47th Ed. 1993) regarding Adipex-P and Didrex; the title page and Forward to the 47th Edition are attached.

21 Board Exhibit U: Excerpt from Facts and Comparisons, dated December 1986, regarding Placidyl.

22. Board Exhibit V: Excerpts from Facts and Comparisons, dated February 1985, regarding Triavil; dated August 1986, regarding amitriptyline; and dated December 1985, regarding perphenazine.

23. Board Exhibit W: Section 2901.22, Ohio Revised Code, entitled "Culpable mental states."

24. Board Exhibit X: Excerpts from *Dorland's Illustrated Medical Dictionary*, (27th Edition, 1988) including definitions for hyperthyroidism and hypothyroidism.

PROCEDURAL MATTERS

A. Respondent's Exhibit M was not admitted to the hearing record, but is held as proffered material.

B. The hearing record in this Matter closed on November 16, 1994.

C. On November 16, 1994, the hearing record in this Matter was reopened for a period of thirty days to allow the parties to continue settlement negotiations pursuant to Rule 4731-13-17(A), Ohio Administrative Code. Because the Hearing Examiner did not receive notice of settlement, the hearing record closed again on December 16, 1994.

D. State's Exhibit 48 was not made available at the hearing on this matter. By Entry dated February 10, 1995, the Hearing Examiner requested that this exhibit be supplied. Because it was not supplied, it is deemed withdrawn.

E. Several patient names appeared in the transcript on pages 547 and 549. These names were redacted by the Hearing Examiner.

F. All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Hearing Examiner prior to his findings and recommendation in this Matter.

SUMMARY OF THE EVIDENCE

1. Several individuals, including Dr. DiBenedetto, testified as experts in this matter:

a. Frank W. DiBenedetto, D.O. is a solo family practitioner with an office on the west side of Columbus, Ohio. Dr. DiBenedetto graduated from the Des Moines College of Osteopathic Medicine and Surgery in 1971, and did a 12-month rotating internship at Doctors Hospital through 1972. He is licensed in Ohio and in Florida. He testified that he has had no disciplinary actions in Florida. He treats a wide variety of patients as far as age and economic status are concerned; about twenty-five percent of his practice have public third-party reimbursement. Dr. DiBenedetto testified that, as of the time of the hearing, he had around 270-280 patients in his weight control program. He had around 4000 plus patients total. He sees 85 to 100 patients per day, from 8:00 a.m. to 8:30 p.m., Monday through Thursday. Fridays and Saturdays are half-days, from 8:00 a.m. to 1:30 or 2:00 p.m., and he sees about half that many patients then. Dr. DiBenedetto's curriculum vitae was admitted as Respondent's Exhibit A.

Following his internship, Dr. DiBenedetto went to work very briefly for a practice in Grandview that was doing weight control. After two weeks, Dr. DiBenedetto became unhappy with their way of doing business, and went into practice with two other physicians on the west side of Columbus who were also doing weight control. Dr. DiBenedetto was trained in their methods. He went with another practice in 1974, then went on his own in 1978. He testified that he has educated himself, and continued to modify and evolve his weight program. (Tr. at 5-7, 536-538)

b. Richard D. Longshore, M.D., testified as an expert on behalf of the State. Dr. Longshore graduated from the University of Louisville Medical School in

1967, and did a one-year rotating internship at Christ Hospital in Cincinnati, completed in 1968. He was licensed to practice medicine in Ohio in 1968. Dr. Longshore was certified by the American Board of Family Practice in 1977, and has renewed his certificate since that time. He is a solo family practitioner in Mt. Healthy, Ohio, which is a suburb of Cincinnati, and is what Dr. Longshore described as a lower middle class area. Dr. Longshore has about 1200 active charts and sees about 25 or 30 patients per day. He sees patients about sixty hours per week. (State's Exhibit 47, Tr. at 95-105) Dr. Longshore's curriculum vitae was admitted as State's Exhibit 47.

c. Beth Shaffer testified on behalf of the State as an expert in the field of dietetics and weight control. She is currently a compliance specialist with the Ohio Board of Dietetics. Her resume was admitted as State's Exhibit 52. She was registered as a dietitian in 1968, and was licensed as a dietitian in Ohio in 1987. (Tr. at 424-434)

d. William B. Malarky, M.D., testified as an expert on behalf of the Respondent. Dr. Malarky is a professor of medical microbiology and immunology and program director of the clinical research center at The Ohio State University. He graduated from Washington University School of Medicine in 1965, did internship and residency from 1965 to 1967 at Ohio State University, from 1969 to 1971 at Washington University in St. Louis, and from 1971 to 1972 at University of Colorado Medical Center in Denver. The last three years were a fellowship in endocrinology; the rest was internal medicine. Dr. Malarky's specialty is endocrinology, and his research interests are pituitary, exercise, stress, and their effects on the endocrine system. (Tr. at 840-843) His curriculum vitae was admitted as Respondent's Exhibit H.

e. Eljorn Don Nelson, Pharm. D. testified as an expert in clinical pharmacology for the Respondent. He is a clinical pharmacologist and professor of clinical pharmacology and cell biophysics at the University of Cincinnati College of Medicine, Associate Director of the Drug and Poison Information Center in Cincinnati, and a faculty member of the Department of Experimental Medicine. Among his other qualifications, Dr. Nelson was trained by the National Institution of Drug Abuse and Alcoholism, and teaches on issues of substance abuse. Analgesia and substance abuse are areas of special interest. (Tr. at 914-919) His curriculum vitae was admitted as Respondent's Exhibit I.

f. Steven L. Delaveris, D.O., testified as an expert on behalf of the Respondent. Dr. Delaveris graduated from the Chicago College of Osteopathic Medicine in 1979, and did a rotating internship at Doctors Hospital from July 1979 to June 1980. He was licensed in Ohio in 1980, and has practiced family

medicine in the Columbus, Ohio area since that time. (Tr. at 1044-1045) Dr. Delaveris's curriculum vitae was admitted as Respondent's Exhibit K.

2. State's Exhibits 56-68 consist of summaries of the prescriptions given to Patients 1 through 13, respectively. These exhibits were found by the successor Hearing Examiner to contain some inaccuracies, but were left in the record because they were reviewed by witnesses Dr. Longshore and Dr. Malarky in preparing for the hearing.

3. **Patient 1**, female d.o.b. 11-10-43, first presented to Dr. DiBenedetto's office on 3-13-87. She was at that time diagnosed as suffering from "Gross DJD of Thoracic - Lumbar Vertebrate" and Tenosynovitis of knees. (State's Exhibit 23, pp. 2-2a) There was some confusion in the record regarding what "Gross DJD" was. Dr. Longshore, the State's expert, testified that Dr. DiBenedetto diagnosed Patient 1 with gross degenerative *disc* disease of the lumbar and thoracic vertebrae, and based his testimony upon that belief. (Tr. at 107) Dr. DiBenedetto testified that he diagnosed Patient 1 as suffering from gross degenerative *joint* disease, based upon examination and x-rays. (Tr. at 572-575) Dr. DiBenedetto drew laboratory samples for a rheumatoid profile, which yielded a negative result for rheumatoid arthritis. (State's Exhibit 23, p. 13) There is a record of x-ray results in State's Exhibit 23, p. 94, which records a result of "ant lipping" for dorsal lumbar x-ray studies; normal results for a bilateral knee x-ray study. Dr. DiBenedetto testified that this notation referred to anterior lipping of the vertebrae. "Lipping is the extra production of calcium product on, in this case, a bone or vertebrae. This signifies calcium laydown due to arthritic processes." (Tr. at 574) Dr. DiBenedetto saw Patient 1 in his office again on 3-20-87 to review the lab results and re-check her back. He recorded a diagnosis that day of "Osteoarthritis [with] myospasm." (State's Exhibit 23, p. 10)

Regarding Patient 1's first visit, on 3-13-87, there is a note that she "wants Rx for Darvocets." (State's Exhibit 23, p. 2) Dr. DiBenedetto prescribed for her an unspecified number of Darvocet-N-100 that day. (State's Exhibit 23, p. 2a) When she returned to Dr. DiBenedetto to review her x-ray results on 3-20-87, she again received a prescription for an unspecified number of Darvocet-N 100 and 20 Feldene. (State's Exhibit 23, p. 10) Patient 1 continued to receive prescriptions from Dr. DiBenedetto for Darvocet-N 100 on a number of occasions, as follows:

Date	Quantity
3-13-87	unspecified
3-20-87	unspecified
4-15-87	50
4-30-87	unspecified

5-22-87	unspecified
6-17-87	unspecified
7-1-87 (p. 20)	unspecified
7-15-87	unspecified
7-27-87 (p. 19)	(one every 4 hr.)
8-24-87	(one every 4 hr.)
9-21-87	unspecified
10-28-87	unspecified
11-16-87: "Cont Rx"	
11-30-87: "Cont Rx"	
12-29-87: "Cont Rx"	
1-27-88	unspecified
2-10-88: "Refill meds"	
3-4-88	unspecified
4-8-88	60
4-30-88	100
5-18-88	60
6-1-88	unspecified
6-14-88	(one or two every 6 hr.)
7-6-88: "Cont Rx"	
7-20-88	unspecified
8-10-88	unspecified
8-17-88	100
8-31-88: "Refill meds"	

(Above the next entry is the note, "Pharmacist states she has received 805 Darvocets since June 1." State's Exhibit 23, p. 46)

9-21-88	100
10-17-88	90
11-9-88	90
11-23-88	(every 4 hr.)
12-30-88	unspecified
1-16-89	100
1-30-89	30
3-6-89	60
3-20-89	60
4-6-89	60 (one every 6-8 hr.)
4-20-89	60
5-18-89	100 (every 6 hr.)
6-15-89	100 (every 6-8 hr.)
6-29-89	100 (one every 6 hr.)

(Following the last entry is the note, "Pharmacist from Super-X called stated if directions are not changed on Darvocet for the quanity (sic). He will not fill anymore." State's Exhibit 23, p. 76)

On or about 7-1-89, Patient 1 presented to the emergency room at Doctors Hospital, Columbus, Ohio. She had fallen backwards the previous evening, hit her back against a chair, and was suffering from pain in her lower back. (State's Exhibit 23, pp. 77-79) The following assessment was made: "Exacerbation of chronic low back pain (lumbago). Patient has been educated as to the natural history of low back pain and has been told that no narcotics will be prescribed for this. She was very unhappy that she would not be receiving narcotics but she will follow-up with her family physician in 3-4 days." (State's Exhibit 23, p. 77) She returned to Doctors Hospital on or about 7-1-89 for the following: "This 45 year old white female is a self admitted long time over-the-counter, [street? - illegible], and prescription drug abuser. She presents at the request of Dr. [illegible] to be evaluated for possible medical admission because of her habituation to narcotics. She states that she takes [illegible] [illegible] Darvocet, Darvon, and has been in the past on Prolixin, etc. ... Despite her long history of rather casual drug abuse, no significant disease states are found and her FINAL DIAGNOSIS is drug abuse." (State's Exhibit 23, p. 80) She was then "referred to Maryhaven for withdrawal and in follow-up with Southwest Mental Health and/or Dr. [illegible] in the morning." (State's Exhibit 23, p. 80) Dr. DiBenedetto was notified of the diagnosis of drug abuse by letter dated 7-6-89. The note was addressed both to Dr. DiBenedetto and Dr. Charles Thurston. (State's Exhibit 23, p. 81)

A review of Patient 1's medical indicates that Dr. DiBenedetto ceased his prescribing of narcotic analgesics to Patient 1 after 6-25-89. He continued to see her as a patient. (State's Exhibit 23)

The recommended maximum daily dose of propoxyphene napsylate is 600 mg. per day. Each tablet of Darvocet-N 100 contains 100 mg. of propoxyphene napsylate. (Board Exhibit G)

Dr. Longshore testified that Dr. DiBenedetto prescribed Bumex 1 mg. to Patient 1 on 8-24-87. Dr. Longshore testified that Bumex is a very potent diuretic, that can deplete the patient's potassium. There was no record that Dr. DiBenedetto placed Patient 1 on potassium, although Dr. Longshore thought that he should have. If a patient's potassium gets too low, the heart slows down, the patient becomes weak and gets leg cramps. Dr. Longshore could find no indication for prescribing this drug. Her blood pressure was 148/62, which Dr. Longshore testified is not high enough to warrant this prescription. (State's Exhibit 23, p. 21; Tr. at 112-114)

Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 1 fell below the minimal standard of care of similar practitioners under the same or similar circumstances. She should not have been prescribed narcotics for chronic back pain. She should have been informed of that fact, and told that "(s)he's stuck with

it. That's the way life is, and not expect to be given narcotics or some kind of narcotics or pain reliever for the rest of her life." (Tr. at 130-131) He should have done a lot more patient education. (Tr. at 131) Furthermore, Dr. DiBenedetto did not exercise reasonable care discrimination in his prescribing of Darvocet-N 100 to Patient 1. "There are different types of treatment for this. And simply prescribing pain medication is not the answer. If nothing else, she could have gone to a back pain clinic." (Tr. at 131-132)

Dr. Longshore provided a chart summarizing Dr. DiBenedetto's prescribing of certain drugs to Patient 1, that was admitted as (State's Exhibit 56). The summary appears to be rather unreliable, however. There are numerous references to prescribing of 100 dosage units of Darvocet-N that are not supported anywhere else in the record. This was possibly the result of misinterpreting the name of the drug, Darvocet-N 100, as a notation of dosage unit quantity.

Dr. DiBenedetto defended his prescribing of Darvocet-N 100 to Patient 1. He testified that it was a good drug for her, because of its low abuse potential, and because it relieved her pain at a lower-than-recommended dose. With the pain relief it provided, she was able to continue working. She was not able to work without the pain relief. He testified that he saw no evidence of over-sedation in this patient. (Tr. at 575-577) He testified that he believed she had been seeing an orthopedist. He acknowledged that he did not refer her to a physical therapist. Patient 1 was a Medicaid patient. (Tr. at 735-736)

Dr. Nelson testified that Darvocet is a combination drug. It contains acetaminophen, which is a non-addicting, non-narcotic analgesic, and propoxyphene, which is an opioid. Propoxyphene appears to be more effective in treating chronic pain conditions than short-term pain conditions. It is a controlled drug. It can be addicting. (Tr. at 926-928) "Addiction certainly can occur with large doses over long periods of time. In nearly every case where there is a serious problem with chemical dependency, one sees the drug consumed in quantities in excess of that which is prescribed." (Tr. at 928) Referring to the Physicians' Desk Reference, Dr. Nelson testified that the typical dose for analgesic purposes is one or two tablets every four to six hours. (Tr. at 930) Dr. Nelson testified that in his review of Patient 1's record, Darvocet was a reasonable therapy for her condition. Degenerative joint disease is a clear indication for prescribing of pain-relieving medication. He would want to monitor a patient carefully at the maximum dose of 12 per day. (Tr. at 958-961)

On the subject of drug-seeking behavior, Dr. Nelson testified that a patient asking for a particular drug by name on a first visit might be a tip-off, but it could also result from a knowledgeable patient who is aware of what works for him or her. (Tr. at 985-986)

Dr. Delaveris testified that Dr. DiBenedetto's treatment of Patient 1 did not fall below the minimal standards of care. In his review of her records for the period 1987-1991, he found a clear diagnosis for each visit that was supported by other information in the chart. Dr. Delaveris testified that the medications prescribed were related to the diagnoses. (Tr. at 1050-1052)

4. **Patient 2**, female, d.o.b. 8-28-39, first saw Dr. DiBenedetto on or about 12-20-74. At that time, her chief complaints were weight and sinus drainage. Her weight was noted as 170 lb., with 200 lb. written in above it. It was noted that she "was on Preludin," although she was not currently on any medications. Dr. DiBenedetto diagnosed sinusitis. He prescribed 30 Preludin [End? - illegible] 75 (one pill in the morning), an unspecified quantity of Lasix 40mg., 50 Ornade, and Afrin. (State's Exhibit 24, p. 13) Her next visit was 1-10-75. The chief complaint was "weight." Her weight was noted as 167 lb. Dr. DiBenedetto diagnosed functional exhaustion and sinusitis, which was resolving. He prescribed an unspecified quantity of Preludin [En] 75 to be taken at 10 a.m., an unspecified quantity of Ritalin 5 to be taken at 12 noon, Afrin, and Ornade. (State's Exhibit 24, p. 13) On 1-24-75, on a chief complaint of "weight" and diagnosis of exogenous obesity, she received a prescription for an unspecified quantity of Dexedrine 15 to be taken at 10 a.m., an unspecified quantity of Ritalin 5 to be taken at 2 p.m., and Lasix 40 mg. (State's Exhibit 24, p. 14) On 2-14-75, she received a prescription for an unspecified quantity of Ritalin 5 mg. "AM and lunch," as well as Drixoral and Ampicillin 250 for a diagnosis of otitis media. (State's Exhibit 24, p. 14) On 3-5-75, she received prescriptions for Dexedrine 15, Ritalin 5 "2 PM" and Lasix 40mg. (State's Exhibit 24, p. 15) On 3-20-75, Patient 2 received, among other things, Biphetamine 20mg., Drixoral, Lasix, and Ritalin 5 mg. "6 PM." (State's Exhibit 24, p. 15) On 4-14-75, her weight was noted as 164 lb. She was found to be "Anxious - gets mad easy." Dr. DiBenedetto diagnosed anxiety neurosis, chronic sinusitis, and weight control. He prescribed Biphetamine 20 mg., Lasix 40 mg., and Drixoral. Patient 2 saw Dr. DiBenedetto approximately 64 times from her first visit until August 1988, and received prescriptions for anorectic drugs on 51 of those occasions. Besides Preludin and Biphetamine, she periodically received Ionamin (on 5-19-75), Fastin, and Adipex. (State's Exhibits 24 and 57; Tr. at 133) From 9-2-82 on, the anorectic prescribed was Adipex-P.

The first time Dr. DiBenedetto prescribed either Synthroid or a benzodiazepines to Patient 2 occurred on 6-3-77 (although this is not noted on State's Exhibit 57). This was based on a chief complaint of bad sinuses, weight "Diet pills & sinuses (sic) pills together are bad," and nerves. Her blood pressure was 136/80, pulse 88, and weight 170 lb. Dr. DiBenedetto diagnosed chronic sinusitis and anxiety neurosis. He prescribed an unspecified quantity of Synthroid 0.1 mg., 60 Biphetamine 12.5 mg., and an unspecified quantity of Tranxene 7.5 mg., to be taken three times

per day. (State's Exhibit 24, p. 26) He prescribed Synthroid on 9-16-77 for a diagnosis of hypothyroid, and again on 10-14-77 for the same diagnosis. (State's Exhibit 24, pp. 26-27) Her medical record does not indicate that any test of her thyroid function was performed until 11-8-77, which yielded normal results. (State's Exhibit 24, p. 46) She was tested again for thyroid on 10-22-79, 12-3-82, and 5-29-84. All test results were normal. (State's Exhibit 24, pp. 3-7, 45) Dr. DiBenedetto continued to prescribe Synthroid to Patient 2 throughout the time that he treated her, however. The dose changed to 0.2 mg. one-half per day, on 5-2-85, and to 0.2 mg. every other day on 8-16-85. (State's Exhibit 24, pp. 42-43)

Dr. DiBenedetto prescribed Tranxene 7.5 mg. for Patient 2 on the following dates: 6-3-77, 9-16-77, 10-14-77, 11-10-77, 12-8-77, and 5-2-84. (State's Exhibit 24, pp. 26-28, 40) He prescribed Tranxene 3.75 mg. for Patient 2 on: 12-4-81, 1-11-82, 2-12-82, 9-27-82, 11-4-82, 12-31-82, 2-2-83, 10-6-84, 2-10-84, and 5-19-84. (State's Exhibit 24, pp. 34-40) The supporting diagnosis in each instance was anxiety neurosis.

Dr. DiBenedetto first prescribed Xanax 0.5 mg. for Patient 2 on 8-29-86, based on a diagnosis of anxiety neurosis. The amount was unspecified. She had a blood workup done at the same visit. The results indicated that her SGOT was 56 IU/L (high), GGT was 50 IU/L (high), and SGPT was 67 IU/L (high). Her next visit to Dr. DiBenedetto was on 12-12-86, for chief complaints of nerves-depressed, start diet, Rx, and welfare physical. Her blood pressure was 142/90, and weight was 201 lb. Dr. DiBenedetto' diagnosis was "Liver Enzymes ↑ (? alcohol)." On that date he prescribed Xanax 0.5 mg., among other things. She received a prescription for Xanax 0.5 mg. on 12-31-86 (diagnoses: "1. Resolving Depression, 2. ↑ Liver Enzymes, 3. Hypothyroid." Prescriptions for Xanax 0.5 mg. were received on 5-18-87 (diagnosis: "DJD"), and on 7-31-87 (supporting diagnosis: "Anxiety - Depressive N") At her next visit, on 9-11-87, one of the diagnoses was "Alcoholism." There was a notation in the "Drugs and Treatment" area that stated "Cont. Tx". She received Librium 25 mg. at her next visit on 12-28-87, among other things, and the diagnosis was "Alcoholism (in AA program)." She also received Librium 25 mg. at her 8-17-88 visit; one of the diagnoses is "Alcoholism ↓↓". (State's Exhibit 24)

Dr. Longshore testified that when Patient 2 first came to Dr. DiBenedetto in 1974 she weighed 170 lb. She was Dr. DiBenedetto approximately 64 times over the next 12 years, and received a prescription for anorectic drugs 51 of those 64 times. At the end, she had a net weight gain of 10 lb. Dr. Longshore thought it commendable that Dr. DiBenedetto tried to help his patients lose weight, but disagreed with Dr. DiBenedetto's method of prescribing anorectic drugs to attempt to achieve that. (Tr. at 133)

Dr. Longshore could find no reason in the record for prescribing Synthroid to Patient 2. Dr. DiBenedetto started this prescribing on 6-3-77. A test performed several months later, in November 1977, showed her thyroid function to be normal. Dr. Longshore said that if you give small doses of thyroid medications to a normal patient, it doesn't do anything; it doesn't make them better or worse. Large doses can cause cardiac arrhythmia. Dr. Longshore testified that the small doses that Dr. DiBenedetto gave Patient 2 did not effect the thyroid test. (Tr. at 134-138)

Dr. Longshore stated that it is unusual to prescribe Adipex, an addicting drug, to a patient who may be an alcoholic. Likewise, an alcoholic should not get Xanax, which Dr. Longshore characterized as very addicting. He also questioned why this patient should have been receiving Lasix, with no diagnosis of hypertension.

Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 2 fell below the minimal standards of care of practitioners under the same or similar circumstances. Dr. Longshore believed that Dr. DiBenedetto was "missing an awful lot and not following through." (Tr. at 147) He cited specifically to Dr. DiBenedetto's failure to respond to Patient 2's abnormal liver tests, other than noting "'possible alcoholism.'" (Tr. at 147) Dr. Longshore wondered how Patient 2 got to Alcoholics Anonymous, because there is no note in the record that Dr. DiBenedetto ever sent her there, "which he should have done." (Tr. at 147) It is below the minimal standard of care for a physician to suspect alcoholism and not take further action. (Tr. at 148) Further, his prescribing of Xanax to an alcoholic patient fell below the minimal standards of care, because of the addictive potential of Xanax, and because of the risk of overdose from mixing Xanax and alcohol. (Tr. at 148-149)

Dr. Longshore testified that Dr. DiBenedetto failed to use reasonable care discrimination in choosing the drugs that he prescribed to Patient 2. "I think he ignored what was really wrong with the patient." (Tr. at 149-150)

Dr. DiBenedetto admitted that he prescribed Synthroid to Patient 2 on 6-3-77 without noting a diagnosis of hyperthyroidism in her record for that visit. He testified that he noted the diagnosis of hypothyroidism on her next visit. (Tr. at 610) He testified that he reached that diagnosis because "(t)his patient always had bulging eyes, lethargy, tiredness, weight gain, things that you would see in hypothyroid disease. ... Difficulty with weight control. Like I say, the lethargy would be one, the bulging of the eyes." (Tr. at 610-611) (Nevertheless, it would appear that bulging of the eyes would more likely be a result of *hyper*thyroidism rather than *hypo*thyroidism. (Board Exhibit X)) Dr. DiBenedetto said that she may have given a history of having received thyroid medication from another physician, although he acknowledged that such was not recorded in the medical

records. He testified that the thyroid tests were normal after he started prescribing Synthroid because of the corrective action of the Synthroid. He testified that the lab tests were not as accurate as they are now, and a doctor could do a lot clinically. (Tr. at 742-744)

Dr. DiBenedetto testified regarding his prescribing of anorectics to Patient 2 that she had been on Preludin prior to seeing him, and had lost 30 lb. (Tr. at 612) He testified that she weighed 170 lb. at her first visit. He acknowledged that the entry for 8-17-88 notes that her weight was 221 lb. (Tr. at 744-745)

Regarding his prescribing of benzodiazepines to Patient 2, Dr. DiBenedetto testified that he does not recall any evidence of addiction to the drugs he was prescribing, nor did he suspect alcoholism. (Tr. at 622, 751) Dr. DiBenedetto did not become concerned that she might become addicted to Tranxene or Xanax. He testified that anything is addictive in large enough quantities. (Tr. at 748) He seemed to be saying that in a controlled, clinical setting, where the patient does not have access to large quantities of the drug, the chances of addiction are small. (Tr. at 750)

Dr. Delaveris testified that, in his opinion, Dr. DiBenedetto's treatment of Patient 2 did not fall below the minimal standard of care. Dr. DiBenedetto clearly identified his clinical impressions, and his treatment plan was consistent with those impressions. (Tr. at 1052-1053)

5. **Patient 3**, female d.o.b. 10-20-53, visited Dr. DiBenedetto on 12-23-86 and was diagnosed with an upper respiratory infection/pharyngitis, chronic lumbosacral ligamentous sprain, and left external otitis. She received prescriptions for Ceclor, Tussend, Valium 10 mg., Lasix 40 mg., Halcion 0.5 mg., and Fiorinal #3. (State's Exhibit 25, p. 78) Dr. Longshore testified that this seems like a lot of medication for someone with an upper respiratory infection and a bad back. Valium and Halcion are similar medications, and do essentially the same thing. Fiorinal #3 contains butabarbital (a short-acting barbiturate), and codeine. Dr. Longshore testified that all of these substances—codeine, barbiturates, and benzodiazepines—are addictive. Their effects are also additive. (Tr. at 151-154)

On 1-28-87, Patient 3 was diagnosed with anxiety neurosis, otitis media, and chronic lumbosacral ligament sprain. She was prescribed, among other things, Valium 10 mg., Halcion 0.5 mg., Motrin 600 mg., and Fiorinal #3. (State's Exhibit 25, p. 78a)

On 4-28-87, Patient 3 visited Dr. DiBenedetto complaining of depression and back problems. "Extremely tired - sleeps a lot - craves sweets - no energy." Dr. DiBenedetto diagnosed depression neurosis and acute lumbosacral ligament

sprain. He discontinued the Valium, and prescribed 30 Ritalin 10 mg. and 60 Fiorinal #3. (State's Exhibit 25, p. 80) Dr. Longshore testified that Dr. DiBenedetto may have given Patient 3 the Ritalin for her complaint of feeling tired. Dr. Longshore said that the additive effects of the drugs that she had been receiving—Halcion, Valium, Fiorinal #3—could have caused these symptoms. (Tr. at 154-156)

Patient 3 continued to see Dr. DiBenedetto regularly, and on the majority of occasions received scheduled drugs. (State's Exhibit 25) For examples:

> On 5-18-88, she was diagnosed with anxiety neurosis and [musc?] cephalgia. She received prescriptions for 60 Valium 5 mg. b.i.d., Fiorinal #3, 30 Elavil 50 mg., and Adipex-P. (State's Exhibit 25, p. 87)
>
> On 5-5-89, she was diagnosed with anxiety neurosis, DJD in her right ankle, and seasonal rhinitis. Among other things, she was prescribed Valium 5 mg. and Fiorinal #3. At her next visit, on 5-12-89, she complained that her pain medication was making her tired, and she would like to try Darvocet. Dr. DiBenedetto diagnosed her with musculo-[cont?]-cephalgia and depressive neurosis. He prescribed an unspecified quantity of Darvocet-N 100, and Prozac. (State's Exhibit 25, p. 96a)
>
> An x-ray, right ankle-lumbar spine with obliques, performed on 7-22-89 revealed anterior wedging at L-1.
>
> On July 17, 1989, Patient 3 visited Dr. DiBenedetto complaining of back pain. Dr. DiBenedetto diagnosed "Mixed Neuroses ↓↓" and acute lumbosacral ligament sprain. He prescribed 60 Valium 5 mg. b.i.d., 60 or 90 [overwritten] Fiorinal #3, and Adipex-P. (State's Exhibit 25, p. 103a)

On August 5, 1989, Patient 3 was involved in a traffic accident. She went to the Doctors Hospital emergency room via ambulance. She was diagnosed with concussion and multiple contusions. She was discharged, with instructions to follow up within 3-5 days with Dr. DiBenedetto. She was prescribed Tylonol#3 and Motrin 600 mg. (State's Exhibit 25, p. 97-97a) The following day, Patient 3 was x-rayed. The radiology Department at Doctors Hospital did a cervical spine with obliques-chest-left humerus-pelvis-right femur. The report stated "AP, lateral, and oblique views of the cervical spine including six films reveal seven cervical segments in satisfactory alignment. There is no evidence of recent fracture. Vertebral bodies, interspaces, articular facets, and neural canals are unremarkable." (State's Exhibit 25, p. 77a) On 8-14-89, Dr. DiBenedetto prescribed Fiorinal #3 and 60 Valium 5 mg. for multiple contusions, cervical-lumber myositis, and muscle contraction cephalgia. Three visits later, on 9-12-89, she was in

Dr. DiBenedetto's office complaining of "Headache and stopped up ears, coughing, dry nose, can't take a deep breath, dizzy (since yesterday) Requesting fiol #3 (You just phoned some in on 9-11-89 #30)" (State's Exhibit 25, p. 102) Dr. DiBenedetto diagnosed previous compression fracture at L-1, acute lumbosacral ligament sprain, and upper respiratory infection. He prescribed Feldene, 30 Fiorinal #3 and Tavist D, as well as moist heat pack, and lumbosacral and right hip x-ray. (State's Exhibit 25, p. 102) The lumbosacral x-ray was recorded in Dr. DiBenedetto's records as showing "Compressed L-1."

Dr. DiBenedetto continued prescribing Fiorinal #3 and Valium to Patient 3 approximately every month through 3-15-91, for a variety of complaints and diagnoses. (State's Exhibit 25)

Dr. Longshore testified that, following Patient 3's auto accident, the x-rays and tests performed indicated that her back was normal. (Tr. at 160)

Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 3 fell below the minimal standards of care, in that this patient did not need pain medication, she needed back exercises. "There's a certain point in time when the physician should say, 'I can't do anything more for you. Go to the specialists and see what they have to say.' And I think that's what he should have done, but he didn't." (Tr. at 162-163) He testified that Dr. DiBenedetto failed to exercise reasonable care discrimination in prescribing Fiorinal #3 to Patient 3 for almost five years. "And she never got any better. And she's never going to get any better, not with this regimen. It doesn't work." (Tr. at 163-164) Further, Dr. Longshore testified that Dr. DiBenedetto failed to employ acceptable scientific methods in the selection of these drugs. He should have found out why she was having chronic back pains. (Tr. at 164)

Dr. DiBenedetto testified that Patient 3 is still a patient of his. She is now more psychologically stable. She no longer has periods of deep depression, which she previously had frequently. She is now receiving Prozac, taking 2 simultaneously per day. She is not having side effects. (Tr. at 625-628) Prior to Prozac, she was taking Elavil at bedtime, which soothed what Dr. DiBenedetto called the "REMS of the brain," referring to REM cycles. (Tr. at 628-629) Dr. DiBenedetto testified that he did not include a diagnosis of depression for her 12-23-86 visit, because it was a chronic condition. He testified that he gave her Valium for anxiety neurosis, Halcion to help her sleep at night, and Fiorinal #3 for cephalgia and lower back pain. He agreed that all of these drugs are CNS depressants. When asked by counsel if it is wise to give these drugs to a depressed patient, Dr. DiBenedetto stated that at this time she wasn't depressed, she was in an anxiety situation. She used to swing back and forth. between anxiety and depression. He used Ritalin earlier for her depressive neurosis. (Tr. at 632-635) After Patient 3's car accident,

Dr. DiBenedetto prescribed Fiorinal #3 for the moderate pain resulting from her injury. The accident would have aggravated the pre-existing lumbosacral ligamentous sprain that he diagnosed in 1987. Dr. DiBenedetto testified that, in his opinion, his prescribing to this patient was appropriate. (Tr. at 638-644)

Dr. Nelson testified that Valium may have been an appropriate drug to prescribe to Patient 3. "I would want to know if the anxiety was existing by itself or was coexisting with depression, and, certainly, Valium is effective for the treatment of anxiety. If anxiety and depression are there at the same time, and the depression is not a result of the anxiety, in which case if you get rid of the anxiety, the mental state returns to something resembling normal equilibrium. If anxiety depression was there, something, possibly the use of an antidepressant would come into the situation, but the degree of certainty of my answer is not a hundred percent, because this is a -- certainly, a description of a very complex situation." (Tr. at 963-964) He testified that Valium has muscle relaxant activity, and it is useful therapy for muscle spasm. (Tr. at 964)

Dr. Delaveris testified that, in his opinion, Dr. DiBenedetto's treatment of Patient 3 did not fall below the minimal standards of care. (Tr. at 1053-1055)

6. **Patient 4**, female d.o.b. 4-27-62, first visited Dr. DiBenedetto on 1-26-87. At that time, she was complaining of chest pains which had lasted about a week, and spells of being nervous and depressed. Dr. DiBenedetto diagnosed acute costal chondritis; previous tibia-fibula fracture of the left leg, which had healed with malalignment and heavy callous; and anxiety neurosis. He did an exam; history and physical; x-ray of right tibia and ankle, 3 views; chest x-ray; and an ECG. He prescribed Naprosyn 375 mg. b.i.d., Darvocet-N 50, Xanax 0.5 mg. q.i.d., and recommended moist heat and decreased smoking. (State's Exhibit 26, pp. 6-7) Dr. DiBenedetto's office received a call from Patient 4 on 2-2-88, who said that the Xanax was helping her nerves, but that she needed something to help her sleep. Dr. DiBenedetto phoned-in a prescription for 15 Halcion 0.5 mg. at bedtime. (State's Exhibit 26, p. 10)

Several visits later, during which Dr. DiBenedetto always prescribed Xanax 0.5 mg, and usually prescribed either Fiorinal #3, Fiorinal plain, or Tylenol #2, Patient 4 came to see Dr. DiBenedetto on 5-9-88. (State's Exhibit 26, pp. 11, 15, 17) At that time she complained of an injury to her tailbone, and burning and pressure with urination. Dr. DiBenedetto diagnosed urinary cystitis, traumatic coccygodinia, and "High Rx tolerance (addiction quality)." He prescribed, among other things, Fiorinal #3 and Xanax 0.5 mg. Patient 4's next visit to Dr. DiBenedetto was on 6-2-88. Dr. DiBenedetto found "poor tolerance [with] children - eyes glazed." He diagnosed coccygodinia and acute anxiety - psyche

overlay. He prescribed 60 Fiorinal #3, one every 12 hrs, and 90 Xanax 0.5 mg. t.i.d. (State's Exhibit 26, pp. 17-21)

Dr. DiBenedetto continued to prescribe Fiorinal #3 and Xanax 0.5 mg. to Patient 4 on 7-6-88, 7-27-88, and 8-12-88. (State's Exhibit 26, pp. 21-22) On 8-24-88, Dr. DiBenedetto diagnosed "?Drug Dependence (↑ tolerance)." He noted that he discussed decreasing her prescriptions, and prescribed unspecified quantities of Xanax 0.5 mg t.i.d., Fiorinal plain, and Fiorinal #3. (State's Exhibit 26, p. 22)

On 9-9-88, Dr. DiBenedetto diagnosed anxiety neurosis and drug dependency. He prescribed a decreased dose of Xanax 0.25 mg. (with instructions that appear to say two at bedtime), 20 Fiorinal #3, and 60 Fiorinal plain. (State's Exhibit 26, p. 23) He prescribed Fiorinal plain and Xanax 0.25 mg. on 10-7-88, 11-2-88, 11-16-88, 12-16-88, and 1-10-89. (State's Exhibit 26, pp. 23-25) Her visit on 2-7-89 was apparently covered by a locum tenens, whose handwriting was illegible. (State's Exhibit 26, p. 28)

On 3-3-89, she received a prescription for Fiorinal plain from Dr. DiBenedetto. On 3-8-89, she received prescriptions for 30 Feldene 20 mg., 60 Valium 5 mg. b.i.d., and an unspecified amount of Fiorinal plain. (State's Exhibit 26, p. 28-29)

On 3-22-89, Dr. DiBenedetto advised Patient 4 to decrease her prescriptions. He refused to prescribe anything at that visit. (State's Exhibit 26, p. 29)

On 4-17-89, Dr. DiBenedetto prescribed 45 Valium 2 mg. t.i.d. and 60 Fiorinal plain, among other things. That was Patient 4's last visit to Dr. DiBenedetto, except for a visit to get her medical records. (State's Exhibit 26, p. 32)

Dr. Longshore testified that, "except for a couple of things, I can't honestly say that she wasn't treated adequately by Dr. DiBenedetto on these -- it's hard to say that he gave her too much Xanax. He did seem to give her a lot of Fiorinal No. 3 tablets when he would prescribe 60 at a time, and here again, we go with the Xanax and Fiorinal No. 3's." (Tr. at 170) Dr. Longshore questioned Dr. DiBenedetto's diagnosis of vascular insufficiency in this patient, which he thought would have been highly unusual in someone that age (25 years), and which would have deserved immediate attention from a vascular surgeon if it really existed. (Tr. at 172-174) Dr. Longshore testified that Dr. DiBenedetto questioned himself whether Patient 4 was becoming drug dependent, yet he continued prescribing Xanax to her. A physician must wean a patient off Xanax, which is very difficult to do. (Tr. at 178) Dr. DiBenedetto sent Patient 4 to a psychiatrist in November 1988, then started her on Valium. (Tr. at 180) Prescribing Valium to someone that Dr. DiBenedetto suspected was chemically dependent fell below the minimal standard of care, and was a failure to use reasonable care discrimination in the

selection of a drug for a patient. (Tr. at 180-181). Dr. Longshore did not feel that Dr. DiBenedetto's prescribing of Xanax and Fiorinal #3 to Patient 4 fell below the minimal standards of care. "I think as far as the drugs were concerned, he uses more in this case than I would have, but I don't think they're inappropriately used. The only thing that bothers me on this case would be the vascular insufficiency of the right leg and the nutrition deficiency." (Tr. at 180)

Dr. DiBenedetto testified that his diagnosis of vascular insufficiency in this patient was to facilitate her reimbursement for support hose, which Dr. DiBenedetto testified she needed. (Tr. at 654) He testified that she really did have a degree of vascular insufficiency which resulted from the old trauma. (Tr. at 765-766) "First of all, she had a severe trauma to that area. There's no doubt in anybody's mind, looking at this leg and seeing the deformity of the skin, that she was going to somewhere in the area because of the scarring, have loss of circulation in the area due to trauma." (Tr. at 766) She was told to decrease smoking to improve her circulation. "Support hose would be another form of therapy to help pump the venous supply, arterial supply to the muscle; therefore, it will pump away from the heart. To get back to the heart, we need to have some exterior motion such as the support hose compression that would cause venous supply to return to the heart, because there's no muscle layer in the venous supply." (Tr. at 767-768)

One of Dr. DiBenedetto's diagnoses on Patient 4's first visit was acute chondritis. Dr. DiBenedetto described this ailment as an inflammation of the cartilage at the juncture of the ribs and the sternum. She came in with chest pain, and he performed an examination and ECG to rule out heart problems. (Tr. at 648-649) Later, 1-26-88, a chest x-ray was performed, and well as a right ankle and lower leg x-ray in regard to her old leg fracture. (Tr. at 651) Dr. DiBenedetto testified regarding his diagnosis of drug dependence, increased tolerance (State's Exhibit 26, p. 22), that Patient 4 was asking for more and more medication, which to Dr. DiBenedetto meant that she was no longer getting the antianxiety effect from the dose prescribed. Dr. DiBenedetto testified that he didn't want to give her more medication. (Tr. at 657) He prescribed both Fiorinal #3 and Fiorinal plain to wean her off the Sched III Fiorinal #3, and onto the Sched IV Fiorinal plain, which has less abuse potential. Dr. DiBenedetto testified that when you decrease medication, it must be done slowly, over a period of about six months. Dr. DiBenedetto testified that he informed the patient that he was going to decrease her medication. He testified that he eventually got her to Fiorinal plain, and reduced her Xanax to 0.25 mg. Patient 4 became belligerent. Dr. DiBenedetto advised her that she needed to go to a psychiatrist, and get into a program for decreasing medication. Dr. DiBenedetto testified that after 8-4-88, he did not prescribe Fiorinal #3 to Patient 4. Their doctor/patient relationship terminated in June 1989. (Tr. at 658-663, 770) "I asked her to leave. And she got irate, and the

next thing I was -- I had an investigator [ask] why I stopped her medication." (Tr. at 665)

With regard to Patient 4, Dr. Nelson testified that it is a problem when someone has both a chemical dependency problem and pain. Although the easy answer is to withdraw all analgesic medication, Dr. Nelson testified that this is not appropriate in all cases. He testified that Dr. DiBenedetto's decision to taper Patient 4's medication was appropriate. (Tr. at 971-974)

Dr. Delaveris testified that the medications and modalities use by Dr. DiBenedetto were consistent with his clinical impressions throughout the course of his treatment of Patient 4. Dr. Delaveris testified that, in his opinion, Dr. DiBenedetto's treatment of Patient 4 did not fall below the minimal standards of care. (Tr. at 1055-1057)

7. **Patient 5**, female d.o.b. 3-27-38, had been a patient of Dr. DiBenedetto's for approximately 6 years on 5-22-80 when she presented to his office complaining of shortness of breath, vomiting, aching all over, sore throat, bad cough, and nasal drainage into lungs. Her blood pressure was 138/76, and her weight was 284.5 lb. Dr. DiBenedetto diagnosed chronic obstructive pulmonary disease (COPD) and obesity. (State's Exhibit 27, p. 119. She was admitted to Doctors Hospital West the following day, and later discharged on 6-5-80. The final diagnosis was "Acute bronchospastic episode secondary to sinobronchial syndrome secondary to maxillary sinus Aspergillosis, Exogenous obesity, [and] Sphenopalatina cephalgia." A "right maxillary antrostomy with curettage and irrigation" had been performed, and she was discharged with Choledyl 200 mg. q.i.d., with instructions to see Dr. DiBenedetto in one week. (State's Exhibit 27, p. 120) She was seen by Dr. DiBenedetto at his office on 6-10-80, and diagnosed with COPD, obesity and polyps. He suggested a bypass, and prescribed, among other things, 30 Dalmane 30 mg. and Triavil 4-25. (State's Exhibit 27, p. 119)

On 7-11-80, Patient 5 saw Dr. DiBenedetto, and complained of feeling tired all the time, and trouble sleeping. Dr. DiBenedetto diagnosed COPD, polyps, and obesity. He prescribed 30 Placidyl 500 mg. one at bedtime, and 60 Talwin 50 mg. every six hours. She was referred to a Dr. Zollinger, and a bypass apparently planned for October or November. (State's Exhibit 27, p. 131)

For the next three years, Dr. DiBenedetto regularly prescribed Placidyl, Talwin, Triavil, and Dexedrine to Patient 5. On her 5-12-83 visit, Dr. DiBenedetto prescribed 20 Placidyl 500 mg., 60 Talwin NX 50 mg., and 120 Triavil 4-25 for diagnoses of Adult-onset diabetes mellitus (AODM), tension cephalgia, obesity, and depressive neurosis. Above that chart is the note "5-13-83 Zincan View Pharm. called said [Patient 5] had added 3 refills to her Placidyl." (State's

Exhibit 27, p. 158) On 6-29-83, Dr. DiBenedetto prescribed Diabinese, 60 Talwin NX 50 mg. with the notation "↓", Triavil 4-25, 15 Placidyl 500 mg. with the notation "↓", and Dexedrine 5 mg. at 2:00 p.m. There is no note regarding discussion with the patient. (State's Exhibit 27, p. 159) He continued prescribing these medications to Patient 5 regularly. (State's Exhibit 27)

On 11-10-83, Dr. DiBenedetto found that Patient 5 had "Been Drinking too much" (State's Exhibit 27, p. 161)

On 1-26-84, he prescribed an unspecified quantity of Placidyl 750 mg., in addition to refilling her regular medications. (State's Exhibit 27, p. 182)

On 4-30-85, Dr. DiBenedetto noted "Long Discussion about ABUSE." He wrote that Patient 5 should decrease her use of Placidyl, Talwin, and Dexedrine. That day, he prescribed 15 Placidyl 750 mg., Triavil 4-25 q.i.d., Diabinese, and 60 Talwin. (State's Exhibit 27, p. 190) On 3-31-85 he noted that he was discontinuing Placidyl, and prescribed Talwin every 8 hr. (State's Exhibit 27, p. 190) He continued prescribing Talwin, Triavil and Dexedrine to Patient 5 regularly for the next year and a half, adding Halcion 0.5 mg. to the list on 12-4-86. (State's Exhibit 27, pp 190-201) On 6-13-88, Dr. DiBenedetto diagnosed Patient 5 with "Dependency on Rx." (State's Exhibit 27, p. 227) Nevertheless, such medications continued to be prescribed to Patient 5 on a regular basis through 3-17-93. (State's Exhibit 27, pp. 201-276)

Dalmane 30 was prescribed to Patient 5 on 2-1-88, and again on 3-2-88. A note on Patient 5's chart says "3/15/88 'Dalmane fell down the toilet' Dr. OK refill #20 next door." (State's Exhibit 27, p. 219)

Dr. Longshore testified that Placidyl is a sleeping medication. It comes in three sizes: 200 mg., 500 mg., and 750 mg. He testified that sleeping medications don't work after about 10 nights. The lethal dose for Placidyl is about 5 g. Patient 5 could have killed herself with twelve of the 750's. (Tr. at 183-185) She should not have been maintained in this medication as long as she was. She should have been referred to a sleep clinic, neuropsychiatrist, or neurologist. (Tr. at 192) Although Dr. Longshore made reference to prescription quantities of 50 or 60, (Tr. at 185) the Hearing Examiner could not find an example of this in the medical record. Many of the notes did not specify a quantity, but of those that did, the quantity was always 30 or less. (State's Exhibit 27)

Dr. Longshore testified that Elavil can be a toxic medication. She could have killed herself with twenty of them. It can also cause tardive dyskinesia, which are involuntary, jerky movements, which can be permanent, as a result of its Trilafon

component. Dr. DiBenedetto was prescribing this medication to Patient 5 in quantities of 120. (Tr. at 189-191)

Dr. Longshore noted that Patient 5's blood sugar was too high for too long, and that her cholesterol was excessively high. She should have been placed on a cholesterol-lowering drug. (Tr. at 197-199)

Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 5 fell below the minimal standards of care. Although some of the medications prescribed may have been appropriate for a period of time, they should not have been prescribed longer than three or four weeks. The prescribing went on for years. (Tr. at 203-204) Such prescribing was also indicative of a failure to use reasonable care discrimination. (Tr. at 206-207)

Dr. Nelson testified that Patient 5 suffered from a number of maladies, including cluster headaches. Once everything has been done to rule out other causes, if the patient is still in pain, the physician should prescribe something for pain relief. He testified that Patient 5 was seen by a neurologist, which seemed to be a reasonable evaluation of that condition. Dr. Nelson testified that some of the best migraine treatment centers in the country wrestle with the problem of giving opioid drugs to such patients, but testified that he believes that adequate analgesia should be provided. (Tr. at 968-971)

Dr. Delaveris testified that Dr. DiBenedetto's treatment of Patient 5 clearly did not fall below the minimal standards of care. Even though she had been caught changing a prescription for Placidyl, Dr. DiBenedetto continued working with her, and "got her to really an incredible end point in 1990." (Tr. at 159-160)

8. **Patient 6**, female d.o.b. 7-11-54, first saw Dr. DiBenedetto on 7-11-78. At that time she weighed 107.5 lb. Her blood pressure was 132/84. She complained of very bad headaches. They were intermittent. She had suffered from these for 12 years, and they were getting worse. Her chiropractor had told her that she had a crooked spine. Dr. DiBenedetto diagnosed musculo-vascular cephalgia. "Plan I" consisted of heat, Midrin, Fiorinal #3, and Flexeril. "Plan II" consisted of repeat EEG, skull series, cervical series, and Dilantin 100 mg. "Plan III" was physical therapy. (State's Exhibit 28, pp. 5-6) Skull and cervical-thoracic x-rays were performed on 11-8-78. The results of these x-rays are noted as negative. (State's Exhibit 28, p. 94) The EEG was performed on 11-16-78, and yielded normal results. (State's Exhibit 28, p. 9) Patient 6 saw Dr. DiBenedetto regularly after that. He treated her headaches with osteopathic manipulative therapy, cervical traction, magnatherm, hydrocollator, and Fiorinal #3. Fiorinal #3 was regularly prescribed to Patient 6 by Dr. DiBenedetto through 1-16-87. She was briefly shifted over to Darvon in May 1987, then was prescribed Esgic #3, or Esgic plain for the majority of her visits

through 11-20-89. There was nothing contained in Patient 6's medical record that indicated that she had ever been referred for complete neurological workup during the course of Dr. DiBenedetto's treatment of her. (State's Exhibit 28)

On 6-3-82, Patient 6 started on a diet program. Her weight on that date was 118 lb. It was noted in her chart that day that she had gained 14.5 lb. since March. It is also noted that she "Wishes 100." (State's Exhibit 28, p. 33) Her height is not recorded anywhere in the medical record. (State's Exhibit 28) Dr. DiBenedetto prescribed Adipex-P (appears to say "BD" - twice per day?), and Lasix 20 mg., twice per week. There is nothing in the medical record for that day to indicate that Patient 6 was placed on a restricted calorie diet. At her next visit, 6-10-82, Patient 6 was down to 110.5 lb., a loss of 7.5 lb. in one week. She was not prescribed Adipex-P again until 9-2-82, and 9-14-82 (wt. 116.5) when she received prescriptions for unspecified quantities. She received a prescription for 60 Adipex-P on 10-1-82 (wt. 116) , and 30 Adipex-P on 11-15-82, 12-3-82, and 12-16-82. She received Adipex-P whether her weight went down or not. She received a prescription for Adipex-P on 3-24-83 when her weight was 124 lb. She received more on 4-22-83 when her weight was 125.5 lb. She continued receiving prescriptions for Adipex-P regularly from Dr. DiBenedetto through 11-9-88, often in quantities of 60 until 1986, when the regularly dispensed amount dropped to 21 or 14. (State's Exhibit 28) On 11-9-88, Dr. DiBenedetto noted in Patient 6's chart that she was "Also seeing Dr. Hard for Diet getting Adipex per his office." (State's Exhibit 28, p. 121) Dr. DiBenedetto ceased prescribing Adipex-P to Patient 6 until 4-7-89, when he gave her a prescription for 14 Adipex-P. She also received prescriptions for Adipex-P on 6-1-89 (wt. 146.5), 6-16-89 (wt. 142), 7-26-89 (wt. 143), and 10-18-89 (wt. 148.5).

After 11-11-86, Dr. DiBenedetto prescribed Adipex-P to Patient 6 as follows:

Date	Quantity	Weight	
11-24-86	30	121	
12-3-86	60	119	
12-23-86	28	120	"-New Diet Rules-"
1-16-87	28	125.5	
5-4-87	21	138	
5-18-87	?	140	
5-29-87	21	139	
6-18-87	21	135	
8-12-87	14	143	
12-16-87	?	139	
1-6-88	14	134.5	
1-22-88	14	134.5	

2-5-88	21	134
2-19-88	14	128
3-3-88	21	133
3-?-88	21	127
4-18-88	21	125
4-21-88	21	127
5-5-88	?	126
5-20-88	21	123.5
6-1-88	21	120
6-29-88	21	124.5
7-15-88	21	128
7-28-88	21	126
8-9-88	21	129
8-19-88	"-Stop Diet- Can Restart after 20 Oct 88. Must see 'Doc D'"	
10-4-88	14	138
10-25-88	?	138

(State's Exhibit 28, pp. 100-131)

On 1-15-90, it was noted that she had been seeing multiple physicians, and had received Fiorinal with codeine on 12-16-89 from Dr. Vermise. "D → Refused to see - Going to multiple Doctor's offices." (State's Exhibit 28, pp. 130-131)

Dr. Longshore testified with regard to Patient 6's headaches, which appeared to be getting worse after 12 years, that she should have been sent to a neurologist. Dr. DiBenedetto did not do so. He had an EEG done, but Dr. Longshore testified that these are not very revealing. An appropriate treatment would have been a CT scan to see if something was developing in her brain, such as an aneurysm. (Tr. at 209-210) "I would be afraid to prescribe pain medication to a patient who had came to me that had a headache that was getting worse, without having some type of studies or neurologic exam done beforehand." (Tr. at 210-211) With regard to Dr. DiBenedetto's prescribing of Adipex-P to Patient 6, Dr. Longshore testified that he cannot understand why. "Here is a patient who is 5'6" (the Hearing Examiner searched State's Exhibit 28 thoroughly, and could not find her height recorded anywhere), whose ideal weight should be between 113 to 126, who is actually underweight, and at one time went down to 99 pounds, but [Dr. DiBenedetto] was prescribing the Adipex-P for her. I don't know why." (Tr. at 209)

Dr. Longshore testified that Dr. DiBenedetto failed to employ acceptable scientific methods in the selection of drugs for the treatment of Patient 6's problems. He should have sent her to a neurologist to see what was wrong with her head. He failed to use reasonable care discrimination in choosing the treatment, and in prescribing Adipex-P to this patient when the drug obviously didn't work. For the

same reasons, his treatment of Patient 6 fell below the minimal standards of care. (Tr. at 213-215)

Dr. DiBenedetto testified that the skull series performed on Patient 6 "(s)howed no evidence of periosteal involvement of the skull, and showed no changes intracranially. And basically the venous areas and arterial areas of the skull did not appear to be abnormal either." (Tr. at 687) He testified that the EEG was performed by Dr. Mazo, a neurologist, who gave the impression after reading the graph. Dr. DiBenedetto stated that this ruled out a brain tumor in Patient 6. (Tr. at 687-688) Dr. DiBenedetto testified that he used other modalities in addition to medication. (Tr. at 688-690) He testified that he put her on Adipex-P because both he and the patient decided that they didn't like the weight that she was at. (Tr. at 788-789)

Dr. DiBenedetto testified that the reference to "New Diet Rules" referred to internal changes that were made at his office. He was not aware of the new rules by the Medical Board at that time. (Tr. at 796)

Dr. DiBenedetto testified that he never noticed any evidence of abuse of the pain medication he was prescribing to Patient 6. If he had, he would have noted it in the records, he stated. (Tr. at 697) When Dr. DiBenedetto heard that she had been seeing Dr. Hard to obtain more Adipex-P, he confronted her. Patient 6 told Dr. DiBenedetto that it was her sisters were surreptitiously using her name to obtain these medications. He gave her the benefit of the doubt. (Tr. at 707-711)

Dr. Nelson testified that, in his review of Dr. DiBenedetto's treatment of Patient 6, from his perspective as a clinical pharmacologist, there were some things that he thought could have been done differently. However, he stated that some humility is in order in his review of the work of a busy clinician, and he saw nothing in the records that he considered horrible. To a reasonable degree of scientific probability, reasonable standards for appropriate selection of pharmacologic agents were employed. (Tr. at 976-980)

Dr. Delaveris testified that an EEG, skull series, and cervical spine x-ray were, in 1978, the baselines for evaluation of patients with chronic headaches. MRI scans were not readily available back then. He believes that Dr. DiBenedetto made the right diagnosis, and attempted a variety of different treatments. In Dr. Delaveris's opinion, the treatment rendered by Dr. DiBenedetto to Patient 6 did not fall below the minimal standards of care. (Tr. at 1061-1064)

9. **Patient 7**, female d.o.b. 7-31-44, first visited Dr. DiBenedetto 1-15-75. Her chief complaints were weight, needs estrogen shot, and pain in the abdomen. He blood pressure was 138/80, pulse 68, height 5'11", weight 148.5 lb. Dr. DiBenedetto

diagnosed exogenous obesity and hormone deficiency (post hysterectomy). Dr. DiBenedetto's treatment plan was history and physical, (the outcome of these is not in the record), an unspecified amount of "Tenuate Dosp.," "Tenuate 25," an unspecified amount of Lasix 40 mg., "1000 cal. diet sheet," "Profile 12, CBC, Trig.," chest x-ray (Chest and abdomen x-rays noted as "neg."), estrogen, B-12, "Flat abd.," and a prescription for 60 [Pre--- ? illegible] 1.25. (State's Exhibit 29, p. 5)

From that time, Patient 7 made frequent visits to Dr. DiBenedetto's office, more or less on a monthly basis, and received controlled substance anorectics on many of these occasions. From 1-30-75 until 1986, she received numerous prescriptions for Preludin 75 mg., a schedule II controlled substance. During some of her earlier visits, she received prescriptions for Biphetamine 20 mg., also a schedule II controlled substance. She received these prescriptions whether or not she had lost weight, and she gained weight during the overall course of this treatment. For example, Patient 7 weighed 147.5 lb. on 1-30-75, and received Preludin 75 mg. She received a refill on 2-27-75, at which time she weighed 145 lb. At her next visit, on 3-17-75, she weighed 150 lb. and received a prescription for Biphetamine 20 mg. Many visits and many prescriptions later, on 10-23-78, she weighed 188 lb., and received a prescription for Preludin 75 mg. The majority of the office charts do not list the quantity prescribed. (State's Exhibit 29)

After 1986, the drug prescribed was Adipex-P. She received approximately fifty-two prescriptions for Adipex-P from 2-10-87 until 7-29-92, at which time she weighed 180.5 lb. (State's Exhibit 29, p. 422) Her weight fluctuated during this time from a low of 157.5 lb. (11-18-91) to a high of 194 lb. (3-11-88). On 2-10-87, she weighed 189 lb. On 7-29-87, she weighed 180.5 lb. The majority of the charts during this time period do not list the quantity prescribed. On 8-18-88, however, it is noted that she received a prescription for 21 Adipex-P. (State's Exhibit 29)

On 12-01-77, Dr. DiBenedetto diagnosed Patient 7 as hypothyroid, and prescribed an unspecified quantity of Synthroid 0.1 mg. There is nothing in the chart that indicated that any diagnostic tests had been performed to reach this diagnosis. At Patient 7's next visit, 1-5-78, the prescription for Synthroid 0.1 mg. was scratched out. No other prescriptions for Synthroid were issued. (State's Exhibit 29, pp. 32-33)

Dr. Longshore testified that Patient 7 had numerous medical problems, including chronic back pain, obesity, chronic lumbar ligamentous strain, and blindness. She had a history of hysterectomy and abdominal adhesions. She had an industrial accident on 2-18-85, and has since been getting Workmen's Compensation for chronic back pain. (Tr. at 220)

Dr. Longshore stated that Dr. DiBenedetto's long-term and unsuccessful treatment of Patient 7 with anorectic drugs fell below the minimal standards of care, and constituted a failure to use reasonable care discrimination in the administration of drugs. (Tr. at 218-222) "And I don't know why he keeps doing this. It's just – we have the same pattern. You know, in most of these, it just simply doesn't work. They don't lose weight. And he doesn't do what else needs to be done. You have to have – you can't just give somebody a pill, and say 'Here's a pill. You're going to lose weight.' You have to go into some diet control, again, you know, the exercise program, consultation with a dietitian ...." (Tr. at 221)

Dr. DiBenedetto testified that Patient 7 is still a patient of his. She is still obese, but losing. Her blindness is due to a pseudo tumor cerebral lesion. Her industrial injury occurred prior to her blindness. Her weight was having an impact on her other medical problems. This patient was more than just a diet patient. (Tr. at 711-714)

10. **Patient 8**, female d.o.b. 2-28-45, first visited Dr. DiBenedetto's office on 1-18-88. She was 5'6", 143 lb., and wanted to get down to 130 lb. Her home was in Chillicothe, and her family physician was noted as "Dr. McHale; Chillicothe, Oh." The medical records indicate that she was instructed to lose three to four pounds by her next visit, and one pound per week thereafter. The plan was "Exam; discussion = Book/sheet; 3 Principals = facts/figures; Count = 1200 - 1500/day; Adipex-P (14) [one per] day." Nothing is contained in the chart for that day indicating whether or not Patient 8 had made previous attempts to lose weight without the assistance of controlled substances. (State's Exhibit 30, pp. 3-4) At her next visit, Patient 8 weighed 138.5 lb., and received a prescription for 28 Didrex 50 mg. (State's Exhibit 30, p. 5) Five visits and five Didrex prescriptions later, on 4-18-88, Patient 8 weighed 130 lb. (State's Exhibit 30, pp. 5-7) Nevertheless, she received a prescription for 28 Didrex 50 mg. On 5-24-88, she weighed 128.5 lb., and received a prescription for 28 Didrex 50 mg. Five visits and five prescriptions for 28 Didrex 50 mg. later, on 2-9-89, she weighed 138 lb., and had gained some weight before each visit. Another ten visits and ten Didrex prescriptions later, on 7-12-89, she was down to 125.5 lb. She got a prescription for 28 Didrex 50 mg. that day. She continued receiving the same prescription until her last visit, on 4-13-90. At that time she weighed 129 lb., and received a prescription for 28 Didrex 50 mg. (State's Exhibit 30)

Dr. Longshore testified that it was difficult to tell exactly what was done with Patient 8, "because there really isn't much here on the chart, except exam, discussion, continue, and then a prescription for Didrex." (Tr. at 230) He testified that the physical examination appeared to have been adequate. She was prescribed Didrex over a two-year period, and lost a total of 14 lb., down to 129 from 143. She gained weight periodically while on the drug. Dr. Longshore

testified that Dr. DiBenedetto's prescribing of Didrex constituted a failure to use reasonable care discrimination in the administration of the drug. For a 5'6" female with a medium build, her ideal weight should be between 130 and 144 lb. She was within her normal weight range before she went on the drugs. Dr. Longshore testified that, for the same reasons, Dr. DiBenedetto's care of Patient 8 fell below the minimal standards of care. (Tr. at 229-237)

According to the 1983 Metropolitan Height and weight tables, a 5'6" female, small frame, should weigh between 120 and 133 lb.; with medium frame she should weigh between 130 and 144 lb.; with large frame she should weigh between 140 and 159 lb. (State's Exhibit 44) According to the 1985 recommendations of the National Institute of Aging, a 5'6" person between 40 and 49 years of age should weigh between 129 and 164 lb. (State's Exhibit 53)

11. **Patient 9**, female d.o.b. 2-24-58, made her first visit to Dr. DiBenedetto on 4-20-87. She was 5'6", 139.5 lb., blood pressure 130/84. She told Dr. DiBenedetto that she wanted to get down to 125 lb. There is an indication in the chart for that day that she had already lost 7 lb. in 1987. The plans listed were: The plans listed were: "Exam; discussion = facts/figures; 3 Principals = Book/sheet; Count = 1200-1500/day; Adipex-P (14) [one per] day." Dr. DiBenedetto prescribed 14 Adipex-P. (State's Exhibit 31, pp. 4-5) At her next visit, on 5-1-87, she weighed 133 lb. Her blood pressure was 128/78. The only diagnosis in the chart is "Wt. Control." Dr. DiBenedetto prescribed 14 Adipex-P and 15 Lasix 40 mg. (State's Exhibit 31, p. 6) Patient 9 made numerous visits to Dr. DiBenedetto from that date until 2-22-89, and received a prescription for Adipex-P almost every time. (The only exception occurred on 3-16-88, when she received a prescription for 28 Statobex.) She received prescriptions for 21 of them on 7-8-87, 8-19-87, 9-2-87, 9-18-87, 10-14-87, 10-28-87, 11-11-87, 11-25-87, 12-9-87, 12-23-87, 1-6-88, 1-20-88, 2-3-88, 2-17-88, 3-2-88, 3-20-88, and 5-4-88. She also received a number of prescriptions for Lasix 40 mg. during this time, although there was never a diagnosis other than weight control. No potassium supplement was ever prescribed, and there is nothing in the chart to indicate that her electrolytes were ever checked. She received B-12 on several occasions. (State's Exhibit 31)

During the period of time that Patient 9 was being treated by Dr. DiBenedetto, her weight fluctuated considerably. She started at 139.5 lb on 4-20-87; she weighed 139.5 lb. at her last visit on 2-22-89. (State's Exhibit 31, pp. 5, 23) She reached a low of 127 lb. on 5-29-87. (State's Exhibit 31, p. 7) She reached a high of 145.5 lb. on 3-30-88. (State's Exhibit 31, p. 18)

Dr. Longshore testified that Dr. DiBenedetto did a very brief physical, a nervous system check, on Patient 9 during her first visit. She weighed 139.5 lb., which was within her normal weight range if she had a medium frame. If she were

small-framed, she would have been at the upper range of normal at 133 lb. Dr. DiBenedetto prescribed Adipex-P whether she lost weight or gained weight. Dr. Longshore testified that such treatment fell below the minimal standards of care of a similar practitioner, and was a failure to use reasonable care discrimination in the utilization of Adipex-P, to have continued using it when it didn't work. (Tr. at 237-243)

According to the 1983 Metropolitan Height and weight tables, a 5'6" female, small frame, should weigh between 120 and 133 lb.; with medium frame she should weigh between 130 and 144 lb.; with large frame she should weigh between 140 and 159 lb. (State's Exhibit 44) According to the 1985 recommendations of the National Institute of Aging, a 5'6" person between 20 and 29 years of age should weigh between 109 and 144 lb.; between 30 and 39 years, 119 to 154 lb. (State's Exhibit 53)

12. **Patient 10**, female, d.o.b. 12-28-41, weighed 263.5 lb on 3-15-85, when she saw Dr. DiBenedetto to start a diet. She was 5'7", and wanted to get down to 150 lb. Dr. DiBenedetto diagnosed weight control. The plans say "Exam; Book & Sheet; facts & figures; Adipex-P 60 BID." He prescribed 60 Adipex-P, b.i.d. (State's Exhibit 32, p. 10) Approximately 61 visits and dozens of anorectic prescriptions later, on 7-17-90, she weighed 264.5 lb. and received a prescription for 45 Tenuate 25 mg. t.i.d. This was her last visit. (State's Exhibit 32, p. 50) The vast majority of diet prescriptions were for Adipex-P, although 28 Didrex 50 mg. was prescribed on 4-1-87, and Statobex was prescribed on 4-10-87 and 4-23-87. (State's Exhibit 32) Patient 10's weight very rarely fell below 250 lb. during this time span. The lowest weight recorded for her was 244.5 lb. on 9-1-89. (State's Exhibit 32)

On the chart for 5-11-90, her second-to-last visit, there is a note, "wants 150." At that time, she weighed 262 lb. She received a prescription for 45 Tenuate 25 mg., t.i.d. (State's Exhibit 32, p. 50)

Dr. DiBenedetto prescribed 60 Adipex-P for Patient 10 on several occasions, including 12-16-86. He prescribed 28 Adipex-P on 1-16-87, 1-30-87, 2-13-87, and 2-27-87. He prescribed 21 Adipex-P on 3-13-87, 10-28-87, 11-13-87, 1-13-88, 3-4-88, 3-31-88, 4-18-88, 5-23-88, 6-6-88, 7-1-88, 7-18-88, 8-5-88, 9-2-88, and 9-16-88. (State's Exhibit 32)

There are numerous instances where Patient 10 was warned to lose weight or be kicked off the program, for example 5-17-89, 6-14-89, 6-28-89, 9-1-89, 10-3-89, 10-25-89, and 1-5-90. (State's Exhibit 32, pp. 39-45) These threats were evidently not taken seriously; see, for example, the charts for 3-7-90, 4-13-90, and 5-11-90. (State's Exhibit 32, pp. 49-50) She was warned again on her last visit, but the chart

does not make it clear whether Dr. DiBenedetto removed her from the program or if the patient just decided not to continue. (State's Exhibit 32, p. 50)

Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 10 with diet drugs constituted a failure to utilize care discrimination in prescribing, and fell below the minimal standards of care. Dr. Longshore noted that there was a pattern of poor record keeping, whether it was Dr. DiBenedetto or someone else that was seeing the patients, that made it impossible for Dr. Longshore to tell what was going on during the patients' office visits. (Tr. at 249-253)

13. **Patient 11**, female d.o.b. 2-2-64, first visited Dr. DiBenedetto's office on 1-12-87, wanting on a diet program. She was 5'5" and weighed 125 lb. Her blood pressure was 118/76. A note in her chart indicates that she lost five pounds in Maryland in 1986 with Adipex-P. She wanted down to 118 lb. A diagnosis of weight control was rendered. The plan was "(1) EXAM; (2) Book/Sheet; (3) Facts/Figures; (4) 3 Principles; (5) ↓ Calories - 1500/day; (6) Adipex-P (28) [one] BID." A notation in her chart says "New Diet Rules" She was prescribed 28 Adipex-P with instructions to take one pill twice per day. She was scheduled for a visit in two weeks, and a note in the chart indicated that she was told to lose three to four pounds by her next visit, and one pound per week thereafter. An underlined note at the bottom of the chart says "Watch". (State's Exhibit 33, p. 5) The notation in the chart beneath "c/c" and in the lower right hand column of that chart, including "New Diet Rules," is the handwriting of Stephen Fulton, a former employee of Dr. DiBenedetto's. Mr. Fulton testified that the rest of the handwriting on that page appeared to be that of Dr. DiBenedetto's. (Tr. at 380-382)

At her next visit, on 1-26-87, Patient 11 weighed 123.5 lb., and was prescribed 28 Adipex-P. On 2-9-87, Patient 11 weighed 125.5 lb., a gain of two pounds, and was prescribed 28 Adipex-P. (State's Exhibit 33, p. 7) She was down to 124 lb. by 2-23-87, and was prescribed 28 Adipex-P. (State's Exhibit 33, p. 8) Her next chart is dated 4-16-87. The chief complaint is diet restart. She weighed 123.5 lb., and was prescribed 28 Didrex 50 mg. to be taken twice per day. She received the same prescription at her next visit on 4-27-87, when she weighed 121.5 lb. (State's Exhibit 33, p. 9)

On 5-11-87, she weighed 123 lb. Her chief complaint was "Diet." her blood pressure was 112/74. The only diagnosis in the chart is "Wt. Control." She was prescribed 28 Didrex 50 mg. and 10 Lasix 40 mg. (State's Exhibit 33, p. 10)

She continued to visit Dr. DiBenedetto's office approximately every two weeks through 2-16-88, and received a prescription for 28 Didrex 50 mg. each time. (State's Exhibit 33, pp. 10-18) On her chart for 1-13-88, the notation "Maint Program" appears. At her next visit, on 1-27-88, she received a prescription for 28

Didrex 50 mg., to be taken once per day. Her next appointment was scheduled four weeks thereafter. (State's Exhibit 33, p. 18) She was seen next on 2-16-88, her weight was 121.5, and she was prescribed 28 Didrex 50 mg., one per day. At her next visit, on 3-14-88, she weighed 127 lb. and was prescribed 28 Didrex 50 mg. A note in her chart that day says "Restart Diet" and another says "Too much yo yo." (State's Exhibit 33, p. 19) At her next visit on 3-28-88, she weighed 125 lb, the only diagnosis is weight control, and she was prescribed 28 Didrex 50 mg. and 15 Lasix 40 mg. (State's Exhibit 33, p. 20) Patient 11 continued to receive prescriptions for 28 Didrex 50 mg. approximately every two weeks thereafter through 5-4-89, although only one week separated her visits on 5-4-88 and 5-11-88; 11-[illegible]-88 and 11-11-88; and 12-2-88 and 12-9-88. (State's Exhibit 33, pp. 20-35)

Patient 11 restarted her diet on 2-28-90, at a weight of 135 lb. She wanted to get down to 130 lb. Notes on her chart for that day indicate that her prescription for 14 Adipex-P was held, and she was warned to lose one pound per week every week or no prescription. Some lab work and an EKG was done that day. At her next visit, 3-14-90, her weight was 131 lb., and there is a note, "Wants 130." She received a prescription for 14 Adipex-P. On 3-28-90, she weighed 129 lb., and a note on her chart says, "Wants 120." She received a prescription for 14 Adipex-P. On 4-11-90, she was switched back to 28 Didrex 50 mg., and she received this prescription approximately every two weeks until her last visit on 7-5-90, when she weighed 121.5 lb. (State's Exhibit 33, pp. 35-44)

Dr. Longshore testified that, at 5'5" and 125 lb., Patient 11 was at a normal weight, even if she had a small frame. He testified that there was no medical reason why she should have had to lose weight. Dr. Longshore testified that Dr. DiBenedetto's treatment of Patient 11 constituted a failure to use reasonable care discrimination in prescribing Didrex and Adipex-P, and failed to conform to the minimal standards of care of a similar practitioner under the same or similar circumstances. (Tr. at 253-260)

Dr. DiBenedetto testified that seven extra pounds on Patient 11 could have been like twenty extra pounds on someone else; the weight could have been in the wrong areas. He testified that the note, "Watch" at the bottom of her chart for her first visit meant that she should be monitored closely to be sure that she was legitimate. (Tr. at 60-61) He testified that he switched her to Didrex from Adipex-P based on patient comments, but that they were basically the same type of medication, with the same basic effects and the same potential for abuse. (Tr. at 64-65)

According to the 1983 Metropolitan Height and weight tables, a 5'5" female, small frame, should weigh between 117 and 130 lb.; with medium frame she should weigh between 127 and 141 lb.; with large frame she should weigh between 137

and 155 lb. (State's Exhibit 44) According to the 1985 recommendations of the National Institute of Aging, a 5'5" person between 20 and 29 years of age should weigh between 106 and 140 lb. (State's Exhibit 53)

14. **Patient 12**, female (no d.o.b. in her chart, age 37 at her first visit), visited Dr. DiBenedetto's office on 1-19-87, and wanted on a diet program. She was 5'6-1/2" and weighed 173.5 lb. Her blood pressure was 120/78. A note on her chart indicates that she had lost 13 lb. using Adipex-P in 1985, and lost 20 lb. using Fastin in 1983, both from other physicians. She wanted to get down to 135 lb. A note on her chart says, "New Diet Rules." The plan was "(1) EXAM; (2) Book/Sheet; (3) Facts/Figures; (4) 3 Principles; (5) ↓ Calories - 1500/day; (6) Fastin 30 (28) [one] BID. Lasix 40 (15) [one] QOD." She was warned to lose three to four pounds by her next visit, and one pound per week thereafter. Although there is no diagnosis on her chart other than "weight control," Dr. DiBenedetto prescribed 28 Fastin 30 mg. to be taken twice per day, and 15 Lasix 40 mg. to be taken once every other day. (State's Exhibit 34, p. 4) At her next visit, on 2-3-87, her weight was 168 lb., she was prescribed 28 Adipex-P, and her next visit scheduled in two weeks. (State's Exhibit 34, p. 5) She received a prescription for 28 Adipex-P on 2-24-87, and for 14 Adipex-P on 3-10-87 and 4-7-87. (State's Exhibit 34, p. 6) On her next eight visits, through 8-24-87, she received a prescription for 14 Adipex-P each time, although she gained weight or failed to lose weight on five of these occasions. On 4-21-87 she was also prescribed 15 Lasix 40 mg., and on 6-2-87 was prescribed an unspecified quantity of Bumex 1 mg., although no diagnosis other that weight control was ever made. On 4-21-87, her blood pressure was 124/78, and on 6-2-87 her blood pressure was 112/80. There in nothing in the medical records to indicate that her electrolytes were monitored during this time period, or that she ever received a potassium supplement. (State's Exhibit 34, pp. 7-10)

On 9-8-87 (wt. 158), Patient 12 was switched to 28 Didrex 50 mg, and received this prescription again on 9-28-87 (wt. 160). (State's Exhibit 34, p. 11) She received 14 Adipex-P and 15 Lasix 40 mg. on 10-26-87 (wt. 163), and 14 Adipex-P on 11-23-87 (wt. 165). (State's Exhibit 34, p. 12) Twenty visits and twenty prescriptions for Adipex-P later, on 10-2-89, her weight was 170.5 lb. She received prescriptions for a quantity of 21 Adipex-P on eight of these occasions. She received a prescription for 15 Lasix 40 mg. on 3-9-88, 6-27-88, 10-24-88, and 4-4-89 in addition to Adipex-P. (State's Exhibit 34, pp. 13-24)

Dr. Longshore testified that Patient 12 had a weight problem, but Dr. DiBenedetto needed to do something such as provide nutritional information, consultation with a dietitian, exercise, counseling or group therapy, besides give her diet pills. Dr. DiBenedetto's treatment of Patient 12 constituted a failure to utilize reasonable care discrimination in the selection of drugs, and failed to conform to the minimal

standards of care of a similar practitioner in the same or similar circumstances. (Tr. at 260-264)

15. **Patient 13**, male d.o.b. 11-12-45, first visited Dr. DiBenedetto's office on 4-23-87, for weight control. He suffered from AODM, and was on Diabinese 250 mg. once daily. He was 5'10" and weighed 300 lb. He wanted to get down to 200 lb. The plan indicated "Exam," although none of the boxes on the exam form were checked. There is a note on the chart that Patient 13 told Dr. DiBenedetto that he lost 70 lb. in 1977 using "Black Beauties." Another note says, "New Diet Rules." The plan was "(1) EXAM; (2) Bl Sugar; (3) discussion = Facts/Figures; (4) 3 Principles = Book/Sheet; (5) Count 1200-1500/day; (6) Adipex-P (14) [one] day." Patient 13 was told to lose three to four pounds by his next visit and one pound per week thereafter. He was prescribed 14 Adipex-P. (State's Exhibit 35, pp 9-10) He received a prescription for 14 Adipex-P on 5-7-87 (wt. 284.5), 5-22-87 (wt. 274), an unspecified quantity on 6-4-87 (wt. 265.5), and 14 Adipex-P on 6-18-87 (wt. 262). (State's Exhibit 35, pp. 13, 16) Patient 13 received prescriptions for 21 Adipex-P on 7-2-87 (wt. 255.5), and for the next six visits through 12-9-87 (wt. 271.5). Patient 13 gained weight on four of these occasions. (State's Exhibit 35, pp. 19, 21, 24-25) On his next visit, 2-29-88 (wt. 287), there is a circled note that says, "3 week drunk." Among other things, he received prescriptions for 21 Adipex-P and an unspecified quantity of Lasix 40 mg. (State's Exhibit 35, p. 25) He received prescriptions for 21 Adipex-P on 3-17-88 (wt. 283), 7-27-88 (wt. 304.5), 8-12-88 (wt. 295), and 8-25-88 (wt. 295). (State's Exhibit 35, pp. 28 and 31) Patient 13 did not receive any more prescriptions for Adipex-P until 1-26-89 (wt. 294), then again on 2-9-89 (wt. 293) and 2-23-89 (wt. 286). (State's Exhibit 35, pp. 40, 42)

    Dr. Longshore testified that black beauties were some kind of amphetamine that is no longer manufactured. (Tr. at 265) Dr. Longshore testified that Dr. DiBenedetto's continued prescribing of Adipex-P to Patient 13 after he began to gain weight again constituted a failure to reasonable care discrimination in the utilization of that drug, and fell below the minimal standards of care of a similar practitioner under the same or similar circumstances. (Tr. at 264-273)

16. Dr. Longshore testified that he has patients to whom he recommends weight loss. He does not use diet pills, because he does not believe they work, and is unfair to the patients to prescribe them. He tells his patients that it is their decision to lose weight, he tries to tell them how many calories they are consuming and how many they should be consuming, which foods to avoid, and sends them to diet workshops. Dr. Longshore testified that the only people who benefit from diet pills are the practitioners that prescribe them, and the drug companies that manufacture them. (Tr. at 224-229)

17. Beth Shaffer testified on behalf of the State as an expert in the field of dietetics and weight control. She is currently a compliance specialist with the Ohio Board of Dietetics. Her resume was admitted as State's Exhibit 52. She was registered as a dietitian in 1968, and was licensed as a dietitian in Ohio in 1987. One of her previously held positions was working as a consultant in a gastroenterology clinic. None of the patients that she dealt with were taking anorectic drugs to her knowledge. (Tr. at 424-436)

    Ms. Shaffer testified that, in her practice, each weight-loss client's program was individualized. She would take a weight history, such as how much they weighed at age 18, after each pregnancy, when they gained weight. If the weight was just recently gained, she would look for a reason. If the client had been obese since childhood, that person may have a genetic predisposition to be overweight, which could effect Ms. Shaffer's decision regarding that person's ideal body weight. She testified that, in most cases involving lifelong obesity, she would only look for modest weight loss, in the range of ten percent, in order to realize some health improvement. Clients often came to her with preconceived and unrealistic notions of their ideal body weight, and Ms. Shaffer would use tables such as the Metropolitan Height and Weight Tables (State's Exhibit 44) to try and convince them where they should be. (Tr. at 436-442) After the assessment, the plan was client education and behavior modification. (Tr. at 447-450) Ms. Shaffer testified that almost all of the experts agree that exercise is important for long-term success in weight loss. (Tr. at 443-444) Many people are trying to lose weight today who are not really overweight, many of them young women. Ms. Shaffer tries to educate such people that there are adverse health consequences to being too thin, such as menstrual problems and nutrition deficiencies. (Tr. at 450-453)

18. William B. Malarky, M.D., testified that weight control and obesity have traditionally fallen into the category of endocrinology. In the normal course of Dr. Malarky's practice, he frequently sees patients with obesity and weight control problems. He is familiar with the use of anorectic agents as a treatment for overweight. (Tr. at 840-844) Among the literature that Dr. Malarky has reviewed on this subject is a study by Weintraub entitled "'Long-Term Weight Control, National Heart, Lung and Blood Institute Funded Multimodal Intervention Study,'" published in "Clinical Pharmacology Therapeutics" in May 1992. This article was admitted as Respondent's Exhibit I. (Tr. at 845)

    Dr. Malarky testified that obesity is a multifaceted problem. On one side, the intake side, there are hormones that regulate appetite. Which ones they are and how they work physiologically is unknown. Another issue is how calories are metabolized. (Tr. at 846-848) Dr. Malarky testified that there are many opinions in the medical community regarding the use of anorectic agents in weight control, ranging from "those that think they're effective to those that think they have no

place in the treatment of obesity." (Tr. at 848) One cause of this diversity of opinion is that no one really knows what causes obesity. Dr. Malarky does not believe that the popular notion of behavior adequately explains the problem; other physiologic processes are at issue. The problem with the use of anorectic agents is that they affect people differently. They may help people who have problems with appetite control, which is not always the cause of the problem. Another problem is a dearth of good studies into their long-term effects. Yet another problem is defining the expected outcome; how much weight loss should be expected, or prevention of further weight gain. The studies referred to in the Weintraub article found that subjects who received these substances, in addition to good diet plans and behavior modification, lost more weight than those who had received a placebo. (Tr. at 848-856, 874-877) Most of the subjects receiving anorectic agents received two—fenfluramine (Pondimin), a serotonin anorectic agent; and phentermine (Adipex-P), which affects the dopaminergic system.

Dr. Malarky testified that he does not use anorectic drugs because he does not want to be bothered with the regulations, plus the literature wasn't very clear whether or not these agents are effective. The Weintraub article has changed his opinion. "I think we're definitely going to see these agents used again." (Tr. at 856) He characterized obesity as a chronic condition. It can exacerbate two lethal health problems, namely cancer and heart disease. (Tr. at 856-857)

Dr. Malarky reviewed the Dr. DiBenedetto's medical records for Patients 8 through 13. In his opinion, there was a reasonable scientific basis for the use of anorectic agents. He does not believe that the use of these agents fell below the minimal standards of care. His opinion was based on an understanding that these were problem cases. He stated that if these were the worst patients in Dr. DiBenedetto's practice, he "would almost have to congratulate him ...." (Tr. at 861-862) He testified that Dr. DiBenedetto's use of these drugs was done with reasonable care discrimination, because Dr. DiBenedetto was seeing the patients every two weeks. This gave Dr. DiBenedetto a short time window to adjust medication if there was a problem. (Tr. at 868)

Dr. Malarky testified that in his experience and that of his colleagues, the success rate of obese patients—fifty pounds overweight or more—who lose weight and keep it off is ten percent. (Tr. at 867) His opinion in recent years regarding the use of anorectic agents has been that there was no place for them in a weight loss program that includes diet, behavior modification and exercise. This opinion was based on a lack of good literature that demonstrated that people could lose weight and keep it off using these drugs. Dr. Malarky was also concerned about their habit-forming characteristics and side effects. He testified that he did not have a lot of experience using them, which Dr. DiBenedetto had. (Tr. at 880-882) But when asked if he would use these drugs if there were no Medical Board rules

concerning their use, Dr. Malarky testified, "I'd start tomorrow." (Tr. at 896) He would use a program similar to that in the Weintraub article. (Tr. at 896) He wouldn't use them on all of his patients, but on those who are grossly obese, or had a family history of obesity that were beginning to fall into the family pattern of weight gain, to try to interrupt it. (Tr. at 898) Based on the Weintraub article, Dr. Malarky would be willing to keep these patients on anorectics long-term, five, ten or fifteen years. (Tr. at 899)

Dr. Malarky testified that he occasionally uses diuretics in a weight control program if the patient is having problems with fluid retention. He does not monitor potassium in patients receiving diuretics intermittently unless the patient gets fatigue. A couple weeks at a time would be considered intermittent. Dr. Malarky testified that "Lasix is much more of a potassium excreter. So you might have more problems with Lasix. Again I get potassiums in people on Lasix who are hypertensives, but again, the body is pretty good to us. When your potassium is down, you don't usually feel too good. So I use that as a very important thing. I tell them that if you are feeling tired, let me know. We'll get a potassium." (Tr. at 904-906) When asked if a physician should take a thorough weight history before prescribing an anorectic, Dr. Malarky testified, "Yes, sure." (Tr. at 909) In a patient who was not overweight but had an unusual fat distribution, Dr. Malarky testified that an appetite suppressant would not be the first thing he would try. (Tr. at 910) Dr. Malarky stated that he did not see any thorough weight histories in the charts of Dr. DiBenedetto's that he reviewed, but that he and some outstanding colleagues have been guilty in the past of the same thing. (Tr. at 911-912)

19. In 1986, Dr. DiBenedetto hired Steve Fulton. At that same time, he expanded his weight control practice into more of a program type setting. Dr. DiBenedetto testified that Mr. Fulton went through EMT and physician's assistant training in the military, and had worked as a medic in Columbus. He was a certified medical assistant, because Dr. DiBenedetto wanted his employees who worked in the back to be certified. Dr. DiBenedetto was not certain who the certifying entity was, however. Mr. Fulton left Dr. DiBenedetto's employ in 1990 or 1991. (Tr. at 8-14) Mr. Fulton was never licensed as a physician's assistant by the State Medical Board of Ohio. (State's Exhibit 54)

Dr. DiBenedetto currently has five employees, including two office managers, two full-time and one part-time medical assistants, and one x-ray technologist. (Tr. at 17)

Dr. DiBenedetto testified that he had trouble getting details about the changes in the Ohio Administrative Code, and did not find out about the rule changes concerning Schedule III and IV anorectics until October or November 1988. He

stated that when he found out about the changes, he made the necessary adjustments. (Tr. at 19-25) "Depending on what the rules were at that time, I made every change that was necessary. And that at the time, I feel, was that you had to go to see the patient every two weeks." (Tr. at 25) Dr. DiBenedetto testified that State's Exhibits 38 - 43 are the initial packet that he used to hand out to his weight patients. There have since been minor changes made. (Tr. at 29-30)

Dr. DiBenedetto stated that when a new patient came in for weight control, the patient would first fill out a history sheet, which would then be reviewed. Different methods of weight control would then be discussed with the patient, and then Dr. DiBenedetto would do a full physical exam. At some point in time that he could not recall, lab work and an EKG were added to the routine. Dr. DiBenedetto testified that he did the physical examinations himself. (Tr. at 34-39) After Mr. Fulton started working for Dr. DiBenedetto, "(h)e [Mr. Fulton] would do what any of my medical assistants would do on my staff, take a history, do blood pressure, heart rate, and question some of the history." (Tr. at 39) Mr. Fulton would go over the program (State's Exhibit 39), and Dr. DiBenedetto would come in and go through the examination. (Tr. at 39-40) However, at an investigative deposition on 12-14-88 (State's Exhibit 45), as corrected (State's Exhibit 46), Dr. DiBenedetto stated that he just talks to the new patient, "unless, based on the history and clinical acumen, I feel it is appropriate, and then I examine them also." (State's Exhibit 46, p. 2) When pressed on the issue of the discrepancies in his testimony, Dr. DiBenedetto stated, "As things evolved with different rules and talking with different people that came in, yes, I do that [examine each patient]." (Tr. at 75-76) Follow-up visits would be covered by Mr. Fulton, but later they were seen by Dr. DiBenedetto. (Tr. at 78-79) He testified that a Medical Board investigator gave him pointers on things that should be changed. (Tr. at 81)

Dr. DiBenedetto testified that State's Exhibit 41 is a copy of the objectives and regulations at Westside Health Center [Dr. DiBenedetto's practice]. Rule number one was that the patient must be ten or more pounds over ideal body weight in order to begin the program. (Tr. at 53-54) Dr. DiBenedetto used a list like the Metropolitan Life tables (State's Exhibit 44). (Tr at 54-56) He did not recall specifically which table was used. (Tr. at 60) If a patient wanted to go a little lower, as long as there were no negative health ramifications, that would be allowed. Then they would go on maintenance. (Tr. at 57)

Dr. DiBenedetto testified that anorectics "work by stimulating the hypothalamus to produce catecholamines in the CNS system." (Tr. at 63) This suppresses appetite. It also speeds up metabolism a little. Some studies have indicated that it causes some lipolysis, or breakdown of fat. (Tr. at 63-64)

Dr. DiBenedetto admitted that he left pre-signed prescription blanks for use by his staff when he was out of the office. The Board investigator discovered this, and informed Dr. DiBenedetto that such practice was not permitted. (Tr. at 83) Dr. DiBenedetto testified that "No names were put on them, just my signature, and they were preprinted also." (Tr. at 84) They were intended for the diet patients, and written for Adipex, Didrex, and Lasix. (Tr. at 84) Dr. DiBenedetto testified prescriptions were phoned in only after authorized by a physician, either Dr. DiBenedetto or a locum tenens. (Tr. at 92)

Dr. DiBenedetto identified Respondent's Exhibits B and C as comparison lists of old and new diet patients, respectively. These were prepared by Dr. DiBenedetto and his staff. Dr. DiBenedetto stated that the conclusion that he draws from these lists is that his program was successful, and went from good to better. (Tr. at 542-550) Dr. DiBenedetto admitted that, in Respondent's Exhibit C, he could not document the starting weight of Patient 5, which would calculate out to 301 lb. He stated that he is not aware of any other patients on the list whose starting weight could not be documented. (Tr. at 728-733)

20. Stephen Fulton testified that he worked for Dr. DiBenedetto for about five and one-half years, from April 1986 to November 1991. He left Dr. DiBenedetto's employ due to cost cutbacks in the practice. He testified that he is a high school graduate, and went through the U.S. Army's nursing program, basic medical program, and paramedic program, as well as Ohio's EMT, advanced EMT, and paramedic programs. He holds an advanced EMT certificate in Ohio. He has never been licensed by the State Medical Board as a physician's assistant. He has a certificate from the Board of the American Association of Medical Assistants, Inc. (Tr. at 367-373)

Mr. Fulton testified that on an average day, he would do lab work, blood pressure, injections, and weight control patients. (Tr. at 374-375) When a new weight patient came in, they would first be weighed and have their blood pressure taken. A brief history would be taken regarding any medications they were using, past medical histories, and their goal. They would be given the information packet, and calorie-counting would be explained to them. They would go over the "three principles," which Mr. Fulton said were "Eat, drink, or chew what you like. Two, ingest two to three and a half times a day. And you must count all calories, not the amounts of food." (Tr. at 383) Dr. DiBenedetto would usually come in then and review the same items, and see if the patient had any questions or problems. Dr. DiBenedetto made the determination whether to put the patient on medication. In late 1988 or early 1989, they discovered that a physical, including bloodwork and an EKG, was required. As soon as they discovered that, they instituted it. Prior to learning from a Board investigator in mid-1988 that weight

patients were to be weighed every fourteen days, they were having the patients come in every thirty days. (Tr. at 375-390)

Mr. Fulton stated that for follow-up visits, he took the patient's weight, blood pressure, found out how the patient was doing, and asked them if they had any problems or questions. In the early phases of the program, there were follow-up patients that Dr. DiBenedetto did not see. As soon as they discovered that Dr. DiBenedetto was to see everybody, that policy changed. Mr. Fulton testified that this occurred about two or three months after he started working for Dr. DiBenedetto. (Tr. at 393-395)

Mr. Fulton testified that he would fill out pre-signed prescriptions for follow-up patients needing a refill. Mr. Fulton stated that these were to be used for certain patients only. This occurred in early 1987, and only when Dr. DiBenedetto was in the office. The blanks did not have the patient's name already filled in. Mr. Fulton filled the name in. The medication was already filled in. Mr. Fulton recalled that these prescriptions were just for Adipex and Didrex, although some might have been for Lasix. This changed after they discovered that it shouldn't be done, during the first six months that Mr. Fulton was there. (Tr. at 397-400)

21. The recommended daily dosage for Adipex-P is one tablet or capsule per day. The recommended daily dosage for Didrex is from 25 to 50 mg. one to three times daily. (Board Exhibits N through T)

22. Dr. DiBenedetto was away from his office on National guard duty on the following dates: 8-15-87 to 8-30-87, 6-18-88 to 7-2-88, and 2-3-89 to 2-19-89. (State's Exhibit 55) State's Exhibit 37, p. 92, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 132 dated 6-22-88. State's Exhibit 37, p. 93, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 28 Didrex 50 mg. for Patient 130. State's Exhibit 37, p. 94, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 421 dated 6-24-88. State's Exhibit 37, p. 96, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 28 Didrex 50 mg., for Patient 116 dated 6-24-88. State's Exhibit 37, p. 100, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 225 dated 6-27-88. State's Exhibit 37, p. 100, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 322 dated 6-27-88. State's Exhibit 37, p. 101, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 121 dated 6-27-88. State's Exhibit 37, p. 100, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 28 Didrex 50 mg., for Patient 179 dated 6-27-88. State's Exhibit 37, p. 102, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 209 dated 6-27-88. State's Exhibit 37, p. 117, contains a copy of a prescription, apparently signed by

Dr. DiBenedetto, for 14 Adipex-P for Patient 500 dated 6-28-88. State's Exhibit 37, p. 124, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 595 dated 6-28-88. State's Exhibit 37, p. 128, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 15 Lasix 40 mg. and 14 Adipex-P for Patient 154 dated 6-29-88. State's Exhibit 37, p. 134, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 285 dated 8-17-87. State's Exhibit 37, p. 144, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 540 dated 8-19-87. State's Exhibit 37, p. 146, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 309 dated 8-20-87. State's Exhibit 37, p. 149, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 200 dated 8-21-87. State's Exhibit 37, p. 151, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 28 Didrex 50 mg., for Patient 246 dated 8-21-87. State's Exhibit 37, p. 151, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 149 dated 8-21-87. State's Exhibit 37, p. 151, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 30 dated 8-21-87. State's Exhibit 37, p. 159, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 516 dated 8-24-87. State's Exhibit 37, p. 164, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 22 dated 8-25-87. State's Exhibit 37, p. 151, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 419 dated 8-26-87. State's Exhibit 37, p. 174, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 7 dated 8-28-87. State's Exhibit 37, p. 174, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 355 dated 8-28-87. State's Exhibit 37, p. 179, contains a copy of a prescription, apparently signed by Dr. DiBenedetto, for 14 Adipex-P for Patient 272 dated 8-28-87.

23. Preludin is a schedule II drug. Statobex is a schedule III drug. Didrex is a schedule III drug. Tenuate is a schedule III drug. Adipex-P is a schedule IV drug. Fastin is a schedule IV drug. (Board Exhibit F) Fiorinal #3 is a schedule III drug. Darvocet-N 100 is a schedule IV drug. (Board Exhibit G) Dexedrine is a schedule II drug. (Board Exhibit H) Xanax is a schedule IV drug. Valium is a schedule IV drug. Tranxene is a schedule IV drug. (Board Exhibit I) Dalmane is a schedule IV drug. Halcion is a schedule IV drug. (Board Exhibit J) Ritalin is a schedule II drug. (Board Exhibit L) Triavil and Elavil are not scheduled drugs. (Board Exhibit V) Placidyl is a schedule IV drug. (Board Exhibit U)

A history of drug abuse is a contraindication to the prescribing of Adipex-P or Didrex. (Board Exhibits N-T)

FINDINGS OF FACT

1. The evidence is sufficient to support a finding that in the routine course of his practice, Frank W. DiBenedetto, D.O., excessively prescribed controlled substances. Such prescribing was sometimes done without utilization of appropriate diagnostic testing or other methods of evaluating the validity of the complaints or the nature or severity of the patients' reported pain, illness, or injury, or without indication that such prescribing was warranted. Further, this prescribing was often initiated and continued without employing or exhausting other conservative measures or modalities. Furthermore, Dr. DiBenedetto's medical records frequently failed to reflect the symptoms, observations, assessments, dosage units of drugs prescribed, or treatment plans for the individual patients.

2. Dr. DiBenedetto prescribed Darvocet-N 100, a controlled substance narcotic, to Patient 1 from March 1987 to June 1989. At her first visit, Dr. DiBenedetto diagnosed gross degenerative joint disease of thoracic lumbar vertebrae and tenosynovitis of the knees. He noted that Patient 1 "wants Rx for Darvocets." Dr. DiBenedetto prescribed Darvocet-N 100 to Patient 1 at this first visit prior to seeing radiological findings, although these were reviewed at her next visit one week later. Sometime in September 1988, Dr. DiBenedetto was notified by a pharmacist that the patient had received 805 dosage units of Darvocet since June of that year. Further, in July, 1989 the patient presented to an emergency room, and was diagnosed as suffering from drug abuse and referred to a facility to detoxify. At around that same time, Dr. DiBenedetto or a member of his office staff received a call from a local pharmacist who stated that "if the directions are not changed on Darvocet for the quantity he will not fill anymore." The evidence does not support a finding that Dr. DiBenedetto continued prescribing Darvocet-N 100 to Patient 1 after her emergency room visit or after the second call from the pharmacist. Dr. DiBenedetto ceased his prescribing of Darvocet-N 100 to Patient 1 after June 29, 1989.

3. Dr. DiBenedetto excessively prescribed thyroid medication, benzodiazepines and anorectic agents (including Synthroid, Xanax and Adipex-P) from 1974 through 1987 to Patient 2 for anxiety and an unsubstantiated diagnosis of hypothyroidism. He continually prescribed thyroid medications for a ten year period despite repeated negative test results. However, the evidence does not support a finding that the dose of thyroid medication increased during this period of time.

4 Dr. DiBenedetto excessively prescribed controlled substance narcotics and benzodiazepines (including Fiorinal #3, Halcion and Valium) to Patient 3 primarily for complaints of back pain and various ailments in the absence of appropriate testing.

5. Dr. DiBenedetto prescribed controlled substance narcotics and benzodiazepines to Patient 4 from February 1988 through May 1989 for various ailments including anxiety and costochondritis, but the evidence is insufficient to support a finding that such prescribing was excessive. The State's physician expert, Dr. Longshore, testified that the drugs were not inappropriately prescribed, although Dr. DiBenedetto used them more extensively than Dr. Longshore himself would have used them. Dr. Longshore expressed concern about Dr. DiBenedetto's diagnoses of vascular insufficiency in this patient, but this particular aspect of Dr. DiBenedetto's care of Patient 4 was not included in the September 9, 1992 notice letter, and a finding of violation of the Medical Practices Act based upon this problem would violate due process and fundamental fairness.

   The evidence supports a finding that Dr. DiBenedetto's continued to prescribe Valium to Patient 4 after Dr. DiBenedetto suspected that she was chemically dependent.

6. A physician/patient relationship existed between Dr. DiBenedetto and Patient 5 from approximately 1974 until 1990. In 1983, Dr. DiBenedetto began and continued thereafter to excessively prescribe controlled substance analgesics, benzodiazepines, hypnotics (including Placidyl, Talwin, Dalmane and Valium) and Triavil without medical necessity. In May 1983, Dr. DiBenedetto was notified by a local pharmacist that the patient had "added three refills to her Placidyl (prescription)." In April, 1985 Dr. DiBenedetto had a "long discussion about abuse" ...with Patient 5. In March, 1988 Dr. DiBenedetto noted in the Patient's record that "Dalmane fell down toilet" and okayed a refill of 20 D.U. In June, 1988 Dr. DiBenedetto documented a diagnosis of "Dependency on Rx." However, Dr. DiBenedetto continued prescribing these drugs to Patient 5 through March 1993.

7 Dr. DiBenedetto excessively prescribed controlled substance narcotics and anorectic agents (including Fiorinal #3, Esgic with codeine, and Adipex-P) to Patient 6 for headaches and weight loss. Dr. DiBenedetto prescribed Fiorinal #3 to Patient 6 from 1978 through 1987. Esgic with codeine was prescribed from 1987 through 1989. Dr. DiBenedetto failed to refer Patient 6 for a complete neurological workup, although an EEG was performed by a neurologist. In addition to the drug therapy, Dr. DiBenedetto treated Patient 6 with osteopathic manipulative therapy, cervical traction, magnatherm, and hydrocollator. Dr. DiBenedetto first prescribed Adipex-P to Patient 6 in June 1982, and continued to prescribe this drug to the patient every two to four weeks until November 1988, often in greater than a fourteen day supply. In November 1988 Dr. DiBenedetto became aware that Patient 6 had been receiving Adipex-P from another physician since 1987. Dr. DiBenedetto ceased prescribing this drug to Patient 6 until April 1989, at which

time he began prescribing it again until October 1989. At the time of Patient 6's June 1982 visit, she weighed 118 pounds; the last time she received a prescription for Adipex-P from Dr. DiBenedetto, she weighed 148.5 pounds.

8. Dr. DiBenedetto excessively prescribed controlled substance anorectic agents (including Adipex-P and Biphetamine) to Patient 7 from 1975 until 1992. At the time of her first visit, Patient 7 weighed 148.5 pounds; at the time she received her last prescription for an anorectic drug, on July 29, 1992, she weighed 180.5 pounds.

9 Patient 8 presented to Dr. DiBenedetto's office on or about January 18, 1988, with a chief complaint of weight control. She was 5'6" tall and weighed 143 pounds. She wanted to lose 13 pounds. Nothing is contained in the chart that indicated whether of not Patient 8 had made previous attempts to lose weight without the assistance of controlled substances. Dr. DiBenedetto provided Patient 8 with a prescription for Adipex-P, a Schedule IV controlled substance. She continued to receive prescriptions for controlled substance anorectic drugs from Dr. DiBenedetto through April 1993, at which time she weighed 129 pounds. Patient 8 received numerous prescriptions for Schedule III and IV controlled substance anorectics despite evidence that she failed to lose weight, or otherwise developed a tolerance for the drugs. The physical examination performed by Dr. DiBenedetto on this patient was adequate.

While prescribing controlled substances for weight loss for Patient 8, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 8 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 8 in Dr. DiBenedetto's absence but by his authority, or that Dr. DiBenedetto pre-signed prescription blanks that were used to dispense controlled substances to this patient by Mr. Fulton. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office. The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

10. Patient 9 presented to Dr. DiBenedetto's office on or about April 20, 1987 with a chief complaint of weight control. At that time she weighed 139.5 pounds. She was 5'6" tall, and wanted to lose 14.5 pounds. Despite evidence of successful weight loss without controlled substances, Dr. DiBenedetto prescribed Adipex-P. For approximately two years Patient 9 received prescriptions for Schedule III and IV controlled substance anorectics, and on many occasions received greater than a fourteen-day supply. Patient 9's weight fluctuated greatly during this time. At the time of her last visit, February 22, 1989, her weight was 139.5 pounds, the same as when she had started.

    While prescribing controlled substances for weight loss for Patient 9, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

    The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 9 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 9 in Dr. DiBenedetto's absence but by his authority. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office. The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

11. Dr. DiBenedetto treated Patient 10 primarily for weight control from 1985 through 1990. During this time, Dr. DiBenedetto excessively prescribed Schedule III and IV controlled substances for weight loss despite evidence of Patient 10's tolerance to the drugs, failure to lose weight, weight gain, and evidence that the patient was not utilizing the drugs in strict compliance with Dr. DiBenedetto's directions. At the time of her last visit, Patient 10 was one pound heavier than she was at the time of her initial visit.

    While prescribing controlled substances for weight loss for Patient 10, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 10 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 10 in Dr. DiBenedetto's absence but by his authority. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office. The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

12. On or about January 12, 1987, Patient 11 presented to Dr. DiBenedetto's office wanting to get on a diet. She was 5'5" and weighed 125 pounds at that time. Dr. DiBenedetto's records indicate that she had received Adipex-P from another physician the previous year and had lost five pounds. Dr. DiBenedetto prescribed 28 Adipex-P and instructed Patient 11 to take one pill twice per day. There was a notation in the patient record indicating "New Diet Rules" and that the patient must lose 3-4 pounds by the next visit and one pound per week thereafter. An underlined note at the bottom of her chart for that day says "Watch." For the next three and one-half years the patient received prescriptions for Schedule III and IV controlled substance anorectics, often in greater amounts than a fourteen-day supply. Patient 11's weight greatly fluctuated during this time. By the time of her last visit, on July 5, 1990, Patient 11 weighed 121.5 pounds, a net loss of only 3.5 pounds.

While prescribing controlled substances for weight loss for Patient 11, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 11 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 11 in Dr. DiBenedetto's absence but by his authority. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office.

The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

13. On or about January 19, 1987 Patient 12 presented to Dr. DiBenedetto's office wanting on a diet program. At this time she weighed 173.5 pounds. Dr. DiBenedetto's records indicated that Patient 12 had received Adipex and Fastin in the past from other physicians and had successfully lost weight. Dr. DiBenedetto prescribed 28 Fastin 30 mg. to be taken twice per day. There are notations in the patient record indicating "New Diet Rules" and that the patient must lose 3-4 pounds by the next visit and one pound per week thereafter. For over two and one-half years Patient 12 received prescriptions for Schedule III and IV controlled substance anorectics, often in amounts greater than a fourteen-day supply. Patient 12's weight fluctuated greatly during this time. At the time of her last visit, October 2, 1989, her weight was 170.5 pounds, a net loss of only three pounds.

While prescribing controlled substances for weight loss for Patient 12, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 12 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 12 in Dr. DiBenedetto's absence but by his authority. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office. The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

14. On or about April 23, 1987, Patient 13 presented to Dr. DiBenedetto's office with a chief complaint of weight control. At that time Patient 13 weighed 300 pounds. Dr. DiBenedetto's records indicate that the patient had received "Black Beauties" in the past from another physician and had successfully lost weight. For over one and one-half years, on a somewhat irregular basis, Patient 13 received prescriptions for Adipex-P for weight loss often in amounts greater than a fourteen-day supply. Patient 13's weight greatly fluctuated during this time. At

the time of his last visit for weight loss, on February 23, 1989, Patient 13 weighed 286 pounds, a net loss of 14 pounds.

While prescribing controlled substances for weight loss for Patient 13, Dr. DiBenedetto failed to follow F.D.A. approved labeling for the products, failed to determine that the patient made a substantial good-faith effort to lose weight in a treatment program prior to the utilization of controlled substances, failed to rule out the existence of any recognized contraindications, and failed to discontinue the controlled substances when the patient did not lose weight.

The evidence is insufficient to support a finding that Dr. DiBenedetto failed to utilize the controlled substances as an adjunct in the treatment of obesity. Patient 13 was placed on a regimen of weight reduction based on caloric restriction. Furthermore, the evidence is insufficient to support a finding that controlled substances were prescribed to Patient 13 in Dr. DiBenedetto's absence but by his authority. Evidence was presented that Dr. DiBenedetto was always covered by locum tenens when he was away from the office, and there is no copy of a prescription for this patient, bearing Dr. DiBenedetto's signature, for a date when the evidence indicated that Dr. DiBenedetto was not present at his office. The evidence was insufficient to support a finding that Dr. DiBenedetto retrospectively signed the patient record for the visits for which he was absent.

15. In the routine course of Dr. DiBenedetto's practice, Dr. DiBenedetto continually authorized non-physician staff members to prescribe controlled substances for weight loss to patients in Dr. DiBenedetto's absence. Both Dr. DiBenedetto and Stephen Fulton admitted that Dr. DiBenedetto left signed prescription blanks for Mr. Fulton, a non-physician, to dispense controlled substance anorectics to patients. The hearing record contains numerous copies of prescriptions for these substances which appear to bear the signature of Dr. DiBenedetto, and bear dates for times when Dr. DiBenedetto was away from his practice and on National Guard duty.

CONCLUSIONS

1. As set forth in Findings of Fact #1 and #2, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 1, constitute: "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by

the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Rule 4731-11-02, Ohio Administrative Code, states, in part:

(A) A physician shall not utilize a controlled substance other than in accordance with all of the provisions of this chapter of the Administrative Code.

...

(C) A physician shall not utilize a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(D) A physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based.

...

The evidence presented convincingly established that Dr. DiBenedetto violated paragraph (D). His records of examinations, evaluations, and/or treatments of Patient 1, as with all of the other patients in this case, were sketchy and incomplete. Patient 1's records, as well as the other patient records, often failed to reflect the quantity of drug that was prescribed, or the patient directions. Dr. DiBenedetto failed, with Patient 1 and other patients, to indicate the diagnosis and purpose for which controlled substances were being utilized, and commonly failed to include the bases for diagnoses. Based on this, it can also be concluded that Dr. DiBenedetto violated paragraph (A) of this Rule.

By operation of Rule 4731-11-02(F), Ohio Administrative Code, Dr. DiBenedetto's violation of Rules 4731-11-02(A) and (D) constitutes: "'failure to use reasonable care discrimination in the administration of drugs,' as that clause is used in division (B)(2) of section 4731.22 of the Revised Code; and 'a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is

established,' as that clause is used in division (B)(6) of section 4731.22 of the Revised Code."

The evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his care of Patient 1 constituted violation of Section 4731.22(B)(2) and (B)(6), Ohio Revised Code, except by operation of Rule 4721-11-02(F), Ohio Administrative Code. The State's expert based his opinions on what appeared to be erroneous information, both concerning Dr. DiBenedetto's diagnosis of degenerative joint disease, as well as the quantities of the drugs that the expert thought Dr. DiBenedetto had been prescribing. Dr. DiBenedetto presented evidence that his prescribing of Darvocet-N 100 was appropriate. For these reasons, the evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his care of Patient 1 constituted violation of Section 4731.22(B)(20), to wit: Rule 4731-11-02(C), Ohio Administrative Code.

2. As set forth in Findings of Fact #1 and #3, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 2, constitute: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Section 2901.22 states, in part:

(C) A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to resist.

Dr. DiBenedetto prescribed Xanax to Patient 2 when he suspected that she had alcoholism. There is nothing in the record to indicate that Dr. DiBenedetto made any effort to discontinue the drug, or to monitor Patient 2 more closely while she was maintained on the drug. Xanax addictive, and there is a risk of overdose when it is mixed with alcohol. Dr. DiBenedetto recklessly failed to consider "the drug's potential for abuse, [and] the possibility the drug may lead to dependence," as those clauses are used in Rule 4731-11-02(C), Ohio Administrative Code. A violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22, Ohio Revised Code, shall also constitute a violation of 4731.22(B)(3), Ohio Revised Code.

3. As set forth in Findings of Fact #1 and #4, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 3, constitute: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C), and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. It is concluded that Dr. DiBenedetto's violation of Rule 4731-11-02(C), Ohio Administrative Code, with regard to his treatment of Patient 3, was negligent, rather than purposeful, knowing, or reckless, as those terms are defined in Section 2901.22, Ohio Revised Code.

4. As set forth in Findings of Fact #1 and #5, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 4, constitute: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or

any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A),(C), and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his treatment of Patient 4 violated Rule 4731-11-02(C), Ohio Administrative Code in that he prescribed Valium to Patient 4 at a time when Dr. DiBenedetto suspected that she may be chemically dependent. In so doing, Dr. DiBenedetto recklessly failed to consider "the drug's potential for abuse, [and] the possibility the drug may lead to dependence," as those clauses are used in Rule 4731-11-02(C), Ohio Administrative Code. A violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22, Ohio Revised Code, shall also constitute a violation of 4731.22(B)(3), Ohio Revised Code.

5. As set forth in Findings of Fact #1 and #6, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 5, constitute: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C), and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of this rule, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Dr. DiBenedetto continued to prescribe a wide spectrum of controlled substances to Patient 5 after he became aware that she may have had a substance abuse problem, and after he was made aware that Patient 5 attempted to falsify a prescription for Placidyl in order to obtain a larger amount than had been prescribed. Dr. DiBenedetto recklessly failed to consider "the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug," as those clauses are used in Rule 4731-

11-02(C), Ohio Administrative Code. A violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22, Ohio Revised Code, shall also constitute a violation of 4731.22(B)(3), Ohio Revised Code.

6. As set forth in Finding of Fact #7, above, Dr. DiBenedetto's excessive prescribing of controlled substance narcotic and anorectic agents to Patient 6, and his failure to refer Patient 6 for a complete neurological workup, constituted: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; and/or "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

In addition, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his prescribing of a schedule IV anorectic agent to Patient 6, constituted "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1), (2), (3), and (5)(a), (b), and (d), Ohio Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

Rule 4731-11-04, Ohio Administrative Code, states, in part:

(A) A physician shall not utilize a schedule III or IV controlled substance for purposes of weight reduction unless it has an F.D.A. approved indication for this purpose and then only in accordance with all of the provisions of this rule.

(B) A physician may utilize a schedule III or IV controlled substance for purposes of weight reduction in the treatment of obesity only as an adjunct, in accordance with F.D.A. approved labeling for the product, in a regimen of weight reduction based on caloric restriction, provided that all of the following conditions are met:

(1) Before initiating treatment utilizing a schedule III or IV controlled substance, the physician determines through review of his own records or prior treatment, or through review of the records of prior treatment

which another treating physician or weight-loss program has provided to the physician, that the patient has made a substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that said treatment has been ineffective.

(2) Before initiating treatment utilizing a schedule III or IV controlled substance, the physician obtains a thorough history, performs a thorough physical examination of the patient, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized.

(3) The physician shall not utilize any schedule III or IV controlled substance when he knows or has reason to believe that a recognized contraindication to its use exists.

...

(5) The physician shall not initiate or shall discontinue utilizing all schedule III or IV controlled substances immediately upon ascertaining or having reason to believe:

(a) That the patient has failed to lose weight while under treatment with a controlled substance or controlled substances over a period of fourteen days, which determination shall be made by weighing the patient at least every fourteenth day, except that a patient who has never before received treatment for obesity utilizing any controlled substance who fails to lose weight during his first such treatment attempt may be treated with a different controlled substance for an additional fourteen days, or

(b) That the patient has developed tolerance (a decreasing contribution of the drug toward further weight loss) to the anorectic effects of the controlled substance being utilized, or

...

(d) That the patient has consumed or disposed of any controlled substances other than in strict compliance with the treating physician's directions.

Dr. DiBenedetto's care of Patient 6 violated each of the above paragraphs. There was nothing in the patient records when the weight loss routine started that indicated Patient 6 was placed on a weight loss regimen based on caloric restriction. He did not prescribe Adipex-P in accordance with F.D.A. approved labeling for that product. There was nothing in the record to indicate that

Dr. DiBenedetto attempted to ascertain whether or not Patient 6 had ever made a substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that such treatment had been ineffective. There was no record of a thorough history and physical having been performed on Patient 6, or that recognized contraindications to the use of a schedule IV anorectic was ruled out. Dr. DiBenedetto continued to prescribe Adipex-P to Patient 6 after he learned that she had been simultaneously obtaining the drug from another physician; a history of drug abuse is a contraindication for the prescribing of Adipex-P. Such behavior also indicates that Patient 6 had consumed or disposed of Adipex-P other than in strict compliance with Dr. DiBenedetto's directions. Adipex-P was prescribed to Patient 6 whether or not she had lost weight. Patient 6 was not weighed every fourteenth day, and Adipex-P was often prescribed to her in amounts greater than a fourteen-day supply. Dr. DiBenedetto continued to prescribe Adipex-P to Patient 6 after she developed a tolerance to its anorectic effects.

7. As set forth in Finding of Fact #8, above, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patient 7, constituted: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1), (2), and (5)(a) and (b), Ohio Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

The evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his treatment of Patient 7 violated Rule 4731-11-04(B)(3). The record does not contain evidence that Dr. DiBenedetto knew or had reason to believe that a recognized contraindication existed to the use of the anorectic drugs prescribed. Additionally, there was no evidence presented that Patient 7 had consumed or disposed of the anorectics other than as directed by Dr. DiBenedetto , therefore there was no violation of Rule 4731-11-04(B)(5)(d), Ohio Administrative Code, with regard to Patient 7.

8. As set forth in Findings of Fact #9 through #14, above, Dr. DiBenedetto's acts, conduct, and/or omissions, individually and/or collectively, with regard to his treatment of Patients 8 through 13, constituted: "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "... prescribing, ... or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and/or "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, the violation of any provision of Rule 4731-11-02, as determined by the Board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Dr. DiBenedetto's acts, conduct, and/or omissions with regard to Patients 9 through 13, and which occurred after November 11, 1986, also constitute "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1), (2), and (5)(a) and (b), Ohio Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of Rule 4731-11-04, Ohio Administrative Code, shall constitute a violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

Dr. DiBenedetto's acts, conduct, and/or omissions with regard to Patient 8 , and which occurred after November 11, 1986, also constitute "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(A), (B)(1) and (5)(a) and (b), Ohio Administrative Code. Pursuant to paragraph (C) of Rule 4731-11-04, Ohio Administrative Code, a violation of any provision of Rule 4731-11-04, Ohio Administrative Code, shall constitute a violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code. The evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his treatment of Patient 8

constituted violation of Rule 4731-11-04(B)(2), Ohio Administrative Code. The state's expert testified that the examination that Dr. DiBenedetto performed on this patient was adequate.

The evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his treatment of Patient 8 through 13 constituted violation of Rule 4731-11-04(B)(3), Ohio Administrative Code. The record does not contain evidence that Dr. DiBenedetto knew or had reason to believe that a recognized contraindication existed to the use of the anorectic drugs prescribed.

The evidence is insufficient to support a conclusion that Dr. DiBenedetto's acts, conduct, and/or omissions with regard to his treatment of Patients 8 through 13 constituted "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Dr. DiBenedetto presented evidence that the long-term prescribing of controlled substance anorectic drugs, in conjunction with a program involving good diet plans and behavior modification, may have some beneficial effect for some people. Nevertheless, while Dr. Malarky's testimony and the Weintraub article may be thought-provoking, they do not represent the standard of care. And although Dr. DiBenedetto put Patients 8 through 13 on low calorie diets and provided nutritional information, no behavioral modification was used.

9 As set forth in Finding of Fact #15, the acts, conduct, and/or omissions of Dr. DiBenedetto, individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code; "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate and therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; "commission of act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 473.22(B)(12), Ohio Revised Code, to wit: Section

3719.06(A), Ohio Revised Code, Prescription in dispensing by practitioner. Pursuant to Section 3719.99(B), Ohio Revised Code, a violation of this Section shall constitute the misdemeanor of the third degree.

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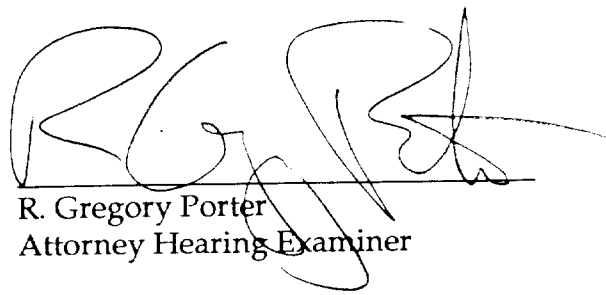
The evidence presented in this Matter clearly established that Dr. DiBenedetto's manner of practice had some serious deficiencies. These deficiencies are of such scope and magnitude that it may reasonably be concluded that Dr. DiBenedetto would not be amenable to rehabilitation or reeducation. His record-keeping was abominable. His long-term prescribing of addictive narcotics, benzodiazepines, and hypnotics was highly questionable, and in some cases (such as the prescribing of Xanax to a suspected alcoholic), dangerous. He prescribed thyroid medication to patients for questionable diagnoses, or no diagnosis that would justify such prescribing. Dr. DiBenedetto's weight loss program made controlled substance anorectics available on a long-term basis to any patient who expressed a desire to lose weight, whether the patient was overweight or not. In instances where the patient truly had a weight problem, they were strung along with anorectic drugs for years, even though the drugs were patently ineffective. The waste of these patients' time and money in office visits and prescriptions must have been enormous. In Patient 10's case, this treatment seemed downright cruel. She weighed over 260 pounds at her first visit, and wanted to get down to 150 pounds. She was prescribed different controlled-substance anorectics for years, but her weight never fell below 244 pounds. Five years later, she weighed 262 pounds, and a note on her chart said that she still wanted to get down to 150 pounds. Rather than continuing to prescribe drugs this whole time—drugs that clearly were ineffective for this patient—Dr. DiBenedetto should have been trying other methods to help this patient.

Dr. DiBenedetto admittedly pre-signed prescription blanks for his staff to use at their discretion, in his absence. In effect, he abdicated matters of clinical judgment to personnel who were incompetent under the laws of Ohio to bear this responsibility. Although no evidence was presented that any of Dr. DiBenedetto's patients suffered harm as a result of this conduct, the potential for patient harm existed, and Dr. DiBenedetto should have been aware of that potential. This conduct alone justifies the severest sanction.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Frank W. DiBenedetto, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be permanently REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio, except that Dr. DiBenedetto shall immediately surrender his United States Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for his personal use by another so authorized by law. Further, in the interim, Dr. DiBenedetto shall not undertake treatment of any individual not already under his care.



R. Gregory Porter
Attorney Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF APRIL 12, 1995

REPORTS AND RECOMMENDATIONS

Dr. Garg announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Garg asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Sheila A. Barnes, D.O.; Stanley E. Broadnax, M.D.; Kwok Wei Chan, M.D.; Frank DiBenedetto, D.O.; Naba Goswami, M.D.; Sam Hill, D.O.; Don R. Johnson, M.D.; William Patrick Mooney, D.O.; Harvey M. Rodman, M.D.; Kevin Smith, P.A.; And Steve Shu-Tzu Young, M.D. A roll call was taken:

Dr. Garg asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye
	Dr. Garg	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further particpation in the adjudication of this matter. Carla S. O'Day, M.D., was the Secretary involved in supervision of the cases under consideration this date.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

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All Assistant Attorneys General and all Enforcement Coordinators returned to the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF FRANK DIBENEDETTO, D.O.

Dr. Garg stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board members present.

Dr. Garg advised that a request to address the Board has been timely filed on behalf of Dr. DiBenedetto.

Dr. Garg advised Ms. Berman that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Ms. Berman stated that she did not have any objection to the absence of a court reporter.

Dr. Garg reminded Ms. Berman that the Board members have read the entire hearing record, including the exhibits and any objections filed. He added that the Board will not retry the case at this time, and that pursuant to Section 4731.23(C), Revised Code, oral arguments made at this time are to address the proposed findings of fact and conclusions of the hearing examiner. Dr. Garg stated that Ms. Berman would be allotted approximately five minutes for her address.

Ms. Berman began by introducing Dr. DiBenedetto to the Board. She stated that two years have passed between the date of the hearing and today. Those two years speak volumes as to the validity of the charges against Dr. DiBenedetto. At the hearing, both sides had a full and fair opportunity to lay their cards on the table. When she and Dr. DiBenedetto left the hearing, they felt satisfied that an honest test of the merits of the case militated a finding in favor of Dr. DiBenedetto. She added that what happened in those next two years is instructive. In the intervening two years, the Board has remained silent, a fact entirely consistent with the facts that were adduced at the trial. Dr. DiBenedetto has continued to practice and to meet and exceed C.M.E. requirements. He has been certified as a flight surgeon for the F.A.A. He will be sitting for his Boards in family medicine in October of this year. He has voluntarily terminated the weight control program, which was of some concern to some of the members of this Board. Ms. Berman and Dr. DiBenedetto believe that his actions and the Board's silence is telling.

Ms. Berman continued that they were surprised to learn in 1994 that a replacement Hearing Examiner, an absolute stranger to the proceedings, someone who had never met Dr. DiBenedetto and did not have a chance to see a witness, hear a word of testimony, or judge the credibility of one witness, was to make a decision. Needless to say, they were shocked with the conclusions and the recommendation of that Hearing

Examiner. They don't think that the evidence justified the sanction. The question is, what, if anything, is the appropriate sanction.

Ms. Berman stated that the hearing established that Dr. DiBenedetto deals with low-income patients, patients with no benefit of education and guidance.

Ms. Berman stated that the testimony of William Malarkey, M.D., Eljorn Don Nelson, Pharm.D., and Steven Delaveris, D.O., including Dr. DiBenedetto's own testimony, overwhelmingly established that Dr. DiBenedetto's practice did fall within the minimal standards of care, that reasonable care discrimination was used in the prescribing of medicine, and that scientific methodology was employed in the treatment of all of his patients. They also believe the evidence shows that Dr. DiBenedetto is a dedicated physician who works with his patients over a long-term basis and is committed to their care. Ms. Berman stated that when she went through and read the transcript, and had other lawyers look at the transcript, it was clear that the State did not meet its burden of proof. The State's expert, relative to the experts who testified on behalf of Dr. DiBenedetto, was not as credible and not as qualified. He was frequently confused. He was admittedly confused. He was frequently mistaken as to the facts. He offered speculation in place of opinions. That is not sufficient. He was never once asked, and he never once offered, what exactly the standard of care would require. They never heard that testimony. The State simply didn't meet its burden of proof.

Ms. Berman stated that they never disputed, and they don't dispute today, that there were some minor technical violations, none of which amounted in volume or gravity, or were of such a severe character, to justify the proposed sanction. As soon as Dr. DiBenedetto became aware of those violations, even though it was actual instead of constructive knowledge, he made changes that were immediate and that conformed with the mandates of this Board. They dispute all of the remaining charges, because they simply believe that the replacement Hearing Examiner was unable, for whatever reason, to fairly judge the evidence in this case. Is a sanction of permanent revocation rational in view of the fact that Dr. DiBenedetto has been permitted to practice for the past two years? They believe the answer to that question is "no." Ms. Berman stated that she would assume that the Board read the transcript, as would a jury, with an open and unbiased eye toward the truth, that judgment was reserved until all of the evidence was reviewed. She believes that that fair review compels a conclusion that the proposed sanction is without basis in fact and in law. If a sanction needs to be imposed at all, let it be one that comports with the truth. Let it be one that recognizes that Dr. DiBenedetto has, in fact, regulated himself. Let it be one that considers the letters offered on his behalf, his conduct in the past two years and the value of his services to the medical community.

Ms. Berman asked that, if there is any time left, Dr. DiBenedetto now be permitted to address the Board.

Dr. Garg stated that Ms. Berman has already used the five minutes allotted. Dr. Garg added that the Board members have read the entire record.

Dr. Garg asked whether Ms. Strait wished to address the Board.

Ms. Strait stated that, with regard to the comments made about the fact that a replacement hearing examiner wrote the Report and Recommendation in this case, the Board is well aware of the circumstances that necessitated Mr. Porter taking over this case. Instead of viewing the Report and Recommendation as having any less validity to it, the Board should commend Mr. Porter for reviewing an incredibly extensive hearing record and coming up with what she felt was an excellent summary of the evidence. It is very apparent that he very carefully weighed the various charges and evidence presented. He did, in fact, find that the State did not meet the burden of proof in some of its charges, but did meet it in others. The Supreme Court of Ohio has upheld the use of multiple Hearing Examiners because the Board makes the ultimate decision.

Ms. Strait disagreed with the characterization of the expert testimony at the hearing. The State's expert may not have been the most erudite, but he did practice in a similar type of practice, and he had valid opinions. In reviewing Dr. DiBenedetto's prescribing, some of it is inexcusable. This case is indicative of a practitioner who was practicing medicine very inappropriately.

Ms. Strait continued that there was also testimony concerning another significant issue, and that involved an unlicensed, uncertified individual passing on prescriptions pre-signed by Dr. DiBenedetto. The Board has never tolerated this, and has considered this a very serious violation.

Ms. Strait again stated that the Hearing Examiner did an excellent job of stating what was and what wasn't proved, and she urged the adoption of the Proposed Findings of Fact, Conclusions of Law, and Order.

Dr. Garg concurred with Ms. Strait's statements about Mr. Porter, and commended him on the excellent job he did in this case.

DR. GRETTER MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FRANK W. DIBENEDETTO, D.O. MR. SINNOTT SECONDED THE MOTION.

Dr. Garg asked whether there were any questions concerning the proposed findings of fact, conclusions and order in the above matter.

Dr. Steinbergh stated that she is on staff with Dr. DiBenedetto and provided locum tenens coverage for him several years ago. She will therefore abstain from the discussion and voting on this case.

DR. STIENECKER MOVED TO AMEND THE CONCLUSIONS IN THE MATTER OF FRANK W. DIBENEDETTO, D.O., BY DELETING THE FOLLOWING SENTENCE FROM THE FIRST UNNUMBERED, CONCLUSIONARY PARAGRAPH: "THE WASTE OF THESE PATIENTS' TIME AND MONEY IN OFFICE VISITS AND PRESCRIPTIONS MUST HAVE BEEN ENORMOUS." DR. GRETTER SECONDED THE MOTION.

Dr. Stienecker stated that the Board hasn't usually revoked licenses in cases such as this, but instead has suspended the physician's license. He believes that a suspension of six months to a year would be reasonable in this case. Other cases in the past several years involving diet doctors inappropriately prescribing, pre-signing prescriptions and allowing staff to hand the pre-signed prescriptions out to patients have been handled with suspensions.

DR. STIENECKER MOVED TO AMEND THE PROPOSED ORDER TO SUSPEND DR. DIBENEDETTO'S LICENSE FOR A YEAR, WITH NO SUBSEQUENT PROBATION. The motion died for lack of a second.

Dr. Agresta stated that he was also uncomfortable with an order which revokes Dr. DiBenedetto's license. The amount of material contained in the hearing record shows that Dr. DiBenedetto used poor judgment and a lack of knowledge of medication and its side effects. Dr. Agresta stated that he would like to change the Order, but he feels there should be some probationary terms. He understands that Dr. DiBenedetto has voluntarily suspended his weight loss practice. Dr. Agresta added that he also understands that weight loss patients can be difficult, but the fact that Dr. DiBenedetto's patients are poor doesn't mean that they deserve poorer care than those patients who are better off.

Dr. Heidt stated that, in reading this case, he found that it was a massive document, and a few points were quite evident. Dr. DiBenedetto was practicing a very poor type of medicine. His tremendously large number of prescriptions for controlled substances, especially Darvocet, were not in accord with minimal standards of care. It was quite obvious that in many of these cases Dr. DiBenedetto was certainly practicing below minimal standards. As far as revocation is concerned, there is a good chance that the Board can salvage this doctor to an extent, but a long suspension, plus required C.M.E. would be appropriate.

Mr. Sinnott stated that the Report and Recommendation before the Board at this time is a compelling record of many years of substandard practice. He does not see anything that recommends allowing Dr. DiBenedetto to keep his license, and he doesn't know why other members would shy away from revocation in this case. He doesn't know what a doctor could do in that type of practice and not be revoked, if the Board doesn't revoke in this case. Mr. Sinnott stated that he can't see any argument that would allow Dr. DiBenedetto to remain a licensed physician in this state.

Dr. Bhati stated that this is a difficult situation. On one side the Board has a physician who sees 85 to 95 patients per day, and he doesn't know how he can justify seeing that many. 80% of the patient records reviewed were incomplete. The record before the Board is extensive. Dr. Bhati recommended at least a 2-year suspension with a 5 to 10-year probationary period.

A vote was taken on Dr. Stienecker's motion to amend:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.

DR. STIENECKER MOVED TO TABLE THE MATTER OF FRANK W. DIBENEDETTO, D.O. DR. GRETTER SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- nay
	Dr. Heidt	- nay
	Dr. Steinbergh	- abstain

The motion carried.

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APRIL 13, 1995

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DR. STIENECKER MOVED TO REMOVE THE MATTER OF FRANK W. DIBENEDETTO, D.O., FROM THE TABLE. DR. GRETTER SECONDED THE MOTION. A vote was taken:

VOTE:		
	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye

Dr. Gretter	- aye
Dr. Agresta	- aye
Dr. Buchan	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye

The motion carried.

Mr. Sinnott stated that he has been informed by Dr. DiBenedetto's attorney that one of his partners or associates represented Dr. DiBenedetto in another matter. Mr. Sinnott has been asked to recuse himself to avoid the appearance of impropriety, and he will do so. Mr. Sinnott asked to withdraw his earlier votes. He voted in favor of Dr. Stienecker's motion to amend, and he voted against tabling the matter. He stated that his vote in both cases did not affect the outcome of the motion. He did, however, second the motion to approve and confirm the Findings of Fact, Conclusions and Proposed Order. Therefore, the Board will need a new motion.

Dr. Garg stated that he doesn't understand conflicts of interest. He asked when members should recuse themselves. He stated that since Mr. Sinnott knows nothing about the case in which his associate is involved, he doesn't understand why Mr. Sinnott needs to recuse himself.

Mr. Sinnott stated that this would be a problem peculiar to him. As he understands it, Dr. DiBenedetto is or has been a client of Mr. Sinnott's law firm on another matter.

Dr. Gretter asked whether Mr. Sinnott had known that before.

Mr. Sinnott stated that he did not and that he found out the previous day, following deliberation. It's a matter of the appearance of impropriety. If someone alleges it, it could run against the state. It could appear that he would have a bias in the doctor's favor.

DR. STIENECKER MOVED TO GRANT MR. SINNOTT'S REQUEST TO RECUSE HIMSELF, AND TO ALTER THE RECORD AS STATED. HE FURTHER MOVED TO RESTART THE PROCESS OF CONSIDERATION OF THE REPORT AND RECOMMENDATION IN THE MATTER OF FRANK W. DIBENEDETTO, D.O. DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:

Mr. Albert	- aye
Dr. Bhati	- aye
Dr. Stienecker	- aye
Dr. Gretter	- aye
Dr. Agresta	- aye

Dr. Buchan	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye

The motion carried.

DR. STIENECKER MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FRANK W. DIBENEDETTO, D.O. DR. AGRESTA SECONDED THE MOTION.

Dr. Garg asked whether there were any questions concerning the proposed findings of fact, conclusions and order in the above matter.

Ms. Noble joined the meeting at this time.

DR. STIENECKER MOVED THAT THE ORDER IN THE MATTER OF FRANK W. DIBENEDETTO, D.O., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

1. The certificate of Dr. DiBenedetto to practice osteopathic medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is STAYED, and Dr. DiBenedetto's osteopathic certificate is hereby SUSPENDED for an indefinite period of time, but not less that one year.

2. The State Medical Board shall not consider reinstatement of Dr. DiBenedetto's osteopathic certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. DiBenedetto shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. DiBenedetto shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances, such course to be approved in advance by the Board or its designee, and shall be in addition to the regular Continuing Medical Education requirements for relicensure under Section 4731.281, Ohio Revised Code.

   c. Doctor DiBenedetto shall provide acceptable documentation of successful completion of a minimum of sixty (60) hours of Continuing Medical Education courses in medical record keeping and pharmacology. Such courses shall be approved in advance by the Board or its designee and shall be in addition to the Continuing Medical Education requirements for relicensure under Section 4731.281, Ohio Revised Code.

   d. Doctor DiBenedetto shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained

from the offices of the State Medical Board. In the event that Dr. DiBenedetto fails this examination, Dr. DiBenedetto must wait one (1) month between re-examinations.

e. In the event that Dr. DiBenedetto has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731. 222, Ohio Revised Code, to require additional evidence of Dr. DiBenedetto's fitness to resume practice.

3. Upon reinstatement and commencement of practice in Ohio, Dr. DiBenedetto certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years.

a. Dr. DiBenedetto shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine in Ohio.

b. Dr. DiBenedetto shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether there has been compliance with all the conditions of this probation.

c. Dr. DiBenedetto shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

d. In the event that Dr. DiBenedetto should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. DiBenedetto must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

e. In the event Dr. DiBenedetto is found by the Secretary of the Board to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the probationary period under this Order.

f. Dr. DiBenedetto shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. DiBenedetto's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. DiBenedetto shall make Dr. DiBenedetto's patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.

4. Dr. DiBenedetto shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.

5. This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. DiBenedetto shall not undertake the care of any patient not already under his care.

DR. STIENECKER FURTHER MOVED TO MODIFY THE FINAL SENTENCE OF THE FINAL CONCLUSIONARY PARAGRAPH TO READ AS FOLLOWS: "THIS CONDUCT ALONE MERITS THE SEVEREST SANCTION." DR. AGRESTA SECONDED THE MOTION.

Dr. Agresta stated that, as he said yesterday, he does favor altering the original Proposed Order. This amendment seems to accomplish what he had in mind, and he supports it. The amended Order has all the safeguards that the Board has put in place in similar cases.

Ms. Noble spoke against the amended Order, stating that when the Board reviews a doctor's records and sees the magnitude to which patients' health was jeopardized, she doesn't feel that it would be in the best interest of the community in which he served to allow him to continue to practice medicine. Clearly, in reviewing his record you will see that he is not able to do that effectively.

Ms. Noble further expressed concern over Dr. DiBenedetto's having practiced for 13 years without a license.

Board members indicated that Dr. DiBenedetto is not the physician who worked without a license.

Ms. Noble apologized for confusing the cases. She stated that when she reviewed Dr. DiBenedetto's case and saw the quantity of drugs that were given to patients in a month's time, she found it was absolutely too much. Even a layman can recognize that fact. She noted several examples from the record which she felt would indicate inappropriate and dangerous prescribing. Ms. Noble stated that the Board should not jeopardize the community any longer with this kind of care.

Dr. Steinbergh again stated that she would be abstaining on this case based on past association with Dr. DiBenedetto.

A vote was taken on Dr. Stienecker's motion to amend:

VOTE:		
	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- nay
	Mr. Sinnott	- abstain

STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

September 9, 1992

Frank W. DiBenedetto, D.O.
421 S. Georgesville Rd.
Columbus, OH 43228

Dear Doctor DiBenedetto:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) In the routine course of your practice, you excessively prescribed controlled substances. This prescribing was frequently done without utilization of appropriate diagnostic testing or other methods of evaluating the validity of the complaints or the nature or severity of the patients' reported pain, illness or injury, or without indication that such prescribing was warranted. Further, this prescribing was often initiated and continued without employing or exhausting other conservative measures or modalities. Furthermore, your records fail to reflect the symptoms, observations, assessments, dosage units of drugs prescribed, or treatment plans for the individual patients.

Instances of such practices are illustrated in the patient records of those individuals identified on the attached Patient Key (Key to be withheld from public disclosure) as revealed by the patient records:

a) You excessively prescribed Darvocet, a controlled substance narcotic, from March 1987 through February 1991 to Patient 1 primarily for back pain. At her initial visit you diagnosed her as having "Gross Degenerative Disc Disease" and noted that the Patient "wants a (prescription) for Darvocets." You then prescribed Darvocet in the absence of results from any radiological findings. In early September 1988

Mailed 9/11/92

you were notified by a pharmacist that the Patient had received 805 D.U. of Darvocet since June of that year. Further, in July, 1989 the patient presented to an emergency room, was diagnosed as suffering from drug abuse and referred to a facility to detoxify. In spite of this knowledge, you continued to prescribe excessive amounts of this drug until 1991, when you or your office staff received a call from a local pharmacist who stated that if "the directions are not changed on Darvocet for the quantity he will not fill anymore."

b) You excessively prescribed thyroid medication, benzodiazepines and anorectic agents (including Synthroid, Xanax and Adipex-P) from 1974 through 1987 to Patient 2 for anxiety and an unsubstantiated diagnosis of hypothyroidism. You continually prescribed thyroid medications in increasing dosages for a ten year period despite repeated negative test results.

c) You excessively prescribed controlled substance narcotics and benzodiazepines (including Fiorinal #3, Halcion and Valium) from November 1986 through March 1991 to Patient 3 primarily for complaints of back pain and various ailments in the absence of appropriate testing.

d) You excessively prescribed controlled substance narcotics and benzodiazepines (including Fiorinal #3 and Xanax) to Patient 4 from February 1988 through May 1989 for various ailments including anxiety and costochondritis. In August 1988 you documented a diagnosis of "drug dependency". However, you continued to prescribe these drugs until May, 1989.

e) A physician/patient relationship existed between you and Patient 5 from approximately 1974 until 1990. In 1983 you began and continued thereafter to excessively prescribe controlled substance analgesics, benzodiazines, hypnotics (including Placidyl, Talwin, Dalmane and Valium) and Triavil without medical

necessity. In May of 1983 you were notified by a local pharmacist that the patient had "added three refills to her Placidyl (prescription)." In April, 1985 you had a "long discussion about abuse" of Placidyl and Talwin with Patient 5. In March, 1988 you noted in the Patient's record that "Dalmane fell down toilet" and okayed a refill of 20 D.U. In June, 1988 you documented a diagnosis of "dependency on prescriptions." However, you continued to excessively prescribe these drugs to Patient 5 for at least two more years.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions committed after November 11, 1986 as alleged in paragraph (1) above, individually and/or collectively constitute "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-02(A), (C) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of this rule, as determined by the board, shall also constitute a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. A violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, as those words are defined in Section 2901.22 of the Revised Code, shall also constitute a violation of Section 4731.22(B)(3), Ohio Revised Code.

2) You excessively prescribed controlled substance narcotics and anorectic agents (including Fiorinal #3, Esgic with Codeine and Adipex-P) to Patient 6 for headaches and weight loss from 1980 until 1990. Although you referred Patient 6 to an opthalmologist, who noted a normal exam, you failed to refer her for a complete neurological workup. You continued to excessively prescribe Fiorinal #3 or Esgic with Codeine for the next two (2) years. You first prescribed Adipex-P to Patient 6 in June, 1982 and continued to prescribe this drug to the Patient every two (2) to four (4) weeks, often in greater than a fourteen (14) day supply. On or about November 1988 you became aware that the Patient had been receiving Adipex-P from another physician since 1987. Despite this knowledge you continued to prescribe Adipex-P to Patient 6 for the next two (2) years. At the time of Patient 6's June 1982 visit she weighed 112 pounds; the last time she was weighed, in December, 1989, she weighed 155 pounds.

(3) You excessively prescribed controlled substance anorectic agents (including Adipex-P and Biphetamine) to Patient 7 from 1975 through 1990. At the time of her first visit Patient 7 weighed 141 1/2 pounds; at her last visit in July, 1990 the patient weighed 181 pounds.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively constitute "failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (5) above, individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions pertaining to the highlighted prescriptions in the attached Prescription List as alleged in paragraph (5) above, individually and/or collectively, constitutes "commission of an act that constitute a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.06(A), Ohio Revised Code, Prescription and dispensing by practitioner. Pursuant to Section 3719.99(D), Ohio Revised Code, a violation of this section shall constitute a misdemeanor of the third degree.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Carla S. O'Day, M.D./tc

Carla S. O'Day, M.D.
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 055 328 820
RETURN RECEIPT REQUESTED

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
767	PATIENT 14	3/31/88	Adipex-P	14
847	PATIENT 14	4/27/88	Adipex-P	14
455	PATIENT 15	10/27/87	ADIPEX-P	14
952	PATIENT 16	6/24/88	DIDREX 50	28
153	PATIENT 17	8/26/87	ADIPEX-P	14
254	PATIENT 17	10/16/87	ADIPEX 37.5	14
639	PATIENT 18	3/25/88	DIDREX 50	28
865	PATIENT 18	4/29/88	DIDREX 50	28
4	PATIENT 19	8/17/87	DIDREX 50	28
432	PATIENT 19	10/26/87	DIDREX 50	28
433	PATIENT 19	10/26/87	LASIX 40	15
866	PATIENT 19	4/29/88	DIDREX 50	28
275	PATIENT 20	10/19/87	DIDREX 50	28
906	PATIENT 20	4/29/88	DIDREX 50	28
167	PATIENT 21	8/26/87	Adipex-P	14
349	PATIENT 21	10/21/87	Adipex-P	14
760	PATIENT 21	3/31/88	Adipex-P	14
882	PATIENT 21	4/29/88	Adipex-P	14
1086	PATIENT 22	3/28/88	ADIPEX-P	14
147	PATIENT 22	8/25/87	ADIPEX-P	14
768	PATIENT 22	4/25/88	Adipex-P	14
351	PATIENT 22	10/21/87	ADIPEX-P	14
542	PATIENT 23	1/19/88	ADIPEX	14
8	PATIENT 24	8/17/87	ADIPEX-P	14
358	PATIENT 25	10/23/87	ADIPEX-P	14
790	PATIENT 25	4/25/88	Adipex-P	14
640	PATIENT 26	3/25/88	ADIPEX-P	14
163	PATIENT 27	8/26/87	ADIPEX-P	14
350	PATIENT 27	10/21/87	ADIPEX-P	14
561	PATIENT 27	1/10/88	ADIPEX-P	14
213	PATIENT 28	8/28/87	DIDREX 50	28
252	PATIENT 28	10/16/87	DIDREX 50	28
532	PATIENT 28	1/19/88	DIDREX 50	28
720	PATIENT 28	3/29/88	DIDREX 50	28
844	PATIENT 28	4/27/88	DIDREX 50	28
62	PATIENT 29	8/19/87	ADIPEX-P	14
231	PATIENT 29	10/16/87	ADIPEX-P	14
890	PATIENT 29	4/29/88	Adipex-P	14
1013	PATIENT 29	6/27/88	Adipex-P	14
83	PATIENT 30	8/21/87	ADIPEX-P	14
653	PATIENT 31	3/28/88	Adipex-P	14
773	PATIENT 31	4/25/88	Adipex-P	14
246	PATIENT 32	10/16/87	DIDREX 50	28
247	PATIENT 32	10/16/87	LASIX 40	15
149	PATIENT 33	8/26/87	ADIPEX-P	21

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
342	PATIENT 33	10/21/87	ADIPEX-P	21
849	PATIENT 33	4/27/88	Adipex-P	21
180	PATIENT 34	8/27/87	DIDREX 50	28
235	PATIENT 34	10/16/87	DIDREX 50	28
33	PATIENT 35	8/18/87	ADIPEX-P	14
232	PATIENT 35	10/16/87	Adipex-P	21
584	PATIENT 35	1/21/88	ADIPEX-P	21
418	PATIENT 36	10/26/87	ADIPEX-P	14
419	PATIENT 36	10/26/87	LASIX 40	15
76	PATIENT 37	8/21/87	ADIPEX-P	14
460	PATIENT 37	10/28/87	ADIPEX-P	14
461	PATIENT 37	10/28/87	LASIX 40	15
550	PATIENT 37	1/10/88	ADIPEX-P	14
551	PATIENT 37	1/10/88	LASIX 40	15
727	PATIENT 37	3/30/88	Adipex-P	14
823	PATIENT 37	4/26/88	Adipex-P	14
943	PATIENT 37	6/22/88	Adipex-P	14
900	PATIENT 38	4/29/88	Adipex-P	14
1007	PATIENT 38	6/27/88	Adipex-P	14
899	PATIENT 39	4/29/88	Adipex-P	14
1008	PATIENT 39	6/27/88	Adipex-P	14
1009	PATIENT 39	6/27/88	LASIX 40	15
288	PATIENT 40	10/19/87	ADIPEX-P	14
634	PATIENT 41	3/25/88	ADIPEX-P	21
904	PATIENT 42	4/29/88	Adipex-P	14
635	PATIENT 43	3/25/88	ADIPEX-P	14
604	PATIENT 44	3/25/88	Adipex-P	14
605	PATIENT 45	3/25/88	Adipex-P	14
230	PATIENT 46	10/16/87	DIDREX 50	28
522	PATIENT 46	1/18/88	DIDREX 50	28
741	PATIENT 46	3/30/88	DIDREX 50	28
797	PATIENT 46	4/26/88	DIDREX 50	28
382	PATIENT 47	10/23/87	DIDREX 50	28
446	PATIENT 48	10/27/87	ADIPEX-P	14
240	PATIENT 49	10/16/87	ADIPEX-P	14
241	PATIENT 49	10/16/87	LASIX 40	15
354	PATIENT 50	10/23/87	ADIPEX-P	14
1054	PATIENT 51	6/28/88	Adipex-P	14
1055	PATIENT 51	6/28/88	LASIX 40	15
330	PATIENT 52	10/21/87	Adipex-P	14
560	PATIENT 52	1/10/88	ADIPEX-P	14
159	PATIENT 52	8/26/87	Adipex-P	14
155	PATIENT 53	8/26/87	ADIPEX-P	14
156	PATIENT 53	8/26/87	LASIX 40	15
445	PATIENT 53	10/27/87	ADIPEX-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
499	PATIENT 53	1/18/88	Adipex-P	14
500	PATIENT 53	1/18/88	LASIX 40	15
458	PATIENT 54	10/27/87	ADIPEX-P	14
13	PATIENT 55	8/17/87	ADIPEX-P	14
569	PATIENT 55	1/10/88	Adipex-P	14
621	PATIENT 56	3/25/88	ADIPEX-P	14
1074	PATIENT 57	6/29/88	DIDREX 50	28
55	PATIENT 58	8/19/87	ADIPEX-P	14
886	PATIENT 59	4/29/88	Adipex-P	14
128	PATIENT 60	8/25/87	ADIPEX-P	14
125	PATIENT 61	8/25/87	DIDREX 50	28
126	PATIENT 61	8/25/87	LASIX 40	15
306	PATIENT 61	10/20/87	DIDREX 50	28
1072	PATIENT 61	6/29/88	DIDREX 50	28
1073	PATIENT 61	6/29/88	LASIX 40	15
367	PATIENT 62	10/23/87	ADIPEX-P	21
897	PATIENT 62	4/29/88	Adipex-P	21
1044	PATIENT 62	6/28/88	Adipex-P	21
1045	PATIENT 63	6/28/88	Adipex-P	14
857	PATIENT 64	4/28/88	Adipex-P	14
1079	PATIENT 64	6/29/88	Adipex-P	21
505	PATIENT 65	1/18/88	Adipex-P	21
370	PATIENT 66	10/23/87	ADIPEX-P	21
81	PATIENT 67	8/21/87	ADIPEX-P	21
198	PATIENT 68	8/28/87	ADIPEX-P	21
277	PATIENT 68	10/19/87	ADIPEX-P	21
710	PATIENT 69	3/29/88	DIDREX 50	28
208	PATIENT 70	8/28/87	DIDREX 50	28
373	PATIENT 71	10/23/87	DIDREX 50	28
619	PATIENT 71	3/25/88	LASIX 40	15
619	PATIENT 71	3/25/88	DIDREX 50	28
211	PATIENT 72	8/28/87	DIDREX 50	28
211	PATIENT 72	8/28/87	LASIX 40	15
374	PATIENT 72	10/23/87	DIDREX 50	28
629	PATIENT 72	3/25/88	Adipex-P	21
29	PATIENT 73	8/18/87	ADIPEX-P	14
1034	PATIENT 74	6/28/88	Adipex-P	14
636	PATIENT 75	3/25/88	ADIPEX-P	14
345	PATIENT 76	10/21/87	ADIPEX-P	21
103	PATIENT 77	8/24/87	Adipex-P	21
516	PATIENT 77	1/18/88	ADIPEX-P	21
688	PATIENT 77	3/29/88	Adipex-P	21
789	PATIENT 77	4/25/88	Adipex-P	21
291	PATIENT 78	10/19/87	STATOBEX	28
292	PATIENT 78	10/19/87	LASIX 40	15

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
1060	PATIENT 79	6/28/88	STATOBEX	28
58	PATIENT 80	8/19/87	ADIPEX	14
965	PATIENT 81	6/24/88	Adipex-P	21
435	PATIENT 82	10/26/87	ADIPEX-P	14
692	PATIENT 83	3/29/88	Adipex-P	14
836	PATIENT 83	4/27/88	Adipex-P	14
1	PATIENT 84	8/17/87	ADIPEX	14
140	PATIENT 85	8/25/87	Adipex-P	14
960	PATIENT 86	6/24/88	Adipex-P	14
574	PATIENT 87	1/10/88	Adipex-P	21
489	PATIENT 88	10/29/87	ADIPEX-P	14
490	PATIENT 88	10/29/87	LASIX 40	15
135	PATIENT 89	8/25/87	ADIPEX-P	14
975	PATIENT 90	6/27/88	Adipex-P	14
466	PATIENT 91	10/28/87	ADIPEX-P	21
923	PATIENT 92	5/2/88	Adipex-P	14
1049	PATIENT 92	6/28/88	Adipex-P	14
417	PATIENT 93	10/26/87	ADIPEX-P	21
988	PATIENT 93	6/27/88	Adipex-P	21
908	PATIENT 94	5/2/88	Adipex-P	14
177	PATIENT 95	8/27/87	DIDREX 50	28
691	PATIENT 96	3/29/88	Adipex-P	21
956	PATIENT 96	6/24/88	Adipex-P	21
325	PATIENT 97	10/21/87	DIDREX 50	28
326	PATIENT 97	10/21/87	LASIX 40	15
48	PATIENT 98	8/19/87	STATOBEX CAPS	28
1080	PATIENT 99	6/29/88	Adipex-P	21
34	PATIENT 100	8/18/87	DIDREX 50	28
35	PATIENT 100	8/18/87	LASIX 40	15
217	PATIENT 100	8/28/87	DIDREX 50	28
305	PATIENT 100	10/20/87	DIDREX 50	28
775	PATIENT 100	4/25/88	DIDREX 50	28
800	PATIENT 101	4/26/88	Adipex-P	14
832	PATIENT 102	4/27/88	DIDREX 50	28
615	PATIENT 103	3/25/88	Adipex-P	14
264	PATIENT 104	10/19/87	ADIPEX-P	14
363	PATIENT 105	10/23/87	ADIPEX-P	21
364	PATIENT 105	10/23/87	LASIX 40	15
637	PATIENT 105	3/25/88	ADIPEX-P	21
638	PATIENT 105	3/25/88	LASIX 40	15
826	PATIENT 105	4/26/88	Adipex-P	21
535	PATIENT 106	1/19/88	DIDREX 50	28
259	PATIENT 107	10/19/87	TUSSEND	4
679	PATIENT 108	3/28/88	Adipex-P	14
680	PATIENT 108	3/28/88	LASIX 40	15

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
769	PATIENT 108	4/25/88	Adipex-P	14
770	PATIENT 108	4/25/88	LASIX 40	15
572	PATIENT 109	1/10/88	Adipex-P	14
699	PATIENT 109	3/29/88	Adipex-P	14
799	PATIENT 109	4/26/88	Adipex-P	14
1068	PATIENT 109	6/28/88	Adipex-P	14
71	PATIENT 110	8/21/87	ADIPEX-P	21
381	PATIENT 111	10/23/87	ADIPEX-P	14
979	PATIENT 112	6/27/88	Adipex-P	21
980	PATIENT 112	6/27/88	LASIX 40	15
473	PATIENT 113	10/29/87	ADIPEX-P	14
793	PATIENT 113	4/26/88	Adipex-P	14
752	PATIENT 114	3/30/88	ADIPEX-P	14
566	PATIENT 115	1/10/88	Adipex-P	14
544	PATIENT 116	1/19/88	DIDREX 50	28
1016	PATIENT 116	6/27/88	DIDREX 50	28
696	PATIENT 117	3/29/88	DIDREX 50	28
810	PATIENT 117	4/26/88	DIDREX 50	28
959	PATIENT 117	6/24/88	DIDREX 50	28
360	PATIENT 118	10/23/87	ADIPEX-P	14
820	PATIENT 118	4/26/88	Adipex-P	14
726	PATIENT 119	3/30/88	DIDREX 50	28
830	PATIENT 119	4/27/88	DIDREX 50	28
316	PATIENT 120	10/20/87	DIDREX 50	28
972	PATIENT 121	6/27/88	Adipex-P	14
182	PATIENT 122	8/27/87	DIDREX 50	28
227	PATIENT 123	10/16/87	Adipex-P	14
99	PATIENT 124	8/24/87	DIDREX 50	28
999	PATIENT 124	6/27/88	DIDREX 50	28
98	PATIENT 125	8/24/87	ADIPEX-P	14
766	PATIENT 125	3/31/88	Adipex-P	14
795	PATIENT 125	4/26/88	Adipex-P	14
1023	PATIENT 125	6/28/88	Adipex-P	14
151	PATIENT 126	8/26/87	ADIPEX-P	21
366	PATIENT 126	10/23/87	ADIPEX-P	21
1084	PATIENT 127	6/29/88	Adipex-P	14
72	PATIENT 128	8/21/87	ADIPEX-P	21
73	PATIENT 128	8/21/87	LASIX 40	15
1043	PATIENT 128	6/28/88	Adipex-P	14
529	PATIENT 129	1/19/88	ADIPEX-P	14
530	PATIENT 129	1/19/88	LASIX 40	15
949	PATIENT 130	6/23/88	DIDREX 50	28
608	PATIENT 131	3/25/88	Adipex-P	21
937	PATIENT 132	6/22/88	Adipex-P	14
203	PATIENT 133	8/28/87	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
375	PATIENT 133	10/23/87	ADIPEX-P	14
684	PATIENT 134	3/28/88	Adipex-P	14
157	PATIENT 135	8/26/87	ADIPEX-P	14
1081	PATIENT 136	6/29/88	Adipex-P	14
1082	PATIENT 136	6/29/88	LASIX 40	15
45	PATIENT 137	8/18/87	ADIPEX-P	21
116	PATIENT 138	8/24/87	DIDREX 50	28
289	PATIENT 138	10/19/87	DIDREX 50	28
932	PATIENT 138	5/2/88	DIDREX 50	28
1001	PATIENT 138	6/27/88	DIDREX 50	28
859	PATIENT 139	4/29/88	Adipex-P	14
665	PATIENT 140	3/28/88	Adipex-P	14
704	PATIENT 141	3/29/88	DIDREX 50	28
1021	PATIENT 141	6/27/88	DIDREX 50	28
465	PATIENT 142	10/28/87	DIDREX 50	28
22	PATIENT 143	8/18/87	DIDREX 50	28
468	PATIENT 143	10/28/87	DIDREX 50	28
565	PATIENT 143	1/10/88	DIDREX 50	28
736	PATIENT 143	3/30/88	DIDREX 50	28
840	PATIENT 143	4/27/88	DIDREX 50	28
263	PATIENT 144	10/19/87	DIDREX 50	28
582	PATIENT 145	1/21/88	ADIPEX 37.5	14
837	PATIENT 146	4/27/88	Adipex-P	14
1030	PATIENT 146	6/28/88	Adipex-P	14
297	PATIENT 147	10/20/87	ADIPEX-P	14
448	PATIENT 148	10/27/87	ADIPEX-P	14
85	PATIENT 149	8/21/87	ADIPEX-P	14
253	PATIENT 149	10/16/87	ADIPEX-P	14
209	PATIENT 150	8/28/87	DIDREX 50	28
394	PATIENT 151	10/23/87	DIDREX 50	28
794	PATIENT 151	4/26/88	DIDREX 50	28
395	PATIENT 152	10/23/87	DIDREX 50	28
101	PATIENT 153	8/24/87	DIDREX 50	28
1085	PATIENT 154	6/29/88	Adipex-P	14
2	PATIENT 155	8/17/87	ADIPEX-P	14
17	PATIENT 156	8/17/87	ADIPEX-P	14
719	PATIENT 157	3/29/88	Adipex-P	14
531	PATIENT 158	1/19/88	Adipex-P	14
91	PATIENT 159	8/24/87	DIDREX 50	28
884	PATIENT 160	4/29/88	Adipex-P	14
860	PATIENT 161	4/29/88	STATOBEX	28
864	PATIENT 162	4/29/88	DIDREX 50	28
222	PATIENT 163	8/28/87	DIDREX 50	28
383	PATIENT 164	10/23/87	ADIPEX-P	14
614	PATIENT 165	3/25/88	ADIPEX-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
174	PATIENT 166	8/26/87	ADIPEX-P	21
346	PATIENT 166	10/21/87	ADIPEX-P	21
748	PATIENT 166	3/30/88	Adipex-P	21
1042	PATIENT 167	6/28/88	DIDREX 50	28
224	PATIENT 168	10/16/87	MEDROL DOSEPACK 4	8
290	PATIENT 168	10/19/87	ADIPEX	14
549	PATIENT 169	1/10/88	ADIPEX-P	14
60	PATIENT 170	8/19/87	ADIPEX-P	14
764	PATIENT 171	3/31/88	DIDREX 50	28
856	PATIENT 171	4/28/88	DIDREX 50	28
132	PATIENT 172	8/25/87	ADIPEX-P	14
133	PATIENT 172	8/25/87	LASIX 40	15
822	PATIENT 172	4/26/88	Adipex-P	14
481	PATIENT 173	10/29/87	DIDREX 50	28
747	PATIENT 173	3/30/88	DIDREX 50	28
817	PATIENT 173	4/26/88	DIDREX 50	28
570	PATIENT 174	1/10/88	DIDREX 50	28
626	PATIENT 175	3/25/88	Adipex-P	14
1010	PATIENT 176	6/27/88	Adipex-P	14
5	PATIENT 177	8/17/87	ADIPEX-P	14
430	PATIENT 177	10/26/87	DIDREX 50	28
669	PATIENT 177	3/28/88	Adipex-P	21
1037	PATIENT 177	6/28/88	Adipex-P	21
110	PATIENT 178	8/24/87	ADIPEX-P	14
973	PATIENT 179	6/27/88	DIDREX 50	28
321	PATIENT 180	10/21/87	DIDREX 50	28
591	PATIENT 180	1/21/88	DIDREX 50	28
693	PATIENT 180	3/29/88	DIDREX 50	28
848	PATIENT 180	4/27/88	DIDREX 50	28
587	PATIENT 181	1/21/88	Adipex-P	14
547	PATIENT 182	1/20/88	ADIPEX-P	14
730	PATIENT 183	3/30/88	Adipex-P	14
798	PATIENT 183	4/26/88	Adipex-P	14
990	PATIENT 183	6/27/88	Adipex-P	14
258	PATIENT 184	10/16/87	ADIPEX-P	14
304	PATIENT 185	10/20/87	ADIPEX-P	14
54	PATIENT 186	8/19/87	ADIPEX-P	21
1024	PATIENT 186	6/28/88	Adipex-P	21
229	PATIENT 187	10/16/87	Adipex-P	21
706	PATIENT 188	3/29/88	Adipex-P	14
469	PATIENT 189	10/28/87	ADIPEX-P	14
7	PATIENT 190	8/17/87	ADIPEX-P	14
575	PATIENT 191	1/10/88	Adipex-P	14
703	PATIENT 191	3/29/88	Adipex-P	14
807	PATIENT 191	4/26/88	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
1035	PATIENT 192	6/28/88	Adipex-P	14
725	PATIENT 193	3/30/88	Adipex-P	14
331	PATIENT 194	10/21/87	Adipex-P	21
1065	PATIENT 195	6/28/88	Adipex-P	14
51	PATIENT 196	8/19/87	ADIPEX	14
438	PATIENT 197	10/27/87	ADIPEX-P	14
61	PATIENT 198	8/19/87	ADIPEX-P	14
185	PATIENT 199	8/27/87	DIDREX 50	28
186	PATIENT 199	8/27/87	LASIX 40	15
323	PATIENT 199	10/21/87	DIDREX 50	28
324	PATIENT 199	10/21/87	LASIX 40	15
82	PATIENT 200	8/21/87	ADIPEX-P	14
380	PATIENT 200	10/23/87	ADIPEX-P	14
234	PATIENT 201	10/16/87	Adipex P	14
218	PATIENT 202	8/28/87	ADIPEX-P	14
226	PATIENT 203	10/16/87	Adipex-P	14
955	PATIENT 204	6/24/88	Adipex-P	14
299	PATIENT 205	10/20/87	ADIPEX-P	14
442	PATIENT 206	10/27/87	ADIPEX-P	14
152	PATIENT 207	8/26/87	ADIPEX-P	14
894	PATIENT 207	4/29/88	Adipex-P	14
335	PATIENT 208	10/21/87	Adipex-P	14
974	PATIENT 209	6/27/88	Adipex-P	14
141	PATIENT 210	8/25/87	DIDREX 50	28
285	PATIENT 210	10/19/87	DIDREX 50	28
556	PATIENT 210	1/10/88	DIDREX 50	28
501	PATIENT 211	1/18/88	Adipex-P	14
563	PATIENT 212	1/10/88	Adipex-P	14
737	PATIENT 212	3/30/88	Adipex-P	14
835	PATIENT 212	4/27/88	Adipex-P	14
910	PATIENT 213	5/2/88	Adipex-P	21
854	PATIENT 214	4/28/88	Adipex-P	21
197	PATIENT 215	8/28/87	Adipex-P	14
377	PATIENT 216	10/23/87	DIDREX 50	28
378	PATIENT 216	10/23/87	LASIX 40	15
189	PATIENT 217	8/28/87	DIDREX 50	28
190	PATIENT 217	8/28/87	LASIX 40	15
602	PATIENT 217	3/25/88	DIDREX 50	28
361	PATIENT 218	10/23/87	ADIPEX-P	14
362	PATIENT 218	10/23/87	LASIX 40	15
763	PATIENT 219	3/31/88	Adipex-P	21
195	PATIENT 220	8/28/87	Adipex-P	14
494	PATIENT 221	1/18/88	Adipex-P	14
495	PATIENT 221	1/18/88	LASIX 40	15
470	PATIENT 222	10/28/87	ADIPEX-P	21

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
371	PATIENT 223	10/23/87	ADIPEX-P	14
139	PATIENT 224	8/25/87	DIDREX 50	28
443	PATIENT 224	10/27/87	DIDREX 50	28
559	PATIENT 224	1/10/88	DIDREX 50	28
735	PATIENT 224	3/30/88	DIDREX 50	28
833	PATIENT 224	4/27/88	DIDREX 50	28
946	PATIENT 224	6/22/88	DIDREX 50	28
970	PATIENT 225	6/27/88	Adipex-P	14
577	PATIENT 226	1/21/88	ADIPEX-P	21
384	PATIENT 227	10/23/87	ADIPEX-P	14
385	PATIENT 227	10/23/87	LASIX 40	15
617	PATIENT 228	3/25/88	Adipex-P	14
176	PATIENT 229	8/27/87	Adipex-P	14
450	PATIENT 230	10/27/87	ADIPEX-P	14
1029	PATIENT 231	6/28/88	DIDREX 50	28
909	PATIENT 232	5/2/88	Adipex-P	21
102	PATIENT 233	8/24/87	ADIPEX-P	14
828	PATIENT 233	4/27/88	Adipex-P	14
968	PATIENT 233	6/24/88	Adipex-P	14
668	PATIENT 234	3/28/88	Adipex-P	14
914	PATIENT 234	5/2/88	Adipex-P	14
38	PATIENT 235	8/18/87	ADIPEX-P	14
528	PATIENT 236	1/19/88	DIDREX	28
650	PATIENT 236	3/28/88	DIDREX 50	28
783	PATIENT 236	4/25/88	DIDREX 50	28
1014	PATIENT 236	6/27/88	DIDREX 50	28
451	PATIENT 237	10/27/87	DIDREX 50	28
452	PATIENT 237	10/27/87	LASIX 40	15
1026	PATIENT 238	6/28/88	DIDREX 50	28
27	PATIENT 239	8/18/87	ADIPEX-P	14
129	PATIENT 240	8/25/87	ADIPEX-P	14
902	PATIENT 241	4/29/88	Adipex-P	21
244	PATIENT 242	10/16/87	ADIPEX-P	14
245	PATIENT 242	10/16/87	LASIX 40	15
754	PATIENT 242	3/31/88	Adipex-P	14
755	PATIENT 242	3/31/88	LASIX 40	15
889	PATIENT 242	4/29/88	Adipex-P	14
1052	PATIENT 242	6/28/88	Adipex-P	21
257	PATIENT 243	10/16/87	ADIPEX-P	14
313	PATIENT 244	10/20/87	Adipex-P	14
716	PATIENT 245	3/29/88	Adipex-P	14
84	PATIENT 246	8/21/87	DIDREX 50	28
256	PATIENT 246	10/16/87	DIDREX 50	28
548	PATIENT 246	1/20/88	DIDREX 50	28
753	PATIENT 246	3/30/88	DIDREX 50	28

ENTRY #	NAME	DATE	DRUG/SCH	DU
484	PATIENT 247	10/29/87	DIDREX 50	28
571	PATIENT 247	1/10/88	DIDREX 50	28
746	PATIENT 247	3/30/88	DIDREX 50	28
816	PATIENT 247	4/26/88	DIDREX 50	28
1048	PATIENT 248	6/28/88	DIDREX 50	28
398	PATIENT 249	10/23/87	ADIPEX-P	14
399	PATIENT 249	10/23/87	LASIX 40	15
656	PATIENT 250	3/28/88	DIDREX 50	28
67	PATIENT 251	8/19/87	ADIPEX-P	21
612	PATIENT 252	3/25/88	Adipex-P	14
994	PATIENT 252	6/27/88	Adipex-P	14
319	PATIENT 253	10/21/87	LOMOTIL	20
320	PATIENT 253	10/21/87	BENTYL 20	20
336	PATIENT 254	10/21/87	DIDREX 50	28
178	PATIENT 255	8/27/87	ADIPEX-P	21
179	PATIENT 255	8/27/87	LASIX 40	15
40	PATIENT 256	8/18/87	ADIPEX-P	14
248	PATIENT 256	10/16/87	Adipex-P	14
517	PATIENT 256	1/18/88	Adipex-P	14
183	PATIENT 257	8/27/87	ADIPEX-P	14
389	PATIENT 257	10/23/87	ADIPEX-P	21
995	PATIENT 257	6/27/88	Adipex-P	21
160	PATIENT 258	8/26/87	Adipex-P	21
280	PATIENT 258	10/19/87	Adipex-P	21
471	PATIENT 258	10/27/87	ADIPEX-P	21
892	PATIENT 259	4/29/88	Adipex-P	21
338	PATIENT 260	10/21/87	ADIPEX-P	21
521	PATIENT 261	1/18/88	DIDREX 50	28
663	PATIENT 261	3/28/88	DIDREX 50	28
664	PATIENT 261	3/28/88	LASIX 40	15
788	PATIENT 261	4/25/88	DIDREX 50	28
206	PATIENT 262	8/28/87	DIDREX 50	28
479	PATIENT 262	10/29/87	DIDREX 50	28
425	PATIENT 263	10/26/87	ADIPEX-P	14
655	PATIENT 263	3/28/88	Adipex-P	21
386	PATIENT 264	10/23/87	DIDREX 50	28
1015	PATIENT 265	6/27/88	Adipex-P	14
69	PATIENT 266	8/20/87	ADIPEX-P	14
100	PATIENT 267	8/24/87	ADIPEX-P	21
514	PATIENT 268	1/18/88	DIDREX 50	28
683	PATIENT 268	3/28/88	DIDREX 50	28
928	PATIENT 269	5/2/88	DIDREX 50	28
715	PATIENT 270	3/29/88	Adipex-P	14
803	PATIENT 270	4/26/88	Adipex-P	14
881	PATIENT 271	4/29/88	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
948	PATIENT 271	6/22/88	Adipex-P	14
212	PATIENT 272	8/28/87	ADIPEX-P	14
390	PATIENT 272	10/23/87	ADIPEX-P	21
607	PATIENT 272	3/25/88	Adipex-P	21
671	PATIENT 273	3/28/88	Adipex-P	21
784	PATIENT 273	4/25/88	Adipex-P	21
670	PATIENT 274	3/28/88	Adipex-P	21
785	PATIENT 274	4/25/88	Adipex-P	21
286	PATIENT 275	10/19/87	ADIPEX-P	21
695	PATIENT 276	3/29/88	Adipex-P	14
801	PATIENT 276	4/26/88	Adipex-P	14
944	PATIENT 276	6/22/88	Adipex-P	14
661	PATIENT 277	3/28/88	Adipex-P	14
1087	PATIENT 277	4/25/88	ADIPEX-P	14
117	PATIENT 278	8/24/87	ADIPEX-P	21
722	PATIENT 279	3/29/88	Adipex-P	14
723	PATIENT 279	3/29/88	LASIX 40	15
802	PATIENT 279	4/26/88	DIDREX 50	28
594	PATIENT 280	1/21/88	Adipex-P	14
595	PATIENT 280	1/21/88	LASIX 40	15
53	PATIENT 281	8/19/87	ADIPEX-P	14
283	PATIENT 281	10/19/87	ADIPEX-P	14
284	PATIENT 281	10/19/87	LASIX 40	14
827	PATIENT 281	4/27/88	Adipex-P	14
1012	PATIENT 281	6/27/88	Adipex-P	14
175	PATIENT 282	8/26/87	ADIPEX-P	21
464	PATIENT 282	10/28/87	ADIPEX-P	21
734	PATIENT 282	3/30/88	Adipex-P	21
713	PATIENT 283	3/29/88	Adipex-P	14
714	PATIENT 283	3/29/88	LASIX 40	15
819	PATIENT 283	4/26/88	Adipex-P	14
482	PATIENT 284	10/29/87	ADIPEX-P	14
483	PATIENT 284	10/29/87	LASIX 40	15
18	PATIENT 285	8/17/87	ADIPEX-P	14
868	PATIENT 286	4/29/88	Adipex-P	21
12	PATIENT 287	8/17/87	ADIPEX-P	14
554	PATIENT 288	1/10/88	DIDREX 50	28
555	PATIENT 288	1/10/88	LASIX 40	15
947	PATIENT 288	6/22/88	DIDREX 50	28
406	PATIENT 289	10/30/87	ADIPEX-P	14
502	PATIENT 290	1/18/88	ADIPEX-P	14
503	PATIENT 290	1/18/88	LASIX 40	15
410	PATIENT 291	10/26/87	DIDREX 50	28
411	PATIENT 291	10/26/87	LASIX 40	15
895	PATIENT 291	4/29/88	DIDREX 50	28

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
751	PATIENT 292	3/30/88	Adipex-P	14
199	PATIENT 293	8/28/87	ADIPEX-P	14
372	PATIENT 293	10/23/87	ADIPEX-P	14
268	PATIENT 294	10/19/87	Adipex-P	14
423	PATIENT 295	10/26/87	ADIPEX-P	14
424	PATIENT 295	10/26/87	LASIX 40	15
80	PATIENT 296	8/21/87	DIDREX 50	28
941	PATIENT 296	6/22/88	DIDREX 50	28
998	PATIENT 297	6/27/88	Adipex-P	21
536	PATIENT 298	1/19/88	Adipex-P	14
145	PATIENT 299	8/25/87	ADIPEX-P	14
298	PATIENT 299	10/20/87	ADIPEX P	14
761	PATIENT 299	3/31/88	Adipex-P	14
1078	PATIENT 300	6/29/88	Adipex-P	14
977	PATIENT 301	6/27/88	Adipex-P	14
738	PATIENT 302	3/30/88	Adipex-P	14
739	PATIENT 302	3/30/88	LASIX 40	15
846	PATIENT 302	4/27/88	Adipex-P	14
870	PATIENT 303	4/29/88	DIDREX 50	28
1061	PATIENT 303	6/28/88	DIDREX 50	28
1062	PATIENT 304	6/28/88	DIDREX 50	28
421	PATIENT 305	10/26/87	ADIPEX-P	14
422	PATIENT 305	10/26/87	LASIX 40	15
806	PATIENT 306	4/26/88	STATOBEX	28
527	PATIENT 307	1/19/88	ADIPEX	14
220	PATIENT 308	8/28/87	ADIPEX-P	14
427	PATIENT 308	10/26/87	ADIPEX-P	14
883	PATIENT 308	4/29/88	Adipex-P	14
68	PATIENT 309	8/20/87	ADIPEX-P	14
596	PATIENT 310	1/21/88	ADIPEX-P	14
597	PATIENT 310	1/21/88	LASIX 40	15
171	PATIENT 311	8/26/87	Adipex-P	14
172	PATIENT 311	8/26/87	LASIX 40	15
462	PATIENT 311	10/28/87	ADIPEX-P	14
463	PATIENT 311	10/28/87	LASIX 40	15
879	PATIENT 312	4/29/88	DIDREX 50	28
278	PATIENT 313	10/19/87	DIDREX 50	28
279	PATIENT 313	10/19/87	LASIX 40	15
497	PATIENT 314	1/18/88	DIDREX 50	28
498	PATIENT 314	1/18/88	LASIX 40	15
809	PATIENT 314	4/26/88	DIDREX 50	28
207	PATIENT 315	8/28/87	DIDREX 50	28
265	PATIENT 315	10/19/87	DIDREX 50	28
273	PATIENT 316	10/19/87	DIDREX 50	28
590	PATIENT 316	1/21/88	DIDREX 50	28

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
609	PATIENT 316	3/25/88	DIDREX 50	28
672	PATIENT 316	3/28/88	DIDREX 50	28
437	PATIENT 317	10/27/87	ADIPEX-P	14
267	PATIENT 318	10/19/87	ADIPEX-P	14
838	PATIENT 319	4/27/88	Adipex-P	14
193	PATIENT 320	8/28/87	DIDREX 50	28
477	PATIENT 320	10/29/87	DIDREX 50	28
543	PATIENT 320	1/19/88	DIDREX	20
642	PATIENT 320	3/28/88	DIDREX 50	28
786	PATIENT 320	4/25/88	DIDREX 50	28
534	PATIENT 321	1/19/88	DIDREX 50	28
978	PATIENT 321	6/27/88	Adipex-P	14
971	PATIENT 322	6/27/88	Adipex-P	14
137	PATIENT 323	8/25/87	DIDREX 50	28
580	PATIENT 324	1/21/88	ADIPEX-P	14
581	PATIENT 324	1/21/88	LASIX 40	15
935	PATIENT 325	5/2/88	Adipex-P	14
281	PATIENT 326	10/19/87	ADIPEX-P	14
796	PATIENT 326	4/26/88	Adipex-P	14
431	PATIENT 327	10/26/87	ADIPEX-P	21
861	PATIENT 328	4/29/88	Adipex-P	21
633	PATIENT 329	3/25/88	Adipex-P	14
632	PATIENT 330	3/25/88	Adipex-P	14
158	PATIENT 331	8/26/87	ADIPEX-P	14
407	PATIENT 332	10/26/87	ADIPEX-P	21
573	PATIENT 333	1/10/88	ADIPEX-P	21
537	PATIENT 334	1/19/88	ADIPEX	14
694	PATIENT 334	3/29/88	Adipex-P	14
804	PATIENT 334	4/26/88	Adipex-P	14
545	PATIENT 335	1/19/88	Adipex-P	21
627	PATIENT 335	3/25/88	ADIPEX-P	21
628	PATIENT 335	3/25/88	LOZOL 2.5	30
87	PATIENT 336	8/24/87	ADIPEX-P	21
39	PATIENT 337	8/18/87	ADIPEX-P	14
233	PATIENT 337	10/16/87	Adipex-P	21
583	PATIENT 337	1/21/88	ADIPEX-P	21
311	PATIENT 338	10/20/87	ADIPEX-P	14
930	PATIENT 339	5/2/88	DIDREX 50	28
317	PATIENT 340	10/20/87	ADIPEX-P	14
194	PATIENT 341	8/28/87	Adipex-P	14
191	PATIENT 342	8/28/87	ADIPEX-P	14
765	PATIENT 343	3/31/88	Adipex-P	21
842	PATIENT 344	4/27/88	Adipex-P	14
134	PATIENT 345	8/25/87	ADIPEX-P	21
416	PATIENT 346	10/26/87	ADIPEX-P	21

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
677	PATIENT 346	3/28/88	Adipex-P	21
678	PATIENT 346	3/28/88	LASIX 40	15
1075	PATIENT 347	6/29/88	Adipex-P	21
839	PATIENT 348	4/27/88	Adipex-P	21
1028	PATIENT 348	6/28/88	Adipex-P	14
339	PATIENT 349	10/21/87	Adipex-P	21
340	PATIENT 349	10/21/87	LASIX 40	15
872	PATIENT 350	4/29/88	Adipex-P	21
348	PATIENT 351	10/21/87	Adipex-P	14
210	PATIENT 352	8/28/87	DIDREX 50	28
396	PATIENT 352	10/23/87	DIDREX 50	28
488	PATIENT 353	10/29/87	ADIPEX-P	21
588	PATIENT 353	1/21/88	ADIPEX-P	21
762	PATIENT 353	3/31/88	Adipex-P	21
112	PATIENT 354	8/24/87	ADIPEX-P	14
187	PATIENT 355	8/28/87	ADIPEX-P	14
969	PATIENT 356	6/24/88	Adipex-P	14
271	PATIENT 357	10/19/87	Adipex-P	14
564	PATIENT 358	1/10/88	ADIPEX-P	14
782	PATIENT 358	4/25/88	Adipex-P	14
898	PATIENT 359	4/29/88	DIDREX 50	28
131	PATIENT 360	8/25/87	DIDREX 50	28
302	PATIENT 360	10/20/87	DIDREX 50	28
491	PATIENT 360	1/18/88	DIDREX 50	28
929	PATIENT 360	5/2/88	DIDREX 50	28
1053	PATIENT 360	6/28/88	DIDREX 50	28
352	PATIENT 361	10/21/87	ADIPEX-P	14
144	PATIENT 362	8/25/87	ADIPEX-P	14
1047	PATIENT 363	6/28/88	Adipex-P	14
1046	PATIENT 364	6/28/88	Adipex-P	14
255	PATIENT 365	10/16/87	Adipex-P	14
651	PATIENT 365	3/28/88	ADIPEX-P	14
221	PATIENT 365	8/28/87	ADIPEX-P	14
887	PATIENT 366	4/29/88	Adipex-P	14
170	PATIENT 367	8/26/87	Adipex-P	21
388	PATIENT 367	10/23/87	ADIPEX-P	21
341	PATIENT 368	10/21/87	ADIPEX-P	14
562	PATIENT 368	1/10/88	Adipex-P	14
223	PATIENT 369	8/28/87	Adipex-P	14
523	PATIENT 370	1/18/88	ADIPEX-P	14
219	PATIENT 371	8/28/87	ADIPEX-P	14
1019	PATIENT 372	6/27/88	Adipex-P	14
23	PATIENT 373	8/18/87	ADIPEX-P	14
413	PATIENT 374	10/26/87	ADIPEX-P	14
78	PATIENT 375	8/21/87	ADIPEX	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
86	PATIENT 376	8/24/87	ADIPEX-P	14
618	PATIENT 376	3/25/88	STATOBEX	28
15	PATIENT 377	8/17/87	DIDREX 50	28
333	PATIENT 378	10/21/87	Adipex-P	14
397	PATIENT 379	10/23/87	ADIPEX-P	14
945	PATIENT 379	6/22/88	Adipex-P	14
907	PATIENT 380	5/2/88	Adipex-P	14
472	PATIENT 381	10/28/87	Adipex-P	14
164	PATIENT 382	8/26/87	ADIPEX-P	21
303	PATIENT 382	10/20/87	ADIPEX-P	21
616	PATIENT 382	3/25/88	Adipex-P	21
643	PATIENT 383	3/28/88	DIDREX 50	28
173	PATIENT 384	8/26/87	Adipex-P	21
578	PATIENT 384	1/21/88	ADIPEX-P	21
877	PATIENT 384	4/29/88	Adipex-P	21
408	PATIENT 385	10/26/87	ADIPEX-P	21
402	PATIENT 386	10/23/87	ADIPEX-P	14
731	PATIENT 387	3/30/88	Adipex-P	21
732	PATIENT 387	3/30/88	LASIX 40	15
829	PATIENT 387	4/27/88	Adipex-P	21
449	PATIENT 388	10/27/87	ADIPEX-P	14
878	PATIENT 389	4/29/88	Adipex-P	21
19	PATIENT 390	8/18/87	DIDREX 50	28
457	PATIENT 390	10/27/87	DIDREX 50	28
518	PATIENT 390	1/18/88	DIDREX 50	28
772	PATIENT 390	4/25/88	DIDREX 50	28
454	PATIENT 391	10/27/87	ADIPEX-P	14
165	PATIENT 392	8/26/87	ADIPEX-P	14
511	PATIENT 392	1/18/88	Adipex-P	14
1076	PATIENT 392	6/29/88	Adipex-P	14
10	PATIENT 393	8/17/87	ADIPEX	14
11	PATIENT 393	8/17/87	LASIX 40	15
996	PATIENT 394	6/27/88	Adipex-P	21
997	PATIENT 394	6/27/88	LASIX 40	15
379	PATIENT 395	10/23/87	ADIPEX-P	21
740	PATIENT 396	3/30/88	Adipex-P	21
905	PATIENT 396	4/29/88	Adipex-P	21
981	PATIENT 396	6/27/88	Adipex-P	21
630	PATIENT 397	3/25/88	Adipex-P	21
934	PATIENT 398	5/2/88	Adipex-P	14
1003	PATIENT 398	6/27/88	Adipex-P	14
1004	PATIENT 398	6/27/88	LASIX 40	15
641	PATIENT 399	3/28/88	ADIPEX-P	14
641	PATIENT 399	3/28/88	LASIX 40	15
771	PATIENT 399	4/25/88	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
301	PATIENT 400	10/20/87	DIDREX 50	28
993	PATIENT 401	6/27/88	Adipex-P	14
1022	PATIENT 402	6/28/88	Adipex-P	14
687	PATIENT 403	3/29/88	Adipex-P	14
778	PATIENT 403	4/25/88	Adipex-P	14
758	PATIENT 404	3/31/88	Adipex-P	14
1083	PATIENT 405	6/29/88	Adipex-P	14
984	PATIENT 406	6/27/88	DIDREX 50	28
37	PATIENT 407	8/18/87	DIDREX 50	28
989	PATIENT 407	6/27/88	DIDREX 50	28
312	PATIENT 408	10/20/87	Adipex-P	14
933	PATIENT 409	5/2/88	Adipex-P	14
196	PATIENT 410	8/28/87	DIDREX 50	28
717	PATIENT 411	3/29/88	Adipex-P	14
825	PATIENT 411	4/26/88	Adipex-P	14
540	PATIENT 412	1/19/88	Adipex-P	14
657	PATIENT 412	3/28/88	Adipex-P	28
225	PATIENT 413	10/16/87	Adipex-P	14
276	PATIENT 414	10/19/87	Adipex-P	14
14	PATIENT 415	8/17/87	ADIPEX-P	21
309	PATIENT 415	10/20/87	ADIPEX-P	21
70	PATIENT 416	8/21/87	ADIPEX	21
70	PATIENT 416	8/21/87	LASIX 40	15
310	PATIENT 416	10/20/87	ADIPEX-P	21
875	PATIENT 416	4/29/88	Adipex-P	21
322	PATIENT 417	10/21/87	ADIPEX-P	14
138	PATIENT 418	8/25/87	ADIPEX-P	14
148	PATIENT 419	8/26/87	ADIPEX-P	14
812	PATIENT 420	4/26/88	Adipex-P	14
951	PATIENT 421	6/24/88	Adipex-P	14
880	PATIENT 422	4/29/88	Adipex-P	14
300	PATIENT 423	10/20/87	ADIPEX	14
1050	PATIENT 424	6/28/88	Adipex-P	21
1051	PATIENT 424	6/28/88	LASIX 40	15
89	PATIENT 425	8/24/87	DIDREX	28
90	PATIENT 425	8/24/87	LASIX 40	15
434	PATIENT 425	10/26/87	DIDREX 50	28
917	PATIENT 425	5/2/88	DIDREX 50	28
1002	PATIENT 425	6/27/88	DIDREX 50	28
56	PATIENT 426	8/19/87	ADIPEX	21
57	PATIENT 426	8/19/87	LASIX 40	15
1032	PATIENT 427	6/28/88	Adipex-P	14
1033	PATIENT 427	6/28/88	LASIX 40	15
127	PATIENT 428	8/25/87	ADIPEX-P	14
510	PATIENT 429	1/18/88	ADIPEX-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
718	PATIENT 429	3/29/88	DIDREX 50	28
927	PATIENT 429	5/2/88	DIDREX 50	28
214	PATIENT 430	8/28/87	ADIPEX-P	14
485	PATIENT 431	10/29/87	ADIPEX	14
702	PATIENT 432	3/29/88	Adipex-P	14
814	PATIENT 432	4/26/88	Adipex-P	14
939	PATIENT 432	6/22/88	Adipex-P	14
474	PATIENT 433	10/29/87	DIDREX 50	28
576	PATIENT 434	1/10/88	DIDREX 50	28
750	PATIENT 434	3/30/88	DIDREX 50	28
851	PATIENT 434	4/27/88	DIDREX 50	28
376	PATIENT 435	10/23/87	ADIPEX-P	14
647	PATIENT 436	3/28/88	ADIPEX-P	21
287	PATIENT 437	10/19/87	ADIPEX-P	14
916	PATIENT 438	5/2/88	Adipex-P	14
1036	PATIENT 438	6/28/88	Adipex-P	14
107	PATIENT 439	8/24/87	Adipex-P	21
108	PATIENT 439	8/24/87	LASIX 40	15
467	PATIENT 440	10/28/87	ADIPEX-P	14
598	PATIENT 441	1/21/88	ADIPEX-P	21
79	PATIENT 442	8/21/87	ADIPEX-P	14
250	PATIENT 442	10/16/87	Adipex-P	21
251	PATIENT 442	10/16/87	LASIX 40	15
631	PATIENT 442	3/25/88	ADIPEX-P	14
888	PATIENT 442	4/29/88	Adipex-P	14
1011	PATIENT 442	6/27/88	Adipex-P	14
456	PATIENT 443	10/27/87	ADIPEX-P	14
113	PATIENT 444	8/24/87	ADIPEX-P	14
202	PATIENT 445	8/28/87	ADIPEX P 37.5	21
238	PATIENT 445	10/16/87	ADIPEX	21
239	PATIENT 445	10/16/87	LASIX 40	15
115	PATIENT 446	8/24/87	LASIX 40	15
114	PATIENT 446	8/24/87	ADIPEX-P	21
459	PATIENT 447	10/28/87	Adipex-P	21
533	PATIENT 447	1/19/88	Adipex-P	21
533	PATIENT 447	1/19/88	LASIX 40	15
721	PATIENT 447	3/29/88	Adipex-P	21
808	PATIENT 447	4/26/88	Adipex-P	21
954	PATIENT 447	6/24/88	Adipex-P	21
913	PATIENT 448	5/2/88	Adipex-P	14
123	PATIENT 449	8/24/87	ADIPEX-P	14
922	PATIENT 450	5/2/88	Adipex-P	14
991	PATIENT 450	6/27/88	Adipex-P	21
26	PATIENT 451	8/18/87	ADIPEX-P	14
334	PATIENT 452	10/21/87	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
701	PATIENT 452	3/29/88	Adipex-P	14
296	PATIENT 453	10/20/87	ADIPEX-P	14
136	PATIENT 454	8/25/87	ADIPEX-P	14
506	PATIENT 455	1/18/88	Adipex-P	14
815	PATIENT 455	4/26/88	STOTOBEX	28
369	PATIENT 456	10/23/87	ADIPEX-P	14
143	PATIENT 457	8/25/87	ADIPEX-P	14
453	PATIENT 457	10/27/87	ADIPEX-P	14
711	PATIENT 457	3/29/88	Adipex-P	21
654	PATIENT 458	3/28/88	Adipex-P	14
781	PATIENT 458	4/25/88	Adipex-P	14
961	PATIENT 458	6/24/88	Adipex-P	14
43	PATIENT 459	8/18/87	ADIPEX-P	14
744	PATIENT 460	3/30/88	DIDREX 50	28
745	PATIENT 460	3/30/88	LASIX 40	15
841	PATIENT 460	4/27/88	DIDREX 50	28
967	PATIENT 460	6/24/88	DIDREX 50	28
478	PATIENT 461	10/29/87	ADIPEX	14
161	PATIENT 462	8/26/87	ADIPEX-P	14
705	PATIENT 462	3/29/88	Adipex-P	14
893	PATIENT 462	4/29/88	Adipex-P	14
541	PATIENT 463	1/19/88	Adipex-P	14
700	PATIENT 463	3/29/88	Adipex-P	14
813	PATIENT 463	4/26/88	Adipex-P	14
272	PATIENT 464	10/19/87	Adipex-P	14
119	PATIENT 465	8/24/87	ADIPEX-P	21
120	PATIENT 465	8/24/87	LASIX 40	15
337	PATIENT 465	10/21/87	ADIPEX-P	21
622	PATIENT 466	3/25/88	Adipex-P	21
901	PATIENT 466	4/29/88	Adipex-P	21
420	PATIENT 467	10/26/87	ADIPEX-P	14
16	PATIENT 468	8/17/87	DIDREX 50	28
931	PATIENT 468	5/2/88	DIDREX 50	28
1000	PATIENT 468	6/27/88	DIDREX 50	28
181	PATIENT 469	8/27/87	ADIPEX-P	14
318	PATIENT 469	10/20/87	ADIPEX-P	14
707	PATIENT 469	3/29/88	Adipex-P	21
805	PATIENT 469	4/26/88	Adipex-P	21
77	PATIENT 470	8/21/87	DIDREX 50	28
243	PATIENT 470	10/16/87	DIDREX 50	28
493	PATIENT 470	1/18/88	DIDREX 50	28
652	PATIENT 470	3/28/88	DIDREX 50	28
824	PATIENT 470	4/26/88	DIDREX 50	28
1040	PATIENT 470	6/28/88	DIDREX 50	28
623	PATIENT 471	3/25/88	ADIPEX-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
412	PATIENT 472	10/26/87	ADIPEX-P	14
343	PATIENT 473	10/21/87	ADIPEX-P	21
344	PATIENT 473	10/21/87	LASIX 40	15
121	PATIENT 474	8/24/87	DIDREX 50	28
122	PATIENT 474	8/24/87	LASIX 40	15
49	PATIENT 475	8/19/87	ADIPEX	21
50	PATIENT 475	8/19/87	LASIX 40	15
818	PATIENT 476	4/26/88	Adipex-P	21
558	PATIENT 477	1/10/88	Adipex-P	14
624	PATIENT 477	3/25/88	Adipex-P	14
903	PATIENT 477	4/29/88	Adipex-P	14
414	PATIENT 478	10/26/87	ADIPEX-P	21
415	PATIENT 478	10/26/87	LASIX 40	15
237	PATIENT 479	10/16/87	DIDREX 50	28
242	PATIENT 480	10/16/87	DIDREX 50	28
294	PATIENT 481	10/19/87	LASIX 40	15
93	PATIENT 482	8/24/87	ADIPEX-P	14
992	PATIENT 483	6/27/88	Adipex-P	14
266	PATIENT 484	10/19/87	Adipex-P	14
36	PATIENT 485	8/18/87	ADIPEX-P	14
269	PATIENT 485	10/19/87	ADIPEX-P	14
589	PATIENT 485	1/21/88	ADIPEX-P	21
524	PATIENT 486	1/18/88	ADIPEX	14
896	PATIENT 486	4/29/88	Adipex-P	14
976	PATIENT 486	6/27/88	Adipex-P	21
444	PATIENT 487	10/27/87	Adipex-P	14
567	PATIENT 488	1/10/88	Adipex-P	21
697	PATIENT 488	3/29/88	Adipex-P	21
698	PATIENT 488	3/29/88	LASIX 40	15
811	PATIENT 488	4/26/88	Adipex-P	21
30	PATIENT 489	8/18/87	ADIPEX-P	14
1064	PATIENT 489	6/28/88	Adipex-P	14
921	PATIENT 490	5/2/88	DIDREX 50	28
942	PATIENT 491	6/22/88	Adipex-P	14
168	PATIENT 492	8/26/87	Adipex-P	14
46	PATIENT 493	8/19/87	ADIPEX-P	14
47	PATIENT 493	8/19/87	LASIX 40	15
475	PATIENT 494	10/29/87	DIDREX 50	28
759	PATIENT 494	3/31/88	DIDREX 50	28
876	PATIENT 494	4/29/88	DIDREX 50	28
118	PATIENT 495	8/24/87	DIDREX 50	28
862	PATIENT 496	4/29/88	Adipex-P	14
867	PATIENT 497	4/29/88	Adipex-P	21
662	PATIENT 498	3/28/88	Adipex-P	21
519	PATIENT 499	1/18/88	Adipex-P	14

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
520	PATIENT 499	1/18/88	LASIX 40	15
1041	PATIENT 500	6/28/88	Adipex-P	14
215	PATIENT 501	8/28/87	ADIPEX-P	14
216	PATIENT 501	8/28/87	LASIX 40	15
400	PATIENT 501	10/23/87	ADIPEX-P	14
963	PATIENT 502	6/24/88	Adipex-P	14
166	PATIENT 503	8/26/87	ADIPEX-P	14
486	PATIENT 503	10/29/87	ADIPEX-P	14
487	PATIENT 503	10/29/87	LASIX 40	15
885	PATIENT 503	4/29/88	DIDREX 50	28
962	PATIENT 503	6/24/88	DIDREX 50	28
1027	PATIENT 504	6/28/88	DIDREX 50	28
150	PATIENT 505	8/26/87	ADIPEX-P	14
920	PATIENT 505	5/2/88	Adipex-P	14
480	PATIENT 506	10/29/87	ADIPEX-P	14
188	PATIENT 507	8/28/87	STATOBEX	28
357	PATIENT 507	10/23/87	STATOBEX	28
712	PATIENT 507	3/29/88	DIDREX 50	28
249	PATIENT 508	10/16/87	ADIPEX-P	21
891	PATIENT 508	4/29/88	Adipex-P	21
95	PATIENT 509	8/24/87	DIDREX 50	28
1056	PATIENT 510	6/28/88	STATOBEX	28
686	PATIENT 511	3/28/88	DIDREX 50	28
912	PATIENT 512	5/2/88	Adipex-P	14
204	PATIENT 513	8/28/87	ADIPEX-P	14
353	PATIENT 514	10/21/87	ADIPEX-P	14
987	PATIENT 515	6/27/88	Adipex-P	21
124	PATIENT 516	8/24/87	ADIPEX-P	14
295	PATIENT 516	10/20/87	ADIPEX-P	14
260	PATIENT 517	10/19/87	TRANXENE 3.75	30
496	PATIENT 518	1/18/88	DIDREX 50	28
329	PATIENT 519	10/21/87	Adipex-P	14
447	PATIENT 520	10/27/87	ADIPEX-P	21
936	PATIENT 521	5/2/88	DIDREX 50	28
162	PATIENT 522	8/26/87	ADIPEX-P	14
282	PATIENT 523	10/19/87	Adipex-P	14
666	PATIENT 524	3/28/88	DIDREX 50	28
667	PATIENT 524	3/28/88	LASIX 40	15
52	PATIENT 525	8/19/87	ADIPEX-P	21
426	PATIENT 525	10/26/87	ADIPEX-P	21
613	PATIENT 525	3/25/88	Adipex-P	21
105	PATIENT 526	8/24/87	ADIPEX-P	14
28	PATIENT 527	8/18/87	DIDREX 50	28
205	PATIENT 528	8/28/87	DIDREX 50	28
504	PATIENT 528	1/18/88	DIDREX 50	28

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
610	PATIENT 528	3/25/88	DIDREX 50	28
708	PATIENT 529	3/29/88	DIDREX 50	28
709	PATIENT 529	3/29/88	LASIX 40	15
1038	PATIENT 530	6/28/88	Adipex-P	14
1039	PATIENT 530	6/28/88	LASIX 40	15
552	PATIENT 531	1/10/88	Adipex-P	21
553	PATIENT 531	1/10/88	LASIX 40	15
871	PATIENT 531	4/29/88	Adipex-P	21
31	PATIENT 532	8/18/87	DIDREX 50	28
32	PATIENT 532	8/18/87	LASIX 40	15
568	PATIENT 532	1/10/88	DIDREX 50	28
88	PATIENT 533	8/24/87	DIDREX 50	28
585	PATIENT 533	1/21/88	DIDREX 50	28
586	PATIENT 533	1/21/88	LASIX 40	15
111	PATIENT 534	8/24/87	ADIPEX-P	14
359	PATIENT 535	10/23/87	ADIPEX-P	14
525	PATIENT 535	1/19/88	Adipex-P	14
526	PATIENT 535	1/19/88	LASIX 40	15
1017	PATIENT 536	6/27/88	Adipex-P	14
1018	PATIENT 536	6/27/88	LASIX 40	15
24	PATIENT 537	8/18/87	DIDREX 50	28
25	PATIENT 537	8/18/87	LASIX 40	15
674	PATIENT 537	3/28/88	DIDREX 50	28
982	PATIENT 537	6/27/88	DIDREX 50	28
983	PATIENT 537	6/27/88	LASIX 40	15
293	PATIENT 538	10/19/87	STATOBEX	28
863	PATIENT 539	4/29/88	Adipex-P	21
63	PATIENT 540	8/19/87	ADIPEX-P	14
779	PATIENT 541	4/25/88	Adipex-P	14
184	PATIENT 542	8/27/87	DIDREX 50	28
355	PATIENT 543	10/23/87	DIDREX 50	28
356	PATIENT 543	10/23/87	LASIX 40	15
774	PATIENT 544	4/25/88	DIDREX 50	28
94	PATIENT 545	8/24/87	ADIPEX-P	14
142	PATIENT 546	8/25/87	DIDREX 50	28
476	PATIENT 546	10/29/87	DIDREX 50	28
104	PATIENT 547	8/24/87	Adipex-P	14
274	PATIENT 547	10/19/87	Adipex-P	14
924	PATIENT 547	5/2/88	Adipex-P	14
1025	PATIENT 547	6/28/88	Adipex-P	14
557	PATIENT 548	1/10/88	ADIPEX-P	14
733	PATIENT 548	3/30/88	Adipex-P	14
728	PATIENT 549	3/30/88	Adipex-P	14
843	PATIENT 549	4/27/88	Adipex-P	14
154	PATIENT 550	8/26/87	ADIPEX-P	21

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
106	PATIENT 551	8/24/87	Adipex-P	14
75	PATIENT 552	8/21/87	ADIPEX	14
911	PATIENT 552	5/2/88	Adipex-P	14
66	PATIENT 553	8/19/87	ADIPEX-P	14
515	PATIENT 553	1/18/88	DIDREX 50	28
606	PATIENT 553	3/25/88	STATOBEX	25
441	PATIENT 554	10/27/87	DIDREX 50	28
428	PATIENT 555	10/26/87	ADIPEX-P	21
492	PATIENT 555	1/18/88	Adipex-P	21
236	PATIENT 556	10/16/87	ADIPEX-P	14
314	PATIENT 557	10/20/87	DIDREX 50	28
315	PATIENT 557	10/20/87	LASIX 40	15
673	PATIENT 558	3/28/88	Adipex-P	14
791	PATIENT 558	4/25/88	Adipex-P	14
749	PATIENT 559	3/30/88	Adipex-P	14
858	PATIENT 559	4/28/88	Adipex-P	14
1077	PATIENT 560	6/29/88	Adipex-P	14
915	PATIENT 561	5/2/88	Adipex-P	14
546	PATIENT 562	1/20/88	ADIPEX-P	14
546	PATIENT 562	1/20/88	LASIX 40	15
436	PATIENT 563	10/27/87	DIDREX 50	28
436	PATIENT 563	10/27/87	LASIX 40	15
6	PATIENT 564	8/17/87	ADIPEX	14
675	PATIENT 565	3/28/88	Adipex-P	21
676	PATIENT 565	3/28/88	LASIX 40	15
780	PATIENT 565	4/25/88	Adipex-P	21
985	PATIENT 565	6/27/88	Adipex-P	21
986	PATIENT 565	6/27/88	LASIX 40	15
512	PATIENT 566	1/18/88	LASIX 40	15
513	PATIENT 566	1/18/88	DIDREX 50	28
658	PATIENT 566	3/28/88	STATOBEX	28
659	PATIENT 566	3/28/88	LASIX 40	40
776	PATIENT 566	4/25/88	DIDREX 50	28
777	PATIENT 566	4/25/88	LASIX 40	15
92	PATIENT 567	8/24/87	ADIPEX-P	21
401	PATIENT 567	10/23/87	ADIPEX-P	21
192	PATIENT 568	8/28/87	ADIPEX 37.5	21
391	PATIENT 568	10/23/87	ADIPEX-P	14
3	PATIENT 569	8/17/87	DIDREX 50	28
873	PATIENT 570	4/29/88	Adipex-P	21
874	PATIENT 570	4/29/88	LASIX 40	15
957	PATIENT 570	6/24/88	Adipex-P	21
958	PATIENT 570	6/24/88	LASIX 40	15
365	PATIENT 571	10/23/87	ADIPEX-P	14
332	PATIENT 572	10/21/87	DIDREX 50	28

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
648	PATIENT 572	3/28/88	DIDREX 50	28
649	PATIENT 572	3/28/88	LASIX 40	15
59	PATIENT 573	8/19/87	ADIPEX-P	14
538	PATIENT 574	1/19/88	ADIPEX	14
592	PATIENT 575	1/21/88	Adipex-P	14
593	PATIENT 575	1/21/88	LASIX 40	15
74	PATIENT 576	8/21/87	ADIPEX-P	14
96	PATIENT 577	8/24/87	ADIPEX-P	14
97	PATIENT 577	8/24/87	LASIX 40	15
831	PATIENT 578	4/27/88	Adipex-P	14
327	PATIENT 579	10/21/87	Adipex-P	21
1020	PATIENT 580	6/27/88	Adipex-P	14
387	PATIENT 581	10/23/87	ADIPEX-P	14
625	PATIENT 582	3/25/88	ADIPEX-P	14
603	PATIENT 583	3/25/88	ADIPEX-P	21
869	PATIENT 583	4/29/88	Adipex-P	21
660	PATIENT 584	3/28/88	STATOBEX	28
792	PATIENT 584	4/25/88	STATOBEX	28
599	PATIENT 585	1/21/88	ADIPEX-P	14
600	PATIENT 585	1/21/88	LASIX 40	15
611	PATIENT 585	3/25/88	ADIPEX-P	14
834	PATIENT 585	4/27/88	Adipex-P	14
850	PATIENT 586	4/27/88	DIDREX 50	28
109	PATIENT 587	8/24/87	ADIPEX-P	14
347	PATIENT 588	10/21/87	ADIPEX-P	14
328	PATIENT 589	10/21/87	Adipex-P	14
724	PATIENT 589	3/30/88	DIDREX 50	28
20	PATIENT 590	8/18/87	ADIPEX-P	14
21	PATIENT 591	8/18/87	ADIPEX-P	14
9	PATIENT 592	8/17/87	DIDREX 50	28
270	PATIENT 592	10/19/87	DIDREX 50	28
228	PATIENT 593	10/16/87	ADIPEX-P	21
130	PATIENT 594	8/25/87	DIDREX 50	28
601	PATIENT 595	1/22/88	ADIPEX-P	14
1071	PATIENT 595	6/28/88	Adipex-P	14
845	PATIENT 596	4/27/88	DIDREX 50	28
404	PATIENT 597	10/27/87	ADIPEX-P	14
409	PATIENT 598	10/26/87	ADIPEX-P	21
953	PATIENT 598	6/24/88	Adipex-P	21
620	PATIENT 599	3/25/88	ADIPEX-P	21
964	PATIENT 600	6/24/88	Adipex-P	14
1005	PATIENT 601	6/27/88	Adipex-P	14
1006	PATIENT 601	6/27/88	LASIX 40	15
44	PATIENT 602	8/18/87	DIDREX 50	28
742	PATIENT 603	3/30/88	Adipex-P	21

PRESCRIPTION LIST/DR. DIBENEDETTO

ENTRY #	NAME	DATE	DRUG/SCH	DU
743	PATIENT 603	3/30/88	LASIX 40	15
966	PATIENT 603	6/24/88	Adipex-P	21
200	PATIENT 604	8/28/87	Adipex-P	14
201	PATIENT 604	8/28/87	LASIX 40	15
1063	PATIENT 605	6/28/88	Adipex-P	14
41	PATIENT 606	8/18/87	ADIPEX-P	14
42	PATIENT 606	8/18/87	LASIX 40	15
855	PATIENT 607	4/28/88	Adipex-P	14
507	PATIENT 608	1/18/88	DIDREX 50	28
681	PATIENT 608	3/28/88	DIDREX 50	28
682	PATIENT 608	3/28/88	LASIX 40	15
787	PATIENT 608	4/25/88	DIDREX 50	28
307	PATIENT 609	10/20/87	DIDREX 50	28
852	PATIENT 610	4/28/88	DIDREX 50	28
308	PATIENT 611	10/20/87	DIDREX 50	28
853	PATIENT 611	4/28/88	DIDREX 50	28
429	PATIENT 612	10/26/87	ADIPEX-P	14
539	PATIENT 612	1/19/88	Adipex-P	14
1059	PATIENT 613	6/28/88	STATOBEX	28
729	PATIENT 614	3/30/88	Adipex-P	14
821	PATIENT 614	4/26/88	Adipex-P	14
940	PATIENT 614	6/22/88	Adipex-P	14
508	PATIENT 615	1/18/88	ADIPEX-P	14
509	PATIENT 615	1/18/88	LASIX 40	15

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

FRANK W. DIBENEDETTO, D.O. :

NOTICE OF DISMISSAL WITHOUT PREJUDICE

IN THE MATTER OF: FRANK W. DIBENEDETTO, D.O.

The State Medical Board of Ohio, in regular meeting on January 11, 1989, issued a notice of opportunity for hearing to Frank W. DiBenedetto, D.O., based upon alleged violations of various provisions of Chapter 4731., Ohio Revised Code, and Chapter 4731-11, Ohio Administative Code. It having been shown that the dates of Dr. DiBenedetto's alleged absence from his practice contained in the notice of opportunity for hearing are possibly incorrect, the notice of opportunity for hearing issued to him on January 11, 1989, is hereby DISMISSED WITHOUT PREJUDICE to the State Medical Board of Ohio's right to issue another notice of opportunity for hearing with similar allegations in the future.

SO ORDERED this 21 day of July, 1989.

HENRY G. CRAMBLETT, M.D.
Secretary

(SEAL)

JOHN E. RAUCH, D.O.
Supervising Member

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

January 11, 1989

Frank DiBenedetto, D.O.
4998 West Broad Street Suite #102
Columbus, OH 43228

Dear Doctor DiBenedetto:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

(1) During the period beginning no later than November 17, 1986 and continuing to the present, you have employed as a medical assistant one Steven Fulton, an individual who is not certified by the State Medical Board to practice medicine or surgery or any of its branches, osteopathic medicine and surgery, or podiatry, and who is not registered as a physician's assistant. In the course of such employment you have authorized and instructed Mr. Fulton to obtain medical histories from diet patients new to your practice, to examine new and returning diet patients, and to prescribe controlled substance stimulants and prescription diuretics to diet patients whom you have not personally seen and examined.

(2) The allegations contained in the above paragraph (1) are hereby realleged as if fully restated herein. During a period of approximately two (2) weeks encompassing at least August 4, 1987 to August 19, 1987, you were absent from your office in connection with your military duties. During this period all weight patients being treated with controlled substance stimulants were seen by Steven Fulton exclusively. Pursuant to your instructions, Mr. Fulton would weigh such patients, take their blood pressure, and issue them prescriptions for controlled substance stimulants and/or prescription diuretic drugs , using presigned prescription forms which you had previously provided him.

(3) The allegations contained in the above paragraphs (1) and (2) are hereby realleged as if fully restated herein. On or about August 4, 1987, Patient A, who is identified in the attached patient key (Key to be withheld from public disclosure to protect patient confidentiality), paid an initial visit to your office seeking assistance with weight control. Patient A was seen on this office

visit by Steven Fulton exclusively. Mr. Fulton obtained a medical history from the patient which revealed that she suffered frequent ear infections, and was, at the time of the office visit, experiencing chest pain, indigestion or heartburn, chronic abdominal pain, constipation, anemia, and easy bruising. Patient A advised Mr. Fulton that she had previously received "black beauties" during weight loss treatment with another physician, but she reported no prior attempts to lose weight in a treatment program which did not utilize controlled substances. Mr. Fulton weighed the patient and recorded her blood pressure, but performed no other physical examination or testing. He issued to the patient a prescription for fourteen (14) dosage units of Adipex-P, on a presigned prescription form which you had previously provided him. Patient A was charged $25.00 for this visit.

(4) The allegations contained in the above paragraphs (1) and (2) are hereby realleged as if fully restated herein. On or about August 19, 1987, Patient A made her first return visit to your office. She was seen on this office visit by Steven Fulton exclusively. Mr. Fulton recorded her weight and blood pressure, but performed no other examination, and issued her a prescription for fourteen (14) dosage units of Adipex-P, on a presigned prescription form which you had previously provided him. Patient A was charged $10.00 for this visit.

Such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given", as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (2) through (4), which occurred on or after March 17, 1987, individually and/or collectively, constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the acts was committed", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, (effective March 17, 1987) to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

Further, such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice", as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Sections 2923.03 and 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

Further, such acts as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, (Section 4731.22(B)(16), Ohio Revised Code, as in effect prior to March 17, 1987) to wit: Section 4731.41, Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (3) and (4), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rules 4731-11-04(B)(1) and 4731-11-04(B)(2), Ohio Administrative Code. Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, a violation of any provision of that Rule also violates Sections 4731.22(B)(2), 4731.22(B)(3) and 4731.22(B)(6), Ohio Revised Code.

(5) A substantial portion of your medical practice entails the prescribing of controlled substances for purposes of weight reduction. In conducting such practice:

(a) You prescribed controlled substances to be taken in amounts exceeding the maximum daily dosages, as set forth in the F.D.A. approved labeling for the products. You continued such prescribing from November 17, 1986 until at least August 1987.

(b) You initiate treatment utilizing controlled substances without first determining through review of your own records of prior treatment, or through review of the records of prior treatment which another treating physician or weight loss program has provided to you, that the patient has made a substantial good-faith effort to lose

weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that said treatment has been ineffective. You have continued such practice from November 17, 1986 to the present.

(c) You initiate treatment utilizing controlled substances without first obtaining a thorough history, performing a thorough physical examination of the patient, and ruling out the existence of any recognized contraindications to the use of the controlled substance to be utilized.

(d) You utilized controlled substances for purposes of weight reduction without weighing the patient at least every fourteenth day, to assure continuing weight loss. You continued such practice until at least December 1987.

Such acts as alleged in the above paragraph (5), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code (Section 4731.22(B)(16), as in effect prior to March 17, 1987), to wit: Rule 4731-11-04, Ohio Administrative Code.

Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, a violation of any provision of that rule also violates Sections 4731.22(B)(2), (3), and (6), Ohio Revised Code.

(6) On dates undetermined, you did issue to the below-listed patients, who are identified in the attached patient key (Key to be withheld from public disclosure to protect patient confidentiality) prescriptions for controlled substances and other dangerous drugs (as defined by Section 4729.02(D), Ohio Revised Code), which prescriptions were dated to give the appearance of having been issued on a date subsequent to the actual date of issuance:

	Date Appearing on Prescription	Drug	Amount
Patient B	8/6/87	Talwin Nx 50	90
	8/6/87	Halcion .5 mg.	40
	8/6/87	Triavil 4-25	120
	8/6/87	Lopressor 100	30
Patient C	8/12/87	Adipex-P	14
Patient D	8/14/87	Adipex-P	14
Patient E	8/14/87	Adipex-P	14

Such as acts alleged in the above paragraph (6) individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts as alleged in the above paragraph (6), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, such acts as alleged in the above paragraph (6), individually and/or collectively, constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Henry G. Cramblett, M.D. /jen

Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 746 510 242
RETURN RECEIPT REQUESTED