**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS**
**STATE OF GEORGIA**

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Kevin Westray, Legal Assistant

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| **GEORGIA COMPOSITE MEDICAL BOARD,** **Petitioner,** | : | Docket No.: OSAH-CSBME-PHY-1603818-60-Walker |
| | : | |
| **v.** | : | Agency Reference No.: 20150024 |
| **IMO F. NDEM, M.D.,** **Respondent.** | : | |

# INITIAL DECISION

## I. Procedural History

On July 23, 2015, the Georgia Composite Medical Board (hereinafter "Petitioner" or "Board") issued a Statement of Matters Asserted seeking final disciplinary action against Respondent's license to practice medicine. An administrative hearing was held on October 28, 2015, and the record closed on November 16, 2015.[1] D. Williams-McNeely, Esq. represented the Petitioner

[1] Following the hearing, Respondent submitted a fourteen-page letter to the undersigned postmarked November 2, 2015, in which he reiterated several of the arguments he already had raised before this Court, supported by new facts not previously introduced at the hearing. (See Respondent's Post-Hearing Letter, filed Nov. 4, 2015). On November 5, 2015, the Board filed a motion opposing the Petitioner's fourteen-page letter, pursuant to Ga. Comp. R. & Regs. r. 616-1-2-.25. (Petitioner's Opposition to Respondent's Submission of Additional Evidence, filed Nov. 5, 2015). Here, because Respondent's letter contains new facts not previously introduced into evidence, and because he does not argue that this information was newly discovered or could not have been discovered with due diligence, the Board's motion is **GRANTED**. Respondent also submitted a four-page letter to the undersigned, postmarked November 4, 2015, in which he presents additional arguments regarding the meaning of "pain management clinic" in state law; and an email was submitted to the Court on his behalf on November 5, 2015, in which he asks the undersigned to "review annual patient population set forth in Title 43 Chapter 34 Article 10." (See Respondent's Post-Hearing Letter, filed Nov. 6, 2015; Email to Kevin Westray filed Nov. 5, 2015). The Petitioner has not opposed either submission. Nonetheless, the undersigned has reviewed both and does not find either relevant to the outcome of this case.

and Respondent appeared pro se.[2] After considering the evidence presented at the administrative hearing, the undersigned recommends that Respondent's license be **REVOKED**.

## II. Findings of Fact

### A. Background

1.

Respondent holds a license to practice as a physician in the State of Georgia, and has held such certificate at all times relevant to the issues presented for hearing. On July 7, 2015, the Board summarily suspended Respondent's medical license. The license has an expiration date of November 30, 2015.[3] (Statement of Matters Asserted [Matters Asserted] ¶ 1; Transcript at pp. 43-44, 46 (hereinafter T.); Exhibit P-1).

2.

Between October 2010 and April 2011, Respondent worked as a physician at the Augusta Wellness Center ("AWC") in Augusta, Georgia. (Matters Asserted ¶ 2; T. 59, 68; Exhibits P-3 through P-12).

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[2] Respondent—who was in custody at the Columbia County Detention Center—and all five of Petitioner's witnesses appeared at the hearing by telephone. (See Notice of Reset Hearing Date and Venue, filed Oct. 14, 2015; Petitioner's Motion for Testimony by Remote Telephonic Communication, filed Sep. 29, 2015).

[3] Notwithstanding that Respondent's license has expired, disciplinary proceedings in this matter are still pertinent. Under Ga. Comp. R. & Regs. r. 360-2-.05:

> (3) Licensees have the right to obtain a late renewal of their licenses during the three (3) month period immediately following the expiration date. During this period, the penalty for late renewal applies. A physician may not practice medicine after the expiration date of his or her license.
>
> (4) The Board ***shall administratively revoke any license not renewed prior to the expiration of the late renewal period.*** (emphasis added). Such revocation removes all rights and privileges to practice medicine and surgery in this State . . . . . Revocation for failure to renew is not considered a disciplinary revocation. However, the license may only be reinstated through application.

3.

While Respondent was working at AWC, the Board received a complaint that he was prescribing controlled substances in violation of state law. (Exhibit P-17). The Board initiated an investigation. (T. 44).

4.

On or about March 31, 2011, Cardinal Health suspended all pharmaceutical sales of controlled and monitored substances to Respondent and/or AWC, on the grounds that the sales quantities of controlled and monitored substances were not justified. (Matters Asserted ¶ 3; T. 86).[4]

5.

After Cardinal Health suspended pharmaceutical sales, Respondent resigned from AWC. (T. 71). In October 2011, he opened a new clinic, Pathway to Wellness Center ("Pathway" or "clinic"), in Martinez, Georgia. (T. 50, 86).

6.

As required by O.C.G.A. § 43-34-283, pain management clinics must be licensed by the Board. In July 2013, Respondent applied to the Board for a pain management clinic license on behalf of Pathway. (Matters Asserted ¶ 6). The Board denied Respondent's application on September 30, 2013, noting in its denial that Respondent had a pending case before the Board involving allegations that he had prescribed controlled substances inappropriately. (Matters Asserted ¶ 6; T. 45; Exhibit P-17).

7.

After Petitioner opened Pathway, the federal Drug Enforcement Agency ("DEA"), in a joint investigation with the Columbia County Sheriff's Office, began to investigate the clinic.

[4] During the hearing Respondent asserted that he was not directly responsible for any improper prescription practices committed at AWC and that he had brought the matter of AWC's improper prescriptions to the attention of the Board and local law officials. (T. 69-72, 85-86, 88-89). The undersigned does not find Respondent's testimony to be credible.

(Matters Asserted ¶ 7; T. 52). On March 14, 2015, Respondent was arrested and charged with operating an unlicensed pain management clinic, in violation of the Georgia Pain Management Act, O.C.G.A. §§ 43-34-283(a), 43-34-288. (Matters Asserted ¶ 8; Exhibit P-18). He is currently in custody at the Columbia County Detention Center. (T. 78; Petitioner's Motion for Testimony by Remote Telephonic Communication, filed Sep. 29, 2015).

**B. AWC Investigation**

8.

On July 23, 2015, the Board issued a Statement of Matters Asserted charging that Respondent's treatment of ten patients at AWC—identified as A.S., C.L.H., D.F., J.B., K.S., M.L., M.T., P.M., R.M., and T.S.—departed from and failed to conform to the minimal standards of acceptable and prevailing medical practice. (Matters Asserted ¶¶ 4-5). The Matters Asserted also noted that Respondent has been criminally charged with operating a pain management clinic without a license. (Matters Asserted ¶ 8).

9.

Michael Sherrod Lott holds an M.D. from the Medical College of Georgia. He completed his residency at Emory University and was chief fellow during a fellowship at Duke University. Dr. Lott is licensed in the State of Georgia, and is board certified in anesthesiology and interventional pain medicine. He practices medicine at the Center for Spinal Intervention and also serves as a peer reviewer for the Board. (T. 21-23).

10.

The Board requested that Dr. Lott review the medical records of the ten patients identified in the Matters Asserted to determine whether Respondent's treatment conformed to the minimal standards of acceptable and prevailing medical practice. (T. 23-24; Exhibits P-3 through P-12).

11.

A.S., C.L.H., D.F., J.B., K.S., M.L., M.T., P.M., R.M., and T.S. were patients at AWC between October 2010 and March 2011. Each of these patients received prescriptions for oxycodone and Xanax from Respondent. (Exhibits P-3 through P-12).

12.

Based on his review of the records for A.S., C.L.H., D.F., J.B., K.S., M.L., M.T., P.M., R.M., and T.S., Dr. Lott concluded that neither Respondent's medical treatment nor the "type of records that were being maintained" for these patients met "the minimum standard of care." (T. 34). Many of the patients were between the ages of twenty and thirty, and Dr. Lott observed that it is "very rare that a patient younger than 30 will have chronic back pain that even requires narcotics." (T. 30-31). He also noted that patients came from out of state to receive treatment from AWC; however, for patients with severe back pain it would be "difficult" to make "those long rides" on a monthly basis. (T. 28-29). As a general matter, more than ninety percent of all medical practices support patients who live relatively close to a physician's office. Dr. Lott determined that the fact that these ten patients traveled long distances to see Respondent meant that "what [he was] offering is different from the standard of care of what that person's community is providing." (T. 30, 41).

**Patient A.S.**

13.

A.S. was a twenty-five-year-old female from Kentucky suffering from a "degenerative disc." (T. 25). Prior to traveling to AWC, A.S. had received treatment from pain clinics in Kentucky and Florida. (T. 25; Exhibit P-10). The records for A.S. included a Magnetic Resonance Imaging ("MRI") report dated June 15, 2010, from a Florida clinic. (Exhibit P-10). However, there were

no treatment records from prior physicians in her file; rather, Respondent's records only reflect that the office for A.S.'s prior physician had closed. (T. 27; Exhibit P-10).

14.

Respondent saw A.S. on two occasions and both times prescribed the following: 30 tablets of Xanax 1mg; and 90 tablets of oxycodone 30mg, or "90 milligrams" of oxycodone.[5] (T. 35; Exhibit P-10). According to Dr. Lott, 90 milligrams "is considered to be [above the recommended dosage] if you are going to do opioid or narcotic care." (T. 41). Moreover, based on the imaging, A.S.'s condition constituted "age appropriate" spine degeneration that occurs in "almost every spine" after age eighteen. (T. 25).

**Patient C.L.H.**

15.

C.L.H. was a forty-two-year-old female with lumbar disc herniation and spinal stenosis. (T. 28).

16.

Dr. Lott testified that C.L.H. drove "from North Carolina and Florida to Georgia to obtain medicine." (T. 28). The records for C.L.H. include copies of her Tennessee driver's license, a North Carolina driver's license and an MRI report performed in Florida. (Exhibit P-5).

17.

Records indicate that Respondent saw C.L.H. on two occasions. At the first visit, Respondent prescribed the following: 120 tablets of Xanax 1mg; 90 tablets of oxycodone 30mg; and 60 tablets of oxycodone 15mg. On C.L.H.'s second visit, Respondent prescribed the following: 60

[5] Dr. Lott initially testified that A.S. "was on 180 milligrams of oxycodone equivalent," which he considered an "unclear and excessive pathology." (T. 25). On cross-examination, Dr. Lott conceded that his testimony was erroneous—the prescription for 180 milligrams had been issued by another physician. The records demonstrate that Respondent only had prescribed A.S. "90 milligrams" of oxycodone. (T. 35-38; Exhibit P-10).

tablets of Xanax 1mg; 120 tablets of oxycodone 30mg; and 30 tablets of Atenolol 25mg. (Exhibit P-5).

18.

Dr. Lott testified that, based on the lack of prior medical records, a "high dose of opioids," and C.L.H.'s history of driving to different states for treatment, Respondent's treatment of C.L.H. fell below the minimum standard of care. (T. 28).

**Patient D.F.**

19.

D.F. was a thirty-year-old male with lumbar spondylitis, which Dr. Lott testified was "pretty par for the course" for patients with back pain. (T. 28).

20.

D.F.'s medical records reflect that he lived in Kentucky, and had traveled to Florida, Tennessee, and Georgia to obtain treatment. (T. 28; Exhibit P-4).

21.

Records for D.F. include an MRI performed in Florida. (Exhibit P-4).

22.

Respondent did not offer any pain-management options to D.F besides medication. (T. 28; Exhibit P-4). He prescribed "90 milligrams" of oxycodone. (T. 39-40). According to Dr. Lott, 90 milligrams of oxycodone is the equivalent of 180 milligrams of morphine, which is considered above the 100 to 120 milligrams that would be recommended for opioid or narcotic care.[6] (T. 41).

[6] Dr. Lott testified on direct examination that Respondent prescribed D.F. "150 milligrams of equivalent, [or] so, of oxycodone." (T. 28). On cross-examination, Dr. Lott conceded that he had mistakenly looked at a prescription

23.

Based on the long distances that D.F. traveled on a monthly basis, coupled with the "morphine equivalent" he was prescribed, Dr. Lott determined that D.F.'s treatment fell below the standard of care. (T. 28-29).

**Patient J.B.**

24.

J.B. was a thirty-year-old male suffering from disc herniation and arthritis. (T. 29).

25.

J.B. traveled from Kentucky to Georgia to receive care from Respondent. (T. 29). The records for J.B. include an MRI report from a clinic in Florida. (Exhibit P-3).

26.

Respondent saw J.B. on five occasions. On all five visits, he prescribed J.B. 60 tablets of Xanax 1mg; however the amount of oxycodone prescribed varied as the records contain two prescriptions for 90 tablets, one prescription for 96 tablets, and two prescriptions for 120 tablets. (Exhibit P-3).

27.

Dr. Lott characterized these prescriptions as excessive. (T. 29-30; Exhibit P-3).

28.

Dr. Lott testified that J.B.'s case "is along the same line as the others," and that Respondent's medical treatment fell "below the standard of care." (T. 29).

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written by a prior physician, and that the records in fact showed that Respondent prescribed D.F. "90 milligrams" of oxycodone. (T. 39-40). However, he maintained that a 90 milligram prescription of oxycodone would not change his opinion that Respondent's treatment of D.F. fell below the minimum standard of care. (T. 40-41).

**Patient K.S.**

29.

K.S. was a twenty-four-year-old male with lumbar spondylitis. Prior to receiving treatment from Respondent in Georgia, K.S. had traveled to Florida for treatment.[7] (T. 31). His records include an MRI report from a Florida clinic. (Exhibit P-11).

30.

Based on the MRI report, Dr. Lott concluded that K.S. had an "age appropriate" spine, as individuals older than eighteen experience "normal degenerative disc and early stage lumbar spondylosis." (T. 31-32; Exhibit P-11).

31.

Respondent saw K.S. on three occasions. On the first two visits, Respondent prescribed 30 tablets of Xanax 1mg and 90 tablets of oxycodone 30mg. On the third visit, Respondent prescribed 60 tablets of Xanax 1mg[8] and 90 tablets of oxycodone 30mg.[9] (Exhibit P-11).

32.

Dr. Lott concluded that, based on the "age appropriate" condition of K.S's spine, the amount of oxycodone prescribed, and K.S.'s history of driving to different states for treatment, Respondent's treatment of K.S. did not meet the standard of care. (T. 31-32).

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[7] Dr. Lott testified that K.S. traveled "from Kentucky to Florida now to Georgia." (T. 31). However, the records indicate that K.S. resided in West Virginia, not Kentucky. (See Exhibit P-11).

[8] The Statement of Matters Asserted incorrectly states that 30 tablets of Xanax 1mg were prescribed on all three visits. (See Matters Asserted ¶ 4(E); Exhibit P-11).

[9] Dr. Lott testified that Respondent prescribed K.S. between "90 milligrams and 240 milligrams" of oxycodone, and that "240 milligrams is pretty high." (T. 31). However, it is unclear as to why Dr. Lott stated that K.S. was prescribed a range of oxycodone amounts, as the records show that all three prescriptions were for 90 tablets of oxycodone 30mg. (See Exhibit P-11).

**Patient M.T.**

33.

M.T. was a thirty-six-year-old male with lumbar disc herniation. (T. 32).

34.

Prior to receiving treatment from Respondent in Georgia, M.T. had traveled from North Carolina to Florida to obtain treatment. (T. 32; Exhibit P-12). Records for M.T. include an MRI report from a Florida clinic. (Exhibit P-12).

35.

Records show that Respondent saw M.T. on two occasions and both times prescribed 60 tablets of Xanax 1mg and 90 tablets of oxycodone 30mg. (Exhibit P-12).

36.

Other than prescribing Xanax and oxycodone, Respondent did not offer M.T. any other treatment options, such as spinal interventions, rehabilitation, or surgical evaluations for the herniated discs. (T. 32).

37.

Based on Respondent's failure to offer M.T. any treatment other than narcotics, the excessive amount of medication prescribed and the distance that M.T. was driving, Dr. Lott concluded that Respondent's medical treatment fell below the standard of care. (T. 32).

**Patient M.L.**

38.

M.L. was a twenty-nine-year-old female suffering from lumbar radiculopathy. (T. 33).

39.

M.L. listed a home address in Kentucky on her patient information sheet. The records also include an MRI report from a Florida clinic. (Exhibit P-6).

40.

Records indicate that Respondent saw M.L. on one occasion and prescribed 30 tablets of Xanax 1mg and 90 tablets of oxycodone 30mg. (Exhibit P-6). According to Dr. Lott "90 milligrams" of oxycodone is the equivalent of 180 milligrams of morphine. (T. 33).

41.

Respondent did not offer M.L. any treatment options other than prescribing narcotics. (T. 33; Exhibit P-6).

42.

Dr. Lott testified that the amount of M.L.'s medication was "pretty excessive" and fell below the standard of care. (T. 33).

**Patient P.M.**

43.

P.M. was a forty-five-year-old female with degenerative disc disease. Dr. Lott testified that her condition was "age appropriate." (T. 33).

44.

Prior to receiving treatment from Respondent in Georgia, P.M. had traveled from Ohio to Florida for treatment, which Dr. Lott described as a "pretty long distance to travel." (T. 33; Exhibit P-8).

45.

The records for P.M. include an MRI report from a Florida clinic. (Exhibit P-8).

46.

Records indicate that Respondent saw P.M. on three occasions. On the first visit, Respondent prescribed 30 tablets of Xanax 1mg and 180 tablets of oxycodone 30mg. On the next two visits, Respondent prescribed 60 tablets of Xanax 1mg and 120 tablets of oxycodone 30mg.[10] Dr. Lott testified that Respondent prescribed P.M. "180 milligrams" of oxycodone. (T. 33; Exhibit P-8).

47.

Based on these prescriptions, Dr. Lott testified that P.M.'s treatment fell below the standard of care. (T. 33).

**Patient R.M.**

48.

R.M. was a forty-year-old male patient suffering from lower back pain.[11] (T. 33; Exhibit P-7).

49.

Prior to receiving treatment from Respondent in Georgia, R.M. drove from West Virginia to Florida for medication. (T. 33; Exhibit P-7). The records for R.M. include an MRI report from a Florida clinic. R.M. did not provide the name of his prior physician on the patient information sheet. (Exhibit P-7).

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[10] Regarding P.M., the sum total of Dr. Lott's testimony was as follows: "Next patient, [P.M]. It's 45 year-old female with degenerative disc disease, which again is age appropriate for this young lady. She's on 180 milligrams of oxycodone. Driving from Ohio to Florida, now to Georgia. Pretty long distances to travel, and again I think the amount of medicine she's on and other treatments that were offered, this is below standard of care." (T. 33). Dr. Lott did not clarify what he was referring to regarding "other treatments that were offered." (Exhibit P-8).

[11] Dr. Lott's did not specify R.M.'s medical condition in his testimony. In fact, the sum total of Dr. Lott's testimony regarding R.M. was as follows: "R.M. which is a 40-year old female—40-year old male, rather. Ninety to 100 milligrams, fluctuating prescriptions written. Driving from West Virginia to Florida, now to Georgia to get treatment. Again, none of those records that I have were obtained. And again, I think that is – with that medication regimen and lack of records obtained that's below the standard of care." (T. 33). Dr. Lott testified that Respondent had written "fluctuating prescriptions" between 90 and 100 milligrams, though he did not specify whether these prescriptions were for oxycodone or Xanax. (T. 33). The records demonstrate that R.M.'s two prescriptions for Xanax and two prescriptions for oxycodone were identical. (See Exhibit P-7).

50.

Records indicate that Respondent saw R.M. on two occasions. On the first visit, Respondent prescribed 30 tablets of Xanax 1mg; 90 tablets of oxycodone 30mg; and 1 Z-Pack. On the second visit, Respondent prescribed 30 tablets of Xanax 1mg; 90 tablets of oxycodone 30mg; and 130 tablets of Meloxicam 15mg. (Exhibit P-7).

51.

Dr. Lott testified that "with that medication regimen and lack of records obtained that's below the standard of care." (T. 33).

**Patient T.S.**

52.

T.S. was a thirty-year-old female who suffered from herniated disc disease, which Dr. Lott testified was "pretty par for the course for a 30-year-old female." (T. 34).

53.

T.S. traveled from Kentucky to Georgia to be treated by Respondent. (T. 33; Exhibit P-9).

54.

Respondent saw T.S. one time and prescribed 60 tablets of Xanax 1mg and 90 tablets of oxycodone 30mg. (Exhibit P-9). According to Dr. Lott, Respondent's treatment fell below the minimum standard of care. (T. 34).

**C. DEA Investigation**

55.

After Respondent opened Pathway, Agent Michael Marbert, a special agent with the DEA, received information that Respondent had worked at a "previous pain clinic that had been closed down." (T. 48-50). He also learned that Respondent was prescribing pain medication "outside . . . the legal limits." (T. 48-50). Several pharmacies in the Augusta area were refusing to fill prescriptions written by Respondent. (T. 86-87). Agent Marbert initiated an investigation.[12]

56.

As part of the investigation, Agent Marbert directed an undercover officer to make four controlled visits to Pathway. He testified that the undercover officer posed "as somebody seeking pain medication for a minor reason that didn't actually qualify for Schedule II medications." (T. 50-51). Respondent wrote prescriptions for the undercover officer for 100 tablets of oxycodone 30mg on four occasions, and at least one prescription for Xanax 2mg. (T. 51, 54).[13]

57.

Agent Marbert also conducted surveillance at the clinic. He observed individuals traveling "two to three, four hours" to Pathway from South Georgia, North Carolina, and South Carolina.

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[12] Agent Marbert obtained prescription records from pharmacies and spoke with pharmacists about the prescriptions submitted from Pathway. (T. 50). None of these pharmacy records, however, were submitted into evidence.

[13] Agent Marbert identified oxycodone and Xanax as "controlled substances." However, no testimony was presented during the hearing as to whether oxycodone or Xanax were Schedule II or III controlled substances as required under O.C.G.A. §§ 43-34-282(7), 43-34-283(a). The undersigned takes judicial notice that O.C.G.A. § 16-13-26(1)(A)(xiv) lists oxycodone as a Schedule II controlled substance. O.C.G.A. § 16-13-28(a)(1) identifies alprazolam, also known as Xanax, as a Schedule IV substance. See Liles v. State, 311 Ga. App. 355, 357 (2011); and Wright v. State, 304 Ga. App. 651, 651 (2010).

Although Pathway was located within fifteen miles of the Georgia-South Carolina border, patients who arrived at Pathway from South Carolina came from the Greenville-Spartanburg area, which was two hours away. (T. 51-52). Most of the patients paid cash. (T. 52).

58.

On October 29, 2014, DEA agents executed a search warrant at the clinic. During the search Respondent surrendered his DEA certificate that permitted him to prescribe Schedule II, III, and IV narcotics. Law enforcement officers also obtained medical records and interviewed Respondent. (T. 52-53, 58-59, 62).

59.

Agent Charles Sikes, a diversion investigator with the DEA, interviewed Respondent. (T. 52-53, 58-59). During the interview, Respondent "told me that the Pathway to Wellness was primarily a pain clinic, that at least 65 percent of his patients were treated by him for pain management. And that he also saw some patients for weight loss and preventative maintenance—or preventative medical care." (T. 59). Agent Sikes stated that Respondent offered the "65 percent" figure in response to being asked to give a percentage of "how many patients you see for pain management." (T. 66).[14] Respondent acknowledged that the Board had denied his application for a pain-management license. (T. 60).

60.

Respondent explained to Agent Sikes that he did not require his patients to bring in prior treatment records, but expected patients to provide MRI reports. (T. 60-61, 63). Although

[14] Respondent testified that Pathway did not need to be licensed as a pain management clinic because it had not yet reached a "target" of 200 patients. (T. 79-80, 91, 93). Respondent asserted that his clinic had only treated a total of ninety patients, which included individuals treated for "medical health" and "weight loss." (T. 80-81).

Respondent screened all of his patients for drugs during their initial visits, regardless of whether the patients tested positive or negative, he would prescribe controlled substances. (T. 61).

61.

On July 15, 2015, the Superior Court of Columbia County issued an indictment charging Respondent with operating an unlicensed pain management clinic, in violation of the Georgia Pain Management Act, O.C.G.A. §§ 43-34-283(a), 43-34-288. (Matters Asserted ¶ 8; Exhibit P-18). The indictment stated the following:

> [B]etween the 27th day of September, 2013, and the 29th day of October, 2014, [Respondent] did operate a pain management clinic, to-wit: Pathway to Wellness Center, PC, wherein more than fifty (50) percent of the annual patient population was treated for chronic pain for non-terminal conditions by the use of Schedule II or III Controlled Substances, without a license issued by the Georgia Composite Medical Board . . . .

(Exhibit P-18). Respondent testified that he was arrested on April 20, 2015, and has been in custody for the past six months. (T. 78).

## III. Conclusions of Law

1.

The Board bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

Professional licensing boards may discipline a licensee upon a finding by a majority of the entire board that the licensee has engaged in unprofessional conduct that fails to conform to the minimal reasonable standards of acceptable and prevailing practice. O.C.G.A. § 43-1-19(a)(6).

3.

In turn, under O.C.G.A. § 43-34-8(a), the Board has the authority to discipline a physician upon a finding that the licensee has:

> (7) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimum standards of acceptable and prevailing medical practice and shall also include, but not be limited to, the prescribing or use of drugs, treatment, or diagnostic procedures which are detrimental to the patient as determined by the minimum standards of acceptable and prevailing medical practice or by rule of the board;
>
> ...

4.

Pursuant to Ga. Comp. R. & Regs. r. 360-3-.02, unprofessional conduct includes:

> (7) Failing to maintain appropriate patient records whenever Schedule II, III, IV or V controlled substances are prescribed. Appropriate records, at a minimum, shall contain the following:
>
> (a) The patient's name and address;
>
> (b) The date, drug name, drug quantity and patient's diagnosis necessitating the Schedule II, III, IV or V controlled substances prescription; and
>
> (c) Records concerning the patient's history.
>
> ...
>
> (18) Any other practice determined to be below the minimum standards of acceptable and prevailing practice.

5.

The Board is also authorized to take disciplinary action pursuant to Ga. Comp. R. & Regs. r. 360-3-.03 for violations of laws, rules, and regulations which relate to or in part regulate the practice of medicine. These laws, rules, and regulations include, but are not limited to, the Georgia Medical Practice Act, O.C.G.A. §§ 43-34-20 to -45; and the Rules of the Georgia Composite Medical Board, Ga. Comp. R. & Regs. r. 360-3-.01 et seq. Disciplinary action may include revocation of a professional license. O.C.G.A. § 43-34-8(b)(1)(F).

6.

O.C.G.A. § 43-34-283(a) provides as follows:

> On and after July 2013, all pain management clinics shall be licensed by the board and shall biennially renew their license with the board. In the event that physicians in a pain management clinic practice at more than one location, each such location shall be licensed by the board, and such license shall be nontransferable.

7.

A "pain management clinic" is defined as follows:

> a medical practice advertising "treatment of pain" or utilizing "pain" in the name of the clinic or a medical practice or clinic with greater than 50 percent of its annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances.

O.C.G.A. § 43-34-282(7). "Annual patient population" refers to "persons seen by a clinic or practice in a 12 month calendar year . . . ." O.C.G.A. § 43-34-282(1).

8.

Any person who operates a pain management clinic without a license shall be guilty of a felony. O.C.G.A. § 43-34-288.

9.

The Board proved, by a preponderance of the evidence, that Respondent engaged in unprofessional conduct or a practice harmful to the public in violation of O.C.G.A. §§ 43-1-19, 43-34-8 and Ga. Comp. R. & Regs. r. 360-3-.02. These practices departed from, or failed to conform to, the minimum standards of acceptable and prevailing medical practice.

10.

Based on the evidence presented at the hearing, Respondent's treatment of AWC patients A.S., C.L.H., D.F., J.B., K.S., M.L., M.T., P.M., R.M., and T.S. fell below the minimum standards of acceptable and prevailing medical practice. Albeit that Dr. Lott's testimony was at times cursory and/or inaccurate, the undersigned finds credible his statements that Respondent prescribed oxycodone in excessive amounts given the patients' ages and conditions. In particular, patients D.F., K.S., P.M., and T.S. all presented with spinal conditions that were "age appropriate" or otherwise normal for individuals their age, yet Respondent prescribed them high amounts of oxycodone. This practice falls below the minimum standard of care, and thus constitutes unprofessional conduct under Ga. Comp. R. & Regs. r. 360-3-.02.[15]

11.

Additionally, Respondent solely offered pharmacologic treatment options to the ten AWC patients. In the cases of patients A.S., M.L., and M.T., there was no documentation in the record reflecting that, in conjunction with prescribing controlled substances, Respondent presented alternative treatments. For example, Respondent failed to offer M.T. alternative treatments like

[15] Dr. Lott provided extensive testimony about the fact that all ten patients lived outside of Georgia and had a history of traveling outside of their state of residence to seek treatment. While Dr. Lott stated that this pattern of travel suggested that Respondent offered treatment "different from the standard of care of what that person's community is providing," he did not testify as to whether Respondent's failure to acknowledge the patients' practice of seeking out-of-state treatment fell below the minimal standards of acceptable and prevailing medical practice. Thus, the Board failed to demonstrate how the patients' out-of-state residencies pertain to whether Respondent committed unprofessional conduct under O.C.G.A. § 43-34-8(a) and Ga. Comp. R. & Regs. r. 360-3-.02.

spinal interventions, rehabilitation, or surgical evaluations for his herniated discs. Such omissions violate the minimum standard of care, and thus constitute unprofessional conduct under Ga. Comp. R. & Regs. r. 360-3-.02.

12.

Respondent also failed to maintain appropriate medical records concerning the patients' medical histories. The records for patients A.S., C.L.H., and R.M. fell below the minimum standards of acceptable and prevailing medical practice because Respondent did not obtain medical records from the patients' previous physicians.[16] Other than MRI reports, Respondent did not require patients to bring in prior treatment records. Respondent's record-keeping thus failed to conform to the minimum standards of acceptable and prevailing medical practice. O.C.G.A. § 43-34-8(a)(7); Ga. Comp. R. & Regs. r. 360-3-.02(7)(c).

13.

The aforementioned violations provide sufficient justification to revoke Respondent's license.[17]

## IV. Decision

Based on the aforementioned Findings of Fact, the Board has proven by a preponderance of the evidence that Respondent engaged in unprofessional conduct that failed to conform to the minimal standards of acceptable and prevailing practice and engaged in conduct that violated

[16] In the cases of A.S. and C.L.H., both patients represented to Respondent that their prior physician's office had closed, while R.H. did not list the name of a previous physician. The records for all three patients do include MRI reports and records of prior prescriptions. (See Exhibits P-5, P-7, & P-10).

[17] During the hearing, the Board's evidence as to whether Respondent violated O.C.G.A. § 43-34-283(a) by operating a pain clinic without a license was as follows: (a) the Board had denied Respondent's application for a pain-clinic license for Pathway; (b) Respondent admitted that he knew of this denial; and (c) Respondent told a DEA agent that "65 percent" of his patients at Pathway were seen for "pain management." Even accepting Respondent's admissions as true, the admissions, by themselves, do not demonstrate that all of the "pain patients" making up the 65 percent were treated for "chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances" which are conditions for the license set by statute. See O.C.G.A. § 43-34-283(a).

O.C.G.A. §§ 43-1-19, 43-34-8, and Ga. Comp. R. & Regs. r. 360-3-.02. For the reasons stated, the undersigned recommends Respondent's license be **REVOKED**.

**SO ORDERED, this** 17 **day of** December, **20**15.

**RONIT WALKER**
**Administrative Law Judge**