

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: The Emergency Suspension of the License of
Norbert Falasco, M.D.
License Number: ME 43769
Case Number 2003-26411

ORDER OF EMERGENCY SUSPENSION OF LICENSE

John J. Aguirre, M.D., M.B.A., Secretary for the Department of Health, hereby ORDERS the Emergency Suspension of the license of Norbert Falasco, M.D., ("Dr. Falasco") to practice as a physician. Dr. Falasco holds license number ME 43769 and his last known address is 7020 Edgeworth Drive, Orlando, Florida 32819. The following Findings of Fact and Conclusions of Law support the Emergency Suspension of Dr. Falasco's license to practice medicine.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state agency charged with regulating medical doctors pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.
2. At all times material to this proceeding, Dr. Falasco was licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.
3. Section 456.073(8), Florida Statutes, empowers the Secretary of the Department to summarily suspend Dr. Falasco's license to practice medicine in the State of Florida, in accordance with Section 120.60(6), Florida Statutes.

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4. On or about January 25, 2003, an agent assigned to the Pharmaceutical Crimes Unit of the Orange County Sheriff's Office ("OCSO") arrested Dr. Falasco and charged him with three counts of trafficking in hydrocodone. According to Florida law enforcement agents, before his arrest, Dr. Falasco was suspected of writing prescriptions for controlled substances for persons who were not his patients and for non-existent persons. These fraudulent prescriptions were often written for hydrocodone.

5. Hydrocodone, an opioid analgesic, is a Schedule III controlled substance listed in Section 893.03(3), Florida Statutes. Hydrocodone is indicated for the relief of moderate to moderately severe pain. A substance in Schedule III has a lesser potential for abuse than the substances listed in Schedule II, and has a currently accepted but restricted medical use in treatment in the United States. Abuse of hydrocodone may lead to moderate or low physical dependence or high psychological dependence.

6. On or about September 18, 2003, in Case No. 48-03-CF-1093-O/A, in the Ninth Judicial Circuit Court in and for Orange County, Florida, Dr. Falasco pleaded guilty to "attempted trafficking in hydrocodone (more than four grams, less than fourteen grams)," a felony offense, in violation of Sections 777.04 and 893.135(1)(c)(1)a, Florida Statutes. Dr. Falasco admitted that he had been writing fraudulent hydrocodone prescriptions and obtaining hydrocodone through use of his fraudulent hydrocodone prescriptions for approximately six months prior to his arrest.

7. On or about September 18, 2003, in Case No. 48-03-CF-1093-O/A, in the Ninth Judicial Circuit Court in and for Orange County, Florida, the Court adjudicated Dr. Falasco guilty of "attempted trafficking in hydrocodone (more than four grams, less than fourteen grams)," a felony offense, in violation of Sections 777.04 and 893.135(1)(c)(1)a, Florida Statutes, and sentenced him to serve five years in the custody of the Department of Corrections. The Court ordered Dr. Falasco's five-year prison term to be suspended on the condition that Dr. Falasco successfully complete a seven-year term of supervised probation. Dr. Falasco's seven-year term of probation included the following conditions: a specific term of "no early termination;" no consumption of alcohol or drugs unless prescribed by a treating physician; evaluation and participation as recommended in a court-approved substance abuse program; random urine drug screens; compliance with all terms and conditions of the Professionals' Resource Network ("PRN"); performance of 288 hours of community service; providing monthly reports to probation officer; and payment of costs of supervision.

8. PRN is the impaired practitioners program for the Board of Medicine, pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between the treatment providers, PRN and the Department, for the protection of the public. Raymond M. Pomm, M.D., is the Medical Director of the PRN and is charged with responsibility for the oversight of

the program and documentation of compliance and noncompliance with PRN monitoring contracts.

9. By letter dated November 10, 2003, the Department notified Dr. Falasco of its pending investigation regarding his criminal conviction under Chapter 893, Florida Statutes, as set forth above.

10. On or about December 8, 2003, Dr. Falasco advised a Department investigator that he was currently unemployed but was "looking for work" as a pediatrician.

11. Section 456.074(1), Florida Statutes (2003), provides that the Department shall issue an emergency order suspending the license of any person licensed under Chapter 458 who is convicted of a felony under Chapter 893, Florida Statutes. Because Dr. Falasco was convicted of trafficking hydrocodone in violation of Section 893.135(1)(c)(1)(a), Florida Statutes, a second-degree felony, the Department is required to issue an emergency suspension order suspending Dr. Falasco's license to practice medicine.

12. In addition, Section 458.331(1)(c), Florida Statutes (2003), subjects a licensee to discipline, including suspension, for "[b]eing convicted or found guilty of . . . a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine."

13. As detailed above, on or about September 18, 2003, in Case No. 48-03-CF-1093-O/A, in the Ninth Judicial Circuit Court in and for Orange County, Florida, Dr. Falasco pleaded guilty to, and was found guilty of, the crime of

trafficking hydrocodone, a felony offense under Chapter 893, Florida Statutes. Dr. Falasco was able to write the fraudulent hydrocodone only by virtue of his medical license, which allows him to write prescriptions for controlled substances to patients. But for his license to practice medicine, he would not have been able to write the fraudulent hydrocodone prescriptions that resulted in his conviction under Chapter 893, Florida Statutes. The crime and resulting conviction, is therefore, related to the practice of medicine or to the ability to practice medicine, in violation of Section 458.331(1)(c), Florida Statutes (2003).

14. Section 456.072(1)(a), Florida Statutes (2002), authorizes the Department to discipline a licensee for making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

15. In or about July 2002 through January 2003, Dr. Falasco fraudulently obtained possession of hydrocodone, a controlled substance, by writing fraudulent prescriptions for hydrocodone to non-existent patients, and to persons who were not his patients, for the purpose of obtaining the controlled substance for his own personal use in violation of Section 456.072(1)(a), Florida Statutes (2002).

16. Section 456.072(1)(w), Florida Statutes (2003), authorizes the Department to discipline a licensee for failing to report to the board in writing within 30 days after the licensee has been convicted or found guilty of a crime in any jurisdiction.

17. Dr. Falasco failed to report to the Board of Medicine that he had been convicted of committing a crime, specifically a felony offense under Chapter 893, Florida Statutes, in Case No. 48-03-CF-1093-O/A as provided herein above, in violation of Section 456.072(1)(w), Florida Statutes (2003).

18. Section 458.331(1)(q), Florida Statutes (2002), subjects a licensee to discipline, including suspension, for prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

19. Dr. Falasco unlawfully prescribed controlled substances in violation of Section 458.331(1)(q), Florida Statutes (2002), by prescribing controlled substances to patients he had never examined, and to persons who did not exist, for the purpose of obtaining controlled substances through fraudulent means for his personal consumption.

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

21. Dr. Falasco's behavior was not an isolated instance of misjudgment or even poor judgment, but rather part of an extended course of criminal activity that he admitted continued from July 2002 through January 2003. During that period of time, Dr. Falasco admittedly wrote fraudulent prescriptions for purposes of obtaining controlled substances without any medical justification for doing so and without any regard to the health and safety of the public.

22. Dr. Falasco's inappropriate medical practices and illegal method of conducting his medical practice presents an immediate and serious danger to the health, safety, and welfare of the public.

23. Dr. Falasco has demonstrated a flagrant disregard for the duties and responsibilities imposed upon a physician practicing in the State of Florida and for the health and welfare of his patients. Dr. Falasco's egregious and repeated conduct of writing fraudulent prescriptions for controlled substances and of obtaining controlled substances through fraudulent means for his personal use, constitutes a breach of the trust and confidence that the Legislature placed in him by issuing him a license to practice medicine.

24. Dr. Falasco's lack of good judgment and moral character and his disregard for the laws of this State represent a significant likelihood that Dr. Falasco will cause harm to the public. This probability constitutes an immediate and serious danger to the health, safety, and welfare of the citizens of the State of Florida. Nothing short of the immediate suspension of Dr. Falasco's license to practice medicine will ensure the protection of the public from this danger.

CONCLUSIONS OF LAW

1. The Secretary of the Department of Health has jurisdiction over this matter pursuant to Sections 456.073 and 20.43.(3)(g), Florida Statutes, and Chapter 458, Florida Statutes, as set forth above.

2. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Falasco has violated Section 456.074(1), Florida Statutes (2003), which

requires the Department to issue an emergency order suspending the license of any person licensed under Chapter 458 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under Chapter 893."

3. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Falascso has violated Section 458.331(1)(c), Florida Statutes (2003), by being convicted or found guilty of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine.

4. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Falasco has violated Section 456.072(1)(a), Florida Statutes (2002), by making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

5. Based on the foregoing Findings of Fact, the Secretary concludes that Dr. Falasco has violated Section 456.072(1)(w), Florida Statutes (2003), by failing to report to the board in writing within 30 days after the licensee has been convicted or found guilty of a crime in any jurisdiction.

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

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

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

1. The license of Norbert Falasco, M.D., License Number ME 43769, is hereby immediately suspended.

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

3. Dr. Falasco shall comply with the rules regarding the closing of a medical practice set forth in Florida Administrative Code Rule 64B8-10.

DONE and ORDERED this 18th day of December, 2003.



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

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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