The practice of pain management allows prescription of controlled substances by a physician to relieve pain and suffering. It is now well recognized that opioid narcotic medications have an important role in the treatment of pain. These medications may be prescribed for acute short term use such as trauma, injury or surgery. They are also a mainstay in the treatment of pain associated with Cancer and other terminal illness. Within the last 15 years these medications have also been utilized to treat chronic conditions that are associated with intractable pain. Pain that cannot be otherwise treated or cured. These are potent medications with potential for abuse and harm and must be used carefully. It is incumbent on the physician to adhere to certain guidelines to ensure that these medications are not misused, abused or diverted into illegal use. Guidelines and standards have been established by both governmental and professional groups to help the physician adhere to proper practices that will prevent such problems. On the federal level there are requirements established by the Drug Enforcement Agency. At the state level there are also requirements for narcotic use that may vary from state to state. Together these regulations seek to prevent inappropriate or illegal use of narcotic medications.

I have had the opportunity to review prescriptions written for narcotic medications in this case. Many of these prescriptions represent violations of regulatory standards. The most striking findings however are deviations from typical practice patterns. These deviations from clinical practice standards are so blatantly abnormal that they suggest fictitious or falsified information. I will discuss these deviations individually below.

The evidence reviewed that formed the basis of my opinions included the following

1. Prescriptions: Undated, filled 9-22-04 (start # 194639)

Dated 10-19-04, filled 10-19-04 (start # 195913)

2. Fax Cover Sheets: Add Promethazine w/ Codeine

Dated 11-30-04, filled 12-1-04 thru 12-4-04 (start # 198748)

Dated 12-6-04, filled 12-6-04 (start # 199288)

Dated 12-20-04, filled 12-21-04 thru 12-28 (start # 201076)

Dated 12-27-04, filled 12-28-04 thru 12-30 (start # 201653)

3. Fax Cover Sheets: Delete Alprazolam

(4 patients) Dated 6-2-05, filled 6-4-05 (start #217712)

(remaining patients) Dated 6-13-05 (start #218573)

Five additional faxes instruct to omit alprazolam: dates: 5-24-05; 6-13-05; 6-20-05; 6-23-05; 7-6-05.

1. Dr Elder is unable to provide practice records which demonstrate his involvement and rationale for prescribing medication to each individual patient. Physicians, who prescribe any medication, are required to maintain records. In the case of federally scheduled narcotic medications this requirement is even more stringent. It is incumbent on any physician prescribing narcotic medication to document the rationale for its use. This would include a history of trauma or injury which discusses the type of pain, location, duration, frequency and presumed mechanism of pain. This history is then followed documentation of an exam and review of diagnostic studies such as x-rays, which support the physician's diagnosis and treatment plan. The physician generally will follow recommendations to treat with non-narcotic medications and other treatments before considering the use of narcotic medications to treat pain. Once a decision to treat with narcotic medication has been made, the physician must document this rationale and keep careful records of the prescriptions for these medications. There must be evidence of regular follow up. This ensures that these medications which have potential for misuse and abuse will not be diverted from their intended use, the relief of pain and suffering. In this case there are NO records. Not a single record can be produced to demonstrate physician/ patient involvement at any level. There are both federal and state requirements for this documentation. This is clearly a violation of legal documentation requirements for medical practice.

2. Physicians must write prescriptions in a specific manner. These prescriptions must include patient name, medication dose, number of pills and instructions. Physician signature and DEA # are also required. A very important part of a controlled substance prescription is the inclusion of date. Physicians who write for controlled substances understand that there may be attempts by unscrupulous patients to obtain prescriptions from more than one practitioner. In order to document the timing of the prescription given for a controlled substance, it is mandatory to provide a date that the prescription was written. This also allows pharmacies to release medications within a predetermine time frame. Non-dated prescriptions for controlled substances are always refused by pharmacies in my experience. They simply will not fill them. There are multiple non-dated prescriptions from this physician. In one entire "batch" of prescriptions no date can be found. Prescriptions are written individually at each clinic visit. While it might be possible for a physician to forget to put a date on one or two prescriptions, the fact that date is missing on multiple prescriptions in fact one entire day suggests that these prescriptions are being written in bulk without seeing patients.

The requirements summarized above are outlined in Texas through the Texas Occupational Code 107.1 – 170.3. This document provides further detail on the specific State requirements through what is known as the "Intractable Pain Treatment Act."

3. Each patient is different. Some older, some younger. Patients have a variety of illness and allergies or sensitivities to medications that make prescribing difficult and challenging. Each patient requires a different approach and tailoring to provide the proper medication at the proper dose. In actual pain practices a review of 10 patient records will likely demonstrate 10 different prescribing methods. By this I mean that, some patients have an allergy or sensitivity to one medication or another. Some use very little to achieve relief, others need more. Each individual patient has their own specific needs. One size does not fit all patients or types of pain. In this practice everyone received the same medications, the same doses and the same combination of medications. On the same day multiple prescriptions were changed to reflect new medications to an entire "batch" of patients. This does not happen in clinical practice. An entire batch of patients does not change at the same time requiring a change in medication. In review of records from August 2004 thru August 2005 there are two times when entire batches of prescriptions were changed to reflect different dosing for dozens of patients at once. The use of Hydrocodone in addition to promethazine with codeine is a bizarre and unusual treatment for a single patient and does not reflect typical pain physician practice. Promethazine is a cough syrup and has limited use in the treatment of pain. A Texas State Board of Pharmacy newsletter from spring 2001 noted that Houston and southwest Texas was experiencing a problem with Promethazine diversion and illegal prescribing. Promethazine, known as "syrup" or "lean" was being used in combination with marijuana or mixed with alcohol. The fact that multiple patients suddenly began receiving these combinations is remarkable. This is clearly abnormal, does follow typical prescribing behaviors of physicians and does not reflect patient individual variations. This clearly suggests a fraudulent behavior.

4. When Dr. Elder moved to a different clinic, he immediately began prescribing in the same manner. High volumes, identical prescriptions. He claims that these were patients that followed him to his new practice location however review of 110 records did not find a single carry over patient. To immediately move into a new practice location, claim to have an immediate high volume patient base and then immediately provide identical controlled substance prescriptions suggests fraudulent behavior.

5. The arrangement between physician, intermediary agent and pharmacy is extremely unusual and suspicious. Each patient will generally obtain prescriptions from a different local pharmacy. Prescriptions are not typically paid for in cash. Mailing prescriptions to an out of

state individual pharmacy in bulk without any documentation of later distribution to individual patients suggests fraudulent behavior.

In conclusion, there are violations of regulation in the prescribing of controlled substances, the most egregious being the lack of records for review. The writing of prescriptions without date is also a violation. Practice patterns however reflect a more devious problem with this practice. Taken as a whole the physician's prescribing practices suggest a fictitious practice of medicine with grossly abnormal prescribing. It is likely that these prescriptions were written fraudulently, outside the scope of medical practice and not for a legitimate medical purpose.