

IN THE MATTER OF
HENRY KERN, P.D.
LICENSE NO. 8183

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHARMACY

* * * * *

CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Pharmacy (the "Board"), and subject to Health Occupations Article, §12-315, Annotated Code of Maryland (the "Act"), the Board charged Henry Kern, (the "Respondent") with violations of §12-313 of the Act.

Specifically, the Board charges the Respondent with violation of the following provisions:

Subject to the hearing provisions of §12-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee;

- (2) Fraudulently or deceptively uses a license;
- (4) Provides professional services while:
 - (i) Under the influence of alcohol; or
 - (ii) Using any narcotic or controlled dangerous substance, as defined in Article 27 of the Code, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (6) Willfully makes or files a false report or record as part of practicing pharmacy;
- (7) Willfully fails to file or record any report that is required by law;
- (8) Willfully impedes or obstructs the filing or recording of any report that is required by law;
- (14) Without first having received a written or oral prescription for the drug from an authorized

prescriber, dispenses any drug for which a prescription is required;

(16) Violates any provision of §12-509 of this title, which concerns the labeling requirements for prescription medicines;

(20) Is professionally, physically, or mentally incompetent;

The Respondent was given notice of the charges and the issues underlying those charges by letter and charging documents sent to Respondent on July 30, 1993. A prehearing conference on those charges was held on August 24, 1993 and was attended by Melvin Rubin, P.D., and William Adams, Members of the Board; Roslyn Scheer, Executive Director of the Board; Catherine Putz, Pharmacist Compliance Officer; Respondent and Janet Klein Brown, Assistant Attorney General, Administrative Prosecutor. Also in attendance were Tony Tommasello, B.S. Pharm., M.S., Pharmacists' Rehabilitation Committee and Pam Ferinde, R.N., B.S.N., M.A.

Following the prehearing conference, the parties and Board agreed to resolve the administrative charges by way of settlement. As a result of negotiations entered into at the prehearing conference the parties have agreed to enter into the following Consent Order.

FINDINGS OF FACT

1. At all times relevant hereto, Respondent was licensed to practice pharmacy in the State of Maryland.

2. On or about April 23, 1992, Respondent was employed as a Staff Pharmacist at Union Hospital of Cecil County ("Union

Hospital"), 106 Bow Street, Elkton, Maryland 21921.

3. On or about April 23, 1992, at approximately 12:22 a.m., Respondent was observed by the Union Hospital House Supervisor, Hospital security guards and Hospital maintenance personnel, in the corridor outside of the pharmacy at Union Hospital attempting to unlock the pharmacy door without a key. At that time, Respondent's speech was slurred and his physical coordination was severely impaired.

4. On April 23, 1992, Respondent's shift in the hospital pharmacy ended at 6:30 p.m.

5. On or about April 23, 1992, Respondent, at the request of his supervisor, the Manager of Pharmacy, Union Hospital, and the Director of Ancillary Services, voluntarily submitted to a drug toxicology screen. The drug screen report was positive for cocaine.

6. On or about April 23, 1992, Respondent admitted to his supervisor, the Manager of Pharmacy and to a staff member of Family Outpatient Services, Detoxification Program, Union Hospital, that he had an alcohol problem and used and abused cocaine.

7. On or about April 24, 1992, the Manager of Pharmacy, Union Hospital, conducted an inventory of the Union Hospital Pharmacy and determined that 9.3 grams of Cocaine HCl were unaccounted for.

8. On or about April 26, 1992, Respondent informed the Director of Ancillary Services, Union Hospital, that he removed cocaine from the Union Hospital Pharmacy with authorization.

9. On or about May 22, 1992 through May 27, 1992, Respondent admitted to the Manager of Pharmacy that he put lactose in the Hospital pharmacy's stock bottles of Cocaine HCl.

10. On or about May 22, 1992, all cocaine products in Union Hospital were assayed for purity. The reports of the assay revealed that one 30 ml. bottle of 10% cocaine solution contained no cocaine. One 1/2 gram bottle of cocaine powder showed 16.7% cocaine and another 1/2 gram bottle of cocaine powder showed 20.4% cocaine. Both bottles were diluted with lactose. A total of 25 grams of cocaine were unaccounted for.

11. On or about May 26, 1992, the above events were reported to the Elkton Police Department.

12. On or about May 27, 1992, Respondent's employment at Union Hospital was terminated.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law, that the Respondent violated §12-313(b)(2), (4)(i) (ii), (6), (7), (8), (14), (16) and (20).

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 28 day of OCT, 1993, by a majority of a quorum of the Board, it is hereby

ORDERED that the license of Respondent to practice Pharmacy be **SUSPENDED**; and be it further

ORDERED that said suspension shall be immediately **STAYED** and the Respondent placed on **PROBATION** subject to the following conditions:

1. Respondent shall enter into a new contract with the Pharmacists' Rehabilitation Committee of the Maryland Pharmacists Association (the "Rehabilitation Committee"). The contract shall be for a term of at least three (3) years and continue at least as long as Respondent is on probation. Respondent shall provide the Board within fifteen (15) days of the signing of this Order with a copy of the contract and with a copy of any modification to the contract within fifteen (15) days of the date of any modifications.

2. The Respondent shall continue to participate in the individual and group therapy programs of the Professional Rehabilitation Outpatient Program at Crossroads Centers as recommended by Ms. Pamela Ferinde, R.N., B.S.N., M.A., and comply with all recommendations made to him and in the time limit suggested by his therapist(s), until such time as he is discharged from treatment by the therapist(s). If such discharge occurs, Respondent shall arrange for prompt submission by the therapist(s) of a written discharge report to the Board and the Rehabilitation Committee.

3. If, in violation, of paragraph 2, Respondent fails to continue with his therapist without having been discharged or ordered by the Board to change or cease therapy, Respondent shall immediately notify the Board and the Rehabilitation Committee in writing and have his therapist(s) notify the aforementioned entities.

4. Respondent's employment shall be for no more than 48 hours per week. Respondent shall not work as a "floater."

5. Respondent may work as a dispensing pharmacist. At present, Respondent may not dispense Schedule II controlled dangerous substances. Any changes in dispensing may only be made in accordance with the recommendation of the Rehabilitation Committee after consultation with the therapist. Any limitation on Respondent's ability to dispense must be contained in his contract with the Rehabilitation Committee.

6. Respondent shall provide a copy of this Order to his pharmacy employer. Within ten (10) days of the date of this Order, Respondent shall arrange for his employer to acknowledge in writing to the Board that the employer has received a copy of the Order and agrees to comply with the conditions pertaining to the employer.

7. Respondent shall arrange for his therapist(s), the Rehabilitation Committee, his employer, and Respondent himself to submit written quarterly reports to the Board reporting on Respondent's compliance with this Order and his progress. The reports shall be due on June 1, September 1, December 1 and March 1 of each year until Respondent has been terminated from probation. The first set of reports, from the therapist, the Rehabilitation Committee, the employer and the Respondent, will be due December 1, 1993. The second set of reports will be due March 1, 1994.

8. Respondent shall be responsible for arranging for random observed urine screens at least once a week, in a manner acceptable to the Board. Respondent shall arrange for the results of all screening to be reported directly to his

therapist. His therapist shall advise the Board of the results of all of the screenings by incorporating the results into the quarterly reports.

9. Respondent shall participate in at least three meetings per week of AA or NA programs. Respondent shall report to the Board on a quarterly basis as to the dates and places of meetings attended and as to the progress he has made with AA or NA programs. Respondent shall attach a copy of the proof of this attendance at said meetings in his reports.

10. In the event that Respondent's therapist(s) or the Rehabilitation Committee reports to the Board that the Respondent is incapable of practicing pharmacy safely, or that his previous problems are interfering with his ability to practice pharmacy, the Respondent shall, within 24 hours of being informed by the Board of that report, voluntarily discontinue the practice of pharmacy. The Respondent shall not resume the practice of pharmacy until the Board determines that Respondent is capable of resuming the practice of pharmacy or gives him permission to resume the practice of pharmacy.

11. The Respondent will agree to and follow through with any change in his treatment program determined to be necessary by the Board, based upon the recommendations of his therapists or the Pharmacists Rehabilitation Committee.

12. In addition to the number of continuing education units ("CEUs") needed for license renewal set by the Board for the renewal period of 1995, Respondent shall obtain 15 additional CEUs in substance abuse and verify the completion of these

courses to the Board.

13. In the event that Respondent moves, he shall promptly notify the Board in writing of the change of address and of any change in his home and work telephone number.

14. The Respondent shall refrain from engaging in the conduct which led to his suspension from the practice of pharmacy under the Maryland Pharmacy Act.

15. Respondent shall practice in accordance with the Maryland Pharmacy Act and in a competent manner; and be it further

ORDERED that the conditions of this Consent Order be, and the same is hereby, effective as of the date of this Order; and be it further

ORDERED that in the event the Maryland Board of Pharmacy receives an unsatisfactory report which it believes in good faith to be accurate, or in the event that the Maryland Board of Pharmacy finds for any reason in good faith that Respondent has violated any provision of Title 12 of the Health Occupations Article or regulations thereunder or violated any of the conditions of Probation hereunder, the Board may take immediate action, including, but not limited to, revocation or suspension of the Respondent's license to practice Pharmacy prior to giving the Respondent an opportunity for a hearing. However, Respondent shall have a right to a hearing, in accordance with the Administrative Procedure Act, State Government Article, Section 10-210 et seq., within thirty (30) days after Respondent notifies the Board in writing of his desire for such a hearing regarding

the Board's action. The Board may, in its discretion, fail to entertain such notice if received more than ninety (90) days after its action; and be it further

ORDERED that on or after one year from the commencement date of Probation, the Board shall entertain a petition for modification of Respondent's probationary condition; and be it further

ORDERED that on or after three (3) years of the commencement date of Probation, the Board shall entertain a petition for termination of Respondent's probationary status and full reinstatement of his license to practice pharmacy without any conditions or restrictions as to the scope of practice. If the Board determines that the termination of probation and complete reinstatement would be inappropriate at the time, the Board may modify one or more of the conditions upon which Respondent was placed on probation. However, if Respondent fails to make any such petition, after three (3) years of the commencement of Probation, then his probationary status shall continue indefinitely, subject to the conditions set forth in this Order; and be it further

ORDERED that for purposes of public disclosure as permitted by §10-617(h), State Government Article, Annotated Code of Maryland, this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order.



STEVEN S. COHEN, P.D.
President
Board of Pharmacy

CONSENT OF HENRY KERN

I, Henry Kern, by affixing my signature hereto, acknowledge that:

1. I am aware of my right to be represented by an attorney, and I have elected not to be represented.

2. I am aware that without my consent, my license to practice Pharmacy in this State cannot be limited except pursuant to the provisions of §12-313 of the Act and §10-205 et seq. of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland;

3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent and submit to the foregoing Findings of Fact, Conclusions of Law and Order provided the Board adopts the foregoing Final Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in §12-315 of the Act and §10-205 of the Administrative Procedure Act, State Government Article, Annotated Code of Maryland and any right to appeal as set forth in §12-316 of the Act and §10-215 of the Administrative Procedure Act. I acknowledge that by failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice Pharmacy in the State of Maryland.

Sept. 22, 1993
DATE


HENRY KERN, P.D.


Chief Pharmacist
117 n.e. Perry Point.

STATE OF MARYLAND
CITY/COUNTY OF:

I HEREBY CERTIFY, that on this 22nd day of September,
1993, a Notary Public of the State of Maryland and (City/County),
Harford County, personally appeared Henry Kern, P.D., License
No. 8183, and made oath in due form of law that signing the
foregoing Consent Order was his voluntary act and deed, and the
statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

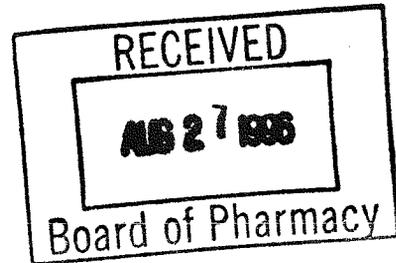
Stephanie L. Agelopas
NOTARY PUBLIC
Stephanie L. Agelopas

My Commission Expires:

August 1st, 1995

Norene Pease, Ex. Dir.
Md. Board of Pharmacy
4201 Patterson Ave.
Baltimore, Md. 21215

HENRY K. KERN
803 Moores Mill Rd
Bel Air, MD 21014



DEAR Ms. Pease:

As I come to the end of my third year with the Board - and four and one-half years with the Pharmacists' Rehab. Committee - I feel I've been through more changes in my life than the Board has in those years, and the Board has been through a few. I would like to petition for full reinstatement of my license in September as it was three years ago that I first appeared before the Board. I am still active in N.A. - a treasurer at my home group and a secretary at Hiddenbrook on Sunday evenings. I chair meetings whenever asked. I have maintained contact with my P.R.C. member, Mr. Gil Cohen and with Tony Tommasello. Work is going fine and I'm getting ready to take a Montana vacation next week. I look forward to your reply concerning my request for full reinstatement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry K. Kern".



GEORGE C. VOXAKIS, P. D.
PRESIDENT

MELVIN N. RUBIN, P. D.
SECRETARY

NORENE F. PEASE, M.Ed., M.B.A.
EXECUTIVE DIRECTOR

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
STATE BOARD OF PHARMACY

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MARYLAND RELAY SERVICE
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DAVID M. RUSSO, P. D., M.B.A.
WASHINGTON COUNTY

ROBERT J. KABIK, P. D.
BALTIMORE COUNTY

THEODORE S. LITWIN, L.L.B.
BALTIMORE COUNTY

W. IRVING LOTTIER, JR., P. D.
BALTIMORE CITY

DOROTHY LEVI, P. D.
BALTIMORE COUNTY

BARBARA J. FALTZ JACKSON, M.S., B.S.
BALTIMORE CITY

TO: Board Members
FROM: David Oliver 
RE: Henry Kern, P.D. - **PETITION FOR REINSTATEMENT**
DATE: October 4, 1996

In consideration of the above referenced pharmacist's petition for reinstatement, please **thoroughly** review the attached copies of the Dr. Kern's petition for reinstatement of his license and his October 28, 1993 Order of the Board. To date, Dr. Kern has fulfilled all the conditions of his probation except that he needs to submit to the Board recommendations from his employer(s), the PRC, and his therapist.

Also, if the Board agrees to maintain Dr. Kern's license in probationary status and resume therapy, my suggestion is that the Board recommends a therapist other than **Ms. Kay Lee**. **The Board has had problems with receiving quarterly reports from her in the past.**

IN THE MATTER OF
BARBARA KIRBY, P.D.

BEFORE THE MARYLAND
BOARD OF PHARMACY

* * * * *

ORDER FOR EMERGENCY SUSPENSION
OF PHARMACY LICENSE

Based on information received from the Division of Drug Control of the Maryland Department of Health and Mental Hygiene (the "Division") regarding the pharmacy practice of Barbara Kirby, P.D. (the "Respondent") and further investigation by the Maryland Board of Pharmacy (the "Board"), the Maryland Board makes the following findings:

1. Respondent is a pharmacist licensed by the Board to practice in Maryland.
2. Respondent is the owner and sole pharmacist at Silver Spring Professional Pharmacy (the "Pharmacy") located at 808 Pershing Drive, Silver Spring, Maryland 20910.
3. Silver Spring Professional Pharmacy was at all times relevant to this Order registered, pursuant to Article 27, §281 of the Annotated Code of Maryland, to dispense controlled dangerous substances under Registration #415120 (See Exhibit A);
4. On December 6, 1984 Division Inspector Robert Chang and Federal Drug Enforcement Administration Agent

Mozelle Early conducted an inspection of the pharmacy's controlled dangerous substances records of Dilaudid 4mgm, a Schedule II controlled dangerous substance, received and dispensed during the period April 19, 1983 to November 27, 1984 (See Exhibit B);

5. The inspection of the pharmacy records revealed a shortage of 3400 tablets of Dilaudid 4mgm (See Exhibit B);
6. The shortage of Dilaudid 4 mgm tablets was not adequately accounted for by the pharmacy and Respondent because complete and accurate records of the disposition of this controlled dangerous substance were not maintained as required by Article 27, §283 of the Annotated Code of Maryland and COMAR 10.19.03.05;
7. On Novmeber 27, 1984 1000 tablets of Dilaudid 4 mgm were dispensed with Respondent's knowledge and consent and without the written prescription of an authorized prescriber as required by Article 27, §300 and Title 4, §220 of the Annotated Code of Maryland;
8. The 1000 tablets of Dilaudid 4 mgm dispensed on November 27, 1984 were dispensed with Respondent's knowledge and consent to an unauthorized person in violation of Article 27, §286(a)(1) of the Annotated

Code of Maryland;

9. The pharmacy had on its premises 99 prescriptions for the 1983 calendar year and 106 prescriptions for the 1984 calendar year in the names of Henry J. Smith, M.D., and Eugene W. Williams, Jr., M.D., which were not valid prescriptions but were false or forged prescriptions as evidenced by subject physicians (See Exhibits C and D) and therefore, the actual number of Dilaudid tablets received and dispensed which are unaccounted for in the pharmacy's records is 24,000 rather than 3400 tablets;
10. Respondent was aware of the fact that the prescriptions referred to in §9 were false or forged and of the actual total shortage of controlled dangerous substances;
11. The records referred to above were obtained as a result of a Search and Seizure Warrant documented by Montgomery County Police Officer Fred B. Ailes and duly signed and authorized by Honorable William C. Miller, Circuit Court for Montgomery County, MD on November 27, 1984 (See Exhibit E);
12. Based on the foregoing information the Board has good cause to believe:
 - A. That during the period of April 19, 1983 to

November 27, 1984 Respondent received controlled dangerous substances for the purpose of dispensing such substances to various persons without prescriptions from authorized prescribers.

- B. That during the period of April 19, 1983 to November 27, 1984 Respondent did dispense controlled dangerous substances without written or oral prescriptions of authorized prescribers.
- C. That on November 27, 1984 controlled dangerous substances were dispensed to an unauthorized person with Respondent's knowledge and consent.
- D. That during 1983 and 1984, Respondent willfully and knowingly filed in the pharmacy records false and forged prescriptions for controlled dangerous substances for the purpose of avoiding detection of the illegal distribution of these substances to unauthorized persons.

For the reasons set forth above, the Board concludes that emergency action is required in this case pursuant to State Government Article, §10-405(b), Annotated Code of Maryland, because Respondent's continued access to controlled dangerous substances and continued practice as a pharmacist poses an imminent and grave danger to the public health, welfare and

safety and that that situation imperatively requires emergency action by the Board prior to its filing and considering charges against Respondent's license to practice pharmacy.

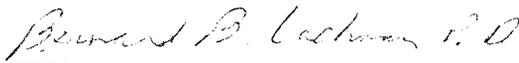
ORDER

IT IS THIS 10 day of January, 1985, by the Maryland Board of Pharmacy,

ORDERED that pursuant to the authority vested in the Board by State Government Article, §10-405(b) Respondent's license to practice pharmacy is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED that on presentation of this Order, Respondent shall immediately deliver to the Board's investigator (1) her diploma-sized Certificate of the Maryland Board of Pharmacy, (2) her current Department of Health and Mental Hygiene License Renewal Certificate, and (3) her current wallet-size license renewal card; and be it further

ORDERED that a hearing to consider his emergency suspension shall be held before the Board within ten (10) business days of the date upon which the Board receives a request for such a hearing from Respondent. Such request must be in writing.


Bernard B. Lachman, P.D. *RS*
President
Maryland Board of Pharmacy