

IN THE MATTER OF

CHARLES J. KESSLER, M.D.

Respondent

License Number: D73675

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BEFORE THE

MARYLAND STATE

BOARD OF PHYSICIANS

Case Numbers: 2012-0906 and
2013-0148

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On November 20, 2012, the Maryland State Board of Physicians (the "Board") charged **CHARLES J. KESSLER, M.D.** (the "Respondent") (D.O.B., 06/18/1952), License Number D73675, with violating the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 14-101 *et seq.* (2009 Repl. Vol.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act under H.O. § 14-404:

- (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of the quorum, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
 - (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
 - (3) Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine;
 - (11) Willfully makes or files a false report or record in the practice of medicine;
 - (24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for action under this section and the

licensee: (i) Surrendered the license issued by the state or country to the state or country; [and]

- (36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine[.]

Grounds for action under H.O. § 14-404(a)(24) include the following:

- (22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;
- (27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes [and]
- (40) Fails to keep adequate medical records as determined by appropriate peer review.

On February 6, 2013, a Case Resolution Conference was convened in this matter. Based on negotiations occurring as a result of this Case Resolution Conference, the Respondent agreed to enter into this Consent Order, which consists of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

The Board makes the following Findings of Fact:

BACKGROUND FINDINGS

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Board initially issued the Respondent a license to practice medicine in Maryland on or about February 15, 2012, under License Number D73675. The Respondent's license is scheduled for renewal on September 30, 2014

2. At all times relevant hereto, the Respondent maintained a medical office at the Kessler Center for Chronic Diseases, 8945 North Westland Drive, Suite 100, Gaithersburg, Maryland 20877.

3. The Respondent is board-certified in pediatric medicine.

4. The Board initiated an investigation of the Respondent based on allegations that he improperly prescribed controlled dangerous substances to patients and that he permanently relinquished his Florida medical license while under investigation for inappropriate prescribing practices.

5. After reviewing the Respondent's actions, the Board, on November 15, 2012, issued an Order for Summary Suspension pursuant to Md. State Gov't Code Ann. § 10-226(c)(2). The Board concluded that the Respondent's actions constituted a substantial likelihood of risk of serious harm to the public health, safety and welfare, which imperatively requires the immediate suspension of his license to practice medicine.

6. The Board's investigative findings are set forth *infra*.

BOARD INVESTIGATIVE FINDINGS

Respondent's permanent relinquishment of his Florida medical license

Case Number 2012-0906

7. The Board initiated an investigation of the Respondent under Case Number 2012-0906 after a Maryland pharmacist (the "Complainant")¹ from a national retail chain contacted the Board on or about June 15, 2012, to report concerns about the Respondent's prescribing practices. The Complainant stated that individuals from

¹ To ensure confidentiality, the names of any individuals referenced herein, except the Respondent, will not be disclosed in this Consent Order. The Respondent is aware of the identity of all individuals referenced herein.

Kentucky were coming into his/her pharmacy and were presenting prescriptions that the Respondent issued. The Complainant expressed concern that the physician profile the Board posted at the time stated that the Respondent was practicing in Florida.

8. Board investigators conducted a pharmacy survey of the Complainant's company's pharmacies and a series of other area pharmacies and found that the Respondent was prescribing oxycodone, an opiate and Schedule II controlled dangerous substance ("CDS"), and alprazolam, a benzodiazepine and Schedule IV CDS, to patients from a variety of states, including Delaware, Florida, Kentucky, Ohio, Maryland and North Carolina.

9. The Board then received several additional complaints about the Respondent's prescribing practices from other pharmacists and at least one law enforcement official. The pharmacists, who worked at various pharmacies in Maryland and Delaware, reported that individuals from other states, such as Florida, Ohio, Kentucky and Georgia, were presenting prescriptions the Respondent wrote for medications that included oxycodone and benzodiazepines, which they refused to fill.

Case Number 2013-0148

10. The Board initiated a second investigation of the Respondent under Case Number 2013-0148 after it was advised that the Respondent permanently relinquished his license to practice medicine in the State of Florida, effective August 16, 2012, to resolve a 28-count administrative complaint that the Florida Department of Health issued against him, dated November 18, 2011. The Florida Department of Health alleged that the Respondent prescribed excessive and inappropriate amounts of various opioid medications, such as oxycodone, hydrocodone, Methadone and Dilaudid, and

benzodiazepines, on the same day to patients, and that his actions violated prevailing standards of care and Florida state prescribing regulations.

11. Among other allegations, the Florida Department of Health charged that with respect to a series of patients, the Respondent:

- (a) Prescribed schedule II controlled substances in quantities that were potentially lethal and without justification or without documenting justification in his medical records;
- (b) Did not document or did not perform complete medical histories and physical examinations;
- (c) Did not refer or document referrals for patients to psychiatrists, orthopedic surgeons, physical therapist, or interventional pain specialists;
- (d) Did not document or failed to:
 - (i) Determine the nature or intensity of the patients' pain;
 - (ii) Determine current or past treatments of his patients;
 - (iii) Determine the effects of pain on the patients' physical or psychological function;
 - (iv) Obtain any history of substance abuse;
 - (v) Obtain any diagnostic studies;
 - (vi) Obtain any consultations from other specialties; and
 - (vii) Counsel patients on the potential danger of addiction and abuse of the medications he prescribed.

12. The Respondent's permanent relinquishment of his Florida medical license while under investigation for inappropriate prescribing practices by the Florida Department of Health, as described above, constitutes a violation of the following provision of the Act: H.O. § 14-404(a)(24), Was subject to investigation or disciplinary

action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for action under this section and the licensee: (i) Surrendered the license issued by the state or country to the state or country.

13. Grounds for action under H.O. § 14-404(a)(24) include the following: H.O. § 14-404(a)(22), Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State; H.O. § 14-404(a)(27), Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes; and H.O. § 14-404(a)(40), Fails to keep adequate medical records as determined by appropriate peer review.

Respondent's misrepresentations on his 2011 application for licensure to the Board

14. The Board reviewed the Respondent's application for licensure (the "Application"), dated June 24, 2011 (received by the Board on July 7, 2011), and determined that he made material misrepresentations in the Application, despite certifying that the information he provided in it was true and correct.

15. In his Application, the Respondent failed to disclose that at the time he submitted it, he was under investigation by the Florida Department of Health for improper prescribing practices and that on or about May 23, 2011, he had been arrested in Florida for his involvement in practicing at or operating an unregistered pain clinic.

16. The Respondent's misrepresentations in his Application, as described above, constitute a violation of the following provisions of the Act: H.O. § 14-404(a)(1), Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or

licensee or for another; H.O. § 14-404(a)(3), Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine; H.O. § 14-404(a)(11), Willfully makes or files a false report or record in the practice of medicine; and H.O. § 14-404(a)(36), Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated the following provisions of the Act: H.O. § 14-404(a)(1), Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another; H.O. § 14-404(a)(3), Is guilty of: (i) immoral conduct in the practice of medicine; or (ii) unprofessional conduct in the practice of medicine; H.O. § 14-404(a)(11), Willfully makes or files a false report or record in the practice of medicine; H.O. § 14-404(a)(24), Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for action under this section and the licensee: (i) Surrendered the license issued by the state or country to the state or country; and H.O. § 14-404(a)(36), Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine. Grounds for action under H.O. § 14-404(a)(24) include the following: H.O. § 14-404(a)(22), Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State; H.O. § 14-404(a)(27), Sells, prescribes,

gives away, or administers drugs for illegal or illegitimate medical purposes; and H.O. § 14-404(a)(40), Fails to keep adequate medical records as determined by appropriate peer review.

ORDER

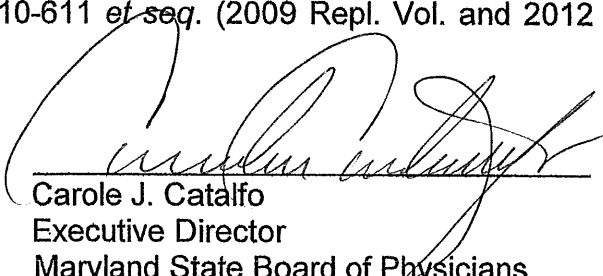
Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of March, 2013, by an affirmative vote of a majority of a quorum of the Board considering this case:

ORDERED that the Order for Summary Suspension, dated November 15, 2012, is hereby **TERMINATED**; and it is further

ORDERED that the Respondent's medical license in the State of Maryland is hereby **REVOKED**, to commence on the date the Board executes this Consent Order; and it is further

ORDERED that the Respondent shall not apply for reinstatement of his Maryland medical license until after the conclusion of **THREE (3) YEARS** after the date the Board executes this Consent Order; and it is further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. § 10-611 *et seq.* (2009 Repl. Vol. and 2012 Supp.).


Carole J. Catalfo
Executive Director
Maryland State Board of Physicians

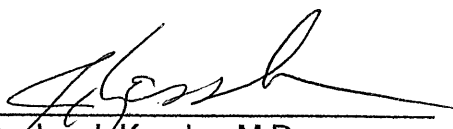
CONSENT

I, Charles J. Kessler, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree to the foregoing Consent Order, which consists of Procedural Background, Findings of Facts, Conclusions of Law, Order, and Consent, and I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

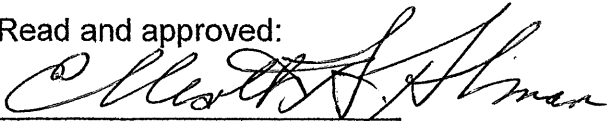
I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

2/23/13
Date



Charles J. Kessler, M.D.
Respondent

Read and approved:


Elliott A. Alman, Esquire
Counsel for Dr. Kessler

NOTARY

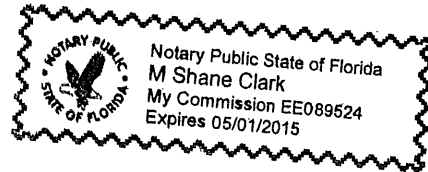
STATE OF Florida

CITY/COUNTY OF: Palm Beach

I HEREBY CERTIFY that on this 25 day of February, 2013, before me, a Notary Public of the State and County aforesaid, personally appeared Charles J. Kessler, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

[Signature]
AS WITNESS, my hand and Notary Seal.

Notary Public



My commission expires: 05/01/2015