

IN THE MATTER OF

KEITH KLINGENSTEIN, P.D.

Respondent

License No. 10201

* BEFORE THE
* STATE BOARD
* OF
* PHARMACY

* * * * *

FINAL CONSENT ORDER

Based on information received and subsequent investigations by the State Board of Pharmacy (the "Board"), and subject to Health Occupations Article, §12-315, Annotated Code of Maryland, Title 12 (the "Act"), the Board charged Keith Klingenstein, P.D. (the "Respondent"), with violations of Title 12 (the "Act"). Specifically, in Second Amended and Supplemental Charges, the Board charged the Respondent with violation of the following provisions of §12-313:

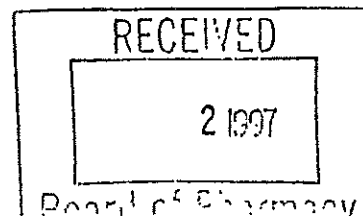
Subject to the hearing provisions of §12-315 of this subtitle, the Board, on the affirmative vote of a two-thirds majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation; or suspend or revoke a license if the applicant or licensee:

(5) Submits a false statement to collect a fee;

(6) Willfully makes or files a false report or record as part of practicing pharmacy;

(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;

(15) Except as provided in §12-511 of this title, unless an authorized prescriber authorizes the refill in the original prescription or by oral order, refills a prescription for 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;

(21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(23) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.

Section 12-509. Labeling requirements for prescription medicines.

(b) Label required. - Except for a medication dispensed to an inpatient in a hospital or related institution, a pharmacist shall label each container of medication that the pharmacist dispenses.

(c) Required information. - In addition to any other information required by law, the pharmacist shall include on the label:

(1) The date the prescription is filled; and

(2) Unless otherwise required by the prescriber:

(i) The month and year when the medication expires, if known;

(ii) Any appropriate special handling instructions regarding proper storage of the medication; and

(iii) Subject to the provisions of subsection (d) of this section, the name and strength of the medication.

(d) Name of medication. - (1) Except as provided in paragraph (2) of this subsection, the pharmacist shall indicate on the label the same name for the medication as that used by the authorized prescriber;

(2) If, under §12-508 of this subtitle, the pharmacist substitutes a drug product for that named by the authorized prescriber, the pharmacist shall indicate on the label both the established name of the drug product prescribed and the name of the manufacturer or distributor of the drug dispensed.

The Respondent was given notice of the charges and the issues underlying those charges by letter and charging documents dated September 24, 1996.¹ A prehearing conference on those charges was held on October 22, 1996, and was attended by Dorothy Levi, P.D., Secretary of the Board and Paul Ballard, Assistant Attorney General, Counsel to the Board. Also in attendance were the Respondent and his attorney, Harry Levy, and the Administrative Prosecutor, Roberta L. Gill, Assistant Attorney General.²

Following the prehearing conference, the parties and the Board agreed to resolve the administrative charges by way of settlement. The parties and the Board agreed to make the following Findings of Fact, Conclusions of Law, and Order.

¹Following a Notice in November, 1990 that the Board intended to execute an Order summarily suspending the Respondent's license for the reasons indicated in the Findings of Fact herein, the Respondent waived his right to a hearing on the summary suspension until after the resolution of pending criminal matters. Thus, since November 15, 1990, the Respondent's license has been summarily suspended. In addition, charges under the Act were issued simultaneously. These charges were subsequently amended in September 1992, adding allegations dealing with fraudulent billing to Blue Cross.

²The criminal matter was finally resolved, after numerous appeals beforehand in June, 1995: one of the provisions imposed by the Judge in that case was that the Respondent could not apply for reinstatement of his pharmacy license for one year. The year's home detention concluded in August, 1996. Consequently, the Respondent requested a prehearing on all outstanding administrative charges against him.

FINDINGS OF FACTS

The Board makes the following findings of facts:

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

2. From 1987 through 1990, the Respondent, who was self-employed, was the co-owner and sole dispenser at Greenbelt Professional Pharmacy in Prince George's County, Maryland.

3. From on or about September 4, 1990 through October 11, 1990 prescription drugs, including Tylenol with Codeine, (Schedule III), Penicillin, Aspirin with Codeine (Schedule III), and Glutethimide (Doriden, Schedule III), were improperly dispensed by Respondent to the confidential informant of and to Maryland State Police officers from prescription blanks which had been filled out by the police officers. In some instances, Respondent dispensed these controlled dangerous substances from copies of prescription forms.

4. Glutethimide, when combined with Tylenol with Codeine, produces an effect similar to heroin, producing an intoxication that lasts up to 10 hours. Whereas other pharmacists in the area charged \$27.50 for the same combination prescription, the Respondent sold the drugs to the informants and the State police officers for \$127.95 to \$135.95.

5. On October 12, 1990, Respondent was arrested on various drug-related offenses. Pursuant to a search warrant, the police discovered a number of third party reimbursement forms, partially completed, as well as a number of drugs which had been repackaged

in prescription vials with no labels. Cash, in the amount of \$20,000, was also found near a large bottle of Dilaudid, a Schedule II controlled dangerous substance.

6. In January, 1991, Respondent was indicted by the Grand Jury of Prince George's County for maintaining a common nuisance by using the Greenbelt Pharmacy to store, conceal, administer and dispense controlled dangerous substances (CDS) in violation of Article 27, §286(a)(5) of the Ann. Code of MD; for unlawfully distributing Schedule III controlled dangerous substances, to wit, Glutethimide (Doriden) and Codeine Phosphate 60 mg. (Tylenol #4), in violation of Article 27 §286(a)(1); for failure to store drugs, medicine and devices in a proper and safe manner in violation of Health Occupations Article, §12-506, Ann. Code of MD; and with 20 counts of aggravated theft (of both over and under \$300.00). The indictment consisted of fifty-four (54) counts.

7. On November 15, 1990, the Board summarily suspended the Respondent's license to practice pharmacy pursuant to State Government Article, Md. Ann. Code, §10-405(b).³

8. At the same time, by separate documents, the Board charged Respondent with a violation of Title 12 (the Pharmacy Act) of the Health Occupations Article of MD, Ann. Code. Specifically, Respondent was charged with violating §§12-311(b)(14) (dispensing drugs without a prescription) and 12-311(b)(20) (being

³ A hearing on the emergency suspension was waived by Respondent pending the outcome of a criminal trial on the matters underlying the suspension. Section 10-405(b) is now §10-226C(2).

professionally, physically or mentally incompetent)⁴ based upon the facts that formed the basis of the emergency suspension action - namely, the illegal drug distribution charges.

9. Subsequent to Respondent's arrest on October 12, 1990 for illegal activities as set forth in the aforesaid 54 count indictment, Blue Cross/Blue Shield of Maryland ("BC/BS") conducted an audit of Respondent's submissions of claims to BC/BS through his pharmacy (Greenbelt Professional Pharmacy). The three (3) year audit period, which covered September, 1987 to July, 1990, revealed that BC/BS subscribers did not receive the medications as indicated on the claim forms submitted for payment to BC/BS, as determined by verification of prescribers and subscribers, resulting in a projected overpayment to Respondent of \$16,000-\$38,000.

10. Specifically, on April 22, 1989, May 22, 1989, July 20, 1990 and August 18, 1990, on behalf of Subscriber A,⁵ Respondent billed BC/BS for Seldane and Flexeril which were medicines neither received by Subscriber A nor prescribed by the physician indicated on the call-in prescription.

11. From September 28, 1989 to February 15, 1990, Respondent billed BC/BS on seven (7) occasions for his dispensing of medications using Subscriber B's membership number. The name on the call-in prescription was "William Westland" who was not

⁴ As of January 1, 1991, Title 12 has been recodified so that the pertinent sections are now 12-313(b)(14) and 12-313(b)(20), respectively.

⁵ Subscribers' names are not revealed due to patient confidentiality.

eligible for benefits under Subscriber B's membership number, not known by him and not authorized by him to use his benefits under BC/BS. On February 15, 1990, March 15, 1990, April 26, 1990 and June 4, 1990, Respondent billed BC/BS for his dispensing of Prozac via a call-in prescription from a physician of whom Subscriber B has never been a patient. On May 15, 1990, Respondent billed BC/BS for Buspar dispensed by him on behalf of Subscriber B's son who did not receive said tranquilizers and who was not a patient of the physician who allegedly called in the prescription.

12. On October 5, 1989 and March 9, 1990, Respondent billed BC/BS for his dispensing of Seldane and Hismanal, respectively, to Subscriber C, neither of which were received by Subscriber C nor prescribed by Subscriber C's physician.

13. In September, 1987, Subscriber D's physician prescribed Minocin and Tridesilon to her. Thereafter Subscriber D did not return to said physician. Yet on June 9, 1990, Subscriber D went to Greenbelt Professional Pharmacy and requested and was dispensed a refill of these medicines by Respondent without a refill prescription. Thereafter, Respondent billed BC/BS not only for the drug dispensed on June 9, 1990 but for a prescription dated July 9, 1990, which Subscriber D claims she never received.

14. Subscriber E was prescribed Progesterone by her physician; Progesterone is a fertility drug that is normally billed to BC/BS at approximately \$30. Respondent, however, billed BC/BS on behalf of Subscriber E on five separate occasions for Clomid, a fertility drug billed in at approximately \$109-231.

15. On September 14, 1989 and October 26, 1989, Respondent billed BC/BS for his dispensing of Minocin and Tridesilon to Subscriber F who never received these drugs. In addition, the alleged call in prescriber was a physician who had last seen Subscriber F on December 8, 1988.

16. From November 11, 1987 to May 14, 1990 on 14 separate occasions, Respondent billed BC/BS for dispensing Diseyrel on behalf of Subscriber G, and from November 27, 1987 to June, 29, 1990 on 26 separate occasions, Respondent billed BC/BS for dispensing Narpramin to Subscriber G; however, Subscriber G denied ever receiving said anti-depressant drugs nor did Subscriber G's physician prescribe these drugs to Subscriber G. From January 18, 1989 to July 30, 1990 on 17 separate occasions, from January 18, 1989 to October 20, 1989 on 7 separate occasions, and from January 31, 1990 to April 30, 1990 on 4 separate occasions, Respondent billed BC/BS for dispensing Seldane, Keflex and Ceclor, respectively, to Subscriber G; however, Subscriber G neither received these drugs nor did Subscriber G's physician prescribe these for Subscriber G.

17. From February 15, 1988 to July 31, 1990 on nine (9) separate occasions Respondent billed Subscriber H's membership number for Ceclor, Seldane and Aserdin, which Subscriber H claimed that she did not receive, nor were these medicines prescribed for her by her physician. From October 21, 1988 through March 16, 1990 on seven (7) separate occasions, Respondent also billed Subscriber H's membership number for his dispensing of Peridex which

Subscriber H only received on one occasion from Respondent. Subscriber H's physician had prescribed Peridex for Subscriber H with only one refill.

18. From June 27, 1989 to October 19, 1989 on four (4) separate occasions and from June 2, 1989 to October 19, 1989 on four (4) separate occasions Respondent billed Subscriber I's membership number for his dispensing of Ultrocef and Naprosyn (sic), respectively, which Subscriber I claimed he did not receive.

19. From January 6, 1988 to June 20, 1988 on seven (7) separate occasions, Respondent billed Subscriber J's BC/BS membership for his dispensing of Carofate, which Subscriber J said he never received and which his physician said were never prescribed for him.

20. From April 10, 1989 to August 23, 1989 on six (6) separate occasions, Respondent billed BC/BS for his dispensing of Tonocard to Subscriber K who has no heart condition and whose physician did not prescribe this medicine for her.

21. After a protracted appeals process, a hearing on some of the drug violations was held in the Prince George's County Circuit Court. On 6/19/95 the Respondent pled guilty and was found guilty of maintaining a common nuisance, a misdemeanor; the Respondent also pled guilty to 5 counts of possession of glutethimide (Doriden) and codeine phosphate (Tylenol with Codeine). The Respondent received an 18 month jail sentence, which was suspended. Respondent was placed on one year of home detention; was ordered to pay a fine of \$1,500.00 within the supervisory period; was then to

be placed on unsupervised probation for 2 years; was ordered to pay \$145.00 court costs within the probationary time; ordered to perform 200 hours of community service, after the home detention period ended; and, was ordered not to apply for reinstatement of pharmacy license within one year. The remainder of the charges were nolle prossed.

CONCLUSIONS OF LAW

Based upon the foregoing Finds of Fact, the Board finds that Respondent violated §§12-313(5), (6), (14), (15), (16), (20) (is professionally . . . incompetent), (21) and (23).

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 16th day of January, ~~1996~~, by a majority of a quorum of the Board, hereby

1997 ORDERED that the Respondent's license be SUSPENDED and that that suspension be STAYED once the Respondent has completed the following:

1. Upon proof of completion of:
 - a. One thousand hours of employment as a pharmacy technician under the direct supervision of a pharmacist who is in good standing with the Board.
 - b. Following the completion of the required 1000 hours, pass, with a minimum of 75%, the reinstatement examination, the Pharmacy Law Test and the Laboratory Test administered by the Board, which examination may be taken as often as necessary.
2. The Respondent must show the Consent Order to the supervising pharmacist who will acknowledge, in writing, within ten (10) days of the effective date that he was

reviewed the Consent Order and will comply with the conditions that apply to him/her throughout the Respondent's tenure as a pharmacist technician. The supervising pharmacist shall submit quarterly reports to the Board, beginning December 1, 1996, regarding the Respondent's performance as a pharmacist technician. During this time, the Respondent shall also submit quarterly status reports on his progress, commencing December 1, 1996.

3. The Respondent may not own a pharmacy or work as a floating pharmacy technician.

ORDERED upon completion of the requirements of the suspension period, the Respondent will be placed on PROBATION for one year, subject to the following conditions:

1. That the Respondent take and pass a Board-pre-approved college-level ethics course with a grade of "B" or better.
2. That during the probationary period, the Respondent obtain, in addition to any CEUs needed for licensure renewal, fifteen (15) additional CEUs, pre-approved by the Board, in CDS.
3. That beginning either March 1st, June 1st, September 1st or December 1st, whichever is closest to the date upon which the Respondent's Probation becomes effective, the Respondent submit quarterly reports from his Board-approved pharmacist employer and from himself of his status/progress as a pharmacist.
4. For at least the first six (6) months of the Probation, the Respondent must be directly supervised by a pharmacist supervisor who is in good standing with the Board. Direct supervisor means that the supervision must be on the premises at all times while the Respondent works as a pharmacist. At the end of the first six months of his probation, the Respondent may petition the Board to be released from the requirement that he be directly supervised.
5. The Respondent may not own a pharmacy or work as a "floater" during the probationary period; and be it further
6. The Respondent shall complete the 30 credits required for his 1997 license renewal; and be it further

ORDERED that the Respondent provide a copy of this Order to his pharmacist employer and that that employer acknowledge in writing, within 30 days of the commencement of the probationary period, that he/she has reviewed the Order and agrees to comply with the terms affecting him/her; and be it further

ORDERED that Respondent notify the Board in writing of any change in employment and that all subsequent pharmacist employers submit written verification that they have reviewed and agree to comply with the Order as it affects them; and be it further

ORDERED that the Respondent immediately notify the Board in writing of any change in address; and be it further

ORDERED that Respondent shall refrain from engaging in the conduct which led to the disciplinary action herein; and be it further

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

ORDERED that if Respondent violates any of the foregoing conditions of suspension or of probation or the Order, the Board, after notification, a hearing and determination of violation, may impose any lawful disciplinary sanctions it deems appropriate; and be it further

ORDERED that on or after the date that the one year probationary period has ended, the Respondent may petition the Board to remove the conditions of probation and restore his license to practice pharmacy without conditions or restrictions, only after the Respondent has demonstrated to the Board that he has practiced

pharmacy in compliance with the Act and with the conditions of suspension, subsequent probation and/or of the Order; however, should the Respondent fail to petition the Board, the conditions of probation will remain as is; and be it further

ORDERED that in the event the Maryland Board of Pharmacy receives an unsatisfactory report from the pharmacy employer 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 substantially violated any provision of Title 12 of the Health Occupations Article, Md. Ann. Code, or regulations thereunder, the Board may take action, including, but not limited to, revocation or suspension of the Respondent's license to practice pharmacy, after giving the Respondent notice and an opportunity for a hearing, in accordance with the Administrative Procedure Act, State Government Article, Md. Ann. Code, §10-201 et seq.; 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.

8 January 97
Date

George P. Voxakis Pharm D
George Voxakis, Pharm.D., Chairman
Maryland Board of Pharmacy

hearing as set forth in §12-315 of the Act and §10-201, et seq., and any right to appeal this Order as well as any subsequent Order arising out of a violation of this Order, as set forth in §12-316 of the Act and §10-201, et seq., of the Act. I acknowledge that my 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.

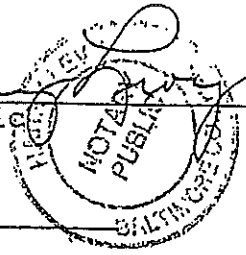
12-27-96
Date

Keith Klingenstein, P.D.
Keith Klingenstein, P.D.

STATE OF MARYLAND)
) ss
COUNTY OF BALTIMORE)

I HEREBY CERTIFY that on this 27 day of December, 1996, a Notary Public of the State of Maryland and County of Baltimore, personally appeared Keith Klingenstein, License No. 10201, 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.

[Signature]
Notary Public


My Commission Expires: 3-28-98.

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