

IN THE MATTER OF

\* BEFORE THE STATE

HAROLD CLINKSCALE, P.D.

\* BOARD OF PHARMACY

Respondent

\*

License No. 06634

\*

\* \* \* \* \*

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the Maryland 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 Harold Clinkscale, P.D. (the "Respondent"), with violations of §12-313. Specifically, the Board charged the Respondent with violation of the following provisions:

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:

- (2) Fraudulently or deceptively uses a license;
- (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;
- (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 delivered to

Respondent on or about March 2, 1995.<sup>1</sup> A prehearing conference on those charges was held on March 31, 1995, and was attended by Dorothy Levi, P.D. and Barbara Jackson of the Board, Norene Pease, Executive Director of the Board, Paul Ballard, Assistant Attorney General, Counsel to the Board, and Tracy Baroni, P.D., Pharmacist Compliance Officer of the Board. Also in attendance were the Respondent and his attorney, Michael Statham, and the Administrative Prosecutor, Roberta L. Gill, Assistant Attorney General.<sup>2</sup>

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 and Conclusions of Law and Order.

#### FINDINGS OF FACTS

The Board makes the following findings of facts:

1. Respondent was and is licensed to practice pharmacy in the State of Maryland during all times relevant to the facts stated

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<sup>1</sup>Following a Notice on June 22, 1992 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 surrendered his license, which surrender was accepted by the Board on July 15, 1992. Said surrender was conditioned upon the resolution of a criminal trial involving the underlying facts.

<sup>2</sup>The criminal matter was dismissed in the District Court and has not been pursued in the Circuit Court to date. Thus, at the time of the prehearing, the Respondent had not been licensed in and practicing in Maryland for over 2½ years. The Respondent had, however, been licensed in and practicing in Washington, D.C. during that time.

herein.

2. At the time of the events alleged in this action, Respondent was employed as a pharmacist at the F & M Pharmacy in Waldorf, Maryland.

3. On a number of occasions between May 3, 1991 and March 19, 1992, Respondent dispensed, without a written or oral prescription, Dilaudid, a Schedule II narcotic. On 12 of those occasions, Respondent entered data into pharmacy records indicating that the Dilaudid had been prescribed for and dispensed to one Steven (or Steve) Stasch. On one occasion, the records reflected that the Dilaudid was prescribed for and dispensed to one Bill Gower.

4. On March 24, 1992, Respondent admitted to Detective William R. Winters from the Charles County Sheriff's Office that he had dispensed Dilaudid without a prescription to Steven (or Steve) Stasch. He stated that the Dilaudid he had recorded as being dispensed to a Bill Gower was, in fact, dispensed to a person named Carl without a prescription.

5. None of the above "purchases" was reflected in cash register receipts.

6. Data entered into the computer at the F & M Pharmacy by Respondent indicated that Dilaudid was prescribed and dispensed by Respondent to individuals named as Russell Reynolds, Hilda Davis, John S. Donaldson, Sheila Dazvis, William S. Smith, Clayton Smith, Paul, Newman, and Mary Sullivan. In fact, there were no written prescriptions in the file for the Dilaudid dispensed to any of those persons and the address listed in each case was either non-existent or

was incorrect for the person designated.

7. Dispensing Dilaudid, a controlled dangerous substance, without a valid prescription from an authorized prescriber is a violation of the Act.

#### CONCLUSIONS OF LAW

Based upon the foregoing Finds of Fact, the Board finds that Respondent violated §12-313(2), (14), (15), and (20) (is professionally . . . incompetent).

#### ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 25<sup>th</sup> day of September, 1996, by a majority of a quorum of the Board, hereby

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. The 84 overdue continuing education units ("CEUs") from licensing periods prior to 1996;
  - b. Upon proof of completion of the 30 credits needed for his 1996 license renewal.
2. Following the completion of the required CEUs, pass, with a minimum of 75%, the reinstatement examination administered by the Board.

If the foregoing fails to occur by the 1998 renewal, the Respondent will be required to show proof of additional credits before the Suspension is Stayed; and be it further

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

1. That the Respondent take and pass a Board-pre-approved college-level ethics course;
2. That beginning December 1st, the Respondent submit quarterly reports from his pharmacist employer and from himself of his status/ progress as a pharmacist; 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 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 two 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 probation and 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.

9/25/96  
Date

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

CONSENT OF HAROLD CLINKSCALE, P.D.

I, Harold Clinkscale, P.D., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Michael Statham, Esquire, and have been advised by him of the legal implications of signing this Consent Order.

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 §10-201, et seq., of the Administrative Procedure Act ("APA"), State Government Article, Annotated Code of Maryland. Although I disagree with the Board's findings and assert that I did not commit the acts as alleged, nor did I violate the Act as charged, I agree that certain evidence exists by which the Board might reach its conclusions. Nothing contained in this Consent Order shall be deemed to be an admission on my part of any criminal conduct in any subsequent proceedings in any court of law or administrative agency.

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 §10-201, 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.

9-12-96  
Date

Harold Clinkscale, P.D.  
Harold Clinkscale, P.D.

STATE OF MARYLAND )  
                  Prince Georges    SS  
COUNTY OF ~~BALTIMORE~~ )

I HEREBY CERTIFY that on this 12 day of September, 1996, a Notary Public of the State of Maryland and County of Baltimore, personally appeared Harold Clinkscale, License No. 06634 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.

Kathleen Cynthia Curtin  
Notary Public

KATHLEEN CYNTHIA CURTIN  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires May 1, 2000

My Commission Expires: