

FILED

September 18, 1980



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

BOARD MEDICAL EXAMINERS

28 WEST STATE STREET
TRENTON, N.J. 08608

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

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September 18, 1980

Marshall P. Silver, M.D.
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James T. Hundley, Esq.
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Re: HARRY JACK DAUBER, JR.,
(deceased)

Gentlemen:

This matter was opened to the New Jersey State Board of Medical Examiners on inquiry into the treatment by Dr. Silver of Harry Jack Dauber, Jr., from approximately 1972 until the patient's death at age 31 on or about October 20, 1977. Dr. Silver is represented by James T. Hundley, Esq. Of primary concern to the Board is the treatment (whose first entry in Dr. Silver's patient chart is shown at February 5, 1977), some two and one-half years after the patient suffered a concussion and other injuries in a serious auto accident October 1974. Dr. Silver began prescribing Fiorinol, a Schedule III Controlled Dangerous Substance, for this patient. On February 16, 1977 Dr. Silver requested and received from Clement Krieder, M.D., the patient's medical history insofar as that was known to Dr. Krieder. It appears that neither of these physicians was aware of prior Controlled Dangerous Substance usage and alcohol consumption by this patient. Dr. Silver began prescribing 40 tablets of Empirin with Codeine, a Schedule III Controlled Dangerous Substance, at least as early as March 18, 1977, which prescription was refilled on April 1, 1977. Twenty-eight tablets of Meprobamate 400 were prescribed on March 25, 1977, and again on July 29, 1977. A prescription of Valium was issued on November 10, 1976, at a time when Dr. Silver claims he was treating only Mr. Dauber, Sr., and not Harry Dauber, Jr. However, this prescription was refilled on May 31, 1977, July 15, 1977 and August 25, 1977, during the time of Dr. Silver's treatment of Harry Dauber, Jr. None of these four dates is recorded in the senior Dauber's chart as a patient visit. Nor were any of these dates recorded as a patient visit on Dauber, Jr.'s chart. All were apparently telephone prescriptions and refills. Valium was also prescribed for Dauber, Jr. on May 31, 1977 and

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Marshall P. Silver, M.D. and
James T. Hundley, Esq.
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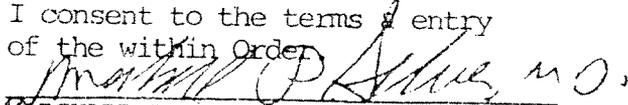
refilled July 15 and August 25, 1977; it was again prescribed on September 29, 1977. Valium is a Schedule IV Controlled Drug. Tylenol with Codeine, a Schedule III Controlled Drug, was prescribed again on July 29 and refilled September 26; it was prescribed again on October 18, 1977, according to a telephone authorization recorded at the West End Pharmacy. Dr. Silver's record, however, indicates that he did not physically see the patient after August 8, 1977.

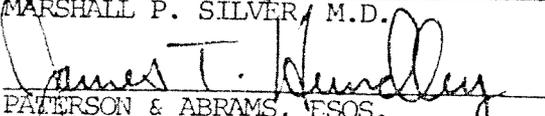
Dr. Silver acknowledges that the prescriptions of September 26, September 29, and two prescriptions on September 30, 1977 were telephone prescriptions which he authorized but failed to record in his patient chart. Yet he denies that he authorized the 40 Tylenol #2 recorded as a telephone authorization in the pharmacy files of October 18, 1977 (also unrecorded on his chart) two days prior to the patient's death. The cause of death was determined to be drug related. Autopsy revealed 0.18% Ethyl Alcohol in the brain, 0.18% mg. % Codeine in the liver, 0.19 % Codeine in the kidney, and positive findings of Codeine and Morphinans in the stomach, and positive findings of Morphine and Morphinans in the bile. Dr. Silver was apparently unaware that this patient was concurrently receiving Controlled Dangerous Drug prescriptions from at least one other physician.

The above course of conduct appears to manifest poor medical judgment and inadequate record keeping for at least the following reasons: prescribing of various forms of Controlled Dangerous Substances and authorizing numerous refills thereof by telephone and without physical examination of the patient; failure to record such telephone prescriptions on the patient chart; and continued prescribing of controlled drugs after learning in February 1977 that this patient was under the concurrent care of a specialist who was also prescribing controlled drugs for him. In the circumstances, this appears to violate N.J.S.A. 45:1-21(e) and N.J.A.C. 13:35-6.12.

In light of the above, Dr. Silver is hereby reprimanded. Further, it is hereby ordered that henceforth Dr. Silver shall maintain proper records on all patients treated, including date of visit, physical examination and findings, diagnosis, identification, dosage and quantities of medication prescribed, if any, and current status. There shall be adequate laboratory and clinical testing warranting prescription of Controlled Dangerous Substances. There shall be full compliance with the Medical Practice Act and all pertinent rules, particularly N.J.A.C. 13:35-6.6, and 6.12.

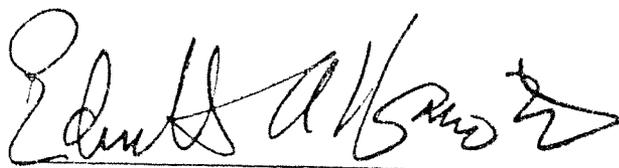
I consent to the terms & entry
of the within Order


MARSHALL P. SILVER, M.D.


PATERSON & ABRAMS, ESQS.

Attorneys for Marshall P. Silver, M.D.

STATE BOARD OF MEDICAL EXAMINERS


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