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FILED

October 31, 1991

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEP'T OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
DOCKET NO. OAL BDS, 02882-91-N

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF LICENSE OF :
ROBERT BERKOWITZ, M.D. :
LICENSED TO PRACTICE MEDICINE :
AND SURGERY IN THE STATE OF :
NEW JERSEY :
: :
: :

Administrative Action
Final Order

This matter was presented to the New Jersey State Board of Medical Examiners by way of Complaint filed August 31, 1990 by the Attorney General of New Jersey before the State Board of Medical Examiners, regarding one patient, Mrs. E.M.G., as more fully set forth in the Complaint.¹ Dr. Berkowitz holds license number 29925

¹ A typographical error in Count I, par.5 referring to March 22, 1973 was corrected to read March 22, 1978.

and practices at 448 Lakehurst Road, Toms River, New Jersey 08753. He is represented by Anthony F. LaBue, Esq.

Dr. Berkowitz specializes in psychiatry, and has acknowledged undertaking the treatment of this patient in 1978 and continuing through at least 1987, aware that she was a practicing nurse and aware that she said she was dependent upon the substantial use of Darvon because she was suffering from chronic pain from a variety of medical conditions. The Complaint alleged matters pertaining to the manner and medical justification for the prescribing of primarily Darvon, a Schedule IV substance. Dr. Berkowitz recognized early on that his prescribing pattern for this patient was unusual, and he attempted twice to secure advice from the State Department of Health. He did not, however, consult the State Board of Medical Examiners to seek review of his prescribing in light of pertinent Board law and rules.

Administrative Complaint was filed and Dr. Berkowitz has entered an Answer denying the charges. The matter was transmitted to the Office of Administrative Law for trial as a contested case.

Respondent has reconsidered his answer and has determined, after consulting with his counsel, to withdraw his prior Answer and to enter a plea of no contest to all of the allegations of the Complaint except as to the specific charge of violation of N.J.S.A. 45:1-13 which he prefers to deny. He has requested that this matter be resolved by entry of a consent order.

Review of his patient record by the Board has disclosed extremely scanty notes which did not meet the standard expected of a licensee pursuant to N.J.A.C. 13:35-6.5. His prescriptions did not comply with the requirements of N.J.A.C. 13:35-6.6. Among other concerns, his patient record did not list visits to match all dates on the prescriptions he issued, indicating either pre or post-dated prescriptions or issuance of a prescription not accompanied by a patient visit. The record did not document appropriate medical justification for the continued and extensive prescribing.

In determining a reasonable resolution of this matter, the Board takes into account that this is the only inappropriate prescribing situation involving Dr. Berkowitz which has thus far come to the attention of the Board and that Dr. Berkowitz appears to have been acting in good faith although without a sufficiently sophisticated recognition of the circumstances. Further, Dr. Berkowitz has now completed a mini-residency sponsored by the University of Medicine and Dentistry in the appropriate prescribing of CDS. In light of all the circumstances,

IT IS ON THIS 30 DAY OF OCTOBER 1991

ORDERED:

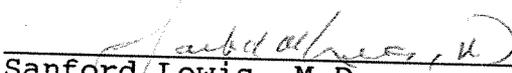
1. Dr. Berkowitz is hereby reprimanded for violation of N.J.S.A. 45:1-21(d) and (h) and N.J.A.C. 13:35-6.5 and 6.6.

2. Dr. Berkowitz is assessed a fine of \$2,500 and investigative costs of \$2,916.67, totalling \$5,416.67, payable to the State Board of Medical Examiners within 10 days of the entry of this Order.

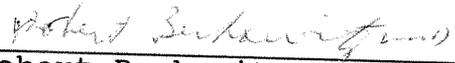
3. Respondent may arrange with the Board office for payment in installments, in which case a Certificate of Debt shall be filed. Interest shall accrue, calculated at an annual rate of 8%. In the event that any payment pursuant to paragraph 2 is received by the Board of Medical Examiners after the 10th day of the month in which it is due and owing, the Board shall not accept said payment unless it is accompanied by a late fee in the amount of 10% of the past due payment.

This Order is effective upon entry.

STATE BOARD OF MEDICAL EXAMINERS

BY: 
Sanford Lewis, M.D.
President

I have read and understood the within Order, and agree to be bound by its terms.


Robert Berkowitz, M.D.

Witness:


Anthony F. LaBue, Esq.
Attorney for Dr. Berkowitz