

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: Brenda Talbot Lewis
Deputy Attorney General
Division of Law Th Floor
124 Halley Street
P.O. Box 45029
Newark, New Jersey 07101
Tel. (973) 648-4738

FILED

May 11, 1998
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF
BERNARD PERLMAN, M.D.

TO PRACTICE MEDICINE & SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

PROVISIONAL ORDER
OF DISCIPLINE

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent Bernard Perlman, M.D., is a physician in the State of New Jersey and has been a licensee at all times relevant hereto.

CERTIFIED TRUE COPY

2. Respondent's license to practice medicine in Massachusetts was suspended for an indefinite period by the Board of Registration in Medicine, Commonwealth of Massachusetts, pursuant to a Consent Order entered on May 30, 1997. Said suspension was stayed by respondent's petition on October 8, 1997. (Copies of Orders attached and made a part hereof)

3. The suspension was based on findings that respondent had committed conduct which placed into question his competence to practice medicine; had been habitually addicted to, dependent on, or a habitual user of drugs; was practicing medicine while his ability to so practice was impaired by alcohol, drugs, physical disability, or mental instability; was practicing medicine deceitfully; and had violated a provision of the laws of the Commonwealth relating to the practice of medicine. Specifically, the Massachusetts board found that respondent had been dependent on Vicodin ES as early as 1992, and that his method for obtaining these drugs had been through the issuance of false prescriptions for family members or acquaintances, and then diversion of the drugs to his own use. Pharmacy records demonstrated that respondent had diverted approximately 10,698 tablets of Vicodin Es for his own use during roughly a three-year period - slightly in excess of 9 per day.

3. Respondent ceased practice in March 1997 and enrolled in the Physician Health Services of the Massachusetts Medical Society. He was suspended indefinitely and allowed to petition for a stay of the suspension after three months, which he did. By Order of October 8, 1997, respondent was allowed to return to practice under terms of a five-year probation which included monitoring by the Board for at least

five years; refraining from all consumption of alcohol or controlled substances; refraining from the dispensing, administering or distribution of controlled substances; continued cooperation with the Physician Health Services; random bodily fluid screenings; counseling by a licensed or certified health care professional experienced in the treatment of chemical dependency; and weekly participation in group counseling for chemically dependent persons.

CONCLUSIONS OF LAW

1. The suspension of respondent's license to practice medicine in Massachusetts for addiction to controlled substances provides grounds for the suspension of his license to practice medicine in New Jersey pursuant to N.J.S.A 45:1-21(b), (e) and (g).

ACCORDINGLY, IT IS on this 11th day of May, 1998,

ORDERED that:

1. Respondent's license to practice medicine and surgery in the State of New Jersey be and hereby is suspended, with said suspension stayed to become a period of probation.

2. Prior to commencing active practice in New Jersey, respondent shall be required to appear before a committee of the Board to demonstrate successful compliance with and completion of the requirements of his Massachusetts suspension and his possession of an unrestricted license to practice medicine in all other jurisdictions where he is so licensed, and any medical practice in this State prior to said appearance shall constitute grounds for the automatic suspension of his New Jersey license. In addition,

the Board reserves the right to place restrictions on respondent's practice should his license be reinstated.

3. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry hereof unless respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a) Submitting a written request for modification or dismissal to Kevin B. Earle, Executive Director, State Board of Medical Examiners, 140 East Front Street, 2nd Floor, Trenton, New Jersey 08608.

b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.

c) Submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

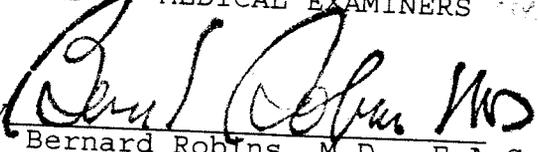
4. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, or if the Board is not persuaded that submitted materials merit further consideration, a Final Order of Suspension will be entered.

5. In the event that respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings

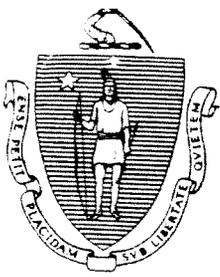
of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegations in such proceeding.

BOARD OF MEDICAL EXAMINERS

By



Bernard Robins, M.D., F.A.C.P.
President



Commonwealth of Massachusetts
Board of Registration in Medicine

10 West Street
Boston, Massachusetts 02111

(617)727-3086

Fax: (617) 451-9568

An Agency within the Office of Consumer Affairs and Business Regulation

ALEXANDER F. FLEMING
EXECUTIVE DIRECTOR

PENELOPE WELLS
GENERAL COUNSEL

NISHAN J. KECHEJIAN,
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PETER N. MADRAS, M.I.
BOARD MEMBER

June 5, 1997

Kevin B. Earle, Executive Director
New Jersey State Board of
Medical Examiners
140 East Front Street, 2nd Floor
Trenton, New Jersey 08608

Re: In the Matter of Bernard Perlman, M.D.
Adjudicatory Case Number 97-12-XX

Dear Mr. Earle:

Enclosed are copies of documents from this Board's recent disciplinary action regarding the above-listed physician who believe is also licensed in your state.

Please call if you have any questions.

Sincerely,

Virginia W. Cunningham
Virginia W. Cunningham
Paralegal, Legal Unit

Enclosure

for back pain. At times, Respondent took as many as 4-5 tablets every 4-5 hours, including while at work and while seeing patients.

3. Respondent's method for obtaining these drugs was through the issuance of false prescriptions for family members or acquaintances, and then diverting the drugs to his own use. Said prescriptions were fraudulent, in that Respondent did not intend these prescriptions to be for the use or benefit of the named patient. Respondent regularly picked up these prescriptions himself.

4. Pharmacy records show that Respondent diverted approximately 10,698 tablets of Vicodin ES for his own use during roughly a three year period -- slightly in excess of 9 per day.

LEGAL BASIS FOR PROPOSED RELIEF

Pursuant to G.L. c. 112, §5(c) and 243 CMR 1.03(5)(a)3, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has committed conduct which places into question his competence to practice medicine.

Pursuant to G.L. c. 112, §5(e) and 243 CMR 1.03(5)(a)5, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician is or has been habitually addicted to, dependent on, or a habitual user of drugs.

Pursuant to G.L. c. 112, §5(d) and 243 CMR 1.03(5)(a)4, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said

physician is practicing medicine while his ability to practice is impaired by alcohol, drugs, physical disability, or mental instability.

Pursuant to G.L. c. 112, §5(h) and 243 CMR 1.03(5)(a)10, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician is practicing medicine deceitfully.

Pursuant to G.L. c. 112, §5(b) and 243 CMR 1.03(5)(a)2, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has violated any provision of the laws of the Commonwealth relating to the practice of medicine -- specifically, has violated Gen. Laws c. 94C.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§5, 61, and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

NATURE OF RELIEF SOUGHT

The Board is authorized and empowered to order appropriate disciplinary action which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

ORDER

Wherefore, it is hereby **ORDERED** that the Respondent show cause why he should not be disciplined for the conduct described herein.

By the Board,



Nishan J. Kechejian, M.D.
Chairman

Dated: June 4, 1997

Notified by
Certified Mail
6/5/97 EJM

clinic on Cape Cod. He is a graduate of the University of the East Medical School in the Philippines. He is licensed in Massachusetts and New Jersey.

2. Respondent has been, and has admitted to the Board as having been, dependent on Vicodin ES, a class III narcotic, since as early as 1993, when he began taking it to treat back pain. At times, Respondent took as many as 4-5 tablets every 4-5 hours, including while at work and while seeing patients.

3. Respondent's method for obtaining Vicodin ES was through the issuance of false prescriptions for family members or acquaintances, and then diverting the drugs to his own use.

4. Under Gen. Laws c. 94C, section 33(b), uttering a false prescription for a controlled substance, or obtaining possession of controlled substance by means of fraud, deception or subterfuge is prohibited. The prescriptions which Respondent issued were fraudulent, in that Respondent did not intend these prescriptions to be for the use or benefit of the named patient.

5. Pharmacy records show that Respondent diverted approximately 10,698 tablets of Vicodin ES for his own use during roughly a three year period -- slightly in excess of 9 per day.

6. Respondent regularly picked up these prescriptions himself.

MITIGATING FACTS

7. Respondent has voluntarily agreed with the Board not to practice medicine since March 1997.

8. Respondent has voluntarily enrolled in Physician Health Services of the Massachusetts Medical Society, where he undergoes monitoring and counseling.
9. Respondent has cooperated fully with the Board in its investigation of this matter.

CONCLUSIONS OF LAW

- A. Respondent may be disciplined pursuant to G.L. c. 112, §5(d) and 243 CMR 1.03(5)(a)4, in that he has practiced medicine while impaired by Vicodin ES, a class III narcotic.
- B. Respondent may be disciplined pursuant to 243 CMR 1.03(5)(a)2 and 2.07(5), in that he has violated Gen. Laws c. 94C, § 33(b) by fraudulently obtaining controlled substances through prescriptions.

SANCTION

The Respondent's license is hereby suspended for an indefinite period of time. The Respondent may petition the Board for a stay of the suspension after three months have run from the date of acceptance by the Board. At the time he petitions the Board for stay of suspension, the Respondent must document to the Board's satisfaction that he has maintained continuous sobriety for that period, with such documentation to include, but not be limited to, a letter from the Director of the Massachusetts Medical Society's Physician Health Services ("PHS"), or an equivalent Board approved monitoring program, that the Respondent has been in contract with the program and has been in compliance

with that contract. In addition, such documentation to the Board should include, but not be limited to, an independent examination by a Board approved physician with expertise in addiction treatment. Said examination shall be at the Respondent's expense, the results of said examination shall be reported by the examiner directly to the Board.

Although the Respondent has the right to petition the Board for a stay of suspension, the Board retains the discretion to deny the petition or to accept the petition under such terms and conditions as the Board may order, including but not limited to, entry into a Probation Agreement with the Board.

This sanction is imposed for Conclusions of Law A and B individually and not for a combination of them.

EXECUTION OF THIS CONSENT ORDER

The parties agree that the approval of this Consent Order is left to the discretion of the Board. The signature of the Respondent, his attorney, and Complaint Counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on the Consent Order. As to any matter this Consent Order leaves to the discretion of the Board, neither the Respondent, nor anyone else acting on his behalf has received any promises or representation regarding the same.

The Respondent waives any right of appeal he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide, within ten (10) days of acceptance of this Consent Order by the Board or when he establishes employment, privileges, appointment or affiliation, whichever is later, any employer, health maintenance organization, health care organization or health care facility with which he has appointment, privileges, or other association with a copy of this Consent order by certified mail, return receipt requested, or by hand deliverance, and the Respondent is further directed to certify to the Board within that same time period that he has complied with this directive.

Bernard H. Kaufman
Respondent

5-30-97
Date

W. Scott Rubey
Respondent's Counsel

5-30-97
Date

James L. Bryant
Complaint Counsel

6-2-97
Date

Approved by the Board of Registration in Medicine this 7 day of June, 1997.

Nishon J. Kechayian MD

Board Chairman

Notified by
Certified Mail
6/5/97 (ZM)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Board of Registration in Medicine

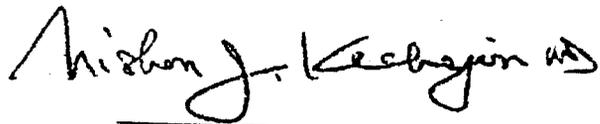
Adjudicatory Case
No. 97-12-XX

In the Matter of)
Bernard Perlmán, M.D.)

ORDER

The Respondent's Petition To Stay Suspension is hereby ALLOWED, subject to the provisions of the attached Probation Agreement.

Dated: October 8, 1997



Nishan J. Kechejian, M.D.
Chairman

- Notified by
First class
Mail - vwc -

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Board of Registration in Medicine

Adjudicatory Case
No. 97-12-XX

_____)
 In the Matter of)
)
 Bernard Perlman, M.D.)
 _____)

I. COMPLIANCE WITH AGREEMENT

The Respondent's license to practice medicine has been suspended for an indefinite period, which suspension shall now be stayed upon the Respondent's compliance with all the conditions of probation set forth below in Section IV.

II. PARTIES

The parties to this Probation Agreement are the Board of Registration in Medicine (the "Board") and Bernard Perlman, M.D. (the "Respondent").

III. JURISDICTION

The parties agree that the Board has the authority to enter into this Probation Agreement, and that the Board may enforce the terms of this Agreement in accordance with applicable laws and regulations and the provisions of this Agreement.

IV. CONDITIONS OF PROBATION

During the probationary period which shall commence on the date the Board approves this Agreement, the Respondent shall comply with each of the following requirements:

- A. The Respondent agrees to undergo monitoring by the Board for a period of at least five years commencing on April 4, 1997, and such further period thereafter as the Board shall for reasonable cause order.
- B. The Respondent shall refrain from all consumption of alcohol, and use of all controlled substances, unless specifically prescribed by a treating physician who has been informed of the Respondent's chemical dependency history, for a legitimate medical purpose and in the usual course of the treating physician's medical practice.
- C. The Respondent shall not dispense, administer, or distribute controlled substances during the five year probationary period or any extension thereof. The Respondent shall not prescribe controlled substances found within Schedules II through IV, except under such terms and conditions as the Board

may impose during the probationary period and at no time before a practice plan is approved. The Respondent shall not prescribe any controlled substances to himself or any member of his family; and agrees that this provision contained in this sentence will survive the probationary period. Prescribing of controlled substances under this paragraph must be in accordance with all applicable state and federal controlled substance registration requirements.

D. The Respondent has entered into a contract, dated April 4, 1997, and in a form acceptable to the Board, with the Physician Health Services ("PHS") of the Massachusetts Medical Society. The Respondent agrees to abide fully by all terms of this contract. This contract includes a provision that PHS will promptly inform the Board of any lapse or violation of its terms by the Respondent, and the contract provides for any necessary waivers of privilege or confidentiality by the Respondent. PHS shall submit quarterly reports to the Board which detail the Respondent's compliance with this contract.

E. The Respondent shall undergo random bodily fluid screenings as required by PHS or as may be required by the Board, which requirement may be reasonably modified from time to time consistent with scientific or practical advances in the field of alcohol and drug detection. The Respondent shall submit random samples at least weekly on average, or at such other frequency as the Board or PHS may require. Sample collection shall be observed by PHS or its designee. An officer of PHS shall file reports of the screening evaluations completed during the previous three months with the Board within thirty (30) days as part of their quarterly report. Said reports shall specify the dates on which samples were taken and shall specify the results of the analysis of such samples and shall be signed by the person in charge. In addition, the

Respondent shall obtain the written agreement of PHS to notify the Board immediately by telephone and in writing;

1.a) in the event that Respondent's sample is found to contain any evidence of alcohol or any controlled substance in violation of this Probation Agreement; or

b) in the event that PHS has other reliable evidence that the Respondent has used alcohol or any controlled substance in violation of this Probation Agreement;

2. in the event that the Respondent misses any random bodily fluid test, excluding an administrative or laboratory mistake beyond the Respondent's control;

3. in the event that the Respondent refuses to cooperate with PHS in monitoring bodily fluids in any manner; or

4. in the event that the Respondent withdraws any waiver filed in connection with this Probation Agreement.

The Respondent agrees to waive any privileges he may have concerning such reports and disclosures to the Board by PHS.

F. The Respondent shall at all times during the length of the probationary period be reasonably available to provide an immediate bodily fluid screen at the request of the Board.

G. The Respondent shall immediately notify the Board or its designee in writing any time that any treating physician writes a prescription for the Respondent for a controlled substance in Schedules II through IV, inclusive.

H. The Respondent shall be under the care of a licensed or certified health care professional experienced in the treatment of chemical dependency who shall submit written reports, including reports on all missed sessions, to the Board or its designee as often as the Board deems necessary but in any event at least once every three months. Copies of these attendance reports shall be part of the quarterly report which PHS submits to the Board. The health care professional shall immediately notify the Board by telephone whenever, in his or her professional judgment, the Respondent poses a potential danger to the health, safety and welfare of the Respondent's patients. In addition, the health care professional shall immediately notify the Board by telephone and in writing in the event that the Respondent terminates treatment, or is non-compliant with the treatment plan. In the event that the health care professional notifies the Board that the Respondent poses a danger to the health, safety or welfare of the Respondent's patients, or terminates treatment, the Board may obtain any and all information, reports, and records for a period not to exceed ninety (90) days prior to the date of said notification from the health care provider concerning the Respondent. The Respondent hereby waives any privileges concerning such information, reports, records and disclosures to the Board. The health care professional shall confirm, in writing, to the Board, his or her agreement and undertaking with respect to the obligations set forth in this paragraph, and shall notify the Board if the Respondent withdraws any waiver filed in connection with this Probation Agreement. The Respondent may not terminate treatment with, or

change the identity of, the health care professional without prior Board approval. The Respondent has chosen Stephen Vance, M.D. as the health care professional who shall fulfill the monitoring requirements of this paragraph.

I. The Respondent shall participate at least once weekly in a group counseling program for chemically dependent persons, approved in advance by the Board. The Respondent shall keep a diary of his attendance at such meetings. The Respondent shall submit this diary to PHS for periodic verification and PHS shall submit current copies of the diary in its quarterly report to the Board.

J. The Respondent shall file, within thirty (30) days of the execution of this Probation Agreement, written releases and authorizations sufficiently broad in scope so as to allow the Board to obtain any and all medical and laboratory reports, treating physicians' reports and records concerning the Respondent's treatment during the probationary period. PHS may retain as confidential the identity of informants who have disclosed suspected or known substance misuse to those programs under the promise of confidentiality.

K. All agreements whereby third parties are to provide written reports, releases, records or any other information to the Board under this Probation Agreement shall be submitted to the Board for approval within thirty (30) days after the Probation Agreement is approved by the Board. All such releases and agreements must, in addition to waiving any relevant state law privileges or immunities, provide the Board with access to all material covered by 42 CFR, Part 2, and the Criminal Offender Records Information (CORI) Act, so-called, M.G.L. c. 6, ss. 167-178; all such releases and agreements must provide that the

released party shall notify the Board if any waiver is withdrawn. In the event that any such releases or waivers are not sufficient to obtain access to any information which the Board in its discretion considers relevant, the Respondent agrees to obtain personally such information and furnish it to the Board, to the extent permitted by law.

L. In the event that the Respondent seeks licensure to practice medicine in another state, the Respondent shall notify the Board of such fact and shall disclose to the licensing authority in such state his status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another states' licensing authority.

M. In the event the Respondent should leave Massachusetts to reside or practice out of the state, the Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside Massachusetts will not apply to the reduction of any period of the Respondent's probationary licensure, unless the Respondent enters into a monitoring agreement, approved by the Board, in the new location.

N. The Respondent shall appear before the Board or a committee of its members at such times as the Board may request, upon reasonable advance notice, commensurate with the gravity or urgency of the need for such meeting as determined by the Board or such committee.

O. The Respondent shall provide, within ten (10) days of the acceptance of this Probation Agreement by the Board, any employer, health care facility, health

maintenance organization, or other health care organization with which he has any appointment, privileges, or any other association with a copy of this Probation Agreement by certified mail, return receipt requested, or by hand deliverance, and the Respondent is further directed to certify to the Board, within the same time period, that he has complied with this directive. If during the term of this Probation Agreement the Respondent establishes employment, privileges, appointment, or other association that was not established on the date of the Board's acceptance of this Probation Agreement, the Respondent shall provide, within ten (10) days of establishing such employment, privileges, appointment, or association, any such employer, health care facility, health maintenance organization, or other health care organization with a copy of this Probation Agreement by certified mail, return receipt requested, or by hand deliverance, and within that same time period, the Respondent shall certify to the Board that he has complied with this directive. The Respondent has selected Richard Abisla, M.D., to serve as his monitor until a practice plan and work monitor are approved by the Board. Until the Board, upon petition of the Respondent, orders otherwise, the Respondent shall continue to be monitored by Dr. Abisla. Doctor Abisla, or his Board approved successor, shall submit a quarterly evaluation of the Respondent to PHS. The evaluation shall be part of the quarterly report which PHS submits to the Board.

P. The Respondent agrees that he shall not commence practicing medicine in any manner, including the prescribing of any medications, unless the Board, upon the Respondent's petition, approves a clinical setting, a practice plan, and monitors. At the Board's discretion, required monitoring may include, among other things, monitoring for sobriety and clinical performance, including

prescribing practices.

Q. The Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by the Respondent's compliance with this Probation Agreement.

R. The Respondent may request that the Board modify any of the conditions set forth above. The Board may, in its discretion, grant such modification. Except for requests for modifications related to the identity of the health care professional referenced in Paragraph H, the monitor referenced in Paragraph O, and the Respondent's employment, Respondent may make such a request not more than once in any one year period, nor any sooner than one year from the date of this Probation Agreement.

V. TERMINATION OF PROBATION

A. If the Respondent complies with his obligations as set forth above, the Board, at the expiration of the five year period, shall, upon petition by the Respondent, terminate the Respondent's probationary period and probation with the Board, unless the Respondent's probation is extended in accordance with paragraph IV(A).

B. If the Respondent fails to comply with his obligations as set forth above,

the Respondent's license to practice medicine may be immediately suspended,
as agreed in Section I.

10/8/97
Date

Bernard Perleman MD
Respondent

10/8/97
Date

W. Scott Hebert
Attorney for the Respondent

Accepted this 8th day of October, 1997, by the
Board of Registration in Medicine.

Mishon J. Keckjian MD
Chairman