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BOARD OF PHARMACY

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

_____	:	
IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	CONSENT ORDER
KEVIN TUSO, R.P. :	:	
	:	
TO PRACTICE PHARMACY IN THE	:	
STATE OF NEW JERSEY	:	
_____	:	

This matter was originally opened to the New Jersey State Board of Pharmacy by John J. Farmer, former Attorney General of New Jersey, Marianne W. Greenwald, Deputy Attorney General appearing. Respondent entered into a Consent Order with the Board of Pharmacy on January 2, 2002 whereby he agreed to the voluntary surrender of his pharmacy license pending further Order of the Board upon respondent's application for reinstatement.

In connection with the application for reinstatement respondent appeared before the full Board and testified as to his past treatment for substance abuse and his present efforts to maintain sobriety. It appearing that respondent has completed an in patient treatment program, continues to attend support group meetings, is under the care of a therapist and has continued to have negative drug and alcohol screens, and respondent having satisfied the Board of his intention to continue in his present treatment program, and it further appearing that respondent wishes to resolve this matter without the necessity of further formal proceedings, and for good cause shown,

IT IS THEREFORE ON THIS 8 DAY OF *October*, 2003,

ORDERED AND AGREED,

1. Respondent shall submit documentation of his successful completion of 30 continuing education credits. Thereafter, the license to practice pharmacy of Kevin Tusso shall be reinstated and placed on a probationary status for one (1) year subject to compliance with paragraphs 2 through 9 herein. If respondent violates any of the provisions of paragraphs 2 through 9 herein, the Board may initiate proceedings to revoke his license to practice pharmacy.

2. (a) Kevin Tusso shall submit to random urine monitoring two (2) times per week at a laboratory facility approved by the Board for the initial six (6) months, and thereafter one

time per week for the duration of the probation. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M/S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b) All test results shall be provided directly from the laboratory facility to Joanne Boyer, R.P., Executive Director of the Board, or her designee in the event she is unavailable. The Board also retains sole discretion to modify the manner of testing in the event technical developments, or individual requirements indicate that a different methodology, approach, or confirming tests are required in order to guarantee the accuracy and reliability of the testing.

(c) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Joanne Boyer, or her designee. Personnel at the lab facility shall not be

authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test with two (2) days, e.g., physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall be deemed dilute and the specimen subjected immediately to the confirming GC/MS test.

(f) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for

a positive urine screen and/or failure to comply with the urine monitoring program.

3. Respondent shall continue his participation with the Physicians' Health Program ("PHP") and shall have monthly face to face contact with representatives from that program. Respondent shall comply with aftercare as directed by the PHP and shall comply with any recommended therapeutic regime for treatment or counseling. Respondent shall be responsible for ensuring that any treating psychiatrist/psychologist and any other person(s) providing therapy regarding substance abuse issues, provide the Board with quarterly reports regarding his progress in counseling.

4. Respondent shall attend support groups, including NA or AA not less than three(3) times per week. Respondent shall provide evidence of attendance at such groups directly to the Board. If respondent discontinues attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

5. Respondent shall abstain from the use of alcohol or controlled dangerous substances and shall not possess any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent shall cause any physician

or dentist who prescribes medication for him which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

6. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment or other program as outlined in this Order, as may be required in order that all reports, records, and other pertinent information may be provided to, and utilized by the Board in a timely manner.

7. Respondent shall not be a pharmacist-in-charge during the entire period of probation.

8. Respondent shall give written notice to the Board and to his employer prior to beginning or changing any employment. Employee evaluations shall be submitted weekly for the first month of employment and thereafter, quarterly performance evaluations shall be submitted to the Board for one year.

9. (a) respondent shall be subject to an order of automatic suspension of his license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this Consent Order, including but not

limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

10. No earlier than one (1) year from the entry of this Order respondent may appear before the Board to request a modification regarding urine screens and/or supervision.

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward G. McGinley R.P.
Edward G. McGinley R.P.,
President

I have read the within Order and understand it. I agree to be bound by its terms and hereby consent to it being entered by the New Jersey Board of Pharmacy.

Kevin R. Tusso 10/3/03
Kevin Tusso, R.P.