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FILED

DEC 10 2008

BOARD OF PHARMACY

By: Megan Cordoma
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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 :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

HOWARD WERTHEIM, R. P. :
License No.: 28RI101975600 :

CONSENT ORDER

TO PRACTICE PHARMACY IN THE :
STATE OF NEW JERSEY :
_____ :

This matter was opened to the New Jersey State Board of Pharmacy upon the receipt of information that respondent had failed to comply with the Order of Reinstatement of license filed with the Board on July 11, 2007 attached hereto and made a part of this Order. Specifically, respondent failed to obtain random weekly urine screens, and ensure that the results would be provided to the Executive Director of the Board. Once obtained, urine screen results demonstrated that on three occasions respondent had opiates in his system; he discontinued his treatment with psychiatrists; he failed to attend support groups, and respondent failed to notify the Board as to where he was employed and failed to show the employer the July 11, 2007 Order and ensure that the

employer notify the Board in writing that he or she had read the Order.

On September 10, 2008 Respondent appeared before the Board and testified that he believed that the urine tests were being provided to the Board and that he asked his employer to notify the Board of his change in employment. He stated that he has been unable to find a psychiatrist who is accepting new patients who also accepts his insurance plan. In August 2008 Respondent voluntarily enrolled in the Professional Assistance Program (PAP) after his drug screens were positive for Tylenol with Codeine in May of 2008.

Respondent, being desirous of resolving this matter without the necessity of further formal proceedings, and agreeing to waive any right to same, and the Board having determined that this Order is sufficiently protective of the public health, safety and welfare; and all parties agreeing to the terms of this Order,

ACCORDINGLY, IT IS on this 10th day of DECEMBER, 2008,

ORDERED THAT:

1. Respondent Howard Wertheim, R.P.'s license to practice pharmacy in the State of New Jersey is hereby suspended for a minimum of one year from the date of entry of this Order.
2. Respondent shall cease and desist from engaging in the practice of pharmacy, which includes, but is not limited to the following: respondent shall not handle, order, inventory, compound, count, fill, refill or dispense any drug; he shall not handle anything requiring a prescription, including devices and medications; he shall not handle prescriptions; he shall not advise or consult with patients, and he is prohibited from being present within a prescription filling area of a pharmacy.
3. Respondent shall surrender his original wall certificate, his wallet certificate, and his most recent renewal card of his license to the Executive Director of the Board immediately upon

the entry of this Order by mailing same to Joanne Boyer, Executive Director, Board of Pharmacy,
P. O. Box 45013, Newark, New Jersey 07101.

4. Respondent shall enroll in and comply fully with the monitoring program established for him by the PAP. Such monitoring program shall include but not be limited to:

- a. Absolute abstinence from all psychoactive substances including alcohol unless prescribed by a treating health care professional for a documented medical condition and with notification from the treating health care professional to the executive medical director of the PAP of the diagnosis and treatment regime within five days of issuing the prescription. Respondent shall advise all of his treating health care practitioners, who prescribe medications, of his addiction history and shall be responsible to ensure that the treating health care professional notifies the PAP of any prescription for a psychoactive substance within five days of issuance of the prescription. Respondent shall also personally notify the PAP of any prescription for a psychoactive substance within five days of issuance of the prescription.
- b. Respondent shall, within three months of the entry of this order, undergo an in-depth psychological or psychiatric evaluation by a psychiatrist or psychologist approved by the PAP and comply with any recommendations made by the therapist. Thereafter, Respondent shall participate in individual psychiatric or psychological therapy with a therapist approved by the PAP and at a frequency determined by the therapist until such time as the therapist, in consultation with the executive medical director of the PAP agree that therapy is no longer required.
- c. Respondent shall attend support group meetings of Alcoholics Anonymous or Narcotics Anonymous at a frequency of not less than three meetings per week. Respondent shall provide evidence of attendance at such groups directly to the PAP on a form or in a manner as required by the PAP.
- d. Respondent shall undergo random witnessed urine monitoring under the supervision of the PAP on a random, unannounced basis, at a frequency of no less than 2 times per week. All test results shall be provided in the first instance directly to the PAP and then to the Executive Director of the Board. Any positive result shall be reported immediately by the PAP to the Executive Director of the Board.
- e. The Board reserves the right to require a modification of the manner of the random witnessed urine testing by the PAP in the event technical developments or individual requirements indicate that a different methodology or approach is required to guarantee the accuracy and reliability of the testing.
- f. Respondent's failure to submit to or provide a urine sample within twenty-four hours of a request shall be deemed to be the equivalent of a confirmed positive urine test and shall be deemed a violation of this order unless Respondent is unable to appear for a scheduled urine test due to illness or other impossibility. Respondent must advise the Board in writing within two (2) days, and cause the PAP to so advise the

Board in writing within (2) days, of a claimed illness or impossibility. If Respondent fails to appear for a scheduled urine test due to illness, Respondent shall provide to the Board, written substantiation of the illness in the form of a physician's report, within two (2) days. "Impossibility" means an obstacle beyond the control of Respondent that is insurmountable or that makes his appearance for the urine test so infeasible that a reasonable person would waive Respondent's requirement to give the urine sample that day.

- g. All random witnessed alcohol and drug screens shall be negative for the presence of alcohol or drugs, unless the drugs detected by screening were taken for a documented illness pursuant to a valid prescription from a health care practitioner aware of Respondent's substance abuse history. All positive results shall be confirmed by the Gas Chromatography Mass Spectrometry (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.
- h. Any urine test result showing creatinine levels below 20 mg/dl and a specific gravity below 1.003 shall create a rebuttable presumption of a confirmed positive urine test, and shall be followed by a confirming test. The method of the confirming test shall be determined by the PAP.
- l. Respondent shall become familiar 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. Respondent specifically agrees that 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.
- j. Respondent shall submit to continued monitoring by the PAP and shall meet with the PAP on a face-to-face basis at least once a month for the first three months following entry of this Order, with subsequent reductions at the direction of the executive medical director of the PAP consistent with Respondent's duration in recovery and with prior notification to the State Board of Pharmacy.
- k. Respondent shall be responsible to ensure that the PAP shall supply reports every ninety (90) days to the Board regarding his progress with the monitoring program beginning on the "filed" date of this Order
- l. Respondent shall obtain the agreement of the PAP via a signature of its representative on this Order to notify the Board within 24 hours of its receipt of information of any noncompliant behavior, slip or relapse of impairment, including but not limited to any positive urine screen or failure to appear for urine monitoring or any scheduled appointment or any discontinuance of the PAP rehabilitation program whether initiated by Respondent or by the PAP.
- m. Respondent expressly waives any claim to privilege or confidentiality that he may have concerning reports and disclosures to the Board, and use by the Board of that

information in any license proceedings, including reports and disclosures by the urine monitoring program, or the PAP, or any other person or entity involved in the rehabilitation program.

n. All costs associated with the monitoring outlined above shall be the responsibility of, and paid directly by, Respondent.

5. Respondent may request modification of this Order no earlier than one year after the date of entry of this Order. Any such application shall be in writing, and shall include information as follows:

- a. Documentation showing his compliance with each term of this Order;
- b. Evidence that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare and that he is not then suffering from any impairment or limitation resulting from the use of controlled substances, alcohol, or any drug which could affect his ability to practice;
- c. Evidence that he is not a habitual user of controlled substances, alcohol, drugs or mood altering chemicals in violation of N.J.S.A. 45:1-21(1) ;
- d. Complete treatment records of all diagnostic and rehabilitative therapy and an in-depth, current evaluation from a Board approved psychiatrist or psychologist. In addition, respondent shall provide reports from each and every mental health professional (including, but not limited to: psychologists, psychiatrists, counselors, and therapists) who have participated in respondent's care and/or treatment in this matter during the period of time from the entry of this Consent Order to his appearance before the Board.
- e. Documentation of his participation in random, twice weekly, and directly witnessed urine monitoring by providing all test results for a minimum of one year prior to his application for modification. This documentation shall show that Respondent has not had any positive test results for alcohol, controlled substances or any other psychoactive substances;
- f. Provide the Board with a full account of his conduct during the intervening period of time from his entry into treatment to his appearance pursuant to this Order.

6. After the Board has received the documentation required by paragraph five (5) of this Order, Respondent shall appear before the Board or a committee thereof to discuss his readiness to reenter the practice of pharmacy. At that time Respondent shall be prepared to propose his plans for future practice in New Jersey.

7. The parties hereby stipulate that entry of this Order is without prejudice to further action by this Board or other law enforcement entities resulting from respondent's conduct prior to entry of this Order.

NEW JERSEY STATE BOARD OF PHARMACY

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

I have read the above Order and understand its terms. I consent to the entry of this Order by the State Board of Pharmacy.

Howard Wertheim
Howard Wertheim R. Ph.
Respondent

Consent as to form and entry.

Angelo Cifaldi
Angelo Cifaldi, Esq.
Attorney for Howard Wertheim, R. Ph.