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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
APPLICATION OF

Alan Kay, R.P.
License No. 28RI01565700

FOR REINSTATEMENT OF LICENSURE
TO PRACTICE PHARMACY IN THE
STATE OF NEW JERSEY

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: Administrative Action
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: CONSENT ORDER OF
: REINSTATEMENT OF LICENSE
: WITH CONDITIONS AND
: MONITORING
:
:

This matter was most recently opened to the New Jersey State Board of Pharmacy ("the Board") upon receipt of respondent Alan Kay's application for reinstatement of his license to practice pharmacy in this State. By way of history, on September 2, 2008, respondent was arrested and charged with unlawful possession of controlled dangerous substances (CDS) and prescription legend drugs. On February 6, 2009, respondent was granted a twelve-month

conditional discharge by the municipal court, and was required to complete all terms and conditions of the Conditional Discharge Program. By Consent Order filed with the Board on December 9, 2009 respondent voluntarily surrendered his license to practice pharmacy with no application for reinstatement to be made until the completion of his term of conditional discharge.

In support of respondent's current petition for reinstatement, Dr. Edward Reading, Assistant Director of the Professional Assistance Program (PAP), submitted letters dated August 26, 2010 and November 8, 2010 in which he stated that respondent has been monitored by PAP since September 22, 2008. The PAP takes the position that Respondent had a medical condition which developed into Chronic Pain Syndrome, and that as a Respondent had not been receiving proper pain management, it led to respondent diverting pain medication from his employer's pharmacy. Dr. Reading provided documentation that respondent has been treated and is under continuing medical treatment for these underlying medical conditions is currently managing his pain issues without medications. The PAP strongly recommended respondent's reinstatement with certain monitoring requirements.

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 finding that respondent has demonstrated sufficient rehabilitation, fitness and ability to practice pharmacy, and has complied with the conditions set forth in the Consent Order of December 9, 2009; 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 8th day of DECEMBER, 2010,

ORDERED THAT:

1. Respondent's license shall be reinstated following his provision to the Executive Director of the Board of the following which shall all be to the satisfaction of the Board:
 - a. Proof of successful completion of all application requirements including a criminal history background check with results that are satisfactory to the Board and payment of all reinstatement fees;
 - b. Documentation of completion of continuing education credits required by N.J.A.C. 13:39-3A.1 to 13:39-3A.7.
2. After respondent has complied with all of the requirements of paragraph one (1) of this Order to the satisfaction of the Board, respondent's license to practice pharmacy shall be reinstated subject to a two year period of probation and subject to the conditions set forth below until further Order of the Board.

3. Respondent shall continue participating in PAP for a minimum period of two years and comply fully with the monitoring program established for him by the PAP. Such monitoring program shall include but not be limited to:

- a. Compliance with all treatment recommendations for counseling or medical care made by any of respondent's treating physicians or clinical staff of the PAP.
- b. Maintaining regular contact with all treating physicians and other healthcare providers to care for any conditions that require medical care. Any prescriptions shall be copied and forwarded to the Medical Director of the PAP.
- c. 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 psychoactive substance within five days of issuance of the prescription.
- 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 month for the first twelve months following respondent's return to practice. Subsequent reductions in the frequency of urine screens shall be at the direction of the executive medical director of the PAP consistent with respondent's duration in recovery with prior notification to the State Board of Pharmacy. All test results shall be provided in the first

instance directly to the PAP and any positive result shall be reported immediately by the PAP to the Executive Director of the Board. Any indication of non-prescribed medications will be reported by the PAP to the Board along with treatment recommendations.

- 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.
- i. 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 a minimum of one year following respondent's return to practice, with subsequent reductions at the direction of the executive medical director of the PAP consistent with respondent's duration of recovery and with prior notification to the State Board of Pharmacy.
- k. Respondent shall be responsible to ensure that the PAP shall supply reports to the Board every ninety (90) days beginning on the "filed" date of this Order regarding his progress with the monitoring program along with an evaluation by the PAP at the end of the first year and at the conclusion of the two year period of probation.
- 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 his rehabilitation program.

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

4. Respondent shall not act as a preceptor or a pharmacist-in-charge (RPIC) at any pharmacy and shall not own or have an ownership interest in any pharmacy during the two year period of probation.

5. During the two year period of probation, Respondent hereby consents to the entry of an Order of automatic suspension of license without notice, upon the Board's receipt of any information which the Board in its sole discretion deems reliable that respondent has failed to comply with any of the conditions set forth above, any other provision of this Order, any report of a confirmed positive urine, or a prima facie showing of a recurrence of the use of alcohol or any psychoactive substance which is not prescribed by a treating health care professional aware of respondent's substance abuse history, for a documented medical condition, and with notification to the PAP as described above.

6. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice but in such event shall be limited to a showing that the urine tested was not

his or was a false positive in the case of urine testing, or that other information submitted was false.

NEW JERSEY STATE BOARD OF PHARMACY

By:

Edward G. McGinley
Edward G. McGinley, R.Ph.,
President

I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

Alan Kay, R.P.
Alan Kay, R.P.

Agreed as to the monitoring and reporting requirements of this Consent Order on behalf of the Professional Assistance Program.

Louis E. Baxter, Sr.
Louis E. Baxter, Sr., M.D., FASAM
Medical Director
Professional Assistance Program