



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
Case Initiation and Tracking Unit
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April 10, 2014

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Newark, NJ 07101
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-Via Certified & Regular Mail-

Manuel Nigalan, Reg# 41710-050
CCM Philadelphia - Community Corrections Office
2nd & Chestnut St. - 7th Floor
Philadelphia, PA 19106

In The Matter of the New Jersey CDS
Registration issued to
Manuel B. Nigalan, M.D.
NJ CDS Registration No. D01580700
Docket #: 13-082

Dear Manuel Nigalan:

Enclosed please find a Final Order on Default in connection to the above captioned matter which was filed on **April 9, 2014**.

Respectfully,


James Rodriguez
Clerk

cc: Steve C. Lee, Acting Director
Maryann Sheehan, Deputy Director, Professional Boards
Matt Wetzel, Acting Head Drug Control Unit
David M. Puteska, Deputy Attorney General
Megan Cordoma, Deputy Attorney General
Jerome A. Ballarotto, Esq. 143 White Horse Avenue, Trenton, NJ 08610

FILED

APR 9 2014

Division of Consumer Affairs

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

**IN THE MATTER OF THE NEW JERSEY
CDS REGISTRATION ISSUED TO**

Administrative Action

Manuel B. Nigalan, M.D.

**FINAL ORDER
ON DEFAULT**

N.J. CDS REG. # D01580700

13-082

This matter was opened to Eric T. Kanefsky, Director of the New Jersey Division of Consumer Affairs (the "Director") pursuant to his authority over the dispensing¹ of Controlled Dangerous Substances (CDS) as set forth in N.J.S.A. 24:21-1 et seq. upon his receipt and review of information and by way of an Order to Show Cause filed with the Division of Consumer Affairs (the "Division") by John Hoffman, Acting Attorney General of New Jersey, Deputy Attorney General David Puteska appearing on September 30, 2013. The Order was returnable on December 9, 2013, at 9:00 a.m. Pursuant to N.J.S.A. 24:21-12, the Attorney General sought revocation of the registration of Manuel B. Nigalan, M.D. ("Respondent") to dispense CDS.

The Order to Show Cause alleges that, on June 15, 2009, Respondent was charged in the United States District Court for the District of New Jersey with conspiracy to distribute, dispense and possess with the intent to distribute CDS, without a legitimate medical purpose and outside the scope of practice, in violation of Title 21, United States Code, Section 841(a)(1) and 841(b)(1)(c). Respondent was subsequently indicted. On May 9, 2011, Respondent pled guilty

¹ "Dispense" means to deliver a controlled dangerous substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery." N.J.S.A. 24:21-2.

and was convicted of one count of the indictment charging him with conspiring with others to distribute and possess with the intent to distribute Schedule II CDS in violation of 21 U.S.C. §§846, 841(A) and 841(B)(1)(C). Respondent was sentenced to a period of incarceration for 36 months and was ordered to forfeit property in the amount of \$613,000.00 and pay a fine in the amount of \$10,000.00.

Respondent did not submit an Answer or other written response to the Order to Show Cause. Nor did he telephone or appear at the Division of Consumer Affairs office seeking an adjournment or otherwise responding to the Order to Show Cause. Notification of the Order to Show Cause was sent on October 9, 2013 to the attorney of record for Respondent, Jerome Ballarotto. Mr. Ballarotto sent a letter to the Division of Law indicating that his representation of his client was limited to the criminal matters before the Federal District Court, and that he would not appear for the Order to Show Cause.

A hearing was held before the Director on December 9, 2013. Deputy Attorney General David Puteska appeared on behalf of the Attorney General. After representing that neither Respondent nor counsel for Respondent had called the Attorney General or responded to the Order to Show Cause, the Attorney General asked to proceed with the hearing to revoke Respondent's registration, asserting that adequate efforts at service had been made. He supported his application with the following document introduced into evidence:

P-1, the Certification of James Rodriguez, Clerk, dated November 25, 2013, in which Mr. Rodriguez certifies that service was made on or about October 11, 2013 via United States Express Mail, of a copy of the Order to Show Cause and attached exhibits in this matter on Miguel Nigalan, USP- CCM Philadelphia – Community Corrections Office, 2nd and Chestnut, 7th Floor, Philadelphia, Pennsylvania, 19106. This address was obtained from the Federal Bureau

of Prisons Inmate Locator Service. A true and complete copy of the Express Mail receipt, and proof of delivery on October 8, 2013 are attached to Mr. Rodriguez' certification.

The Director determined that the State had met its burden of proof and demonstrated that service was made at respondent's current place of residence. The Director found efforts at service sufficient to place Respondent on notice pursuant to N.J.A.C. 1:1-7.1, and found the Respondent to be in default and moved forward with the hearing in Respondent's absence. With an appreciation that internal mail delivery at a penitentiary may not be expeditious, the Director indicated that this default proceeding was without prejudice to Respondent's ability to reopen this matter at a later time upon a showing that the Order to Show Cause was not actually received by him.

SUMMARY OF EVIDENCE PRESENTED

In opening statements and in the Order to Show Cause submitted to the Director, the Attorney General argued that Respondent's guilty plea and criminal conviction of an indictable offense related to his indiscriminate prescribing of CDS, constitutes grounds for revocation of his New Jersey CDS registration pursuant to N.J.S.A. 24:21-12(a)(2),(3) and (4). The Attorney General supported his application for revocation of Respondent's registration with the following documents introduced into evidence:

- P-2 United States District Court – Criminal Complaint, dated June 15, 2009
- P-3 Judgment in a Criminal Case I/M/O USA v. Manuel B. Nigalan, dated May 10, 2011.
- P-4 Consent Order between Respondent and New Jersey State Board of Medical Examiners
- P-5 Certified copy of Surrender of DEA registration
- P-6 United States District Court – Forfeiture Order of \$613,000.00

The Judgment of Conviction, P-3 in evidence, establishes that Respondent pled guilty to one count of Conspiracy to Distribute and Possess with the Intent to Distribute Oxycodone in violation of 21 U.S.C. §§846, 841(A) and 841(B)(1)(C). The Judgment further establishes that Respondent was sentenced to thirty six (36) months of imprisonment and that a criminal penalty of \$10,000.00 was imposed.

On or about October 14, 2010, Respondent entered into a final consent order with the New Jersey Board of Medical Examiners (the "Board"), P-4 in evidence. The Board found that Respondent had engaged in professional misconduct; been convicted of acts constituting crimes or offenses involving moral turpitude and/or relating adversely to the practice of medicine; prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, and breached his on-going duty to maintain good moral character in violation of N.J.S.A. 45:1-21(e), (f), (m) and N.J.S.A. 45:9-6. It was ordered and agreed that Respondent would surrender his license to practice medicine and surgery in the State of New Jersey, such surrender to be deemed a revocation of his license.

On or about July 17, 2009, Respondent also voluntarily surrendered his federal controlled substances privileges, DEA registration number BD0318318, P-5 in evidence.

FINDINGS

The evidence presented by the Attorney General in support of the Order to Show Cause for the revocation of respondent's registration is compelling, and collectively establishes a basis to revoke Respondent's New Jersey CDS registration pursuant to N.J.A.C. 13:45H-7.4 and N.J.S.A. 24:21-12(a)(2),(3) and (4), including but not limited to Respondent's admitted distribution of CDS for purposes other than legitimate medical needs and outside the scope of his practice as a physician.

ACCORDINGLY, it is on this 9th day of ~~March~~ ^{April} 2014

ORDERED, as announced orally on the record and effective December 9, 2013:

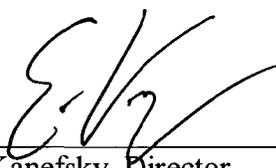
1. New Jersey CDS Registration D01580700, held by Respondent Miguel B. Nigalan, M.D., is hereby revoked.

2. This Order is entered without prejudice to Respondent seeking to reopen this matter at a later time upon a showing that the Order to Show Cause was not actually received by him.

3. Should Respondent, at any future date, wish to prescribe CDS in New Jersey, in addition to obtaining the return of his medical license, he must independently file an application for a CDS Registration with the Director. Such registration will only be issued after Respondent proves, to the Director's satisfaction, that he has been rehabilitated, is able to comport himself with integrity and reliability with respect to controlled dangerous substances, is able to maintain effective controls against diversion, and that such issuance is in the public interest as set forth in N.J.S.A. 24:21-11.

DIVISION OF CONSUMER AFFAIRS

BY: _____


Eric Kanefsky, Director

New Jersey Division of Consumer Affairs