



CHRIS CHRISTIE  
Governor

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Lt. Governor

## New Jersey Office of the Attorney General

Division of Consumer Affairs  
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April 11, 2014

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-Via Certified & Regular Mail-

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In The Matter of the New Jersey CDS  
Registration issued to  
Michael Chung Kay Lam, M.D.  
NJ CDS Registration No. D07517800  
Docket #: 13-076

Dear Mr. Gorell and Mr. Lam:

Enclosed please find a Final Order 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

**FILED**

APR 9 2014

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

**Division of Consumer Affairs**

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

Administrative Action

Michael Chung Kay Lam, M.D.

**FINAL ORDER**

**N.J. CDS REG. # D07517800**

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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 dispensing 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. Respondent Michael Chung Kay Lam held registration number D07517800 to prescribe and dispense CDS issued by the New Jersey Division of Consumer Affairs pursuant to N.J.S.A. 24:21-10. Respondent's CDS registration became inactive on October 31, 2011 upon the temporary suspension of his license to practice medicine and surgery in the State of New Jersey.

The Order to Show Cause alleges that on, June 8, 2012, Respondent pled guilty to one count of criminal distribution of CDS, in violation of N.J.S.A. 2C:35-5A(1) and 2C:35-5B(5). The State argues that Respondent's conviction for an indictable offense, and his indiscriminate issuing of CDS prescriptions for non-legitimate medical purposes, constitute grounds for the revocation of his New Jersey CDS registration pursuant to the Director's authority under N.J.S.A. 24:21-12. It further alleges that Respondent's admitted indiscriminate prescribing of

CDS to patients without legitimate medical need in exchange for cash, admitted falsification of medical records to make it appear as though treatment was being provided when it was not, and admitted failure to record many of the CDS prescriptions he wrote, also warrant revocation of his CDS registration.

In response to the Order to Show Cause, Respondent, through counsel Joseph Gorrell, Esq., submitted a letter to me on December 2, 2013. In that letter, Respondent argued that the Division of Consumer Affairs lacks the authority to deny Respondent the right to prescribe in New Jersey based upon the following:

1. The State has no authority to revoke a physician's authority to prescribe. Instead, N.J.S.A. 24:21-12(a) permits the Director to revoke a registration to "to manufacture, distribute or dispense a controlled dangerous substance," but not to revoke authority of a physician to prescribe.
2. Respondent does not currently have a license to practice medicine and his CDS registration is inactive. Thus, there is not a ripe controversy that can be addressed at this time.
3. The decision whether Dr. Lam should be allowed to prescribe medications is properly within the purview of the New Jersey State Board of Medical Examiners. Even if the Director had the authority to limit prescribing, he should defer to the Board under the principle of comity.

A hearing was held before me on January 27, 2013.

Respondent made a prehearing motion that the action be dismissed based upon the same arguments made in his letter dated December 2, 2013. I denied the motion, finding that the Director of the Division of Consumer Affairs has clear statutory authority over CDS registrations pursuant to N.J.S.A. 24:21-1 et seq. There is nothing in the enabling statutes of either agency which dictates the order in which the agencies should proceed in such matters.

At the close of the hearing, the record was kept open to allow transcripts of the proceeding and the DVD statement (played into evidence as P-6) of Dr. Lam to be prepared. I

directed that within two weeks of receiving the transcripts the parties should submit post-hearing briefs. Both parties submitted briefs in a timely manner.

### **SUMMARY OF EVIDENCE PRESENTED**

In opening statements and in the Order to Show Cause, 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). The State further argued that on repeated occasions Respondent acted as the physician equivalent of a drug dealer in that he repeatedly accepted cash in exchange for issuing CDS prescriptions when there was no legitimate medical need for the prescriptions in violation of N.J.A.C. 13:45H-7.4(a) and constituting grounds for revocation of his registration pursuant to N.J.S.A. 24:21-12(a)(3). Finally, the State argued that there is an independent basis for revocation of a CDS registration in the State of New Jersey where there is no active maintenance of a DEA registration and that the surrender of Respondent's DEA registration "for cause" constitutes grounds for the revocation of his registration pursuant to N.J.S.A. 24:21(a)(4). The Attorney General supported his application for revocation of Respondent's registration with the following documents introduced into evidence:

- P-1 Plea Transcript, dated June 8, 2012.
- P-2 Judgment in a Criminal Case IMO USA v. Michael Chung Kay Lam, dated July 20, 2012.<sup>1</sup>
- P-3 Joint Stipulation between Respondent and New Jersey State Board of Medical Examiners, dated May 21, 2013

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<sup>1</sup> Respondent pled guilty to Possession/Distribution/Manufacturing of CDS I or II, in violation of N.J.S.A. 2C:35(A)(1) and N.J.S.A. 2C:35-5(B)(5).

- P-4 Final Order Revoking Licensure of Respondent dated July 10, 2013. In this Order, the Board of Medical Examiners expressly 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 had failed to demonstrate an on-going duty of 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 that Respondent's license to practice medicine and surgery in the State of New Jersey be revoked. A civil penalty in the amount of \$20,000.00 was assessed.
- P-5 Certified copy of Surrender of DEA Registration, December 21, 2010.<sup>2</sup>
- P-6 Video tape of Respondent's statement made to the Fort Lee Police Department and an Enforcement Bureau Investigator on December 21, 2010 regarding the criminal allegations against him at that time.<sup>3</sup>

In opening statements and in his letter response to the Order to Show Cause counsel for Respondent argued that, with the exception of the poor choices at the heart of this matter, Respondent was a very good doctor who was well respected by his peers. As such, he should not be permanently barred from prescribing CDS. Respondent supported his arguments with the following documents introduced into evidence:

- R-1 Statement in Mitigation of Penalty and in Support of Application for Reinstatement, with attached exhibits, including myriad positive personal and professional letters of reference.
- R-2 Letter from Ghias Moussa, M.D., dated December 27, 2013 in which Dr. Moussa supports the reinstatement of Respondent's medical license and indicates that upon reinstatement he will closely supervise and monitor Respondent's work.
- R-3 Letter from Patrick Dwyer, Director, Continuing Medical Education, Rutgers University, dated December 23, 2013 indicating that Respondent completed the Prim-E ethics course and was awarded 20 AMA PRA

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<sup>2</sup> The Deputy Attorney General represented at the hearing that the Drug Enforcement Administration has confirmed that the current status of respondent's DEA registration is "surrendered for cause."

<sup>3</sup> I allowed the video to be played over objections from Respondent's counsel that the tape was inaudible with the caveat that I would afford it appropriate weight based upon what was able to be understood. I directed the Deputy Attorney General to obtain a transcript of the video and provide same to me and to Respondent's counsel and to redact any identifiable patient health information. The transcript was received on February 19, 2014 and is hereby incorporated into the record.

Category 1 credits.

R-4 Letter from Russell I. McIntyre, Ph.D., dated December 23, 2013 in which he provides an assessment of Respondent's participation in the Prim-E course and indicates that Respondent now has an "enlightened understanding of his boundary violations."

R-5 Final Order Revoking Licensure of Respondent dated July 10, 2013.

Jeffrey Gudin, M.D., Director, Pain Management and Palliative Care at Englewood Hospital and Medical Center appeared and testified on behalf of Respondent. Dr. Gudin concluded, from a review of hundreds Respondent's treatment records and discussion with Respondent, that a very small minority of his patients were treated solely for pain and found that Respondent's general practice of pain management exceeded community standards, and that he did not engage in the "unscrupulous" conduct of certain other opioid prescribers. (Exhibit R-1, Exhibit C; T1 102:13-118:18<sup>4</sup>).

In rebuttal, the Attorney General called Respondent to testify. Respondent admitted, in large part, to the basic factual allegations underlying this matter, i.e. that he accepted cash in return for prescribing CDS on more than one occasion for more than one patient without a legitimate medical reason and falsified the medical records of at least one patient.

Counsel for both parties made closing arguments consistent with their positions as discussed earlier in this Order.

### **FINDINGS**

The evidence presented by the Attorney General in support of the Order to Show Cause for the revocation of Respondent's CDS registration is compelling. Respondent has been convicted of a crime relating to controlled dangerous substance establishing a basis for

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<sup>4</sup> The transcript of the January 27, 2014 hearing in this matter is cited as "T1" followed by the page and line number. The transcript of the DVD interview of Dr. Lam played into evidence as P-6 is cited as "T2" followed by the page and line number.

revocation pursuant to N.J.S.A. 24:21-12(a)(2). Respondent admits that he provided prescriptions to patients without conducting any medical examination and for no legitimate medical purpose. He admits that he provided multiple prescriptions in exchange for cash and that he falsified the medical records of at least one patient by creating fictitious entries to make it appear as though medical treatment was provided, and to having failed to record many of the prescriptions which he wrote. The evidence collectively establishes a basis for the Director to revoke Respondent's New Jersey CDS registration pursuant to N.J.S.A. 24:21-12(a)(3). The revocation of Respondent's CDS registration is also appropriate given that his DEA registration is surrendered "for cause." (N.J.S.A. 24:12-(a)(4)).

Nonetheless, Respondent makes several legal arguments in an attempt to eviscerate my authority and jurisdiction over Dr. Lam's CDS registration. I reject them all for the reasons explained below. First, Respondent contends that I lack jurisdiction because he did not "dispense" CDS, he "prescribed" it. This argument is plainly specious as prescribing is clearly within the statutory definition of dispense:

"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 (emphasis added).

Second, Respondent asserts that I do not have authority to permanently revoke CDS privileges because the CDS Act, N.J.S.A. 24:21- 12, does not include the modifier "permanent." I reject this argument. It is the evaluation of the record that should inform the duration of the time that Respondent should be barred from holding a registration allowing him to prescribe CDS. The transcript of the statement that Respondent gave to the police at a time

contemporaneous with his arrest offers insight into his motivation. In what appears to be an initial attempt to characterize his actions as a benign attempt to "help" patient A.M., Respondent admitted that he accepted cash from one patient in exchange for multiple post-dated scripts for oxycodone and Percocet because the patient was "going away" and "won't be able to come back," yet the patient continued to come every two weeks and pay for scripts on approximately five separate recorded visits. (T2 5:13 to 19:7).

After being confronted with the results of the undercover visits, Respondent also admits he later charged A.M. extra cash (\$500, not \$260) in return for CDS scripts: "He wanted to give it to me, to help him out, like a favor, you know, because I was helping him all this time." (T2 40:2-15). Apparently, Respondent was aware that the patient was providing at least some of the prescribed drugs to other individuals:

Investigator Lizzano: Number One, that young lady is a police officer. And she asked you for a prescription today and you told her she can get her pills from Tony. So you know that Tony's giving pills to people. He told you he was giving pills to people and she was there, you understand? Let me - - you're an intelligent man, (inaudible) we just want to see if there's any plausible explanation for this? This is drug dealing. I don't know why, you're a respectable doctor, you got a good practice going. But you succumbed to drug dealing here. You're getting paid a lot more for these prescriptions than you told us about.

Dr. Lam: I admit it, you know, sometimes times are tough, sometimes the money - -

T2 37:25 to 38:15.

A lot of these people they come in. Believe me, I had housewives come in, that's a major problem with the Percocet, they love the Percocet, the housewife. They come in, how would I even know is she using too much or something. You know, I'm busy, I got a lot of people coming in. I get phone calls all day, call me at the hospital. I got a patient in the hospital, now, I got to go see him. It's just so many things. It's not like I'm sitting here in the office collecting money all day, I wish that was true. You know, I would

sit there all day doing nothing except writing scripts and give them.

T2 76:6 to 76:10.

During questioning by the Attorney General at the hearing held before me, Respondent confirmed that he had repeatedly sold CDS prescriptions to A.M. and omitted these prescriptions from his medical records. (T1 119:24 to 122:10). Respondent also admitted that a urine screen for opioids performed on A.M. on December 7, 2012 was negative despite months of CDS prescribing thereby confirming for Respondent that the patient was not taking the prescribed painkiller. (T1 122:11 to 122:22). Respondent also admitted to falsifying medical findings by including in A.M.'s medical records vital signs that were never taken and findings for physical examinations that were never performed. (T1 123:13 to 124:18). When asked if he indiscriminately prescribed CDS to patients other than A.M., he responded "some." (T1 124:19 to 124:22). These statements bespeak of such a fundamental disregard for the responsibilities inherent in holding a CDS registration that it may be that Respondent should never regain the authorization to prescribe and/or handle CDS. Just as the Board of Medical Examiners could now, after the repeal of N.J.S.A. 45:9-16 (repealed by P.L. 1999, c. 403, § 12, eff. Jan. 18, 2000), elect to bar a revoked practitioner from ever practicing again, I see no legal impediment to my exercise of a similar discretion in appropriate cases under N.J.S.A. 23:21-12.

Third, Respondent argues, in his post-hearing brief, that the New Jersey Supreme Court's decision in City of Hackensack v. Winner, 82 N.J. 1 (1980) is applicable to this matter. In that case, the Court held that because "there was a substantial likelihood that the entire controversy could have been heard fairly and fully by the Civil Service Commission in a single proceeding with sufficient expertise and competence to account for all genuine concerns" the Public Employment Relations Commission should have stayed its own hearings related to the same

underlying issues, until after the Civil Service Commission had reached a determination in the matter. That there is jurisdictional overlap between me and the Board of Medical Examiners, according to Respondent, means I should automatically defer to the Board in this matter. As a general proposition, I reject this contention as well. In initially passing N.J.S.A. 24:21-1 et seq. in 1970, the Legislature could have vested the power to regulate CDS in the Board, but instead chose to specifically grant that authority to the Commissioner of the Department of Health. Moreover, when the Legislature amended the statute in 2007, it could have transferred CDS authority from the Commissioner to the Board, but instead the authority was given to the Director of the Division of Consumer Affairs (N.J.S.A. 24:21-3) with specific reference to the factors that the Director was to consider when issuing registrations (N.J.S.A. 24:21-11) and suspending or revoking them (N.J.S.A. 24:21-12). The plain language of the statute authorizes me, the Director, to regulate CDS prescribing authority in New Jersey.

To be sure, the Board has broad oversight over the practice of medicine and, pursuant to N.J.S.A. 45:1-22(h), the authority to determine if a variety of limitations might appropriately be placed upon a licensee - from requesting a chaperone, to barring a doctor from performing certain surgical procedures, to imposing limitations on prescribing. Those limitations can, and in cases such as this, should include limitations of a physician's ability to prescribe CDS. My jurisdiction is much more specific - to determine whether an applicant for CDS registration or a registrant seeking the restoration of privileges has engaged in conduct that so fundamentally belies an ability to prescribe or dispense CDS with "reliability and integrity" and whether he or she has put in place adequate safeguards that will adequately "maintain effective controls against diversion" should the registration be granted or restored. (N.J.S.A. 24:21-11 and 12). While the statutory schemes overlap somewhat, I do not read the Board's jurisdiction to trump mine when it

comes to regulating prescribing and dispensing CDS. My role is to evaluate whether a restoration of CDS privileges is consonant with the public interest.

Nonetheless, I am aware that in this particular matter we find ourselves in a somewhat unusual procedural posture. It appears that I considered essentially the same basic information at the hearing before me in January 2014 as had been considered by the New Jersey Board of Medical Examiners, in June 2013, with the notable exception that the Board was not given the opportunity to hear Dr. Lam's own words either by way of testimony or transcript of statement to the police. Following review of a joint stipulation of fact and documentary evidence and the testimony of expert and character witnesses presented by Respondent in mitigation of penalty, the Board issued a twenty-four page order revoking Respondent's license to practice medicine in New Jersey for a minimum of three years, retroactive to the date he voluntarily surrendered his license. (Board of Medical Examiners, Final Order Revoking Licensure I/M/O Michael Chung Kay Lam, M.D introduced as exhibit P-4 and R-5). In doing so, the Board specifically considered the issue of whether Respondent's privileges to prescribe CDS should be permanently revoked, indicated doubt that Respondent "should ever again be allowed to obtain authorization to prescribe CDS" and expressly reserved decision regarding CDS prescribing privileges until Respondent "first demonstrates fitness to resume practice and presents an acceptable plan for any reentry." (Exhibit P-4 at 21-22). The Board further noted that:

. . . we presently harbor significant reservations and concerns whether respondent should ever be able to regain privileges to prescribe CDS, given his admitted history of having so fundamentally abused and corrupted his authorization to prescribe in the past.

Board of Medical Examiners, Final Order Revoking Licensure I/M/O Michael Chung Kay Lam, M.D., Footnote 1, pages 4-5.

and,

We recognize that the ability to prescribe is a fundamental tool for all physicians, but we are also aware that Dr. Lam's past abrogation of his responsibilities and abuse of his prescription power militates against allowing him to ever regain authorization (or in the alternative, would support limitations on any prescribing authorization).

Board of Medical Examiners, Final Order Revoking Licensure I/M/O Michael Chung Kay Lam, M.D., pages 21-22.

Although the Attorney General requested that the Board revoke Respondent's CDS prescribing privileges, the Board opted instead to address that issue when Respondent sought reinstatement of his medical license.<sup>5</sup> Recently, Respondent filed an application with the Board for the full reinstatement of his medical license without restrictions or limitations. Now, an Order to Show Cause for the revocation of Respondent's CDS registration is pending before me contemporaneously with Respondent's application for reinstatement of his medical license before the Board of Medical Examiners. Respondent concedes that the Board may conclude that the license privileges should not be restored or that, in light of the record as a whole, its initial concerns expressed in its revocation order will militate against restoration of any CDS privileges.

While I am not concluding that in every instance the Director's consideration should await Board action, here the unique posture of the matter calls for the exercise of decisional economy. Here the Director's authority can be better exercised when there is greater certainty as to the scope of practice the Board will countenance going forward and what the Board will demand of an acceptable plan for "re-entry."

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<sup>5</sup> As the administrative officer with primary jurisdiction over medical professionals' CDS registrations, I am troubled by the Board's decision to defer revocation of Respondent's CDS privileges given the egregious nature of his offense. As the oversight body for physicians, it is imperative the Board be unequivocal that a physician will lose both their medical license and CDS registration if caught indiscriminately prescribing. However, I do recognize that as a practical matter it was of little consequence in this case because without an active medical license, Respondent has not been able to prescribe any medications, including CDS.

ACCORDINGLY, it is on this 9th day of April 2014,

**ORDERED**

1. The proceeding currently before me is stayed pending a decision from the Board on Respondent's reapplication of his medical license.

2. Respondent's CDS registration shall remain in inactive status.

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.

3. All materials entered into evidence and transcripts in these proceedings will be forwarded to the Board of Medical Examiners.

DIVISION OF CONSUMER AFFAIRS

BY:

  
Eric Kanefsky, Director  
New Jersey Division of Consumer Affairs