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**FILED**  
SEP 30 2013  
Division of Consumer Affairs

By: David M. Puteska  
Deputy Attorney General



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

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IN THE MATTER OF THE NEW JERSEY :	:	Administrative Action
CDS REGISTRATION ISSUED TO :	:	
:	:	
<b>MICHAEL DURANTE, M.D.</b> :	:	<b>ORDER TO SHOW CAUSE</b>
<b>N.J. CDS REG. No. D05273300</b> :	:	<b>WHY CDS REGISTRATION</b>
_____	:	<b>SHOULD NOT BE REVOKED</b>
	:	

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. and is based upon his receipt and review of information on which the following preliminary findings of fact and conclusions of law are made.

Michael Durante, M.D. ("Respondent") is a physician licensed to practice medicine and surgery in New Jersey by the New Jersey State Board of Medical Examiners (the "Board"). Respondent also maintains a registration to prescribe and/or dispense CDS issued by the New Jersey Division of Consumer Affairs (the "Division") pursuant to N.J.S.A. 24:21-10 under registration number D05273300. At all times relevant hereto Respondent maintained a medical office in Nutley, New Jersey.

On May 4, 2011, the Board entered an Interim Order in which Respondent agreed to the cease and desist the practice of medicine pending the resolution of federal criminal proceedings. A copy of the Board's Order is attached hereto as Exhibit 1 and incorporated by reference.

On June 19, 2013, Respondent was found guilty in federal court, following a jury trial, of one (1) count of conspiracy to distribute oxycodone, a schedule II CDS, and fifteen (15) counts of unlawful distribution of the drug. According to allegations in the United States Government's criminal complaint, a copy of which is attached as Exhibit 2, Respondent accepted cash and other items including "gold" Fraternal Order of Police cards in exchange for CDS prescriptions. (Exhibit 2, Pg. 5). Respondent instructed a DEA agent posing as a patient to ensure that he filled CDS prescriptions at different pharmacies and issued CDS prescriptions even after being told by the DEA agent that the pills would be given to another person. (Exhibit 2, Pg. 6).

The evidence presented during the trial, including covert recordings of Respondent and the testimony of two witnesses who pled guilty to participating with Respondent in the drug distribution scheme, established that Respondent regularly sold prescriptions of oxycodone between 2009 and March 2011 to a group of people who would resell the drugs on the street for a profit. In one of the recorded conversations, Respondent, referring to the anticipated resale value of prescriptions he provided to one of the cooperating witnesses over the previous week, was heard in the recordings saying "[s]o two last week, four this week—you should have \$6,000 in your pocket." He later said, "I know what people do with these things. You gotta have at least 12, 15 thousand dollars a month of income here." Additional evidence presented at trial showed Respondent on video accepting \$300 cash from a cooperating witness in exchange for prescriptions as well as \$100 cash for an extra prescription he sold to an undercover agent. Other evidence introduced at trial evidenced that as part of the scheme, Respondent falsified medical

records, omitted progress notes and lied about writing new prescriptions for ones he claimed had been lost.

The Drug Enforcement Administration (“DEA”) has confirmed that the current status of Respondent’s DEA registration is “surrendered for cause.”

N.J.A.C. 13:45H-7.4(a) requires that all prescriptions for CDS be issued only for legitimate medical purposes by a practitioner acting in the usual course of his professional practice. Respondent’s conviction, as detailed above, reflects that he issued CDS prescriptions without legitimate medical purposes and outside the usual course of professional practice.

Respondent’s conviction of an indictable offense related to his indiscriminate prescribing of CDS constitutes grounds for the revocation of his New Jersey CDS registration pursuant to the Director’s authority under N.J.S.A. 24:21-12(a)(2). Respondent’s conduct, as reflected in the evidence presented by the United States Government during the criminal trial, reflects that he issued CDS prescriptions for non-legitimate medical purposes in violation of N.J.A.C. 13:45H-7.4(a) and thus provides grounds for the revocation of his New Jersey CDS registration pursuant to N.J.S.A. 24:21-12(a)(3). Respondent’s DEA status of “surrendered for cause” provides grounds for the revocation of his New Jersey CDS registration pursuant to N.J.S.A. 24:21-12(a)(4).

Pursuant to the above information; the Director’s authority under N.J.S.A. 24:21-12(c); and for good cause shown:

IT IS ON THIS 30th day of September, 2013 ORDERED that

1. The Respondent, Michael Durante, M.D., either in person or by attorney, shall show cause before the Director of the New Jersey Division of Consumer Affairs, on November 25, 2013 at 9:00 AM or as soon thereafter as the parties may be

heard, at the New Jersey Division of Consumer Affairs, 124 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey 07101, why an Order should not be entered (A) Revoking his New Jersey CDS registration pursuant to N.J.S.A. 24:21-12 (a)(2) thru (a)(4); and (B) Requiring that any future application by Respondent to the Director for a CDS registration be issued only after he proves, to the Director's satisfaction, that such issuance is in the public interest as set forth in N.J.S.A. 24:21-11;

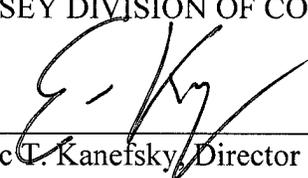
2. That a copy of this Order be served upon Respondent or his attorney forthwith;

3. That Respondent shall file a response five (5) business days prior to the return date set forth above, stating in writing any and all reasons why the revocation of his CDS registration should not occur including any arguments in mitigation and all documents or other written evidence supporting Respondent's position; said response should be delivered to Eric Kanefsky, Director, New Jersey Division of Consumer Affairs, 124 Halsey Street, 7<sup>th</sup> Floor, P.O. Box 45029, with a copy delivered on that same date and time to David M. Puteska, Deputy Attorney General, Division of Law, 124 Halsey Street, 5th Floor, P.O. Box 45029, Newark, New Jersey 07101; and

4. That failure to respond to this Order to Show Cause or failure to appear before the Director in person or through an attorney, as is herein required, may result in this matter being considered in Respondent's absence and an Order may be entered against Respondent revoking his New Jersey CDS Registration.

NEW JERSEY DIVISION OF CONSUMER AFFAIRS

By: \_\_\_\_\_

  
Eric C. Kanefsky, Director