

IN THE MATTER OF * **BEFORE THE STATE BOARD**
JAMES M. KESSLER, P.D. * **OF PHARMACY**
RESPONDENT *
License Number: 07800 *
* * * * *

CONSENT ORDER

The Maryland State Board of Pharmacy (the "Board") charged **JAMES M. KESSLER, P.D., (the "Respondent")**, D.O.B.: **09/06/50**, License Number: **07800**, with violating certain provisions of the Maryland Pharmacy Act (the "Act"), Md. Health Occ. Code Ann., §§ 12-101 *et seq.* (2000). Specifically, the Board charged the Respondent with violating the following:

H.O. § 12-313:

- (b) *In general.* Subject to the hearing provisions of § 12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:
 - (5) Submits a false statement to collect a fee;
 - (21) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
 - (23) Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.

The Respondent was given notice of the charges and the issues underlying

those charges by letter and charging document dated June 20, 2001. A Case Resolution Conference on those charges was held on August 16, 2001.

FINDINGS OF FACT

The Board finds:

1. At all times relevant to the charges herein, the Respondent was and is licensed to practice pharmacy in the State of Maryland. The Respondent was originally licensed on July 16, 1973.

2. At all times relevant to the charges herein, the Respondent owned and operated Pharmacare, Inc. (t/a "Cockeysville Pharmacy") located at 10255 York Road, Cockeysville, Maryland.

3. During the period between January 1, 1997 and June 28, 2000, the Respondent submitted claims to Maryland Medical Assistance Program ("Medicaid") falsely representing that he and Cockeysville Pharmacy had dispensed medication to Medicaid recipients. The Respondent also falsely represented on claim forms submitted to CareFirst BlueCross BlueShield, Express Scripts Inc., Caremark Services Inc., National Prescription Administrators Inc., Paid Prescription L.L.C., Value Rx. Pharmacy Program Inc., PCS Health Systems, Inc., Perform Cost Management Service Inc, Associated Prescription Services Inc., and Helix Family Choice Inc. (collectively, the "insurance providers") that he and Cockeysville Pharmacy had dispensed medications to patients who were insured by the insurance providers.

4. On or about August 21, 2000, the Respondent was indicted by the Grand Jury of the State of Maryland, for the body of Baltimore County, in the case of State of Maryland v. James M. Kessler, Criminal Case No.: 2941, in which the Respondent was charged with one count of Felony Medicaid Fraud, in violation of Article 27, § 230B(b)(1); one count of Felony Theft, in violation of Article 27, § 342; one count of Felony Insurance Fraud-False Documentation/Claims, in violation of Article 27, § 403(2); one count of Felony Insurance Fraud-False Documentation/Claim Verifications, in violation of Article 27, § 403(2); and one count of Obstruction of Justice, in violation of Article 27, § 26. (A copy of the Criminal Indictment in Criminal Case No.: 2941, State of Maryland v. James M. Kessler is attached hereto and incorporated herein as Exhibit A).

5. On or about January 23, 2001, the Respondent entered a guilty plea before Judge Lawrence R. Daniels to one count of Felony Medicaid Fraud, in violation of Article 27, § 230B(b)(1) and one count of Felony Insurance Fraud-False Documentation/Claims, in violation of Article 27, § 403(2). (A copy of the Docket Entries dated May 17, 2001, Plea Agreement dated December 28, 2000, and Statement of Facts in Criminal Case No.: 2941 State of Maryland v. James M. Kessler is attached hereto and incorporated herein as Exhibit B).

6. On or about April 25, 2001, the Respondent was sentenced by Judge Lawrence Daniels to five (5) years imprisonment, with all but one (1) month suspended. The Respondent was ordered to serve five (5) years of supervised probation, make

restitution as determined by the Office of the Attorney General, perform twenty-four hundred (2400) hours of community service, attend five (5) NA/AA meetings per week, and continue with counseling.²

7. Felony Medicaid Fraud is a felony and a crime involving moral turpitude.

8. Felony Insurance Fraud-False Documentation/Claims is a felony and a crime involving moral turpitude. See, e.g., Maryland State Board of Physician Quality Assurance v. Felsenberg, 351 Md. 288, 295 (1998) (Crimes involving fraud and deceit are crimes involving moral turpitude).

CONCLUSIONS OF LAW

The Board finds that the Respondent violated H.O. §§ 12-313(b)(5), (21), and (23).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 12 day of Sept 2001, the Board, on the affirmative vote of a majority of its member then serving, hereby

ORDERED that the Respondent's license to practice pharmacy is hereby **SUSPENDED INDEFINITELY**; and be it further

ORDERED that the Respondent may petition the Board for reinstatement of his license no earlier than three (3) years from the date that the Board signs this Consent Order; and be it further

ORDERED that the Respondent shall obtain continuing education credits that would

² The Respondent paid a fine in the amount of ten thousand (\$10,000) and court cost prior to his April 25, 2001 sentencing date.

be required if his license was not suspended; and be it further

ORDERED that the Respondent shall be responsible for all costs incurred for any and all physical and mental examinations; and be it further

ORDERED that the Respondent shall not be eligible for reinstatement until he has provided the Board verification of his continuing education credits and undergone physical and mental health examinations by a Board approved health care provider to determine his competence to practice pharmacy; and be it further

ORDERED that if the Respondent's license to practice pharmacy is reinstated, the Respondent shall be placed on probation. The length and terms of the probationary period shall be determined by the Board, if and when the Respondent is placed on probation; and be it further

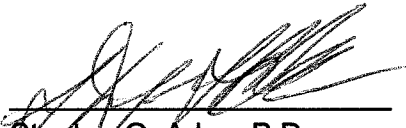
ORDERED that if the Respondent violates any of the terms or conditions of this Consent Order, then the Board, after determination of violation and notice and an opportunity for a hearing, may impose any other disciplinary sanctions it deems appropriate, including revocation, said violation of probation being proved by a preponderance of evidence; and be it further

ORDERED that the conditions of this Consent Order be, and the same is hereby, effective as of the date of this Consent Order; and be it further

ORDERED that this is a **FINAL ORDER** and as such is a public document pursuant to Md. State Gov't. Code Ann. §§ 10-611 et seq. (1999).

September 12, 2001

Date


Stanton G. Ades, P.D.
President
State Board of Pharmacy

CONSENT OF JAMES M. KESSLER, P.D.

I, James M. Kessler, P.D., by affixing my signature hereto, acknowledge that:

1. I am represented by attorney, Jeffrey S. Chernow. I have been advised by and have consulted with my attorneys in regard to signing this Consent Order.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to § 12-315 of the Act, Md. State Gov't. Code Ann. §§ 10-201 et seq. (1999), and Md. Reg. Code tit. 10, § 10.34.01.

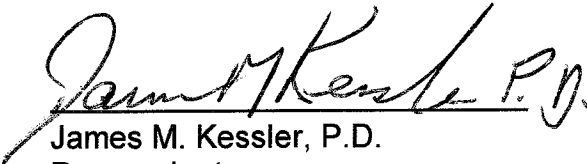
3. I acknowledge the validity of this Consent Order as if entered after a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law.

4. I waive any right to contest the findings of fact and conclusions of law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or as set forth in § 12-316 of the Act and Md. State Gov't Code Ann. §§ 10-201 et seq. (1999).

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may suffer disciplinary action which may include revocation of my license to practice pharmacy in the State of Maryland.

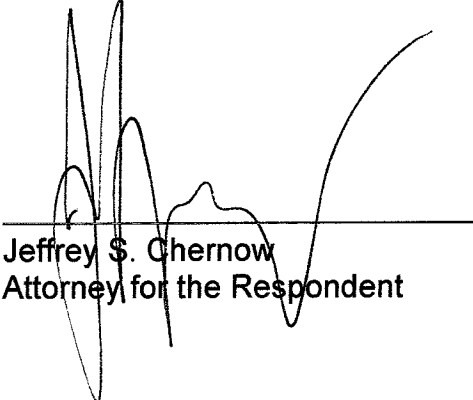
6. I sign this Consent Order without reservation as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

8/28/01
Date


James M. Kessler, P.D.
Respondent

Read and Approved:

8/29/01
Date


Jeffrey S. Chernow
Attorney for the Respondent

NOTARY

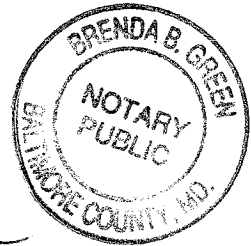
STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY THAT on this 28th day of August, 2001, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared James M. Kessler, P.D., and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

B. B. Green
Notary Public



My Commission Expires: 9/1/03