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In the Matter of
LOUIS MAYER, M.D.

FINAL DECISION

By written Notice of December 16, 1981, the Louisiana State Board of Medical Examiners ("Board") suspended the medical licensure of Louis Mayer, M.D. ("Dr. Mayer") pending formal adjudication of specified violations of the Louisiana Medical Practice Act by Dr. Mayer, to-wit: "[p]rescribing, dispensing, or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner," in violation of Section 1285(6) of Title 37, La. Rev. Stat., and "[p]rofessional or medical incompetency," in violation of Section 1285(12) of Title 37, La. Rev. Stat.

A formal hearing was convened before the Board on January 22, 1982 to adjudicate the alleged violations. A quorum of the Board was present, including Charles B. Odom, M.D.; J. Morgan Lyons, M.D.; F. P. Bordelon, Jr., M.D.; Anthony J. Hackett,

-2-

Jr., M.D.; Ike Muslow, M.D.; and Gerald R. LaNasa, M.D.* Dr. Mayer was present and was represented by legal counsel, Sam J. D'Amico, Esq.

Upon consideration of the evidence presented, pursuant to La. Rev. Stat., Title 49, Section 958, the Board renders the following findings of fact, conclusions of law and decision.

Findings of Fact

1

Dr. Mayer is a physician duly licensed by the Board to practice medicine in the state of Louisiana. By virtue of state licensure and Federal registration, he is authorized, as a practitioner, to prescribe, dispense or administer controlled substances. At all times material to the conduct and activities which this administrative proceeding concerns, Dr. Mayer was so licensed and authorized and engaged in the practice of medicine in Baton Rouge, Louisiana.

2

An investigation of Dr. Mayer was conducted by the Diversion Investigative Unit of the Department of Public Safety, Office of State Police ("DIU"), after to confidential

*Richard M. Nunnally, M.D., Vice-President, did not participate in the hearing or decision in this matter.

-3-

informants suggested that they had been able to obtain prescriptions for controlled substances from Dr. Mayer, without medical justification. The informants agreed to introduce a DIU agent to Dr. Mayer.

3

In the course of the investigation, three DIU agents, employing fictitious names, were introduced to Dr. Mayer by two confidential informants. From August 14, 1981 to November 17, 1981, these agents, together with one confidential informant, saw Dr. Mayer on 16 occasions and received a total of 28 prescriptions for controlled substances.

4

Dr. Mayer did not conduct regular office hours on Saturdays; nevertheless, 12 of the 16 visits hereinafter described were conducted on Saturday mornings. On none of these occasions was a nurse, assistant or receptionist observed. Two of the visits occurred on a Tuesday and the remaining two on a Friday. All appointments were scheduled with Dr. Mayer by telephone.

5

Except as expressly noted hereinafter, neither the confidential informants nor the three agents offered any medical

-4-

reason or basis for any of their 16 separate visits to Dr. Mayer, other a desire for prescriptions for controlled substances. Nor did Dr. Mayer at any time seek to elicit any medical complaint, condition, reason or justification for the visits. And, save for requesting that two agents weigh themselves, Dr. Mayer performed no physical or medical examinations during any of the visits, nor did he obtain medical histories from any of the agents or from the confidential informants.

6

Dr. Mayer's office records, corresponding to the confidential informants and the fictitious names employed by DIU agents, consisted simply of names, dates and medications prescribed on each visit. The records contain no indication that Dr. Mayer performed any physical or medical examinations and virtually no medical history.

7

The fee charged by Dr. Mayer was dependent upon the day of the week and the number of prescriptions issued. On those visits which were conducted on a Saturday, Dr. Mayer charged \$25 for each prescription issued; whereas, the charge for a Tuesday or Friday visit ranged from \$20 to \$30 and the charge

-5-

for visits occurring on a weekday did not vary with the number of prescriptions written by Dr. Mayer.

8

Of the 28 prescriptions written by Dr. Mayer, 16 were for Fiorinal #3, 30 mg. (butalbital / codeine), representing 256 dosage units. The remaining prescriptions included seven prescriptions for Placidyl, 750 mg. (ethchlorvynol), representing 196 dosage units; three for Fastin, 30 mg. (phentermine hydrochloride),* representing 90 dosage units; and two for Talwin, 50 mg. (pentazocine hydrochloride),** representing 32 dosage units.

9

All of the substances enumerated in the preceding paragraph were secured through prescriptions and, with the exception of those prescriptions issued to confidential informants,

*Fastin (phentermine hydrochloride) is classified as a Schedule II controlled substance under Louisiana law. LSA-R.S. 40:964.

**Talwin (Pentazocine hydrochloride) is now a Schedule II controlled dangerous substance under Louisiana law. At the time of the prescriptions described herein, it was classified as a Schedule IV substance.

-6-

all prescriptions were issued in the fictitious names and addresses supplied by the DIU agents.

10

On Friday, August 14, 1981, a confidential informant, accompanied by a DIU agent, visited Dr. Mayer at his Baton Rouge office. The confidential informant received a prescription for 16 tablets of Talwin, 50 mg., for her husband, who was not physically present for examination. During the same visit, a DIU agent who was introduced to Dr. Mayer as Roger Thompson stated that he had pain in his neck and requested a prescription for Talwin. No physical or medical examination was performed, but Dr. Mayer told the agent that he did not have any pain and refused to issue a prescription.

11

On Saturday, August 22, 1981, a confidential informant obtained two prescriptions for controlled substances from Dr. Mayer. One of these prescriptions was issued for 16 tablets of Talwin, 50 mg., in the name of the confidential informant's husband. Dr. Mayer issued a second prescription for 16 capsules of Fiorinal #3, 30 mg., in the name of Roger Thompson, the alias used by the agent who had been introduced to Dr. Mayer the preceding week. Neither the informant's husband nor

-7-

the agent, in whose names the prescriptions were issued, was present.

12

On Saturday, August 29, 1981, a confidential informant, accompanied by a DIU agent employing the fictitious name of Roger Thompson, visited Dr. Mayer. Each received prescriptions for 16 capsules of Fiorinal #3, 30 mg.

13

On Saturday, September 5, 1981, Dr. Mayer issued three prescriptions, each for 16 capsules of Fiorinal #3, 30 mg. Two of the prescriptions were issued in the names of the confidential informants, neither of whom was present for examination. The third was issued in the name of Roger Thompson.

14

On Saturday, September 12, 1981, Dr. Mayer issued three prescriptions, each for 16 capsules of Florinal #3, 30 mg., to the agent employing the fictitious name of Roger Thompson. Two of the prescriptions were issued in the names of the confidential informants, neither of whom was present for examination. The third prescription was issued in the name of Roger Thompson.

-8-

15

On Saturday, September 19, 1981, Dr. Mayer issued four prescriptions for controlled substances, all in the name of Roger Thompson. Three were written for 16 capsules of Fiorinal #3, 30 mg. Two of these prescriptions were post-dated by Dr. Mayer, bearing the dates of September 26, 1981 and October 3, 1981, respectively. Additionally, after stating that "those green things" (to which Dr. Mayer responded "Placidyls?") are selling for \$5.00 a piece on the street, Dr. Mayer issued a prescription for 30 capsules of Placidyl, 750 mg., in the name of Roger Thompson.

16

On Saturday, October 10, 1981, a second DIU agent was introduced to Dr. Mayer as Carl Thompson, the brother of Roger Thompson. During this visit, Dr. Mayer issued two prescriptions, one in the name of Roger Thompson, for 16 capsules of Fiorinal #3, 30 mg., the other, for 30 capsules of Placidyl, 750 mg., in the name of Carl Thompson.

17

On Saturday, October 17, 1981, Dr. Mayer issued two prescriptions in the name of Roger Thompson. One was for 16

-9-

capsules of Fiorinal #3, 30 mg.; the other was for 30 capsules of Placidyl, 750 mg.

18

On Saturday, October 24, 1981, the agents representing themselves as Roger and Carl Thompson again visited Dr. Mayer. Dr. Mayer issued three prescriptions for controlled substances. One was issued in the name of Roger Thompson for 16 capsules of Fiorinal #3, 30 mg. During the visit, the agent identified as Carl Thompson requested a prescription for Placidyl, stating that he had doubled the prescribed daily dosage and depleted the one-month supply which Dr. Mayer had prescribed two weeks earlier. The same agent also requested a prescription for diet pills. On this date, Dr. Mayer issued two prescriptions in the name of Carl Thompson. One prescription was for 30 capsules of Placidyl, 750 mg. and the other was for 30 capsules of Fastin, 30 mg. Other than requesting the agent ("Carl Thompson") to weigh himself, Dr. Mayer performed no physical or medical examinations and obtained no medical history from either agent. Prior to the conclusion of this visit, Dr. Mayer instructed the agents that they were not to have the prescriptions filled at the pharmacies which they had previously frequented.

-10-

19

On Saturday, October 31, 1981, Dr. Mayer issued three prescriptions in the name of Roger Thompson: 16 capsules of Fiorinal #3, 30 mg.; 30 capsules of Fastin, 30 mg.; and 16 capsules of Placidyl, 750 mg. With specific reference to the prescription issued for Fastin, Dr. Mayer was advised by the agent that the prescription was intended for Carl Thompson. Other than requesting the agent ("Roger Thompson") to weigh himself, Dr. Mayer performed no physical or medical examination, nor did he obtain a medical history. Prior to the conclusion of the visit, Dr. Mayer inquired as to whether the agent intended to have the prescriptions filled at a different pharmacy.

20

On Tuesday, November 17, 1981, a third agent was introduced to Dr. Mayer as Bobby Williams, a friend of Carl Thompson. On this date, Dr. Mayer issued three prescriptions. Two of the prescriptions were issued in the name of Carl Thompson. One prescription was written for 30 capsules of Placidyl, 750 mg. and a second prescription, dated November 24, 1981, was written for 30 capsules of Fastin, 30 mg. At the same time, in response to a request for "some of those green capsules," Dr. Mayer issued a prescription for 30 capsules of

-11-

Placidyl, 750 mg. in the name of Bobby Williams. Other than requesting one agent ("Carl Thompson") to weigh himself, Dr. Mayer performed no physical or medical examinations and did not obtain medical histories from either agent.

Conclusions of Law

Based on the foregoing Findings of Fact, the Board concludes as a matter of law, that:

1

Fiorinol #3 (butalbital / codeine); Placidyl (eth-chlorvynol), Fastin (phentermine hydrochloride); and Talwin (pentazocine hydrochloride), are all controlled substances under Louisiana and Federal law. LSA-R.S. 40:964; 21 C.F.R. §§ 1308.13; 1308.14.

2

State and Federal law, recognizing the substantial hazards inherent in controlled substances, uniformly condition their use by physicians on strict adherence to statutes and regulations governing records, security, and the form of and cause for prescriptions. Federal regulations, for example, provide that:

A prescription for controlled substances to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the

-12-

usual scope of his professional practice. . . . An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 390 of the Act (21 U.S.C. 829) and the . . . person issuing it shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

21 C.F.R. §1306.04(a). A virtually identical policy is embraced by Louisiana law.*

Thus, the law severely circumscribes a physician's privilege to make controlled substances available by explicitly requiring that a prescription may be issued (1) only within the usual scope of a physician's professional practice, (2) only for a legitimate medical purpose, and (3) only when the physician is acting in good faith in the administration of a bona fide treatment of a physical, mental or bodily ailment. Together, these requirements make it clear that controlled substances licensure and registration do not license a physician to disregard these requirements when issuing prescriptions for controlled substances. When the physician does so, he can

*LSA-R.S. 40:961(30) defines "prescription" as a written request for a drug or therapeutic aid issued by a licensed physician . . . for a legitimate medical purpose for the purpose of correcting a physical, mental, or bodily ailment, and acting in good faith in the usual course of his professional practice.

-13-

no longer claim that the treatment is bona fide or that his prescription is issued in good faith with medical justification.

3

The 28 prescriptions issued by Dr. Louis Mayer for controlled substances were issued without legitimate medical basis or justification and were not issued in the good faith administration of bona fide treatment for a physical, mental or bodily ailment. In issuing such prescriptions Dr. Mayer was prescribing legally controlled substances in other than a legal or legitimate manner and, therefore, just cause exists for action against his license as provided by LSA-R.S. 37: 1285(6).

4

It is unlawful for a physician to issue a written prescription for controlled substances in the name of a person for whom the controlled substance is not intended.* In issuing a prescription in the name of a person, for whom the medication was not intended, Dr. Mayer prescribed, dispensed or administered

*21 C.F.R. § 1306.04(a), LSA-R.S. 40:961(30).

-14-

controlled substances in other than a legal or legitimate manner and, therefore, just cause exists for action against his license as provide by LSA-R.S. 37:1285(6).

5

It is unlawful for a physician to issue a prescription which bears a date other than the date on which such prescription was issued.* In issuing prescriptions in such form, Dr. Mayer prescribed controlled substances in other than a legal or legitimate manner and, therefore, just cause exists for action against his license as provided by LSA-R.S. 37:1285(6).

6

It is unlawful to issue a written prescription to a person who had advised the physician that one or more prior prescriptions, for controlled substances, had been filled and used for illegitimate, non-medical purposes.** In issuing these prescriptions, Dr. Mayer prescribed controlled substances in other than a legal or legitimate manner and, therefore, just cause exists for action against his license as provided by LSA-R.S. 37:1285(6).

*21 C.F.R § 1306.05(a).

**21 C.F.R. § 1306.04(a); LSA-R.S. 40:961(30).

-15-

7

Dr. Mayer's failure to perform physical or medical examinations or to elicit any medical history during the course of the visits described hereinabove, is demonstrative of medical incompetency, and, therefore, just cause exists for action against his license as provided by LSA-R.S. 37:1285(12).

Decision

Considering the foregoing;

IT IS ORDERED that the license of Louis Mayer, M.D., to practice medicine in the state of Louisiana, as evidenced by Certificate No. 4926, be, and the same is hereby, REVOKED.

New Orleans, Louisiana this 16 day of February, 1982.

LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS

By: Charles B. Odom M.D.
CHARLES B. ODOM, M.D.
President