# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS





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LOUISIANA STATE

BOARD OF MEDICAL EXAMINERS

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In the Matter of *

KIRBY A. GREEN, M.D. * FINAL DECISION

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A formal administrative hearing was convened before the Louisiana State Board of Medical Examiners ("Board") on December 7, 1981 to adjudicate alleged, specified violations of the Louisiana Medical Practice Act by Kirby A. Green, M.D. ("Dr. Green"), to-wit: "[p]rescribing, dispensing, or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner," La. Rev. Stat., Title 37, Section 1285(6), and "[p]rofessional or medical incompetency," La. Rev. Stat., Title 37, Section 1285(12). A quorum of the Board was present. Dr. Green was present and was represented by legal counsel, Constant Marquer, Esq. and Maurice Hattier, 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. Green 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. Green was so licensed and authorized, and while a full-time resident in internal medicine at Charity Hospital, engaged in the practice of medicine in New Orleans, Louisiana.

2

Dr. Green conducted a general practice in offices located within three New Orleans metropolitan area pharmacies from August, 1979 through November, 1980. He conducted this practice three to four days per week for approximately two hours a day, and never more than four hours per day. Dr. Green testified he spent from five to ten minutes with every patient and performed a physical examination and took a blood pressure and a weight on each

patient. Dr. Green testified that only overweight patients were issued a prescription for Preludin (phenmetrazine hydrochloride), 75 mg., one tablet to be taken each day. He estimated that 50% of his patients were seen for weight control.

3

An investigation was conducted by the Division of Narcotics and Dangerous Drugs ("DNDD") of the Louisiana Department of Health and Human Resources into the Schedule II prescription files of seven New Orleans pharmacies. The investigation was initiated after a local television station broadcast an investigative report suggesting that drug abusers were obtaining controlled substances through prescriptions written by physicians who practiced in pharmacy clinics.

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In the course of the investigation, DNDD agents seized 1,546 Schedule II prescriptions written by Dr. Green from December, 1979 to September, 1981. Of this number, 1,432 were written for Preludin (phenmetrazine hydrochloride), 75 mg. tablets, representing 44,490 dosage units.

5

Further analysis of the such Schedule II prescriptions revealed that on 18 separate occasions Dr. Green wrote two prescriptions for Preludin 75 mg., thirty tablets each, in the name of the same patient, with directions to take one capsule per day. On one occasion he wrote three prescriptions for Preludin in the name of one patient.

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On 22 separate occasions Dr. Green wrote prescriptions for Preludin for a patient within a few days of writing an identical prescription for that patient.

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The evidence further established that Dr. Green maintained some patients on Preludin for as long as 16 months.

8

Preludin (phenmetrazine hydrochloride), is a sympathominetic amine with pharmacologic actions similar to the amphetamines, acting as a central nervous system and cardiovascular system stimulant. Its exclusive indication is as an appetite suppressant or anorexiant therapy in the management of exogenous obesity as a short-term (a few weeks) adjunct in a regimen of weight reduction based on

caloric restriction, exercise and behavior modification.

9

In prescribing Preludin, a physician must be cognizant of its known contraindications, possible adverse side effects and potential dangers and weigh such risks against its limited usefulness. Preludin, thus, may produce untoward cardiovascular and central nervous system stimulation. The substance also produces tachyphylaxis and tolerance, which appears in most patients with administration of the drug over four to six weeks. Continued administration beyond such a term carries a substantial risk of physical or psychological dependence.

10

Preludin, like the amphetamines and other stimulant drugs, has been extensively abused. Preludin, in particular, is a stimulant of preference among drug abusers as it is water soluble and its stimulatory effect may be enhanced by parenteral administration, or injection, in lieu of oral administration. In the estimate of a narcotics investigative officer, the current illicit market value of a single tablet of Preludin ranges, in Louisiana, from $16.00 to $22.00, while the retail price currently charged by pharmacies in filling prescriptions is 30¢-40¢ per tablet.

Because of its known high potential for abuse, Preludin is controlled by both state and federal law as a Schedule II substance.

11

Dr. Carl King, an assistant professor of pharmacology at LSU Medical School, was qualified as an expert in pharmacology and medical education as it relates to pharmacology. He testified that a typical second year medical student would be aware that Preludin is to be avoided because it is highly addictive and has become the most popular street drug. Dr. King testified that even the manufacturers of the drug warned of rapid tolerance to the drug, requiring ever-increasing dosages, as well as drug dependence and drug addiction. While recognizing that the drug may be legally prescribed, in Dr. King's opinion, there is no pharmacological justification for Preludin to be used under any circumstances, given its dangers and the availability of alternatives.

12

In reviewing the prescriptions written by Dr.Kirby Green, Dr. King testified that there was no pharmacological or medical justification for the prescribing of Preludin in the quantity that Dr. Green prescribed and that, if it was

used at all, it should have been only on a short-term basis and certainly not more than a few weeks. Further, there was absolutely no pharmacological or medical justification for prescribing Preludin 75 mg. in such a manner that a patient could consume more than one tablet per day for prolonged periods.

13

The Board finds as a matter of medical fact, consistent with the opinions of experts who testified in this matter and the unanimous teachings of the medical authorities that Preludin causes rapid tolerance, is highly addictive and should be avoided because of its potential for abuse. The Board further finds that there is no conceivable medical justification, in any case, for the prescribing of Preludin in excess of one tablet per day or for the continuous prescribing of Preludin in excess of 12 weeks.

14

In his defense, Dr. Green denied writing duplicate prescriptions except on two occasions: one woman had her purse snatched on leaving the office and the other woman was going out of town for two months. He also denied writing prescriptions at an excessive frequency. Dr. Green admitted that he never dated his prescriptions in order that patients

would be able to have the prescriptions filled at a later time or when they could afford it. He suggested his patients may have accumulated the undated prescriptions. He testified that he was aware that a pharmacy could not fill a prescription for a scheduled substance more than 24 hours after it was written, but testified he was not aware of any medical reason for that regulation.

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Dr. Green also testified that he was not aware of the potential for abuse of Preludin in this community. However, he was aware that a substance was designated Schedule II if it was known to be abused.

16

Dr. Green further testified that the conditions under which he worked in the pharmacy clinics made it difficult to keep accurate profiles and records of patients and that, if a patient's records could not be located, he would create a new one. Therefore he was not always aware of what medication a patient had been on or the length of time they had been on it. However, Dr. Green testified that he would issue prescriptions for periods of time in excess of the duration recommended by the manufacturer if a patient was losing weight.

## Conclusions of Law

Based on the foregoing findings of fact, the Board concludes, as a matter of law, that:

1

Preludin (phenmetrazine hydrochloride) is a controlled substance under Louisiana and Federal law.

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

*A drug is classified as a Schedule II controlled dangerous substance upon a considered, empirical finding that "[t]he drug or other substance has a high potential for abuse" and "[a]buse of the drug or other substance may lead to severe psychological or physical dependence." The definition is identical under federal and Louisiana law. 21 U.S.C. § 812(b)(2)(A), (C); LSA-R.S. 40:963(A), (C).

> 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 for 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 the demonstrated abuse and dependency inducing potential of dangerous drugs. When a physician does so, he can no longer claim that the treatment is bona fide or that his prescription is issued in good faith with medical justification.

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*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.

3

As a matter of course, Dr. Green has indiscriminately issued prescriptions for controlled substances without legitimate medical basis or justification and not in the good faith administration of a bona fide treatment for a physical, mental or bodily ailment.* In issuing such prescriptions, Dr. Green 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 for by LSA-R.S. 37:1285(6).

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Dr. Green's failure to date his prescriptions as an explanation for the numerous prescriptions written in duplicate and written in excessive frequency is indicative of medical incompetence in that respect. Dr. Green's explanation that prescribing Preludin for periods in excess

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* The Board takes note of Dr. Green's failure to produce any patient records.

of four months and for as long as 16 months was medically justified as long as the patient was losing weight is an additional indicator of medical incompetence. Dr. Green's failure to keep adequate patient records and failure to take precautions to prevent abuse of scheduled substances further supports a conclusion of medical incompetence. Accordingly, just cause exists for action against his license as provided for by LSA-R.S. 37:1285(12).

## Decision

Considering the foregoing,

IT IS ORDERED that the license of Kirby A. Green, M.D. to practice medicine in the State of Louisiana, as evidenced by Certificate No. 14738 , be, and the same is hereby suspended for a period of six (6) months from the date hereof and will remain on probation for a period of five (5) years.

IT IS FURTHER ORDERED that Kirby A. Green surrender his Federal and State controlled substances permits for a period of five years from the date hereof.

IT IS FURTHER ORDERED that any violation of the probationary terms, conditions and restrictions set forth herein shall be deemed just cause for the suspension or

revocation of the medical licensure of Kirby A. Green, M.D., or for such other disciplinary action as the Board deems appropriate, as if such violations were enumerated among the causes provided in LSA-R.S. 37:1285.

New Orleans, Louisiana, this 30 day of December, 198 1 .

LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS

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