

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

630 Camp Street, New Orleans, LA 70130

General Correspondence Address: Post Office Box 30250, New Orleans, LA 70190-0250

www.lsbme.org

Telephone: (504) 568-6820

FAX: (504) 568-8893

Writer's Direct Dial:



Ext. _____

-----X
:
In The Matter Of
:
ROBERT LEE BERRY, M.D.
:
(Certificate No. 12017R)
:
-----X

NO. 03-I-066

CONSENT ORDER

On or about September 29, 2003, the Investigating Officer of the Louisiana State Board of Medical Examiners (the "Board") received information alleging that Robert Lee Berry, M.D. ("Dr. Berry"), a physician who at all times pertinent was licensed to practice medicine and was engaged in the practice of anesthesiology, had been accused of diverting medications of Kadlec Medical Center in Richland, Washington where Dr. Berry had been practicing as a locum tenens physician. Further investigation revealed that on or about March 16, 2004, the Washington Medical Quality Assurance Commission summarily suspended Dr. Berry's license to practice medicine based its review of care and treatment that Dr. Berry provided to five (5) patients and indications of his diversion of narcotics in these five cases.

Dr. Berry has not practiced medicine since November 15, 2002. He has successfully completed an approved rehabilitation program on January 8, 2003 and signed a contract with the Louisiana Physician's Health Program on January 17, 2003.

As evidenced by his subscription hereto, Dr. Berry acknowledges the substantial accuracy of the foregoing information and that such acknowledgment and the reported information would provide the Investigating Officer herein with probable cause to pursue formal administrative proceedings against him for his past violation of the Louisiana Medical Practice Act, La. Rev. Stat. §§37:1285A(5)¹ and (25)², constituting sufficient cause for the suspension or revocation of his license to practice medicine the state of Louisiana.

¹ La. Rev. Stat. §37:1285A(5) provides that the Board may take action against the license of a physician as a result of (H)abitual or recurring abuse of drugs including alcohol, which affect the central nervous system an which are capable of inducing physiological or psychological dependence."

² La. Rev. Stat. §37:1285A(25) provides that the Board may take action against the license of a physician as a result of "(I)nability to practice medicine...with reasonable skill or safety to patients because of...excessive use or abuse of drugs, including alcohol."

Recognizing his right to have administrative adjudication of the charges which have been asserted, at which time he would be entitled to be represented by legal counsel, to call witnesses and to present evidence on his own behalf in defense or in mitigation of the charges made, and to a decision thereon by the Board based upon written findings of fact and conclusions of law, pursuant to La. Rev. Stat. §49:951, *et seq.*, Dr. Berry nonetheless, hereby waives his right to formal adjudication and, pursuant to La. Rev. Stat. §49:955(D), hereby agrees to an order of suspension of his medical license effective as of the date of this Order. Dr. Berry's medical license shall be reinstated thereafter upon compliance with the terms and conditions described below. By his subscription hereto, Dr. Berry also acknowledges that he waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, *et seq.* or which otherwise may be afforded to him by law, to contest his agreement to or the force and effect of this document in any court or other forum relating to the matters referred to herein, unless the Board has breached any term and condition relied upon by Dr. Berry in this Consent Order. By his subscription hereto, Dr. Berry also hereby authorizes the Investigating Officer designated by the Board with respect hereto, as well as his legal counsel assisting him in connection herewith, to present this Consent Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation and he waives any objection to such disclosures to the Board under La. Rev. Stat. §49:960. Dr. Berry expressly acknowledges that the disclosure of information to the Board by the Investigating Officer or his legal counsel shall be without prejudice to the Investigating Officer's authority to pursue formal administrative charges against him or to the Board's capacity to adjudicate such charges, should the Board decline to accept this Consent Order. In the event the Board declines to accept this Consent Order, any waiver or other agreement that has been set forth in this proposed Consent Order shall be considered null and void, with no legal effect, and Dr. Berry shall have the right to pursue a formal administrative hearing and subsequent legal action.

Accordingly, in consideration of the foregoing and pursuant to the authority vested in the Board by La. Rev. Stat. §37:1285 and La. Rev. Stat. §49:955(D);

IT IS ORDERED the license of Robert Lee Berry, M.D., to engage in the practice of medicine in the state of Louisiana, as evidenced by Certificate No. 12017R, be, and the same is hereby, effective immediately, **SUSPENDED INDEFINITELY**. Dr. Berry shall not practice medicine in any form in the state of Louisiana until and unless the Board issues and serves on him a written order reinstating his license to practice medicine. As express conditions to the issuance of such Order, the Board must receive the opinion from a treatment facility acceptable to the Board, as well as of two (2) physicians acceptable to the Board, that Dr. Berry's prognosis for continued abstinence from the use of mood-altering chemicals is good, and that Dr. Berry is then capable of practicing medicine with reasonable skill and safety to patients, based upon their personal examination, evaluation and diagnosis of Dr. Berry.

IT IS FURTHER ORDERED that upon Dr. Berry's satisfaction of the terms and conditions of reinstatement hereinabove set forth, his license to practice medicine in the state of Louisiana shall be reinstated by the Board, **ON PROBATION**, for a period of five (5) years from the date of reinstatement; *provided, however*, that such reinstatement of license and Dr. Berry's continuing exercise of rights and privileges thereunder shall be conditioned upon his acceptance of and strict compliance with the following terms, conditions and restrictions:

(1) **Personal Appearance Before Impaired Physicians Committee.** Prior to the consideration of his request for reinstatement of his license, Dr. Berry shall personally appear before the Physicians Health Committee of the Board to permit the Committee and the Board to consider his current and aftercare treatment program, his compliance with the terms of this Order and to advise the Committee and the Board of his intentions with respect to his continued practice of medicine.

(2) **Additional Probationary Terms.** In addition to such other terms and conditions as are placed upon his license to practice medicine by this Order, Dr. Berry hereby consents to, agrees with and acquiesces in the imposition of any additional terms, conditions or restrictions, as well as the length or nature thereof, including, but not limited to, additional treatment, reports and evaluations and extensions of his suspension and probationary periods, which the Board in its sole discretion may deem necessary or appropriate to impose thereon.

(3) **Continuing Treatment, Participation in the PHP/Reports to Board.** Dr. Berry shall continue in, abide by and strictly adhere to each of the recommendations for ongoing treatment and monitoring of his condition, which have or may be prescribed in his PHP Substance Abuse Treatment Contract, or any subsequent treatment contract which may be recommended by the PHP, as well those recommended by any other health care provider involved in his care to the extent that they continue to follow him. Dr. Berry shall, in addition, authorize and cause his treating and monitoring physicians to submit to the Board, not less frequently than quarterly throughout the probationary period, written reports on his then-current treatment diagnosis, course of treatment, prognosis, maintenance of abstinence from alcohol and mood-altering chemicals and substances, his fitness and ability to practice medicine with reasonable skill and safety to patient and his compliance with the terms, conditions and restrictions of this Order and any PHP Substance Abuse Treatment Contract signed by Dr. Berry and any aftercare agreement he has executed or may hereafter execute.

(4) **Drug Screens.** Dr. Berry shall submit to periodic, unannounced blood, urine, saliva and/or hair collection for the presence of controlled or other mood-altering substances by a PHP physician or his or her designee. Unless and until this condition is modified or rescinded by the Board, Dr. Berry shall authorize and cause such physician to report the results of such drug screens to the Board not less frequently than quarterly throughout the probationary period.

(5) **Maintenance of Complete Abstinence.** Dr. Berry shall, for the duration of his life, maintain complete and total abstinence from the use of alcohol or any other mood-altering substance except as may be prescribed by a treating physician other than himself for a *bona fide* medical condition. Dr. Berry shall personally inform his treating and monitoring physicians, both orally and in writing, within forty-eight (48) hours of the prescription or administration of any mood-altering substance received by him from another physician for treatment of a *bona fide* medical condition.

(6) **Board Access to Treatment Records and Reports.** Dr. Berry shall and does by his subscription hereto authorize and cause any physician or any institution at which he undergoes treatment for chemical dependency or any psychiatric condition, as well as any physician under whose care he may come at such an institution, who has or may hereafter evaluate, diagnose, treat or monitor him, to provide the Board with complete copies of all medical records and reports relating to Dr. Berry's history, examination, diagnosis, treatment and prognosis and to provide the Board with written and verbal reports relative thereto. Dr. Berry expressly waives any privilege that may otherwise be afforded the disclosure of such records, pursuant to state or federal law and by his subscription hereto acknowledges that he shall immediately execute any authorization presented to him by the Board to obtain such records.

(7) **Controlled Substances - All Schedules.** Dr. Berry shall not, for the remainder of his medical career, prescribe, dispense or administer (i) any controlled substance which may be classified, defined, enumerated or included in 21 C.F.R. §§1308.11-.15, La. Rev. Stat. §40:964; or (ii) any substance which may hereafter be designated a controlled substance by amendment or supplementation of such regulations and statute; or (iii) any drug or medication which affects the central nervous system or which is capable of producing physiological or psychological dependence; or (iv) any mood-altering substance; or (v) the drugs Nubain, Dalgan, Soma, Ultram and Butalbital in any form or generic thereof. This prohibition shall survive the term of probation ordered herein and remain in effect so long as Dr. Berry shall hold any form of license or permit to practice

medicine in the state of Louisiana. This prohibition shall not prohibit Dr. Berry from ordering controlled substances and other prescription medications for administration to inpatients of a hospital or similar institution where he may be employed or exercise staff and clinical privileges under the controlled substance license and registration of such hospital or institution and in accordance with such hospital or institution's prescribed policies and procedures governing the administration of controlled substances. Consistent with this Order, Dr. Berry shall immediately surrender his controlled substance certificate and registration to the state and federal issuing authorities.

(8) **Practice of Anesthesiology Prohibited.** Dr. Berry shall not, for the remainder of his medical career, practice in the field of anesthesiology.

(9) **Practice of Pain Management Limited.** Dr. Berry shall not, for the remainder of his medical career, practice in fields of pain management that involve use of controlled substances.

(10) **Sanction.** By his subscription hereto, Dr. Berry acknowledges that his receipt of written notification from the Board that it has received apparently reliable information which indicates his failure to abide by the terms and conditions of this Order, shall, without need for formal hearing or providing him with any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. Rev. Stat. §§49:951, *et seq.*, or which otherwise may be afforded to him by law, constitute his consent to the immediate suspension of his license to practice medicine in this state pending the issuance of a decision by the Board following administrative adjudication of such charges.

(11) **Fees and Costs of Treatment; Testing and Reports.** Any and all fees, costs or expenses incurred by Dr. Berry in connection with his continuing substance abuse, psychiatric and/or other treatment, including the drug screens ordered herein, as well as the reporting requirements contained in this Order, shall be borne by Dr. Berry.

(12) **Cooperation with Board's Probation and Compliance Officer.** Upon the Board's issuance of any order of resintatement, Dr. Berry shall immediately notify the Board's Probation and Compliance Officer of any change in his current home and professional addresses and telephone numbers and he shall direct all matters that may then be required by the Board pursuant to this Consent Order to the attention of the Probation and Compliance Officer, with whom he shall

cooperate on all matters and inquiries pertaining to his compliance with the terms, conditions and restrictions of his reinstatement.

(13) Absence from State—Effect on Probation. Should Dr. Berry at any time during the period of probation be absent from the state of Louisiana, relocate to and/or take up residency in another state or country for a period of thirty (30) days or more, he will so advise the Board in writing. In such instance, the probationary period ordered herein and all terms and conditions thereof shall be deemed interrupted and extended and shall not commence to run until Dr. Berry notifies the Board in writing that he has returned to, relocated in and/or taken up residency in the state of Louisiana. In such instance, Dr. Berry shall not receive credit toward completion of the probationary period for the time during which he was absent from the state of Louisiana.

(14) Certification of Compliance with Probationary Terms/Personal Appearance Before the Board. At least sixty (60) days prior to the conclusion of the probationary term imposed herein, Dr. Berry shall provide the Board with an executed affidavit certifying that he has complied with each of the terms of probation imposed upon him by this Order, and he shall contact the Board and arrange for a personal appearance before the Physicians Health Committee of the Board, or such other committee as may be designated by the Board, at its meeting preceding the expiration of the probationary term ordered herein.

(15) Payment of Costs and Probation Monitoring Fee. Within two years of any order of reinstatement, Dr. Berry shall a fine of \$2,000. Dr. Berry acknowledges that the timely payment of the fine is his legal obligation and responsibility and he understands that he shall cease practicing medicine in this state if the fine is not paid within two years as ordered. For each year of the probationary term Dr. Berry shall pay the Board a probation monitoring fee of Three Hundred (\$300.00) Dollars. Payment of the initial fee shall be due not later than sixty (60) days from the date on which the Board may hereafter order that the suspension of Dr. Berry's license has ended and he is authorized to resume his practice. All subsequent annual payments shall be due on or before the anniversary date of the initial fee payment.

IT IS FURTHER ORDERED that any violation or failure of strict compliance with any of the restrictions set forth by this Order by Dr. Berry shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for the revocation and cancellation of Dr. Berry's license to practice medicine in the state of Louisiana or for

such other action as the Board may deem appropriate, as if such violations were enumerated among the causes provided in La. Rev. Stat. §37:1285.

IT IS FURTHER ORDERED that this Consent Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 15th day of February, 2005.

**LOUISIANA STATE BOARD
OF MEDICAL EXAMINERS**


By:

KE LeBlanc MD
KIM EDWARD LEBLANC, M.D., PH.D.
PRESIDENT

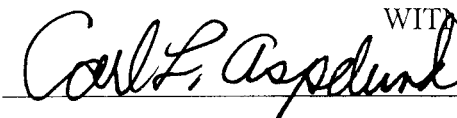
STATE OF _____
PARISH/COUNTY OF _____

**ACKNOWLEDGMENT
AND CONSENT**

I, ROBERT LEE BERRY, M.D., hereby acknowledge, approve, accept and
consent to entry of the above and foregoing Order, this 17 day of January,
2005.

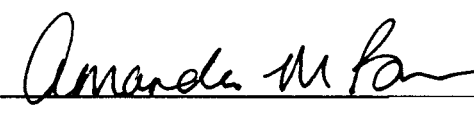

ROBERT LEE BERRY, M.D.

WITNESSES:


Signature
Carl L. Aspelund

Typed Name
One Galleria Blvd., Ste 1100
Metairie, LA 70001

Address


Signature
Amanda Brown

Typed Name
One Galleria Blvd., Ste 1100
Metairie, La 70001

Address

Sworn to and subscribed before me at New Orleans, Louisiana, this 17 day of
January, 2005, in the presence of the two stated witnesses.


Notary Public

LYDIA HABLSTON TOSO
BAR # 12873