

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2014-048

In the Matter of)
)
)
STEVEN L. MILLER, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Steven L. Miller, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is 12-291.

Biographical Information

1. The Respondent was born on February 15, 1954. He graduated from the University of California, San Diego School of Medicine in 1980. He is certified by the American Board of Diagnostic Radiology. He has been licensed to practice medicine in Massachusetts under certificate number 54087 since 1985. He is affiliated with Newton-Wellesley Hospital.

Factual Allegations

2. Henry Schein, Inc. (Schein) is a New York corporation which fulfills orders from licensed physicians, hospitals and other providers of medical services for various medications

and medical supplies. Schein maintains an internet-based ordering system which allows physicians and others to place orders for products over the internet.

3. The various products offered by Schein to licensed physicians are intended for use in physicians' medical practices for their respective patients.

4. Beginning in approximately 1995, the Respondent placed an order for controlled and non-controlled substances (medications) from Schein.

5. The Respondent thereafter continued to order medications and medical supplies from Schein on a regular basis through May 2012.

6. In early 2012, Schein mailed documents to the Respondent requesting him to update his account and to provide updated information and credit card data; the Respondent completed certain Schein forms online.

7. In one online form, the Respondent wrote that he ordered medications and supplies from Schein for his own personal use, and for the personal use of his spouse, and that his medication orders were for medications that were originally prescribed to them by their respective physicians.

8. As a result of the Respondent's written representations to Schein in early 2012, on or about March 2012, Schein notified the Respondent that it had closed his online ordering privileges, and closed his account.

9. Since 2005, the Respondent ordered non-controlled substances and supplies from Schein, such as ibuprofen, eye drops, latex gloves, and a wound closure tray.

10. Since 2005, the Respondent ordered controlled substances such as:

- ♦ Oxazepam
- ♦ Carisoprodol
- ♦ Alprazolam
- ♦ Lorazepam

- ♦ Diphenoxylate with atropine
- ♦ Zolpidem Tartrate

11. Between 2005 and 2012, the Respondent ordered and received from Schein tablets of oxazepam by placing orders electronically on Schein's website.

12. The Respondent ordered oxazepam from Schein for his own personal use, and for the personal use of his spouse.

13. Between 2005 and 2012, the Respondent's primary care physician also prescribed oxazepam to the Respondent.

14. Oxazepam is a DEA Schedule IV controlled substance.

15. Between 2005 and 2011, the Respondent ordered and received from Schein 350 mg. tablets of carisoprodol by placing orders electronically on Schein's website. Carisoprodol is also known as Soma.

16. The Respondent ordered carisoprodol from Schein for his own personal use and for the personal use of his spouse.

17. Between 2005 and 2012, the Respondent's primary care physician did not prescribe Carisoprodol to the Respondent.

18. On December 12, 2011, the DEA published its final rule in the Federal Register (76 Fed. Reg. 77,330 (Dec. 12, 2011)), which reclassified carisoprodol from a non-scheduled medication to a DEA Schedule IV controlled substance, effective January 11, 2012.

19. Between 2005 and 2012, the Respondent ordered and received from Schein quantities of alprazolam, lorazepam, diphenoxylate with atropine, and zolpidem tartrate for his own personal use.

20. Alprazolam is a DEA Schedule IV controlled substance.

21. Lorazepam is a DEA Schedule IV controlled substance.

22. Diphenoxylate with atropine is a DEA Schedule V controlled substance.
23. Zolpidem is a DEA Schedule IV controlled substance.
24. The Respondent's spouse has never been a patient of the Respondent; the Respondent kept no medical records relating to his medication orders from Schein which were intended for her personal use.

Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, §5, ninth par. (b) and 243 CMR 1.03(5)(a)2, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician committed an offense against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder. More specifically:

1. G.L. c. 94C, § 19(a), which requires that physicians issue prescriptions for controlled substances for legitimate purpose and in the usual course of the physician's medical practice.

B. Pursuant to G.L. c. 112, §5, ninth par. (h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has violated of a rule or regulation of the Board. Specifically:

1. 243 CMR 2.07(5), which states that a licensee who violates G.L. c. 94C also violates a rule or regulation of the Board;

2. 243 CMR 2.07(19), which prohibits a physician from:
 - a. prescribing controlled substances in Schedules II, III, and IV for his own use; and

3. 243 CMR 2.07(13)(a), which requires a physician to:

- a. maintain a medical record for each patient, which is adequate to enable the licensee to provide proper diagnosis and treatment;
- b. maintain a patient's medical record in a manner which permits the former patient or a successor physician access to them.

C. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair

Date: December 3, 2014

SENT CERTIFIED MAIL 12/4/14 (ms)