

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2021-002

In the Matter of

JONATHAN KIEV, M.D.

CONSENT ORDER

Pursuant to Mass. Gen. Laws c. 30A, § 10, Jonathan Kiev, M.D. (the "Respondent" or "Licensee") and the Board of Registration in Medicine (the "Board") (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of Investigative Docket Number 20-155.

Findings of Fact

1. The Respondent was born on June 7, 1961. The Respondent graduated in 1989 from the Tulane University School of Medicine. He has been licensed to practice medicine in Massachusetts under license number 217103 since 2003.
2. The Respondent is Board certified in surgery and thoracic surgery.
3. On March 10, 2020, the Respondent entered into a Consent Order with the Illinois Department of Financial and Professional Regulation (the "Illinois Board") to resolve an active

case that the latter had open against him (the "Illinois Consent Order") which related to the Respondent's prescribing controlled substances to personal acquaintances outside of his professional practice of medicine.

4. With respect to the specific allegations resolved by the Illinois Consent Order, in April 2016, the Respondent prescribed a refill for his ex-girlfriend's Xanax prescription.

5. The Respondent's ex-girlfriend was not his patient when he prescribed the refill described in the preceding paragraph and, additionally, the Respondent did not maintain any medical records in connection with the aforementioned prescription.

6. Separately, on approximately four (4) separate occasions in 2017, 2018 and 2019, the Respondent prescribed Tylenol with codeine to a personal acquaintance.

7. The 2019 prescription for Tylenol with codeine that the Respondent wrote for his personal acquaintance as described in the preceding paragraph authorized three (3) refills.

8. The personal acquaintance to whom the Respondent prescribed Tylenol with codeine as described in ¶¶ 6-7, above, was never a patient of the Respondent and, additionally, the Respondent did not maintain any medical records in connection with the aforementioned prescriptions.

9. Furthermore, the Respondent prescribed Tylenol with codeine to his personal acquaintance as described in ¶¶ 6-8, above, without checking the acquaintance's prescribing history in the Illinois Prescription Monitoring Program.

10. Finally, although the Respondent relocated to Kentucky from Illinois in 2017, he authorized the 2018 and 2019 prescriptions for his personal acquaintance, an Illinois resident, after his Controlled Substance License issued by the State of Illinois had lapsed into inactivity.

11. Pursuant to the Illinois Consent Order, the Respondent's license to practice medicine in Illinois was reprimanded, his Controlled Substance License in that state was suspended for a period of thirty (30) days and thereafter returned to "not renewed" status, the Respondent was ordered to pay a fine in the amount of ten thousand dollars (\$10,000.00), and the Illinois Board required the Respondent to complete ten (10) hours of category I Continuing Medical Education credits ("CMEs") related to professional responsibility and ten (10) hours of category I CMEs related to prescribing controlled substances.

12. A true and accurate copy of the Illinois Consent Order is enclosed herewith as Attachment A and incorporated herein by reference.

Conclusions of Law

A. The Respondent has violated 243 CMR 1.03(5)(a)(12), in that he has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in Mass. Gen. Laws c. 112, § 5 or 243 CMR 1.03(5), specifically:

- i. Mass. Gen. Laws c. 112, § 5, ¶ 9(c) and 243 CMR 1.03(5)(a)(3) ("Conduct which places into question the physician's competence to practice medicine, including but not limited to ... beyond its authorized scope ... or with ... negligence on repeated occasions");
- ii. Mass. Gen. Laws c. 112, § 5, ¶ 9(b) and 243 CMR 1.03(5)(a)(2) (committing an offense/offenses against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder, to wit:

1. Mass. Gen. Laws c. 94C § 19(a); and

2. Prescribing Practices Policy and Guidelines, adopted by the Board of Registration in Medicine August 1, 1989, amended May 19, 2010.)
- iii. 243 CMR 2.07(13)(a), which requires a physician to:
 1. maintain a medical record for each patient which is adequate to enable the licensee to provide proper diagnosis and treatment;
 2. maintain a patient's medical record in a manner which permits the former patient or a successor physician access to them;
- iv. *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), which provide for discipline where, by proof satisfactory to a majority of the Board, a physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Sanction and Order

The Respondent is hereby reprimanded.

Execution of this Consent Order

Complaint Counsel, the Respondent, and the Respondent's counsel agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent, and the Respondent's counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.

As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments, within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; and the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which he becomes associated in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

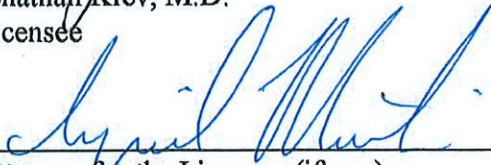
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.



Jonathan Kiev, M.D.
Licensee

9/25/20

Date



Attorney for the Licensee (if any)

9/30/20

Date



Lawrence Perchick
Complaint Counsel

10/5/20

Date

So ORDERED by the Board of Registration in Medicine this 14th day of January, 2021.



George M. Abraham, M.D.
Chair

Attachment A

**STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION**

| | | |
|--|---|----------------|
| DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois, DIVISION OF PROFESSIONAL REGULATION, |) | |
| |) | |
| |) | |
| |) | Complainant, |
| v. |) | No. 2016-04169 |
| JONATHAN KIEV, |) | |
| License No. 036.134306, |) | |
| 336.095570 |) | Respondent. |

CONSENT ORDER

The Department of Financial and Professional Regulation of the State of Illinois, Division of Professional Regulation (Department), by and through Brooke Harper, Staff Attorney, and JONATHAN KIEV, M.D. (Respondent), by and through his attorney, Michael Lieber, hereby agree to the following:

STIPULATIONS

Respondent holds a Certificate of Registration as a Physician and Surgeon in the State of Illinois, License No. 036.134306. Said license is currently in ACTIVE status. Respondent also holds a Controlled Substance License, License No. 336.095570. Said license has been in NOT RENEWED status since July 31, 2017. At all times material to the matter set forth in this Consent Order, the Department had jurisdiction over the subject matter and parties herein.

On May 9, 2016, the Department received a complaint from an officer of the Downers Grove Police Department. The complaint reported that in April 2016, Respondent authorized a refill of his girlfriend's Xanax prescription. His girlfriend was not a patient and Respondent did not maintain any medical records associated with the prescription.

A review of Respondent's Illinois prescribing activity revealed that he also prescribed a controlled substance, Tylenol with codeine, to an individual named M.H. on approximately four

separate occasions in 2017, 2018, and 2019. The 2019 prescription authorized three refills. M.H. is also a personal acquaintance of Respondent's. M.H. was never a patient of Respondent's and Respondent did not maintain any medical records in connection with his prescriptions to M.H.

Respondent relocated to Kentucky in 2017, and his Controlled Substance License lapsed into NOT RENEWED status. Respondent authorized the 2018 and 2019 prescriptions for M.H., an Illinois patient, from Kentucky. He did so without having an active Controlled Substance License issued by the State of Illinois, without checking the patient's history in the Illinois PMP, without examining the patient, and without inquiring as to why the patient was reaching out to Respondent for pain medication instead of to a regular treating physician.

The allegations as set forth herein, if proven to be true, would constitute grounds for the Department to revoke, suspend, or otherwise discipline Respondent's license as a Physician and Surgeon on the authority of 225 ILCS 60/22(A)(5); 68 Ill. Admin. Code 1285.240; 20 ILCS 2105/2105-130.

Respondent has been advised of the right to a hearing to contest the pending charges and the right to administrative review of any order resulting from a hearing. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Board or the Director of the Division of Professional Regulation of the Department (Director).

Respondent has freely and willingly entered into this Consent Order without any threat or coercion by any person. Respondent acknowledges that he has not relied upon any statement or promise made on behalf of the Department except as set forth herein.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent be permitted to enter into a Consent Order with the Department providing for the

imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the People of the State of Illinois.

CONDITIONS

WHEREFORE, the Department, by and through Brooke Harper, Staff Attorney, and Jonathan Kiev, M.D., Respondent, by and through his attorney, Michael Lieber, hereby agree to the following:

A. Respondent's Illinois Physician and Surgeon License, No. 036.134306, shall be REPRIMANDED;

B. Upon the effective date of this Consent Order, Respondent's Illinois Controlled Substance License, No. 336.095570, shall be SUSPENDED for a period of thirty (30) days. It will thereafter return to NOT-RENEWED status.

C. Respondent shall pay a fine in the amount of ten thousand dollars (\$10,000.00). Said fine shall be paid within one hundred eighty (180) days of the effective date of this Consent Order. The fine is to be paid by personal check, cashier's check, or personal money order. Said check shall be made payable to "Illinois Department of Financial and Professional Regulation" and mailed to the following address:

Illinois Dept. of Financial and Professional Regulation
SSC- Accounts Receivable Section- Fines
PO BOX 7086
Springfield, Illinois 62791-7086

D. In the notation portion of the check, Respondent shall list the above stated case number and Respondent's license number. If Respondent fails to pay the aforementioned fine and the Department initiates a collection effort to retrieve the fine, Respondent shall be responsible for all costs and fees incurred by the Department in said collection effort;

E. Respondent shall complete ten (10) hours of category I Continuing Medical Education credits (CMEs) related to professional responsibility; and ten (10) hours of category I CMEs related to

prescribing controlled substances;

1. Respondent must seek pre-approval in writing by the Department's Chief Medical Coordinator prior to attendance of said CMEs. Respondent shall send his written request for pre-approval to the Department's Chief Medical Coordinator at:

**Illinois Department of Financial and Professional Regulation
Attn: Chief Medical Coordinator
100 W. Randolph Street, Suite 9-300
Chicago, IL 60601.**

2. Respondent shall submit proof of completion of the aforesaid CMEs within twelve (12) months of the final approval of this Consent Order to the following address:

**Illinois Department of Financial and Professional Regulation
Attn: Chief Medical Coordinator
100 W. Randolph Street, Suite 9-300
Chicago, IL 60601.**

3. The aforementioned CMEs may count towards the total required to renew Respondent's license in 2021.

F. Respondent agrees that any violation of the aforementioned terms and conditions of this Order permits the Director to issue an Order forthwith mandating the automatic, indefinite, and immediate suspension of his Physician and Surgeon License, No. 036.134306, for a minimum period of twelve (12) months. This suspension shall not preclude the Department from taking any other disciplinary or other actions it deems appropriate. In the event that Respondent contests the factual basis underlying said indefinite suspension in a written petition that complies with the Department's Rules of Practice in Administrative Hearings, which is filed with the Department within fifteen (15) days of the effective date of the indefinite suspension, then Respondent shall be afforded a hearing on the merits within thirty (30) days from the filing of said petition;

- G. This disposition is considered a discipline for reporting purposes to entities such as the National Practitioner Data Bank;
- H. This Consent Order shall become effective upon signing and approval by the Director.

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DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
of the State of Illinois


2/27/2020
DATE


Brooke Harper
Attorney for the Department

2/26/20
DATE


Jonathan Klee, M.D.
Respondent

2/26/20
DATE


Michael Lieber
Attorney for the Respondent

3/4/20
DATE


Member
Medical Disciplinary Board

The foregoing Consent Order is approved in full.

DATED THIS 10th day of March, 2020.

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION
of the State of Illinois;
Deborah Hagan, Secretary
DIVISION OF PROFESSIONAL REGULATION


CECILIA ABUNDIS
Acting Director

REF: Case No. 2016-04169
Lic. No. 036.134306