

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOARD OF REGISTRATION
IN MEDICINE

Adj. Case No: 2014-008 (RM-14-77)

In the Matter of)

Jeffrey J. Davis, M.D.)
_____)

Final Decision and Order

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision, dated July 1, 2015, which found Jeffrey J. Davis, M.D. ("Respondent") in default. After full consideration of that Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, amending it by adding the following:

Findings of Fact

In light of the failure of the Respondent to appear for two scheduled hearings at the Division of Administrative Law Appeals ("DALA"), to produce medical records pursuant to a Board subpoena, to inform DALA of his current address, and to respond to a written default motion mailed to multiple addresses, including a new address, the Board hereby finds the Respondent in default. M.G.L. c. 30A, § 10(2). Therefore, the allegations contained in the Statement of Allegations are deemed admitted. See Peters & Russel, Inc. v. Dorfman, 188 F.2d 711 (7th Cir. 1951); and Northwest Yeast Co. v. Broutin, 133 F.2d 638 (6th Cir. 1943). The Board makes the following findings:

1. The Respondent was born on March 26, 1948. He graduated from Yale University School of Medicine in 1975 and was initially licensed to practice medicine in Massachusetts in 1977 under certificate number 41019. He did not renew his Massachusetts license when it was due for renewal on March 26, 2013. The Respondent is licensed to practice medicine in New Jersey and in New York, where he presently resides.
2. The Respondent was last employed in the Commonwealth of Massachusetts as an independent contractor, providing anesthesia services to eye and cataract surgical centers in Western Massachusetts (“surgical centers” or “surgical center”).
3. The Respondent ordered certain controlled substances from PD-Rx Pharmaceuticals, Inc. (“PD-Rx”), a mail order pharmacy, for himself and for an immediate family member (“family member”).
4. At all times relevant to this matter, the Respondent was a licensed physician in the Commonwealth of Massachusetts.
5. On October 14, 2011, the Respondent ordered three (3) bottles of 100 Fioricet tablets for the family member from PD-Rx, and directed that the medications be delivered to him at the surgical center.
6. In Massachusetts, Fioricet is a controlled substance which requires a prescription written by a licensed physician.
7. PD-Rx fulfilled the October 14, 2011 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the October 14, 2011 order.

8. On October 31, 2011, the Respondent ordered one (1) bottle of 100 Citalopram 40 mg. tablets for the family member from PD-Rx and directed that the controlled substances be delivered to him at the surgical center.
9. In Massachusetts, Citalopram is a controlled substance which requires a prescription written by a licensed physician.
10. PD-Rx fulfilled the October 31, 2011 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the October 31, 2011 order.
11. On November 4, 2011, the Respondent ordered one (1) bottle of 90 Crestor 20 mg. tablets for himself from PD-Rx and directed that the controlled substances be delivered to him at the surgical center.
12. In Massachusetts, Crestor is a controlled substance which requires a prescription written by a licensed physician.
13. PD-Rx fulfilled the November 4, 2011 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the November 4, 2011 order.
14. On November 28, 2011, the Respondent ordered three (3) bottles of 100 Fioricet tablets for the family member from PD-Rx and directed that the controlled substances be delivered to him at the surgical center.
15. PD-Rx fulfilled the November 28, 2011 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the November 28, 2011 order.

16. On December 2, 2011, the Respondent ordered twenty (20) bottles of 30 butalbital tablets for the family member from PD-Rx and directed that the controlled substances be delivered to him at the surgical center.
17. In Massachusetts, butalbital is a controlled substance which requires a prescription written by a licensed physician.
18. PD-Rx fulfilled the December 2, 2011 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the December 2, 2011 order.
19. On January 18, 2012, the Respondent ordered three (3) bottles of 100 Fioricet tablets for the family member from PD-Rx and directed that the controlled substances be delivered to him at the surgical center.
20. PD-Rx fulfilled the January 18, 2012 order, and delivered the controlled substances to the Respondent at the surgical center; the Respondent received the January 18, 2012 order.
21. Board staff's investigation revealed that the Respondent wrote prescriptions for the family member for 25 and/or 30 tablets of Fioricet on June 24, 2010, September 27, 2010, November 18, 2010, August 17, 2011, October 4, 2011 and October 14, 2011.
22. Board staff also discovered that the Respondent had been ordering controlled substances for himself and for the family member from PD-Rx since April 6, 2007.
23. Between the period of April 6, 2007 and January 18, 2012, the Respondent placed and received a total forty-nine (49) orders for various controlled substances from PD-Rx.
24. Among the controlled substances the Respondent ordered and received from PD-Rx, and in addition to the controlled substances identified herein, were Lorazepam, and Alprazolam.

25. On August 1, 1989, the Board adopted guidelines for physicians who write prescriptions for controlled substances pursuant to G.L. c. 94C, known as “*Prescribing Practices Policy and Guidelines*” (“Guidelines”). The *Guidelines* were amended on December 12, 2001, and on May 19, 2010, and were in effect at all times relevant to this matter.
26. Pursuant to G.L. c. 94C, section 19(a), and 243 C.M.R. 2.07(19), and the *Guidelines*, a prescription is invalid unless it is issued for a legitimate medical purpose in the usual course of a physician’s professional practice.
27. The *Guidelines* state that one factor in determining the validity of a prescription is whether the physician has documented an appropriate medical history and physical examination of the patient, detailed enough that the physician’s clinical reasoning is discernible from the physician’s medical records for that patient.
28. The *Guidelines* caution prescribers that butalbital, the active ingredient in Fioricet, may have addictive properties, and that “(s)ince Fioricet is in Schedule VI, its addictive properties may be overlooked.”
29. During the course of the investigation, the Respondent made several oral and written representations to Board staff that he was in compliance with the *Guidelines*, and with the Board’s regulations relative to prescribing medication to family members, because he maintained a medical record for the family member for each prescription he wrote, or controlled substance he ordered, for that family member.
30. On November 23, 2012, Board staff mailed a subpoena to the Respondent at his residential address in New York. The subpoena required the Respondent to produce “any and all medical records maintained and kept by Jeffrey J. Davis, M.D. for the [family member].”

31. The Respondent has not produced any medical records to the Board.

Conclusions of Law

- A. The Respondent has violated 243 C.M.R. 1.03(5)(a)16, in that he failed to respond to a subpoena or to furnish the Board, its investigators or representatives, documents, information or testimony to which the Board is legally entitled.
- B. The Respondent has violated G.L. c. 112, §5, ninth par. (b) and 243 C.M.R. 1.03(5)(a)2, in that he 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. The Respondent violated 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;
- C. The Respondent has violated G.L. c. 112, §5, ninth par. (h) and 243 C.M.R. 1.03(5)(a)11, by violating a rule or regulation of the Board. Specifically:
 - 1. The Respondent violated 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. The Respondent violated 243 CMR 2.07(12), by failing to make available to the Board any relevant and authorized records with respect to an inquiry or complaint about a licensee's professional conduct;
 - 3. The Respondent violated 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.

Sanction

The Respondent's failure to respond to the Board's subpoena, his failure to notify the Board of his change of address, and his default in connection with this action demonstrate his utter disregard for the Board's statutory mandate. By failing to respond to the Board, the Respondent prevented the Board from investigating the serious allegations concerning his improper prescribing practices. In order for the Board to fulfill its mission to protect the public, a physician's cooperation is essential. By failing to respond to the serious allegations against him, the Respondent hindered the Board's efforts to fulfill its mission. See In the Matter of Mark M. Kowalski, M.D., Adjudicatory Case No. 97-16-DALA (Final Decision and Order, April 1, 1998) ("A physician who obstructs the Board's investigation of a complaint and blatantly ignores repeated requests for a response threatens the public's health, welfare and safety, not only by denying the Board potentially important information, but also by draining the resources of the Board.").

Revocation has been imposed by the Board "where physicians have repeatedly disregarded the Board's administrative directives." See In the Matter of Anastasia Kucharski, M.D., Adjudicatory Case No. 2008-048 (Final Decision and Order, April 14, 2010). Revocation has also been the ordered sanction where the physician displays a "disregard for both the integrity of his profession and the authority of the Commonwealth." See In the Matter of R. T. Moody, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2008-49 (Final Decision and Order, February 24, 2010). See also In the Matter of Thomas Mikolinnas, M.D., Board of Registration in Medicine, Adjudicatory Case no. 2005-040 (RM-05-741) (Board

revoked physician's inchoate right to renew his medical license, finding that he had continued to practice after his license had lapsed, including the prescribing of Schedule II controlled substances, failed to notify the Board of his change of address, and failed to furnish to the Board documents and information to which the Board was legally entitled.).

The Board's paramount responsibility is the protection of the public health, safety and welfare. See Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979). In light of the Respondent's default, which hindered the Board's efforts in its fulfillment of this responsibility, it is appropriate to impose a sanction in this matter. The Board hereby **revokes** the Respondent's inchoate right to renew his license to practice medicine. This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them. While the underlying prescribing violations are subject to discipline, the Board need not add additional sanctions beyond what is being imposed.

The Respondent shall provide a complete copy of this Final Decision and 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 s/he practices medicine; any in- or out-of-state health maintenance organization with whom she has privileges or any other kind of association; any state agency, in- or out-of-state, with which she has a provider contract; any in- or out-of-state medical employer, whether or not she practices medicine there; the state licensing boards of all states in which she 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 she becomes associated for

the duration of this revocation. The Respondent is further directed to certify to the Board within ten (10) days that she has complied with this directive.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

DATE: October 8, 2015

Candace Lapidus Sloane, MD
Candace Lapidus Sloane, M.D.
Chair