

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No: 2017-003

In the Matter of)

Katherine J. Downey, 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 April 5, 2017, which found Katherine J. Downey, 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 Respondent's failure to respond to the Statement of Allegations (SOA), to appear for a scheduled hearing at the Division of Administrative Law Appeals (DALA), and to provide the Board with updated contact information, the Board hereby finds the Respondent in default. M.G.L. c. 30A, § 10(2). Therefore, the allegations contained in the SOA 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:

Biographical Information

1. The Respondent was born on January 23, 1975. She graduated from the University of Arizona, College of Medicine in 2008. She has been licensed to practice medicine in Massachusetts under certificate number 256948 since 2013. She is the sole member of MD Medical Spa and Wellness Center, LLC (Med Spa). Med Spa offers medical spa and wellness services including certification for medical marijuana.
2. The Respondent filed her most recent medical license renewal application on December 27, 2015 (2015 Renewal).¹
3. On her 2015 Renewal, the Respondent provided the same home, business and mailing address: 19 Washington Street, Norwell MA 02061 (Norwell Address).

Factual Allegations

Docket No. 15-297

4. In 2015, Patient AM was a student at a Law School.
5. On September 11, 2015, Patient AM had an appointment with the Respondent at Med Spa for the purpose of becoming certified for medical marijuana.
6. On September 11, 2015, Patient AM was examined by the Respondent at her Hyannis office. Patient AM provided medical records to the Respondent.
7. The Respondent informed Patient AM that she would receive an email within three to five days after her appointment that would instruct her (Patient AM) to take an online safety quiz. After taking the quiz, Patient AM would receive a PIN number to register with the Medical Marijuana program.

¹ The Board's records reflect that Dr. Downey renewed her license on January 23, 2016.

8. When she did not receive an email within three to five days after her appointment, Patient AM contacted the Respondent's office. Patient AM was told to wait.
9. On October 4, 2015, Patient AM contacted the Respondent's office. Given that she had not received the email as promised, Patient AM asked for a refund. Patient AM was told that she would be receiving a letter in the mail.
10. On October 7, 2015, the Respondent sent an email to the Dean of Patient AM's Law School in which:
 - a. the Respondent identified Patient AM as her patient; and
 - b. the Respondent accused Patient AM of harassment and extortion.

Docket No. 16-065

11. On October 28, 2015, Patient HA, a 69 year-old female, had an appointment with the Respondent at Med Spa for the purpose of becoming certified for medical marijuana.
12. The Respondent instructed Patient HA to take an online safety quiz and informed Patient HA that she would be certified after the completion of the online safety quiz.
13. Patient HA did not take the online safety quiz because she was sick from November 2015 to early January 2016.
14. Patient HA did not get her certification.
15. Patient HA called the Respondent but did not receive a response.
16. Patient HA wrote a letter to the Respondent but it was returned by the post office.
17. Patient HA went to the Respondent's office, but nobody answered the door.

Docket 16-145

18. In February 2016, Patient CW, a 51 year-old spinal cord patient, had an appointment with the Respondent at Med Spa for the purpose of becoming certified for medical marijuana.
19. The Respondent certified Patient CW.
20. After certification, Patient CW contacted the Respondent and requested more information on proper use of medical marijuana.
21. The Respondent informed Patient CW that to receive additional information, Patient CW must schedule additional visits at \$250 apiece and a nutritional program for \$2300.
22. Patient CW expressed displeasure about the additional cost to the Respondent.
23. Thereafter, the Respondent informed Patient CW that her certificate had been terminated.

Docket 16-304

24. On April 22, 2016, Investigator Landers sent, via certified and regular U.S. Mail, two notification letters with copies of the complaints regarding Docket Nos. 16-065 and 16-145 to the Respondent at the Norwell Address. The letters requested a response within thirty days.
25. The Respondent received the Docket No. 16-065 letter on April 25, 2016.
26. On April 29, 2016, Investigator Landers learned that the notification letter and complaint regarding Docket No. 16-145 was not delivered.

27. On April 29, 2016, Investigator Landers resent, via certified mail only, the notification letter and complaint regarding Docket No. 16-145 to the Norwell Address.
28. The Respondent received the Docket No. 16-145 letter on May 2, 2016.
29. As of July 14, 2016, the Respondent had not responded to either request for a response.
30. On August 29, 2016, a Ten Day Order to Respond was issued pursuant to 243 CMR 1.03(7). The Order was sent via email and regular and overnight mail to the Norwell Address.
31. The Respondent has never responded to the Order.
32. Pursuant to 243 CMR 2.07(8)(a), a physician must report to the Board a change of home or business address within 30 days of the date of the change of address.

Conclusions of Law

Since the matter was decided on the basis of a default at DALA, the Magistrate made no determinations as to Conclusions of Law. Based upon the facts set out in the SOA, and now admitted, the Board can make the following Conclusions of Law:

- A. The Respondent has violated 243 C.M.R. 1.03(5)(a)18, by committing misconduct.
- B. The Respondent has violated 243 CMR 1.03(5)(a)(16) by failing 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.
- C. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession, a basis for discipline pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in*

Medicine, 387 Mass. 708 (1982), and *Sugarman v. Board of Registration in Medicine*, 422 Mass. 338 (1996).

Sanction

The Respondent's failure to respond to communications from the Board, including a Ten Day Order to Respond, failure to submit an Answer to the SOA, failure to appear for a scheduled hearing at DALA, and her default in connection with this action demonstrate her 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 her failure to maintain the confidentiality of all records and communications to the extent provided by law and her failure to promptly and adequately respond to patients. 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 her, the Respondent hindered the Board's efforts to fulfill its mission. See *In the Matter of Mark M. Kowalski, M.D.*, Board of Registration in Medicine, 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.*, Board of Registration in Medicine, 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 (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 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.

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 she 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: August 3, 2017

A handwritten signature in cursive script, reading "Kathleen Sullivan Meyer".

Kathleen Sullivan Meyer, J.D.
Vice Chair