

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-14-77

Jeffrey Davis, M.D.,
Respondent

Appearance for Petitioner:

John Costello, Esq.
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Jeffrey Davis, M.D.
2109 Broadway, Apt. 787
New York, NY 10023-2142¹

Administrative Magistrate

James P. Rooney

Summary of Decision

Doctor, who appealed a Statement of Allegations seeking to discipline him for prescribing controlled substances to his ex-wife, himself, and private patients outside the course of his ordinary practice and without legitimate purpose, is defaulted for failure to respond to requests to produce relevant medical records, failure in the course of two or three moves to provide a current address at which he could be reached, failure to attend a hearing, and failure to respond to a motion seeking to default him.

¹ This appears to be Dr. Davis's latest address. I will also send this decision to the address he used most frequently during this proceeding, 5 East 63rd Street, New York, NY 10036.

RECOMMENDED DECISION

Jeffrey J. Davis, M.D. was licensed in 1977 to practice medicine in Massachusetts. His license lapsed on March 26, 2012³, when he failed to renew it.

On February 19, 2014, the Board of Registration in Medicine issued a Statement of Allegations charging Dr. Davis with violating M.G.L. c. 94C and the Board's "Prescribing Practices and Guidelines" by prescribing controlled substances to a family member and to himself outside the usual course of his practice, and by failing to turn over his medical records of these prescriptions in response to a Board subpoena. The matter was scheduled for a hearing on March 6, 2015. Dr. Davis failed to appear, as he had failed to appear for a hearing scheduled a few months earlier. I granted the Board's oral motion to default him, and allowed the Board time to file a brief supporting its motion. The Board filed a brief; Dr. Davis did not respond. In this decision, I confirm my ruling defaulting Dr. Davis and my recommendation that the Board impose appropriate sanctions.

Background

The Statement of Allegations charged that between October 2011 and January 2012, while working as an independent contractor providing anesthesia services to eye and cataract surgery centers, Dr. Davis ordered controlled substances – Fioricet, Citalopram, Crestor, and butalbital² – from a mail order pharmacy in Oklahoma. He prescribed all but the Crestor to his ex-wife, from whom he was divorced on February 25,

² According to Board counsel, Fioricet and butalbital are barbiturates that are combined with other drugs, Citalopram is an anti-depressant, and Crestor is used for cholesterol management.

2011. He prescribed Crestor to himself. Each of these drugs is a Massachusetts Schedule 6 drug and requires a prescription.

The Statement of Allegations also charged that, between 2007 and 2012, Dr. Davis placed 49 orders for controlled substances, including Lorazepam and Alprazolam, both of which are Massachusetts Schedule 4 drugs.³ Lastly, the Statement of Allegations charged that Dr. Davis failed to comply with a subpoena requiring him to produce medical records related to his treatment of his ex-wife.

Dr. Davis answered the allegations. He denied that the Fioricet and Citalopram were prescribed to a family member, since his ex-wife was no longer a family member. I take this to be an admission that he prescribed these drugs to her. He admitted ordering Crestor for himself, saying he did so at a time when his insurance had lapsed. He denied ordering butalbital. He acknowledged placing 47 orders for prescription drugs between 2007 and 2012, but said these orders were placed when he practiced as an emergency physician and family physician and he kept appropriate records of his prescriptions to his private patients during this period. He admitted failing to turn over the records of his treatment of his ex-wife, but averred that his ex-wife had refused to allow him to produce the records.

Board counsel continued to seek Dr. Davis's medical records, serving him with a document request that sought the records of his treatment of his ex-wife, among other items. Magistrate Maria Imperato ordered Board counsel to submit a brief in support of the Board's assertion that it had the authority to seek such records. Board counsel

³ According to Board counsel, Lorazepam and Alprazolam are similar anti-depressants.

submitted a brief describing the Board's authority to regulate the practice of medicine, and its consequent power to subpoena pertinent patient medical records, including records that a patient objects to producing. Magistrate Imparato ordered Dr. Davis to respond to the document production request by June 2, 2014. Dr. Davis responded by producing some of the items sought, including a copy of his divorce decree, but continued to refuse to produce any records of the treatment of his ex-wife or any other patient, claiming that because he lived in New York he was not obligated to respond to a Massachusetts subpoena. Chief Magistrate Richard Heidlage rejected Dr. Davis's reasons for not producing medical records because parties to an adjudicatory proceeding can be compelled to respond to discovery requests. He ordered the doctor to produce the records sought by September 14, 2014. When the doctor again did not produce any medical records, Magistrate Imparato ordered that, at a hearing on the charges, the doctor would not be permitted to submit any medical records he had failed to produce; additionally, the failure to produce the records of his treatment of his ex-wife would be taken to show that those records would not support a conclusion that the prescriptions he wrote for his ex-wife were for a legitimate medical purpose.

In addition to failing to comply with requests and orders that he produce documents, Dr. Davis moved during the course of these proceedings without letting Board counsel or the Division of Administrative Law Appeals (DALA) know of his address changes, leading inevitably to long lapses in communication and consequent delays. When the proceedings began, Dr. Davis resided in an apartment on 5 East 63rd Street in Manhattan. DALA sent a notice of a prehearing conference to him at this

address. He appeared for the conference on April 2, 2014 and the following month responded to Magistrate Imparato's order that he produce documents.

Thereafter, efforts to communicate with him became more difficult. On July 23, 2014, Magistrate Imparato sent an order to Dr. Davis's East 63rd Street address informing him that a hearing had been scheduled for August 26, 2014. One week later, Board counsel informed the Magistrate that he had received a letter returned from that address stating that Dr. Davis had moved to 169 Mercer Street in Manhattan. Magistrate Imparato remailed the hearing order to the Mercer Street address. This order reached Dr. Davis, and he responded by requesting a continuance. On September 23, 2014, Magistrate Imparato set a new hearing date, December 9, 2014, and sent an order with this date to the Mercer Street address. The Post Office returned the order as undeliverable. Board counsel located another possible residence for Dr. Davis at West 42nd Street in Manhattan and a possible business address in Morris Plains, New Jersey. I remailed the notice of hearing to these addresses and to Dr. Davis's original address on East 63rd Street. He did not appear on December 9, 2014 for the hearing. I issued the doctor an order to show cause, sending it to the East 63rd Street address and to another possible business address in Manhattan, 144 East 44th Street, and an address in Patterson, New Jersey he listed with the New Jersey State Board of Medical Examiners. I later amended the order and mailed it to the West 42nd Street and Morris Plains addresses previously located by Board counsel. Dr. Davis responded that he had not received the notice of the August 2014 hearing date because he had moved temporarily while renovations were being made to his apartment. He did not state whether he had received

the notice of the December 2014 hearing date. He listed the 5 East 63rd Street as his address.

Board counsel moved to default Dr. Davis. I denied the motion and instead, on January 15, 2015, I rescheduled the hearing for March 6, 2015. I also added the following to the hearing order:

I note that Dr. Davis, in his response to the order to show cause, continues to argue about document production. It would appear from this that he has not received the filings and ruling made in this case since sometime in August 2014. I am therefore sending to him a copy of Chief Magistrate Heidlage's Second Prehearing Order dated August 14, 2014, the Board's status report of September 19, 2014, and Magistrate Imperato's Orders of September 23, 2015 and September 29, 2015. These orders have consequences for the hearing because Chief Magistrate Heidlage has rejected Dr. Davis's reasons for refusing to produce certain documents to the Board. Consequently, Magistrate Imperato directed in her September 23, 2015 order that Dr. Davis not be permitted to submit as exhibits any documents he had refused to produce to the Board.

I see no reason to disturb those rulings. Because Dr. Davis had not received Chief Magistrate Heidlage's Order directing him to produce documents, I will give him one final chance to do so. If he produces to the Board by **February 13, 2015** any of the documents it requested, then he may submit those documents as proposed exhibits.

Finally, I direct Dr. Davis to inform DALA and the Board timely of any changes of address, whether permanent or temporary. DALA must be able to communicate with the parties at any time during the pendency of this matter, which has now been delayed for months because DALA and the Board had difficulty locating Dr. Davis.

I mailed the order to Dr. Davis at his East 63rd Street address and received no response from him before the date set for hearing. Board Counsel filed eleven exhibits in advance of the hearing and sent a disc with the exhibits to Dr. Davis at his East 63rd Street address.

On March 6, 2015, Board counsel appeared for the hearing. Dr. Davis did not appear. Board counsel informed me that the disc of exhibits had been returned by the Post Office. Counsel orally moved to default the doctor. I granted the motion. Board counsel followed up with a written motion on April 6, 2015. Ten days later, Board counsel filed a copy of a letter he had sent to Dr. Davis at a new address, 2109 Broadway, Apt. 787, in Manhattan enclosing a copy of the motion for entry of default. Dr. Davis field no response to the motion.

Discussion

A party may be defaulted for failure to defend against a Statement of Allegations issued by the Board of Registration in Medicine. *See* 801 C.M.R. § 1.01(7)(g)2. Grounds for default include failure to respond to the orders of the magistrate, failure to respond to a motion seeking a default, or otherwise indicating an intention not to continue with the proceeding. *Id.*

Here, Dr. Davis refused to respond to requests to provide patient medical records that the Board was entitled to review in the course of its investigation. He was given repeated opportunities to comply with a document request seeking these records and he failed to do so, even after Chief Magistrate Heidlage informed him that the grounds on which he was withholding these records was without merit. He was sanctioned by Magistrate Imperato for this refusal to comply. Her order barring him from introducing the medical records of his treatment of his ex-wife and the other persons for whom he prescribed for between 2007 and 2012 meant that, had he gone to a hearing, he would have been without documentary proof that the prescriptions he wrote for these persons

were made for a legitimate purpose and in the ordinary course of his practice. Her further order that his failure to produce those records would be taken to mean that the records would show that the prescriptions were not made in the ordinary course of his practice or for a legitimate purpose meant that he would somehow have had to show that this assumption was incorrect, all without documentary evidence. This repeated failure to produce medical records, despite being ordered to do so, is also a ground for default.

In addition to failing to respond to orders requiring him to produce medical records, Dr. Davis also moved once, and probably two or three times, during the pendency of this matter, without informing the Board or DALA of his address changes. A party to a proceeding at DALA must file an appearance listing an address where he can be reached. *See* 801 C.M.R. § 1.01(3)(b). Dr. Davis did not inform DALA or Board counsel when he moved out of his apartment while it was being renovated, moved back to his apartment, or moved to a third apartment. He also appears also to have failed to forward his mail, thereby causing numerous mailings sent to him to be returned. DALA is not obligated to repeatedly chase down parties who make it difficult to communicate with them. Consequently, Dr. Davis's failure to consistently inform DALA of his current address is another ground for default.


I assume, because it was not returned, that Dr. Davis received the notice of the March 6, 2015 hearing that was sent to his East 63rd Street address. He did not appear for that hearing (or for the hearing scheduled for December 9, 2014). He did not respond to the written default motion mailed to his East 63rd Street address and his apparent new

address on Broadway. The failure to attend the hearing or respond to the motion are the final grounds for defaulting Dr. Davis.

I note that, in this case, there was no dispute that Dr. Davis bought prescription drugs from a mail order pharmacy and prescribed them to his ex-wife, himself, and other private patients. The only dispute was whether those prescriptions were written in the ordinary course of his practice and for a legitimate purpose. The records that he refused to disclose would likely have helped answer that question. It is possible that the records might have convinced the Board that he had not engaged in conduct for which he should be disciplined. Even if the records did not exonerate him, they would likely have played a significant role in the Board's determination of what sanction to impose. Because he did not produce them, the Board now has only the exhibits submitted prior to the hearing, which include the orders for drugs, but no proof that they were ordered for a legitimate purpose in the ordinary course of Dr. Davis's practice.

I recommend that the Board impose appropriate sanctions on Dr. Davis.

DIVISION OF ADMINISTRATIVE LAW APPEALS,



James P. Rooney
First Administrative Magistrate

Dated: **JUL - 1 2015**