

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

December 30, 2019

Middlesex, ss.

Docket No. RM-19-0487

BOARD OF REGISTRATION IN MEDICINE, Petitioner

v.

ANNA D. STEINER, M.D., Respondent

**ORDER OF DEFAULT –
RECOMMENDED DECISION**

Appearance for the Petitioner

Karen A. Robinson, Esq.
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

(No appearance; mailing to last known addresses)

Dr. Anna D. Steiner
443 County Route 32
Valatie, NY 12184

Dr. Anna D. Steiner
P.O. Box 550
Valatie, NY 12184-0550

Administrative Magistrate:

Mark L. Silverstein, Esq.

*Summary of Decision***Physician Discipline - Misconduct in practice of medicine, conduct placing competence to practice medicine into question, conduct undermining public confidence in integrity of medical profession - Default decision recommended.**

The Massachusetts Board of Registration in Medicine issued a statement of allegations ordering a physician to show cause why she should not be disciplined by the Board for conduct that placed into question her competence to practice medicine, practicing medicine deceitfully or engaging in conduct which has the capacity to deceive or defraud, and fraudulently procuring her certificate of registration to practice medicine in Massachusetts or its renewal, in violation of M.G.L. c. 112, § 5 and the Board's regulations, 243 C.M.R. § 1.03(5), and engaging in conduct that undermines public confidence in the medical profession, in view of (1) her participation in a telemedicine scheme (including writing prescriptions for persons she did not know and who were not her patients, and obtaining kickbacks for doing so from out-of-state pharmacies that filled prescriptions she wrote for unwanted high-cost pain medication and durable medical equipment for which health care insurers were billed; and (2) her indictment in July 2019 in the United States District Court for the Eastern District of New York for participating in an alleged telemedicine scheme to submit fraudulent claims to Medicare and private insurance companies and receive kickbacks for prescribing and ordering durable medical equipment, prescription drugs and diagnostic tests that were neither medically necessary nor resulted from an examination or consultation with a physician.

The Board transferred the matter to DALA for recommended findings of fact and conclusions of law. Following the physician's failure to answer the Board's Statement of Allegations against her, appear for a previously-scheduled prehearing conference, or respond to an order directing her to show cause why a default decision should not be issued, it is recommended that the Board make the statement of allegations against the physician final by default and proceed to determine what discipline is appropriate.

Background

This physician discipline-related adjudicatory proceeding was commenced on September 30, 2019, when the Massachusetts Board of Registration in Medicine ("the Board") issued a Statement of Allegations of professional misconduct against Dr. Anna D. Steiner, and an Order of Reference referring the matter to the Division of Administrative Law Appeals (DALA) for "recommended findings of fact and necessary conclusions of law."

Dr. Steiner was licensed to practice medicine in Massachusetts from 1992 until that license expired on October 31, 2019. She is, or was, licensed to practice in at least two other states as well (New York and California). Dr. Steiner was certified in anesthesiology by the American Board of Medical Specialties. She resides currently in New York.

The Statement of Allegations ordered Dr. Steiner to show cause why the Board should not sanction her for practicing medicine in violation of law, and contrary to good and accepted medical practice, based upon the following alleged facts:

(1) Between October 2014 and November 17, 2017, Dr. Steiner used her United States Drug Enforcement Agency number to issue prescriptions for Blue Cross Blue Shield of Massachusetts (BCBS) members without having examined, met or interacted with them, with whom she did not have a physician-patient relationship, and who did not request medications or medical equipment from her. The prescriptions were mostly for high-cost compounds or topical medications—mostly pain cream, including lidocaine, diclofenac sodium, Fluocinonide, and Doxepin, as well as aerosol sprays—and durable medical equipment including TENS Units and knee and back braces. Dr. Steiner allegedly did so as a consultant for telemedicine marketing companies, which paid her 30 dollars per “consult.” The prescriptions for medication that she wrote were filled through six different out-of-state pharmacies, in Florida, Texas and Alabama, which sent the medications and equipment to the BCBS members, and billed BCBS between \$1,175 and \$5,306 for the high-cost compounds.

(2) Between January 2014 and October 2018, Dr. Steiner issued prescriptions for Tufts Health Plan members residing in Massachusetts without having examined, met or interacted with

them, with whom she did not have a physician-patient relationship, and who did not request medication from her. The prescriptions were mostly for high-cost compounds or topical medications to treat pain, including lidocaine and diclofenac. Dr. Steiner allegedly did so as a consultant for telemedicine marketing companies, which paid her 30 dollars per “consult.” The prescriptions for medication that she wrote were filled by out-of-state pharmacies in Alabama, California, Florida, Mississippi, Oklahoma, Pennsylvania and Texas, which sent the medications and equipment to the Tufts Health Plan members. Tufts Health Plan reimbursed the pharmacies approximately \$40,000 between January 2014 and September 2016;

(3) Despite an ongoing Board of Registration in Medicine investigation of Dr. Steiner, of which she was notified by the Board in November 2016 and afterward by letter, telephone and email, Dr. Steiner falsely answer “no” to Question 18C on her October 2017 Massachusetts medical license renewal application. That question asked whether the applicant had been the subject of an investigation by any governmental authority, including the Massachusetts Board of Registration in Medicine or any other state medical board, health care facility, group practice, employer or professional association. In fact, the Board had commenced an investigation of Dr. Steiner in November 2016, and had communicated with her about the investigation by letter, telephone and email.

(4) On or about July 9, 2019, the United States Attorney for the Eastern District of New York charged Dr. Steiner, in an indictment filed in the federal court for that District, with participating in an alleged telemedicine scheme to submit fraudulent claims to Medicare and private insurance companies, in which the participants received kickbacks for prescribing and ordering durable

medical equipment, prescription drugs and diagnostic tests that were neither medically necessary nor resulted from an examination by or consultation with a physician. The United States Attorney for the Eastern District of New York issued a superseding indictment charging Dr. Steiner with conspiracy to commit health care fraud filed on September 19, 2019.

The Board's Statement of Allegations asserted the following grounds for imposing appropriate discipline upon Dr. Steiner in Massachusetts:

(1) There was proof satisfactory to a majority of the Board that Dr. Steiner had fraudulently procured her certificate of registration or its renewal, pursuant to M.G.L. c. 112, § 5, eighth para. at subd. (a), and 243 C.M.R. § 1.03(5)(1)(a);

(2) Dr. Steiner had engaged in conduct that placed into question her competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions—any of which was a ground for physician discipline under M.G.L. c. 112, § 5, eighth para. at subd. (c) and 243 C.M.R. § 1.03(5)(a)3;

(3) Dr. Steiner had practiced medicine “deceitfully,” or had engaged in “conduct which has the capacity to deceive or defraud,” each of which was a ground for physician discipline under 243 C.M.R. § 1.03(5)(a)10; and

(4) Dr. Steiner lacked good moral character and had engaged in conduct that undermines the public confidence in the integrity of the medical profession, *citing Raymond v. Bd. of Registration in Medicine*, 387 Mass. 708, 443 N.E.2d 391 (1982), and *Levy v. Bd. of Registration*, 378 Mass. 519,

392 N.E.2d 1036 (1979).

The Board's Statement of Allegations also stated (at 7) that the adjudicatory proceeding it commenced would be conducted in accordance with the provisions of M.G.L. c. 30A (the Massachusetts Administrative Procedure Act) and the Standard Rules of Adjudicatory Practice and Procedure, 801 C.M.R. § 1.01 *et seq.* In an accompanying cover letter, also dated September 30, 2019, the Board notified Dr. Steiner that, pursuant to 801 C.M.R. § 1.01(6)(d), she was required to file an answer to the Board's Statement of Allegations with DALA within 21 days of receiving it.

Dr. Steiner has not filed with DALA, thus far, an answer to the Board's Statement of Allegations against her.

On October 3, 2019, DALA issued to the Board and Dr. Steiner a notice acknowledging the commencement of this proceeding and its assignment of a DALA docket number. On October 15, 2019, DALA issued a corrected Acknowledgment noting the Board's current Complaint Counsel. Copies of both acknowledgments were mailed to Dr. Steiner at 443 County Route 32 Valatie, NY 12184, the address to which the Board had mailed its Statement of Allegations and Order of Reference. Neither of the acknowledgments mailed to Dr. Steiner was returned to DALA by the United States Postal Service, and her receipt of the acknowledgment notice is therefore presumed.

On October 15, 2019, DALA also issued a Notice of Prehearing Conference, which was sent by regular mail to both Dr. Steiner and the Board. It stated that DALA had scheduled a prehearing conference in this proceeding for November 5, 2019 at 2:00 p.m. for the purposes of setting a hearing date and discussing and resolving matters related to its adjudication—identifying and narrowing the issues to be adjudicated, scheduling pre-hearing discovery and motion practice, identifying the

parties' respective hearing witnesses, and determining whether all or any of disputed issues could be resolved by agreement. DALA mailed a copy of this notice to Dr. Steiner at 443 County Route 32, Valatie, NY 12184, the only address that the Board and DALA had for her. It, too, was not returned to DALA by the United States Postal Service, and its receipt by Dr. Steiner is therefore presumed.

I held the scheduled prehearing conference at 2:00 p.m. on November 5, 2019. The Board appeared for the conference. Dr. Steiner did not appear at the conference, and no one appeared on her behalf. The Board advised that the Statement of Allegations it had sent to Dr. Steiner by regular mail was not returned by the United States Postal Service. The Board also advised that it had no other address on file for Dr. Steiner other than 443 County Route 32, Valatie, NY 12184; however, it had determined that the Medical Board of California also had post office box mailing address on file for Dr. Steiner (P.O. Box 550, Valatie, NY 12184-0550). The Board advised, as well, that it had not received an answer by Dr. Steiner to the Statement of Allegations.

After waiting more than half an hour, I terminated the prehearing conference and advised the Board that I would order Dr. Steiner to show cause why I should not issue a recommended decision granting an order of default against her.

On November 13, 2019, I issued an order directing Dr. Steiner to show cause by November 27, 2019 why, in view of her failure to (1) answer the Board of Registration in Medicine's September 30, 2019 Statement of Allegations against her; or (2) appear at DALA for the scheduled prehearing conference on November 5, 2019 despite prior written notice of the conference to her, I should not issue a default decision recommending that the Board make its Statement of Allegations final and

proceed to determine what discipline is appropriate. A copy of the order was mailed to Dr. Steiner at 443 County Route 32, Valatie, NY 12184; and at P.O. Box 550, Valatie, NY 12184-0550, the only addresses that both DALA and the Board of Registration in Medicine had for her. Neither of these mailings was returned to DALA by the United States Postal Service, and Dr. Steiner's receipt of the order to show cause is therefore presumed. Dr. Steiner filed no response to the order to show cause, and the response time set by the order has expired.

Disposition

In view of Dr. Steiner's failure to (1) answer the Board of Registration in Medicine's September 30, 2019 Statement of Allegations against her; (2) appear at DALA for the scheduled prehearing conference on November 5, 2019 despite prior written notice of the conference to her; or (3) file a response to the order to show cause that I issued on November 13, 2019, the appropriate outcome here is a default decision in the Board's favor. This disposition is appropriate when, as here, the physician's conduct or inaction shows that she does not intend to contest the Board's Statement of Allegations. It may be implemented pursuant to 801 C.M.R. § 1.01(7)(a)1, which provides that "[a]n Agency or Party may by motion request the Presiding Officer to issue any order or take any action not inconsistent with law or 801 CMR 1.00." *See Bd. of Registration in Medicine v. Owens*, Docket No. RM-17-840, Order of Default - Recommended Decision (Mass. Div. of Admin. Law App., Jan. 29, 2018).

For the reasons set forth above, I now issue this Order of Default - Recommended Decision, pursuant to 801 C.M.R. § 1.01(7)(a)1. I recommend that the Board make final both this

recommended decision and the allegations of misconduct against Dr. Steiner set forth in the Statement of Allegations, and proceed to determine what discipline is appropriate.

In accordance with the provisions of 801 C.M.R. § 1.01(11)(c)(1), each of the parties has 30 days to file written objections to this Recommended Decision (if any) with the Board of Registration in Medicine.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: December 30, 2019