

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No: 2012-012

In the Matter of)
)
R. James Klingenstein, M.D.)
_____)

PROBATION AGREEMENT

I. COMPLIANCE WITH AGREEMENT

The Respondent agrees that violation of this Probation Agreement, including such provisions which survive this Agreement, shall constitute sufficient grounds for the immediate suspension of the Respondent’s license to practice medicine, or any such lesser sanction as the Board may deem fit to impose, without prior notice to the Respondent. The Respondent hereby waives any claim or defense to any subsequent action by the Board to suspend the Respondent’s license or impose such other lesser sanction, for any such violation or violations, except that the Respondent shall be entitled to defend against the assertion of a violation of this Agreement. The Respondent acknowledges and agrees that by entering into this Agreement, the Respondent is relinquishing important procedural and substantive rights.

II. PARTIES

The parties to this Probation Agreement are the Board of Registration in Medicine (the “Board”) and R. James Klingenstein, M.D. (the “Respondent”).

III. JURISDICTION

The parties agree that the Board has the authority to enter into this Probation Agreement, and that the Board may enforce the terms of this Agreement in accordance with applicable laws and regulations and the provisions of this Agreement.

IV. CONDITIONS OF PROBATION

During the probationary period, which shall be effective on the date the Board accepts this Agreement, the Respondent shall comply with each of the following requirements:

A. The Respondent agrees to undergo monitoring by the Board for five years following the adoption of this Agreement, and for such further period thereafter as the Board shall for reasonable cause order. At the Board’s discretion, any periods during which the Respondent is not practicing medicine, during the probationary period, may extend the probationary period. The Respondent may petition to terminate this Agreement upon (1) two years of documented compliance with this Agreement and (2) documented completion of all requirements of the Consent Order in this matter, including the payment of a fine and successful completion of the Board-approved course on ethics and boundary violations, as required by Paragraph B below.

B. The Respondent must complete a Board-approved course on ethics and boundary violations, such as the ProBE Program through the Center for Personalized Education for Physicians, including any six or twelve month follow-up recommended by that program, or any other equivalent Board-approved program.

C. The Respondent's prescribing of controlled substances on the Drug Enforcement Administration's Schedules II, III, IV and V is restricted to endoscopic procedures performed at Newton-Wellesley Hospital. The Respondent may also prescribe controlled substances as part of an internal medicine practice at Newtown-Wellesley Hospital. The Respondent may not prescribe controlled substances from these Schedules at any other location or for any other reason. The Respondent must submit a list of all his prescribing during these procedures to the Board-approved monitor identified in Paragraph I of this Agreement for review on a monthly basis. In addition, the Respondent will provide a separate list of all Schedule VI prescriptions to the worksite monitor on a monthly basis. The Respondent must also request from the Department of Public Health's Prescription Monitoring Program ("PMP") or its equivalent, a list of all prescriptions he has written and provide this PMP list to the Board-approved monitor on a monthly basis.

D. In the event that the Respondent seeks licensure to practice medicine in another state, the Respondent shall notify the Board of such fact and shall disclose to the licensing authority in such state his status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another states' licensing authority.

E. In the event the Respondent should leave Massachusetts to reside or practice out of the state, the Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residency or practice outside Massachusetts will not apply to the reduction of any period of the Respondent's probationary licensure, unless the Respondent enters into a monitoring agreement, approved by the Board, in the new location.

F. The Respondent shall appear before the Board or a committee of its members at such times as the Board may request, upon reasonable advance notice, commensurate with the gravity or urgency of the need for such meeting as determined by the Board or such committee.

G. The Respondent shall notify and provide, within ten (10) days of acceptance of this Probation Agreement by the Board, a complete copy of this Agreement with all exhibits and attachments 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; and any in- or out-of-state medical employer, whether or not he practices medicine there; the Drug Enforcement Agency, Boston Diversion Group; the Massachusetts Bureau of Health Care Safety and Quality' Drug Control Program; and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this Probation Agreement. 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.

H. The Respondent may engage in the practice of medicine under conditions that the Board may impose. The Respondent shall engage in the practice of medicine only as a gastroenterologist at Newton-Wellesley Hospital. The Respondent may also maintain an internal medicine practice at Newtown-Wellesley Hospital. The Respondent shall not engage in the practice of medicine at any other location until the Board has approved a practice plan, including prescription monitoring plan, and monitor for that location.

I. Until the Board, upon petition of the Respondent, orders otherwise, the Respondent's practice of medicine shall be monitored by Leslie G. Selbovitz, M.D. Dr. Selbovitz, or his Board-approved successor, shall meet monthly with the Respondent to review all of the prescriptions written by the Respondent, including any written as part of the Respondent's internal medicine practice. In addition, Dr. Selbovitz, or his Board-

approved successor, shall review the PMP list obtained by the Respondent in accordance with Paragraph C above. Dr. Selbovitz, or his Board-approved successor, shall file a monthly report, including copies of the PMP lists, to the Board's Physician Health and Compliance Unit ("PHC Unit"). The Respondent shall execute releases of information such that the Board may receive and share information with Dr. Selbovitz, or his Board-approved successor, about his compliance with this Agreement.

J. The Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by the Respondent's compliance with this Probation Agreement.

K. The Respondent may request that the Board modify any of the conditions set forth above. The Board may, in its discretion, grant such modification. Except for requests for modifications related to the Respondent's employment, the Respondent may make such a request not more than once in any one-year period, nor any sooner than one year from the date of this Probation Agreement.

V. TERMINATION OF PROBATION

A. If the Respondent complies with his obligations as set forth above, the Board, at the expiration of the five-year period, shall, upon petition by the Respondent, terminate the Respondent's probationary period and probation with the Board, unless the Respondent's probation is extended in accordance with paragraph IV(A). Notwithstanding the first sentence of this Paragraph, the Respondent may petition to terminate this Agreement after two years in accordance with paragraph IV (A).

B. If the Respondent fails to comply with his obligations as set forth above, the Respondent's license to practice medicine may be immediately suspended, as agreed in Section I.

2/27/12

Date

2/27/12

Date

Signed by James Klingenstein

Respondent

Signed by David M. Gould

Attorney for the Respondent

Accepted this 11th day of, April by the Board of Registration in Medicine.

Signed by Herbet H. Hodos

Herbert H. Hodos, J.D., Acting Chair

Board of Registration in Medicine