

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2012-012

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)  
In the Matter of )  
)  
R. JAMES KLINGENSTEIN, M.D. )  
\_\_\_\_\_)

**CONSENT ORDER**

Pursuant to G.L. c. 30A, § 10, R. James Klingenstein, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 10-271.

Findings of Fact

1. The Respondent was born on October 30, 1948. He graduated from the New York University School of Medicine in 1974. He is certified by the American Board of Internal Medicine in both Internal Medicine and Gastroenterology. He has been licensed to practice medicine in Massachusetts under certificate number 44287 since 1979. He has privileges at Newton-Wellesley Hospital.

Patient A

2. Patient A is a 45-year-old male.

3. The Respondent began treating Patient A in approximately 2001 for unexplained abdominal pain.

4. In 2001, the Respondent diagnosed Patient A with Acute Intermittent Porphyria (AIP). AIP is a rare disorder which is sometimes painful.

5. In 2001, the Respondent referred Patient A to a hematologist, and later, a pain clinic. The hematologist and pain clinic physicians prescribed certain opioids to Patient A, but when they refused to continue prescribing high dose OxyContin to Patient A, the Respondent continued the prescriptions.

6. Between the years 2001 and 2007, the dosage and quantity of the Respondent's opioid prescribing for Patient A increased.

7. Patient A told the Respondent that he received alprazolam from a former psychiatrist, and that he (Patient A) became addicted to alprazolam. The Respondent continued to prescribe alprazolam to Patient A.

8. In 2007 and 2008, the Respondent was the subject of Board investigative docket number 07-284, which concerned allegations that the Respondent overprescribed opioids to Patient A.

9. On September 3, 2008, the Board resolved investigative docket number 07-284 by issuing a Letter of Warning to the Respondent that stated,

We warn you that when prescribing opiate therapy to your patients, it would be prudent to ensure that:

- a written agreement exists between the patient and you, outlining the patient's responsibilities
- you, rather than the patient, delineate the circumstances of escalation
- the increasing dosages correlate with pain scales
- you utilize a consultant and specialty advice when a patients' issues extend beyond your expertise.

10. On April 27, 2010, the Respondent wrote the following prescriptions to Patient A: 50 Alprazolam 2 mg., 60 Percocet 5/325, 60 MS Contin 30 mg.

11. On April 29, 2010, the Respondent wrote the following prescriptions to Patient A: 60 MS Contin 60 mg., 60 Percocet 5/325.

12. Patient A was arrested and charged with Operating Under the Influence of Drugs in May 2010, and the Respondent was aware of Patient A's arrest soon thereafter.

13. On June 2, 2010, the Respondent wrote the following prescription to Patient A: 30 MS Contin 60 mg.

14. Patient A was arrested and charged with Operating Under the Influence of Drugs in June 2010, and the Respondent was aware of Patient A's arrest soon thereafter.

15. On June 28, 2010, the Respondent wrote the following prescriptions to Patient A: 60 MS Contin 30 mg., and 60 Percocet 5/325 mg.

16. On July 8, 2010, the Respondent was told by a law enforcement officer that Patient A had been forging prescriptions in the Respondent's name during the above stated period of time.

17. The Respondent told the law enforcement officer that he could not understand why Patient A forged the prescriptions because the Respondent would have given it to him. Thereafter, the Respondent continued to prescribe opioids to Patient A.

18. On July 9, 2010, the Respondent wrote the following prescriptions to Patient A: 100 MS Contin 60 mg., 100 MS Contin 30 mg., 60 MS Contin 30 mg., 200 Percocet 5/325, and 100 Percocet 10/650.

19. On July 20, 2010, the Respondent wrote the following prescription to Patient A: 100 Percocet 5/325.

20. On July 23, 2010, the Respondent wrote the following prescription to Patient A:  
50 Alprazolam 2 mg.

21. On July 27, 2010, the Respondent wrote the following prescriptions to Patient A:  
12 MS Contin 60 mg., 100 MS Contin 60 mg., 100 Percocet 10/650, and 150 Demerol IM 100 mg.

22. On July 28, 2010, Patient A presented a prescription written by the Respondent to a pharmacist for MS Contin 60 mg.; however, Patient A altered the prescription to dispense 260 pills as opposed to 60 pills which had been written by the Respondent.

23. When the pharmacist refused to fill the prescription for 260 MS Contin 60 mg., Patient A called the Respondent from Patient A's cell phone and demanded that the Respondent speak with the pharmacist to fill the prescription.

24. The Respondent told the pharmacist to give Patient A what he wanted.

25. On August 1, 2010, the Respondent wrote the following prescriptions to Patient A: 12 MS Contin 60 mg., 50 Percocet 10/650, and 100 Xanax 2 mg.

26. On August 2, 2010, the Respondent wrote the following prescriptions to Patient A: 100 Alprazolam 2 mg., 50 Percocet 10/650, 60 MS Contin 60 mg., 75 Demerol IM 100 mg., 60 Percocet 5/325, 50 MS Contin 60 mg., and 50 Percocet 10/650.

27. On August 6, 2010, the Respondent wrote the following prescriptions to Patient A: 60 Percocet 10/650, 60 Percocet 5/325, 100 MS Contin 30 mg., 100 MS Contin 60 mg., and 75 Demerol IM 100 mg.

28. On August 16, 2010, the Respondent wrote the following prescription to Patient A: 60 MS Contin 60 mg.

29. On August 17, 2010, the Respondent wrote the following prescriptions to Patient A: 100 MS Contin 30 mg., 30 Percocet 10/650, 30 MS Contin 60 mg., 100 Alprazolam 2 mg., 100 Percocet 5/325.

30. The prescriptions written on August 17, 2010 were not filled because approximately one hour after leaving the Respondent's Newton-Wellesley Hospital office at 10:00 pm, Patient A was involved in a motor vehicle accident and was subsequently arrested and charged with one count of Operating Under the Influence of Drugs.

31. The Respondent was aware of Patient A's third arrest because Patient A called the Respondent from the police station.

32. The Respondent did not keep or maintain adequate medical records for Patient A.

33. On November 5, 2010, the Respondent wrote two prescriptions in the name of Patient A's brother-in-law for 50 Oxycodone 30 mg., and 30 MS Contin 30 mg., intending that Patient A be the ultimate recipient of the pills.

34. Patient A's brother-in-law and the Respondent did not have a physician-patient relationship, and the Respondent did not keep or maintain a medical record for this individual.

35. The Respondent gave Patient A's brother-in-law a check in the amount of \$20,000 for the purpose of paying for the cost of Patient A's inpatient detoxification in approximately August 2010.

36. The Respondent's clinical reasoning for the prescriptions referenced above was absent in Patient A's medical records.

37. The Respondent did not have Patient A sign a written agreement delineating the patient's responsibilities relative to opioid prescribing following the Board's 2008 Letter of Warning.

38. In addition to being Patient A's physician, between 2003 and 2010, the Respondent invested in a company owned and operated by Patient A. The Respondent did not receive any return on his investment during the period of time of the Respondent's investments.

39. The Respondent did not reveal the investment in Patient A's company to the Board during the course of the Board's prior investigation.

40. Patient A told the Respondent that the company was the target of a probable takeover and that the Respondent's return on his investment would be substantial.

41. The Respondent convinced some of his friends and family to also invest in Patient A's company.

42. Patient A's company, as represented, did not exist.

43. The Respondent sued Patient A and obtained a judgment in 2011 for the invested amounts, plus interest and costs.

#### Patients B and C

44. Patient B is a 55-year-old male who resides in California.

45. Patient B and the Respondent have known each other for more than 20 years, and consider themselves close friends.

46. In December 2007, Patient B asked the Respondent to prescribe him various medications including Clonazepam, which the Respondent did.

47. The Respondent continued to issue or call in prescriptions for Patient B in 2008 and 2009.

48. The Respondent also prescribed various medications for Patient B's wife, Patient C in 2008 and 2009.

49. The Respondent did not physically examine either Patient B or Patient C prior to issuing any prescriptions to them, nor did the Respondent physically examine Patient B or Patient C at any time thereafter.

50. The Respondent did not keep or maintain any medical records for Patients B or C.

51. The Respondent and Patient B were also partners in a joint venture concerning real estate in California, since 1996.

#### Patient D

52. Patient D is a 35-year-old male who has been diagnosed with Crohn's Disease.

53. Patient D met the Respondent each month at the Newton-Wellesley Hospital during a break in the Respondent's procedure schedule.

54. The Respondent's treatment of Patient D consisted, in part, of his issuing monthly prescriptions for 60 Percocet 10/650 tablets from approximately 2009 to 2011.

55. The Respondent did not examine Patient D prior to giving him his monthly prescriptions, and did not record the encounter in a medical record.

56. The Respondent did not keep or maintain adequate medical records for Patient D.

#### The Respondent's friends and family

57. Between 2008 and 2011, the Respondent wrote prescriptions to members of the Respondent's immediate family, including but not limited to anti-biotics, anti-fungals, anti-virals and anti-emetics.

58. The Respondent did not keep or maintain any medical records for any of his immediate family members.

59. In June 2010 and in February 2011, the Respondent wrote prescriptions for Xanax to a friend who is also a physician.

60. The Respondent did not keep or maintain any medical records for this individual.

Conclusion of Law

A. The Respondent has violated G.L. c. 112, § 5, ninth par. (h) and 243 C.M.R.

1.03(5)(a)(11) in that he has violated a rule or regulation of the Board.

1. Pursuant to 243 C.M.R. 2.07(5), a licensee who violates G.L. c. 94C, also violates a rule or regulation of the Board.
2. Pursuant to G.L. c. 94C, §19(a), prescriptions for controlled substances must be issued by a licensee for a legitimate purpose and in the usual course of the licensee's medical practice.

B. The Respondent has violated 243 C.M.R. 2.07(13)(a) in that he failed to maintain a medical record for Patients A, B, C, D, the Respondent's family members and/or the Respondent's friend, which is adequate to enable the licensee to provide proper diagnosis and treatment.

C. The Respondent has violated 243 C.M.R. 1.03(5)(a)18 in that he committed misconduct by prescribing controlled substances in the name of a person other than the one for whose use they were intended.

D. The Respondent has violated 243 C.M.R. 1.03(5)(a)18 in that he committed misconduct by engaging in economic boundary violations with Patients A and B.

E. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession, in violation of the standards set forth in *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).



### Sanction and Order

The Respondent's license is hereby indefinitely suspended. Said suspension shall be immediately stayed upon entry into a five-year Probation Agreement that includes, but is not limited to, the following terms and conditions:

1. Pursuant to G.L. c. 112, § 5A and 243 C.M.R. 1.05 (7), the Respondent's practice of medicine is restricted to a Board-approved worksite;
2. Pursuant to G.L. c. 112, § 5A and 243 C.M.R. 1.05 (7), the Respondent prescribing controlled substances on DEA Schedules II, III, IV and V is restricted to within a Board-approved procedural setting only, and no where else;
3. The Respondent must submit a Board-approved plan detailing the manner in which he prescribes DEA Schedules II, III, IV and V during the course of surgical or diagnostic procedures performed at any Board-approved worksite;
4. The Respondent must submit a Board-approved practice plan with a Board-approved monitor who will review all of the Respondent's prescribing. The Respondent must submit a list of all his prescribing to said monitor for review 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 said PMP list to the monitor on a monthly basis, and the monitor shall file monthly reports, as well as the said PMP lists, with the Board's Physician Health and Compliance Unit;
5. The Respondent must enrollment in, and successfully complete, a Board-approved course on ethics and boundary violations, such as the ProBE Program through the Center for

Personalized Education for Physicians, with a 6- or 12-month longitudinal follow-up as recommended by the program, and

6. The Probation Agreement shall also contain provisions for the execution of releases of information such that the Board may receive and share information with any and all persons or entities monitoring the Respondent during the course of the Probation Agreement.

The Respondent is also hereby fined \$2,500 for each of the medical record violations of Patients A, B, C and D, for a total of \$10,000, which shall be paid within ninety (90) days of the Board's approval of this Consent Order.

The Respondent may petition to terminate the Probation Agreement after two (2) years from the date said agreement is approved by the Board. At the time of said petition, the Respondent must show that he has successfully complied with all the terms of the Probation Agreement, including the payment of the fine and the successful completion of the ProBE program, or its equivalent.

#### Execution of this Consent Order

The Respondent shall provide a complete copy of this Consent Order and Probation Agreement 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 the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of

all states in which the Respondent 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 the Respondent becomes associated for the duration of this stayed suspension. The Respondent is further directed to certify to the Board within ten (10) days that the Respondent 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.

Signed by R. James Klingenstein  
R. James Klingenstein, M.D.  
Licensee

10/14/11  
Date

Signed by David M. Gould  
David Gould, Esq.  
Attorney for the Licensee

10/14/11  
Date

Signed by John Costello  
John Costello  
Complaint Counsel

10/18/11  
Date

So ORDERED by the Board of Registration in Medicine this 11th day of April, 2012.

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