COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS. Board of Registration in Medicine

 Adjudicatory Case No. 2021-002

 )

In the Matter of )

 )

JONATHAN KIEV, M.D. )

 )

**CONSENT ORDER**

 Pursuant to Mass. Gen. Laws c. 30A, § 10, Jonathan Kiev, M.D. (the “Respondent” or “Licensee”) and the Board of Registration in Medicine (the “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 Number 20-155.

Findings of Fact

1. The Respondent was born on June 7, 1961. The Respondent graduated in 1989 from the Tulane University School of Medicine. He has been licensed to practice medicine in Massachusetts under license number 217103 since 2003.
2. The Respondent is Board certified in surgery and thoracic surgery.
3. On March 10, 2020, the Respondent entered into a Consent Order with the Illinois Department of Financial and Professional Regulation (the “Illinois Board”) to resolve an active case that the latter had open against him (the “Illinois Consent Order”) which related to the Respondent’s prescribing controlled substances to personal acquaintances outside of his professional practice of medicine.
4. With respect to the specific allegations resolved by the Illinois Consent Order, in April 2016, the Respondent prescribed a refill for his ex-girlfriend’s Xanax prescription.
5. The Respondent’s ex-girlfriend was not his patient when he prescribed the refill described in the preceding paragraph and, additionally, the Respondent did not maintain any medical records in connection with the aforementioned prescription.
6. Separately, on approximately four (4) separate occasions in 2017, 2018 and 2019, the Respondent prescribed Tylenol with codeine to a personal acquaintance.
7. The 2019 prescription for Tylenol with codeine that the Respondent wrote for his personal acquaintance as described in the preceding paragraph authorized three (3) refills.
8. The personal acquaintance to whom the Respondent prescribed Tylenol with codeine as described in ¶¶ 6-7, above, was never a patient of the Respondent and, additionally, the Respondent did not maintain any medical records in connection with the aforementioned prescriptions.
9. Furthermore, the Respondent prescribed Tylenol with codeine to his personal acquaintance as described in ¶¶ 6-8, above, without checking the acquaintance’s prescribing history in the Illinois Prescription Monitoring Program.
10. Finally, although the Respondent relocated to Kentucky from Illinois in 2017, he authorized the 2018 and 2019 prescriptions for his personal acquaintance, an Illinois resident, after his Controlled Substance License issued by the State of Illinois had lapsed into inactivity.
11. Pursuant to the Illinois Consent Order, the Respondent’s license to practice medicine in Illinois was reprimanded, his Controlled Substance License in that state was suspended for a period of thirty (30) days and thereafter returned to “not renewed” status, the Respondent was ordered to pay a fine in the amount of ten thousand dollars ($10,000.00), and the Illinois Board required the Respondent to complete ten (10) hours of category I Continuing Medical Education credits (“CMEs”) related to professional responsibility and ten (10) hours of category I CMEs related to prescribing controlled substances.
12. A true and accurate copy of the Illinois Consent Order is enclosed herewith as Attachment A and incorporated herein by reference.

Conclusions of Law

* 1. The Respondent has violated 243 CMR 1.03(5)(a)(12), in that he has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in Mass. Gen. Laws c. 112, § 5 or 243 CMR 1.03(5), specifically:
		1. Mass. Gen. Laws c. 112, § 5, ¶ 9(c) and 243 CMR 1.03(5)(a)(3) (“Conduct which places into question the physician’s competence to practice medicine, including but not limited to ... beyond its authorized scope ... or with ... negligence on repeated occasions”);
		2. Mass. Gen. Laws c. 112, § 5, ¶ 9(b) and 243 CMR 1.03(5)(a)(2) (committing an offense/offenses against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder, to wit:
			1. Mass. Gen. Laws c. 94C § 19(a); and
			2. Prescribing Practices Policy and Guidelines, adopted by the Board of Registration in Medicine August 1, 1989, amended May 19, 2010.)
		3. 243 CMR 2.07(13)(a), which requires a physician to:
			1. maintain a medical record for each patient which is adequate to enable the licensee to provide proper diagnosis and treatment;
			2. maintain a patient’s medical record in a manner which permits the former patient or a successor physician access to them;
		4. *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), which provide for discipline where, by proof satisfactory to a majority of the Board, a physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Sanction and Order

 The Respondent is hereby reprimanded.

Execution of this Consent Order

Complaint Counsel, the Respondent, and the Respondent’s counsel agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent, and the Respondent’s counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.

As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

 The Respondent waives any right of appeal that he may have resulting from the Board’s acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent 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 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; any in- or out-of-state medical employer, whether or not he practices medicine there; and the state licensing boards of all states in which he 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 he becomes associated in the year following the date of imposition of this reprimand.  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.

Signed by Jonathan Kiev, M.D. 9/25/20

Jonathan Kiev, M.D. Date

Licensee

Signed by Ingrid S. Martin 9/30/20

Attorney for the Licensee (if any) Date

Signed by Lawrence Perchick 10/5/20

Lawrence Perchick Date

Complaint Counsel

 So ORDERED by the Board of Registration in Medicine this 14th day of January, 2021.

 Signed by George M. Abraham, M.D.

 George M. Abraham, M.D.

 Chair

To obtain a copy of the out-of-state disciplinary order, please contact the appropriate state’s medical licensing board directly. A list of state medical boards and contact information is available at <https://www.fsmb.org/contact-a-state-medica-board/>. You may also obtain a copy of the out-of-state disciplinary order by submitting a public records request (PRR) with the Massachusetts Board of Registration in Medicine. PRR forms and additional information can be found at <https://www.mass.gov/board-of-registration-in-medicine-public-records>.