

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2021-036

In the Matter of)
)
)
MARK J. STERLING, M.D.)
_____)

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Mark J. Sterling, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree 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 the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket Nos. 21-332, 21-298 and 20-879.

Findings of Fact

1. The Respondent is a 1991 graduate of the New York Medical College and board certified in gastroenterology and internal medicine. He was initially licensed to practice medicine in Massachusetts under certificate number 78918 from January 26, 1994 through March 15, 1997 and has been again since 2008. The Respondent was previously licensed in New Jersey from 1997 until 2009 and Ohio from 1996 to 1998.

Impairment

2. On diverse dates from April 1, 2013 through November 3, 2020 the Respondent "nodded off" with his eyes closed and head down during endoscopic procedures for which he was the assigned attending physician overseeing Fellows with varying levels of experience at Lahey Hospital and Medical Center and Tufts Medical Center.

3. In 2019 the Respondent was diagnosed with obstructive sleep apnea after a sleep study and began relevant specialized treatment and intervention.

4. On or about November 11, 2020 the Respondent's endoscopic privileges at Tufts Medical Center were temporarily suspended in a non-disciplinary manner due to his excessive sleepiness during endoscopic procedures after the last incident on November 3, 2020. The Respondent completed a medical evaluation and updated sleep assessment before his endoscopic privileges were reinstated on November 20, 2020.

5. On or about May 6, 2021 while the Respondent was performing a complicated endoscopic retrograde cholangiopancreatography (ERCP) procedure with SpyGlass, he handed the scope to a Fellow and sat down before he was observed by multiple staff and an outside representative to immediately "nod off" with his eyes closed and head down as he had before. When staff confronted him about their observations, the Respondent became belligerent towards them. On May 7, 2021 the Respondent's treatment for his obstructive sleep apnea was changed with positive results.

Disruptive Behavior

6. On diverse dates between October 2008 and May 2021 and while employed at Lahey Hospital and Medical Center and Tufts Medical Center, the Respondent engaged in the following conduct which had the potential to interfere with patient care:

- a. publicly chastised nurses and other hospital staff, including in front of patients;
- b. used belligerent, condescending, loud, and profane language with nurses and staff during procedures; and
- c. consistently started his schedule late and took extraordinary amounts of time to complete procedures causing staff to work unusually long hours and clinic patients to leave without being seen by him.

7. Board Policy Number 01-01 on Disruptive Physician Behavior states "Disruptive behavior by a physician has a deleterious effect on the health care system and increases the risk of patient harm."

8. Behaviors such as foul language; rude, loud or offensive comments; and intimidation of staff, patients and family members are now recognized as detrimental to patient care.

Conclusions of Law

A. The Respondent practiced medicine while his ability to practice was impaired by a physical disability. *See* G.L. c. 112, § 5, ninth par. (d) and 243 CMR 1.03(5)(a)(4)

B. The Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See* Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982); Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

C. The Respondent engaged in disruptive behavior. *See* Disruptive Physician Behavior Policy, Board of Registration in Medicine adopted June 13, 2001

Sanction and Order

The Respondent's license is hereby indefinitely suspended. The Respondent may petition the Board to stay said suspension upon (1) completion of a comprehensive medical examination and sleep study by a Board-approved evaluator or entity; (2) completion of an assessment by Physician Health Services (PHS) and compliance with any recommendations; (3) entry into a five-year Board Probation Agreement with the following conditions:

- a. monitoring of and reporting on the Respondent's compliance with PHS recommendations;
- b. monitoring of and reporting on the Respondent's fitness to practice by health care providers;

- c. monitoring of and reporting on the Respondent's workplace conduct by an independent Board-approved individual or entity; and
- d. any other conditions as the Board may require.

This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them.

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 the Respondent 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 during the pendency of the suspension or the subsequent 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.

Mark J. Sterling, M.D.
Mark J. Sterling, M.D.
Licensee

7/29/2021
Date

Andrew L. Hyams, Esq.
Andrew L. Hyams, Esq.
Attorney for the Licensee

7/24/2021

Patrick G. Fitzgerald
Patrick G. Fitzgerald
Complaint Counsel

7/29/2021
Date

So ORDERED by the Board of Registration in Medicine this 9th day of September, 2021.

George Abraham, M.D.
George Abraham, M.D.
Board Chair