

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION  
IN MEDICINE

Adjudicatory Case No. 2018-006  
(RM-18-0066)

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In the Matter of \_\_\_\_\_  
Eugene Jagella, M.D. \_\_\_\_\_  
\_\_\_\_\_

**FINAL DECISION AND ORDER**

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's June 4, 2019 Recommended Decision and the Board's October 10, 2019 Partial Final Decision as to Findings of Fact and Conclusions of Law (hereinafter "Partial Final Decision"), which is attached hereto and incorporated by reference. After hearing from the Parties and considering the Parties' Memoranda on Disposition, the Board amends the Partial Final Decision by adding the following:

Sanction

The record demonstrates that, with respect to six chronic pain patients, the Respondent rendered substandard care, failed to keep adequate medical records, and engaged in conduct that undermines the integrity of the medical profession. Upon consideration of the entirety of the record before the Board, it is appropriate for the Board to sanction the Respondent in order to fulfill the Board's obligation to protect the public health, safety and welfare. *See Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979). After a hearing, the Board may "revoke, suspend, or cancel the certificate of registration or reprimand, censure, impose a fine...require a course of education or training or otherwise" discipline a physician. See G.L. c. 112, § 5, paragraph 9(c).

*Substandard Care*

"Physicians must meet the standard of care, which is 'the degree of care and skill of the average qualified practitioner, taking account the advances in the profession'. *Brune v. Belinkoff*,

354 Mass. 102, 109, 235 N.E.2<sup>nd</sup> 793, 798 (1969).”<sup>1</sup> While “the standard of care does leave room for physicians to make choices between alternative treatment approaches,...those choices must be reasonable and within the standard of care. See Barret v. Hight, 353 Mass. 268, 276-277, 230 N.E.2d 808, 814 (1967)(discussing limits of reasonable decision).”<sup>2</sup>

The Respondent’s failures to meet the standard of care include, but are not limited to: i) failing to obtain patients’ prior medical records before prescribing opioids; ii) failing to consider non-opioid treatments prior to prescribing opioids; iii) failing to consider patients’ substance use histories when prescribing opioids and when prescribing opioids and benzodiazepines simultaneously; iv) failing to conduct regular drug screens on patients for whom he prescribes opioids; and v) failing to conduct regular visits and examinations of the patients for whom he prescribes opioids so as to assess patients’ side effects from and compliance with prescriptions.

#### *Failure to Maintain Adequate Medical Records*

“Record-keeping deficiencies are not ‘technical’ violations, because accurate and current medical records are absolutely essential in maintaining a patient’s health and welfare.” See In the Matter of Peter J. Krokidas, M.D., Board of Registration in Medicine, Adjudicatory Case No. 88-36-CA (Final Decision and Order, June 7, 1989) quoting In the Matter of Robert Wakeling, D.O., Adjudicatory Case No. 87-50-CA (Final Decision and Order, September 16, 1987).

The Respondent’s failures to maintain adequate medical records include, but are not limited to the Respondent’s: i) failing to document the justification for prescribing benzodiazepines in concert with opioids to patients and failing to document the justification for prescribing benzodiazepines to a patient with a history of substance abuse; ii) “expunging” references to a patient’s intravenous drug use in her medical record based solely on the Patient’s explanation that it was inaccurate; iii) failing to document drug screens in medical records; and iv) failing to follow-up with a patient about a reference in his medical record to a referral to detox.

#### *Undermining the Integrity of the Medical Profession*

“Conduct which undermines public confidence in the integrity of the medical profession is an independently sufficient ground for the [B]oard to sanction a physician....the [B]oard has broad authority to ‘protect the image of the medical profession’ and is not limited to disciplining

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<sup>1</sup> Recommended Decision at p. 20.

<sup>2</sup> Recommended decision at p. 21.

conduct involving direct patient care.” *Sugarman v. Bd. of Reg. in Medicine*, 422 Mass. 338, 343, 662 N.E.2d 1020, 1024 (1996).

The Respondent engaged in conduct that undermines the integrity of the medical profession by failing to respond to questions raised about his treatment of a patient by a medical professional, and by failing to address concerns raised by his patients’ pharmacies and insurers.

*Substandard Care Involving Pain Management, Inadequate Medical Records and Conduct that Undermines the Integrity of the Medical Profession*

On some occasions, where a physician’s pain management care and prescribing have fallen below the standard of care for multiple patients and the physician has failed to maintain appropriate medical records, the Board has indefinitely suspended the physician, making any stay of the suspension at the Board’s discretion and conditioned upon: i) submitting the results of clinical skills assessment by a Board-approved entity; and ii) entering a Probation Agreement, which includes clinical monitoring, a prohibition of prescribing opiates at least during the probationary term; and iii) following the recommendations of the evaluators and monitors. *See In the Matter of Shaohua Tang, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2016-001 (Final Decision and Order, April 27, 2017)(substandard pain management, opioid prescribing, and medical records; indefinite suspension, stay contingent on skills assessment, and entry into a five-year Probation Agreement that incorporates evaluators’ recommendations, prohibits early termination of probation, and prohibits opiate prescribing during probation).

On other occasions, where a physician’s pain management care and prescribing have fallen below the standard of care for multiple patients and the physician has failed to maintain appropriate medical records, the Board imposed license revocation as the sanction. *See In the Matter of Willy Falk, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 92-6-DALA (Final Decision and Order March 10, 1993)(prescribing to individuals displaying indicators of substance abuse and chemical dependency and failure to properly examine patients, document symptoms and refer patients for counseling; license revocation).

While the Board acknowledges that the Respondent: i) “cares about his patients and he acted in what he believed were their best interests;”<sup>3</sup> and ii) served “the neediest in his community,”<sup>4</sup> the Board, in fashioning a sanction, is guided first by its mission to ensure public

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<sup>3</sup> Recommended Decision at p. 24.

<sup>4</sup> *Id.*

health, safety and welfare. The Board as stated in *Falk*, more than twenty-five years ago, "has long viewed with the utmost seriousness any physician's inability or failure to faithfully discharge" his "grave responsibility" for issuing prescriptions for controlled substances. *Falk* at 2 citing *In the Matter of Earl Hoffman, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 85-7-GR (Final Decision and Order, November 20, 1985), *In the Matter of John V. Temte, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 863 (Final Decision and Order, March 18, 1983). As stated in *Falk*, "The Respondent's failure to properly examine his patients, to document patient symptoms, and to refer patients for counseling is inexcusable....A physician who undertakes the care of a patient must fully conform with all acceptable standards of safe and appropriate care." *Falk* at 2.

Consistent with the Board's public protection mission and the determination that the Respondent poses an immediate and serious threat to the public, the Board hereby REVOKES the Respondent's inchoate right to renew his license to practice medicine.

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

The Respondent shall provide a complete copy of this Final Decision and 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 which 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; the state licensing boards of all states with 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 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 taken.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A §§14 and 15, and G.L. c. 112, § 64.

DATE: December 19, 2019

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.  
Chair