COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

MIDDLESEX, ss

Adjudicatory Case No. 2014-007
(RM-14-78)

In the Matter of

Mark M. O'Connell, M.D.

FINAL DECISION AND ORDER

This matter came before the Board for disposition on the basis of the Administrative Magistrate's Recommended Decision, dated August 3, 2015. No Objections to the Recommended Decision or Memorandum on Disposition were filed by the parties. After full consideration of the Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, amending it by deleting the reference on page 17 to "and is guilty of misconduct in the practice of medicine," and by adding the following:

Sanction

Pursuant to 243 CMR 1.03(5)(a)12, the Board has the authority to discipline a physician who has "been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in G.L. c. 112, sec. 5 or 243 CMR 1.03(5)." The record demonstrates that the Respondent violated G.L. c. 112, sec. 5 ninth par. (c) and 243 CMR 1.03(5)(a)3, by engaging in conduct "that places into question the Respondent's competence to practice medicine." Accordingly, it is proper for the Board to impose sanction. *See Raymond v. Board of Registration in Medicine,* 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine,* 378 Mass. 519 (1979). When the Board imposes reciprocal discipline, the Board may impose any sanction consistent with its policies and precedent and based on out-of-state facts, not the out-of-state sanction. *See In the Matter of Robert Schlossman, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 85-12-RO (Final Decision and Order, November 5, 1986) (Board noted that the fact that another state stayed its sanction did not require same outcome in Massachusetts).

In this matter, the Respondent was disciplined for engaging in misconduct by failing to fulfill the terms of his restricted license by not timely informing the New Jersey Board that he was taking a job at a clinic, having an improper CDS number and no DEA number but still prescribing Schedule III and IV medications, and having CDS medications mislabeled or expired and improperly stored. Had the Respondent committed these violations in Massachusetts, the Board could discipline him for "conduct which places into question his competence to practice medicine," 243 CMR 1.03(5)(a)3.

The facts of this case establish that the Respondent violated an order of the New Jersey Board, and committed multiple prescribing violations. The Board has imposed an indefinite suspension on a physician who, among other things, prescribed controlled substances while his DEA registration was expired. *See In the Matter of William P. Straub, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 95-18-DALA (Final Decision and Order, February 8, 1995). Although Board discipline has varied from reprimand to revocation for other types of prescribing violations, in the vast majority of these cases, the Board has imposed an indefinite suspension. *See In the Matter of James Gallagher, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2012-020 (Consent Order, July 11, 2012) (Board indefinitely suspended physician's inchoate right to renew his license but granted the physician leave to petition for a stay of suspension immediately upon proof of compliance with his Connecticut probation and renewal conditioned upon entry into a five year probation agreement). Furthermore, the Respondent has been previously disciplined by the Board for abuse of drugs. *See In the Matter of Mark M. O'Connell, M.D.*, Adjudicatory Case No. 97-09-DALA (Final Decision & Order, December 17, 1997) (the Board imposed a reprimand and an out-of-state Probation Agreement). "Evidence of past misconduct...has been essential in determining the appropriate level of discipline to be imposed in any case." *See Matter of Saab*, 406 Mass. 315, 327-328 (1989).

Where the Respondent's license to practice medicine has lapsed, the Respondent's inchoate right to renew his license is hereby INDEFINITELY SUSPENDED. The sanction is imposed for each violation of the law, 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 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; 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 for the duration of the indefinite suspension of his inchoate right to renew. 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. The Respondent has the right to appeal this Final decision and Order within (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c.112, §64.

Date: October 22, 2015

Kathleen Sullivan Meyer

Kathleen Sullivan Meyer, Esq.
Board Vice Chair
Board of Registration in Medicine

SENT CERTIFIED MAIL 10/23/15 MS