

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE

Middlesex, ss.

Adjudicatory Case
No. 2013-031 (RM-09-665)

In the Matter of)

Bentley A. Ogoke, M.D.)
_____))

Final Decision and Order

This matter came before the Board, on the basis of the Administrative Magistrate's (Magistrate's) Recommended Decision, dated February 24, 2017. After full consideration of the Recommended Decision, attached to and incorporated into this Final Decision and Order, the Board hereby adopts it, as amended to add the following Conclusions of Law:

- A. Pursuant to G.L. c. 112, §5, ninth par. (c) and 243 CMR 1.03(5)(a)3 the Respondent engaged in conduct that places into question his competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.
- B. Pursuant to G.L. c. 112, § 5(b) and 243 CMR 1.03(5)(a)2, the Respondent committed an offense against the provisions of the laws of the Commonwealth relating to the practice of medicine or rule or regulation promulgated thereunder. General Laws c. 94C relates to the practice of medicine.
- C. Pursuant to G.L. c. 112, § 5(h) and 243 CMR 1.03(5)(a)11, the Respondent violated a rule or regulation of the Board. Specifically, the bases are:
 1. Pursuant to 243 CMR 2.07(5), a licensee who violates G.L. c. 94C also violates a rule or regulation of the Board.
 2. Pursuant to 243 CMR 2.07(13)(a), a physician must maintain a medical record for each patient, which is adequate to enable the licensee to provide proper diagnosis and treatment; or maintain a patient's medical record in a manner which permits the former patient or a successor physician access to them.
 3. Pursuant to 243 CMR 2.07(13)(b), a physician must, upon a patient request, provide a copy of the patient's medical record to a patient, other licensee or other specifically authorized person, in a timely manner.

SANCTION

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).

The Board has long held that, "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). In this matter, the Magistrate determined that the Respondent's medical records for Patient M were inadequate. In addition, the Magistrate determined that the Respondent failed to provide Patient H with his medical records in a timely manner.

In addition, the Magistrate determined that the Respondent did not respond to positive drugs tests for three patients: Patients G, J and N and thus failed to meet the standard of care. When determining the appropriate sanction in a substandard care case, the Board has taken into consideration the number of patients involved, the degree of deviation from the standard of care, and mitigating circumstances. *See Ernest Osei-Tutu, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2007-004 (Final Decision and Order, February 25, 2009). In this matter, the Board notes that while the Respondent's response to the positive tests may not have been as timely as it could be, the Respondent did, in fact, respond to the positive tests and properly terminated prescribing for the patients.

However, in determining the appropriate sanction in this matter, the Board took into consideration the length of time this matter has taken to reach a resolution. This matter began on September 20, 2009 when the Respondent entered into a Voluntary Agreement Not to Practice. The Board issued its Statement of Allegations on October 7, 2009. The Division of Administrative Law Appeals' proceedings concluded on April 3, 2012. The Respondent has not been allowed to practice medicine since September 2009, eight years ago.

In light of the above consideration, the Board hereby orders the Respondent to complete four (4) additional hours of continuing medical education, beyond those required for maintenance of licensure, in the area of prescribing. The courses must be approved in advance by the Board and must be completed within sixty (60) days of this Order.

Execution of this Final Decision and Order

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 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 in the year following the date of imposition of this admonishment. 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.

Dated: September 28, 2017

Candace Lapidus Sloane, MD
Candace Lapidus Sloane, M.D., Chair
Board of Registration in Medicine