

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No: 2018-017

In the Matter of)
)

Manuel S. Yapchai, M.D.)
_____)

Final Decision and Order

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision, dated July 30, 2018, which found Manuel S. Yapchai, M.D. (Respondent) in default. After full consideration of that Recommended Decision as well as the Petitioner's Memorandum on Disposition, which are attached hereto and incorporated by reference, the Board adopts the Recommended Decision, amending it by adding the following:

Findings of Fact

In light of the Respondent's failure to respond to the Statement of Allegations (SOA) and to appear for a scheduled prehearing at the Division of Administrative Law Appeals (DALA), the Board hereby finds the Respondent in default. M.G.L. c. 30A, § 10(2). Therefore, the allegations contained in the SOA are deemed admitted. *See Peters & Russel, Inc. v. Dorfman*, 188 F.2d 711 (7th Cir. 1951); and *Northwest Yeast Co. v. Broutin*, 133 F.2d 638 (6th Cir. 1943).

The Board makes the following findings:

Biographical Information

1. Manuel S. Yapchai, M.D., was born on December 11, 1950. He graduated from the University of the East Ramon Magsaysay Memorial Medical Center in Quezon City, Quezon, Philippines in 1976. He was licensed to practice medicine in Massachusetts

under certificate number 53328 on August 24, 1984; his license was revoked by operation of law on December 11, 2005 when he failed to renew it.

Factual Allegations

1. On March 7, 2018, the Respondent was convicted of one count of the Illegal Distribution of a Controlled Substance (Oxycodone and Promethazine with Codeine) of a federal crime in the Eastern District of Michigan. On the same day, he was sentenced to imprisonment for one day, time served and two years of supervised release.
2. On September 13, 2017, the Michigan Board accepted, by Stipulated Order, the Respondent's revocation of his license to practice medicine in the State of Michigan. A review of the Consent Order issued by the Disciplinary Subcommittee of the Michigan Board, dated September 13, 2017, recites the Respondent's admission that he violated several subsections of the Michigan Public Health Code (M.C.L. Sections 333.16221(a), (b), (b)vi., (c)(iv) and (e)(iii).
3. The Respondent, as part of the Stipulated Order, was also fined \$5,000, for violation of the Michigan Public Health Code, MCL 333.11101 *et seq.*

Conclusions of Law

Based upon the facts set out in the SOA, and now admitted, the Board makes the following Conclusions of Law that the Respondent has:

1. violated 243 CMR 1.03(5)(a)7 by his March 2017 criminal conviction for the Illegal Distribution of a Controlled Substance in Federal Court in the Eastern District of Michigan;

2. been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those in G.L. c. 112 §5 or 243 CMR 1.03(5).

More specifically, the Respondent has:

- a) engaged in conduct that indicates a lack of good moral character and undermines the public confidence in the integrity of the medical profession. *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979) and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).
 - b) practiced medicine fraudulently or beyond its scope in violation of G.L. c. 112, s. 5 eight par.(c) and 243 CMR 1.03(5)(a);
 - c) practiced medicine deceitfully or engaged in conduct that has the capacity to deceive or defraud in violation of 2.03(5)(a)(10).
 - d) committed misconduct in the practice of medicine in violation of 243 CMR 1.03(5)(a)(18).
3. violated G. L. c. 112, § 5, eighth par. (b) and 243 CMR 1.03(5)(a)2, by committing an offense against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder. More specifically:
 - a). G.L. c. 94C, § 19(a), which requires that physicians issue prescriptions for controlled substances for a legitimate purpose and in the usual course of the physician's medical practice.¹

¹ The Board corrects a scrivener's error found in the SOA under Legal Basis for Proposed Relief (paragraph C-5) which states that pursuant to G.L. 94C, § 19(a), that the Board may discipline a physician who issues prescriptions for a controlled substance for legitimated purposes and in the usual course of the physician's medical practice.

Sanction

The Respondent's failure to respond to the SOA, to appear for a scheduled prehearing at DALA, and his default in connection with this action demonstrate his utter disregard for the Board's statutory mandate. By failing to respond to the Board, the Respondent prevented the Board from investigating the serious allegations concerning his: i) criminal conviction for the Illegal Distribution of a Controlled Substance (Oxycodone and Promethazine with Codeine); and 2) out-of-state discipline by the Michigan Board of Medicine for prescribing controlled substances outside the scope of his medical practice and with no legitimate purpose.

In order for the Board to fulfill its mission to protect the public, a physician's cooperation is essential. By failing to respond to the serious allegations against him, the Respondent hindered the Board's efforts to fulfill its mission. See *In the Matter of Mark M. Kowalski, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 97-16-DALA (Final Decision and Order, April 1, 1998) ("A physician who obstructs the Board's investigation of a complaint and blatantly ignores repeated requests for a response threatens the public's health, welfare and safety, not only by denying the Board potentially important information, but also by draining the resources of the Board.")

The Board may, in accordance with 243 CMR 1.03(5)(a)7 and M.G.L. c. 112, § 5(g), discipline a physician who has been convicted of a crime. The Board also has the authority to discipline a physician upon proof satisfactory that the physician has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5).

In particular, the Board has long viewed with the utmost seriousness any physician's inability or failure to faithfully discharge the grave responsibility of issuing prescriptions for

controlled substances, and has dealt strictly with cases involving the unlawful distribution of controlled substances. In these situations, the Board has generally imposed the sanction of revocation. See In the Matter of Joseph F. Piazza, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2015-005 (Final Decision and Order, September 4, 2015, amended November 19, 2015) (revocation for conviction for Conspiracy to Commit an Offense Against the United States by the unauthorized distribution of 152,774 Oxycodone pills while employed by a cash-only pain management clinic in the State of Florida); In the Matter of Michael L. Mavroidis, M.D., Board of Registration in Medicine, Adjudicatory Case No. 01-27-DALA (Final Decision and Order, November 19, 2008)(revocation for conviction on ten counts of unauthorized distribution of Class B, C and E controlled substances); In the Matter of Luis A. Molmenti, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2006-017 (Consent Order, April 12, 2006)(revocation for convictions on one count of health care fraud and one count of obtaining drugs by fraud); In the Matter of David C. Arndt, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2005-031 (Final Decision and Order, November 16, 2005)(reaffirmation of prior revocation, for conviction on nine counts of controlled substance law violations); and In the Matter of Anish B. Doshi, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-11-XX (Consent Order, April 10, 2002)(revocation for admitting to sufficient facts for a finding guilty on 26 counts of illegal distribution of controlled substances).

The Board's paramount responsibility is the protection of the public health, safety and welfare. See Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979). In light of the Respondent's default, which hindered the Board's efforts in its fulfillment of this responsibility, it is appropriate to impose a sanction in this matter. Whereby the Respondent's license is lapsed, 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 Conclusion of Law section 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 this revocation. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

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.

Candace Lapidus Sloane, MD

Date: November 21, 2018

Candace Lapidus Sloane, M.D.
Board Chair