

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals
1 Congress Street, 11th Floor
Boston, MA 02114
www.mass.gov/dala

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-16-250

Milton Reder, M.D.,

Respondent

Appearance for Petitioner:

Stephen C. Hctor, Esq.
Board of Registration in Medicine
200 Harvard Mill Square
Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Brian Whiteley, Esq.
Barclay Damon LLP
One Financial Center, Suite 1701
Boston, MA 02111

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF RECOMMENDED DECISION

Among other things, doctor did not maintain adequate medical records for some patients, and his repeated use of Sphenopalatine Ganglion Block was excessive, unwarranted, and below the standard of care. He is subject to discipline by the Board of Registration in Medicine.

RECOMMENDED DECISION

The Board of Registration in Medicine (Board) filed a Statement of Allegations against

the Respondent, Dr. Milton. The parties signed a stipulation to resolve the matter without an evidentiary hearing.

Finding of Facts

The parties stipulate to the following facts:

1. The Respondent was born on August 31, 1952. He graduated from the Johns Hopkins University School of Medicine in 1978. He is certified by the American Board of Internal Medicine. He has been licensed to practice medicine in Massachusetts under certificate number 48716 since 1982. He is not affiliated with any Massachusetts hospital or clinic. He maintains a private office within a building that also contains his residence.
2. As of July 2013, the Respondent's practice included, but was not limited to, a patient panel of approximately twenty (20) patients. The Respondent performed Sphenopalatine Ganglion Block (SPGB) treatments on patients in his office. SPGB is a nerve block therapy/pain management technique. In addition to performing SPGB treatments, the Respondent prescribed various medications to patients.
3. In addition to his medical practice, the Respondent is also a professional musician. The Respondent maintains a music recording studio in a building that also contains his residence and his office. Some of the Respondent's patients have worked or performed in the Respondent's music studio. The Respondent is also a member of a musical band of which one of the hereinafter mentioned patients is a part.
4. Some of the hereinafter mentioned patients have rented an apartment in the building containing the Respondent's residence and office from the Respondent.
5. The Respondent issued four prescriptions of Xanax and one prescription of Chloral hydrate, a non-barbiturate sedative and hypnotic, to his six-year-old dog, when the dog was

suffering from congestive heart failure.

6. In approximately June of 2013, the Board requested that the Respondent provide his complete medical records for twelve (12) patients (Patients A through L).

7. The Respondent produced his complete medical records for only eleven (11) of his patients; the Respondent did not provide any medical records for one patient (Patient E).

8. The basis for Respondent's care and treatment of Patients A through J was not adequately documented in the patients' medical records, and the Respondent's personal and business relationships with certain patients violates ethical principles of good and sound medical practice.

9. Examples of the Respondent's failures include:

A. Patient A, whom the Respondent had treated since 1994 and with whom the Respondent had a close personal relationship, received approximately 99 consecutive SGB procedures, nearly daily, between September and December of 2011, yet the Respondent's medical records detail only the purported dates of service with no substantive reference to efficacy or need; further, the Respondent violated Board regulations by prescribing Schedule II controlled substances to Patient A during the time of their personal relationship for non-emergent care.

B. Patient B, whom the Respondent had treated since 2004 and with whom the Respondent has had a close business relationship for approximately 25 years, received a SGB for treatment of sciatica — the medical rationale for which is not certain; the Respondent's medical records fail to adequately document Patient B's history, diagnoses, and treatment.

C. Patient C, who worked as an intern at the Respondent's recording studio, and to whom the Respondent prescribed Oxycodone for purported back pain.

D. Patient D, who at one point in time was a tenant in the Respondent's residence and with whom the Respondent collaborated on various musical endeavors and who saw the Respondent since 2005 for treatment of pre-existing spinal muscular atrophy; the Respondent's course of treatment of Patient D included the extensive use of SGBs with inadequate medical recordkeeping to justify the number of SGBs provided to this patient or the medical necessity for the number and frequency of SGBs.

E. Patient E, whom the Respondent reportedly treated for severe sciatica in April 2012 and for whom the Respondent prescribed Oxycodone, monthly, from October 2012 through January 2013, but for whom the Respondent failed to maintain any medical records.

F. Patient F, with whom the Respondent has a personal relationship, and who first treated with the Respondent for temporomandibular joint dysfunction (TMJ) and headaches since 2004 and embarked on a course of SGBs and chronic opioid therapy through at least mid-2013; the prescriptions written for this patient were written for varying doses, strengths, and duration, and were at times written mere days apart, all without any documented support or explanation in the patient's medical record.

G. Patient G, who first treated with the Respondent in December 2012 for management of headaches and failed back syndrome, and who received SGBs from the Respondent and also alprazolam for anxiety; despite the Respondent's knowledge of this patient's dependency upon alprazolam and the Respondent's observation that the patient needed inpatient help, the Respondent nonetheless continued to prescribe alprazolam to the patient; similar to all patients, the Respondent's medical records for this patient were scant and contained little or no documentation of medical necessity or efficacy.

H. Patient H, who first saw the Respondent in 1995 for post-motor vehicle accident headaches, received SGB procedures and escalating chronic opioid therapy but without adequate medical recordkeeping to justify the treatment.

I. Patient I, who befriended the Respondent through their shared musical interests until Patient I's passing in 2012 from cancer, received almost daily SGB procedures in concert with chronic opioid treatment.

J. Patient J, who first treated with the Respondent in January 2009 for headaches and pain following a motor vehicle accident, received SGBs and chronic opioid therapy; the course and frequency of treatment is not adequately documented in the medical record.

K. Patient K, with whom the Respondent occasionally meets socially, received prescriptions to continue her long-standing sleep disorder medication.

L. Patient L, who received monthly oxycodone prescriptions from the Respondent between 2006 and 2011 in strengths and quantities that are not supported in the Respondent's medical records for the patient's purported ailments.

10. The Board's *Prescribing Practices Policy and Guidelines*, adopted by the Board on August 1, 1989, and amended on November 17, 2010 and October 8, 2015, iterates that every prescription written by a licensee must be issued in the practitioner's usual course of his professional practice and medical records must be contemporaneously kept.

11. The Respondent's documentation in his medical records is below the standard of care for all of the medical records that he produced to the Board; the notes are cursory and fail to record on whom the SGBs were performed.

12. The Respondent's frequent and repeated use of SGBs is excessive, unwarranted, and

below the standard of care based on the documentation in the medical records.

Conclusions of Law

The parties agree to the following conclusions of law:

- A. The Respondent has 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:
 1. G.L. c. 94C, § 19(a), which requires that physicians issue prescriptions for controlled substances for legitimate purpose and in the usual course of the physician's medical practice.
- B. The Respondent has violated G.L. c. 112, §5, eighth 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.
- C. The respondent has violated G.L. c. 112, §5, eighth par. (h) and 243 CMR 1.03(5)(a)11, by violating a rule or regulation of the Board. Specifically:
 1. 243 CMR 2.07(13)(a), which requires a physician to:
 - a. maintain a medical record for each patient, which is adequate to enable the licensee to provide proper diagnosis and treatment;
 - b. maintain a patient's medical record in a manner that permits the former patient or a successor physician access to them.
 2. 243 CMR 2.07(5), which states that a licensee who violates G.L. c. 94C also violates a rule or regulation of the Board;
 3. 243 CMR 2.07(19), which prohibits a physician from:

- a. prescribing Schedule II controlled substances to a member of his immediate family, including a spouse (or equivalent), parent, child, sibling, parent-in-law, son/daughter-in-law, brother/sister-in-law, step-parent, step-child, step-sibling, or other relative permanently residing in the same residence as the licensee, except in an emergency;
- D. The Respondent has violated 243 CMR 1.03(5)(a)18, by committing misconduct in the practice of medicine.
- E. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

Sanction and Order

The parties have communicated to me that they agree to the following:

The Respondent, the Respondent's attorney, and Complaint Counsel expressly acknowledge that the Board may impose sanctions against the Respondent based on the above Stipulated Facts and Conclusions of Law.

If the Board decides to impose sanctions that the Respondent is not willing to accept, the Respondent will be given the opportunity to proceed to a hearing on the merits in accordance with the adjudicatory process as provided in General Laws chapter 30A and 801 CMR 1.00 et seq.

The stipulation has a section called "Execution of this Stipulation," which includes the following:

If the Board rejects any provision in this Stipulation, the entire document shall be null and void and the matter will be recommitted to DALA for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

Conclusion

I adopt the parties' facts as stipulated and the conclusions of law as warranted. I

recommend that the Board impose such discipline on Dr. Reder as it deems appropriate in light of the parties' stipulation.

I attach the parties' stipulation as Exhibit 1.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Kenneth Bresler
Administrative Magistrate

Dated:

MAR 15 2017