COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS. Board of Registration in Medicine

 Adjudicatory Case No. 2018-020

 )

In the Matter of )

 )

IRA J. SCHMELKIN, M.D. )

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**STATEMENT OF ALLEGATIONS**

 The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Ira J. Schmelkin, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause isDocket No. 15-356.

# Biographical Information

1. The Respondent was born on December 27, 1960. He graduated from the College of Medicine, State University of New York at Buffalo in 1984. He has been licensed to practice medicine in Massachusetts under certificate number 56902 since 1986. The Respondent is board-certified in Internal Medicine with a subspecialty certification in Gastroenterology. He currently has privileges at Baystate Medical Center and Noble Hospital.

Factual Allegations

1. The Respondent and Nurse A first met in mid-2008. Nurse A was a nurse at the medical center where the Respondent was working. The Respondent and Nurse A began dating very shortly after they met. Their relationship continued off and on until approximately October 2013.
2. On June 23, 2012, the Respondent was arrested for domestic assault and battery on Nurse A. The Respondent was arraigned on June 25, 2012 and the case was dismissed on August 28, 2012.
3. On October 6, 2013, Nurse A reported an incident of domestic violence to the police. On October 7, 2013, the Respondent was charged with two counts of assault and battery, one count of vandalizing property, and one count of intimidation of a witness.
4. On October 21, 2013, the Respondent completed his 2013 Board of Registration in Medicine Renewal Application (2013 Renewal Application) which sought information regarding the period since his previous renewal in 2011. The Respondent inaccurately answered “No” to the following questions on his 2013 Renewal Application:
5. Have you been charged with any criminal offense during this period?
6. Have any criminal offenses/charges against you been resolved during this period?
7. Are there any criminal charges pending against you today?
8. On February 14, 2014, the second criminal case was dismissed when Nurse A asserted her Fifth Amendment right against self-incrimination.
9. On October 27, 2015, the Respondent completed his 2015 Board of Registration in Medicine Renewal Application and reported resolution of the 2013 criminal case against him.
10. From on or about September 2012 to August 2013, without keeping records, the Respondent prescribed Nurse A the following medications:
	1. Three prescriptions for 60 tablets of Xanax 1 mg, a Schedule IV medication. Each prescription allowed for four refills.
	2. One prescription for 6 tablets of Vicodin ES, a Schedule II medication.

Legal Basis for Proposed Relief

 A. Pursuant to G.L. c. 112, §5, eighth par. (b) and 243 CMR 1.03(5)(a)2, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician committed 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 in the usual course of the physician’s medical practice; and
	2. 243 CMR 2.07(13)(a), which requires a physician to: maintain a medical record for each patient, which is adequate to enable the licensee to provide proper diagnosis and treatment.
1. Pursuant to G.L. c. 112, § 5, eighth par. (a) and 243 CMR 1.03(5)(a)1, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician fraudulently procured his certificate of registration or its renewal.
2. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

 The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

# Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

 By the Board of Registration in Medicine,

 Signed by Candace Lapidus Sloane, M.D.

 Candace Lapidus Sloane, M.D.

 Board Chair

Date: May 24, 2018