

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2022-014

In the Matter of)
)
)

ANDREA STEWART, M.D.)
_____)

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 ANDREA STEWART, 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 is Docket No. 20-050.

Factual Information

1. The Respondent is a 1983 graduate of the State University of New York Upstate Medical University. She has been licensed to practice medicine in Massachusetts under certificate number 57656 since 1987. She is also licensed to practice medicine in Rhode Island.
2. On or about December 11, 2019, the Respondent was disciplined by the Rhode Island Board of Medical Licensure and Discipline (the Rhode Island Board). See Rhode Island Consent Order at Exhibit A and incorporated herein by reference.

3. The Rhode Island Board discipline was based on a Consent Order signed by the Respondent.

4. The Rhode Island Board disciplined the Respondent for a variety of conduct including but not limited to:

- a. Failing to meet the minimum standard of care in the treatment of multiple patients;
- b. Inadequately documenting medical records;
- c. Willfully making and filing false reports or records in the practice of medicine; and
- d. Failing to follow regulations pertaining to the issuing of Marijuana certificates.

Legal Basis for Proposed Relief

Pursuant to 243 CMR 1.03(5)(a)12, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said 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). More specifically, in Massachusetts, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has

1. Pursuant to G.L. c. 112, §5, eighth par. (c) and 243 CMR 1.03(5)(a)3, engaged in conduct that places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.
2. Pursuant to 243 CMR 1.03(5)(a)10, practiced medicine deceitfully, or engaged in conduct that has the capacity to deceive or defraud.

3. Pursuant to G.L. c. 112, §5, eighth par. (h) and 243 CMR 1.03(5)(a)11, violated a rule or regulation of the Board. Specifically,

243 CMR 2.07(13)(a), requires a physician to: maintain a medical record for each patient, which is complete, timely, and adequate to enable the licensee to provide proper diagnosis and treatment; and

935 CMR 501.0000, requires a physician issuing a Marijuana certificate to complete and document a full assessment of the patient's medical history and current medical condition, and explain the potential benefits and risks of Marijuana use.

4. Pursuant to 243 CMR 1.03(5)(a)18, committed misconduct in the practice of medicine.

5. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), engaged in conduct that undermines the public confidence in the integrity of the medical profession.

6. Pursuant to G.L. c. 112, § 61(5), engaging in dishonesty, fraud or deceit which is reasonably related to the practice of medicine.

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,

A handwritten signature in black ink, appearing to read 'W Giessmann', with a long horizontal flourish extending to the right.

Woody Giessmann LADC-I, CADC, CIP, AIS
Acting Board Chair

Date: April 14, 2022

State of Rhode Island
Department of Health
Board of Medical Licensure and Discipline



IN THE MATTER OF:
Andrea Stewart, MD
License No.: MD 07402
Case No.: C190379C

CONSENT ORDER

Andrea Stewart, MD ("Respondent") is licensed as a physician in Rhode Island. The Rhode Island Board of Medical Licensure and Discipline ("Board") makes the following

FINDINGS OF FACT

1. Respondent has been a licensed physician in the Commonwealth of Massachusetts and the State of Rhode Island since , 1987 and 1989, respectively.
2. Respondent graduated from SUNY Upstate College of Medicine on June 1, 1983. Respondent's specialty is anesthesiology.
3. Respondent was the certifying practitioner physician for Patients 1-10.
4. The Board received a complaint in which Respondent was alleged not to be following the Rules and Regulations for the Medical Marijuana Program, 216-RICR-20-10-3 ("Regulations").
5. Respondent evaluated patients at two separate locations: *Tetra Hydro Club*, located at 17 Columbia Street, South Kingstown, RI ("Tetra Hydro"), and *Everyday Medicinals*, located at 873 Warwick Avenue, Warwick, RI ("Everyday"). Respondent was an independent contractor, not an owner, of Everyday Medicinals and provided services at Tetra Hydro on three occasions at the request of Everyday.

6. Respondent is an anesthesiologist employed at South Coast Health Systems, Charlton, Memorial site. Since Respondent has been licensed as a physician in Massachusetts and Rhode Island, no complaints have been brought against her except for the one referenced herein.

7. Respondent submitted a written response to the Board in which she stated that she provided the "highest level of care to her patients." Respondent also appeared before the Investigative Committee on September 25, 2019.

8. The Investigative Committee subpoenaed ten medical records from Respondent, which medical records were supplied and are the medical records for Patients 1-10.

9. Patient 1 presented to Respondent for evaluation for medical marijuana due to *"Left Leg pain, chronic pain and numbness and low back pain."* The Investigative Committee reviewed the medical record. There was no documentation in the medical record of an exam of Patient 1's left leg or back, nor an assessment of whether she had numbness. In the initial evaluation, the response to the question, "Narcotic or illicit drug use?" is marked "no," yet the medical record reveals that Patient 1 was taking 105 mg daily of methadone, which is a schedule II opioid and a narcotic. It is not documented in the medical record why Patient 1 was taking methadone. Documented in the medical record is: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent, however, was not registered for the Rhode Island Prescription Drug Monitoring Program ("PDMP") and admitted to the Investigative Committee that she did not review the PDMP for Patient 1. Documented in the medical record is: *"response to conventional medical therapies r/t condition (inadequate response?)"* "Inadequate Response" is circled, but there is no explanation relative to over-the-counter medications. The medical record contains a Review of Systems section. MS and Neurologic are circled with no

further explanation. There is no other information in the section, which is otherwise blank. The Investigative Committee subpoenaed 10 medical records from Respondent, and she complied with this subpoena and provided the medical records of Patients 1-10.

10. The Investigative Committee concluded that the care given to Patient 1 did not meet the minimum standard of care.

11. Patient 3 presented to Respondent for evaluation for medical marijuana due to "IBS - nausea, anorexia, insomnia, joint pain." The "Chief Concerns" and "hx of chief concerns" sections of the medical record are documented as "as above," without further information. Notwithstanding the nature of Patient 3's complaints, there was no documentation in the medical record of an abdominal exam or of a joint exam. Patient 3's medical record contains within it attached medical records from Patient 3's PCP, Dr. Michael Lucarelli, which additional records reveal that Patient 3 was diagnosed with ADHD, but was not diagnosed by her PCP with either IBS or joint pain. There is no documentation in Respondent's medical record relative to a chief complaint or history of present illness or adequate physical exam. Additionally, documented in the medical record is: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that she did not review the PDMP for Patient 3.

12. The Investigative Committee concluded that the care given to Patient 3 did not meet the minimum standard of care.

13. Patient 5 presented to Respondent for evaluation for medical marijuana due to *"testicular ca - chemo, stomach muscle spasms, nausea."* The "Chief Concern" and "hx of chief concerns"

sections of the medical record are documented as *"as above secondary to chemo."* The Review of Systems for Patient 3 indicates problems in 12 of the 13 systems reviewed, yet the record reflects no physical exam or documentation that these concerns were addressed. Additionally, documented in the medical record is: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that she did not review the PDMP for Patient 5.

14. The Investigative Committee concluded that the care given to Patient 5 did not meet the minimum standard of care.

15. Patient 6 presented to Respondent for evaluation for medical marijuana due to *"nausea secondary to diastasis recti, Right leg pain torn muscle, abd pain, fibroids."* The "Chief Concern" section of the medical record was listed as *"as above"*. There is no documented physical exam. There is no record in the History of Present Illness of the duration of these listed medical problems, their etiology, or any prior treatment. It is not evident from the medical record how diastasis recti caused severe nausea. Additionally, documented in the medical record is: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that she did not review the PDMP for Patient 6.

16. The Investigative Committee concluded that the care given to Patient 6 did not meet the minimum standard of care.

17. Patient 7 presented to Respondent for medical marijuana due to ankylosing spondylitis.

The medical record did not contain an exam of Patient 7's back, even though the patient reported having back pain. There was no documentation of how Patient 7 was diagnosed, how long the patient suffered from this chronic disease, or how other treatments were or were not effective for Patient 7. Additionally, documented in the medical record is: "review of RI prescription drug

monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."

Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that she did not review the PDMP for Patient 7.

18. The Investigative Committee concluded that the care given to Patient 7 did not meet the minimum standard of care.

19. Patient 8 presented to Respondent for medical marijuana due to "IBS and severe nausea, headaches, migraines secondary to a C1 fracture." There was no abdominal exam noted in the medical record, nor was there documentation relative to how the IBS was diagnosed or how long the patient had IBS or how IBS impacted Patient 8's health. The neck exam is documented as normal. It is not evident from the medical record whether Patient 8 had any disability from the C1 fracture. Additionally, documented in the medical record is: "review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."

Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that she did not review the PDMP for Patient 8.

20. The Investigative Committee concluded that the care given to Patient 8 did not meet the minimum standard of care.

21. Patient 9 presented to Respondent for medical marijuana due to "headaches, Hepatitis C,

chronic nausea/vomiting from RX, insomnia and anxiety." Absent from the medical record are details relative to these medical problems in the History of Present Illness, how these problems were diagnosed, the duration of these illnesses, and other treatments. The medical record also indicates that Patient 9 is not taking narcotics, yet the record elsewhere reflects that Patient 9 is taking methadone 150 mg a day, which drug is a schedule II narcotic. There is no indication of why Patient 9 is taking methadone. There is no documentation of an abdominal exam. The neurological exam is scant. It is also not clear what alternative treatments Patient 9 tried prior to seeking medical marijuana. The qualifying diagnosis was abdominal pain secondary to Hepatitis C, yet there is no exam or history to evaluate the abdominal pain secondary to Hepatitis C. There is no documentation relative to how the diagnosis of Hepatitis C was made. Additionally, documented in the medical record is: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent was not registered for the Rhode Island PDMP and admitted to the Investigative Committee that did not review the PDMP for Patient 9.

22. The Investigative Committee concluded that the care given to Patient 9 did not meet the minimum standard of care.

23. All ten medical records supplied to the Board contained the documentation: *"review of RI prescription drug monitoring program, prescription hx, made a clinical judgment about the potential for drug interaction, adverse events or untoward clinical outcomes from adding medical marijuana."* Respondent was not registered for the Rhode Island PDMP and did not review the PDMP for Patients 1-10.

24. The Investigative Committee concluded, therefore, that Respondent violated R.I. Gen.

Laws § 5-37-5.1(8), which defines "unprofessional conduct" as including "[w]illfully making and filing false reports or records in the practice of medicine."

25. The Investigative Committee reviewed the medical records of Patients 1-10 for content specifying that the patients had been educated as contemplated by the above-referenced regulation.

26. Each of the medical records contained a check box stating, "*education (dosing, interactions/co-ingestion of ETOH not recommended, route, interval in-between doses, caregiver, authorized purchaser, compassion centers). Discussed with client.*"

27. The Investigative Committee concluded that the above-described documentation was a template and is not individualized to each patient, that each patient has unique needs that may change over time, and that the education should have been customized and documented as such. The Investigative Committee concluded that Respondent violated the Regulations, (216-RICR-20-10-3.4.3(C)), relative to "Patient Education," which provides, "*The certifying practitioner shall document in the medical record and provide in written or verbal format, that patient was educated regarding maximum daily dose of active ingredient, minimum interval between doses, possible drug interactions—including risk of co-ingesting alcohol.*"

28. The Investigative Committee reviewed an audit report of the PDMP and determined that Respondent was not registered for the PDMP and did not have any delegates registered for the PDMP and, therefore, that Respondent could not have and did not review the PDMP as required for these patients, in violation of the Regulations, (216-RICR-20-10-3.4.3(G)), which provides that "*[b]efore issuing a written certification, a certifying physician must review the Rhode Island [PDMP], review the patients' prescription history and make a judgment about the potential for drug interaction, adverse events or untoward clinical outcome from adding medical marijuana.*"

29. The Investigative Committee concluded that Respondent's documentation was inadequate and not in compliance with the Regulations, (216-RICR-20-10-3.4.3(H)), which specifies, for evaluation for medical marijuana, a "full assessment" of the patient must be documented in the record, which assessment is defined as *"evaluation by practitioner which at a minimum documents in the medical record: history of present illness, social history, past medical and surgical history, alcohol and substance use history, physical exam and documentation of therapies with inadequate response."*

30. The Investigative Committee concluded that Respondent's care of each patient failed to meet the minimum standard in violation of R.I. Gen. Laws §§ 5-37-5.1 (19), which defines unprofessional conduct as including, *"[i]ncompetent, negligent, or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board."*

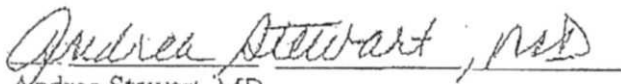
Based on the foregoing, the parties agree as follows:

1. Respondent admits to and agrees to remain under the jurisdiction of the Board.
2. Respondent acknowledges that this Consent Order reflects the Boards' findings of fact. Respondent has agreed to this Consent Order and understands that it is subject to final approval of the Board and is not binding on Respondent until final ratification by the Board. This Consent Order is neither an admission of liability by Respondent, nor concession by the Board that its claims are not well founded.
3. If ratified by the Board, Respondent hereby acknowledges and waives:
 - a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence on his behalf at a hearing;

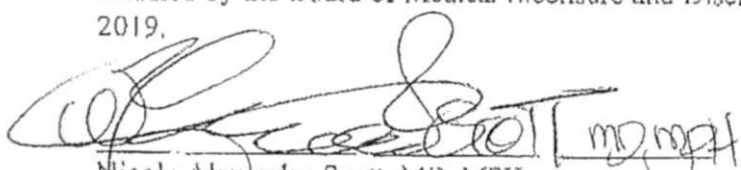
- c. The right to cross examine witnesses;
 - d. The right to have subpoenas issued by the Board;
 - e. The right to further procedural steps except for those specifically contained herein;
 - f. Any and all rights of appeal of this Consent Order;
 - g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review; and
 - h. Any objection to the fact that this Consent Order will be reported to the National Practitioner Data Bank and Federation of State Medical Boards and posted to the Rhode Island Department of Health ("RIDOH") public website.
4. Respondent agrees to pay, within 5 days of the ratification of this Consent Order, an administrative fee of \$1,862.99 for costs associated with investigating the above-referenced complaint. Such payment shall be made by certified check, made payable to "Rhode Island General Treasurer," and sent to Rhode Island Department of Health, 3 Capitol Hill, Room 205, Providence, RI 02908, Attn: Lauren Lasso. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of submitting the above-referenced payment.
5. Respondent agrees to a reprimand on her physician license.
6. Within six months of ratification of this Consent Order, Respondent will complete four hours of Board approved Category 1 CME in courses related to clinical applications of medical marijuana. Respondent will send notice of compliance with this condition to DOH.PRCOMPLIANCE@health.ri.gov within 30 days of completion.
7. Within six months of ratification of this Consent Order, Respondent will complete a Board approved medical records course of at least 12 hours of Category 1 approved CME. Respondent

will send notice of compliance with this condition to DOH.PRCcompliance@health.ri.gov within 30 days of completion. If Respondent violates any term of this Consent Order after it is signed and accepted, the Director of RIDOH ("Director") shall have the discretion to impose further disciplinary action, including immediate suspension of Respondent's medical license. If the Director imposes further disciplinary action, Respondent shall be given notice and shall have the right to request an administrative hearing within 20 days of the suspension and/or further discipline. The Director shall also have the discretion to request an administrative hearing after notice to Respondent of a violation of any term of this Consent Order. The Board may suspend Respondent's license, or impose further discipline, for the remainder of Respondent's licensing period if the alleged violation is proven by a preponderance of evidence.

Signed this 22 day of November, 2019.


Andrea Stewart, MD

Ratified by the Board of Medical Licensure and Discipline on the 11th day of December 2019.


Nicole Alexander-Scott, MD, MPH
Director

Rhode Island Department of Health
3 Capitol Hill, Room 401
Providence, RI 02908