

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2016-041

In the Matter of)
)
PAUL M. ZUSKY, 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 Paul M. Zusky, 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. 15-163.

Biographical Information

1. The Respondent was born on March 30, 1949. He graduated from the Tufts University School of Medicine in 1975. He is board certified in Internal Medicine and in Psychiatry. He has been licensed to practice medicine in Massachusetts under certificate number 47479 since 1981. He has privileges at Massachusetts General Hospital. He maintains a private psychopharmacology practice in Wellesley Hills.

Factual Allegations

2. In June 1993, the American Medical Association (AMA) adopted Opinion 8.19 of the Code of Medical Ethics, Self-Treatment or Treatment of Immediate Family Members.

3. Opinion 8.19 of the AMA Code of Medical Ethics states that physicians generally should not treat members of their immediate families as professional objectivity may be compromised and issues of patient autonomy and informed consent may arise.

4. The Board's Prescribing Practices Policy and Guidelines, adopted by the Board on August 1, 1989, and amended on November 17, 2010, 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.

5. During the period of time from approximately 2008 to April 2015, the Respondent wrote prescriptions to an immediate family member for controlled substances; but did not keep a medical record for the immediate family member.

6. By prescribing controlled substances to the immediate family member without keeping a medical record, the Respondent prescribed controlled substances outside the usual course of his professional practice.

7. In August 2014, the Drug Enforcement Administration (DEA) reclassified tramadol from a non-controlled medication to a schedule IV controlled substance; prior to this reclassification, in Massachusetts, tramadol required a prescription from a licensee registered with the Massachusetts Department of Public Health Drug Control Program (DCP).

8. At all times relevant, the Respondent was registered with the DCP.

9. Beginning in approximately the 1990's, the Respondent self-prescribed tramadol; his self-prescribing continued after tramadol was reclassified as a schedule IV controlled substance until approximately April 2015, when he ceased self-prescribing upon learning of the DEA's reclassification.

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 for legitimate purpose and in the usual course of the physician's medical practice;

B. Pursuant to G.L. c. 112, §5, eighth par. (h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has violated of a rule or regulation of the Board. Specifically:

1. 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;

2. 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 which permits the former patient or a successor physician access to them.

3. 243 CMR 2.07(19), which prohibits a physician from:

- a. prescribing controlled substances in Schedules II, III, and IV for his own use.

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,



Board Member

Date: October 6, 2016