

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Division of Administrative Law Appeals
Docket No. RM- 20-0387

Board of Registration in Medicine, Petitioner, v. George Hayao, M.D., Respondent.

JOINT STIPULATION

George Hayao, M.D. (the "Respondent"), the Respondent's attorney, and Complaint Counsel (hereinafter referred to jointly as the "Parties") agree that this Joint Stipulation shall be filed with the Administrative Magistrate for the Division of Administrative Law Appeals ("DALA") as a resolution of questions of material fact and law as set forth by the Statement of Allegations in the above matter. The Respondent admits to the Findings of Fact described below and agrees that the Administrative Magistrate and the Board of Registration in Medicine (the "Board") may make the Conclusions of Law as set forth below.

BACKGROUND

1. The Respondent was born in August 1953 and graduated from Indiana University School of Medicine in 1986. He is certified by the American Board of Internal Medicine and has been licensed to practice medicine in Massachusetts under certificate number 70675 since 1989.
2. The Respondent worked as a primary care provider (PCP), initially in Kingston, and later in Boston, until 2007 when he decided to become a hospitalist. From 2007 to 2014 he worked as a hospitalist in Lowell. In 2014, he accepted a position at Lahey Medical Center &

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Hospital (Lahey) where he remains employed as a full-time hospitalist providing inpatient care in Burlington and Peabody.

STIPULATED FACTS

Patient A

1. The Respondent began treating Patient A, a female in her mid-fifties, at his private practice in Kingston in the 1990s.
2. The Respondent prescribed Patient A methadone and hydrocodone/acetaminophen (Norco) for chronic neck and back pain stemming from an injury she sustained in a motor vehicle crash in 1988.
3. The Respondent continued to serve as Patient A's PCP when he was practicing at Harvard Vanguard/Atrius Health in Boston.
4. In 2007, when the Respondent accepted a position as a hospitalist, he agreed to continue to provide Patient A with prescriptions for her chronic pain medications until such time as she found a new PCP.
5. Patient A began seeing a new PCP in approximately June 2008; however, the Respondent continued to write her prescriptions for chronic pain medications until January 2020.
6. Between 2007 and January 2020 the Respondent's various employers provided malpractice insurance for the work he performed as a hospitalist. The Respondent did not obtain malpractice insurance to cover the treatment he provided to Patient A, which was outside the scope of his employment as a hospitalist.
7. The Respondent's primary forms of communication with Patient A after leaving Harvard Vanguard/ Atrius Health were email and text message.

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8. The Respondent's in-person visits with Patient A between approximately 2007 and January 2020 were limited to a few occasions where she met with him in the lobby and/ or the cafeteria of the hospital where he was working.

9. The Respondent did not conduct a physical examination of Patient A after he left Harvard Vanguard/ Atrius Health in 2007.

10. The Respondent did not communicate with Patient A's other providers about her care between approximately 2007 and January 2020.

11. On November 23, 2008, the Respondent acknowledged in an email to Patient A that he was unable to view her surgical records from Jordan Hospital, which related to her ongoing neck and back pain, because he was no longer on staff at that facility.

12. The Respondent made no attempt to get a paper copy of Patient A's records or talk to her surgical team before continuing to prescribe her pain medications.

13. The Respondent did not maintain a medical record for Patient A after leaving Harvard Vanguard/ Atrius Health in 2007.

14. On June 8, 2008, Patient A sent the Respondent an email stating that she had been experiencing a lot of pain and wanted to know if he could prescribe her Duragesic patches (topical patches that provide time-released doses of Fentanyl) in addition to the oral medications she was taking for relief of her chronic pain.

15. The Respondent replied via email that it had been approximately two years since he had prescribed Duragesic patches for her. He then asked her in that same email to remind him of the reason he had stopped prescribing them for her.

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16. Although he was prescribing her methadone, the Respondent did not periodically check Patient A's systolic blood pressure or baseline liver function to confirm that they were within the appropriate ranges.

17. On April 15, 2010, Patient A wrote the Respondent an email stating that she had a tumor on her liver, which her current PCP wanted to biopsy.

18. The Respondent replied to Patient A's email two days later stating "Wow, I hope everything turns out alright. Please keep me posted."

19. The Respondent did not attempt to talk with Patient A's PCP about the biopsy or instruct her to discontinue her Norco temporarily, which can affect liver function.

20. Prior to March 22, 2017, the Respondent did not instruct Patient A to undergo periodic EKGs to determine whether her methadone dose was prolonging her QTc interval.

21. On diverse dates between 2011 and 2015 the Respondent sent Patient A emails acknowledging that he had not been able to send out her prescriptions on time.

22. On September 22, 2018, the Respondent sent Patient A an email asking her to send him a list of her "specific diagnoses for pain" to assist him in completing various forms required by her pharmacy.

23. On May 13, 2019, the Respondent sent Patient A an email admitting that he was not the correct person to be managing her chronic pain medications, in part, because he lacked a facility where he could monitor her care. However, he continued to prescribe her medications until January 2020.

24. The prescriptions that the Respondent wrote for Patient A between 2007 and January 2020 were not issued in the usual course of his medical practice as a full-time hospitalist.

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25. The Respondent's treatment of Patient A from approximately 2007 to January 2020 was not within the standard of care expected of either a PCP or a hospitalist.

Patient B

26. Patient B, a female in her early sixties, saw the Respondent at his practice in Kingston for treatment of chronic neck, back and abdominal pain starting in the 1990s.

27. The Respondent continued to serve as Patient B's PCP when he closed his Kingston practice and moved to Harvard Vanguard/ Atrius Health in Boston.

28. In 2007, when he became a hospitalist, the Respondent agreed to continue to write prescriptions for oxycontin and diazepam for Patient B until she was able to find another PCP.

29. The Respondent wrote Patient B monthly prescriptions for pain medications, including oxycontin, from approximately 2007 until March 11, 2019.

30. Between 2007 and March 2019 the Respondent's various employers provided malpractice insurance to cover the treatment he provided as a hospitalist. The Respondent did not obtain additional malpractice insurance to cover the treatment he provided to Patient B, which was outside the scope of his employment as a hospitalist.

31. The Respondent did not maintain a medical record for Patient B after he left Harvard Vanguard/ Atrius Health in 2007.

32. The Respondent's primary forms of communication with Patient B between approximately 2007 and March 2019 were email, telephone and text message.

33. The Respondent did not perform a physical evaluation of Patient B after becoming a hospitalist in 2007.

34. On one occasion in 2009, one of Patient B's family members drove to the Respondent's workplace to pick up hard copies of the prescriptions the Respondent wrote for Patient B's pain medications.

35. On two other occasions in 2015 and 2016, the Respondent agreed to meet Patient B's spouse in a parking lot where he provided the spouse with hard copies of prescriptions that he wrote for Patient B.

36. On January 2, 2014, the Respondent sent Patient B an email informing her that he had accidentally deleted from his phone the list of medications he was prescribing for her. He instructed her to send him a list of all her medications along with the doses of same.

37. In June 2016, the Respondent sent Patient B an email thanking her for sending him a list of her diagnoses. He further stated that "none of them [her diagnoses] really warrant the use of chronic pain medications these days" but agreed to prescribe her 80 mg of oxycontin (two times daily), 60 mg of oxycontin (two times daily) as well as 10 mg oxycodone (as needed).

38. The Respondent did not communicate with Patient B's other providers between approximately 2007 and April 2019 when he finally spoke with a physician who agreed to take over prescribing her medications.

39. The prescriptions that the Respondent wrote for Patient B between 2007 and 2019 were not issued in the usual course of his medical practice as full-time hospitalist.

40. The Respondent's treatment of Patient B from approximately 2007 to March 2019 did not meet the standard of care expected of either a PCP or a hospitalist.

Patient C

41. Patient C, a female in her mid-thirties, has a history of obesity, chronic lower back pain including a 2014 burst fracture of the first vertebrae in the lumbar region (L1).

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42. Patient C also has a history of post-traumatic stress disorder, major depression and suicide attempts.

43. Patient C was seen by neurosurgery in October 2018 and informed that there were no surgical options available to address her back pain.

44. Patient C was admitted to North Shore Medical Center (NSMC) on April 9, 2019 complaining of back pain.

45. An MRI taken on April 9, 2019 showed that she had no acute traumatic injuries.

46. Patient C's symptoms were treated at NSMC and she was released.

47. On April 15, 2019, Patient C was seen at Lahey in the Emergency Department (ED) where she was given IV dilauid and lorazepam by mouth. She also was discharged with a prescription for diazepam.

48. Patient C returned to Lahey's ED on April 19, 2019 complaining of ongoing back pain.

49. At the time of her admission, Patient C reported taking 25 mg per day of oxycodone for the past seven years; however, that amount was inconsistent with the amount noted in her preadmission paperwork.

50. Patient C was admitted for a two-day inpatient stay during which the Respondent served as her attending physician.

51. The Respondent's note from April 20, 2019 states that "when [he] first saw her in our ER last night she was lying supine on the gurney with legs crossed Indian style and looking quite comfortable looking at her I-phone." He further stated that she looked less comfortable the following day but was still able to move around in bed without increased pain.

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52. The Respondent prescribed Patient C tramadol and IV diluadid (1 mg every 4 hours as needed) even though she was capable of taking oral medications and did not appear to be experiencing increased pain.

53. The Respondent noted that he "relented" and ordered another MRI for Patient C despite the fact that her MRI from ten days earlier did not show any evidence of an acute traumatic injury.

54. The Respondent discharged Patient C on April 21, 2019, with a seven-day prescription for oxycodone (20mg 4 times per day). This dose was a significant increase from the dose she reported taking when she was admitted to his care just two days earlier.

55. The Respondent also increased her doses of Effexor and Neurontin on April 21, 2019.

56. Patient C was readmitted to Lahey on April 22, 2019, after falling and sustaining a fracture of her fifth metatarsal.

57. The Respondent increased Patient C's oxycodone dose during her second admission and discharged her with a twenty-day supply of 120 mg of oxycodone per day. He also provided her with a prescription for 100 tablets of 5mg oxycodone to be taken as needed.

58. The amounts of oxycodone that the Respondent prescribed Patient C on April 21, 2019 and April 26, 2019 were not appropriate for a patient with chronic back and an unchanged MRI.

59. The Respondent's treatment of Patient C during her two admissions to Lahey in April 2019 did not meet the standard of care expected of a hospitalist.

CONCLUSIONS OF LAW

A. 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 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.

B. The Respondent has violated G.L. c. 112, § 5, eighth par. (b) and 243 CMR 1.03(5)(a)2 by committing a violation against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder---to wit: G. L. c. 94C, § 19(a), which requires that physicians issue prescriptions for controlled substances for legitimate purposes and in the usual course of the physician's medical practice.

C. The Respondent has violated G.L. c. 112, § 5, eighth par. (b) and 243 CMR 1.03(5)(a)11 by violating a rule or regulation of the Board, to wit:

- a. Failure to obtain mandatory professional malpractice liability insurance as defined in 243 CMR 2.07(16); and
- b. Failure to maintain a medical record for each patient that is complete, timely, legible and adequate to enable the licensee or any other healthcare provider to provide proper diagnosis and treatment in violation of 243 CMR 2.07(13)(a).

D. Pursuant to Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979); Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982), and Sugarman v. Board of Registration in Medicine, 422 Mass. 338 (1996), the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

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SANCTION AND ORDER

The Parties expressly acknowledge that the Board may impose sanctions against the Respondent based upon the above Findings of Fact and Conclusions of Law. The Parties hereby jointly agree to recommend to the Board that it impose the sanction set forth below. The Parties understand that the recommended sanction is not binding on the Board, and that the Board may wish to impose a different sanction on the Respondent.

At the time the Board considers this Stipulation, it will inform the Parties of its inclination as to sanction. If the Board's sanction is different from the one recommended by the Parties, the Respondent will be given an opportunity to either accept or reject the proposed sanction. If the Respondent rejects the proposed sanction, then the matter will continue through the adjudicatory process pursuant to Mass. Gen. Laws c. 30A and 801 CMR 1.00 et seq.

The Respondent's license is hereby reprimanded. The Respondent is ordered to complete five additional continuing professional development credits (CPDS) focused on opioid prescribing and five additional CPDs focused on record-keeping within 60 days of the issuance of the Board's Final Decision and Order.

EXECUTION OF THIS STIPULATION

The Parties agree that the approval of this Stipulation is left to the discretion of the Administrative Magistrate and the Board. As to any matter this Stipulation leaves to the discretion of the Administrative Magistrate or the Board, neither the Respondent, nor anyone else acting on his behalf, has received any promises or representations regarding the same.

The signatures of the Parties are expressly conditioned on the Administrative Magistrate and the Board accepting this Stipulation.

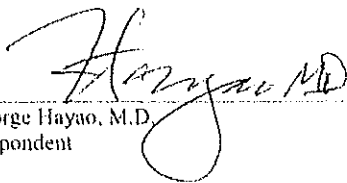
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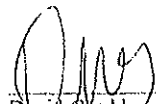
If the Administrative Magistrate rejects any provision contained in this Stipulation, the entire document shall be deemed null and void and the matter will be scheduled for a hearing pursuant to Mass. Gen. Laws c. 30A and 801 CMR 1.00 et seq.

If the Board rejects any provision in this Stipulation or modifies the Sanction and said modification is rejected by the Respondent, the entire document shall be null and void and the matter will be recommitted to DALA for appropriate proceedings and an eventual hearing pursuant to Mass. Gen. Laws c. 30A and 801 CMR 1.00 et seq.

Neither the Parties nor anyone else may rely on the Stipulation in either the proceedings or hearing referenced in the preceding paragraph or in any appeal therefrom.


George Hayao, M.D.
Respondent

Date 6/27/2021


David Gould
Attorney for Respondent

Date 6/28/21

/s/ Lisa L. Fuccione

Lisa L. Fuccione
Complaint Counsel

6/24/2021

Date

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