

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2018-020

In the Matter of)
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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 is Docket 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

2. 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.

3. 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.

4. 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.

5. 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:

- A. Have you been charged with any criminal offense during this period?
- B. Have any criminal offenses/charges against you been resolved during this period?
- C. Are there any criminal charges pending against you today?

6. On February 14, 2014, the second criminal case was dismissed when Nurse A asserted her Fifth Amendment right against self-incrimination.

7. 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.

8. From on or about September 2012 to August 2013, without keeping records, the Respondent prescribed Nurse A the following medications:

- a. Three prescriptions for 60 tablets of Xanax 1 mg, a Schedule IV medication.
Each prescription allowed for four refills.

- b. 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:

- i. 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
- ii. 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.

B. 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.

C. 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,

Candace Lapidus Sloane, MD
Candace Lapidus Sloane, M.D.
Board Chair

Date: May 24, 2018

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2018-020

In the Matter of)
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IRA J. SCHMELKIN, M.D.)
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CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Ira J. Schmelkin, M.D. (Respondent) and the Board of Registration in Medicine (Board) (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 15-356.

Findings of Fact

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.

2. 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.

3. 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.

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5. 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:

- A. Have you been charged with any criminal offense during this period?
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6. On February 14, 2014, the second criminal case was dismissed when Nurse A asserted her Fifth Amendment right against self-incrimination.

7. 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.

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- a. Three prescriptions for 60 tablets of Xanax 1 mg, a Schedule IV medication.
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- b. One prescription for 6 tablets of Vicodin ES, a Schedule II medication.

Conclusion 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 offenses against a provision of the laws of the Commonwealth relating to the practice of medicine, or a rule or regulation adopted thereunder—to wit:

- i. 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
- ii. 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;

B. The Respondent has violated G.L. c. 112, § 5, eighth par. (a) and 243 CMR 1.03(5)(a)1 by fraudulently procuring the renewal of his certificate of registration.

C. 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); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

Sanction and Order

The Respondent's license is hereby REPRIMANDED. This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them. The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

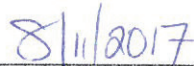
Execution of this Consent Order

The Respondent shall provide a complete copy of this Consent Order with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which the Respondent practices medicine; any in- or out-of-state health maintenance organization with whom the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of all states in which the Respondent has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which the Respondent becomes associated in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that the Respondent has complied with this directive.

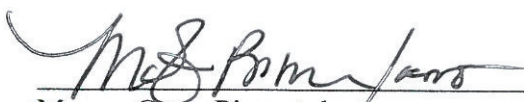
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.



Ira J. Schmelkin, M.D.
Licensee

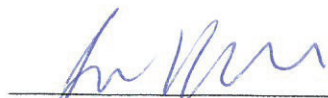


Date



Megan Grew Pimental
Attorney for the Licensee

Date


James Paikos
Complaint Counsel

8/18/2017
Date

So ORDERED by the Board of Registration in Medicine this 24th day of May, 2018.

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair