

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2016-041

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In the Matter of)

PAUL M. ZUSKY, M.D.)
_____)

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Paul M. Zusky, 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. 15-163.

Findings of Fact

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.

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.

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

1. G.L. c. 94C, § 19(a), which requires that physicians issue prescriptions for controlled substances for a legitimate medical purpose and in the usual course of the physician's medical practice.

B. The Respondent has violated G.L. c. 112, § 5, eighth par. (h) and 243 CMR

1.03(5)(a)11 by violating regulations of the Board—to wit,

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; and,
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.

Sanction and Order

The Respondent's license is hereby REPRIMANDED. The Respondent is also ORDERED to pay a fine in the amount of \$2,500. Said fine is payable within 90 (ninety) days of the date on which this Consent Order is approved by the Board. The Board will not renew the license of any physician who fails to pay a fine in a timely manner; this step will be taken automatically and no further notice or process will apply. This sanction is imposed for each

violation of law listed in the Conclusion section and not a combination of any or all of them.

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 and fine. The Respondent is further directed to certify to the Board within ten (10) days that the Respondent has complied with this directive.

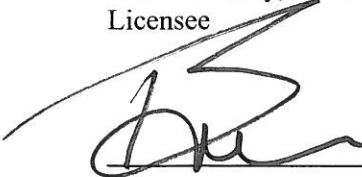
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

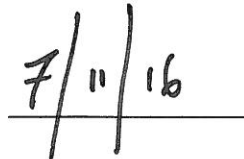


Paul M. Zusky, M.D.
Licensee




Date





Brooks L. Glahn, Esq.
Attorney for the Licensee

Date




John Costello
Complaint Counsel

7/13/16

Date

So ORDERED by the Board of Registration in Medicine this 6th day of October ,
2016.



Board Member