

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2018-052

In the Matter of)

RICHARD J. HELLER, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (the “Board”) has determined that good cause exists to believe the following acts occurred and constitute a violation for which the Board may sanction a licensee. The Board therefore alleges that Richard J. Heller, 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 Statement of Allegations is Docket No. 16-225.

Biographical Information

1. The Respondent was born on May 13, 1949. The Respondent graduated in 1980 from the Temple University School of Medicine. The Respondent lists his practice specialties as psychiatry and addiction psychiatry. He is certified in psychiatry by the American Board of Medical Specialties. The Respondent has been licensed to practice medicine in Massachusetts since October 1, 1980 under certificate number 46668.

Factual Allegations

2. On December 3, 2015, the Respondent entered into a Settlement Agreement with the United States of America, acting through the Department of Justice and its Drug Enforcement Administration (the “DEA”) in order to resolve an active case that the latter had

opened against the Respondent (the "Settlement Agreement") which related to the Respondent's failure to maintain complete and accurate records of controlled substances that Respondent kept in a storage unit and other documentary failures.

3. In entering into said Settlement Agreement, Respondent admitted to failing to maintain an adequate record of controlled substances, failing to conduct a biennial inventory in violation of 21 C.F.R. § 1304.11(c), and failing to maintain controlled substances records separately from all other records or in such form that the controlled substance information was readily retrievable from his ordinary business records, in violation of 21 C.F.R. § 1304.04(g).

4. Pursuant to said Settlement Agreement, Respondent agreed to pay \$20,000 and further agreed to abide by all applicable legal and regulatory requirements imposed by federal law and DEA regulations which relate to the handling of, and recordkeeping regarding, controlled substances.

Legal Basis for Proposed Relief

In the instant matter, the DEA action was based upon conduct that is substantially similar to conduct which this Board may discipline. Parallel disciplinary grounds in Massachusetts include:

- Mass. Gen Laws c. 112, § 5(h) and 243 CMR 1.03(5)(a)(11), which enable the Board to discipline a physician for violations of a rule or regulation of the Board;
- 243 C.M.R. 1.03(5)(a)(18), proscribing misconduct in the practice of medicine;
- 243 CMR 2.07(5), which clarifies that a violation of Mass. Gen. Laws c. 94C also constitutes a violation of a rule or regulation of the Board; and

- 105 CMR 700.006(A) and 700.006(C), which requires compliance with record keeping regulations promulgated by DEA, and requires prescribers to maintain records in a manner that makes them easily available for inspection upon request of the DEA.

The Board has jurisdiction over this matter pursuant to Mass. Gen. Laws 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 (1) 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:

11/8/18

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine
Adjudicatory Case No. 2018-052

In the Matter of)
)
)

RICHARD J. HELLER, M.D.)
_____)

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Richard J. Heller, M.D. (the "Respondent" or "Licensee") and the Board of Registration in Medicine (the "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 Number 16-225.

Findings of Fact

1. The Respondent was born on May 13, 1949. The Respondent graduated in 1980 from the Temple University School of Medicine. The Respondent lists his practice specialties as psychiatry and addiction psychiatry. He is certified in psychiatry by the American Board of Medical Specialties. The Respondent has been licensed to practice medicine in Massachusetts since October 1, 1980 under certificate number 46668.

2. On December 3, 2015, the Respondent entered into a Settlement Agreement with the United States of America, acting through the Department of Justice and its Drug

Enforcement Administration (the “DEA”) in order to resolve investigation that the latter had opened against the Respondent (the “Settlement Agreement”) which related to the Respondent’s failure to maintain complete and accurate records of controlled substances that Respondent kept in a storage unit and other documentary failures.

3. In entering into said Settlement Agreement, Respondent admitted to failing to maintain an adequate record of controlled substances, failing to conduct a biennial inventory in violation of 21 C.F.R. § 1304.11(c), and failing to maintain controlled substances records separately from all other records or in such form that the controlled substance information was readily retrievable from his ordinary business records, in violation of 21 C.F.R. § 1304.04(g).

4. Pursuant to said Settlement Agreement, Respondent agreed to pay \$20,000 and further agreed to abide by all applicable legal and regulatory requirements imposed by federal law and DEA regulations which relate to the handling of, and recordkeeping regarding, controlled substances. A true and accurate copy of the Settlement Agreement is attached hereto as Attachment A and incorporated herein by reference.

Conclusions of Law

A. The Board is authorized to discipline physicians that have been disciplined by another jurisdiction for reasons substantially the same as those set forth in Massachusetts law and regulations. *See* 243 CMR 1.03(5)(a)(12).

B. Whether this Board may exercise its discretion and impose reciprocal discipline depends upon whether the other jurisdiction’s disciplinary action was based upon facts and law that are “substantially similar” to the bases for discipline in our state. *Id.*

C. In the instant matter, the DEA action was based upon conduct that is substantially similar to conduct which this Board may discipline. Parallel disciplinary grounds in Massachusetts include:

- i. Mass. Gen Laws c. 112, § 5(h) and 243 CMR 1.03(5)(a)(11), which enable the Board to discipline a physician for violations of a rule or regulation of the Board;
- ii. 243 C.M.R. 1.03(5)(a)(18), proscribing misconduct in the practice of medicine;
- iii. 243 CMR 2.07(5), which clarifies that a violation of Mass. Gen. Laws c. 94C also constitutes a violation of a rule or regulation of the Board; and
- iv. 105 CMR 700.006(A) and 700.006(C), which requires compliance with record keeping regulations promulgated by DEA, and requires prescribers to maintain records in a manner that makes them easily available for inspection upon request of the DEA.

Sanction and Order

The Respondent is hereby admonished.

Execution of this Consent Order

Complaint Counsel, the Respondent, and the Respondent's counsel agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel, the Respondent, and the Respondent's counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.

As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance 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 he practices medicine; any in- or out-of-state health maintenance organization with whom he has privileges or any other kind of association; any state agency, in- or out-of-state, with which he has a provider contract; any in- or out-of-state medical employer, whether or not he practices medicine there; and the state licensing boards of all states in which he has any kind of license. The Respondent shall also provide this notification to any such designated entities with which he becomes associated in the year following the date of imposition of this admonishment. The Respondent is further directed to certify to the Board within ten (10) days that he 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.

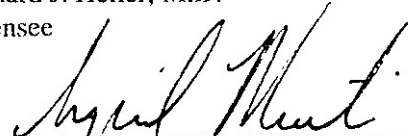


Richard J. Heller, M.D.

Licensee

1-12-18

Date

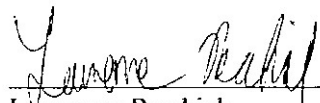


Ingrid Martin, Esq.

Attorney for the Licensee (if any)

1/18/18

Date



Lawrence Perchick

Complaint Counsel

1/25/18

Date

So ORDERED by the Board of Registration in Medicine this 8 day of Nov,
2017.

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Chair

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between, on the one hand, the United States of America acting through the Department of Justice and its Drug Enforcement Administration ("DEA") (collectively, the "United States"), and, on the other hand, Richard Heller, MD ("Heller") (together, the "Parties").

RECITALS

A. Heller is a psychiatrist practicing in North Andover, Massachusetts with DEA number xxxxxxx43.

B. The United States contends that, during the period from September 7, 2011 through June 1, 2015, Heller engaged in conduct that violated the Controlled Substances Act, Title 21 United States Code, Section 801 *et seq.* ("the Act"), and the regulations promulgated thereunder. In particular, the United States contends that it has claims for civil monetary penalties and/or injunctive relief based upon:

1. Heller's failure to maintain adequately detailed, complete, and accurate records of controlled substances that were stored in a North Andover storage unit and at his office in North Andover, Massachusetts resulting in unaccounted-for pills according to an audit conducted in August 2012, in violation of 21 C.F.R. § 1304.22(c);
2. Heller's failure to conduct a biennial inventory in violation of 21 C.F.R. § 1304.11(c); and
3. Heller's failure to maintain controlled substances records separately from all other records or in such form that the information required was readily retrievable from his ordinary business records, in violation of 21 C.F.R. § 1304.04(g).

The conduct referred to in this Recital B is referred to below as the Covered Conduct.

C. Heller admits the above violations.

D. In consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS OF AGREEMENT

In accordance with the mutual covenants and agreements herein, and with full authority to enter into this Agreement and to be bound thereby, the United States and Heller agree as follows:

1. Heller shall pay the United States the sum of twenty thousand dollars (\$20,000.00) (the "Settlement Amount"). As of the date on which this Agreement is signed by all parties ("Effective Date"), this sum shall constitute a debt due and immediately owing to the United States. Heller shall pay the first \$10,000 of the Settlement amount no later than 10 days after the Effective Date, and payment instructions have been received pursuant to Paragraph 2. Thereafter, Heller shall pay \$2,500 at the following four intervals: (a) within 101 days of the Effective Date, (b) within 192 days of the Effective Date, (c) within 283 days of the Effective Date, and (d) within 374 days of the Effective Date.

2. Payment of the Settlement Amount shall be made through www.pay.gov in accordance with written notice to, and written instructions from, the Office of the United States Attorney for the District of Massachusetts.

3. Heller shall continue to abide by all applicable legal and regulatory requirements relating to the handling of, and recordkeeping regarding, controlled substances imposed by federal law and DEA regulations.

4. As long as Heller is in compliance with the terms of the Settlement Agreement, the United States covenants not to sue Heller for the Covered Conduct. Upon timely payment in full of the Settlement Amount described in Paragraph 1 above and subject to the conditions described

in Paragraph 6, the United States' covenant will mature into a release by the United States of Heller from any civil or administrative monetary claim the United States has for the Covered Conduct.

5. This Agreement in no way alters or restricts the United States' rights to enforce the Act and regulations promulgated thereunder by commencing a civil or administrative action against Heller for any violations of the Act which are not based on the Covered Conduct, nor does it restrict the United States or any other sovereign or governmental entity from bringing any criminal charge against Heller. Also, this Agreement does not prevent any sovereign other than the United States from pursuing civil, criminal, and/or administrative claims against Heller for the Covered Conduct and/or any other conduct.

6. The DEA reserves the right to perform four administrative inspections on Heller's North Andover business premises within two years of the date of this Agreement, without warrant, and Heller acknowledges that right and agrees to such inspections. In turn, the DEA acknowledges the nature of Heller's office practice and shall make reasonable efforts to make such administrative inspections, if conducted, in a manner that is least intrusive to patient care and will protect patient safety. Nothing in this paragraph, however, shall impose any enforceable legal or regulatory obligation, commitment, or standard or liability on the part of DEA or the United States that does not otherwise independently exist in law, nor shall it provide a basis for rescission of this agreement.

7. Heller waives and shall not assert any defenses he may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or

in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Heller releases the United States and its agencies, officers, agents, employees, and servants, from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that Heller has asserted, could have asserted, or may assert in the future against the United States or its agencies, officers, agents, employees, or servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. In the event that Heller fails to pay any or all of the payments owed pursuant to this Agreement within five business days of the due date, Heller shall be in Default of his obligations under this Agreement. The United States will provide written notice of the Default to Heller and Heller shall have the opportunity to cure such Default within fourteen days from the date of receipt of the notice. Notice of Default will be delivered to Heller at 95 Main Street, North Andover, MA and his counsel, Ingrid Martin, Esq., at Collora LLP, 100 High Street, 20th Floor, Boston, MA. If Heller fails to cure such Default within fourteen days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become accelerated and immediately due and payable, and interest shall accrue at a simple rate of 12% per annum from the date of Default until the date of payment.

Furthermore, if Heller fails to cure a Default within fourteen days of receiving the Notice of Default, the United States may at its option take one or more of the following actions: 1) rescind its release; 2) file an action for specific performance of this Agreement; 3) institute an action against Heller for the Covered Conduct; or 4) exercise any other right granted by law or in equity.

10. Each party and signatory to this Agreement represents that it/he/she freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. This Agreement is intended to be for the benefit of the Parties only; it does not create any rights or benefits as to third parties. The Parties do not release any claims against any other person or entity.

12. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Massachusetts. This Agreement shall be deemed to have been drafted by all Parties to this Agreement and, therefore, shall not be construed against any Party for that reason in any subsequent dispute.

13. This document contains the entire agreement between Heller and the United States regarding the claims at issue herein. The Agreement may be amended only by a writing signed by both Parties.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the Parties.

15. This Agreement may be executed in counterparts, each of which constitutes an

original and all of which constitute one and the same agreement.

16. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.


17. The Parties may execute this Agreement via facsimile and/or by portable document format (.pdf), both of which shall be deemed the equivalent of an original signature.

18. Both Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

19. This Agreement shall be effective on the date of the signature of the last signatory to the Agreement.

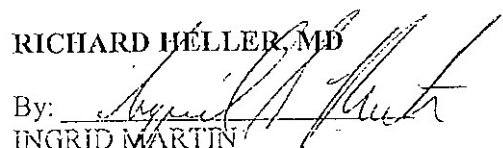
DATED: 12/3/15

~~THE UNITED STATES OF AMERICA~~

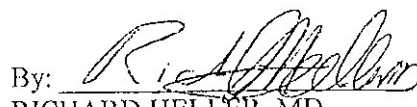
By: 
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DATED: 12/3/2015

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DATED: 12/3/2015

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