

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2008-023

_____)
In the Matter of)
)
JOHN F. McCLELLAN, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (“the Board”) has reason to believe that John F. McClellan, M.D. (Respondent) has practiced medicine while his ability to do so was impaired by alcohol in Board of Registration in Medicine docket number 07-151.

Biographical Information

1. The Respondent was born on May 8, 1949. He is a 1975 graduate of the University of Pennsylvania School of Medicine. He has been licensed to practice medicine in Massachusetts under certificate number 41357 since 1977. He is currently employed in an administrative capacity at Jordan Hospital. Prior to March 21, 2007, he was the Chief of Medicine at Jordan Hospital and a shareholder and employee of PMG Physician Associates, P.C. (PMG), a physician-owned practice group.

Factual Allegations

2. On March 6, 2007, the Board received a report, filed pursuant to G.L. c. 112, § 5F, by a physician who expressed his concern that the Respondent’s practice of medicine was impaired by his abuse of alcohol.

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3. The Respondent's abuse of alcohol resulted in the Respondent harassing PMG employees and colleagues; appearing intoxicated at staff meetings; cancelling patient appointments with little or no notice; and failing to make scheduled hospital rounds.

4. On March 21, 2007, the Board accepted the Respondent's Voluntary Agreement Not to Practice Medicine.

5. On April 15, 2007, the Respondent entered into a substance abuse monitoring contract with Physicians Health Services (PHS) of the Massachusetts Medical Society.

6. The Respondent has been compliant with the terms of his PHS contract (which includes a requirement that he not ingest alcohol and that he continue in out-patient psychotherapy) since he entered into it.

Conclusions of Law

Pursuant to G.L. c. 112, §5, tenth par. (c) and 243 C.M.R. 1.03(5)(a)³ the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician engaged in conduct that places into question his competence to practice medicine.

Pursuant to G.L. c. 112, §5, tenth par. (d) and 243 C.M.R. 1.03(5)(a)⁴ the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician practiced medicine while his ability to do so was impaired by alcohol.

Pursuant to *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979), the Board may discipline a physician upon proof satisfactory to a majority of the Board that said

physician has committed conduct which undermines public confidence in the integrity of the medical profession.

The Board has jurisdiction of this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This proceeding will be conducted according to the provisions of G.L. c. 30A and 801 CMR 1.01 et seq.

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, in addition to or instead of revocation or suspension, order one or more of the following: admonishment, reprimand, censure, fine, the performance of uncompensated public service, a course of education or training, or other limitation on the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why he should not be disciplined for the conduct described herein.

By the
Board of Registration in Medicine,

Date: July 9, 2008


John B. Herman, M.D.
Chairman

SENT CERTIFIED MAIL 7/9/08 JB

COMMONWEALTH OF MASSACHUSETTS

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BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2008-023

)
In the Matter of)

)
JOHN F. McCLELLAN, M.D.)
_____)

CONSENT ORDER

John F. McClellan, M.D. (Respondent) and Complaint Counsel agree that the Board of Registration in Medicine (Board) may issue this Consent Order with 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 described below and agrees the Board may make conclusions of law and impose a sanction in resolution of Board docket number 07-151.

FINDINGS OF FACT

1. The Respondent was born on May 8, 1949. He is a 1975 graduate of the University of Pennsylvania School of Medicine. He has been licensed to practice medicine in Massachusetts under certificate number 41357 since 1977. He is currently employed in an administrative capacity at Jordan Hospital. Prior to March 21, 2007, he was the Chief of Medicine at Jordan Hospital and a shareholder and employee of PMG Physician Associates, P.C. (PMG), a physician-owned practice group.

2. On March 6, 2007, the Board received a report, filed pursuant to G.L. c. 112, § 5F, by a physician who expressed his concern that the Respondent's practice of medicine was impaired by his abuse of alcohol.

3. The Respondent's abuse of alcohol resulted in the Respondent harassing PMG employees and colleagues; appearing intoxicated at staff meetings; cancelling patient appointments with little or no notice; and failing to make scheduled hospital rounds.

4. On March 21, 2007, the Board accepted the Respondent's Voluntary Agreement Not to Practice Medicine.

5. On April 15, 2007, the Respondent entered into a substance abuse monitoring contract with Physicians Health Services (PHS) of the Massachusetts Medical Society.

6. The Respondent has been compliant with the terms of his PHS contract (which includes a requirement that he not ingest alcohol and that he continue in out-patient psychotherapy) since he entered into it.

CONCLUSIONS OF LAW

A. The Respondent has violated G.L. c. 112, §5, tenth par. (c) and 243 C.M.R. 1.03(5)(a)(3) in that he engaged in conduct that places into question his competence to practice medicine.

B. The Respondent has violated G.L. c. 112, §5, tenth par. (d) and 243 C.M.R. 1.03(5)(a)(4) in that he practiced medicine while his ability to do so was impaired by alcohol.

C. The Respondent has engaged in conduct that undermines the public confidence in the integrity of the medical profession, in violation of the standards set forth in *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979), and *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982).

SANCTION

The Respondent's license to practice medicine is hereby indefinitely suspended. The Respondent may petition the Board for a stay of the suspension upon documentation of one year of continuous sobriety and entry into a Probation Agreement, the terms of which would include, but not be limited to, compliance with a PHS contract, counseling and a Board approved work place monitor.

This sanction is imposed for Conclusions of Law A, B and C individually, and not for a combination of them.

EXECUTION OF THIS CONSENT ORDER

The parties agree that the approval of this Consent Order is left to the discretion of the Board. The signature of the Respondent and Complaint 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 stipulations contained herein 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 that this Consent Order leaves 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 and Probation Agreement 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; the state licensing boards of all states in which he has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Bureau of Health Care Safety and Quality. The Respondent shall also provide this notification to any such designated entities with which he becomes associated for the duration of this indefinite suspension and probationary period. 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.

John F. McClellan M.D.
John F. McClellan, M.D.
Respondent

June 24, 2008
Date

W. Scott Liebert
W. Scott Liebert, Esquire
Respondent's Counsel

6/27/2008
Date

James J. Barrett, Esquire
James J. Barrett, Esquire
Complaint Counsel

June 30, 2008
Date

Accepted by the Board of Registration in Medicine this 9th day of July, 2008.

John B. Herman, M.D.
John B. Herman, M.D.
Chairman

SENT CERTIFIED MAIL
7/9/08 KSH

III. JURISDICTION

The parties agree that the Board has the authority to enter into this Probation Agreement, and that the Board may enforce the terms of this Agreement in accordance with applicable laws and regulations and the provisions of this Agreement.

IV. CONDITIONS OF PROBATION

During the probationary period, which shall be effective on the date the Board accepts this Agreement, the Respondent shall comply with each of the following requirements:

A. The Respondent agrees to undergo monitoring by the Board until at least April 15, 2012 (five years from the effective date of his Physician Health Services contract) and for such further period thereafter as the Board shall for reasonable cause order. At the Board's discretion, any periods during which the Respondent is not practicing medicine, during the probationary period, may extend the probationary period. The Respondent may petition for termination of this Agreement for one year. Any termination will be contingent upon his compliance with his Physicians Health Services contract, and compliance with this Agreement.

B. The Respondent shall refrain from all consumption of alcohol, and use of all controlled substances, unless specifically prescribed by a treating physician who has been informed of the Respondent's chemical dependency history, for a legitimate medical purpose and in the usual course of treating physician's medical practice.

C. The Respondent shall not prescribe any controlled substances to himself or any member of his family; and agrees that this provision contained in this sentence will survive the probationary period. Prescribing controlled substances under this paragraph must be in accordance with all applicable state and federal controlled substance registration requirements.

D. The Respondent has entered into a contract, April 15, 2007, and in a form acceptable to the Board, with Physician Health Services ("PHS") of the Massachusetts Medical Society. The Respondent agrees to abide fully by all terms of this contract. This contract includes a provision that PHS will promptly notify the Board of any lapse or violation of its terms by Respondent, and the contract provides for any necessary waivers of privilege or confidentiality by the Respondent. PHS shall submit quarterly reports to the Board which detail the Respondent's compliance with this contract.

E. The Respondent shall undergo random bodily fluid screenings as required by PHS or as may be required by the Board, which requirement may be reasonably modified from time to time consistent with scientific or practical advances in the field of alcohol and drug detection. The Respondent shall submit random samples at least weekly on average or at such other frequency as the Board or PHS may require. An officer of PHS shall file reports of the screening evaluations completed during the previous three months with the Board within thirty (30) days as part of their quarterly report. Said reports shall specify the dates on which samples were taken and shall specify the results of the analysis of

such samples and shall be signed by the person in charge. In addition, the Respondent shall obtain the written agreement of PHS to notify the Board immediately by telephone and in writing.

1. a) in the event that Respondent's sample is found to contain any evidence of alcohol or any controlled substance in violation of this Probation Agreement; or

b) in the event that PHS has other reliable evidence that the Respondent has used alcohol or any controlled substance in violation of this Probation Agreement;

2. in the event that the Respondent misses any random bodily fluid test, excluding an administrative or laboratory mistake beyond the Respondent's control;

3. in the event that the Respondent refuses to cooperate with PHS in monitoring bodily fluids in any manner; or

4. in the event that the Respondent withdraws any waiver filed in connection with this Probation Agreement; or

5. in the event that the PHS contract is terminated for any reason other than successful completion of the contract, as determined by the Director of PHS.

The Respondent agrees to waive any privileges she may have concerning such reports and disclosures to the Board by PHS.

F. The Respondent shall at all times during the length of the probationary period be reasonably available to provide an immediate bodily fluid screen at the request of the Board.

G. The Respondent shall immediately notify the Board in writing any time that any treating physician writes a prescription for the Respondent for a controlled substance in Schedules II through IV, inclusive.

H. The Respondent shall be under the care of a licensed or certified health care professional experienced in the treatment of chemical dependency who shall submit written reports, including reports on all missed sessions, to the Board or its designee as often as the Board deems necessary but in any event at least once every three months. Copies of these attendance reports shall be part of the quarterly report that PHS submits to the Board. The health care professional may immediately notify the Board by telephone whenever, in his professional judgment, the Respondent poses a danger to the health, safety, and welfare of the Respondent's patients. -In addition, the health care professional shall immediately notify the Board by telephone and in writing in the event that the Respondent terminates treatment, or is non-compliant with the treatment plan. In the event that the health care professional notifies the Board that the Respondent poses a danger to the health, safety, or welfare of the Respondent's patients, or terminates treatment, the Board may obtain any and all information, reports, and records for a period not to exceed ninety (90) days prior to the date of said notification from the health care provider concerning the Respondent. The Respondent hereby waives any privileges concerning such information, reports, records and disclosures to the Board. The health care professional shall confirm in writing, within ten (10) days of the Board's accepting this agreement, his agreement and undertaking with respect to the obligations set forth in this Agreement, and shall notify the Board if the Respondent withdraws any waiver filed

in connection with this Agreement. The Respondent may not terminate treatment with, or change the identity of the health care professional without prior Board approval. The Respondent has chose Donna E. McQuinn, Psy.D. as the healthcare professional who shall fulfill the monitoring requirements of this paragraph.

I. The Respondent shall participate at least weekly in group-counseling program for chemically dependent persons, approved in advance by the PHS. The Respondent shall keep a diary of his attendance at such meetings. The Respondent shall submit this diary to PHS for periodic verification and PHS shall submit current copies of the diary in its quarterly report to the Board.

J. The Respondent shall file, within thirty (30) days of the executions of this Probation Agreement, written releases and authorizations sufficiently broad in scope so as to allow the Board to obtain any and all medical and laboratory reports, treating physicians' reports and records concerning the Respondent's treatment during the probationary period. PHS may retain as confidential the identity of informants who have disclosed suspected or known substance misuse to those programs under the promise of confidentiality.

K. All agreements whereby third parties are to provide written reports, releases, records or any other information to the Board under this Probation Agreement shall be submitted to the Board for approval within thirty (30) days after the Probation Agreement is approved by the Board. All such releases and agreements must, in addition to waiving

any relevant state law privileges or immunities, provide the Board with access to all material covered by 42 CFR, Part 2, and the Criminal Offender Records Information (CORI) Act, so-called, M.G.L. c.6, ss. 167-178; all such releases and agreements must provide that the released party shall notify the Board if any waiver is withdrawn. In the event that any such releases or waivers are not sufficient to obtain access to any information which the Board in its discretion considers relevant, the Respondent agrees to obtain personally such information and furnish it to the Board, to the extent permitted by law.

L. In the event that the Respondent seeks licensure to practice medicine in another state, the Respondent shall notify the Board of such fact and shall disclose to the licensing authority in such state his status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another states' licensing authority.

M. In the event the Respondent should leave Massachusetts to reside or practice out of the state, the Respondent shall promptly notify the Board in writing of the new location as well as the dates of departure and return. Periods of residence or practice outside Massachusetts will not apply to the reduction of any period of the Respondent's probationary licensure, unless the Respondent enters into a monitoring agreement, approved by the Board, in the new location.

O. The Respondent shall provide a complete copy of this Probation Agreement, 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 medical employer, whether or not he practices medicine there; the Drug Enforcement Agency, Boston Diversion Group; Department of Public Health, Bureau of Health Care Safety and Quality, and the state licensing boards of all states in which he has any kind of license to practice medicine. The Respondent shall also provide this notification to any such designated entities with which she becomes associated for the duration of this Agreement. 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.

P. The Respondent may engage in the practice of medicine under such conditions as the Board may impose. The Respondent shall engage in the practice of medicine only as a hospitalist at the Jordan Hospital Emergency Department and as a Physician Advisor to Jordon Hospital's case management program.

Q. Until the Board, upon petition of the Respondent, orders otherwise, the Respondent shall be monitored by Dr. Harvey Kowaloff. Doctor Kowaloff, and any

Board approved successor, shall submit quarterly evaluations of the Respondent to the Board. The Respondent's monitor shall immediately report any concerns about potential violations of this Probation Agreement by telephone, and in writing, directly to the Board in writing.

R. The Respondent, and not the Board, shall be responsible for the payment of any fee or charge occasioned by the Respondent's compliance with this Probation Agreement.

S. The Respondent may request that the Board modify any of the conditions set forth above. The Board may, in its discretion, grant such modification. Except for requests for modifications related to the identity of the health care professionals referenced in Paragraphs H, and the Respondent's employment, the Respondent may make such a request not more than once in any year period, nor any sooner than one year from the date of this Probation Agreement.

V. TERMINATION OF PROBATION

A. If the Respondent complies with his obligations as set forth above, the Board, at the expiration of the five-year-period, shall, upon petition by the Respondent, terminate the Respondent's probationary period and probation with the Board, unless the Respondent's probation is extended in accordance with paragraph IV(A).

B. If the Respondent fails to comply with his obligations as set forth above, the Respondent's license to practice medicine may be immediately suspended, as agreed in

Section I.

June 9, 2008
Date

John F. McClellan M.D.
John F. McClellan, M.D.
Respondent

June 10, 2008
Date

W. Scott Liebert
W. Scott Liebert, Esquire
Attorney for the Respondent

Accepted on this 9th day of July, 2008, by the Board of Registration in Medicine.

John B. Herman M.D.
John Herman, M.D., Chairman
Board of Registration in Medicine

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