

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2009-020
(RM-09-391)

In the Matter of)
)
Gerald Morris, M.D.)
)
_____)

FINAL DECISION AND ORDER

This matter came before the Board for final disposition on the basis of the Administrative Magistrate's Recommended Decision, dated September 9, 2009. After full consideration of that Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, amending it by adding the following:

Findings of Fact

In light of the Respondent's failure to file an answer to the Statement of Allegations, the Board hereby finds the Respondent in default. G.L. c. 30A, § 10(2). Therefore, the allegations contained in the Statement of Allegations are deemed admitted. See, Peters & Russel, Inc. v. Dorfman, 188 F.2d 711 (7th Cir. 1951); and Northwest Yeast Co. v. Broutin, 133 F.2d 638 (6th Cir. 1943). The Board makes the following findings:

1. The Respondent was licensed to practice medicine in Massachusetts from June 13, 2001, until March 24, 2008, when his license lapsed for failure to renew.
2. On September 20, 2006, the Board accepted the Respondent's Voluntary Agreement Not to Practice Medicine.
3. An organization called "Affpower Enterprise" (hereinafter "Affpower") used the internet to distribute and dispense prescription pharmaceuticals unlawfully.
4. Affpower unlawfully distributed and dispensed prescription pharmaceuticals for which no valid prescriptions had been issued.
5. Affpower recruited licensed physicians from different states and Puerto Rico to review and approve orders for prescription drugs by Affpower customers. The Respondent was one such physician.
6. From approximately April 2006 through June 2006, the Respondent reviewed for Affpower well in excess of 22,000 customer orders for controlled and non-controlled prescription pharmaceuticals, and he approved approximately 98% of those orders. Most of the orders were for controlled prescription pharmaceuticals.
7. The Respondent was paid approximately \$3.00 for each customer order he reviewed.
8. The Respondent received at least \$52,446 from Affpower as compensation for his reviews, approvals, and prescriptions issued to Affpower customers.

9. In determining whether to issue prescriptions, the Respondent had absolutely no contact with customers, instead relying exclusively upon the information provided by customers in Affpower's online health questionnaire.
10. The Respondent knew and acknowledged that he lacked any physician-patient relationship with Affpower customers.
11. The Respondent knew and acknowledged that, in issuing prescriptions on behalf of Affpower he did not do so in the usual course of a professional medical practice.
12. The Respondent knew that he was not issuing the prescriptions for a legitimate medical purpose but simply to make money.
13. The Respondent knew or suspected that the prescriptions were legally invalid under the laws of the Commonwealth and under federal laws.
14. The Respondent routinely reviewed many hundreds of orders daily, often spending fewer than five seconds to review and approve each order.
15. The Affpower websites contained various materially false representations and used false and fraudulent pretenses to create a misleading impression of Affpower's business and to induct and encourage customers to purchase prescription pharmaceuticals from Affpower.
16. The misrepresentations often included but were not limited to, assurances that its physicians and pharmacies complied with all applicable state laws; that the company met or exceeded all regulations governing prescription pharmaceutical sales; that prescribing the specific medications sold and dispensed by Affpower on the basis of an online health questionnaire was a

safe, effective, and medically accepted practice; and that Affpower doctors were uniquely qualified to prescribe medications online and thoroughly and conscientiously reviewed each customer health questionnaire before prescribing drugs.

17. The Respondent either knew that the representations were materially false and the pretenses were fraudulent, or he acted with reckless indifference to their material falsity and fraudulence.
18. On July 27, 2007, a federal grand jury in San Diego, California returned a 313-count indictment against the Respondent and 17 other defendants.
19. The indictment was based on the operation of Affpower.
20. The Respondent was charged with racketeering and conspiracy to commit racketeering; distribution and dispensing of controlled substances and conspiracy to distribute and dispense controlled substances; mail and wire fraud and conspiracy to commit mail and wire fraud; and conspiracy to dispense and dispensing misbranded drugs with the intent to defraud and mislead.
21. On July 8, 2008, the Respondent pled guilty to one count of conspiracy to illegally distribute controlled substances and agreed to forfeit \$52,446.
22. The Respondent's plea agreement states that he was advised and understood that if the sentencing judge does not follow any of the parties' sentencing recommendations, he nevertheless had no right to withdraw the plea.
23. The Respondent's sentencing has been postponed until completion of the trial against other defendants.

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24. The Respondent was expected to testify for the federal government at the trial against other defendants.
25. On December 17, 2003, the Board adopted Policy 03-06, *Internet Prescribing*, which states that issuance of a prescription, by any means, including the Internet or other electronic process, that does not meet the requirements set forth in G.L. c. 94C, §19(a) and in the *Internet Prescribing* policy is unlawful.

Conclusions of Law

- A. The Respondent has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine, in violation of G.L. c. 112, §5. This conviction is also a violation of 243 CMR 1.03(5)(a)7.
- B. The Respondent violated G.L. c. 94C, §19(a) by issuing internet prescriptions for other than legitimate medical purposes and outside the usual course of the physician's professional practice. This violation constitutes an offense against the provisions of the laws of the Commonwealth relating to the practice of medicine or rule or regulation promulgated thereunder. See G.L. c. 112, §5, and 243 CMR 1.03(5)(a)2.
- C. The Respondent engaged in conduct which calls into question his competence to practice medicine, in violation of 243 CMR 1.03(5)(a)3.
- D. The Respondent's knowledge or reckless indifference about the misrepresentations contained in Affpower's website, as well as his participation in this enterprise, violates 243 CMR 1.03(5)(a)10 and 243 CMR 1.03(5)(a)18, by constituting practicing medicine deceitfully, or engaging in

conduct that has the capacity to deceive or defraud, and misconduct in the practice of medicine.

- E. The Respondent violated 243 CMR 2.07(13)(a) because he did not maintain a medical record for each patient.
- F. 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 and Discipline in Medicine, 378 Mass. 519 (1979) and Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982).

Sanction

The facts of this case establish that the Respondent has failed to adhere to the minimum standards, set out by the Board, for prescribing medicine: his failure to properly examine patients and to maintain medical records is inexcusable. See In the Matter of Gustavo M. Okrassa, M.D., Board of Registration in Medicine, Adjudicatory Case No. 02-50-DALA (Final Decision and Order, July 16, 2003). The Board has long viewed with the utmost seriousness any physician's failure to faithfully discharge the grave responsibility of issuing prescriptions for controlled substances. In the Matter of David C. Arndt, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2005-031 (Final Decision and Order, November 16, 2005).

The Board has dealt strictly with cases, such as the Respondent's, that involve convictions related to the unlawful distribution of controlled substances, because of the close nexus between the criminal conviction and the practice of medicine. In the Matter of Mukunda Mukherjee, M.D., Board of Registration in Medicine, Adjudicatory Case

No. 2007-016 (Final Decision and Order, October 17, 2007); In the Matter of Alan Perl, M.D., Board of Registration in Medicine, Adjudicatory Case No. 96-17-DALA (Final Decision and Order, October 7, 1998); In the Matter of Eric A. Baum, M.D., Board of Registration in Medicine, Adjudicatory Case No. 95-9-DALA (Final Decision and Order, March 29, 1995).

In addition to, and related to, the Respondent's unlawful distribution of controlled substances, the Respondent violated G.L. c. 94C, §19(a) by issuing internet prescriptions for other than legitimate medical purposes and outside the usual course of his professional practice, and the Respondent violated 243 CMR 2.07(13)(a) because he did not maintain a medical record for each patient. The Respondent also engaged in deceitful or fraudulent acts in his practice of medicine, in violation of 243 CMR 1.03(5)(a)10 and 243 CMR 1.03(5)(a)18. The Board may sanction a physician for any and all of those violations. Taken as a whole, they demonstrate a reckless indifference to his responsibilities as a physician.

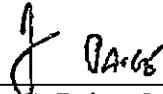
As a function of its obligations to protect the public health, welfare and safety, it is proper for the Board to exercise its authority to discipline the Respondent. See Levy v. Board of Registration and Discipline in Medicine, 378 Mass, 519 (1979). Therefore, the Board hereby REVOKES the Respondent's inchoate right to renew his license. This sanction is imposed for Conclusions of Law "A" through "F" each individually, and not a combination of any or all of them.

The Respondent shall provide a complete copy of this Final Decision and 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; the state licensing boards of all states in which he has any kind of license; 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 he becomes associated for the duration of this revocation. 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 notify independently, at any time, any of the entities designated above, or any other affected entity, of any action taken.

The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

DATE: December 16, 2009



Peter G. Paige, M.D.
Chairman

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-09-391

Gerald Morris, M.D.,
Respondent

Appearance for Petitioner:

Luz A. Carrion, Esquire
Complaint Counsel
Board of Registration in Medicine
200 Harvard Mills Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Pro Se
P.O. Box 1318
Vineyard Haven, MA 02568

Administrative Magistrate:

Judithann Burke

**ORDER OF DEFAULT
RECOMMENDED DECISION**

On July 1, 2009, the Board of Registration in Medicine issued a Statement of Allegations, ordering the Respondent, Gerald Morris, M.D. to show cause why he should not be disciplined because he had allegedly issued prescriptions under the title of "Affpower Enterprise", an organization that used the Internet to distribute and dispense prescription pharmaceuticals unlawfully. The Board also alleged that the

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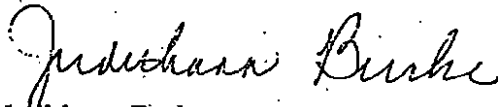
Respondent practiced medicine in violation of law, regulations, and/or good and accepted medical practice. The Respondent voluntarily agreed not to practice medicine on September 20, 2006. His Massachusetts medical license certificate no. 210594 lapsed on March 24, 2008 for failure to renew. The Respondent has never filed an Answer to the Statement of Allegations.

801 CMR 1.01(6)(d) requires that a Respondent file full, direct and specific Answers to a Statement of Allegations. The Respondent has failed to file such an Answer. Thus, pursuant to M.G.L.c. 30A s. 10(2), the Respondent is defaulted. As a consequence of the default, each of the allegations contained in the Statement of Allegations is deemed to be true.

Further, the Respondent has failed to update the Board with his current address. Correspondence from the Board and DALA forwarded to two of his last known addresses has repeatedly been returned.

Accordingly, I recommend that the Board of Registration in Medicine impose appropriate sanctions against the Respondent.

Division of Administrative Law Appeals,
BY:



Judithann Burke
Administrative Magistrate

DATED: September 9, 2009

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY NO. 2009-020

In the Matter of
Gerald C. Morris, M.D.

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 Gerald C. Morris, M.D. (Respondent) has practiced medicine in violation of law, regulations, and/or good and accepted medical practice, as set forth herein. The investigative docket number associated with this order to show cause is 06-436.

BACKGROUND INFORMATION

1. The Respondent was born on March 24, 1971. He is a 1997 graduate of Dartmouth Medical School. He was licensed to practice medicine in Massachusetts under certificate number 210594 from June 13, 2001 until March 24, 2008, when his license lapsed for failure to renew.
2. On September 20, 2006, the Board accepted the Respondent's Voluntary Agreement Not to Practice Medicine.

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FACTUAL ALLEGATIONS

3. The "Affpower Enterprise" was an organization that used the Internet to distribute and dispense prescription pharmaceuticals unlawfully.
4. The Affpower Enterprise unlawfully distributed and dispensed prescription pharmaceuticals for which no valid prescriptions had been issued.
5. The Affpower Enterprise recruited licensed physicians from different states and Puerto Rico to review and approve orders for prescription drugs by Affpower customers. The Respondent was one of such doctors.
6. From on or before April 2006 through June 2006, the Respondent reviewed for the Affpower Enterprise well in excess of 22,000 customer orders for mostly controlled and some non-controlled prescription pharmaceuticals, and he approved approximately 98% of those orders.
7. Typically, the Respondent was paid about \$3.00 for each customer order reviewed.
8. The Respondent received at least \$52,446.00 from his Affpower recruiter as compensation for the Respondent's reviews, approvals, and invalid and unlawful prescriptions issued to Affpower customers.
9. In determining whether to issue prescriptions, the Respondent had absolutely no contact with customers, but instead relied exclusively upon the information provided by customers in Affpower's online health questionnaire.
10. The Respondent knew and acknowledged that he lacked any physician-patient relationship with Affpower customers.
11. The Respondent knew and acknowledged that, in issuing prescriptions on behalf of the Affpower Enterprise he did not do so in the usual course of a professional medical practice.

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12. The Respondent knew and acknowledged that he was not issuing the prescriptions for a legitimate medical purpose but simply to make money.

13. The Respondent knew or suspected that the prescriptions issued by him were legally invalid under the laws of the Commonwealth and under federal law.

14. The Respondent routinely reviewed many hundreds of orders daily, often spending fewer than five seconds to review and approve each order.

15. The Affpower websites contained various materially false representations and used false and fraudulent pretenses to create a misleading impression of Affpower's business and to induce and encourage customers to purchase prescription pharmaceuticals from the Affpower Enterprise.

16. The misrepresentations often included, but were not limited to, assurances that Affpower doctors and pharmacies complied with all applicable state laws; that the enterprise met or exceeded all regulations governing prescription pharmaceutical sales; that prescribing the specific medications sold and dispensed by Affpower purely on the basis of an online health questionnaire was a safe, effective and medically accepted practice; and that Affpower doctors were uniquely qualified to prescribe medications online and thoroughly and conscientiously reviewed each customer health questionnaire before prescribing drugs.

17. The Respondent either knew that the representations were materially false and the pretenses were fraudulent or acted with reckless indifference to their material falsity and fraudulence.

18. On July 27, 2007, a federal grand jury in San Diego, California returned a 313-count indictment against the Respondent and 17 other defendants.

19. The 313-count indictment was based on the operation of the Affpower Enterprise.

20. The Respondent was charged with racketeering and conspiracy to commit racketeering; distribution and dispensing of controlled substances and conspiracy to distribute and dispense controlled substances; mail and wire fraud, and conspiracy to commit mail and wire fraud; and conspiracy to dispense and dispensing of misbranded drugs with the intent to defraud and mislead.

21. On July 8, 2008, the Respondent pleaded guilty to one count of conspiracy to illegally distribute controlled substances and agreed to forfeit \$52,446.

22. The Respondent's plea agreement states that he was advised and understood that if the sentencing judge does not follow any of the parties' sentencing recommendations, he nevertheless had no right to withdraw the plea.

23. The Respondent's sentencing has been postponed until completion of the trial against other defendants.

24. The Respondent was expected to testify for the federal government at the trial against other defendants.

25. On December 17, 2003, the Board adopted Policy 03-06, *Internet Prescribing*, which states that issuance of a prescription, by any means, including the Internet or other electronic process, that does not meet the requirements set forth in G.L. c. 94C, § 19(a) and in the policy is unlawful.

LEGAL BASIS FOR PROPOSED RELIEF

A. Pursuant to G.L. c. 112, § 5, ninth par. (b) and 243 C.M.R. 1.03(5)(a)2, the Board may discipline a physician upon proof satisfactory to a majority of the Board that the physician has committed an offense against the provisions of the laws of the Commonwealth relating to the

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practice of medicine or rule or regulation promulgated thereunder. General Laws c. 94C relates to the practice of medicine, including:

1. G.L. c. 94C, § 19(a), issuing prescriptions for other than legitimate medical purposes and outside the usual course of the physician's professional practice.

B. Pursuant to G.L. c. 112, §5, ninth 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 which calls into question his competence to practice medicine, including but not limited to practicing medicine with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.

C. Pursuant to G.L. c. 112, §5, ninth par. (g), the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician was convicted of a criminal offense which reasonably calls into question his ability to practice medicine.

D. Pursuant to 243 C.M.R. 1.03(5)(a) 7, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician was convicted of a crime.

E. Pursuant to G.L. c. 112, §5, ninth par. (h) and 243 C.M.R. 1.03(5)(a) 11, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician violated a rule or regulation of the Board.

1. Pursuant to 243 C.M.R. 2.07(5), a licensee who violates G.L. c. 94C also violates a rule or regulation of the Board.

2. Pursuant to 243 C.M.R. 2.07(13), a physician shall maintain a medical record for each patient that is adequate to enable the physician to provide proper diagnosis and treatment.

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F. Pursuant to 243 C.M.R. 1.03(5)(a) 10, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician practiced medicine deceitfully, or engaging in conduct that has the capacity to deceive or defraud.

G. Pursuant to 243 C.M.R. 1.03(5)(a) 18, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has committed misconduct in the practice of medicine.

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 C.M.R. 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,

John B. Herman, MD

John B. Herman, M.D.
Chairman

Date: July 1, 2009

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