

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY NO. 2010-002

)
In the Matter of)
)
Bijan Niaki, 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 Bijan Niaki, M.D. ("Respondent") has practiced medicine in violation of law, regulations, and/or good and accepted medical practice, as set forth herein. The docket number associated with this order to show cause is 08-420.

BACKGROUND INFORMATION

1. The Respondent was born on January 8, 1958. He graduated from the University of Tehran, Faculty of Medicine in 1984 and has been licensed under certificate number 72033 to practice medicine in Massachusetts since 1989. He is board-certified in anesthesiology and pain medicine. He worked as an anesthesiologist at Morton Hospital and Medical Center (Morton), was the president of the anesthesia group and director of the pain clinic until May 2008.

FACTUAL ALLEGATIONS

2. In 1989, the Respondent abused fentanyl during his residency. He obtained treatment and entered his first Physician Health Services substance abuse monitoring contract (PHS contract).
3. From approximately January 2008 to March 2008, the Respondent used fentanyl patches prescribed by his physician for pain related to injuries suffered in a 2005 automobile accident.

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4. From approximately March 2008 to April 2008, the Respondent diverted sufentanil for personal use from Morton Hospital approximately 7-8 times.
5. In early May 2008, the Respondent used diazepam to treat his withdrawal from sufentanil.
6. On May 6, 2008, the Respondent entered a PHS contract.
7. On May 7, 2008, the Respondent's urine toxicology screen tested positive for oxazepam.
8. From May 8, 2008 to May 16, 2008, the Respondent was admitted to the Marworth Healthcare Professionals' Program (Marworth) for an evaluation. Upon admission, his urine toxicology screen tested positive for nordazepam, oxazepam, and temazepam.
9. On May 16, 2008, the Respondent left Marworth and returned to his home because his wife was threatening to take their children and return to Iran where the Respondent can not return.
10. On May 19, and 21, 2008, the Respondent's urine toxicology screen tested positive for oxazepam.
11. On May 23, 2008, the Respondent entered into a new PHS contract.
12. On May 26, 2008 the Respondent returned to Marworth. He was discharged on July 17, 2008.
13. On August 17, 2008, the Respondent threatened to kill himself in response to a child custody disagreement with his wife. As a result, he was taken to the hospital and treated.
14. On August 21, 2008, the Respondent was discharged.
15. On September 4, 2008, the Respondent again threatened suicide in response to child custody disagreement with his wife and was taken to the hospital for evaluation.
16. On September 6, 2008, the Respondent was admitted for inpatient treatment.
17. On September 16, 2008, the Respondent was discharged from the hospital.
18. On September 28, 2008, after further child custody disagreements, the Respondent again threatened suicide. He was admitted for treatment for both psychiatric and cardiac issues.

19. On September 29, 2008, the Respondent was transferred pursuant to M.G.L. c. 123, § 12 for increased depression and third attempted suicide.

20. On September 29, 2008, the Respondent entered a Voluntary Agreement Not to Practice.

LEGAL BASIS FOR PROPOSED RELIEF

A. 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 the physician has engaged in conduct which calls into question his competence to practice medicine.

B. Pursuant to violated G.L. c. 112, §5, ninth par. (d) and 243 CMR 1.03(5)(a)4, the Board may discipline a physician upon proof satisfactory to a majority of the Board that the physician practiced medicine while his ability to do so was impaired by drugs

C. Pursuant to Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979) and 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 physician has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Pursuant to G.L. c. 112, §§ 5, 61 and 62, the Board has jurisdiction of this matter. 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,



Peter Paige, M.D.
Chairman

Date: January 6, 2010

4. From approximately March 2008 to April 2008, the Respondent diverted sufentanil for personal use from Morton Hospital approximately 7-8 times.
5. In early May 2008, the Respondent used diazepam to treat his withdrawal from sufentanil.
6. On May 6, 2008, the Respondent entered a PHS contract.
7. On May 7, 2008, the Respondent's urine toxicology screen tested positive for oxazepam.
8. From May 8, 2008 to May 16, 2008, the Respondent was admitted to the Marworth Healthcare Professionals' Program (Marworth) for an evaluation. Upon admission, his urine toxicology screen tested positive for nordazepam, oxazepam, and temazepam.
9. On May 16, 2008, the Respondent left Marworth and returned to his home because his wife was threatening to take their children and return to Iran where the Respondent can not return.
10. On May 19, and 21, 2008, the Respondent's urine toxicology screen tested positive for oxazepam.
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13. On August 17, 2008, the Respondent threatened to kill himself in response to a child custody disagreement with his wife. As a result, he was taken to the hospital and treated.
14. On August 21, 2008, the Respondent was discharged.
15. On September 4, 2008, the Respondent again threatened suicide in response to child custody disagreement with his wife and was taken to the hospital for evaluation.
16. On September 6, 2008, the Respondent was admitted for inpatient treatment.
17. On September 16, 2008, the Respondent was discharged from the hospital.
18. On September 28, 2008, after further child custody disagreements, the Respondent again threatened suicide. He was admitted for treatment for both psychiatric and cardiac issues.

- 19. On September 29, 2008, the Respondent was transferred pursuant to M.G.L. c. 123, § 12 for increased depression and third attempted suicide.
- 20. On September 29, 2008, the Respondent entered a Voluntary Agreement Not to Practice.
- 21. On October 1, 2008, the Respondent was discharged.

CONCLUSIONS OF LAW

- A. The Respondent has violated G.L. c. 112, §5, ninth par. (c) and 243 C.M.R. 1.03(5)(a) 3 in that he engaged in conduct which calls into question his competence to practice medicine.
- B. The Respondent has violated G.L. c. 112, §5(d) and 243 CMR 1.03(5)(a)(4) in that he practiced medicine while his ability to do so was impaired by drugs.
- 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 is hereby indefinitely suspended. The Respondent may petition the Board for a stay of suspension upon eighteen (18) months of continuous sobriety. The Respondent may be given credit for sobriety dating back to September 29, 2008. As a condition of any such stay, the Respondent is required to enter into a five-year Probation Agreement, the terms of which should include, but not be limited to, weekly psychotherapy, weekly participation in Alcoholics Anonymous, compliance with a PHS contract, and submission of a Board-approved practice plan with monitoring, as well as any other terms and conditions the Board deems appropriate.

Pursuant to G.L. c. 112, § 5A and 243 C.M.R. 1.05(7), the Respondent's license to practice medicine is hereby permanently restricted from: accessing fentanyl and sufentanil by any means;

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and administering general anesthesia. Upon successful completion of the five-year probationary period, the Respondent may petition to lift either or both of the restrictions.

Prior to petitioning to lift the restriction to administer general anesthesia, the Respondent must demonstrate his knowledge of the principles of general anesthesia and must submit a practice plan with his petition. The practice plan must include monitoring of the Respondent's general anesthesia cases by a Board-approved monitor who will submit monthly reports to the Board. Said restriction will only be lifted upon Board approval of the practice plan and an extension of probation for one year to effectuate the Board-approved monitoring of the Respondent's general anesthesia cases.

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

EXECUTION OF THIS CONSENT ORDER

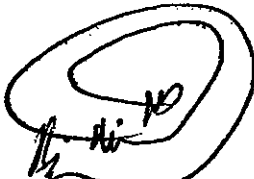
The parties agree that the approval of this Consent Order is left to the discretion of the Board. The signature of the Respondent and Complaint Counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the stipulations 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 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 following the date of imposition of this permanent license restriction. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

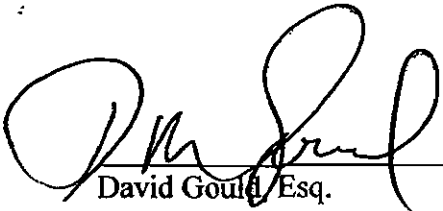
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.



Bijan Niaki, M.D.
Respondent

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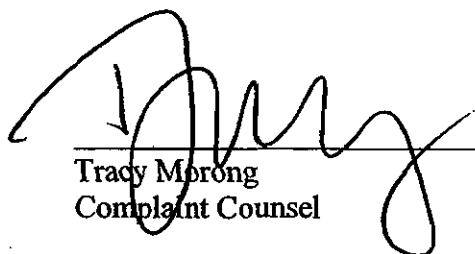
Date



David Gould, Esq.
Attorney for Respondent

12/10/09

Date



Tracy Morong
Complaint Counsel

12/11/09

Date

So ordered by the Board of Registration in Medicine this 6th day of January 2010



Peter Paige, M.D.
Chairman

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