

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY NO. 2008-039

_____)
In the Matter of)
)
Gary Asher, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (the "Board") has reason to believe that, in Docket No. 06-547, Gary Asher, M.D. (the "Respondent") has: (1) violated General Laws c. 94C, which relates to the practice of medicine, and in thereby doing so has also violated the Board's regulations and engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Biographical Information

1. The Respondent was born on September 6, 1944. He graduated from the Medical College of Virginia in 1971. The Respondent is board-certified in Family Medicine and holds privileges at Nashoba Valley Medical Center. The Respondent has been licensed to practice medicine in Massachusetts under certificate number 39323 since April 26, 1976.

Factual Allegations

2. The Respondent obtained samples of Schedule VI medications from pharmaceutical representatives for the purpose of dispensing said medications to the Respondent's brother and sister-in-law.

3. The Respondent dispensed medications for the treatment of cholesterol elevation and testicular failure with erectile dysfunction to his brother by mailing said samples to his brother's residence in Texas.

4. The Respondent dispensed medications for the treatment of osteopenia and anxiety to his sister-in-law by mailing said samples to his sister-in-law's residence in Texas.

5. Although the Respondent reviewed test results relevant to his brother's and sister-in-law's conditions, the Respondent acknowledges that neither his brother nor his sister-in-law were patients of his.

6. It was the Respondent's understanding that his brother and sister-in-law were prescribed the same medications by their respective physicians in Texas.

7. The Respondent did not charge his brother or sister-in-law for the samples mailed.

8. The Respondent's practice of mailing samples of medications for testicular failure, hypercholesterolemia, osteoporosis and anxiety to his brother and sister-in-law in Texas lasted approximately 5 years.

9. The Respondent stopped this practice in 2006.

Legal Basis for Proposed Relief

A. Pursuant to G.L. c. 112, § 5, tenth 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 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, § 9(b), dispensing controlled substances in amounts or quantities exceeding that needed for immediate treatment or to non-patients.

B. Pursuant to G.L. c. 112, § 5, tenth 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 the physician has 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.

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 lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

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 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 he should not be disciplined for the conduct described herein.

By the Board of
Registration in Medicine,



John B. Herman, M.D.
Chair

Dated: October 22, 2008

SENT CERTIFIED MAIL

10/22/08 1513

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY NO. 2008-039

)
In the Matter of)
)
Gary Asher, M.D.)
)

CONSENT ORDER

Gary Asher, M.D. (the Respondent) and the Complaint Counsel agree that the Board of Registration in Medicine (the Board) may issue this Consent Order with all the force and effect of a Final Decision within the meaning of 801 C.M.R. 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 Docket No. 06-547.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on September 6, 1944. He graduated from the Medical College of Virginia in 1971. The Respondent is board-certified in Family Medicine and holds privileges at Nashoba Valley Medical Center. The Respondent has been licensed to practice medicine in Massachusetts under certificate number 39323 since April 26, 1976.

FINDINGS OF FACT

2. The Respondent obtained samples of Schedule VI medications from pharmaceutical representatives for the purpose of dispensing said medications to the Respondent's brother and sister-in-law.

3. The Respondent dispensed medications for the treatment of cholesterol elevation and testicular failure with erectile dysfunction to his brother by mailing said samples to his brother's residence in Texas.
4. The Respondent dispensed medications for the treatment of osteopenia and anxiety to his sister-in-law by mailing said samples to his sister-in-law's residence in Texas.
5. Although the Respondent reviewed test results relevant to his brother's and sister-in-law's conditions, the Respondent acknowledges that neither his brother nor his sister-in-law were patients of his.
6. It was the Respondent's understanding that his brother and sister-in-law were prescribed the same medications by their respective physicians in Texas.
7. The Respondent did not charge his brother or sister-in-law for the samples mailed.
8. The Respondent's practice of mailing samples of medications for testicular failure, hypercholesterolemia, osteoporosis and anxiety to his brother and sister-in-law in Texas lasted approximately 5 years.
9. The Respondent stopped this practice in 2006.

CONCLUSIONS OF LAW

- A. The Respondent has violated 243 C.M.R. 1.03(5)(a)11 in that he has violated a rule or regulation of the Board, to wit 243 C.M.R. 2.07(5).
- B. The Respondent has violated 243 C.M.R. 2.07(5) in that the Respondent violated G.L. c. 94C.
- C. The Respondent has violated G.L. c. 94C, § 9(b), in that he dispensed controlled substances in amounts or quantities exceeding that needed for immediate treatment and to non-patients.

D. 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.

SANCTION

The Respondent is hereby reprimanded. The Respondent shall also complete ten additional, Board-approved, Category I Continuing Medical Education (CME) credits beyond those required for license renewal concerning risk management. Five of these additional credits should be in the area of medical ethics and five in the area of prescribing. The Respondent shall provide documentation to the Board of the CME credits within six months of approval of the Consent Order. This sanction is imposed for Conclusions of Law A, B, C, and D 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 in the year following the date of imposition of this reprimand. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

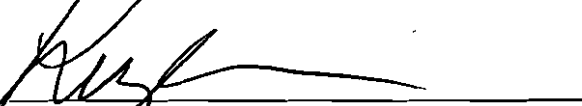
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.


 Gary Asher, M.D.
 Respondent

8/21/08
 Date


 Edwin H. Howard, Esq.
 Attorney for Respondent

8/26/08
 Date


 Luz A. Carrion, Esquire
 Complaint Counsel

8/28/08
 Date

So ordered by the Board of Registration in Medicine this 22nd day of October, 2008.

John B. Herman, M.D.

John B. Herman, M.D.
Chairman

SENT CERTIFIED MAIL
10/22/08 10h

Asher. Gary