

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2009-006

_____)
In the Matter of)
)
Barbara L. Philipp, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has reason to believe that Barbara Philipp, M.D. (Respondent) has inappropriately prescribed Schedule II through V controlled substances to friends and family members, and then personally used those controlled substances. The Board also has reason to believe that the Respondent obtained a signed blank prescription from a colleague under false pretense and then used that prescription to obtain controlled substances for her own personal use.

BACKGROUND

1. The Respondent was born on September 29, 1953. She is a 1979 graduate of the State University of New York College of Medicine. She received her license to practice medicine in Massachusetts in August 1982 under certificate number 49869. The Respondent's specialty is pediatrics and she is certified by the American Board of Pediatrics. The Respondent is affiliated with the Boston Medical Center (BMC).

FACTUAL ALLEGATIONS

2. In or about October 2002, the Respondent fell injuring her back. She developed back pain which required that she take a medical leave of absence from approximately January 2003 through August 2003. The Respondent briefly returned to work in September 2003 but due to

recurrent back pain took a second medical leave of absence from January to September 2004, when she returned to work part time. At that time, she was under the care of her physicians, including a pain specialist. The Respondent continued to receive prescriptions from her physicians.

3. Between February 1, 2003 and June 30, 2003, while the Respondent was on her first medical leave, pharmacy records revealed that the Respondent was receiving prescriptions for Ambien (Schedule IV Controlled Substance), Hydrocodone/APAP (Schedule III Controlled Substance), and Diazepam (Schedule IV Controlled Substance) from her physicians. During that same time period, the Respondent also wrote eleven (11) prescriptions in her husband's name: three (3) prescriptions for Diazepam, and eight (8) prescriptions for Ambien. The Respondent personally used the eleven prescriptions that she wrote for her husband.

4. Between January 1, 2004 to June 30, 2004, while the Respondent was on a second leave of absence from work and receiving prescriptions from her physicians that included Tramadol, Ambien, and seven (7) prescriptions for Percocet (Schedule II Controlled Substance), the Respondent also wrote two (2) prescriptions for Percocet to two friends; eleven (11) prescriptions for Ambien in her husband's and daughter's names and two prescriptions for Diazepam in her husband's name. The Respondent personally used the prescriptions she wrote to her family members and friends.

5. In or about October 2004, in preparation for a lengthy plan trip, the Respondent's asked a colleague to sign a blank prescription for a family member. The colleague complied with the Respondent's request. The Respondent then wrote the prescription to herself for sixty (60) Percocet.

6. On October 2, 2007, the Respondent entered into a PHS Behavioral Health Monitoring Contract with random Screens.

LEGAL BASIS FOR PROPOSED RELIEF

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, sec. 5(h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician who violates any rule or regulation of the Board.

Pursuant to 243 CMR 2.07(5), a physician who violates any provision of G.L. c. 94C also violates the Board's regulations.

Pursuant to G.L. c. 112, § 5(b) and 243 CMR 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, § 19(a), relates to the practice of medicine.

The Board has jurisdiction over this matter pursuant to G.L. c. 112, secs. 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 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 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 restriction 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 Registration in Medicine,

Dated: *February 25, 2009*

J Paige

Peter Paige, M.D.
Chairman

SENT CERTIFIED MAIL
2/25/09 KJP

2004, when she returned to work part time. At that time, she was under the care of her physicians, including a pain specialist. The Respondent continued to receive prescriptions from her physicians.

3. Between February 1, 2003 and June 30, 2003, while the Respondent was on her first medical leave, pharmacy records revealed that the Respondent was receiving prescriptions for Ambien (Schedule IV Controlled Substance), Hydrocodone/APAP (Schedule III Controlled Substance), and Diazepam (Schedule IV Controlled Substance) from her physicians. During that same time period, the Respondent also wrote eleven (11) prescriptions in her husband's name: three (3) prescriptions for Diazepam, and eight (8) prescriptions for Ambien. The Respondent personally used the eleven prescriptions that she wrote for her husband.

4. Between January 1, 2004 to June 30, 2004, while the Respondent was on a second leave of absence from work and receiving prescriptions from her physicians that included Tramadol, Ambien, and seven (7) prescriptions for Percocet (Schedule II Controlled Substance), the Respondent also wrote two (2) prescriptions for Percocet to two friends; eleven (11) prescriptions for Ambien in her husband's and daughter's names and two prescriptions for Diazepam in her husband's name. The Respondent personally used the prescriptions she wrote to her family members and friends.

5. In or about October 2004, in preparation for a lengthy plane trip, the Respondent's asked a colleague to sign a blank prescription for a family member. The colleague complied with the Respondent's request. The Respondent then wrote the prescription to herself for sixty (60) Percocet.

6. On October 2, 2007, the Respondent entered into a PHS Behavioral Health Monitoring Contract with random Screens.

CONCLUSIONS OF LAW

A. The Respondent has violated G.L. c. 112 sec. 5(b) and 243 CMR 1.03(5)(a)2, in that she has committed an offense against the laws of the Commonwealth relating to the practice of medicine. Specifically she has violated G.L. c. 94C.

B. The Respondent has violated G.L. c 112 sec. 5(h) and 243 CMR 1.03(5)(a)11, in that she has violated the rules and regulations of the Board. Specifically, the Respondent has violated 243 CMR 2.07 (5) through her violations of G.L. c. 94C.

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 *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982) and *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979).

SANCTION

The Respondent’s license to practice medicine is hereby indefinitely suspended. The Respondent may petition the Board for a stay of suspension. Said suspension shall be stayed upon the Respondent’s entry into a Board-approved Probation Agreement that requires entry into and compliance with a PHS Behavioral Health Monitoring Contract with random screens and any such conditions the Board in its discretion deems necessary. The term of the Probation Agreement shall be for five years. The Respondent shall be allowed to petition to terminate the Probation Agreement on or after two years from the date that the Board accepts the Probation Agreement. At the time of the filing of any Petition to Terminate Probation, the Respondent must be able to demonstrate that she has successfully completed her PHS

contract and that she has complied with all the terms of her Probation Agreement. Although Respondent has the right to petition the Board for a stay of her suspension, the Board retains the discretion to deny said petition, or to accept said petition under such terms and conditions as it may order.

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, the Respondent's Attorney 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 entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on the Consent Order. As to any matter this Consent Order leaves to the discretion of the Board, neither the Respondent, nor anyone else acting on his behalf, has received any promises or representations regarding the same.

If the Board accepts this Consent Order, the Respondent waives any right of appeal that he may have.

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 she practices medicine; any in- or out-of-state health maintenance organization with whom she has privileges or any other kind of association; any state agency, in- or

out-of-state, with which she has a provider contract; any in- or out-of-state medical employer, whether or not she practices medicine there; the state licensing boards of all states in which she has any kind of license to practice medicine; 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 she becomes associated for the duration of this suspension. The Respondent is further directed to certify to the Board within ten (10) days that she 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, or any action it has taken.

Date: 10/3/08

Barbara L. Philipp, M.D.
Barbara L. Philipp, M.D.
Respondent

Date: 10/3/08

Paul R. Cirel, Esq.
Paul R. Cirel, Esq.
Attorney for Respondent

Date: 10/4/08

Jodi A. Greenburg
Jodi A. Greenburg
Complaint Counsel

Accepted by the Board of Registration in Medicine on this 25th day of February, 2009

Peter Paige
Peter Paige, M.D.

SENT CERTIFIED MAIL
2/25/09 KSD

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

BOARD OF REGISTRATION
IN MEDICINE

Adjudicatory Case No. 2009-006

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| In the Matter of |) |
| Barbara L. Philipp, M.D. |) |
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PROBATION AGREEMENT

I. COMPLIANCE WITH AGREEMENT

The Respondent agrees that violation of this Probation Agreement, including such provisions which survive this Agreement, shall constitute sufficient grounds for the immediate suspension of the Respondent's license to practice medicine, or any such lesser sanction as the Board may deem fit to impose, without prior notice to the Respondent. The Respondent hereby waives any claim or defense to any subsequent action by the Board to suspend the Respondent's license or impose such other lesser sanction, for any such violation or violations, except that the Respondent shall be entitled to defend against the assertion of a violation of this Agreement. The Respondent acknowledges and agrees that by entering into this Agreement, the Respondent is relinquishing important procedural and substantive rights.

II. PARTIES

The parties to this Probation Agreement are the Board of Registration in Medicine (hereinafter "the Board") and Barbara L. Philipp, M.D. (hereinafter "the Respondent").

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 for five years following acceptance of this Agreement and for such further period thereafter as the Board shall for reasonable cause order. The Respondent may petition for termination of this Agreement two years from the date that it is accepted by the Board. Any termination of this Agreement will be contingent upon the Respondent's compliance with all of the terms of this Agreement as well as the successful completion of her Physician Health Services contract. At the Board's discretion, any periods during which the Respondent is not practicing medicine, during the probationary period, may extend the probationary period.

B. The Respondent shall comply with her PHS contract and refrain from the use of all controlled substances, unless specifically prescribed by a treating physician , for a legitimate medical purpose and in the usual course of the treating physician's medical practice.

C. The Respondent shall not prescribe any controlled substances in Schedules II, III and IV, to herself or any member of her family; and agrees that this provision contained in this sentence will survive the probationary period. Prescribing of 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, dated October 2, 2007, and in a form acceptable to the Board, with Physician Health Services (hereinafter "PHS") of the Massachusetts Medical Society. The Respondent agrees to abide fully by all terms of this contract. The Respondent further agrees to successfully complete the term of this contract. The Board is not requiring an extension of this contract beyond its current term, provided it is successfully completed. This contract includes a provision that PHS will promptly inform the Board of any lapse or violation of its terms by the 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. PHS shall notify the Board of the Respondent's successful completion of this contract.

E. 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.

F. The Respondent shall be under the care of a licensed or certified health care professional 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 shall immediately notify the Board by telephone whenever, in his or her professional judgment, the Respondent poses a potential 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 or her 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 chosen Randall Paulsen, M.D. as the healthcare professional who shall fulfill the monitoring requirements of this paragraph.

G. The Respondent shall file, within thirty (30) days of the execution 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.

H. 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.

I. 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 her status with this Board. The Respondent shall submit to the Board copies of all correspondence and application materials submitted to another states' licensing authority.

J. 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 residency 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.

K. The Respondent shall appear before the Board or a committee of its members at such times as the Board may request, upon reasonable advance notice, commensurate with the gravity or urgency of the need for such meeting as determined by the Board or such committee.

L. 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 she practices medicine; any in- or out-of-state health maintenance organization with whom she has privileges or any other kind of association; any state agency, in- or out-of-state, with which she has a provider contract; any in- or out-of-state medical employer, whether or not she practices medicine there; the Drug Enforcement Agency, Boston

Diversion Group; Department of Public Health, Drug Control Program, and the state licensing boards of all states in which she 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 Probation Agreement. The Respondent is further directed to certify to the Board within ten (10) days that she 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.

M. 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 at Boston Medical Center. Until the Board, upon petition of the Respondent, orders otherwise, the Respondent's clinical practice shall be monitored by Dr. Barry Zuckerman and/or Dr. Susan Minear. Doctors Zuckerman, Minear, 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.

N. 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.

O. 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 F and M and the Respondent's

employment, the Respondent may make such a request not more than once in any one 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 her 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 her obligations as set forth above, the Respondent's license to practice medicine may be immediately suspended, as agreed in Section I.

2/6/09
Date

2/10/09
Date

Barbara L Philipp
Respondent
[Signature]
Attorney for the Respondent

Accepted this 25th day of February, 2009, by the Board of Registration in Medicine.

[Signature]
Peter Paige, M.D.
Board of Registration in Medicine

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