

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY CASE NO. 2008-051 -

In the Matter of)
)
Robert P. Wespiser, M.D.)
)

ORDER

The Board hereby **ALLOWS** the Respondent's Petition to Stay, subject to the attached Probation Agreement.

The Board hereby **DENIES** the Respondent's Petition to Waive Press Release.

John B. Herman, MD

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

Dated: December 17, 2008

SENT CERTIFIED MAIL
KJB 12/17/08

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2008-051

_____)
 In the Matter of)
)
 Robert P. Wespiser, M.D.)
 _____)

STATEMENT OF ALLEGATIONS

In Board of Registration in Medicine (the Board) Docket No. 07-302, the Board has reason to believe that Robert P. Wespiser, M.D. (Respondent) has fraudulently obtained controlled substances by issuing prescriptions in the names of fictitious patients and then filling them for self-use.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on May 27, 1957. He graduated from University of Massachusetts Medical School in June 1983, and has been licensed to practice medicine in Massachusetts since March 19, 1986 under certificate number 55555. The Respondent specializes in internal medicine and is certified by the American Board of Internal Medicine. He is a partner in Suburban Internal Medicine, a group practice located in Lee, Massachusetts. He has nursing home privileges at Laurel Lake Center for Health and Rehabilitation in Lee, where he is medical director, and at Providence Care Nursing Center in Lenox. He has hospital privileges at Berkshire Medical Center.

FACTUAL ALLEGATIONS

2. For a period of about six months, beginning in February 2001, the Respondent was prescribed hydrocodone/APAP (a Schedule III controlled substance) and tramadol (a Schedule VI controlled substance) by an orthopedic surgeon, following a leg fracture.

3. Beginning in September 2001, after the orthopedic surgeon had stopped prescribing these medications for the Respondent, the Respondent obtained hydrocodone/APAP, tramadol and, on one occasion, lorazepam (a Schedule IV controlled substance), by writing prescriptions using the names of fictitious patients. The Respondent continued to issue and fill these prescriptions with increasing frequency until June 2006.

4. The Respondent uttered and filled most of the prescriptions he issued in the names of fictitious patients at two Brooks Pharmacies; he paid cash for all of the prescriptions.

5. The Respondent also obtained hydrocodone/APAP and tramadol for self use on the Internet during 2002, by posing as a patient.

6. The Respondent, who had stopped using alcohol in 1990, resumed drinking in December 2004. His drinking increased until early 2006 when he was drinking up to ten (10) ounces of vodka daily.

7. In June 2006, as a result of family concerns, the Respondent underwent a five-day evaluation and then participated in an inpatient treatment program.

8. The Respondent entered into a monitoring contract for chemical dependency with Physician Health Services (PHS) of the Massachusetts Medical Society with an effective date of July 9, 2006. Except for one missed screen on March 21, 2008, he has been in compliance with that contract since he entered into it.

LEGAL BASIS FOR PROPOSED RELIEF

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 said physician has violated any law of the Commonwealth relating to the practice of medicine or any rule or regulation adopted there under.

Pursuant to G.L. c. 94C, § 33, no person shall intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge, including but not limited to the forgery or falsification of a prescription.

Pursuant to G.L. c. 112, § 5(c), and 243 CMR 1.03(5)(a)3, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has engaged in conduct which places into question his competence to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions.

Pursuant to G.L. c. 112, § 5(h) and 243 CMR 1.03(5)(a)11, the Board may discipline a physician, upon proof satisfactory to a majority of the Board that said physician has violated 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 243 CMR 2.07(19), a physician is prohibited from prescribing controlled substances in Schedules II, III, and IV for his own use.

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

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 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,

Dated: December 17, 2008

John B. Herman, M.D.

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

SENT CERTIFIED MAIL

12/17/08 KDD

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2008-051

_____)
 In the Matter of)
)
 Robert P. Wespiser, M.D.)
 _____)

CONSENT ORDER

Robert P. Wespiser, M.D. (Respondent) and the Complaint Counsel agree that the Board of Registration in Medicine (Board) may issue this Consent Order, in lieu of convening an adjudicatory proceeding, 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 Board may make conclusions of law and impose a sanction in resolution of Board of Registration in Medicine docket number 07-302 as set forth below.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on May 27, 1957. He graduated from University of Massachusetts Medical School in June 1983, and has been licensed to practice medicine in Massachusetts since March 19, 1986 under certificate number 55555. The Respondent specializes in internal medicine and is certified by the American Board of Internal Medicine. He is a partner in Suburban Internal Medicine, a group practice located in Lee, Massachusetts. He has nursing home privileges at Laurel Lake Center for Health and Rehabilitation in Lee, where he is medical director, and at Providence Care Nursing Center in Lenox. He has hospital privileges at Berkshire Medical Center.

FINDINGS OF FACT

2. For a period of about six months, beginning in February 2001, the Respondent was prescribed hydrocodone/APAP (a Schedule III controlled substance) and tramadol (a Schedule VI controlled substance) by an orthopedic surgeon, following a leg fracture.
3. Beginning in September 2001, after the orthopedic surgeon had stopped prescribing these medications for the Respondent, the Respondent obtained hydrocodone/APAP, tramadol and, on one occasion, lorazepam (a Schedule IV controlled substance), by writing prescriptions using the names of fictitious patients. The Respondent continued to issue and fill these prescriptions with increasing frequency until June 2006.
4. The Respondent uttered and filled most of the prescriptions he issued in the names of fictitious patients at two Brooks Pharmacies; he paid cash for all of the prescriptions.
5. The Respondent also obtained hydrocodone/APAP and tramadol for self use on the Internet during 2002, by posing as a patient.
6. The Respondent, who had stopped using alcohol in 1990, resumed drinking in December 2004. His drinking increased until early 2006 when he was drinking up to ten (10) ounces of vodka daily.
7. In June 2006, as a result of family concerns, the Respondent underwent a five-day evaluation and then participated in an inpatient treatment program.
8. The Respondent entered into a monitoring contract for chemical dependency with Physician Health Services (PHS) of the Massachusetts Medical Society with an effective date of July 9, 2006. Except for one missed screen on March 21, 2008, he has been in compliance with that contract since he entered into it.

CONCLUSIONS OF LAW

A. The Respondent has violated G.L. c. 112, §5(b) and 243 CMR 1.03(5)(a)2 by unlawfully prescribing and obtaining controlled substances in violation of G.L. c. 94C.

B. The Respondent has violated G.L. c. 112, § 5(c) and 243 CMR 1.03 (5)(a)3 in that he engaged in conduct that places into question his competence to practice medicine by practicing medicine fraudulently.

C. The Respondent has violated G.L. c. 112, § 5(h) and 243 CMR 1.03(5)(a)11 in that he has violated the rules and regulations of the Board.

1. The Respondent has violated 243 CMR 2.07(5), by unlawfully prescribing and obtaining controlled substances.
2. The Respondent has violated 243 CMR 1.03(5)(a)10, in that he has engaged in conduct which has the capacity to deceive or defraud.
3. The Respondent has violated 243 CMR 2.07(19), by prescribing controlled substances in Schedules II through IV for his own use.

SANCTION AND ORDER

The Respondent's license to practice medicine is hereby indefinitely suspended. The Respondent may petition for a stay of this suspension upon documentation of continuous abstinence from chemical substances for a period of eighteen (18) months, which period may include abstinence next preceding the entry into this Consent Order. Although the Respondent has the right to petition the Board for a stay of the suspension, the Board retains the discretion to deny said petition or to accept said petition under terms and conditions the Board may order. As a condition of any stay of the suspension, the Board will require the Respondent to enter into a five-year Probation Agreement with provisions that include, but are not limited to, the

Respondent's participation in a chemical dependency monitoring contract with Physician Health Services. Said Probation Agreement will also include provisions for Board-approved work place monitors at all work locations. The Probation Agreement would further require the Respondent's work place monitors to monitor the Respondent's prescribing of Schedules II, III, and IV controlled substances and to report to the Board on a quarterly basis. The work place monitor at his private practice shall also check the office's inventory of samples on a monthly basis, in particular in regard to samples of tramadol, and shall report any missing samples to the Board.

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

This sanction is imposed for Docket No. 07-302.

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 Complaint Counsel, the Respondent and the Respondent's 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 these stipulations in this proceeding.

As to any matter 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 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 Indefinite Suspension. 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.

Robert P. Wespiser M.D.
Robert P. Wespiser, M.D.
Respondent

12/1/2008
Date

Michael R Rawson
Michael R Rawson, Esq.
Respondent's Counsel

12-4-08
Date

Alice Cole Oliff
Alice Cole Oliff
Complaint Counsel

12-8/08
Date

Accepted by the Board of Registration in Medicine on this 17th day of December, 2008.

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

SENT CERTIFIED MAIL
12/17/08 KDL

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BOARD OF REGISTRATION
IN MEDICINE

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Robert P. Wespiser, 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 Robert P. Wespiser, 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 until at least July 9, 2011 (five years from the date of his current contract with Physician Health Services) 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.
- 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 the 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 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 July 9, 2006, 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 his PHS contract, which shall be continued throughout the duration of the probationary period. 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.

E. The Respondent shall undergo random bodily fluid or other 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;
- 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 he 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 shall immediately notify the Board by telephone whenever, in his 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, is hospitalized, 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 chosen Jennifer Michaels, M.D. as the healthcare professional who shall fulfill the monitoring requirements of this paragraph.

I. The Respondent shall participate at least weekly in a group-counseling program for chemically dependent persons, approved in advance by the Board. 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 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. 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 any other state's 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 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.

N. 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.

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, with which he has a provider contract; any 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 he becomes associated for the duration of this Probation 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 conditions that the Board may impose. The Respondent shall engage in the practice of medicine only at Suburban Internal Medicine, 710 Stockbridge Road, Lee, Massachusetts, Laurel Lake Center, Lee, Massachusetts, and Providence Care Center, Lenox, Massachusetts. The Respondent shall maintain privileges at Berkshire Medical Center, Pittsfield, Massachusetts, where he holds the position of Chief of Staff but does not see patients.

Q. Until the Board, upon petition of the Respondent, orders otherwise, the Respondent shall be monitored by Thomas Consolati, M.D. at Suburban Internal Medicine and Laurel Lake Center, by A. Gray Ellrodt, M.D. at Berkshire Medical Center,

and, by Craig Kirby, D.O. of Family Practice Associates, 20 Elm Street, Pittsfield, Massachusetts, at Providence Care Center. Doctors Consolati, Ellrodt and Kirby, and any Board-approved successor(s), shall submit quarterly evaluations of the Respondent to the Board including reports concerning the Respondent's prescribing of Schedules II, III, and IV controlled substances. In addition, Dr. Consolati, monitor of the Respondent's private practice at Suburban Internal Medicine, shall check that office's inventory of samples on a monthly basis, in particular samples of Tramadol, and shall report any missing samples to the Board. All of the Respondent's monitors shall immediately report any concerns about potential violations of this Probation Agreement by telephone, and in writing, directly to the Board.

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 Q and the Respondent's employment at Paragraph P, 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 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.

Dec 5, 2008
Date

12-8-08
Date

Robert P. Wipmer MD
Respondent

Michael K... ..
Attorney for the Respondent

Accepted this 17th day of December, 2008, by the Board of
Registration in Medicine.

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

SENT CERTIFIED MAIL
12/17/08 KSB