

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY CASE NO.
2006-013 (RM-06-163)

IN THE MATTER OF)
)
Kenneth B. Boyd, M.D.)
_____)

Final Decision & Order

This matter came before the Board for consideration of the Administrative Magistrate's Recommended Decision, dated July 7, 2009. After full consideration of the Recommended Decision, which is attached hereto and incorporated by reference, the Board adopts the Recommended Decision, including the Stipulation of Facts and Conclusion of Law proposed by the parties. The Board further adopts the Recommended Sanction of the parties.

The recommended sanction is consistent with Board precedent. In cases involving misconduct, involving inadequate supervision, the Board has imposed a reprimand as a sanction. See *In the Matter of John J. Walsh, Jr., M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 99-24-XX (Consent Order, November 23, 1999) (in which the Board imposed a reprimand and required the physician to complete CME's in risk management, where the physician failed to adequately supervise his physician's assistant resulting in an arthroscopic procedure on the wrong knee.)

In a case where misconduct included a physician's use of an informed consent form releasing him from any legal liability for a procedure, the Board prohibited the physician from continuing to perform the procedure. *In the Matter of Joseph Py, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 04-35-XX (Consent Order, July 24, 2004).

Therefore, the Respondent is hereby reprimanded, fined \$3,000, and is prohibited from being involved in any way in the IV administration of H₂O₂. The \$3,000 fine is payable within ninety (90) days of the date of this Board Order.

The Board will not renew the license of any physician who fails to pay a fine in a timely manner; this step will be taken automatically and no further notice or process will apply.

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 in the year following the date of imposition of this sanction. The Respondent is further directed to certify to the Board within ten (10) days that he has complied with this directive.

Date: September 16, 2009



John B. Herman, M.D.
Chairman

SENT CERTIFIED MAIL

9-16-09 KSD

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Board of Registration in Medicine,
Petitioner

v.

Docket No. RM-06-163

Kenneth B. Boyd, M.D.,
Respondent

Appearance for Petitioner:

James Barrett, Esq.
Complaint Counsel
Board of Registration in Medicine
Harvard Mill Square, Suite 330
Wakefield, MA 01880

Appearance for Respondent:

Michael L. Blau, Esq.
Lawrence M. Kraus, Esq.
Claire Bishop Abley, Esq.
Foley & Lardner, LLP
111 Huntington Avenue
Boston, MA 02199

Michael M. Burke, P.C.
116 Long Pond Road, Suite 9
Plymouth, MA 02360

Administrative Magistrate:

Richard C. Heidlage, Esq.

RECOMMENDED DECISION

On March 15, 2006, the Petitioner, Board of Registration in Medicine, issued a Statement of Allegations ordering the Respondent, Kenneth B. Boyd, M.D., to show


cause why he should not be disciplined for conduct set forth in the Statement of Allegations.

On March 15, 2006, the matter was referred to the Division of Administrative Law Appeals (DALA). On April 10, 2006 the Respondent filed his Answer to Statement of Allegations and on May 24, 2006 filed a Respondents' Motion to Dismiss. A Pre-hearing Conference was held on September 8, 2006. After further proceedings and on August 21, 2008, the parties filed a Stipulation of Facts and Conclusion of Law, a copy of which is attached hereto as Attachment 1, containing agreed-upon Findings of Fact and a Conclusion of Law.

The Stipulation of Facts and Conclusion of Law is incorporated herein by reference. Other than the agreed-upon Findings of Fact and the admissions of fact contained therein, I have not taken evidence with respect to the facts of this matter. Based on the facts as stipulated, I conclude that the legal conclusion set forth in the Conclusion of Law is warranted and I hereby adopt it.

Based on the foregoing I recommend that the Board impose such discipline on Dr. Boyd as it deems appropriate in light of the facts and conclusion of law as stipulated by the parties.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Richard C. Heidlage
First Administrative Magistrate

DATED: JUL 07 2009

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

Division of Administrative Law Appeals
Docket No. RM-06-163

_____)
Board of Registration in Medicine,)
Petitioner)
)
vs.)
)
Kenneth B. Boyd, M.D.,)
Respondent)
_____)

STIPULATION OF FACTS AND CONCLUSION OF LAW

Kenneth B. Boyd, M.D. (the Respondent), the Respondent's attorneys and Complaint Counsel agree that this Stipulation shall be filed with the Administrative Magistrate for the Division of Administrative Law Appeals (DALA), as a resolution of questions of material fact and law as set forth by the Statement of Allegations in Docket No. RM-06-163 and as more fully set forth herein.

The Respondent admits to the Findings of Fact described below and agrees that the Administrative Magistrate and the Board may make the Conclusion of Law as set forth below, contingent upon the acceptance of the Stipulation by the Administrative Magistrate and the Board of Registration in Medicine (the Board).

FINDINGS OF FACT

1. The Respondent was born on January 19, 1955. He is a 1979 graduate of Boston University School of Medicine. He has been licensed to practice medicine in

ATTACHMENT 1

Massachusetts under certificate of registration number 45369 since February 26, 1980.

The Respondent does not have admitting privileges at any hospital.

2. The Respondent and Paul H. Cochrane, D.O. (Dr. Cochrane) incorporated Preventative Medicine Center (PMC) in 1999.

3. The Respondent practiced medicine at PMC in South Yarmouth, Massachusetts, as a 50% owner of the practice with Dr. Cochrane from 1999 until December 31, 2003.

4. In December 2003, the Respondent sold his interest in the practice to Dr. Cochrane.

5. The Respondent's patients received intravenous (IV) administration of hydrogen peroxide (H_2O_2) from the Respondent's physician assistant (PA) or a nurse at PMC.

6. The PA does not recall discussing the risks of IV H_2O_2 therapy with the Respondent.

7. The Respondent co-signed some of the Informed Consent forms of the patients who were receiving IV H_2O_2 .

8. The Respondent's patients who were infused with IV H_2O_2 did not receive a physical examination prior to the infusion if they had received a recent physical examination.

9. In general, the PA made the determination as to whether or not a patient would receive IV H_2O_2 .

10. The Respondent was the PA's supervising physician from 1999 through 2003.

11. The Respondent's supervision of the PA was inadequate in that he permitted the PA to implement patient treatment plans with regard to the IV administration of H₂O₂ prior to consulting with the Respondent.

12. The United States Food and Drug Administration has not approved the IV administration of H₂O₂.

13. Patients who receive IV H₂O₂ at PMC are required to sign a Consent Form that states that the possible principal side effects of the IV administration of H₂O₂ are discomfort at the site of infusion and sclerosis of the vein. The Consent Form further states that IV H₂O₂ may be considered experimental.

14. The Consent Form also releases PMC from any legal responsibility resulting from the IV administration of H₂O₂.

15. The Respondent ceased all involvement in the IV administration of H₂O₂ after December 2003.

CONCLUSION OF LAW

The Respondent has violated 243 CMR 1.03(5)(a)18 in that he has committed misconduct in the practice of medicine by failing to adequately supervise his PA with regard to the IV administration of H₂O₂ and requiring his patients to sign a Consent Form that released the Respondent from any liability resulting from the IV administration of H₂O₂.

SANCTION

The Respondent, the Respondent's attorneys and Complaint Counsel expressly acknowledge that the Board may impose sanctions against the Respondent based upon the above Findings of Fact and Conclusion of Law. The Respondent, the Respondent's

attorneys and Complaint Counsel jointly agree to recommend to the Board that it impose the sanction set forth below. The parties hereto understand that the recommended sanction is not binding on the Board, and that the Board may wish to impose a different sanction on the Respondent.

At the time the Board considers this Stipulation, it will inform the parties of its inclination as to sanction. If the Board's sanction is different from the one recommended by the parties, the Respondent will be given an opportunity to either accept or reject the proposed sanction. If the Respondent rejects the proposed sanction, then the matter will continue through the adjudicatory process pursuant to General Laws chapter 30A and 801 CMR 1.00 et seq.

The Respondent, Respondent's attorneys and Complaint Counsel agree to recommend that the Respondent be reprimanded, fined \$3,000 and that he be prohibited from being involved in any way in the IV administration of H₂O₂.

EXECUTION OF THIS STIPULATION

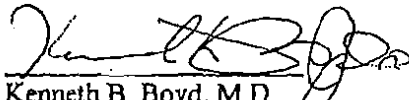
The parties agree that the approval of this Stipulation is left to the discretion of the Administrative Magistrate and the Board. As to any matter this stipulation leaves to the discretion of the Administrative Magistrate or the Board, neither the Respondent, nor anyone else acting on his behalf has received any promises or representations regarding the same.

The signature of the Respondent, his attorneys, and Complaint Counsel are expressly conditioned on the Administrative Magistrate and the Board accepting this stipulation.

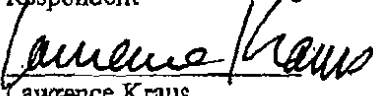
If the Administrative Magistrate rejects any provision contained in this Stipulation, the entire document shall be null and void and the matter will be scheduled for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.

If the Board rejects any provision in this Stipulation or modifies the Sanction and said modification is rejected by the Respondent, the entire document shall be null and void and the matter will be recommitted to the Division of Administrative Law Appeals for a hearing pursuant to General Laws c. 30A and 801 CMR 1.00 et seq.


Neither the parties nor anyone else may rely on the Stipulation in these proceedings or in any appeal there from.


Kenneth B. Boyd, M.D.
Respondent

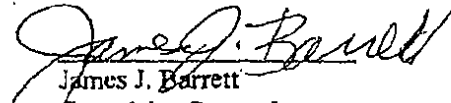
August 8, 2008
Date


Lawrence Kraus
Attorney for the Respondent

August 15, 2008
Date


Michael L. Blau
Attorney for the Respondent

8/14/08
Date


James J. Barrett
Complaint Counsel

8/21/08
Date