State of Rhode Island
Department of Health
Board of Medical Licensure & Discipline

IN THE MATTER OF:
David Kass M.D.
License number MD 04834
Controlled substance Registration CMD 04834
Complaint number 180511A, 180511B

Suspension of Controlled Substance Registration

David Kass M.D. (hereinafter "Respondent") is licensed as a physician in Rhode Island and has a controlled substance registration. The Rhode Island Board of Medical Licensure and Discipline (hereinafter "Board") has reviewed and investigated the above referenced complaints pertaining to Respondent through its Investigative Committee.

Findings of Fact

1. Respondent has been a licensed physician in the State of Rhode Island since March 12th, 1975. He graduated from the University of Zurich on June 1st, 1964.
2. Respondent has a previous disciplinary action which resulted in a Compliance Order issued November 16, 2007 based on facts and circumstances described in complaint C07-337.
3. The Board received two new complaints regarding Respondent and his prescribing of opioids for his elderly patients.
4. Respondent was the attending physician for Patients A, B, C and D (aliases), who were seen and evaluated in a nursing home setting.
5. Patient A is an 82-year-old female and has multiple medical problems including anxiety disorder, major depressive disorder, psychosis, history of falling, dysphagia and other medical problems.
6. Respondent treated patient A with several prescription opioids including oxycodone 10

mg, at varying doses; oxycodone is a short acting schedule II opioid. Respondent also prescribed Morphine Sulfate Extended Release 15 mg a long acting schedule II opioid.

7. Patient B is a 95-year-old female who had multiple medical conditions including anxiety, dysthymic disorder, atrial fibrillation, anemia, and repeated falls.
8. Patient B was treated with oxycodone 20 mg twice a day, oxycodone is a short acting schedule II opioid. Respondent also prescribed oxycontin 30 mg, a long acting opioid, twice a day.
9. Patient C is an 83-year-old female with Alzheimer's disease, dementia, major depressive disorder, anxiety, difficulty walking and other medical problems.
10. Patient C was treated with oxycodone 10 mg, a short acting opioid, three times a day.
11. Patient D is an 84-year-old female with multiple medical problems including Alzheimer's Disease, dementia, and anxiety.
12. The Investigative Committee reviewed the medical records of these patients and did not see documentation of a treatment plan as required by regulations regarding opioid prescribing. The Investigative Committee noted the medical records were scant, at times difficult to read and lacked evidence of medical decision making.
13. The Investigative Committee reviewed the above referenced complaints relevant to Patients A, B, C and D and the previously referenced medical records, as well as facts and circumstances relevant to the complaints and prescribing pattern.
14. The Investigative Committee reviewed the medical records of Patients A, B, C and D, as provided by Respondent, and concluded the medical records did not contain adequate documentation of educating the patient about the adverse risk of taking alcohol, or other psychoactive medications, specifically benzodiazepines, or tolerance, addiction, overdose or death. There was no documentation that it was the patient's responsibility to safeguard the medication and keep in a secure location. There was no documentation of educating the patient about safe disposal options. Additionally, there was no evidence that family members were informed by Respondent of these medications.
15. Respondent was the attending physician for Patients A, B, C and D.
16. Respondent prescribed various opioids including oxycodone and long acting opioids to each of these patients.
17. Respondent did not check the PDMP prior to initiating opioids on any of these patients.

18. Respondent appeared before the investigative committee on September 26th, 2018. Respondent was unaware of the PDMP, other than he received emails about it that he did not pay attention too. He responded to the Investigative Committee about the PDMP, "I don't care" and "I have no use for it". When presented with hypothetical cases for using the PDMP in the nursing home population, Respondent did not indicate a willingness to utilize the PDMP or see how it could be helpful. Respondent was unaware of the regulatory requirement.
19. Respondent was the attending physician for Patient A, B, C and D who all were prescribed various opioids, including oxycodone and long acting opioids at various doses for greater than 90 consecutive days.
20. The Investigative Committee reviewed the medical records of Patient A, B, C and D provided by Respondent, and concluded the medical records did not contain written patient treatment agreements.
21. The Investigative Committee reviewed the above referenced complaints and the previously referenced medical records, as well as facts and circumstances relevant to the complaint and prescribing pattern with Patient A, B, C and D.
22. Respondent was the attending physician for Patients A, B, C and D who were prescribed opioids, including oxycodone and other long acting opioids for greater than 12 months at varying doses.
23. The Investigative Committee reviewed the medical record for Patient A, B, C and D as supplied by Respondent and did not see documentation of Patients A, B, C or D which demonstrated adherence with any medication treatment plan; specifically, if pain, function, or quality of life have improved or diminished using objective evidence; and if continuation or modification of medications for pain management treatment is necessary based on the practitioner's evaluation of progress towards treatment objectives. It was also noted that the medical records did not reflect medical decision making nor meaningful assessments and plans.
24. Respondent was the attending physician for Patient A and Patient B.
25. Respondent was prescribing long acting opioids to each patient. Patient A was receiving Morphine Sulfate ER and Patient B was receiving Oxycontin. These medications are long acting schedule II opioids.

26. The Investigative Committee reviewed the medical records and found no documentation satisfying the regulations pertaining to prescribing long acting opioids.
27. Respondent was attending physician for Patient A, B, C and D.
28. Respondent prescribed each patient various doses of opioids, including oxycodone and other long acting opioids.
29. The Investigative Committee concluded Respondent had patients on short and long-term opioids for long periods of time without documentation of clinical justification. Respondent did appear before the Investigative committee and when asked about how he determined how much to prescribe to his patients he responded, *"I give them as much as they want"*. Respondent also averred that patients would not get addicted because the pain would block that from happening. The Investigative Committee noted Respondent did not maintain the minimum standards to prevent diversion with his patients. The Investigative Committee acknowledged the patients were in a nursing home, yet there was no attempt at verifying the patients were taking the medication or were benefiting from the medication. The Investigative Committee also noted the medical records did not justify the course of treatment with opioids to treat pain. The Investigative Committee determined that Respondent was using prescription opioids to treat agitation and other behavioral conditions to restrain these patients.
30. Respondent is the attending physician for Patients A, B, C and D. Respondent prescribed various medications for these patients while they were residents of a nursing home.
31. Respondent's medical records were reviewed by the Investigative Committee and found to lack the required elements as required by regulations pertaining to medical records. Respondent's records were determined to not meet the minimum standard as determined by the Board, specifically there was not sufficient evidence to justify the course of treatment, there were inadequate patient histories, inadequate patient exams and lack of evidence of medical decision making.
32. Respondent has violated the *Rules and Regulations for Pain Management, Opioid Use and the Registration of Distributors of Controlled Substances in Rhode Island* [R21-28-CSD] sections 3.2 (Documentation of Treatment Plan), 3.4 (Patient Education/Consent), 3.5 PDMP, 3.6 (Written Patient Treatment Agreement), 3.7 Periodic Review, 3.12 Long acting opioids.

33. Respondent has violated RIGL § 5-37.5.1 (19) by failing to conform to the minimal standards of acceptable and prevailing medical practice in his area of expertise as is determined by the board. The board does not need to establish actual injury to the patient in order to adjudge a physician or limited registrant guilty of the unacceptable medical practice under RIGL § 5-37.5.1 (19).
34. Respondent has also violated 216-RICR-40-05-1 Part 1 Licensure and Discipline of Physicians 1.5.12 D Medical Records.

ORDER

After considering the findings of the Board regarding Respondent, it is hereby determined that the continuation of the controlled substance prescribing by Respondent constitutes an immediate danger to the public. The controlled substance registration CMD 04834 of Respondent is hereby suspended.

Respondent is required to ensure the appropriate continuity of care for his patients including ready access to medical records, appropriate referral to qualified health professionals.

The Respondent may submit a written request for a hearing on this suspension, which will be conducted within (20) days of the Department's receipt of said request.

Nicole Alexander-Scott M.D., M.P.H.
Director of Health

Date 11/20/18

CERTIFICATION

I hereby certify that the specification of the charges was delivered by constable on the 23rd day of November 2018 to the Respondent at the address below:

David Kass M.D.
258 Spencer avenue
East Greenwich, Rhode Island 02818

* D Kass

* MARC LAUTIERI
STATE CONSTABLE LIC# 6077