

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

DALE A. D'MELLO, M.D.
License No. 43-01-039175,
Respondent.

File No. 43-21-000246

CONSENT ORDER

On July 27, 2022, the Department of Licensing and Regulatory Affairs executed an Administrative Complaint charging Respondent with violating the Public Health Code, MCL 333.1101 *et seq.*

The parties have stipulated that the Disciplinary Subcommittee (DSC) of the Michigan Board of Medicine may enter this Consent Order. The DSC has reviewed this Consent Order and Stipulation and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, IT IS FOUND that the facts alleged in the Complaint are true and constitute violations of MCL 333.7303a(4) and MCL 333.16221(a), (b)(i), and (w).

Accordingly, IT IS ORDERED that for the cited violations of the Public Health Code:

Respondent is FINED \$750.00, to be paid to the State of Michigan within three (3) months of the effective date of this Order. Respondent shall **direct payment** to

the Department of Licensing and Regulatory Affairs, Enforcement Division, Compliance Section, P.O. Box 30189, Lansing, MI 48909. The fine shall be paid by check or money order, made payable to the State of Michigan, and shall clearly display **File Number 43-21-000246.**

If Respondent fails to timely pay the fine, Respondent's license shall be automatically suspended for a minimum of one (1) day until payment of the fine. If Respondent's license remains suspended for more than six (6) months, Respondent must apply for reinstatement of the license. If Respondent applies for reinstatement of the license, application for reinstatement shall be in accordance with sections MCL 333.16245 and 333.16247.

If Respondent violates any provision of this Order the DSC may take disciplinary action pursuant to Mich Admin Code, R 338.1632 and MCL 333.16221(h).

This Order shall be effective 30 days from the date signed by the Board, as set forth below.

MICHIGAN BOARD OF MEDICINE

By: Lauren Brown for
Chairperson, Disciplinary Subcommittee

Dated: May 3, 2023

STIPULATION

1. Respondent does not contest the allegations of fact and law in the Complaint. Respondent understands that, by pleading no contest, Respondent does not admit the truth of the allegations but agrees the DSC of the Michigan Board of Medicine may treat the allegations as true for the resolution of the Complaint and may enter an order treating the allegations as true. Therefore, the DSC finds that the facts alleged in the Complaint are true and constitute violations of MCL 333.7303a(4) and MCL 333.16221(a), (b)(i), and (w).

2. Respondent understands and intends that by signing this Stipulation, Respondent is waiving the right, pursuant to the Public Health Code, the rules promulgated thereunder, and the Administrative Procedures Act, MCL 24.201 *et seq.*, to require the Department to prove the charges set forth in the Complaint by presentation of evidence and legal authority, and Respondent is waiving the right to appear with an attorney and such witnesses as Respondent may desire to present a defense to the charges.

3. This matter is a public record required to be published and made available to the public pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq.*, and this action will be reported to the National Practitioner Data Bank and any other entity as required by state or federal law.

4. Donald Tynes, M.D., served as conferee and supports this resolution. Dr. Tynes and the Department took the following factors into consideration in the formulation of this Order:

- a. During a compliance conference, Respondent explained his medical practice, which included the treatment of patients with highly complex psychiatric disorders, among other medical conditions, on an inpatient and outpatient basis. Respondent explained his treatment and rationale for each of the patients reviewed and provided several medical studies and articles supporting the treatment rendered. Respondent also identified several areas of the patient charts that supported his treatment of all patients reviewed, such as referring a patient to higher levels of care, documenting Respondent's rationale for increasing the controlled substance dosages, documenting discussions concerning irregular drug screens, and documenting when other prescribers issued controlled substances.
- b. The expert determined that Respondent generally prescribed medications of a type, frequency and strength that were appropriate for each patient's clinical situation. The expert also determined that Respondent's medical records met the minimal standards of acceptable medical practice.
- c. The expert also determined that Respondent requested MAPS reports adequately for the protection of his patients' health and safety. Patient Jane Doe 2 had expired prior to the June 1, 2018 MAPS mandate.
- d. Respondent stated he is in the process of winding down his active practice. Respondent stated he recently retired from working at two outpatient office locations as well as the adult psychiatry unit at Sparrow Hospital. Respondent's practice is currently limited to managing patients with first episode psychosis.
- e. Respondent provided evidence of completing 9.25 hours of continuing education in the area of

recognizing red flags for abuse and diversion.

- f. Respondent has been licensed as a physician in Michigan since 1978 with no previous disciplinary action against his license.

5. A Department representative or Dr. Tynes may discuss this matter with the DSC and recommend acceptance of the resolution set forth in this Order.

6. This proposal is conditioned upon acceptance by the DSC. Respondent and the Department expressly reserve the right to further proceedings without prejudice should the Order be rejected.

AGREED TO BY:



Patrick Cole, Analyst
Regulation Section
Enforcement Division

Dated: 4/24/2023

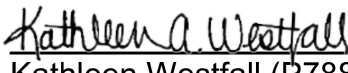
AGREED TO BY:



Dale A. D'Mello, M.D.
Respondent

Dated: 04/21/2023

APPROVED BY:



Kathleen Westfall (P78874),
Attorney for Respondent

Dated: 4/22/2023

Pc/jp/dem

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
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DISCIPLINARY SUBCOMMITTEE

In the Matter of

DALE A. D MELLO, M.D.
License No. 43-01-039175,

File No. 43-21-000246

Respondent.

ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Forrest Pasanski, Director, Enforcement Division, Bureau of Professional Licensing, complains against Respondent Dale A. D Mello, M.D. as follows:

1. The Michigan Board of Medicine is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee (DSC) is empowered to discipline licensees for Code violations.

2. Respondent is currently licensed to practice medicine in the State of Michigan. Respondent also holds a controlled substance license.

3. Alprazolam (e.g., Xanax), a schedule 4 controlled substance, is a benzodiazepine used to treat anxiety disorders and panic disorder. Alprazolam is a commonly abused and diverted drug, particularly in its 1 mg and 2 mg dosages.

4. Buprenorphine/naloxone (Suboxone) is an opioid schedule 3 controlled substance commonly used in opioid dependence treatment. It is commonly abused and diverted. Subutex is buprenorphine without naloxone.

5. Clonazepam (e.g. Klonopin), a schedule 4 controlled substance, is a commonly abused and diverted benzodiazepine used to treat seizures, panic disorder, and akathisia.

6. Diazepam (e.g., Valium) is a benzodiazepine schedule 4 controlled substance.

7. Lorazepam (e.g., Ativan) is a schedule 4 benzodiazepine controlled substance.

8. Zolpidem (e.g., Ambien), a schedule 4 controlled substance, is a non-benzodiazepine sedative used to treat sleep disorders and is commonly abused and diverted.

9. MCL 333.7303a(4) states in relevant part “Beginning June 1, 2018, before prescribing or dispensing to a patient a controlled substance in a quantity that exceeds a 3-day supply, a licensed prescriber shall obtain and review a report concerning that patient from the electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances established under section 7333a.”

10. At times relevant to this Complaint, Respondent was engaged in the practice of medicine in the Lansing, Michigan area.

11. The Department received an allegation that Respondent overprescribed controlled substances to a patient, which may have contributed to the patient’s death.

Maps Data

12. The Department reviewed data from the Michigan Automated Prescription System (MAPS), the State of Michigan's prescription monitoring program, which gathers data regarding controlled substances dispensed in Michigan.

13. MAPS data showed that between January 1, 2018 and August 4, 2021 Respondent prescribed 7,397 total controlled substance prescriptions. 4,185 of the 7,397 were original prescriptions and not refill prescriptions. For this time frame, Respondent checked MAPS reports 3,549 times for a compliance rate less than 85%.

Interview with Respondent

14. On or about September 15, 2021, a Department investigator interviewed Respondent. Respondent provided the following information to the investigator:

- a. Respondent completed his residency in psychiatry in Michigan.
- b. Respondent stated that he now sees complex patients, including substance abuse patients.
- c. Respondent stated that he sees approximately 36 patients per week and also does hospital rounds.
- d. Respondent stated that he sees patients every two weeks to six months depending on the stability of the patients' conditions.

Expert's General Observations of Respondent's Practice

15. As part of an investigation into Respondent's prescribing practices, The Department subpoenaed medical records from Respondent. The Department also obtained the death certificates and MAPS records for patients Jane Doe 1, Jane Doe 2,

John Doe 1, and John Doe 2, all patients of Respondent's, who each expired with causes of death from drug toxicity.

16. An expert reviewed the medical files of and documents for patients Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5, Jane Doe 6, John Doe 1, John Doe 2, and John Doe 3 and made the following general observations:

- a. Respondent failed to adequately document symptoms in patients with a substance abuse disorder.
- b. Respondent failed to refer substance abuse disorder patients struggling with sobriety for inpatient care or other treatment.
- c. Respondent failed to document his rationale for prescribing short-acting Xanax when longer acting medications would be the preferred medical practice.
- d. Respondent failed to document his rationale for continuing to prescribe controlled substances after irregular drug screens were obtained.

Expert's Patient-Specific Observations of Respondent's Practice

17. The expert made the following patient specific observations of Respondent's practice:

Patient Jane Doe 1:

- a. Respondent failed to refer Jane Doe 1 for a more intensive level of substance abuse treatment prior to her expiring from a drug overdose.
- b. Respondent made a late documentation entry five months after the office visit and after Respondent received the subpoena for records from the State of Michigan.
- c. Respondent failed to document his rationale for failing to see Jane Doe 1 for six weeks after first prescribing her Suboxone and for failing to see her for twelve weeks after the second prescription for Suboxone.

- d. Respondent failed to document his rationale for not re-evaluating Jane Doe 1 in a timely manner after she demonstrated her inability to abstain from unprescribed controlled substances.
- e. Respondent failed to document his rationale for stopping his prescribing of diazepam and clonazepam and starting to prescribe alprazolam at Jane Doe 1's request.
- f. Respondent failed to document recognition of potential red flags for abuse and diversion such as irregular drug screens, asking for early refills, and missed appointments.

Patient Jane Doe 2:

- g. Respondent failed to check MAPS as required by law.

Patient Jane Doe 3:

- h. Respondent failed to document his rationale for increasing dosages of controlled substances.
- i. Respondent failed to document any analysis or discussion concerning irregular drug screen results.
- j. Respondent failed to acknowledge that another prescriber was issuing controlled substance prescriptions to Jane Doe 3.
- k. Respondent failed to document cocaine use disorder in the medical record despite the patient disclosing it in a patient intake form from 2015.
- l. Respondent failed to document his rationale for prescribing a stimulant and a sedative concurrently.
- m. Respondent failed to document Jane Doe 3's high overdose risk scores and include them in a treatment plan.

Patient Jane Doe 4:

- n. Respondent failed to document his rationale for increasing dosages of controlled substances.
- o. Respondent failed to document his analysis of irregular drug screen results.

- p. Respondent failed to document his rationale for issuing a supply of 90 tablets of alprazolam 2mg at one time. This amount could encourage abuse or diversion.

Patient Jane Doe 6:

- q. Respondent failed to document notes regarding another prescriber that was issuing opioids.
- r. Respondent failed to document his rationale for increasing the dosages of prescribed controlled substances.
- s. Respondent failed to document his analysis or discussions regarding irregular drug screen results.

Patient John Doe 2:

- t. Respondent failed to document his analysis or discussions regarding irregular drug screens.

Patient John Doe 3:

- u. Respondent failed to document his rationale for increasing the dosages of prescribed controlled substances.
- v. Respondent failed to document analysis or discussion regarding irregular drug screen results.
- w. Respondent failed to obtain drug screens from 2015 through 2017 despite issuing multiple controlled substances concurrently.

COUNT I

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession in violation of MCL 333.16221(a).

COUNT II

Respondent's conduct, as set forth above, demonstrates Respondent's "departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs," and accordingly "incompetence," in violation of MCL 333.16221(b)(i).

COUNT III

Respondent failed to obtain and review a MAPS report prior to prescribing a controlled substance, contrary to MCL 333.7303a(4) and in violation of MCL 333.16221(w).

RESPONDENT IS NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to submit a written response to the allegations contained in it. Pursuant to section 16192(2) of the Code, Respondent is deemed to be in receipt of the complaint three (3) days after the date of mailing listed in the attached proof of service. The written response shall be submitted by email to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing to BPL-DMS@michigan.gov. If unable to submit a response by email, Respondent may submit by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, MI 48909.

Respondent's failure to submit an answer within 30 days is an admission of all Complaint allegations. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 7/27/2022

 signing for

By: Forrest Pasanski, Director
Enforcement Division
Bureau of Professional Licensing

Pc/jp