

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

In the Matter of

MICHAEL ARTHUR ROTH, M.D.

License No. 43-01-028327

Complaint No. 43-15-139118

ADMINISTRATIVE COMPLAINT

Attorney General Bill Schuette, through Assistant Attorney General Kelly K. Elizondo, on behalf of the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing (Complainant), files this complaint against Michael Arthur Roth, M.D. (Respondent) alleging upon information and belief as follows:

Jurisdictional Allegations

1. The Board of Medicine, (Board), an administrative agency established by the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee (DSC).

2. Respondent is currently licensed to practice medicine in the State of Michigan and holds a controlled substance license along with drug control location licenses for his office location in Farmington, Michigan and the office of a practice where he provides coverage in Eastpointe, Michigan.

3. Section 16221(a) of the Code authorizes the DSC to take disciplinary action against Respondent for a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, Respondent's ability to safely and skillfully practice medicine.

4. Section 16221(b)(i) of the Code authorizes the DSC to take disciplinary action against Respondent for incompetence, which is defined at section 16106(1) of the Code as "a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs."

5. Section 16221(b)(vi) of the Code authorizes the DSC to take disciplinary action against Respondent for a lack of good moral character. Good moral character is defined at section 1 of 1974 PA 381, as amended; MCL 338.41 *et. seq.*, as "the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

6. Section 16221(c)(iv) of the Code authorizes the DSC to take disciplinary action against Respondent for obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority, or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

7. Section 16221(e)(ii) of the Code authorizes the DSC to take disciplinary action against Respondent for betrayal of a professional confidence.

8. Section 16226 of the Code authorizes the DSC to impose sanctions against a person licensed by the Board, if, after opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Code.

Factual Allegations

9. On May 19, 2004, the Board of Medicine's Disciplinary Subcommittee issued a consent order placing Respondent's medical license on probation and fining Respondent \$15,000. The consent order was based on an administrative complaint dated October 15, 2003. One of the allegations in the complaint concerned the performance of a pregnancy termination procedure in a patient's home.

10. On December 17, 2012, the Board of Medicine's Disciplinary Subcommittee issued a consent order fining Respondent \$2000. The consent order was based on an administrative complaint regarding a complication during a procedure and miscommunication with a patient.

11. On September 30, 2015, Respondent's car was impounded following a traffic accident.

12. On October 7, 2015, local law enforcement searched Respondent's car based on a search warrant. Law enforcement discovered:

- 6 prescription bottles containing Ciprofloxacin HCL (an antibiotic) prescribed by A.O., M.D.¹ to patients M.G., N.D., J.J., M.B., C.C., and A.H.
- 50 mL single dose flip top vial of Fentanyl Citrate Injection, USP 2500mcg/50mL (Schedule 2 narcotic medication used for pain).
- Fifteen specimen jars containing the "products of conception."
- 10 mg partial used bottle of Midazolam (Schedule IV medication used for anesthesia).

13. On October 13, 2015, local law enforcement searched Respondent's home pursuant to a search warrant and discovered:

- 2 vials of 5 mL Fentanyl Citrate Injection and 1 open 50 mL vial.
- 6 full glass vials containing Methylergonovine Maleate (medication used for uterine bleeding).

14. Purchase and delivery records for A.O., M.D.'s office revealed that the Fentanyl found in Respondent's car and home had been ordered by Dr. A.O. for his office practice. The Fentanyl had expired in 2014.

15. The bottles of antibiotics all contained dates from October 2014 and all bore A.O., M.D.'s name as the prescribing physician. With the exception of N.D. all patients were actual patients of A.O., M.D.; however Dr. A.O. does not know how

¹ Initials used to protect identity. Respondent provides coverage at Dr. A.O.'s office and Respondent has a drug control location license at this location.

Respondent came to be in possession of prescriptions with his patients' names and his prescriber identification information.

16. Respondent's drug control license is location specific and medications can only be stored in the locations associated with each license, the license does not allow Respondent to keep or store medications in his car or home (See MCL 333.17745). Further controlled substances must be stored in a locked cabinet, room or cart at the location (see Mich Admin Code, R 338.3143) to prevent theft or diversion. Respondent was thus in possession of controlled substances without lawful authority and it was both negligent and incompetent to improperly store the antibiotics and controlled substances.

17. Products of conception are considered pathological waste and must be disposed of pursuant to statute (see MCL 333.13811) and cannot be stored in a personal vehicle.

18. Respondent had an obligation to protect patient's personal information and it was negligent to store prescriptions with patient identifiers in his personal vehicle.

COUNT I

19. Respondent's conduct as described above constitutes negligence, in violation of section 16221(a) of the Code.

COUNT II

20. Respondent's conduct as described above constitutes incompetence, in violation of section 16221(b)(i) of the Code.

COUNT III

21. Respondent's conduct as described above constitutes a lack of good moral character, in violation of section 16221(b)(vi) of the Code.

COUNT IV

22. Respondent's conduct as described above constitutes possessing a controlled substance without lawful authority, in violation of section 16221(c)(iv) of the Code.

COUNT V

23. Respondent's conduct as described above constitutes betrayal of a professional confidence, in violation of section 16221(e)(ii) of the Code.

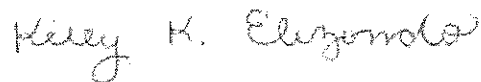
THEREFORE, Complainant requests that this complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, Respondent has 30 days from receipt of this Administrative Complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Professional Licensing, Department of Licensing & Regulatory Affairs, P.O. Box 30670, Lansing, Michigan,

48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(9) of the Public Health Code, failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the Administrative Complaint and shall result in transmittal of the Administrative Complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully Submitted,

BILL SCHUETTE
Attorney General



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Dated: November 30, 2015