

STATE OF MICHIGAN
COURT OF APPEALS

In re RICHARD PAUL PAYEA, M.D.

DEPARTMENT OF COMMUNITY HEALTH,
BUREAU OF HEALTH PROFESSIONS,

UNPUBLISHED
September 29, 2011

Petitioner-Appellee,

v

No. 293727
Board of Medicine
LC No. 2006-000250

RICHARD PAUL PAYEA, M.D.,

Respondent-Appellant.

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

SHAPIRO, P.J. (*concurring in part, dissenting in part*).

I concur in the majority's conclusion that the record established violations of MCL 333.16221(a) (negligence) and (b)(i) (incompetence) by the respondent. However, I do not believe the record contains substantial evidence upon which to conclude that respondent violated MCL 333.161221(b)(vi) (lack of moral character) or (c)(iv) (prescription of controlled substances for other than a lawful diagnostic or therapeutic purpose). While the respondent's negligence involved prescription of controlled substances on the basis of inadequate medical investigation and dubious judgment, the record does not demonstrate that the respondent provided these prescriptions for a pecuniary motive or without having defined, albeit negligently, lawful reasons for which the drugs could be prescribed. I would therefore remand the matter to the petitioner to determine sanctions based upon the negligence and incompetence violations.

/s/ Douglas B. Shapiro