BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
Suresh Venkayya Dutta, M.D.	)	**Case No. 800-2018-050594**
Physician's and Surgeon's Certificate No. A68146	)	
Respondent	)	

DECISION

The attached Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on FEB 07 2020.

IT IS SO ORDERED JAN 10 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H Lewis, MD
Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SURESH VENKAYYA DUTTA, M.D.,

Physician's and Surgeon's Certificate No. A 68146,

Respondent.

Case No. 800-2018-050594

OAH No. 2019050113

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on December 5, 2019, in Oakland, California.

Deputy Attorney General Rebecca D. Wagner represented complainant Kimberly Kirchmeyer, Executive Director, Medical Board of California, Department of Consumer Affairs.

Respondent Suresh Venkayya Dutta, M.D., appeared and represented himself.

The record closed and the matter was submitted for decision on December 5, 2019.

FACTUAL FINDINGS

1. On April 23, 1999, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 68146 to respondent Suresh Venkayya Dutta, M.D. The certificate is delinquent with an expiration date of November 30, 2016. The license was suspended on August 20, 2019.

2. On February 22, 2019, complainant Kimberly Kirchmeyer issued an accusation against respondent in her official capacity as Executive Director of the Board. The accusation alleges that respondent's California certificate is subject to discipline because of action taken by the State of Texas Medical Board (Texas Board) against respondent's Texas medical license. Respondent filed a notice of defense. On August 27, 2019, complainant filed a first amended accusation, alleging that on August 1, 2019, the Texas Board issued an order suspending respondent's Texas medical license. This hearing followed.

3. On August 20, 2019, complainant notified respondent that the Board had suspended his California certificate pursuant to Business and Professions Code section 2310, and had reported the suspension to the National Practitioners Data Bank and the Federation of State Medical Boards. Respondent was notified of his right to a hearing. Respondent requested a hearing on the automatic suspension. This hearing followed that request.

Texas Board Actions

OCTOBER 2018 AGREED ORDER ON FORMAL FILING

4. Respondent is a physician engaged in the practice of therapeutic radiology. Respondent is board certified by the American Board of Radiology. He has been licensed in Texas since December 8, 2000.

5. On August 23, 2017, staff of the Texas Board filed a complaint with the Texas State Office of Administrative Hearings, alleging that discipline should be imposed on respondent's license due to alcohol impairment.[1]The complaint alleged that respondent was impaired due to long-term alcohol abuse after he was noticeably under the influence of alcohol while seeing patients. A first amended complaint was filed on July 20, 2018.

6. Prior to hearing, the parties reached a settlement which was submitted for approval to the Texas Board.

7. On October 19, 2018, the Texas Board issued an Agreed Order on Formal Filing (Agreed Order), in which it approved the parties' settlement. The Texas Board found that witnesses had reported events indicating respondent may be using alcohol in an intemperate manner. The Texas Board found that respondent's use of alcohol "suggests he may suffer from an impairment which could affect his practice of medicine." The Board concluded that it had jurisdiction to take disciplinary action against respondent's license based on the inability to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of

[1] The complaint was filed under Docket No. 503-17-5781.

drugs, narcotics, chemicals or other substance; or as a result of any mental or physical condition.

The Texas Board ordered respondent publicly referred to the Texas Physician Health Program (TXPHP), where he would be subject to screening for drugs and alcohol and other requirements until the referral was completed. Respondent was required to abstain from alcohol, dangerous drugs, controlled substances, or any substance that could cause a positive drug or alcohol test without a valid prescription. Respondent was required to notify any treating physician or health care entity where he had privileges of the Agreed Order. By its terms, the Agreed Order would terminate upon successful completion of its requirements.[2]

8. On October 25, 2018, the State Office of Administrative Hearings granted the Texas Board's motion to dismiss the case on the basis that the case had been resolved by the Agreed Order.

9. On April 11, 2019, the Texas Board issued an order terminating the October 2018 Agreed Order due to respondent's reported completion of all requirements.

2019 TEMPORARY SUSPENSION ORDERS

10. On August 1, 2019, the Texas Board issued an Order of Temporary Suspension (Without Notice of Hearing). In the order, the Texas Board made the following findings regarding respondent's referral to the TXPHP. The Texas Board

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[2] On March 1, 2019, the Texas Board issued an Agreed Order on Formal Finding Nunc Pro Tunc, correcting a factual finding regarding respondent's board certification.

found: (1) respondent had signed an agreement for monitoring and assistance on January 4, 2019, in which he agreed to submit to a 96-hour medical, psychiatric and substance abuse evaluation; (2) respondent did not submit to the evaluation "deliberately misleading TXPHP staff regarding its completion"; (3) respondent was referred back to the Texas Board for non-compliance with the TXPHP; and, (4) after referral back to the Texas Board, board staff offered respondent, who was represented by counsel, an interim testing agreement, which respondent refused to sign.

Based on these findings, the Texas Board found respondent had violated various provisions of the Medical Practice Act authorizing it to take disciplinary action against respondent's medical license. The Texas Board found that respondent was unable to practice medicine with reasonable skill and safety to patients because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other substances, or as a result of a mental or physical condition. The Texas Board further found that respondent had committed unprofessional or dishonorable conduct that was likely to deceive or defraud the public or injure the public.

The Texas Board found that respondent's refusal to sign the interim testing agreement, despite his history of impairment, constituted a continuing threat to the public welfare that provided cause to temporarily suspend his medical license. The Board ordered the suspension effective that day, with the suspension to remain in effect until superseded by an order of the Texas Board.

11. On October 2, 2019, the Texas Board issued an Order of Temporary Suspension (With Notice of Hearing). This order followed a noticed hearing in which respondent was present with counsel. The Texas Board issued factual findings in accordance with those set forth in Finding 10, and found the same violations of the Medical Practice Act to exist. The Board ordered respondent's medical license

temporarily suspended, effective that day, with the suspension to remain in effect until superseded by an order of the Texas Board.

12. The evidence does not establish what further action, if any, has been taken by the Texas Board.

Suspension of California Certificate

13. On August 20, 2019, respondent was notified his California certificate was suspended effective immediately pursuant to Business and Professions Code section 2310. Complainant took this action based on a review of the August 1, 2019 temporary suspension order of the Texas Board. The suspension of respondent's California certificate was referred to the National Practitioners Data Bank and the Federation of State Medical Boards.

Respondent's Evidence

14. Respondent attended medical school at the University of Oklahoma College of Medicine, graduating in 1994. In 1995, respondent completed an internship in internal medicine at the University of California, Fresno. Respondent completed postgraduate training in radiation oncology at Baylor College of Medicine (1995-1996) and Cornell University Medical Center (1996-1998). Respondent completed a fellowship in radiation oncology at Duke University Medical Center from 1998 to 1999.

15. Respondent was an associate professor at the University of Texas, Southwestern Medical Center, Dallas, from 1999 to 2001.

16. Respondent returned to California in 2001 and practiced medicine in the Santa Barbara area. Respondent was an Assistant Professor with the University of

Southern California, Keck School of Medicine, from 2004-2005. Respondent has not practiced medicine in California since his association with the medical school ended.

17. Respondent moved to Louisville, Kentucky, where he worked at the Jewish Hospital for about two and one-half years.

18. In 2008, respondent returned to Texas and opened the Texas Cancer Clinic in San Antonio. The business grew in size and revenue, and according to respondent, served five counties. Respondent believes that it was complaints from employees associated with his practice that led to the ongoing investigations of him by the Texas Board. Respondent is in litigation with the Texas Board regarding his license, and avers that he did comply with what was required of him by the TXPHP.

19. Respondent is not abstinent from alcohol. He admits to having been intoxicated over the course of his life, and to have gotten in trouble by reason of his consumption of alcohol, but he does not believe he has a problem with alcohol.

20. Francis J. Felix, M.D., is an internal medicine physician currently employed by the State of California, Department of Health Care Services. Dr. Felix met respondent in 1994 when he was a senior resident in the internship program respondent attended. They have remained personal friends since that time, and have consulted on cases. Dr. Felix has great admiration for respondent's knowledge, which he describes as exceptional, and for respondent's willingness to advocate for his patients and to speak truth to power, which has gotten him into trouble over the course of his medical career.

21. Respondent wants to return to California to practice medicine so that he can serve underserved communities.

LEGAL CONCLUSIONS

1. The burden of proof in this matter is on the Board, and the standard of proof is clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

License Discipline

2. Pursuant to Business and Professions Code sections 141 and 2305, the Board is authorized to impose discipline on a licensee who has been disciplined in another state.

Business and Professions Code section 2305 provides:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

Business and Professions Code section 141 provides:

> (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal

> government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
>
> (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

Following out-of-state discipline, the Board is authorized to impose discipline without a broad inquiry into the underlying facts. (*Marek v. Board of Podiatric Medicine* (1993) 16 Cal.App.4th 1089, 1096-1098.) This is true even where the respondent has not admitted the truth of the allegations recited in a stipulation to a disciplinary order or consent decree. (*Ibid.*)

3. The Texas Board's October 2018 Agreed Order placed restrictions/limitations on Respondent's license to practice as a physician in Texas. The restrictions/limitations imposed on his license were based on his unprofessional conduct as a physician which would have been grounds for disciplinary action in California pursuant to Business and Professions Code section 2234. (Finding 7.) Cause

therefore exists to discipline respondent's certificate pursuant to Business and Professions Code sections 141 and 2305.

4. Complainant alleges that the Texas Board's August 1, 2019 Order of Temporary Suspension (Without Notice of Hearing) provides separate cause to discipline respondent's certificate pursuant to Business and Professions Code sections 141 and 2305. It is noted that the ex parte temporary suspension of respondent's license is no longer in place, having been superseded by the October 2019 Order of Temporary Suspension (With Notice of Hearing). It is further noted that respondent did not have the opportunity to contest the findings made in the ex parte order. Due to the fact that cause for discipline of respondent's certificate is clearly established on the basis of the Agreed Order, it is unnecessary to reach the merits of whether the superseded ex parte temporary order of suspension would provide a separate basis for license discipline.

Automatic License Suspension

5. Pursuant to Business and Professions Code section 2310, a certificate is automatically suspended upon notification of the suspension out an out-of-state license which is reported to the National Practitioners Data Bank. The suspension in California is for the length of the out-of-state suspension. (*Id.*, subd. (a.).) The Board may set aside the suspension on its own motion or for good cause shown "when it appears to be in the interest of justice to do so, with due regard for maintaining the integrity and confidence in the medical profession." (*Id.*, subd. (b).) The suspension must be rescinded if the out-of-state action is not a basis for discipline in California. (*Id.*, subd. (c).)

Complainant issued the notice of suspension based on the Texas Board's August 1, 2019 Order of Temporary Suspension (Without Notice of Hearing). The Texas Board's Order of Temporary Suspension was premised on conduct which would provide cause for license discipline in California for unprofessional conduct pursuant to Business and Professions Code section 2234. (Findings 10 & 11.) Cause for the automatic suspension therefore exists. Respondent has not shown cause to set aside the suspension. The suspension shall remain in place until such time as the conditions for lifting the suspension set forth in section 2310 are met.

Penalty Determination

6. The purpose of the Medical Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) The purpose of physician discipline is to protect the public and to aid in the rehabilitation of licensees. (Bus. & Prof. Code, § 2229.) The protection of the public is the paramount priority of the Board. (*Ibid.*)

7. The factors to be considered in determining whether a licensee has been rehabilitated include the following: the nature and severity of the act or crime involved; subsequent misconduct; the amount of time that has elapsed since the misconduct took place; evidence of rehabilitation; whether the conviction has been expunged; and, whether the licensee has complied with the terms of probation. (Cal. Code Regs., tit. 16, §§ 1360.1, 1360.2.)

8. The Board has adopted guidelines to assist in the evaluation of physician discipline. (Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th ed. 2016).) The guidelines state that, in out-of-state discipline cases, the minimum level of

discipline should be the same as that for a similar violation in California; the maximum is revocation. The minimum discipline for a similar violation in California is license revocation, stayed during a five-year probationary period, with appropriate probation conditions. As a substance-abusing licensee, respondent would be subject to the Uniform Standards for Substance-Abusing Licensees (Cal. Code Regs., tit. 16, § 1361 et seq.), and to the conditions required under these standards, including clinical diagnostic evaluation and reporting, and biological fluid testing.

Complainant seeks license revocation. Respondent requests that he be allowed to maintain his California certificate while he seeks to restore his license in Texas which in his view has been improperly disciplined.

The Texas Board imposed disciplinary action against respondent's license based on respondent's inability to practice medicine with reasonable skill and safety to patients. The Texas Board terminated the Agreed Order in April 2019 on the report that respondent has complied with its terms. The Texas Board has since determined that respondent was dishonest with the TXPHP and was noncompliant with the Agreed Order. In August 2019, and in October 2019, the Texas Board suspended respondent's license based on determinations that he continues to have a substance abuse problem which impairs his ability to practice medicine safely. In that the suspension orders are recent, respondent has a high burden to show sufficient rehabilitation for continued licensure.

Respondent did not present any evidence of rehabilitation. He does not acknowledge having a substance abuse problem. Respondent's dishonesty with the Texas Board is concerning and detracts from any possible finding of rehabilitation. Based on his conduct with the Texas Board, respondent does not appear to be a suitable candidate for a period of probation in California with the conditions required

of a substance abusing licensee. As such, the only discipline consistent with public protection is license revocation.

ORDER

1. The automatic suspension of Physician's and Surgeon's Certificate No. A 68146, issued to respondent Suresh Venkayya Dutta, M.D., is affirmed.

2. Physician's and Surgeon's Certificate No. A 68146, issued to respondent Suresh Venkayya Dutta, M.D., is revoked.

DATE: December 20, 2019

DocuSigned by:
Melissa Crowell
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MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearing