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K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2106

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PRAGYA B. GUPTA, M.D., LICENSE NO. 34920, 162 BARNWOOD DRIVE, EDGEWOOD, KENTUCKY 41017

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and Pragma B. Gupta, M.D. (hereafter "the licensee"), and, based upon their mutual desire to fully and finally resolve the pending investigation without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER**:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order:

1. At all relevant times, Pragma B. Gupta, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Interventional Pain Management.
3. In January 2023, the Board received a complaint from one of the licensee's patients alleging violations of the standard medical practice and standard of care and causing her trauma. Specifically, the grievant detailed the following issues:
 - Donald Jay Thomas "DJ" was introduced to me as the office manager. However, throughout my time under the licensee's care he was an active participant in my care. I was very uncomfortable with Mr. Thomas being in my treatment room while I was wearing a gown and not fully clothed given that he has no medical certification. On multiple occasions, he was the individual who administered the anesthesia[.] He would ask Dr. Gupta how much to administer and then measure out and give the doses by iv. [...]
 - In September 2021, I was given my first injection of cyanocobalamin [.] I was supposed to have a second injection 30 days from the first as I understand the protocol to be. At the second injection date, Dr. Gupta took

one look at me and was immediately concerned. I had let DJ and others in the office know that I did not feel right, and I had swelling. Dr. Gupta immediately knew that this was an allergic reaction. I instead was given a different injection.

- I was told during my injection procedures that I was a “VIP” patient and that I would receive good stuff. I took this to mean that I was given more anesthesia than other patients. I expected to be in a twilight type feeling while injections were being given. However, I was completely knocked out and I do not believe that was appropriate for this type of injection. On one occasion, I had issues coming out of the anesthesia in the office.
 - Autumn Thomas is the wife of DJ Thomas and the clerk/billing assistant at the office. To my understanding she has had no medical training or certification, but she conducted medical functions such as taking vitals. She was also the individual that would handle sending prescriptions [sic] to the pharmacy. However, I do not believe that proper protocols were followed in proscribing [sic] as I had two different issues that I believe are very important to mention.
 - a. I was proscribed [sic] Savella. Dr. Gupta had advised that this medication was one that needed to be stepped up to a higher dosage. I was only advised to take one a day and was supposed to receive a lower milligram capsule for so many days then pickup a higher milligram. The prescription [sic] was incorrectly placed by Autumn, my dosage stated two pills per day and I was started on a 25 mg which I was supposed to start on 12.5. At one point, the system as you can see in my medical records had me proscribed [sic] a 25 MG and a 50 mg to both take twice a day. I never took these together or in the incorrectly proscribed [sic] manner. However, I did have side effects from taking the 25 mg to begin [...] This causes me to have concerns that he does not fill out his own prescription orders or at the least he doesn't pay attention to what he signs.
 - b. On several occasions, prescriptions [sic] from other doctors were ordered to be refilled by Dr. Gupta's office. My understanding from what I was told was that this was Autumn incorrectly refilling medications. My other doctors [...] were very concerned when this occurred. [...]
4. On or about February 12, 2023, the licensee responded to the grievant's complaint. He discussed her history, diagnoses and treatment. He also included his chronology of her care and his *curriculum vitae*. Specifically, he stated, in part:

- Donnie J Thomas (DJ) is a trained medical assistant. I have trained him since 2002. In my long career, I had not had a single adverse event or serious adverse event where he was involved. I have trained him not only to perform routine Medical Assistant Jobs, but he is also a Clinical Coordinator for my ongoing clinical research work (GCP certified). [...] DJ is trained to perform more than one job. Multitasking is required to work in a solo practitioner's office. DJ helps me in the procedure room. He positions patients, attaches them to the monitors per ASA guidelines, and moves the Fluoroscope per my instruction. At times DJ administers a small dose of sedation on my request. [...] DJ was not the only person present at the time of infusion, as other MAs were there, particularly her daughter, on the day of the first infusion. I have checked her multiple times during the infusion to monitor EKG tracing and the depth of her sedation. She received good care. She was covered appropriately with blankets. There was no trigger for reactivating PTSD.
- In September, there were three encounters. [...] I don't recall the swelling at all. It was not life-threatening and without any residual problems. She is probably referring to swelling from IV fluid extravasation, which is not an allergic reaction. The patient was never administered Cyanocobalamin in my clinic.
- No, I don't recall calling any patient a VIP, although I consider all patients VIPs and treat them accordingly. Most of the time, her daughter Brittany Morris was present during transportation of her to and from the procedure room. She needed 5mg of midazolam for the procedure as she was extremely nervous. Without sedation, I could not have performed the procedure as she would not cooperate.
- Ms. Autumn Thomas is also a MA whom I have trained since 2013. Autumn Thomas occasionally helped us in the recovery unit by relieving Medical Assistants for lunch breaks when we were short-staffed during the COVID infection. Autumn Thomas is responsible for discharging patients, reviewing discharge instructions, and ensuring that patients are appropriately scheduled for post-procedure follow-up. She also helps me with billing work. In the recovery area, she would typically watch those patients who are getting ready to be discharged. All patients in the recovery area are attached to the automated monitors. She is also responsible for following all my orders, such as lab work and imaging requests.
[...]
- The allegations that I don't take care of my prescription are inaccurate. I am meticulous and ensure that my staff follows my instruction correctly. I verify and cross-verify that the prescriptions are correctly sent by checking the logs frequently. Autumn helps me ensure that the refills are sent in a timely fashion. I enter the prescription under the appropriate diagnosis, and then she transmits the Rx electronically, which I monitor directly.

- No, I don't refill other physicians' prescriptions unless the patient specifically requests me to do that to save time and a visit. [...]

5. On or about March 21, 2023, a Board consultant completed a review of the grievant's medical records and found that the licensee's diagnosis and treatment were below the minimum standards of acceptable and prevailing medical practice.

The Board consultant's specific diagnostic concerns were that:

- Dr. Gupta performed three cervical transforaminal epidurals without documenting the specific history and findings indicating the need for these injections [...]
- The cervical MRI showed "C4-C5 small central disc protrusion mildly compressing the thecal sac. No spinal cord or nerve root compression."

The Board consultant's specific treatment concerns were that:

- The three transforaminal cervical epidurals performed were not indicated as described under the diagnosis. In addition, after each transforaminal epidural injection there is no mention of the patient's response to the previous epidural procedure. Only after three epidurals does Dr. Gupta describe the response to the three procedures.
- The epidurals and facet injection's were performed under moderate sedation. The operating physician, Dr. Gupta cannot also serve as the anesthesia monitor. It is standard of care that the anesthesia monitor must be at least an RN. In all of the procedures his trained assistant, DJ Thomas, served as anesthesia monitor. In addition, the sedation monitoring records are incomplete and one is missing.
- There is evidence in the medical record that the grievant was over-medicated. [...] After starting these medications, on follow-ups Dr. Gupta does not address the partial response to these medications. On 6/15/2021 Dr. Gupta's interim history states "Today patient exhibited some speech difficulty and complained of weakness in right upper extremity and lower extremity." The medical record does not show any new physical exam, just a repeat of the previous exams. Dr. Gupta does not comment on these serious new complaints and he continues her treatment plan. On 7/13/2021 the patient presented with new complaints of having an "an attack of generalized numbness and fatigue-like symptoms." The patient complained of intermittent incontinence, in addition to the previous complaints [...] Over the next eight months all of her complaints continued.
- [...] Based on the list of medications and known drug interactions some of these serious symptoms, were more likely than not related to over-medication.

6. On or about April 4, 2023, the licensee responded to the Board consultant's report and included a detailed explanation of his treatment and reasoning for the care he provided to the grievant. He also included significant references to literature and his clinic's policies and procedures. Specifically, he explained:

- The decision to perform three cervical transforaminal injections was based on my clinical examination of the patient, my experience, and my knowledge. I examined the patient before every procedure in the procedure room. There is a record of pre-procedure VAS on each occasion. [...] This patient had complete pain relief after the third injection.
- I use sedation for anxiolysis and amnesia only. I titrate the medicine so that they are fully responsive and comfortable with minimal anxiety and can tolerate unpleasant sensations of the procedure. All patients are monitored as per ASA protocol. BP, HR, and Pulse oximetry are performed continuously in the procedure room. Patients are evaluated pre-procedure and post-procedure, and the vitals are recorded. We have followed the guidelines outlined in KBML (<https://kbml.ky.gov/board/Documents/Board%20Opinion%20Office%20Based%20Surgery.pdf>) (revised 2018) regarding the requirement for the safe conduct of mild sedation. In this document[,] requirement of a trained person is mentioned. All procedure personnel is ACLS trained and have been trained to assist me in the procedure room properly.
- The procedure room has all the equipment for resuscitation, including an AED, laryngoscope (3 sizes Miller and McIntosh), suction machine, ambu-bag, and oxygen cylinder. All recovery bays are fully equipped with monitors for monitoring vitals as per ASA protocol. All equipment undergoes preventative maintenance. [...]
- The MA normally positions the fluoroscope and monitors the patient. I operate the fluoroscope and constantly communicate with the patient. I am a board-certified anesthesiologist and a pain specialist. I administer 0.5mg of Versed in the procedure room and titrate the medicine slowly while my assistant and I monitor the vitals. Most of the time, the completion of the procedure takes 30 - 35 minutes (for ESI or Facet joint block), which includes an examination of the patient pre and post-procedure in the room and recovery area.

[...]
- The patient was an extremely difficult patient to manage. I spent anywhere from 1 – 2 hours with her each visit and could not document everything that transpired during the visit. I treated her with FDA-approved combination medicine for fibromyalgia as she failed all other treatments, but she did not

respond. Insomnia is a known problem associated with fibromyalgia, which I treated with Lunesta. I can assure you that she did not experience any side effects from the medicine that I prescribed. [...]

7. On or about April 26, 2023, after considering the licensee's response to his report and again reviewing the records, the Board consultant changed his conclusions as follows:

- [The grievant] had a total of five procedures where she was administered intravenous sedation with midazolam 5 mg. This dosage is documented in the medical record and acknowledged by Dr. Gupta in his response to the grievance (answer number 3). Dr. Gupta's patient encounters list the billing codes used for each visit. In all instances where midazolam sedation was administered the billing was listed as moderate sedation. Dr. Gupta has indicated in his response to my report that he was using mild sedation (answer 2).
- Dr. Gupta states that [the grievant's] intravenous line infiltrated after one of her cervical epidurals in September 2021 without residual problems. He also says he has educated his staff to properly fill out anesthesia monitoring forms. I have previously stated that the guidelines for intravenous sedation require that a registered nurse be present as the anesthesia monitor to administer the sedation and, if necessary, start intravenous lines. I have included in this report the latest guidelines for conscious sedation.
- Most concerning to me is the recent information I have received regarding Donnie J. Thomas. The grievant has stated that Mr. Thomas started at least one of her intravenous lines and had administered intravenous sedation to her. Further review of Dr. Gupta's response (answer#1) to her grievance reveals by his own admission that he allows Mr. Thomas to administer intravenous midazolam.

My conclusion is Donnie J. Thomas is practicing medicine without a license. This represents an immediate threat to the safety and health of the citizens of Kentucky.

8. The licensee, with counsel, was present at the Panel meeting on May 18, 2023. Leading up to the meeting, he provided more literature to the Panel and provided pictures of his facility to the Panel during the meeting. At the Panel meeting, he explained that he trains all his staff. He considers Mr. Thomas a Medical Assistant because of that training and because he assists him with procedures, including

pushing medications. The licensee conceded that Mr. Thomas has no certification. However, Mr. Thomas has worked with the licensee on and off for twenty years, most recently starting in 2016. During the meeting, the licensee stated that he has twelve staff members, including one Nurse Practitioner, two receptionists, two clinical coordinators, one dietitian, one exercise therapist, one discharge employee and two temporary workers for additional help. Two people are in the procedure room, but none are a Physician Assistant, Registered Nurse or certified Medical Assistant. It is during post-op that a certified Medical Assistant sees patients. He informed the Board that he has plans to move to California and had been offered a job there in October. He has transferred all his patients to another physician, and May 18, 2023 was his last day – he would perform no further procedures in Kentucky.

9. The licensee agreed to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Suspension.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee engaged in conduct which violates the provisions of KRS 311.595(9) [as illustrated by KRS 311.597(4)]. Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this matter without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to resolve the pending matter without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice medicine within the Commonwealth of Kentucky held by Pragma B. Gupta, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT perform any act which would constitute the practice of medicine, as that term is defined or contemplated by KRS 311.840, et seq., in the Commonwealth of Kentucky, unless and until the Panel or its Chair has approved, in writing, the practice location at which he will practice as a physician. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a practice location, the Panel or its Chair will particularly consider whether there will be appropriate oversight by a person(s) or entity that is not the licensee. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety;
 - b. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board's costs of \$2,625.00 within six (6) months from entry of this Agreed Order; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that the licensee has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction

immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 27th day of May, 2023.

FOR THE LICENSEE:



PRAGYA B. GUPTA, M.D.



JUDD R. UHL
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



DALE E. TONEY, M.D.
CHAIR, INQUIRY PANEL B



NICOLE A. KING
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150