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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2081

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY ERIC C. WELLING, M.D., LICENSE NO. C0682,
6599 S. JULIET WAY, SALT LAKE CITY, UTAH 84121

AMENDED EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (“the Board”), acting by and through the Chair of its Inquiry Panel B, considered a memorandum from Michael Rodman, Executive Director, dated December 21, 2022; e-mail correspondence from the Federation of State Medical Boards, dated November 7 and December 20, 2022; an *Order of Summary Suspension of Eric C. Welling, M.D., Wyoming Physician License No. 100015A, Pending A Contested Case Hearing*, Docket No. 23-12 (Wyoming Board of Medicine); e-mail correspondence from the licensee, dated November 25, 2022; and Article X(4) of the Interstate Medical Licensure Compact. Upon consideration of said information and being sufficiently advised, the Chair of Inquiry Panel B authorized the issuance of an emergency order of suspension pursuant to terms of the Interstate Medical Licensure Compact on or about December 21, 2022. On January 19, 2023, Inquiry Panel B convened and reviewed the same information, in addition to information from the Utah Department of Commerce Division of Occupational and Professional Licensing and e-mail correspondence from the licensee, dated January 2, 2023. Having considered this information and being sufficiently advised, Inquiry Panel B hereby ratifies the emergency action and enters the following AMENDED EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support this Amended Emergency Order of Suspension:

1. At all relevant times, Eric C. Welling, M.D. (“the licensee”), was licensed by the Board and through the provisions of the Interstate Medical Licensure Compact to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is anesthesiology.
3. On or about November 4, 2022, the licensee’s license to practice medicine in the State of Wyoming, a member board of the Interstate Medical Licensure Compact, became suspended pursuant to an *Order of Summary Suspension of Eric C. Welling, M.D., Wyoming Physician License No. 100015A, Pending A Contested Case Hearing*, Docket No. 23-12 (Wyoming Board of Medicine) based, in part, upon the following facts:

- a. On or about October 25, 2021, the Wyoming Board received a National Practitioner Data Bank (“NPDB”) report, stating Davis Hospital and Medical Center in Layton, Utah, suspended the clinical privileges of Dr. Welling, effective September 23, 2021.
- b. The NPDB report stated:

Dr. Welling demonstrated a higher-than-average discrepancy rate related to his use of medications, including controlled substances in his anesthesia practice. He was placed on a Focused Review on March 9, 2021, and on Conditional Staff Category on May 25, 2021, due to continued concerns with his drug administration, medical stewardship and medical documentation. On September 21, 2021, at the end of his 6 month FPPE, he disclosed to the MEC that he may have underlying deficits which could be the cause of his substandard performance. He was summarily suspended on September 23, 2021, due to health and safety concerns and was requested to obtain a cognitive assessment. After his suspension went into effect, additional patient safety concerns were raised and an investigation into his performance was initiated on September 30, 2021. At this time, Dr. Welling

has not completed all the requirements of his suspension and it has currently been in place for a period longer than 30 days.

- c. On or about October 27, 2021, Board staff opened complaint No. 1274, and requested a response from Dr. Welling regarding the NPDB report.
- d. On or about November 12, 2021, Dr. Welling emailed a response to the Board office stating:

I am writing to verify that my privileges have been suspended at Davis Hospital pending an investigatory suspension related to anesthesia charting errors. The Davis Hospital Medical Executive Committee required an evaluation at Acumen Assessments in Lawrenceville [sic], KS for neurocognitive testing to diagnosis a medical condition that would explain anesthesia charting errors with relation to the medications removed from the Pyxis drug dispensing system. I suggested that perhaps that a mental illness (ADHD) may explain my the [sic] errors and apparent distraction. The first available appointment at Acumen Assessments was 3 ½ weeks after the suspension. It was also known that Acumen Assessments require 4-6 weeks for completion of their "written review" which is what the Davis Hospital MEC required for their investigatory suspension.

I finished the assessment at Acumen Assessments on October 14. The preliminary report was a diagnosis of Cyclothymia with Anxious Distress. I am seeking consultation with Dr. Benjamin VanLeeuwen, M.D. (Psychiatrist, Layton, UT) who has changed my medication regimen. We are still awaiting the final report from Acumen Assessments at which the Davis Hospital MEC will make their recommendations and treatment plan.

Thank you for your notification of this matter.

- e. On or about November 23, 2021, the Wyoming Board received a subsequent NPDB report, stating Davis Hospital and Medical Center in Layton, Utah, extended the previous action regarding Eric C. Welling, M.D., on November 23, 2021.
- f. The NPDB report stated:

On November 15, 2021, Dr. Welling requested a medical leave of absence for an indefinite period of time. This was due to the recommendation and findings of Dr. Welling's neurologic cognitive assessment provided by Acumen Assessments in Lawrence, Kansas. His request was approved by the Medical Executive Committee on November 16, 2021, and finalized by the Board of Trustees on November 23, 2021.

- g. On or about December 15, 2021, the Board office received the Acumen Assessment report regarding Dr. Welling. The report stated Dr. Welling

would be able to safely and skillfully practice only if he followed the recommendations included on the report.

- h. On or about December 16, 2021, Dr. Welling was advised that the Board officers appointed Board members Rene' Hinkle, M.D., and Diane Noton, M.D., as Interviewers ("Interviewers") to further investigate this matter.
- i. On or about March 2, 2022, after many requests, the Board office received medical records from Dr. Welling's treating physician, Benjamin VanLeeuwen, M.D. The records received indicated that Dr. Welling was going against Acumen Assessments recommendations by changing his own medications, not participating in an intensive partial hospital or day treatment for professionals in crisis, and not taking a leave of absence as recommended until further assessment demonstrates an improvement in his thought organization on the medication.
- j. On or about March 25, 2022, the Board's Prosecuting Attorney sent a letter to Dr. Welling asking him to specifically answer how he had strictly complied with each of the seven recommendations made in the Acumen Assessment evaluation.
- k. On or about March 29, 2022, Dr. Welling sent an email response detailing each of the recommendations by Acumen Assessments and how he felt he had strictly complied with the recommendations.
- l. On or about April 21, 2022, Dr. Welling met for an Informal Interview with the Interviewers and the Board's Prosecuting Attorney.
- m. On or about July 6, 2022, the Interviewers and Prosecuting Attorney sent a memo to the Board officers requesting the officers Order a Mental Health Examination on Eric C. Welling, M.D.
- n. On or about July 22, 2022, the Board Officers' *Order for Alcohol, Substance and Mental Health Examination of Eric Welling, M.D., Wyoming Physician License No. 100015A* ("Order"), was filed and served on Dr. Welling via email and First-Class mail.
- o. Dr. Welling was ordered to confirm attendance at a pre-approved alcohol, substance and mental health examination to the Board no later than 5:00 p.m., Wednesday, August 12, 2022. The Board is concerned that Dr. Welling failed to comply with this portion of the Order.
- p. Dr. Welling was ordered to initially present for the alcohol, substance and mental health examination no later than Monday, September 5, 2022, and shall be completed no later than Friday, September 9, 2022. The Board is further concerned Dr. Welling failed to comply with this portion of the Order.

- q. The Board is further concerned that, if proven, the above actions by Dr. Welling would constitute one or more violations of the Wyoming Medical Practice Act, ...
 - r. The Board is led to find that for all the reasons stated above, most especially Dr. Welling's failure to comply with the Order of the Board Officers requiring a reevaluation at Acumen Assessments of his ability to practice safely and skillfully, Dr. Welling's continued possession of a Wyoming physician license, and his ongoing ability to practice medicine in Wyoming using that license, poses an imminent and immediate threat to the public health, safety, and welfare of the people of Wyoming that imperatively requires an immediate summary suspension of his Wyoming physician license.
4. This Board received notice of the Wyoming suspension via a report from the Federation of State Medical Boards. The licensee did not report the Wyoming within ten days as required by 201 KAR 9:081(9)(2)(a)(2). Further, the licensee did not provide this Board a copy of the order issued by the Wyoming Board within ten days of the November 4, 2022 Order.
 5. On or about December 21, 2022, the Board's Inquiry Panel B Chair issued an emergency order of suspension against the licensee's license to practice medicine in the Commonwealth of Kentucky pursuant to the Interstate Medical Licensure Compact.
 6. In correspondence dated on or about January 2, 2023, the licensee disclosed self-prescribing of blood pressure and anti-cholesterol medications.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Amended Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.

2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated KRS 311.595(9) as illustrated by KRS 311.597(4), and KRS 311.595(12), (17) and (21).
4. The Inquiry Panel concludes there is probable cause to believe this licensee's practice constitutes a danger to the health, welfare and safety of his patients or the general public and that the licensee's license has become suspended in another state.
5. The Board may draw logical and reasonable inferences about a licensee's practice by considering certain facts about a licensee's practice. If there is proof that a licensee has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the licensee will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a licensee's practice presents representative proof of the nature of that licensee's practice in general. Accordingly, probable cause to believe that the licensee has committed certain violations in the recent past presents probable cause to believe that the licensee will commit similar violations in the near future, during the course of the licensee's medical practice.
6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides

for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 520 U.S. 924 (1997), 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

AMENDED EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Eric C. Welling, M.D., is SUSPENDED and Dr. Welling is prohibited from performing any act which constitutes the “practice of medicine,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - until further order of the Inquiry Panel, whichever shall occur first.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective immediately.

SO ORDERED this 20th day of February, 2023.



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

CERTIFICATE OF SERVICE

I certify that the original of this Amended Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed via certified mail return-receipt requested to the licensee, Eric C. Weiling, M.D., License No. C0682, 6599 S. Juliet Way, Salt Lake City, Utah 84121, and emailed to the licensee's email of record, welling.eric@gmail.com, on this 28th day of February, 2023.



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