

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2175

NOV 22 2024

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SUBHASH A. VYAS, M.D., LICENSE NO. 20556, 22 ½ WEST SECOND AVENUE, WILLIAMSON, WEST VIRGINIA 25661-3506

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, considered this matter at its November 21, 2024, meeting. At that meeting, Inquiry Panel B considered a memorandum from Board counsel, dated November 12, 2024; West Virginia Board of Medicine, *Order Summarily Suspending License to Practice Medicine and Surgery in West Virginia, Requiring Mental and Physical Examination of Licensee and Providing Notice of Hearing*, Complaint No. 24-94-W, dated November 4, 2024; a KASPER report reflecting the licensee’s prescribing data for the period November 6, 2023 through November 6, 2024; and a Fourth Amended Agreed Order, KBML Case No. 1023, filed of record July 18, 2012. The licensee was sent notice of the meeting and an opportunity to be heard. The licensee did not appear.

Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following 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 to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Subash A. Vyas, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee identifies his medical specialty to be Urology; however, he also practices General Medicine.
3. The licensee was previously subject to a series of agreed orders with this Board in Case No. 1023, which expired in 2016 and in which he stipulated, in part, to the following facts:

- In November 2004, the Board received information from the Office of the Inspector General alleging that the licensee performed unnecessary procedures; unbundling codes and keeping patients in the hospital longer than would be expected for the diagnosis.

- Three patient charts were referred to a Board Consultant for review. Based upon the review of the three patient charts, the Board Consultant summarized:
... I feel that his performing bilateral retrogrades oftentimes was not necessary. This was a practice that was common 30 years ago, but not today. In my opinion, this is a low-risk to the patient, but nevertheless not completely risk free and does involve radiation exposure as well as a slight chance of infection or ureteral injury. I would stress that the risk is very low though.”

...

It would appear to me that Dr. Vyas should be required to attend postgraduate courses stressing ureteroscopy and/or be required to spend time in a tertiary center with a urologist that does a large number of ureteroscopic and endoscopic procedures.

...

I found that in many instances Dr. Vyas was coding 50972, presumably for ureteroscopy. This code is ureteral endoscopy through a ureterotomy with or without irrigation, instillation, or ureteral pyelography. This is completely inappropriate since there is a code for ureteroscopy. This was done many times. In addition, there was unbundling of urethral dilation and pelvic exam. This is inappropriate, and most, if not all, insurance companies should reject this as inappropriate unbundling....

- Based upon his initial review, ten additional patient charts from the licensee’s practice were referred to the Board Consultant for evaluation. In summary, the Consultant expressed concern over three of the ten patient charts. The Consultant felt the licensee committed gross negligence in proceeding with instrumentation and prostate biopsies in a patient admitted with signs and symptoms of acute prostatitis with urinary retention. The Consultant opined that two cases were below standard for performing retrograde pyelography when not indicated.

- On September 22, 2005, the licensee entered into an Interim Agreed Order to undergo a CPEP assessment.
- The CPEP assessment was conducted on December 14-15, 2005 and January 10, 2006. The Assessment Report was finalized and provided to the Board on May 17, 2006. The licensee described his medical practice as involving both urology and general medicine. Consequently, CPEP evaluated the licensee in both urology and general medicine. CPEP identified multiple deficits of knowledge specific to the licensee's practice of urology and general medicine.
- Based upon neuropsychological screening test results, CPEP recommended a more comprehensive neuropsychological examination.
- At the Panel's August 2006 meeting, the licensee expressed his desire to proceed with a recommended Education Plan specific to Urology but not in the area of general medicine. The licensee agreed to limit his practice of medicine to his specialty of Urology. Based upon the licensee's agreement to limit his practice to his specialty of Urology, the Inquiry Panel agreed to only require that he complete the urologic portion of the recommended CPEP Education Plan and not the general medicine education component, contingent upon him entering into an Agreed Order.
- In October 2006, the licensee underwent a neuropsychological evaluation, which found that
 - In summary, the patient's overall profile appeared to indicate this man is suffering no significant impairment ... However, mild weakness is seen with respect to visuopraxis, and bilateral temporal lobe proficiency involving verbal and complex visual memory. Such a profile of deficiency does tend to be seen in persons experiencing an emerging "mild cognitive impairment" having an organic etiology, particularly someone of his age. ...
- The licensee repeatedly advised the Panel that he is able to fully practice his specialty in West Virginia. Upon inquiry, the Board obtained a Consent Order entered into between the licensee and the West Virginia Board of Medicine on May 12, 2008. The Board also obtained and reviewed minutes of various West Virginia Board of Medicine meetings at which the licensee unsuccessfully sought to remove any restrictions from his West Virginia license.
- As part of his agreement with the Panel, the licensee practiced with a Board-approved supervising physician with whom he met every 30 days to review cases and documentation, discuss decisions related to cases, review specific documents, and make plans for continued monitoring. In November 2011, the supervising physician reported to the panel that the licensee was "up to date and well versed in the urologic scientific literature and modern-day practices of urology, placing him in the upper tier of urologic practitioners." However, the

supervising physician noted that he was constrained from evaluating the licensee's operative skills since he was unable to become credentialed at a hospital.

4. Pursuant to the licensee's agreements with the Board in Case No. 1023, in part:

- He was restricted to the practice general urology, contingent upon him having the oversight of a Board-approved supervising physician;
- He was prohibited from performing any major urological procedures such as prostatectomy and nephrectomy;
- He was required to be under the care of a Board-approved treating physician to attest to any deterioration of impairment of his ability to practice with a reasonable degree of skill or safety.

5. On September 19, 2024, the Complaint Committee of the West Virginia Board of Medicine ("Complaint Committee") initiated Complaint No. 24-94-W against the licensee based upon a report received from a West Virginia practitioner (the "Reporting Provider") which raised concerns regarding Dr. Vyas' prescribing of controlled substance medications, as follows:

- While providing coverage at an ambulatory care clinic in Mingo County, West Virginia, the Reporting Provider provided health care services to an individual who was also an established patient of Dr. Vyas.
- The patient requested a controlled substance from the Reporting Provider to aid with insomnia.
- The Reporting Provider accessed the patient's controlled substance medication history with the West Virginia Board of Pharmacy's Controlled Substance Monitoring Database.
- The Reporting Provider identified that this patient had active prescriptions from Dr. Vyas for three controlled substances (being Fioricet, Gabapentin and Clonazepam).
- The Reporting Provider noted that these prescriptions were written to the patient by Dr. Vyas for several months prior to the Reporting Provider's encounter with the patient.
- During the Reporting Provider's encounter with the patient, the patient disclosed that the patient began seeing Dr. Vyas for these three prescriptions after his care at a pain clinic had been terminated for non-adherence; that Dr. Vyas is not treating the patient for urologic issues, but is prescribing fioricet for headaches, gabapentin for neuropathy and clonazepam for anxiety; that Dr. Vyas has not treated the patient beyond prescribing the identified medications and has done no work-up of the patient's health conditions; that the patient

attends monthly appointments to maintain the reference prescriptions; and that the patient is required to pay \$100 cash for each monthly appointment.

- The patient declined the Reporting Provider's offer to coordinate medical workups for the patient's headaches and anxiety.
- Another provider who was also covering patients at the same Mingo County ambulatory care clinic saw a different patient who was receiving the same combination of controlled substance medications from Dr. Vyas (fioricet, gabapentin and clonazepam) while on gabapentin therapy managed by the ambulatory care clinic. This patient declined to discuss these prescriptions or his care and treatment by Dr. Vyas

6. The Complaint Committee proceeded to investigate the allegations in the report and Dr. Vyas' controlled substance prescribing practices and found that

- Dr. Vyas sees patients at his Williamson, West Virginia Medical Office twice a week on Wednesdays and Fridays.
- Dr. Vyas also sees patients at Alpha Health, LLC ("Alpha Health"), a medication-assisted treatment ("MAT") clinic located on Logan Street in Williamson, West Virginia.
- Dr. Vyas sees patients at Alpha Health on Tuesdays and every other Saturday.
- Dr. Vyas is the only licensed practitioner that sees patients at Alpha Health.
- Alpha Health patients are charged \$100.00 cash per visit.
- Dr. Vyas regularly issues monthly prescriptions to many Alpha Health patients for various cocktails of two, three or four controlled substance medications, typically among the following medications: fioricet, gabapentin, clonazepam, alprazolam and phentermine. The cocktails of controlled substance medications that Dr. Vyas regularly prescribes to his patient population at Alpha Health can increase the risk of respiratory depression, cognitive impairment and overdose.

7. Dr. Vyas' prescribing patterns documented in a Kentucky KASPER report, dated 11/6/2023-11/6/2024, reflect the same controlled substances patterns and combinations noted in West Virginia.

8. Dr. Vyas' controlled substance prescribing records from the West Virginia Board of Pharmacy Controlled Substance Monitoring Database (the "CSMP") indicate that, from September 24, 2024, through October 3, 2024: 205 prescriptions for controlled substance medications, amounting to 15,913 pills/doses, were issued to 78 patients under Dr. Vyas' name and DEA number.

9. Dr. Vyas was on vacation from September 24, 2024, through October 3, 2024.
10. According to Dr. Vyas, while on vacation, he did not see, treat or speak to any patients, including by telehealth; he did not write any prescriptions or issue any electronic prescriptions; he was not asked by anyone, nor did he authorize anyone to issue prescriptions to patients under his name and DEA number, via e-script or otherwise.
11. According to Dr. Vyas, he does not know how to issue an e-script and that when he sees a patient at Alpha Health, he tells a secretary what to prescribe and "the secretary does something, and it goes to the pharmacy [via e-script]."
12. According to Dr. Vyas, he does not issue a prescription, nor authorize the issuance of an e-script, unless he sees or talks to the patient and that if Alpha Health used Dr. Vyas' name and DEA number without his consent to issue e-scripts, then he is not responsible for what Alpha Health does.
13. The Complaint Committee obtained medical records from Alpha Health for fourteen patients for whom Dr. Vyas regularly prescribes controlled substance medications and found that all fourteen patient charts, and the medical documentation contained therein, failed to justify the course of treatment and controlled substance medication cocktails prescribed by Dr. Vyas and/or pursuant to his DEA registration. The patient charts show that multiple patients regularly failed urine drug screens, yet there was no documentation of discussions with the patients regarding the failed screens, medication compliance, nor any discontinuation or changes in the medications prescribed. Five of the fourteen patients whose medical records were obtained were also MAT patients for whom Dr. Vyas regularly co-prescribed suboxone with multiple other controlled substances, including gabapentin, fioricet, clonazepam and/or Xanax.

14. On or about November 3, 2024, Dr. Vyas appeared before the Complaint Committee. His appearance and his responses to questioning by the Complaint Committee created concern on the part of the Complaint Committee for the mental and physical health and well-being of Dr. Vyas and his ability to practice medicine safely to patients. It was noted that Dr. Vyas appeared to have difficulty hearing and comprehending the Committee's questions and exhibited some difficulty with memory/recall. Dr. Vyas' presentation raised concerns regarding his functional capacity and/or competency to monitor the use and control of e-scripts issued under his name and DEA number by other individuals or entities.
15. On or about November 3, 2024, based upon the information developed from its investigation and Dr. Vyas' presentation during his appearance, the Complaint Committee determined that the evidence in its possession indicated that Dr. Vyas' continuation in practice or unrestricted practice constitutes an immediate danger to the public. The Complaint Committee further concluded that a mental and physical examination of Dr. Vyas by a board-designated physician is warranted.
16. On or about November 4, 2024, the West Virginia Board of Medicine summarily suspended Dr. Vyas' license to practice medicine and ordered him to submit to a mental and physical examination.
17. The West Virginia *Order Summarily Suspending License to Practice Medicine and Surgery in West Virginia, Requiring Mental and Physical Examination of Licensee and Providing Notice of Hearing*, Complaint No. 24-94-W, is incorporated in its entirety into this Emergency Order of Suspension by reference.

18. Dr. Vyas did not report the action against his license in West Virginia to this Board within ten (10) days as required by 201 KAR 9:081(9)(2)(a)(2). Further, he did not provide this Board a copy of the order issued by the West Virginia Board within ten (10) days.

19. Dr. Vyas has been nonresponsive to this Board's communications regarding this matter, including failing to appear at the Inquiry Panel meeting on November 21, 2024.

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 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(12) and (17).
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 patients or the general public.
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.

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 SUBHASH A. VYAS, M.D., is SUSPENDED and Dr. Vyas 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 the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective immediately upon service to the licensee.


SO ORDERED this 22nd day of November, 2024.



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

CERTIFICATE OF SERVICE

I certify that the original of this 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; and a copy was mailed via certified mail return-receipt requested to the licensee, Subhash A. Vyas, M.D., License No. 20556, 22 ½ West Second Avenue, P.O. Box 1599, Williamson, West Virginia 25661-3506 and via email to savyasmd@yahoo.com, on this 22nd day of November, 2024.



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