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October 26, 2009

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF LOKESH BABU VUYYURU, M.D. License NO. 25MA54880 TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	Administrative Action **FINAL ORDER OF DISCIPLINE**

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent, Lokesh Vuyyuru, M.D., is the holder of License No. MA54880 and was licensed to practice medicine in the State of New Jersey from 1990 to 1991, after which time Respondent permitted that license to lapse.

2. On or about May 19, 2006, the Virginia Board of Medicine ("Virginia Board") entered an Order revoking Respondent's license

CERTIFIED TRUE COPY

to practice medicine for engaging in professional misconduct. The Virginia Board found that Respondent violated §54.1-2915.A(3), (13), (16), (17), and (18) of the Code, as well as §54.1-3404 and §54.1-3405 of the Code. The Virginia Board also found that Respondent violated the following regulations governing the practice of medicine: 18 VAC 85-20-330(B)(2) and (C)(2); 18 VAC 85-20-340(A) and (B); 18 VAC 85-20-360(A) and (D); 18 VAC 85-20-370; 18 VAC 85-20-380; and 18 VAC 85-20-105. Specifically, the Virginia Board found that the death of Patient A was the result of Respondent's failure to act within the standard of care and that the complications Patient A experienced were the result of Respondent's decision for prolonged and unnecessary intubation. The Virginia Board found that the record did not support the need for additional administration of Versed and Demerol during Patient B's endoscopic retrograde cholangiopancreatography ("ERCP") and that Respondent did not ensure that Patient B was adequately monitored during the procedure. Patient B suffered hypoxia, developed anoxic encephalopathy, and was discharged in a vegetative state. The Virginia Board further found that Respondent's treatment of Patient D, a 104 year old female, who suffered a cardiac arrest and died following an ERCP procedure was contrary to sound medical judgment and a violation of the applicable standard of care. The Board determined that Respondent performed the risky diagnostic procedure without considering Patient D's age and

ignoring relative contradictions such as renal failure, atrial fibrillation, right heart failure and advanced malignancy. Additionally, the Virginia Board determined that Respondent's treatment of Patients E, I and K demonstrated a pattern of faulty clinical judgment with respect to ERCPs. The Virginia Board found that Respondent performed an ERCP on Patient E contrary to sound medical judgment, and recommended that Patients I and K undergo an ERCP contrary to sound medical judgment. The Virginia Board further found that Respondent administered conscious sedation to his patients without the assistance of and monitoring by a licensed nurse, physician assistant, or licensed intern/resident. The Virginia Board also found that Respondent did not have the required written protocols, policies, and procedures for physicians who administer office-based anesthesia, Respondent's medical records of controlled substances failed to satisfy statutory requirements, and that Respondent refused to immediately supply copies of requested records during the investigation of his practice.

3. The Virginia Board's May 19, 2006 Order has been upheld by both the Virginia Court of Appeals and the Supreme Court of Virginia. Respondent's petition to the Supreme Court of Virginia for a rehearing was denied on September 19, 2008.

4. In a Report of an Administrative Law Judge to Illinois' Medical Disciplinary Board dated August 11, 2008, the Judge recommended to the Board that Respondent's license should be

revoked. This Report summarized a two-day hearing during which the Illinois Judge heard testimony from the Respondent, Respondent's medical expert, and a character witness for Respondent, as well as, extensive argument from the parties. The Illinois Judge found the Virginia Board's findings that Respondent exercised poor medical judgment and violated the applicable standard of care on numerous occasions to be reasoned and convincing, and thus adopted those findings. The Illinois Judge also found the Virginia Board's discipline of Respondent to be justified and, thus reasoned that the revocation of Respondent's medical license was necessary to protect citizens from the poor medical care Respondent displayed in the past and was likely to render in the future.

5. On or about October 15, 2008, the Medical Disciplinary Board of the Department of Financial and Professional Regulation, Division of Professional Regulation of the State of Illinois ("Illinois Board") adopted the Findings of Fact and Conclusions of Law of the Administrative Law Judge and entered an Order recommending that the Director of the Division of Professional Regulation revoke Respondent's medical license.

6. On or about March 12, 2009, the Director of the Division of Professional Regulation adopted the Findings of Fact, Conclusions of Law and Recommendation of the Illinois Board to revoke Respondent's medical license. Also Respondent's Motion for

Rehearing challenging the Illinois Board's Order of Revocation was denied.

7. On or about October 13, 2006, the State of New York Department of Public Health, State Board for Professional Medical Conduct ("New York Board") entered an Order summarily suspending Respondent's New York medical license.

8. On or about April 22, 2009, the New York Board conducted a formal hearing in this matter. A final Order will be issued in the near future.

CONCLUSION OF LAW

1. The above disciplinary actions taken by the sister states of Virginia, Illinois, and New York provide grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g), in that Respondent's license to practice medicine is revoked or suspended in other states.

2. The above disciplinary action taken by the sister state of Virginia provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(d), in that Respondent has engaged in repeated acts of negligence.

3. The above disciplinary action taken by the sister state of Virginia provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey

pursuant to N.J.S.A. 45:1-21(e), in that Respondent has engaged in professional misconduct.

4. The above disciplinary action taken by the sister state of Virginia provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(h), in that Respondent has failed to comply with regulation N.J.A.C. 13:35-6.5.

5. Respondent's failure to submit his biennial renewal in 1991 resulting in a lapsed license status provides grounds to automatically suspend Respondent's license to practice medicine and surgery in the State of New Jersey pursuant to N.J.S.A. 45:1-7.1(b).

DISCUSSION

A Provisional Order of Discipline ("POD") was entered by the Board on August 17, 2006 seeking to revoke Respondent's New Jersey medical license based upon the Virginia disciplinary action. Respondent filed a response to the POD dated September 26, 2006, which included voluminous supporting documentation. The Board considered all written submissions and voted to finalize the POD without change. Accordingly, a Final Order of Discipline ("FOD") was entered on June 22, 2007. Thereafter, Appellant through his then attorney, Christopher E. Torkelson, Esquire of Sterns & Weinroth, filed a Notice of Appeal.

In accordance with an "Interim Consent Order" entered by the Board on February 19, 2008, Respondent withdrew the appeal. More specifically, the Interim Consent Order rescinded the FOD and Respondent agreed to place his medical license in its prior status, namely, a lapsed license automatically suspended by operation of law pursuant to N.J.S.A. 45:1-7.1(b), and not seek reinstatement until the Virginia appeal process was exhausted. If successful in his Virginia appeal, Respondent could re-apply to resume active practice; if not, then he had 30 days after entry of a final decision or order to request a mitigation hearing. Pursuant to the Interim Consent Order, the mitigation hearing, however, was limited solely to Respondent's testimony, although he could present written certifications from other witnesses within 60 days of the hearing. The Interim Order further provides that if respondent failed to submit a written request within 30 days of entry of the final decision in the Virginia appeal he will be deemed to have waived his right to a mitigation hearing.

By letter dated November 18, 2008, Respondent advised that although his Virginia appeal had been dismissed, there was a pending federal lawsuit regarding the Virginia and Illinois disciplinary action. The Respondent sought to extend the duration of the Interim Consent Order pending resolution of those matters. However, the Board determined not to indefinitely continue this

proceeding and, therefore, in accordance with the Interim Consent Order, scheduled a mitigation hearing for May 13, 2009.

As required by the Interim Consent Order, on March 13, 2009 Deputy Attorney General Doreen Hafner provided a written submission which was forwarded at least 60 days prior to the scheduled mitigation hearing. Respondent did not provide written certifications, but rather requested an adjournment by letter dated March 13, 2009. Respondent's request stemmed from his inability to access documents he could not submit as they were sealed in an out-of-state Grand Jury investigation. Respondent, however, did not explain how those documents were relevant to these proceedings. The request for an adjournment was opposed by DAG Hafner. The Board again determined not to indefinitely continue this proceeding and, therefore, denied Respondent's adjournment request.

Thereafter, by letter dated April 6, 2009, Christopher Torkelson, Esquire advised that his firm was withdrawing as counsel for the Respondent and that he would appear pro se. As a result, by letter dated April 20, 2008, William Roeder, Executive Director of the Board, directly notified Respondent at his address of record with the Board that the mitigation hearing was scheduled for May 13, 2009 and permitted him additional time to submit written certifications. On April 29, 2009 Respondent again requested and was granted an adjournment, in order to afford him the opportunity to retain new legal counsel. Respondent was notified on May 5,

2009 by fax and UPS Mail that the mitigation hearing was re-scheduled for June 10, 2009 and that no further adjournments would be granted.

A Notice of Motion returnable on the date of the mitigation hearing was filed by DAG Hafner on May 11, 2009. The motion sought to amend the POD ("Amended POD") to include Illinois and New York disciplinary actions, which were based upon the Virginia action. The Amended POD stated that it was subject to finalization at the time of the mitigation hearing unless Respondent requested modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request setting forth any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons offered in mitigation of the penalty. As set forth in a Certification of Service, the Notice of Motion and Amended POD were served upon Respondent; but, he failed to respond.

The mitigation hearing was held before the Board on June 10, 2009. DAG Hafner appeared on behalf of the Attorney General and presented evidence and oral argument. Respondent failed to appear and DAG Hafner requested that the Board proceed with a default hearing. In consideration of this request, the Board reviewed the entire matter, including a letter from Respondent dated June 4, 2009 requesting another adjournment of the June 10 hearing but this

time based upon a conflict with a Virginia federal case and his pending reinstatement application in that State. The Board noted that request was opposed by the DAG and, further, that Respondent was notified on June 9, 2009 that the Board President considered and denied his request, subject to ratification by the full Board on June 10, 2009. Respondent was also informed that he should be prepared to proceed on June 10, 2009 at the scheduled time and, if he was not present, then the hearing would proceed in his absence.

The Board found that Respondent was properly notified of the June 10, 2009 date for the mitigation hearing as well as the Notice of Motion returnable on said date. The Board further found that Respondent was clearly informed that June 10, 2009 was a firm date and that no further adjournments would be granted. Finally, the Board noted that this proceeding commenced with the filing of a POD in 2006 and believes that further delays are neither warranted, nor in the best interests of the public. In light of the above, the Board affirmed the denial of Respondent's adjournment request and, further, granted the State's motion to proceed with a default hearing.

DAG Hafner began by requesting that the Board amend the POD to include the disciplinary actions taken against Respondent in Illinois and New York. The Board heard oral argument and found that Respondent was timely served with, and had ample opportunity to respond to: (1) the Notice of Motion seeking to amend the POD;

and (2) the Amended POD itself. However, in the context of requesting an adjournment, he acknowledged notice although he failed to respond.

The Board also found that granting the motion does not unfairly prejudice Respondent since: (1) he was aware of both matters in that he testified in the Illinois matter and, further, there is evidence that he was served with the New York action; and (2) the Illinois and New York actions were based upon the same set of facts as those in the Virginia action. Finally, in the interests of efficiency and expediency, the Board finds that all related matters should be resolved simultaneously. Accordingly, for all the above reasons, the Board voted to grant the motion to amend the POD and move forward to a hearing on sanctions.

As part of the mitigation hearing, the Board accepted into evidence the Virginia, Illinois, and New York disciplinary actions, as appended to the Amended POD. The Board found that DAG Hafner provided substantial uncontroverted evidence that Respondent's license to practice medicine has been revoked or suspended in at least three states based upon findings of negligence and misconduct. Further, Respondent has failed to provide any evidence to the contrary or written mitigating evidence. He further failed to avail himself of the opportunity to appear before the Board and present testimony and again sought to protract and delay this matter which has been pending since 2006. Therefore, after careful

review of the evidence, the Board determined that further proceedings were not necessary and that the Amended POD should be finalized without change. In reaching this determination the Board considered that Respondent had notice of the charges filed against him and an opportunity to be heard pursuant to an Interim consent Order he entered with advice of counsel. He failed to appear at the hearing or present any mitigating information. We therefore find that the allegations contained in the amended POD are sustained and given the gravity of the conduct, which had a direct adverse impact on patient care and gave rise to the sister state actions, we find revocation is the appropriate disciplinary response in the interest of the public safety and welfare.

ACCORDINGLY, IT IS on this 26th day of Oct, 2009, ORDERED THAT Respondent's license to practice medicine and surgery in the State of New Jersey is hereby **REVOKED**, effective on June 10, 2009, the date this order was orally announced on the record.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____
Paul C. Mendelowitz, M.D.
Board President

Dated: 10/26/09

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE HAS BEEN ACCEPTED

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license(and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.