

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

V.

SHIVKUMAR LAKSHMINARAYAN IYER, M.D.

Respondent.

**ORDER OF SUMMARY SUSPENSION OF LICENSE TO PRACTICE
MEDICINE AND SURGERY WITH NOTICE OF HEARING**

The West Virginia Board of Medicine is the duly constituted body responsible for licensure and professional discipline of allopathic physicians in West Virginia. W. Va. Code §30-3-1 *et seq.* In circumstances where the Board “determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public,” the Board is empowered to take summary disciplinary action, on a temporary basis. Temporary summary action may be taken without first holding a disciplinary hearing “if institution of proceedings for a hearing before the Board are initiated simultaneously with the temporary action and [the hearing] begin[s] within fifteen days of the [summary] action.” W. Va. Code §30-3-14(k).

The West Virginia Board of Medicine [“the Board”] hereby **SUMMARILY SUSPENDS** the license of Shivkumar Lakshminarayan Iyer, M.D. (“Dr. Iyer”), License No. 18736, to practice medicine and surgery in the State of West Virginia, effective at **11:59p.m. on Thursday, February 26, 2015.** The Board simultaneously provides this notice to Dr. Iyer

that proceedings for a hearing upon the underlying charges are hereby instituted, and a hearing will commence on **March 9, 2015**, within fifteen days of the entry of this Order.

FINDINGS OF FACT IN SUPPORT OF SUMMARY ACTION

Evidence considered by the Board in rendering this Order supports the following preliminary findings of fact.¹ Exhibits referenced herein which are not public documents and/or which contain personally identifiable information regarding the licensee or third parties are hereby placed under seal by the Board to protect confidential medical and personal information of Dr. Iyer and/or third parties.²

Licensee's Licensure History with the Board

1. Shivkumar Lakshminarayan Iyer, M.D. [Dr. Iyer], holds a license (#18736) to practice medicine and surgery in the state of West Virginia. Exhibit 1.

2. Dr. Iyer's West Virginia medical license was first issued on September 9, 1996. See Exhibit 1.

3. On May 13, 2002, the Board entered an *Order of Summary Suspension of License to Practice Medicine and Surgery with Notice of Hearing* with respect to Dr. Iyer. The Order summarily suspended Dr. Iyer's West Virginia medical license, effective May 15, 2002, and scheduled a hearing upon the underlying charges for May 29, 2002. The basis for the summary suspension was "apparent violations of West Virginia Code §30-3-14(c)(8), (11), (12), and (17) and 11 CSR 1A 12.1(e), (i), (r), and (u) and 11 CSR 1A 12.2(d), all relating to multiple instances of unprofessional, unethical and dishonorable conduct, exercising influence

¹ Inasmuch as this is a summary action for temporary discipline, no hearing has yet occurred. In recognition of the fact that a public hearing must occur before permanent action can be taken against the licensee, the findings of fact reported herein are characterized as preliminary in nature and are made in support of this summary action.

² All Exhibits have been provided to Dr. Iyer and his counsel of record, without redaction, along with this Order, and all exhibits are on file with the West Virginia Board of Medicine.

within a patient-physician relationship for purposes of engaging a patient in sexual activity, and failing to keep medical records to justify the course of treatment of a patient[.]” In issuing the Order imposing summary discipline, the Board determined that, based upon the evidence in the Board’s possession at the time, “for Dr. Iyer to continue to hold an active license to practice medicine in the State of West Virginia, entitling him to continue to practice medicine, constitutes a danger to the health, welfare and safety of the public.” Exhibit 2, pp. 4 and 5.

4. On July 22, 2002, and in lieu of proceeding to a public hearing on the summary discipline, Dr. Iyer entered into a Consent Order with the Board, acknowledging “a lapse in judgment relating to certain behaviors.” Exhibit 3, p. 3. By way of this Consent Order, Dr. Iyer agreed to the appropriateness of the continued suspension of his medical license and agreed to undergo evaluation at Colorado Personalized Education for Physicians to determine his fitness to practice medicine and what, if any, restrictions should be imposed upon his practice. Exhibit 3.

5. Dr. Iyer’s West Virginia license remained in suspended status until July 12, 2004. Exhibit 4.

6. On July 12, 2004, the Board and Dr. Iyer entered into a Consent Order subjecting Dr. Iyer’s medical license to a stayed revocation and an active probationary period of five years. The Consent Order permitted Dr. Iyer to return to the active practice of medicine in West Virginia pursuant to the terms, conditions, restrictions and limitations imposed by the Consent Order. Those agreed upon conditions included, but were not limited to:

- a. a prohibition on solo practice;
- b. a requirement that Dr. Iyer practice under the supervision and/or monitoring of another physician;

- c. the condition that Dr. Iyer remain under the care of a treating psychiatrist for the duration of his stayed revocation/period of probation; and
- d. an agreement that Dr. Iyer would submit to random and unannounced drug and alcohol testing.

Exhibit 4.

7. Dr. Iyer completed his five year period of stayed revocation and active probation on July 12, 2009. At that time, his license was restored to active, unrestricted status.

Exhibit 5.

Matters Currently Before the Board

8. On or about October 4, 2013, the West Virginia Board of Medicine received an investigative report prepared by the Office of Inspector General Division of Audits and Investigations for the Commonwealth of Kentucky Cabinet for Health and Family Services which set forth certain concerns regarding the practice of medicine by Dr. Iyer. Exhibit 6.

9. According to the Investigative Report, the OIG Division of Audits and Investigations conducted an investigation based upon reports it received concerning possible inappropriate prescribing by Dr. Iyer. See Exhibit 6.

10. Based upon its investigation, the OIG Division of Audits and Investigations identified areas of concern including:

- a. the amount of pain medication being prescribed by physician who is a psychiatrist by training;
- b. similarities in the last names of patient for whom controlled substances were prescribed;
- c. the age of the patients for whom controlled substances were prescribed;
- d. the combination of controlled substances prescribed and potential diversion;
- e. the distance patients traveled to obtain treatment and/or prescriptions from Dr. Iyer; and
- f. patients using one or more pharmacies to fill prescriptions.

See Exhibit 6.

11. On November 17, 2013, the Complaint Committee of the Board reviewed and considered the reported information and elected to initiate a complaint to investigate the allegations reported to the Board. Exhibit 7.

12. The Board's initial efforts to investigate the complaint included the issuance of a *subpoena duces tecum* to Dr. Iyer for certain patient records. Exhibit 8.

13. Dr. Iyer denied the allegations of the initiated complaint. Exhibit 9.

14. Dr. Iyer requested an extension of time to provide the requested records. Thereafter, he sought an additional extension of time, asserting that that he had been locked out of his office space, had no access to the requested records and would need to institute legal action to obtain the records. See Exhibits 10 and 11.

15. Dr. Iyer's former landlord disputes his assertion regarding the availability of the requested patient records. Exhibit 12.

16. In May 2014, having still not received the requested records, allegedly because of the ongoing landlord-tenant dispute, the Committee authorized the issuance of a *subpoena duces tecum* for records of patients that Dr. Iyer was currently treating at his Logan Treatment Center practice location. These patient records were not implicated by the alleged landlord-tenant dispute. Exhibit 13.

17. Selecting different patient records permitted the Complaint Committee's investigation to proceed without deferring the investigation until the completion of the alleged landlord/tenant dispute.

18. On June 18, 2014, as part of the investigation directed by the Complaint Committee the Board Investigator traveled to the Logan Treatment Center to serve Dr. Iyer with the newly authorized *subpoena duces tecum* for certain patient records related to the Committee's investigation. Exhibit 14.

19. The Board Investigator was accompanied by two members of the US 119 Drug Task Force. Exhibit 14.

20. On June 18, 2014, the Board Investigator, Agent Berry and Cpl. Sherrill observed Dr. Iyer arrive at the Logan Treatment Center to begin work at or around 12:20 pm. Exhibit 14.

21. On that date, Dr. Iyer arrived at the Logan Treatment Center in a white Chevrolet Suburban which was driven by another individual. Exhibit 14.

22. In the parking lot outside the Logan Treatment Center on June 18, 2014, Dr. Iyer was swaying, stumbling and talking in a rambling, giddy high-pitched voice. Exhibit 14.

23. In the parking lot outside the Logan Treatment Center on June 18, 2014, Dr. Iyer's appearance was unkempt. He was wearing a heavily soiled jacket and pants with multiple, white crusty stains. Exhibit 14.

24. In the parking lot outside the Logan Treatment Center on June 18, 2014, Dr. Iyer spoke with the Board Investigator, in the presence of two members of the US 119 Drug Task Force. During this communication, his speech was slurred. Exhibit 14.

25. Immediately after speaking with the Board Investigator and accepting service of the Board's subpoena, Dr. Iyer entered his place of employment. Exhibit 14.

26. Dr. Iyer issued original prescriptions for schedule controlled substances on June 18, 2014, after he arrived at work, and after he was observed in the parking lot of the Logan Treatment Center swaying, stumbling and slurring his speech. Exhibit 14.

27. Dr. Iyer complied with the Board's subpoena, and produced patient records for sixteen patients on July 11, 2014. Exhibit 15.

28. The next meeting of the Complainant Committee, subsequent to June 18, 2014, occurred on July 13, 2014. The next full Board meeting occurred on July 14, 2014.

29. At the July 13, 2014 meeting of the Complaint Committee, the Committee considered all of the available evidence, and based upon that evidence, the Board's obligation to protect the public interest, and out of concern for Dr. Iyer's wellbeing, decided to request that the full Board authorize the issuance of an Order requiring Dr. Iyer to submit to a mental and physical evaluation, to include drug testing, by a physician or physicians approved by the Board.

30. In order to protect the privacy of Dr. Iyer, and to ensure the impartiality of the Board should the matter come before it in the future for adjudication, the Committee's request to the full Board referred to Dr. Iyer only as "Physician A."

31. West Virginia Code § 30-3-14(f) authorizes the Board, under any circumstances, to require a physician to submit to a mental or physical examination by a physician or physicians approved by the Board. Pursuant to the provisions of West Virginia Code §30-3-14(f), any physician who accepts the privilege of practicing medicine in the State of West Virginia is deemed to have given his consent to submit to all such examinations when required to do so, in writing, by the Board, and to have waived all objections to the

admissibility of the testimony or examination report of any examining physician on grounds that the testimony or report is privileged communication. West Virginia Code § 30-3-14(f) further provides that the expense of any such examination and testing shall be paid by the Board. However, a physician submitting to any such examination has the right, at his own expense, to designate another physician to be present during the examination and to make an independent report to the investigating body or the Board. Any failure or refusal by a physician to submit to any such examination under circumstances which the Board finds are not beyond the physician's control is prima facie evidence of his inability to practice medicine competently and in compliance with the standards of acceptable and prevailing practice pursuant to West Virginia Code § 30-3-14(f).

32. On July 14, 2014, the Board ordered Dr. Iyer, known to the Board at that time as "Physician A," to participate in a mental and physical examination. Exhibit 16.

33. Because it appeared possible that Dr. Iyer might have been prescribing dangerous controlled substances to patients while impaired, the Board determined that the mental and physical examination should occur as soon as possible, and set the examination for Thursday, July 17, 2014. *See* Exhibit 16.

34. Through counsel, Dr. Iyer averred that he would not be able to exercise his right to be accompanied by a physician of his choosing if the examination were to occur on that date. He indicated that he would comply with the drug testing and requested that the mental and physical examination be rescheduled. Exhibit 17.

35. In an effort to accommodate Dr. Iyer in selecting a physician who could be present to observe his mental and physical examination, the Board agreed to reschedule the mental and physical examination until July 31, 2014, and August 4, 2014. However, this

resulted in a delay of greater than two weeks between the originally scheduled evaluation and the new evaluation dates. Exhibit 18.

36. Dr. Iyer appeared for drug screening on July 17, 2014.

37. Dr. Iyer filed a petition for a writ of prohibition in the circuit court of Kanawha County, seeking to prohibit the mental and physical examination ordered by the Board. His petition was denied, and he appeared for the scheduled exams. Exhibits 19 and 20.

38. The Board contracted with a board certified psychiatrist to conduct the mental and physical evaluation of Dr. Iyer.

39. On or about August 21, 2014, the Board received a written report relaying the results of the mental and physical examination. Exhibit 21.

40. Results of Dr. Iyer's drug testing were reported to the physician conducting the mental and physical evaluation. The mental and physical examination report details the results of the results of Dr. Iyer's drug screen and the levels of medications which were present in his system on July 17, 2014. *See* Exhibit 21.

41. The mental and physical examination report indicated that the assessment provided was limited by the evaluating physician's lack of access to: Dr. Iyer's current medical records; the details of the Board's ongoing investigation; and the details of Dr. Iyer's prior period of psychiatric monitoring pursuant to his 2004 Consent Order. Exhibit 21, p. 5.

42. The mental and physical evaluation report identified seven specific potentially problematic interactions among the medication Dr. Iyer was taking pursuant to prescriptions issued by his physician. Exhibit 21, pp. 5-6.

43. It was the opinion of the evaluator that the behavior, appearance and demeanor of Dr. Iyer, when observed by the Board Investigator and two members of law enforcement on

June 18, 2014, was “consistent with intoxication from the combination of medications he is being prescribed, particularly if taken in larger amounts than prescribed.” Exhibit 21, pp. ____.

44. The evaluator indicated that “[d]ue to the observed behaviors by the Board’s Investigator and the MMPI-2 results suggesting the possibility of substance abuse, the presence of a substance use disorder is highly possible but could not be confirmed with the information available.” Exhibit 21, p. 6.

45. Ultimately, while the evaluator indicated that the combination of medications being prescribed to Dr. Iyer was “inappropriate,” and that cognitive issues which were identified on some of the testing he conducted could potentially interfere with Dr. Iyer’s competent practice of medicine, no recommendation was made for immediate action, and the evaluator did not identify any immediate threat to public health and safety. *See* Exhibit 21.

46. The Complaint Committee received the mental and physical evaluation report at its September 2014 meeting, and continued its investigation.

47. In October 2014, the Board received information indicating that on at least one occasion, Dr. Iyer appropriated a schedule controlled substance he prescribed to a patient.³ Exhibit 22.

48. The evidence developed by the Complaint Committee, through witness interviews conducted by the Board Investigator and through a review of documents obtained pursuant to subpoena indicates that:

- a. On or about October 8, 2014, while working at the Logan Treatment Center, Dr. Iyer had an appointment with Patient 17.

³ To protect the confidentiality of patient identities, each patient for whom the Board obtained medical records has been assigned a numerical designation. Patients 1 through 16 reference the individuals for whom Dr. Iyer produced medical records in July 2014. Medical records for Patient 17 were obtained from the Logan Treatment Center on November 14, 2014. A copy of the Patient key has been provided to Dr. Iyer and his counsel.

- b. At this appointment, Dr. Iyer wrote Patient 17 prescriptions for Xanax, Soma and Celexa.
- c. Xanax and Soma are scheduled controlled substances pursuant to the Uniform Controlled Substances Act.
- d. Patient 17 took the prescriptions she received from Dr. Iyer and caused them to be tendered to Family Discount Pharmacy in Mt. Gay, West Virginia for dispensing.
- e. Upon receipt of her filled prescriptions, Patient 17 determined that the pharmacy had dispensed thirty units of Soma, rather than her customary ninety units.
- f. Patient 17 was advised by the pharmacist that Dr. Iyer had written the prescription for thirty pills, and that Patient 17 would need to address her concern to Dr. Iyer.
- g. Patient 17 returned to the Logan Treatment Center to discuss the Soma prescription discrepancy with Dr. Iyer.
- h. Dr. Iyer advised Patient 17 that his staff would call in a correction to her prescription.
- i. Dr. Iyer took possession of the thirty units of Soma which had been dispensed to Patient 17 by Family Discount Pharmacy and did not return them to Patient 17.
- j. Upon her return to the Family Discount Pharmacy, Patient 17 was provided with sixty additional units of Soma. The total dispensed quantity was ninety units, however, Dr. Iyer retained thirty of the dispensed tablets.
- k. Patient 17 returned to the Logan Treatment Center in an effort to obtain the thirty units of Soma Dr. Iyer had misappropriated.
- l. After taking possession of Patient 17's thirty units of Soma, Dr. Iyer cancelled the remainder of his appointments for October 8, 2014, and left the Logan Treatment Center.
- m. Dr. Iyer refused to speak with members of the Logan Treatment Center staff who called to enquire about the return of Patient 17's Soma.
- n. Patient 17 was advised that Logan Treatment Center staff did not anticipate that Dr. Iyer would be returning her controlled substance medication to her.

See Exhibits 22 and 23.

49. As of October 31, 2014, Dr. Iyer was no longer employed by or practicing medicine at the Logan Treatment Center. *See Exhibit 23.*

50. The Logan Treatment Center closed, effective November 1, 2014. Exhibit 23.

51. Subsequent to November 1, 2014, Dr. Iyer utilized prescription pads from the Logan Treatment Center to prescribe scheduled controlled substances on multiple occasions. Exhibit 23 and Exhibit 24. By utilizing prescriptions pads for the Logan Treatment Center after his employment ended, and after the clinic closed, Dr. Iyer is engaging in deceptive, untrue or fraudulent representations in the practice of medicine, and dishonorable, unprofessional and unethical conduct.

52. At its January 11, 2015 meeting, the Complaint Committee authorized the issuance of an Amended Initiated Complaint to ensure that Dr. Iyer was on formal notice of the panoply of allegations which have emerged as part of the investigation the Committee initiated in November 2013, and which are currently under investigation by the Board. Exhibit 25.

53. Dr. Iyer submitted an answer to the Amended Initiated Complaint. In his response, Dr. Iyer largely either denied the allegations of the Amended Initiated Complaint or indicated that he was without sufficient information to admit or deny the same. Exhibit 26.

54. The Complaint Committee referred this matter to a consultant physician for evaluation pursuant to W. Va. Code §30-3-14(g).

55. The Board Consultant is a duly licensed allopathic physician with a board certified specialty of psychiatry, who practices in West Virginia.

56. The Board Consultant was provided with copies of documents developed in the course of the investigation, and was asked to render an opinion regarding whether or not Dr. Iyer has violated the professional standards of physician practice in West Virginia.

57. The Board Consultant submitted his report on February 5, 2015. Exhibit 27.

58. The Board Consultant identified numerous deviations from the standard of care in Dr. Iyer's practice of psychiatric medicine, including multiple instances of improper prescribing. Exhibit 27, pp. 1-4.

59. Of particular concern to the Board Consultant were the following prescribing practices:

- a. Dr. Iyer's prescribing of Soma, a centrally-acting muscle relaxant which is FDA approved solely for musculoskeletal pain, to treat panic disorder and insomnia;
- b. Dr. Iyer's dangerous practice of prescribing Soma in combination with Xanax, a benzodiazepine, for thirteen of the seventeen patients whose charts were provided for review;
- c. Dr. Iyer's failure to take into account that some of these patients were also being prescribed controlled substance narcotics concurrently with his prescribing of Soma and Xanax; and
- d. Dr. Iyer's failure to properly regulate the controlled substances he prescribed and his continued prescribing to certain patients despite "blatant evidence that many of these patients were abusing multiple controlled substances and potentially diverting them into the community."

Exhibit 27, pp. 1-3.

60. The Board Consultant determined that of the seventeen patient charts provided for review, all seventeen "lacked comprehensive initial psychiatric evaluations." Exhibit 27, p. 3.

61. Sixteen of the seventeen patient charts which were reviewed by the Board Consultant included a diagnosis by Dr. Iyer of panic disorder. However, the Board Consultant concluded that none of the charts provided to the Board by Dr. Iyer contained sufficient information to support a diagnosis of panic disorder. Exhibit 27, p. 3.

62. The Board Consultant concluded that: "Dr. Iyer has severely and repetitively violated the professional standards of physician practice in West Virginia along with numerous

provisions of the West Virginia Medical Practice Act and the rules of the Board. Secondly, there is sufficient information to conclude that Dr. Iyer is suffering with a substance use disorder and possibly an uncontrolled psychiatric condition such as bipolar disorder. As a result, I opine that there is probable cause to substantiate immediate disciplinary action. A prompt suspension of Dr. Iyer's medical license is recommended to protect the public." Exhibit 27, p. 9.

63. On February 12, 2015, the Board received a change of address form from Dr. Iyer indicating that his main work address is currently in Summersville, West Virginia. Exhibit 28.

64. The West Virginia Controlled Substance Monitoring Program prescribing report for Dr. Iyer indicates that he continued to prescribe scheduled controlled substances for Patient 16 in December 2014 and January 2015. Exhibit 29.

65. The West Virginia Controlled Substance Monitoring Program prescribing report for Dr. Iyer indicates that he continued to prescribe scheduled controlled substances for Patient 12 in December 2014, January 2015 and February 2015. Exhibit 29.

66. As of February 6, 2015, Dr. Iyer continued to prescribe scheduled controlled substances, including suboxone, Xanax, Soma and Adderall/amphetamine salt combo. Exhibit 29.

67. On February 23, 2015, the Board received a copy of correspondence from the New Life Clinic in Summersville, West Virginia terminating Dr. Iyer's employment contract with that entity, effective February 18, 2015. Exhibit 30.

68. The bases set forth by New Life Clinic for the termination of Dr. Iyer include Dr. Iyer's "continued threats, prank phone calls, and many other inappropriate actions."

Specifically, the letter asserts that “[b]ased on the messages you left, the threats you and your spouse made on me and my family, and the many very inappropriate demands, are reasons for immediate termination to avoid further damages. If the harassment continues I will be forced to contact the proper authorities. I have several messages and other documented actions that display your inappropriate behavior and threats.” Exhibit 30.

69. New Life Clinic directed Dr. Iyer to contact the psychiatry patients he was treating through the clinic “to provide the proper care and avoid ANY type of abandonment.” At this time, it is unknown to the Board whether Dr. Iyer continues to treat such patients or if he is taking appropriate steps to terminate the physician/patient relationship, either of which would indicate that he continues to engage in the practice of medicine. Exhibit 30.

70. Dr. Iyer continues to engage in conduct for which the Board Consultant recommended “immediate disciplinary action” and a “prompt suspension” of Dr. Iyer’s West Virginia medical license.

CONCLUSIONS OF LAW

The West Virginia Board of Medicine is the “regulatory and disciplinary body for the practice of medicine and surgery” for physicians, podiatrists and physician assistants in West Virginia. W.Va. Code §30-3-5 and §30-3-7(a). Accordingly, Dr. Iyer’s license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine. W.Va. Code §30-3-5 and §30-3-7(a). The Board has jurisdiction over the subject matter and over the Respondent. W. Va. Code §30-3-5.

The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W.Va. Code §30-3-14. The general provisions applicable to state licensing and examination

Boards, authorize the Board to promulgate legislative rules that “delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” W.Va. Code §30-1-8(c). The Board’s Legislative Rule Series 1A, *Licensing and Disciplinary Procedures: Physicians; Podiatrists*, enumerates additional conduct for which discipline may be imposed, including conduct which constitutes dishonorable, unethical and/or unprofessional conduct. W. Va. Code R. §11-1A-12 (2007).

The Board is authorized to impose one or more of the following disciplinary measures, as appropriate:

- a. Denial of an application for a license or other authorization to practice medicine and surgery or podiatry;
- b. Administer a public reprimand;
- c. Issue a suspension, limitation or other restriction upon a license for a period of up to five years;
- d. Suspend, limit or restrict his or her license or other authorization to practice medicine and surgery or podiatry for up to five years;
- e. Revoke a license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for up to ten years;
- f. Require a licensee “to submit to care, counseling or treatment designated by the Board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry”;
- g. Require participation in a program of education;
- h. Require supervised practice for a specified period of time; and
- i. Assess a fine.

W. Va. Code §30-3-14(j).

West Virginia Code §30-3-14(k) further provides that “if the board determines the evidence in its possession indicates that a physician’s continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (j) of this section on a temporary basis and without a hearing, if institution of procedures for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.” *Id.*

A special meeting of the Complaint Committee was convened at 5:00 p.m. on Tuesday, February 17, 2015. A quorum of the committee was present at this meeting, the purpose of which was to review the facts and evidence collected by the Committee in reference to the investigation into matters related to the practice of medicine and surgery by Dr. Iyer, including but not limited to the recently received report from the Board Consultant recommending “immediate disciplinary action.” At the February 17, 2015, meeting, and based upon its review of all of the information developed by the investigation, including the report submitted by the Board Consultant on February 5, 2015, the Complaint Committee determined that probable cause exists to substantiate charges to disqualify Dr. Iyer from the practice of medicine in West Virginia due to apparent violations of:

- a. W. Va. Code §30-3-14(c)(17), W. Va. Code R. §11-1A-12.1.e and 12.1.j, and W. Va. Code R. §11-1A-12.2.d, relating to dishonorable, unethical or unprofessional conduct; and/or
- b. W. Va. Code §30-3-14(c)(20) and W. Va. Code R. §11-1A-12.1.i, relating to demonstrating a lack of professional competence to practice medicine or podiatry with a reasonable degree of skill and safety for patients; and/or
- c. W. Va. Code §30-3-14(c)(13) and W. Va. Code R. §11-1A-12.2.a, relating to prescribing a controlled substance other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in

the course of the physician's or podiatrist's professional practice including but not limited to:

- i. with the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
 - ii. with the intent to evade any law with respect to the sale, use or disposition of the controlled substances;
 - iii. for the licensee's personal use, or for the use of his or her immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice; or
 - iv. in such amounts that the licensee knows or has reason to know, under the attendant circumstances, that the amounts prescribed or dispensed are excessive under accepted and prevailing medical practice standards; and/or
- d. W. Va. Code §30-3-14(c)(21) and W. Va. Code R. §11-1A-12.1.h, relating to the inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol; and/or
 - e. W. Va. Code §30-3-14(c)(11) and W. Va. Code R. §11-1A-12.1.u, relating to the failure to keep written records to justify the course of treatment; and/or
 - f. W. Va. Code §30-3-14(c)(9) and W. Va. Code R. §11-1A-12.2.s, relating to making a deceptive, untrue or fraudulent representation in the practice of medicine and surgery; and/or
 - g. W. Va. Code §30-3-14(c)(17) and W. Va. Code R. §11-1A-12.1.bb and 12.1.o, relating to the knowing violation of any law or lawfully promulgated rule or regulation of this State, any other state, the Board, the United States or any other lawful authority and/or a failure to perform a statutory and/or legal obligation, including but not limited to violations of W. Va. Code R. §11-1A-1 *et seq.* and §11-10-1 *et seq.*

Thereafter, the Committee determined, based upon the evidence in its possession, to recommend that the full Board impose summary discipline in this matter, pursuant to W. Va.

Code §30-3-14(k), because Dr. Iyer's continuation in practice constitutes an immediate danger to the public.

Pursuant to W. Va. Code R. §11-3-4.2, the three members of the Committee participating in the meeting subsequently called for the scheduling of an emergency meeting of the full Board to consider the Committee's recommendation.

An emergency meeting of the West Virginia Board of Medicine was convened on Wednesday, February 25, 2015 at 4:30p.m. At the February 25, 2015, emergency meeting of the full Board, the Complaint Committee reported that it had determined that probable cause exists to substantiate charges to disqualify Dr. Iyer from the practice of medicine in West Virginia. The Board reviewed Exhibits One (1) through Twenty-Nine (29), the Complaint Committee's finding of probable cause, and received the recommendation for summary action from the Complaint Committee. The Board also reviewed Exhibit 30, which was received by the Board on February 23, 2015, after the Complaint Committee's February 17, 2015 determination of probable cause and decision to recommend summary action.

At the February 25, 2015, emergency meeting, with a quorum of the Board present and voting, the Board ratified the Complaint Committee's determination of probable cause. The Board further determined, with no dissenting votes, that under all of the circumstances and given the cumulative effect of the evidence in the possession of the Board, for Dr. Iyer to continue to hold an active license to practice medicine in the State of West Virginia, constitutes an immediate danger to the health, welfare and safety of the public. The Board concluded, as a matter of law, that such a danger to the public demands extraordinary measures, and the Board, with a quorum of the Board present and voting, therefore found, with no dissenting votes, that in accordance with its statutory mandate to protect the public interest, the license to practice

medicine of Dr. Iyer, license number 18736, must be summarily **SUSPENDED**, in accordance with the provisions of W. Va. Code §30-3-14(k) and W. Va. Code R. §11-3-10.16.

Dr. Ferrebee, Dr. Arnold, Dr. Challa and Ms. Henderson abstained from voting due to their sitting on the Complaint Committee during the period that these matters relating to Dr. Iyer were before the Complaint Committee, and the finding of probable cause was made. Dr. Faheem declared a conflict of interest, and left the meeting for all discussion and action upon this matter.

ORDER

WHEREFORE, the Board hereby **ORDERS** that the license to practice medicine and surgery of Shivkumar Lakshminarayan Iyer, M.D. ("Dr. Iyer"), License No. 18736, is **SUSPENDED**, effective Thursday, February 26, 2015, at 11:59 P.M.

NOTICE OF HEARING

Under the provisions of W.Va. Code §30-3-14(k) and W. Va. Code R. §11-3-10.16, if summary disciplinary action is taken by the Board pursuant to these sections, proceedings for a hearing before the Board must be initiated simultaneously with the temporary action, and must commence within fifteen days of such action.

Dr. Iyer is hereby notified that on the **9th day of March 2015, at 10:30 a.m.**, the West Virginia Board of Medicine will convene in its offices located at 101 Dee Drive, Charleston, West Virginia, with a duly qualified Hearing Examiner, for the purpose of hearing evidence regarding the contents of this Order and the charges of professional misconduct set forth in the Amended Initiated Complaint and as set forth herein. Such hearing, if not concluded on that

date, shall continue thereafter upon mutually agreeable dates, and as expeditiously as possible. At this hearing, Dr. Iyer must be present in person and may be accompanied by counsel if he so desires. He may present any witnesses and/or evidence that he desires to present on his behalf to show cause as to why his license to practice medicine and surgery in West Virginia should not be subject to continued suspension and/or additional or further restriction. The Hearing Examiner is hereby delegated the authority to receive and rule upon any non-dispositive pre-trial motions filed by the parties.

So **ORDERED** and hereby **NOTICED FOR HEARING** by the Board on this, the 25th day of February, 2015. In compliance with the provisions of West Virginia Code §30-3-8, which provides that the Secretary of the Board shall “together with the president of the board, sign all licenses, reports, orders and other documents that may be required by the board in the performance of its duties,” the signatures of the current Board President and Secretary appear hereupon below.

WEST VIRGINIA BOARD OF MEDICINE



President



Secretary

EXHIBITS UNDER SEAL AND
ON FILE WITH THE
WEST VIRGINIA BOARD OF
MEDICINE
