

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1912

MAY 20 2019

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SAI P. GUTTI, M.D., LICENSE NO. 29929, 515 N. BYPASS ROAD, SUITE 101, PIKEVILLE, KENTUCKY 41501

COMPLAINT

Comes now the Complainant Sandra R. Shuffett, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on May 16, 2019, states for its Complaint against the licensee, Sai P. Gutti, M.D., as follows:

1. At all relevant times, Sai P. Gutti, M.D. ("the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is interventional pain management.
3. On or about April 11, 2019, the licensee was indicted on eight (8) counts of health care fraud, in violation of 18 U.S.C. §§ 1347 and 2.
4. According to the indictment, in part,
 - Medicare and Medicaid consider presumptive testing to be medically necessary, and appropriately reimbursable, in the treatment of chronic pain patients who are prescribed/dispensed controlled substances as part of treatment, provided the presumptive testing was used in the diagnosis and treatment of beneficiaries and members and the need for the testing was substantiated by documentation in the patient's medical record. Conversely, Medicare and Medicaid specifically excluded from coverage and did not consider medically necessary, "blanket orders" or routine presumptive testing of substances.
 - Medicare and Medicaid consider definitive testing to be medically necessary, and appropriately reimbursable, in the treatment of chronic pain patients who are prescribed/dispensed controlled substances as part of treatment, in certain limited circumstances, including when beneficiaries or members had a specific and documented need for definitive testing. Conversely, Medicare and Medicaid specifically excluded from coverage and did not consider medically necessary, "blanket orders" or routine definitive testing of substances.
 - The manner and means by which the licensee sought to accomplish the objects and the purpose of the alleged violations included, in part, that the licensee submitted or caused to be submitted false and fraudulent claims to Medicare,

Medicaid and other health care benefit programs related to the performance of presumptive and/or definitive testing on urine drug screen specimens without making an individualized determination and/or actual medical necessity and he concealed the existence of this “blanket order” practice from health care benefit programs.

5. On or about May 20, 2019, an Emergency Order of Suspension was issued against the licensee’s license to practice medicine
6. By his conduct, the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(12). Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.
7. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:
 - (a) His failure to respond may be taken as an admission of the charges;
 - (b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.
8. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for October 1, 2019, at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine in the Commonwealth of Kentucky held by Sai P. Gutti, M.D.

This 20th day of May, 2019.



SANDRA R. SHUFFETT, M.D.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint 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 to Daphne Criscillis, Docket Clerk, Administrative Hearings Branch, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, Sai P. Gutti, M.D., License No. 29929, 515 N. Bypass Road, Suite 101, Pikeville, Kentucky 41501, and his counsel, Kerry B. Harvey, Esq., Dickinson Wright PLLC, 300 West Vine Street, Suite 1700, Lexington, Kentucky 40507-1621 on this 20th day of May, 2019.



Leanne K. Diakov
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150

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EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, considered this matter on May 16, 2019. At that meeting, Inquiry Panel B considered an Indictment, filed April 11, 2019, in the United States District Court, Eastern District of Kentucky, Case No. 3:19-CR-00022-GFVT. Although the licensee, Sai P. Gutti, M.D., was given notice of the meeting and an opportunity to be heard, he did not appear.

Having considered 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, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support this Emergency Order of Suspension:

1. At all relevant times, Sai P. Gutti, M.D. (“the licensee”), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is interventional pain management.
3. On or about April 11, 2019, the licensee was indicted on eight (8) counts of health care fraud, in violation of 18 U.S.C. §§ 1347 and 2.

4. According to the indictment, in part,

- Medicare and Medicaid consider presumptive testing to be medically necessary, and appropriately reimbursable, in the treatment of chronic pain patients who are prescribed/dispensed controlled substances as part of treatment, provided the presumptive testing was used in the diagnosis and treatment of beneficiaries and members and the need for the testing was substantiated by documentation in the patient's medical record. Conversely, Medicare and Medicaid specifically excluded from coverage and did not consider medically necessary, "blanket orders" or routine presumptive testing of substances.
- Medicare and Medicaid consider definitive testing to be medically necessary, and appropriately reimbursable, in the treatment of chronic pain patients who are prescribed/dispensed controlled substances as part of treatment, in certain limited circumstances, including when beneficiaries or members had a specific and documented need for definitive testing. Conversely, Medicare and Medicaid specifically excluded from coverage and did not consider medically necessary, "blanket orders" or routine definitive testing of substances.
- The manner and means by which the licensee sought to accomplish the objects and the purpose of the alleged violations included, in part, that the licensee submitted or caused to be submitted false and fraudulent claims to Medicare, Medicaid and other health care benefit programs related to the performance of presumptive and/or definitive testing on urine drug screen specimens without making an individualized determination and/or actual medical necessity and he concealed the existence of this "blanket order" practice from health care benefit programs.

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(9), as illustrated by KRS 311.597(4), and KRS 311.595(12).
 4. 201 KAR 9:240 §1 provides,
 - (1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky in accordance with KRS 311.592 and 13B.125.
 - (2) ...
 - (3) (a) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky if the panel chair determines that a basis for an emergency order as established in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel.
 5. 201 KAR 9:240 §3 provides
 - (1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety or welfare, pursuant to KRS 311.592 and 13B.125.
 - (2) If the Board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to a controlled substance, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license....
 6. 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.
 7. 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 osteopathic practice.

8. 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.

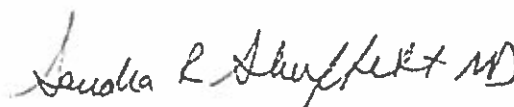
EMERGENCY ORDER OF SUSPENSION

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 Sai P. Gutti, M.D., is SUSPENDED and Dr. Gutti is prohibited from performing

any act which constitutes the “practice of medicine or osteopathy,” 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 Board’s hearing panel has finally resolved the Complaint after receipt of the court documents resolving the criminal charges in the indictment discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 20th day of May, 2019.



SANDRA R. SHUFFETT, 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 copies were mailed via certified mail return-receipt requested to the licensee, Sai P. Gutti, M.D., License No. 29929, 515 N. Bypass Road, Suite 101, Pikeville, Kentucky 41501, and his counsel, Kerry B. Harvey, Esq., Dickinson Wright PLLC, 300 West Vine Street, Suite 1700, Lexington, Kentucky 40507-1621 on this 20th day of May, 2019.



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