

IN THE MATTER OF
THE COMPLAINT AGAINST
ANKUR SARKAR, M.D.

BEFORE THE
TEXAS STATE BOARD OF
MEDICAL EXAMINERS

AGREED ORDER

On the 4th day of June, 2004, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session, the matter of the license of Ankur Sarkar, M.D. ("Respondent").

On March 26, 2004, Respondent appeared in person, with counsel Hugh Barton, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. David Wofford represented Board Staff. The Board's representatives were David E. Garza, D.O. and Patricia Blackwell, members of the Board.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under TEX. OCC. CODE ANN. Title 3, Subtitle B (Vernon's 2002) (the "Act") or the Rules of the Board.

2. Respondent currently holds Texas Medical License No. K-3450. Respondent was originally issued this license to practice medicine in Texas on August 9, 1997. Respondent is not licensed to practice in any other state.

3. Respondent is primarily engaged in the practice of internal medicine. Respondent is board certified in this specialty by the American Board of Medical Specialties.

4. Respondent is 41 years of age.

5. Respondent has not previously been the subject of disciplinary action by the Board.

6. Respondent treated patient D.S. for a period of approximately four years. Her history included diabetes mellitus, Type II, unstable angina, chronic heart failure and other illnesses. In January 2003, D.S. was admitted to El Campo Hospital with sepsis secondary to superficial spreading cellulitis of the abdominal wall, elevated blood sugar, and a white blood count of 16,000. D.S. responded to treatment with antibiotics, and was ordered released to a nursing home on January 24 by Respondent. Metaformin was prescribed for D.S., although it is contraindicated for patients with history of lactic acidosis, which D.S. had in the past. Two board consultants felt that it was below the standard of care for Respondent to prescribe Metaformin for D.S. under these circumstances.

7. On January 28, the nursing home staff informed Respondent, via fax after clinic hours, that D.S. was short of breath and her respiration was labored. Respondent said he could only see D.S. in his office the following morning, and to send D.S. to the emergency room if her condition worsened. The Board consultants believed that the records reflected that D.S. should have been immediately hospitalized on January 28 by the Respondent.

8. The panel members found the following matters in mitigation of this case: (1) D.S. suffered only minor harm; (2) Respondent has been forthcoming with the Board and regrets the incident; (3) Respondent expressed an understanding of what should have been done in this case; (4) this was a single-patient isolated incident; (5) Respondent relied upon nursing home personnel to the patient's detriment; and (6) Respondent relied upon critical lab chemistry that was ordered but was inadvertently not done by the hospital, to his detriment.

9. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare.

3. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

5. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that:

1. Respondent's Texas license is hereby **SUSPENDED**; however, the suspension is **STAYED** and Respondent is placed on **PROBATION** under the following terms and conditions for one year from the date of the signing of this Order by the presiding officer of the Board:

2. Within one year from the date this order is signed by the presiding officer of the Board, Respondent shall obtain 15 hours of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association in the management of the diabetic patient/endocrinology. Upon completion of the required CME, Respondent shall submit proof to the Board of successful completion of the CME. A copy of attendance certificates or a detailed report that can be readily verified by the Board shall satisfy this requirement. This requirement shall be in addition to the regularly required CME of 24 hours.

3. Respondent shall pay an administrative penalty in the amount of \$3000.00 within 180 days of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall

be submitted to the Director of Compliance for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

4. The time period of this Order shall be tolled if (a) Respondent subsequently resides or practices outside the State of Texas, (b) Respondent's license is subsequently canceled for nonpayment of licensure fees, or (c) this Order is stayed or enjoined by Court Order. If Respondent leaves Texas to live or practice elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. When the period of tolling ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of tolling.

5. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

6. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

7. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within ten days of the address change. This information shall be submitted to the Permits Department and the Director of Compliance for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

8. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives all

~~disciplinary action by the Board against Respondent pursuant to the Act~~

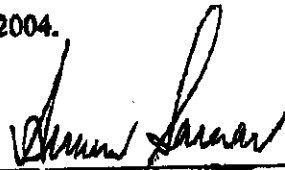
8. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, and to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that ten days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives all notice requirements under Section 164.003 of the Medical Practice Act related to informal proceedings, and Section 2001.054(e) of the Administrative Procedure Act.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, ANKUR SARKAR, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 5/20, 2004.



Ankur Sarkar, M.D.
Respondent

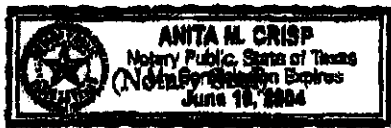
STATE OF Texas

§

COUNTY OF Wharton

§
88

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public,
on this 20 day of May, 2004.



Anita M. Crisp
Signature of Notary Public

ANITA M. CRISP
Printed or typed name of Notary Public
My commission expires:
June 10, 2004

SIGNED AND ENTERED by the presiding officer of the Texas State Board of
Medical Examiners on this 4th day of June, 2004.

Lee S. Anderson
Lee S. Anderson, M.D., President

Texas State Board of Medical Examiners