

Public

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 13-276

IN THE MATTER

OF

JENNIFER LYNNE STEVER, D.O.
CO-12-11-5634-A

COMMISSIONER'S
SUMMARY
ORDER

TO: JENNIFER LYNNE STEVER, D.O.
REDACTED

The undersigned, Sue Kelly, Executive Deputy Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of California, Osteopathic Medical Board of California, Department of Consumer Affairs, has made a finding substantially equivalent to a finding that the practice of medicine by JENNIFER LYNNE STEVER, D.O., Respondent, New York license number 243386, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Order, dated December 3, 2012 and attached papers, attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, JENNIFER LYNNE STEVER, D.O., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in California.

The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the California proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, RIVERVIEW CENTER, SUITE 355, 150 BROADWAY, ALBANY, NY 12204, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH CONCLUSION.

APPENDIX A

BEFORE THE
OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

FILED

DEC 05 2012

In the Matter of the Ex Parte Application
for Interim Suspension Order Against:

JENNIFER STEVER, D.O.
Osteopathic License No. 10348,

Respondent.

Case No. 00-2010-0034 ~~92~~ OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA

OAH No. 2012100738

ORDER GRANTING PETITION FOR INTERIM SUSPENSION

On November 14, 2012, Administrative Law Judge (ALJ) Howard W. Cohen, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Wendy Widlus, Deputy Attorney General, represented petitioner Donald J. Krpan, D.O. (petitioner), Executive Officer of the Osteopathic Medical Board of California (Board).

Jennifer Stever, D.O. (respondent), did not appear and was not represented.

This matter was initially heard on an ex parte application to grant a Petition for Interim Suspension on October 23, 2012. At the ex parte hearing, John A. Mills, Attorney at Law, Fenton Nelson, LLP, represented respondent Jennifer Stever, D.O. (respondent), who was present. An Interim Ex Parte Suspension Order issued on October 25, 2012.

Petitioner submitted additional declarations at the noticed hearing on November 14, 2012. No further submissions were received from respondent. The record was closed on November 14, 2012. The record was reopened on November 21, 2012, to allow petitioner to file an amendment to the petition citing the correct legal authority for issuance of an interim suspension order in this case, Business and Professions Code section 494, by November 27, 2012, and to allow respondent to file a response by November 30, 2012. Petitioner timely filed an Amended Petition, which was marked as Exhibit 6 and admitted. Respondent did not timely file a reply.

The record was closed and the matter deemed submitted on November 30, 2012.

FACTUAL FINDINGS

1. The Board issued Osteopathic License Number 10348 to respondent on February 22, 2008. The license is scheduled to expire on July 31, 2013.¹
2. Respondent at relevant times has worked for Emergent Medical Associates at Valley Presbyterian Hospital, Mission Community Hospital, Martin Luther King Hospital, Little Company of Mary Hospital, and Torrance Hospital.
3. An interim suspension order was issued on an ex parte basis due to the risk that serious injury to the public would occur before the matter could be heard on notice. After the Interim Ex Parte Suspension Order was issued, petitioner timely and properly served notice of the November 14, 2012, hearing.
4. Petitioner alleges that respondent has engaged in acts constituting a violation of the Business and Professions Code, that she is unable to practice safely due to an addiction to controlled substances, and that permitting her to continue to engage in her licensed profession will endanger the public health, safety, or welfare.
5. On April 23, 2012, the Board received a complaint from Mitchell Stever, respondent's ex-husband. Gregory Saeki, an investigator for the Medical Board of California, interviewed Mr. Stever and many witnesses. The petition is supported by Saeki's declaration describing those interviews, as well as numerous declarations from those witnesses, including respondent's former employers, supervisors, and colleagues at Emergent Medical Associates and at the various hospitals in which she worked, pharmacists and pharmacy staff at CVS, Rite Aid, Sav-On, Ralphs, and other pharmacies, respondent's estranged husband and his relatives, and others. According to those declarations, respondent has been self-medicating with Ambien, Xanax, Valium, and OxyContin since after she finished her residency in 2008. To obtain those controlled substances, respondent has repeatedly used her own prescription pads and the prescription pads of other doctors, forging the signatures of those other doctors on prescriptions for large quantities of the medications for herself, for members of her family, and for members of her estranged husband's family. She has then impersonated those persons to pharmacists, in order to obtain for herself the medications disbursed in accordance with the forged prescriptions. Respondent's job performance suffered, starting in 2010 or before, from her abuse of the medications—she was late for shifts and missed shifts entirely, was slow in the performance of her duties, and was placed on probation and ultimately asked to resign from at least one hospital and taken off schedule at another—and her family had well-founded concerns about her ability to care for her children.

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¹ The ALJ takes official notice of the issuance and expiration dates of the license, posted on the Board's website. No evidence of these dates was submitted with the petition.

6. Kenneth Han, M.A., D.O., Chief Physician at University of California, Riverside, and Medical Director at the Veterans Administration Long Beach/West Los Angeles Branch, reviewed Investigator Saeki's files. Dr. Han concluded that respondent's administering controlled substances to herself, both in and of itself and to the extent it impaired her ability to safely practice medicine, and the fraudulent means by which respondent has obtained controlled substances, constitute extreme departures from the applicable standard of care. He also declared that respondent's conduct poses a danger to her and "presents an imminent danger to the public's health and safety." (Han Decl., ¶¶ 4, 5.)

7. Although respondent did not appear at the noticed hearing, she submitted a declaration at the ex parte hearing. As reflected in that declaration, respondent does not contest that she has repeatedly written fraudulent prescriptions while forging other doctors' names, or that she impersonated various purported patients in order to obtain the controlled substances issued in accordance with the forged prescriptions, or that she was under the influence of controlled substances while at work (except that she denies taking OxyContin prior to going to work at Emergent Medical Services). She denied taking "any controlled substance while my children are under my care." (Respondent's Decl., ¶ 6.) She declared that she has been experiencing financial hardship in recent months because she has not been working and that she hopes to obtain employment with a utilization review company in the near future. (Respondent's Decl., ¶¶ 13, 14.) She did not state, however, that suspension of her license would prevent her from obtaining such employment. She acknowledges that she has "a problem with use of Ambien," that she is "determined to obtain professional help," that she has not used Ambien or any other controlled substance for approximately two weeks, and that she had her first meeting with an addiction recovery program doctor the day prior to the ex parte hearing. (Respondent's Decl., ¶¶ 11, 12, 15.)

LEGAL CONCLUSIONS

1. An administrative law judge may issue an order suspending or restricting the license of an osteopathic physician if the affidavits in support of the petition show (1) that the licensee has engaged in acts or omissions constituting a violation of the Business and Professions Code, and (2) that permitting the licensee to continue to engage in the licensed activity would endanger the public health, safety or welfare. (Bus. & Prof. Code, § 494, subd. (a).)

2. The standard of proof for a Petition for Interim Suspension Order is a preponderance of the evidence. (Bus. and Prof. Code, §494, subd. (e).) Petitioner sustained his burden of proof in this case.

3. Cause exists to suspend respondent's license, on the grounds that she has engaged in acts or omissions constituting a violation of the Business and Professions Code, she is unable to practice safely due to her abuse of and dependency on controlled substances, and permitting her to continue to engage in the licensed activity would endanger the public health, safety, or welfare, as set forth in Factual Findings 1-7.

4. Respondent's initial steps to address her problematic use of controlled substances are somewhat encouraging, but they are only initial steps, undertaken quite recently. Less encouraging is respondent's failure to appear at the noticed hearing on November 14, 2012. In view of the affidavits submitted by petitioner, in significant part uncontroverted by respondent, concerning her administering controlled substances to herself, the fraudulent acts she has committed to obtain the controlled substances, and the effect her use of those substances has had on her job performance in medical settings and at home, the threat of harm to the public if respondent's license is not suspended outweighs the threat of harm to respondent resulting from a suspension. Moreover, even if one is to credit respondent's declaration, she is only at the very commencement of the process of recovery from the repeated use of controlled substances. There is no evidence, other than her stated intention, that she will not again engage in the conduct that is the subject of the petition or, in view of her economic difficulties, seek employment treating patients.

5. The Board shall file an accusation within 15 days of the issuance of an interim order. (Bus. & Prof. Code, § 494, subd. (f).)

ORDER

The petition for an interim order suspending Osteopathic License Number 10348, issued to respondent Jennifer Stever, D.O., is granted. The license is suspended pending a full administrative determination of respondent's fitness to practice osteopathy.

During the time this Interim Suspension Order is in effect:

(a) Respondent is prohibited from practicing any aspect of osteopathic medicine in the State of California;

(b) Respondent shall not advertise herself, by any means, or hold herself out as practicing or being available to practice any system or mode of treating the sick or afflicted in this State;

(c) Respondent shall not supervise any osteopathic assistants;

(d) Respondent shall not be present in any location or office which is maintained for the practice of osteopathic medicine, or at which osteopathic medicine is practiced, for any purpose except as a patient or as visitor of family and friends, and except that she may be present at her home if that is a location where, prior to this interim suspension, respondent had practiced osteopathic medicine.

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Respondent shall surrender to the Osteopathic Medical Board of California or its agent for safekeeping pending a final administrative order, all indicia of licensure as an osteopathic physician and surgeon, including her wall certificate and her wallet card.

DATED: December 3, 2012

REDACTED

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

FILED

OCT 30 2012

OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA

DONALD J. KR PAN,
Executive Officer, Osteopathic Medical
Board of California,

Petitioner,

v.

JENNIFER STEVER, D.O.
Osteopathic License No. 10348,

Respondent.

Case No. 00-2010-003472

OAH No. 2012100738

EX PARTE INTERIM SUSPENSION ORDER

On October 23, 2012, Administrative Law Judge Howard W. Cohen, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Wendy Widhus, Deputy Attorney General, represented petitioner Donald J. Krpan, D.O. (petitioner), Executive Officer of the Osteopathic Medical Board of California (Board).

John A. Mills, Attorney at Law, Fenton Nelson, LLP, represented respondent Jennifer Stever, D.O. (respondent), who was present.

Petitioner and respondent submitted documents and presented argument. The matter was submitted for decision on October 23, 2012.

I.

1. On October 18, 2012, petitioner filed an Ex Parte Petition for Interim Suspension Order (Petition) under Government Code section 11529, seeking to suspend, pending a full hearing on the merits, Osteopathic License Number 10348 issued to respondent.

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2. The documentary evidence submitted at hearing is sufficient to establish that:
 - a. There is a reasonable probability that petitioner will prevail in an action to discipline respondent's license.
 - b. Permitting respondent to continue to engage in the practice of medicine will endanger the public health, safety, and welfare.
 - c. The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to respondent in issuing the order.
 - d. Serious injury would result to the public unless this Order is issued before the matter can be heard on notice under Government Code section 11529, subdivision (b).
 - e. Cause exists under Government Code section 11529 to suspend respondent's osteopathic license pending a full hearing on the merits.

II.

Accordingly, IT IS ORDERED:

The Ex Parte Petition is granted. Respondent's license is suspended in accordance with Government Code section 11529.

The noticed hearing on the Petition will be heard at the Office of Administrative Hearings, 320 West Fourth Street, Room 630, Los Angeles, California, on November 14, 2012, at 9:30 a.m., or as soon thereafter as the matter may be heard.

Petitioner, through his counsel, shall serve this Order on respondent, through her counsel, in accordance with Government Code section 11529, subdivision (c). All declarations and other documentation in support of the Petition and this Order were served on and accepted by respondent, through her counsel, at the ex parte hearing of this matter, and those declarations and documentation are deemed to have been served under Government Code section 11529, subdivision (c).

Respondent may file documents and affidavits in opposition to the Petition by noon on or before November 7, 2012. Additional documents in support of the Petition may be filed by noon on or before November 7, 2012. Any written reply to an opponent's documents, including additional declarations, shall be filed by close of business on November 9, 2012.

DATED: October 25, 2012

REDACTED

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings