DELAWARE BOARD OF MEDICAL LICENSURE DISCIPLINE

IN RE: DAMON D. CARY, M.D.  )   Case Nos. 10-120-15
)                                      10-68-17
LICENSE NO.: C2-0007103                      10-10-19

ORDER ACCEPTING COMPLAINT AND GRANTING
EMERGENCY TEMPORARY SUSPENSION

AND NOW, to wit, this 27th day of July, 2019 after review of the relevant documents, upon the agreement of the Secretary of State and the President of the Board it is found that:

WHEREAS, the Delaware Department of Justice through the prosecuting Deputy Attorney General has files with the Board of Medical Licensure and Discipline a written Complaint and Motion for Temporary Suspension; and,

WHEREAS, Respondent, Dr. Cary, is a licensed medical doctor in the state of Delaware with an active M.D. license issued on September 9, 2003 and an active Physician CSR license issued on January 6, 2004; and,

WHEREAS, said Complaint and Motion allege, among other things, that Respondent routinely prescribed controlled substances to two undercover officers and eight separate patients without obtaining informed consent or discussing the risks and benefits of the use of such controlled substances; without conducting a meaningful initial evaluation or examination of the patients or attempt to obtain prior treatment records; without referring them to other treatment modalities or follow up on referral for other treatment modalities; without utilizing or enforcing treatment agreements; without adjusting drug therapies to meet the patient’s needs or documenting an explanation for increases, decreases, or other changes in drug therapies; without periodically reviewing the course of pain treatment and any new information about the etiology of the pain and patients’ state of health to include evaluation of the appropriateness of continued use of controlled substances that did not lead to patient improvement; without appropriately
identifying or responding to red flags for medication abuse; without accessing the Prescription Monitoring Program; without conducting urinalysis or other random testing; and without referring patients for any diagnostic imaging or other testing or follow up on referrals for diagnostic imaging or testing. Respondent is also alleged to have documented physical examinations of patients that did not occur; documented medical discussions that did not occur; documented false diagnoses of medical complaints not mentioned by patients; and billed insurance carriers for visits using those fraudulent records.

WHEREAS, the allegations if substantiated at a formal hearing constitute unprofessional conduct under numerous provisions of the Medical Practice Act, including but not limited to, 24 Del. C. § 1731(b)(1), (2), (3), (10), (11), and (17) and Board Regulations 8.1.12 and 8.1.13; and

WHEREAS, Respondent and his legal counsel were given at least 24 hours’ written or oral notice so that they could file a written response in opposition to entry of an Order of Temporary Suspension together with a copy of the Complaint in compliance with 24 Del. C. § 1738(a); and

WHEREAS, Respondent’s counsel responded by letter dated July 22, 2019, indicating the State’s Complaint does not provide sufficient evidence to show Respondent is a clear and immediate danger to the public health. Respondent’s counsel asserts that Respondent has complied with the State’s subpoena requests to produce patient medical records, allowing the State to be in possession of these records from 2014 to May 20, 2019. Respondent’s counsel asserts that the State’s delay in seeking a temporary suspension despite having these records in their possession for so long indicates the lack of immediate need to seek an emergency suspension. Respondent’s counsel also indicates that the State’s more recent subpoenas, requested on or before December 17, 2018, are issued without good cause or with the intent to
harass Respondent due to the State feeling frustration towards Respondent for asserting his protected rights. Respondent’s counsel indicates Respondent’s Due Process rights will be violated if the temporary suspension is granted without sufficient evidence to prove Respondent is a clear and immediate danger to the public health. Respondent’s counsel asserts further that Respondent will be deprived of his protected privacy interest if the temporary suspension is granted. Respondent’s counsel asserts that Respondent’s due process is violated due to not being afforded the opportunity to be heard on the specifics of the amended complaint. Respondent’s counsel indicates that the allegations within the Amended Complaint cannot be viewed in accordance with specific rules regulations which impose specific obligations. Respondent’s counsel asserts that the Board must review Respondent’s conduct based on the evolving standards and clinical judgment of medical doctors using Rule 18 where the Board has held that allegations under Rule 18 fall within the physician’s decision-making power based on their current knowledge and scientific research. Respondent’s counsel asserts that the State fails to provide sufficient evidence to prove Respondent violated Rule 18 because Respondent can articulate specific clinical decisions with respect to each patient’s case. Finally, Respondent’s counsel indicates that granting temporary suspension of Respondent’s license will actually cause danger to Respondent’s patients because he will be unable to assist his patients with their prescriptions.

WHEREAS, after reviewing the allegations in the State’s Complaint in toto, as well as the response given by Respondent’s counsel thereto, the undersigned find that said Complaint highlights the serious nature of Respondent’s offenses. Further, the undersigned have an obligation to ensure the public health is protected. After due consideration of the Complaint and Motion as well as the Response received, the Secretary of State with the concurrence of the
Board President have determined that the available information is sufficient to support the entry of an Order temporarily suspending Respondent’s license to practice medicine in the State of Delaware in that there is a reasonable belief that Respondent’s continued practice presents a clear and immediate danger to the public health.

**IT IS SO ORDERED** this 2-7 day of July, 2019:

1. That the Motion for Emergency Suspension of Damon D. Cary license to practice medicine (License No.: C2-0007103) is granted;

2. That Damon D. Cary shall be served with a copy of this Order as provided in 24 Del. C. § 1738(a) and notice shall be provided to all other agencies listed therein;

3. That Complaint numbers 10-120-15, 10-68-17, and 10-10-19 are accepted by the Board as the Formal Complaint and shall be assigned to a hearing officer to be scheduled in accordance with 24 Del. C. § 1738 and 29 Del. C. § 8735(v)(1)d to hear evidence related to the Formal Complaint; and

4. That pursuant to 24 Del. C. § 1738, Dr. Cary may request an expedited hearing provided that the Board receives the request within 5 calendar days of the date Dr. Cary is notified of this Order.

The Honorable Jeffrey W. Bullock
Secretary of State, State of Delaware

Garrett H. Colmorgen, M.D.
President, Board of Medical Licensure & Discipline