

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF THE PHYSICIAN'S LICENSE

OF

JAMES BENJAMIN BURKE, M.D.

ORDER DENYING REMOVAL OF RESTRICTIONS ON MEDICAL LICENSE

THIS MATTER came on regularly for hearing on January 17, 2019, before the Mississippi State Board of Medical Licensure, in response to the petition of James Benjamin Burke, M.D. (hereinafter "Licensee"), seeking removal of all restrictions on his license to practice medicine in the State of Mississippi.

Licensee was present, represented by counsel, Douglas Mercier. Complaint Counsel for the Board was Honorable Stan T. Ingram. Sitting as legal advisor to the Board was Honorable Gloria Green, Assistant Attorney General. Board members present for all proceedings were Claude D. Brunson, M.D., President, Charles D. Miles, M.D., Charles K. Lippincott, M.D., William D. McClendon, Jr., M.D., Michelle Y. Owens, M.D., Jeanne Ann Rea, M.D., Allen Gersh, M.D. and Kirk L. Kinard, D.O. Consumer members present were Wesley Breland, Maj. General (Ret.) Erik Hearon and Koomarie "Shoba" Gaymes. Prior to deliberations, Dr. Kinard had to leave the proceedings, and therefore, did not participate.

Evidence and testimony was then presented. Based thereon, the Board finds Licensee's request for removal of all restrictions not to be well taken. The Board finds as follows:

I.

Licensee has a significant history with the Board. He was licensed to practice medicine in the State of Mississippi on December 18, 2007, by issuance of Mississippi Medical License No. 20064, said license is current until June 30, 2019.

II.

On or about June 27, 2002, Licensee surrendered his Certificate of Qualification and License to practice medicine in the State of Alabama based on charges of unprofessional conduct relating to sexual misconduct with female patients (Board Exhibit No. 3; Burke Exhibit No. 6).

III.

On August 23, 2005, the Alabama Board of Medical Examiners granted Licensee's petition for reinstatement of license and authorized him to return to the practice of medicine in the State of Alabama, based in part on the fact that he had received treatment by the Behavioral Medicine Institute of Atlanta (BMI), participated in the Florida CARES evaluation, and had submitted a practice plan for monitoring, proctoring and counseling acceptable to the Alabama Board (Board Exhibit No. 3; Burke Exhibit No. 6).

IV.

In connection with Licensee's application for a license to practice medicine in the State of Mississippi, Licensee submitted to an evaluation by the Mississippi Professionals Health Program (MPHP); Licensee met with MPHP on September 10, 2007, and after reviewing documentation provided by Licensee, including a report from BMI, the MPHP found Licensee's treatment process and documentation to be in order and agreed to support him for licensure in the State of Mississippi, subject to a monitoring contract (Board Exhibit No. 5; Burke Exhibit No. 7).

V.

On October 22, 2007, Licensee's application for licensure in Mississippi was presented to the Executive Committee of the Board by H. Vann Craig, M.D., Executive Director. Dr. Craig requested that the Executive Committee review the information surrounding the sexual misconduct and make a determination as to whether the Board should issue an unrestricted license based on the signed contract with MPHP. While the Board possessed sufficient grounds to deny the application, it was the consensus of the Executive Committee that a reportable Consent Order limiting Licensee's practice to the male population at Parchman State Penitentiary be offered. Licensee accepted the offer and was issued a license to practice medicine in Mississippi, subject to a November 30, 2007 Consent Order (Board Composite Exhibit No. 6; Burke Exhibit No. 8) containing the following probationary terms and condition, to wit:

1. Until authorized otherwise by order of the Board, Licensee's practice in the State of Mississippi shall be limited to the Mississippi State Penitentiary, Parchman, Mississippi, or other correctional facilities under the jurisdiction of the Mississippi Department of Corrections. Licensee shall practice in a supervised structured environment, and such practice shall be limited to treatment of male patients only.
2. Licensee shall comply with all of the terms and conditions of the Monitoring Agreement entered into by and between Licensee and MPHP. In the event Licensee fails to comply with any or all of the terms and conditions of the Monitoring Agreement, or violates any of the terms and conditions of this Consent Order, the Board shall have the right to issue an Order of Prohibition, thereby prohibiting Licensee from practicing medicine pending the outcome of a full evidentiary hearing based on the violations alleged.
3. Licensee shall have the right to petition the Mississippi State Board of Medical Licensure for release of any or all of the above enumerated conditions after expiration of two (2) years from the effective date hereof. Thereafter, any right to petition the Board for reconsideration shall be at reasonable intervals, but not less than twelve (12) months from date of last appearance.

VI.

On November 19, 2009, a hearing was conducted before the Board in response to a request by Licensee for removal or clarification of the above restrictions placed on his license by virtue of that certain Consent Order dated November 30, 2007. Specifically, the Board was advised that since August, 2009 Licensee had been practicing at the Adams County Correctional Center, Natchez, Mississippi, which is a privately held correctional facility housing only federal prisoners, all contrary to the terms of the aforementioned Consent Order. During the hearing, Licensee openly acknowledged that the Adams County Correctional Center was not a facility under the jurisdiction of the Mississippi Department of Corrections; and acknowledged his failure to obtain permission from the Board prior to his employment at Adams County. Notwithstanding, the Board recognized that the Adams County Correctional Center, similar to the Mississippi State Penitentiary, provided Licensee with a supervised structured practice limited to the treatment of male patients only. The Board found that Licensee was fully aware of the violation committed and admonished him in that regard.

The Board, after hearing all testimony and evidence, amended the 2007 Consent Order, and authorized Licensee to continue his present practice at said Adams County Correctional Center. However, the November 30, 2007, Consent Order was amended so as to delete Restriction No. 1 as it was then written and, in lieu thereof, insert the following restriction, to-wit:

1. Until authorized otherwise by Order of the Board, Licensee's practice in the state of Mississippi shall be limited to the Adams County Correctional Center, Natchez, Mississippi, or other correctional facility approved in advance and in writing by the Board. Licensee shall practice in a supervised structured environment, which practice shall be limited to treatment of male patients only.
(emphasis added)

It was further ordered that Licensee shall continue to comply with each and every aspect with the Recovery Contract Agreement which Licensee entered into with the MPHP; and was given the right after expiration of one (1) year to petition for removal of any or all restrictions. (Board Composite Exhibit No. 6; Burke Exhibit No. 9).

VII,

During December, 2010, Licensee left the employ of Adams County Correctional Center, Natchez, Mississippi, and began working for the Central Mississippi Correctional Facility on or about December 15, 2010. On December 22, 2010, Licensee corresponded with the Board, informing the Board that he had changed his practice location. The letter states in part:

"I have been hired as the Medical Director for the Central Mississippi Correctional Facility. As directed by my decree, this facility is under the direction of the Mississippi Department of Corrections. The physical address is; Central Mississippi Correctional Facility 3794 Hwy 468 Pearl, MS 39208."

Pursuant to the November 30, 2007 Consent Order, as amended on November 19, 2009, Licensee did not seek "approval in advance and in writing" from the Board to relocate his practice from the Adams County Correctional Center to the Central Mississippi Correctional Facility, Pearl, Mississippi. Although the Central Mississippi Correctional Facility has male inmates, the Board previously determined that it is the primary female correctional facility for the Mississippi State Department of Corrections. Further, there was concern as to whether Licensee, then serving as the Medical Director, was (i) working in a "supervised structured environment" and (ii) would be treating only male patients.

While serving as the Medical Director at Central Mississippi Correctional Facility, Pearl, Mississippi, Licensee issued orders for the administration of medical care and for the administration, dispensation or prescription of medication for female patients.

Further, at no time did Licensee provide the Board with proof that his medical practice at Central Mississippi Correctional Facility was pursuant to a structured and supervised environment.

VIII.

In response to the above, the Board requested review and recommendations as to Licensee's employment status from MPHP. On January 24, 2011, the Board received a letter from Scott L. Hambleton, M.D., Medical Director of the MPHP, stating that MPHP had met with Licensee on January 7, 2011, to discuss Licensee's request for an unrestricted license which would allow Licensee to see female patients (Board Exhibit No. 7). However, after further investigation by MPHP, Dr. Hambleton notified Licensee that MPHP would not advocate for him. Dr. Hambleton's letter states in part:

"He is employed at Central Mississippi Correctional Facility, in Pearl, MS. He had been employed at Adams County Correctional Facility, until December 20, 2010. His consent order stipulates that he see male patients, only, and that he receive written permission from the MSBML prior to changes in employment. The Central Mississippi Correctional Facility houses female patients. Additionally, Dr. Burke was admonished by the MSBML last year for failure to notify the MSBML about his change in employment.

In April, 2010, he was started on injectable testosterone, for replacement therapy, by his family physician, Dr. Scott Wolfe, M.D. I spoke with Dr. Wolfe on Wednesday, January 19, 2011. He was not aware of Dr. Burke's previous sexual boundary violations, consent order or treatment at BMI, in 2004. Dr. Burke had not discussed his use of testosterone with MPHP or Dr. Able, at BMI. He notified MPHP of his use of testosterone on January 18, 2011.

The use of testosterone by a person with his history is extremely worrisome, especially in light of the fact that he did not discuss it with the MPHP. His RCA, dated September 10, 2007, stipulates in section 2, that he discuss medications with MPHP, "when appropriate." Section 4 stipulates that he submit to follow up with Dr. Able if concerns arise.

In light of the facts noted above, the MPHP requires that Dr. Burke undergo evaluation with Dr. Able, or another MSBML approved facility capable of evaluating a physician with these issues, as well as

providing MPHP with ongoing monitoring requirements. We will provide written notification to him, with request for response within 10 business days.”

On February 1, 2011, MPHP informed the Board that Licensee was scheduled to go to Acumen Assessments LLC in Lawrence, Kansas, for a Forensic Professional Fitness to Practice Evaluation on March 28, 2011, for failure to discuss his use of injectable testosterone with MPHP or Dr. Gene Able at BMI. Also, to be considered was Licensee’s failure to notify the Board of changes in employment on two different occasions when per his Consent Order. Given his history of sexual misconduct, the MPHP was concerned about Licensee taking testosterone and complete failure to communicate with MPHP and the Board regarding job changes without prior notice or approval.

IX.

Based on the results of the evaluation by Acumen, the assessment team was of the opinion that Licensee continued to put his professional status, licensure, and livelihood in jeopardy. Although Licensee was found fit to practice medicine at his then current level of restrictions and was not impaired, he was in need of treatment to address the unresolved difficulties noted in the report.

It was the recommendations of the assessment team that Licensee continue his monitoring contract with MPHP for a period of time deemed appropriate by this program and adhere to all requirements. The assessment team also recommended that Licensee engage in an intensive outpatient day treatment process.

X.

On July 7, 2011, a hearing was conducted before the Board based on Licensee’s aforementioned violations of the Consent Order as amended (second failure to obtain Board consent to change employment and failure to advise Board of his use of testosterone). Following the hearing, the Board suspended Licensee’s certificate to practice medicine in Mississippi until all phases of treatment by Acumen are completed (Board Exhibit No. 9; Burke Exhibit No. 16).

XI.

On or about October 3, 2011, Licensee’s treatment at Acumen was complete. The Acumen report (Board Exhibit No. 11) stated that in the event the Board chose to reinstate his medical license, it was their recommendation that Licensee’s practice of medicine be limited to incarcerated males and not be involved in any direct or indirect medical care of female inmates or female patients outside the prison system until such time as he can be evaluated and approved to do such.

XII.

On November 10, 2011, a reinstatement hearing was conducted before the Board. It was the decision of the Board to reinstate Licensee's license subject to the following terms and conditions (Board Exhibit No. 12; Burke Exhibit No. 18):

1. Licensee shall comply with all terms and conditions set forth in that certain Lifetime Monitoring Agreement dated October 10, 2011, with the Mississippi Professional Health Program (MPHP). The Board is advised that said Lifetime Monitoring Agreement incorporated the recommendations of Acumen Assessments, LLC, Lawrence, Kansas following Licensee's evaluation.
2. Until ordered otherwise by this Board, Licensee shall not treat female patients and shall work in a structured supervised environment, wherein he shall not have any supervised responsibility over other physicians or healthcare providers who may treat female patients.
3. Until ordered otherwise by this Board, Licensee shall advise the Board of any and all changes in his practice location(s). Any changes in practice location must be approved in advance by the Board. Such notice shall be in writing and submitted to the Board at least thirty (30) days prior to any change.

XIII.

The aforesaid Assessment Report dated October 3, 2011, from Acumen Institute also provided that if the Mississippi Board chooses to reinstate Licensee's medical license, they recommend that he return to Acumen Institute March 29-30, 2012, for follow up in order for the team to check in with him and assess his progress. On May 14, 2012, Licensee appeared before the MPHP because he had failed to go back to Acumen at the scheduled time. He was told he could not miss another reassessment. Inasmuch as Licensee also failed to provide testosterone levels as instructed, he was directed to do so. On May 31, 2012, Licensee returned to Acumen for follow up. A report in response was not issued until July 9, 2012 (Board Exhibit No. 14; Burke Exhibit No. 20). Among other recommendations, the Acumen report made the following recommendations:

1. The evaluation team recommends that Dr. Burke maintain a monitoring contract with MPHP for a period of time deemed appropriate by this program and the medical Board and that he participate, and make good use of, program requirements.

2. The treatment team recommends that Dr. Burke conduct his practice in a manner that is beyond reproach and in adherence to the American Medical Association's ethical guidelines. As a part of his monitoring and Board Order requirements, we recommend that he maintain impeccable professional boundaries and decorum and practice all times in full accordance with relevant federal, state, local, organizational, and professional regulations, and ethical guidelines.
3. We recommend that Dr. Burke vigilantly adhere to all requirements associated with his Board Order and monitoring requirements.
4. The treatment team recommends that Dr. Burke continue to have his hypogonadism, and associated testosterone levels, treated and monitored (every six months) by Robert Evans, MD (an endocrinologist). Although Dr. Evans maintains an ongoing medical record regarding Dr. Burke's health condition, we believe that it would be advisable for Dr. Evans to arrange to send MPHP lab results and prescribed testosterone dosages while being monitored by MPHP. This will help Dr. Burke establish a history documenting the proper use of hormone replacement therapy and rule out any suspicions of abuse.
5. If problems emerge in the future that cannot be managed at the local level, we recommend that Dr. Burke return to Acumen Institute.

Since issuance of the July 9, 2012 Follow-up Report and Discharge Summary from Acumen Institute, Licensee has not submitted to any further evaluation or assessment, notwithstanding the fact that it has been seven (7) years. Licensee has requested the Board to remove all restrictions on his license, thus permitting him to practice medicine for both male and female patients. Licensee points to the fact there have been no incidences of professional sexual misconduct. Notwithstanding, the Board notes the recommendations from the July 9, 2012 Acumen report, that is, that Licensee "diligently adhere to all requirements associated with his Board Order and monitoring requirements." At the time of this report, the only Order imposed by the Board is the July 11, 2011 Order (Board Exhibit No. 9; Burke Exhibit No. 16) which specifically limits Licensee's practice to "a structured

supervised environment, male patients only, wherein he shall not have any supervised responsibilities over other physicians or healthcare providers who may treat the male patients.”

Licensee introduced into the record consent orders for two (2) other physicians, wherein the Board permitted removal of restrictions despite being previously disciplined for professional sexual misconduct. As testified by Dr. Scott Hambleton, Medical Director of the MPHP, in each case, however, the physicians did not have a history of non-compliance, had recently been evaluated and received support and advocacy from the MPHP. This is not the case with Licensee.

While the Board is sympathetic to Licensee’s current dilemma, that is, being terminated from the Adams County Correctional Facility because of the restrictions on his license, the fact remains that it has now been over seven (7) years since there has been a comprehensive multi-disciplinary assessment to insure that Licensee can treat female patients with reasonable skill and safety to patients. The Board also takes note of the fact that the current restrictions do not limit Licensee to a correctional setting as long as he does not treat female patients.

Based on the evidence and testimony received, the Board finds Licensee’s request for removal of all restrictions not to be well taken.

THEREFORE, IT IS HEREBY ORDERED, that Licensee’s request for removal of all restrictions is hereby denied. Licensee will not be eligible for reconsideration of the removal of restrictions until he undergoes a multi-disciplinary evaluation at a facility approved in advance by the Board and is found capable of practicing medicine with reasonable skill and safety to both male and female patients.

IT IS FURTHER ORDERED, that pursuant to Miss. Code Ann. §73-25-27(1972), a copy of this Order shall be sent by registered mail or personally served on James Benjamin Burke, M.D.

ORDERED, this the 17th day of January, 2019.

**MISSISSIPPI STATE BOARD OF
MEDICAL LICENSURE**

BY: 

**CLAUDE D. BRUNSON, M.D.
PRESIDENT**