

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE APPLICATION FOR LICENSURE

OF

SETH LEIGH YOSER, M.D.

ORDER TO SHOW CAUSE

TO: **Seth Leigh Yoser, M.D.**
2553 Woodhurst Cove
Germantown, TN 38139

YOU ARE HEREBY SUMMONED to appear before the Mississippi State Board of Medical Licensure in its executive conference room, 1867 Crane Ridge Drive, Suite 200B, Hinds County, Jackson, Mississippi on July 25, 2019, at 10:00 A.M., to show cause why your application for a license to practice medicine in the state of Mississippi should not be denied. The Mississippi State Board of Medical Licensure, charged by law with the licensing of medical doctors in the state, under Title 73, Chapter 25, Miss. Code Ann., as amended, charges that you, an applicant for a license to practice medicine in the state of Mississippi, are guilty of voluntarily entering a plea of guilty related to a federal indictment, which would constitute conviction of a felony or misdemeanor involving moral turpitude that is directly related to the practice of medicine; and are guilty of unprofessional conduct, which includes, but in not limited to, any dishonorable or unethical conduct likely to deceive, defraud, or harm the public.

Pursuant to Subsections (6) and (8)(d) of §73-25-29 and §73-25-83(a), Miss. Code Ann., as amended, such acts constitute grounds for which the Mississippi State Board of Medical Licensure may deny your application for a Mississippi license to practice

medicine, or take any other action in relation to your application as the Board may deem proper under the circumstances.

The Mississippi State Board of Medical Licensure further advises that you have the right to be present at the hearing, to be represented by counsel, to produce witnesses or evidence on your behalf, to cross-examine witnesses and to have subpoenas issued on your behalf by this Board. A full text of the Board's Rules of Procedure can be found at the Board's website www.msblml.ms.gov or can be obtained from the Board office. By service of this Order to Show Cause and attached Rules, you are deemed to be fully advised of the same.

You are further advised that, pursuant to the Board's Rules of Procedure, you must file an answer or response to this Order to Show Cause/Affidavit within fifteen (15) days of the date you receive the same or all matters asserted therein shall be deemed admitted.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 11th day of
June, 2019.



Kenneth E. Cleveland, M.D.
Executive Director
Mississippi State Board of Medical Licensure

BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE
IN THE MATTER OF THE APPLICATION FOR LICENSURE
OF
SETH LEIGH YOSER, M.D.

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, JONATHAN DALTON, Supervisor of the Investigations Division, Mississippi State Board of Medical Licensure, do hereby make oath that I have reason to believe and do believe:

1. That on or about December 28, 2018, Seth Leigh Yoser, M.D., hereinafter referred to as "Applicant," submitted or caused to be submitted his application for a license to practice medicine in the state of Mississippi.

2. That Applicant reported on his licensure application certain adverse information. Question number seven (7) of the Application for Certificate To Practice Medicine (hereinafter "the application") reads as follows:

Has your certificate of qualification or license to practice medicine in any state been suspended, revoked, restricted, conditioned, curtailed, or voluntarily surrendered under threat of suspension or revocation?

Applicant responded "Yes" in answer to this question, among other related questions answered in the positive, and provided a written explanation. The explanation reads, in part:

In openly cooperating with authorities, I pled to information in July 2009 and in February 2010 was sentenced for mail and wire fraud in connection with the unlicensed sale of non-narcotic prescription medication.

APPLICANT HISTORY

3. That on July 15, 2009, the U.S. Government filed what is known as a Bill of Information, hereinafter referred to as the "Information", but more commonly known as an Indictment, against Applicant setting forth certain allegations related to fraud in the practice of medicine. The Information, in part, lays out certain schemes and artifices to defraud Medicare. As an example of said schemes and artifices, the Information states the following in Section 3, (a) and (b):

a. It was part of said scheme that the defendant, Yoser, would use a single dose vial of Lucentis to treat two patients and indicate on the internal ¹ESG documents that two vials of Lucentis were used in order to divert one unopened vial to his possession for every two patients.

b. It was part of said scheme that Yoser would use the residual in the vials of Visudyne to treat multiple patients in order to divert roughly one unopened vial for every five to six patients.

Further allegations set forth in the Information state that Applicant illegally distributed the diverted medications to several eye centers or other retinal consulting groups, leading to an approximate seven-figure profit for Applicant. The aforementioned practices also caused false billings submitted to Medicare on Applicant's behalf, all totaling approximately \$1.6 million.

4. That the Information charged Applicant with thirty-five (35) counts in total, ranging from federal statutes involving Frauds and Swindles (Counts 1-10) [18 U.S.C. §1341], to Prohibited Acts-Distribution of Drugs (Counts 11-33) [21 U.S.C. §§331(t), 333(b)(1)(D) and 352(e)(2)(A)], and Fraud by Wire, Radio, or Television (Counts 34 & 35) [21 U.S.C. §1343].

¹ The term "ESG" is short for Eye Specialty Group, a former employer of Licensee.

5. That, pursuant to the aforementioned Information, Applicant entered into a Plea Agreement, pleading guilty to all thirty-five (35) counts of the Information. As provided by Applicant, the Redacted Amended Judgment In A Criminal Case indicates Applicant was committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 42 months. Subsequent to his imprisonment, Applicant was subject to supervised release for a term of 2 years. Applicant was also assessed a monetary assessment of \$3,500, a total fine of \$10,000, and total restitution of \$400,000.

6. That, in response to Applicant's Plea Agreement, on August 20, 2009, the Board issued a Summons with supporting Affidavit charging Applicant, who was then a licensee of the Board, with violations of Mississippi statute. In lieu of a formal hearing, Applicant chose to execute an Agreed Order of Surrender of Medical License, which was executed on November 16, 2009.

CURRENT MATTER

7. That the "Now, Therefore" paragraph of the aforementioned Agreed Order of Surrender of Medical License states the following, in part:

*In the event Licensee later decides to practice medicine in the State of Mississippi, it will be necessary for his<SIC> to submit a new application with the Board. **At such time, the Board reserves the right to utilize all evidence, including all facts developed during the current investigation, as part of the consideration of any application.***
<Emphasis Added>

8. That entry and/or filing of the May 12, 2009, Information against Applicant culminated an investigation conducted by the United States Food & Drug Administration, hereinafter "FDA". Prior to entry and/or filing of the May 12, 2009, Information, Applicant was made aware of the investigation and, on at least one occasion, was interviewed by agents for the FDA.

9. That on or about June 7, 2009, Applicant, then a licensee, submitted to the Board his on-line Renewal Application for the licensing period July 1, 2009 – June 30, 2010. In the Affidavit Questions section of the Renewal Application, Applicant answered “N” or “No” to Question 1, which states:

From July 1, 2007, to the present, have you been the subject of any disciplinary action or investigation by any licensing authority . . . or other governmental agency?

At the conclusion of the aforementioned on-line license renewal application, Applicant indicated “Yes, I acknowledge the above statement” in the “Certification of Submitted Information” portion of the application, which states:

In utilizing the MSBML's physician license web renewal process, the licensee acknowledges that all information contained in the renewal application has been either directly submitted by the licensee or caused to be submitted by the licensee. The licensee acknowledges that all information submitted is true and correct to the best of licensee's knowledge. Any information erroneously submitted either directly by licensee or at licensee's direction is licensee's responsibility. Investigation and disciplinary action may result from the knowing or willful failure of licensee to submit information, either directly or indirectly, to the Board or from the submission of incorrect information to the Board.

COUNT I

Based upon the foregoing, Applicant has been convicted of a felony or misdemeanor involving moral turpitude, said crimes being directly related to the practice of medicine, all in violation of Miss. Code Ann., §73-25-29(6).

COUNT II

Based upon the foregoing, Applicant knowingly or willfully submitted false information to the Board on his 2009 Renewal Application for a license, at a time when he was a licensee of the Board, and therefore is guilty of unprofessional conduct, including dishonorable or unethical conduct likely to deceive, defraud or harm the public, all in violation of Miss. Code Ann., §§73-25-29(8)(d) and 73-25-83(a).


10. That for the reasons and counts noted above, the undersigned has reason to believe, and does believe, that sufficient grounds exist to deny Applicant's application for a license to practice medicine in the state of Mississippi.

DATED, this the 11th day of June, 2019.



JONATHAN DALTON, CMBI
INVESTIGATIONS SUPERVISOR

SWORN TO AND SUBSCRIBED BEFORE ME, this the 11th day of June, 2019.



NOTARY PUBLIC
No. 034329
Commission Expires
Apr 24, 2021
STATE OF MISSISSIPPI
RANKIN COUNTY