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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

MUSTAFA K. DIKTAS, M.D.,
RESPONDENT.

FINAL DECISION AND ORDER
Case No. LS9707251MED

PARTIES

The parties to this action for purposes of §227.53, Wis. Stats., are:

Mustafa K. Diktas, M.D.
1719 West Thrush Lane
Mequon, WI 53217

State of Wisconsin
Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

State of Wisconsin
Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A closed hearing in the above-captioned matter was held on February 16 and 17, 1998, before Administrative Law Judge Robert T. Ganch. Dr. Diktas appeared in person and by his attorney Matthew Ricci. The Division of Enforcement appeared by attorney Gilbert C. Lubcke. The matter was subsequently reassigned to Administrative law judge Jacquelyn Rothstein in January of 1999.

The administrative law judge filed her Proposed Decision on June 14, 1999. On July 5, 1999, respondent, by Attorney Ricci, filed his objections to the Proposed decision, and Attorney Lubcke filed his response on July 15, 1999. Mr. Ricci and Mr. Lubcke appeared before the board for oral arguments on respondent's objections on August 25, 1999, and the board considered the matter on that date. Also on that date, and prior to the board's deliberations, the board viewed selected videotaped portions of the testimony of Dr. Diktas; Dr. Friedmann and Dr. Brown, Dr. Diktas' treating physicians; and Professor Dennis Maki, complainant's expert witness, for the purpose of permitting the board to observe the demeanor of these principal witnesses during critical portions of their testimony.

Based on the entire record in this case, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Mustafa K. Diktas (dob 10/29/27) resides at 1719 W. Thrush Lane in Mequon, Wisconsin. Dr. Diktas also resided there in March of 1995.
2. Dr. Diktas is currently registered to practice medicine and surgery in the State of Wisconsin. His license was granted on November 21, 1977 (License #21357).

3. In March of 1995, Dr. Diktas practiced general medicine at the Villard Family Clinic located at 6831 West Villard Avenue in Milwaukee, Wisconsin. Prior to becoming licensed in Wisconsin, Dr. Diktas practiced medicine in Turkey for nineteen (19) years. He was trained as a specialist in pulmonary medicine and practiced his specialty in a tuberculosis hospital in Istanbul, Turkey.
4. In February of 1995, Dr. Diktas traveled to Turkey. While there, he became ill and went to see a physician for treatment. A chest x-ray was taken which showed an infiltrate in the right upper lobe of Dr. Diktas's lung.
5. On March 10, 1995, Dr. Diktas flew to Massachusetts to visit his daughter. On that same date, his daughter took him to Baystate Medical Center (Baystate) located in Springfield, Massachusetts, because he was feeling ill. He was admitted and remained hospitalized until his discharge on March 18, 1995.
6. Upon his admission to Baystate, the possibility that Dr. Diktas had tuberculosis was highly raised. He was initially placed in isolation and a tuberculosis evaluation was pursued. A Mantoux test was conducted, sputum was collected, a chest x-ray was taken, and a CT scan was done.
7. At forty-eight (48) hours the Mantoux test revealed an indurated area of twenty-two millimeters, and the sputum revealed multiple acid-fast bacilli. The chest x-ray and CT scan confirmed that Dr. Diktas had a right upper lobe infiltrate with central cavitation. Given these clinical findings, Dr. Diktas was diagnosed as having active pulmonary tuberculosis and was advised accordingly.
8. While hospitalized and upon his discharge from Baystate the following medications were prescribed for Dr. Diktas: Rifampin, Isoniazid, Ethambutol, and Pyrazinamide. These four medications are designed to treat advanced cavitary tuberculosis.
9. Tuberculosis is a respiratory infection caused by mycobacterium and is contracted by airborne spread. Cavitary tuberculosis is characterized by a cavity in the lung and is more contagious than non-cavitary tuberculosis.
10. W.B. was a patient of Dr. Diktas's. On March 21, 1995, Dr. Diktas conducted a physical examination of W.B. and provided medical treatment to him while at the Villard Family Clinic.
11. On March 20, 1995, Dr. Diktas's wife, Emine, went to St. Mary's Hospital-Ozaukee for a tuberculosis skin test. Dr. Diktas accompanied his wife to the hospital. Dr. and Mrs. Diktas returned to the hospital on March 22, 1995, to have the test results read. The test was positive for tuberculosis. Dr. Diktas did not wear a protective face mask on either hospital visit, nor did he inform the hospital personnel with whom he had direct contact that he had an active case of tuberculosis.
12. After receiving a phone call from his son on the evening of March 22, 1995, Dr. Diktas went to the Mequon Police Department. While he was there, he had face-to-face contact with two police officers. Dr. Diktas was not wearing a protective face mask, nor did he inform the officers that he had an active case of tuberculosis.
13. R.K. was a patient of Dr. Diktas's. On March 24, 1995, Dr. Diktas examined R.K. at the Villard Family Clinic and provided medical treatment to her.
14. Burton J. Friedman is a physician licensed to practice medicine in the State of Wisconsin. On March 27, 1995, he saw Dr. Diktas as a patient. Shortly before he saw Dr. Diktas on March 27, he received a telephone call from one of Dr. Diktas's treating physicians in Massachusetts indicating that Dr. Diktas had been diagnosed with tuberculosis. Dr. Friedman took a chest x-ray of Dr. Diktas. The x-ray revealed an infiltrate in Dr. Diktas's upper right lung. Dr. Friedman concluded that Dr. Diktas had tuberculosis and advised him of that. He then referred Dr. Diktas to Dr. Steven M. Brown, a pulmonary specialist.
15. Dr. Brown first saw Dr. Diktas on March 29, 1995, in the negative pressure isolation room at Columbia Hospital in Milwaukee, Wisconsin. On that same date, Dr. Brown contacted the Baystate Laboratory in Massachusetts, to obtain the results of the mycobacterium tuberculosis complex test performed on Dr. Diktas's sputum by a DNA probe. The laboratory results were positive for mycobacterium tuberculosis. Dr. Brown also conducted a physical examination of Dr. Diktas, reviewed his recent chest x-rays, and obtained his medical history. He concluded that Dr. Diktas had active mycobacterium tuberculosis.
16. On March 29, 1995, Dr. Brown advised Dr. Diktas of the seriousness of his diagnosis, the need for ongoing medications, and the necessity of being quarantined. He also ordered that three consecutive sputum samples be obtained at St. Mary's Hospital-Ozaukee beginning on March 30, 1995. Dr. Diktas was directed to wear a mask when entering and exiting the hospital.
17. On March 31, 1995, D.S., an insurance salesperson, met with Dr. Diktas at the Villard Family Clinic to provide him with an insurance quote. During their meeting, Dr. Diktas did not wear a mask, nor did he inform D.S. that he had a diagnosis of probable active pulmonary tuberculosis.

18. On March 31, 1995, Kathleen Bleau, a registered nurse employed by the Ozaukee County Health Department, went to Dr. Diktas's home and served him with a quarantine order. The quarantine order restricted Dr. Diktas to his home and prevented him from having contact with the general public. The quarantine order was to remain in effect until there was medical verification that Dr. Diktas was no longer infectious to the general public.

19. On or about June 3, 1995, Dr. Diktas filed a worker's compensation claim with the Wisconsin Department of Industry, Labor, and Human Relations in which he requested compensation for lost wages as a result of having contracted tuberculosis from an unspecified patient.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this proceeding pursuant to Chapter 448, Wis. Stats.
2. Dr. Diktas, by having examined and treated patient W.B. while he had an active case of cavitary tuberculosis, engaged in unprofessional conduct that constituted a danger to the health, welfare and safety of patients contrary to secs. 448.02 (3), Wis. Stats., and MED 10.02 (2) (h), Wis. Admin. Code.
3. Dr. Diktas, by having examined and treated patient R.K. while he had an active case of cavitary tuberculosis, engaged in unprofessional conduct that constituted a danger to the health, welfare and safety of patients contrary to secs. 448.02 (3), Wis. Stats., and MED 10.02 (2) (h), Wis. Admin. Code.
4. Dr. Diktas, by having gone to St. Mary's Hospital-Ozaukee on two separate occasions without wearing a protective face mask or alerting hospital personnel that he had an active case of cavitary tuberculosis, engaged in unprofessional conduct that constituted a danger to the health, welfare and safety of the public contrary to secs. 448.02 (3), Wis. Stats., and MED 10.02 (2) (h), Wis. Admin. Code.
5. Dr. Diktas, by having gone to the Mequon Police Department while he had an active case of cavitary tuberculosis and talking directly with two police officers without wearing a protective face mask or informing them of his diagnosis, engaged in unprofessional conduct that constituted a danger to the health, welfare and safety of the public contrary to secs. 448.02 (3), Wis. Stats., and MED 10.02 (2) (h), Wis. Admin. Code.
6. Dr. Diktas, by having met with D.S. at his office while he had an active case of cavitary tuberculosis and by not wearing a protective face mask in her presence or informing her of his diagnosis, engaged in unprofessional conduct that constituted a danger to the health, welfare and safety of the public contrary to secs. 448.02 (3), Wis. Stats., and MED 10.02 (2) (h), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Mustafa K. Diktas to practice medicine and surgery in the State of Wisconsin shall be revoked.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Mustafa K. Diktas, pursuant to sec. 440.22, Wis. Stats.

EXPLANATION OF VARIANCE

The board has accepted the administrative law judge's Findings of Fact, Conclusions of Law and Order in their entirety with one small exception. In Finding of Fact #17, the ALJ found that Dr. Diktas met with insurance agent D.S. on March 30, 1995. In fact, that meeting took place on March 31, 1995, and Finding of Fact #17 has therefore been modified accordingly.

Dated at Madison, Wisconsin, this 31st day of August, 1999.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

by _____

Ronald E. Grossman, M.D.

Secretary

