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Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Application for Practice of
Medicine and Surgery by Endorsement

KAUKAB P. SHAH, M.D., Applicant

FINAL DECISION AND ORDER

Order No. **0003418**

Division of Legal Services and Compliance Case No. 14 MED 071

The State of Wisconsin, Medical Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Medical Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 17th day of September, 2014.

A handwritten signature in cursive script, reading "Kenneth B. Smith".

Member
Medical Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application for Practice of
Medicine and Surgery by Endorsement

KAUKAB P. SHAH, M.D., Applicant

DHA Case No. SPS-14-0025

DLSC Case No. 14 MED 071

0003418

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

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Richardson, TX 75080

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Arthur Thexton
Department of Safety and Professional Services
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P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

This proceeding was initiated when Applicant Kaukab Shah appealed from a January 22, 2014 decision by the Wisconsin Medical Examining Board which denied his application to practice medicine and surgery. A prehearing conference was held before the undersigned administrative law judge on April 10, 2014, at which a hearing date and related deadlines were set. A hearing was held in this matter on June 9, 2014, at which only Dr. Shah testified as a witness.

FINDINGS OF FACT

1. In an application dated April 25, 2013, Dr. Shah applied for a license to practice medicine and surgery in Wisconsin. (Div. Ex. 2)
2. Following an oral examination by a two-member panel of the Wisconsin Medical Examining Board ("Board") and then by the full Board, the Board denied Dr. Shah's application by letter dated January 22, 2014. (Div. Ex. 2, pp. 5, 42-45) The grounds for the denial were that

Dr. Shah did not demonstrate current competence due to his lack of an adequate explanation of the circumstances regarding his suspension from his residency program at Griffin Memorial Hospital (“Griffin”) in Oklahoma. The Board’s decision was unanimous. (Div. Ex. 1, p. 4; Div. Ex. 2, pp. 1, 7)

3. Dr. Shah was suspended during the second year of his psychiatric residency program at Griffin, which resulted in his resignation from Griffin’s residency program on December 19 or 20, 2012. He has not completed his residency elsewhere. (App. Ex. C; Div. Ex. 2, pp. 80-81; Hrg. Tr., p. 27)

4. Griffin is a public institution, owned by the State of Oklahoma. (Hrg. Tr., p. 20)

5. There is little information in the record regarding the reason for the suspension. On a questionnaire filled out by Griffin’s residency program director, Dr. Clayton Morris, on April 24, 2013, Dr. Morris checked the “yes” boxes for questions 10 and 11, which asked, “Were any formal patient or staff complaints filed against this physician?” and “Were any incident reports filed involving the professional behavior or conduct of this physician?” The questionnaire asks for an explanation of the “yes” answers. A letter from Dr. Morris dated December 20, 2012 indicates, “Dr. Shah was suspended with pay beginning October 19, 2012 and he resigned effective December 19, 2012.” (Div. Ex. 2, pp. 80-81)

6. Department employee Tamie Buckingham informed Dr. Shah that he needed to have Griffin provide additional information regarding the answers to Questions 10 and 11, above. (Div. Ex. 2, pp. 31-32) Griffin has repeatedly declined to provide additional information regarding the complaint or suspension. In an email to Dr. Shah dated May 8, 2013, a program coordinator for Griffin, Pam Melton, stated, “Dr. Morris says that he has answered the Wisconsin Medical Board’s questions to the best of his ability.” (Div. Ex. 2, p. 83) In an email to Ms. Buckingham dated October 23, 2013, Ms. Melton stated, “I spoke with Dr. Morris and on the advice of our legal division he is not allowed to provide the Wisconsin board with any additional information.” (Div. Ex. 2, p. 35) A February 6, 2013 email to Dr. Shah from Dewayne Moore, legal counsel for Oklahoma’s Department of Mental Health Services, states, “I apologize but investigation reports are not released.” (App. Ex. B; Hrg. Tr., p. 24)

7. At some point, Dr. Morris informed Dr. Shah that a student had complained about his behavior. (Hrg. Tr., pp. 18-19) Dr. Shah testified that during the first week of classes, students were unhappy with him because he did not let them use Facebook or cell phones during his classes but that after the first week, students loved him. (*Id.*, pp. 19, 25) Dr. Shah further testified that Dr. Morris told him that he (Dr. Morris) did not like Dr. Shah, but would not give a reason for his dislike. (*Id.*, pp. 17, 20) Dr. Shah believes that Dr. Morris felt bad that students liked Dr. Shah better than they liked Dr. Morris. (*Id.*, pp. 17-18)

8. Dr. Shah received his medical school degree in Pakistan in 1989. (Div. Ex. 2, pp. 53, 70-71)

9. The record contains six letters in support of Dr. Shah from physicians, including three physicians from Griffin, with whom Dr. Shah has worked for various time periods between 2011 and 2012. (Div. Ex. 2, pp. 19-23, 87-92)

DISCUSSION

Burden of Proof

Those seeking review of the denial of a license application by the Board have the burden of proof. An applicant's burden of proof is set forth in Wis. Admin. Code § SPS 1.08(4), which provides as follows: "The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential."

The Board's Denial

As grounds for its unanimous denial of Dr. Shah's application, the Board stated that Dr. Shah did not demonstrate current competence due to his lack of an adequate explanation of the circumstances regarding his suspension from his residency program at Griffin. The Board cited Wis. Stat. §§ 448.05(2) and 448.06, and Wis. Admin. Code § Med 1.06(4).¹

¹ As they existed at the time of the denial, these provisions state, in relevant part:

Wis. Stat. § 448.05(2) (2011-2012):

(2) LICENSE TO PRACTICE MEDICINE AND SURGERY. An applicant for any class of license to practice medicine and surgery must supply evidence satisfactory to the board that the applicant is a graduate of and possesses a diploma from a medical or osteopathic college approved by the board and has completed postgraduate training of 12 months in a facility approved by the board. If an applicant is a graduate of a foreign medical school which has not been approved by the board, and if such applicant has had postgraduate training in this country in a 12-month program approved by the board or has had other professional experience which the board deems has given the applicant the education and training substantially equivalent, and if such applicant has passed the examinations given by the educational council for foreign medical graduates or its successors, the board may make such additional inquiry including a personal interview as satisfies it that the applicant has had such education and training. If a majority of the board is so satisfied, the applicant may then be admitted to examination for a license to practice medicine and surgery. . . .

Wis. Stat. § 448.06 (2011-2012):

(1) GRANT OF LICENSE, CERTIFICATE OR LIMITED PERMIT. If three-fourths of the members of the board find that an applicant who has passed the required examinations is qualified, the board shall so notify the applicant and shall grant the license, certificate or limited permit.

(2) DENIAL OF LICENSE OR CERTIFICATE. The board may deny an application for any class of license or certificate and refuse to grant such license or certificate on the basis of unprofessional conduct on the part of the applicant, failure to possess the education and training required for that class of license or certificate for which application is made, or failure to achieve a passing grade in the required examinations.

Wis. Admin. Code § Med 1.06(4):

(4) Oral examinations of each applicant are conducted by one or more physician members of the board. The purpose of the oral exams is to test the applicant's knowledge of the practical application of medical principles and techniques of diagnosis and treatment, judgment and professional character and are scored pass or fail. Any applicant who fails the initial oral examination shall be examined by the board which shall then make the final decision as to pass or fail.

In the instant case, Dr. Shah argues that it is unfair for the Board to have denied his license application based on an inadequate explanation for his suspension from Griffin's residency program because Griffin will not provide additional information regarding the circumstances of the suspension.

Dr. Shah has failed to meet his burden of establishing that the Board erred in denying his application. The Board had before it information that Dr. Shah had been suspended from his residency program and that at least one patient or staff complaint had been filed against him involving his professional behavior or conduct. The Board sought additional information regarding these complaints but did not receive it. Even if it is not Dr. Shah's fault that the Board did not receive this additional information, it likewise is not the Board's fault. The Board has a duty to ensure that those it licenses meet the standards of the medical profession and will practice medicine in a safe and competent manner. The Board had before it a very significant red flag: that Dr. Shah was suspended during the second year of his residency program and that a complaint (or complaints) had been filed by patients and/or staff regarding his conduct. Dr. Shah has failed to show that the Board improperly exercised its discretion in determining that it should not allow him to practice medicine in Wisconsin without having information to satisfy itself that the complaint(s) and suspension were unwarranted or that Dr. Shah could nevertheless safely and reliably practice as a physician despite the complaint(s) and suspension.

While there is the possibility that Dr. Shah is correct that the suspension was purely the result of unjustified personal animus against him on the part of Dr. Morris, that appears unlikely in light of the fact that Dr. Morris indicated that there was at least one complaint filed against Dr. Shah. Regardless, the Board has no way of ruling out that the suspension was for a significant and justified cause, one affecting Dr. Shah's ability to safely and reliably practice medicine. This is true despite the letters of recommendation Dr. Shah provided to the Board. These letters do not refer to any complaint filed against Dr. Shah or to his suspension, and there is no indication that the writers of these letters knew anything about the facts surrounding the complaint(s) or suspension. In view of the record, and with Dr. Shah having the burden of proof in this case, there is no alternative but to affirm the Board's denial.

ORDER

Accordingly, IT IS HEREBY ORDERED that the Board's decision denying Dr. Shah's application is upheld.

Dated at Madison, Wisconsin on July 15, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge