

**COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1490**

FILED OF RECORD

FEB 18 2016

K.B.M.L.

**IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH
OF KENTUCKY HELD BY BRET A. DUNNING, D.O., LICENSE NO. 03077,
39 HILLSIDE CENTER DRIVE, P.O. BOX 1794, PRESTONSBURG,
KENTUCKY 41653**

AGREED ORDER OF SURRENDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and Bret A. Dunning, D.O. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending Complaint without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF SURRENDER:**

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Surrender:

1. At all relevant times, Bret A. Dunning, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's osteopathic specialty is Family Medicine.
3. On April 30, Kentucky State Police (KSP) detectives executed a search warrant at the licensee's address. Following the search, the licensee was arrested and charged with Possession of Matter Portraying a Sexual Performance by a Minor. According to the Uniform Citation, detectives observed 3 images on the licensee's computer involving sexual acts by children age 7 or under. The offense charged is a Class D Felony.
4. The licensee's practice is located next to a pre-school, Learning Ladder Academy.

5. **The licensee was arraigned on May 1, 2013. He entered a plea of "Not Guilty" and posted a \$25,000 bond. His office was temporarily closed as of May 3, 2013. According to the report, which quoted the Assistant County Attorney for Floyd County, KY, the licensee is required to stay 1,000 feet away from "...any school, daycare, or public place where there may be underage children present." The report also noted that he is prohibited from possessing a computer or electronic device and was placed on home incarceration.**
6. **On May 8, 2013, the Board's Inquiry Panel B issued an Emergency Order of Suspension against the licensee's Kentucky osteopathic license. The licensee has remained suspended since that time.**
7. **On June 18, 2013, the Floyd County, Kentucky Grand Jury indicted the licensee, in Indictment Number 13-CR-00075, charging him with six (6) counts of Possession of Matter Portraying a Sexual Performance by a Minor, all Class D felonies.**
8. **The licensee was arraigned in Floyd Circuit Court on July 17, 2013.**
9. **In or around May 2015, the licensee became indicted in the United States District Court, Eastern District of Kentucky (Pikeville), on the following counts:**
 - **Counts I and II: Knowingly receiving visual depictions using a means and facility of interstate and foreign commerce, that is, by computer over the internet, and the production of said visual depictions involved the use of a minor engaging in sexually explicit conduct and the visual depiction were of such conduct, all in violation of 18 U.S.C. § 2252(a)(2).**
 - **Count III: Knowingly possessing a matter containing visual depictions that had been transported in and affecting interstate and foreign commerce, and the production of said visual depictions involved the use of a minor engaging in sexually explicit conduct and the visual depiction were of such conduct, all in violation of 18 U.S.C. § 2252(a)(4)(B).**

10. On or about June 12, 2015, the action against the licensee was dismissed from Floyd Circuit Court.

11. On or about October 23, 2015, the licensee entered a plea agreement in *USA v. Dunning*, Case No. 15-4-DCR-EAB (United States District Court, Eastern District of Kentucky (Pikeville)), in which he agreed to enter a guilty plea to felony Count I and in which he admitted that

- o He knowingly received a visual depiction in interstate commerce;**
- o The production of the visual depiction involved the use of a minor engaging in sexually explicit conduct;**
- o The visual depiction is of a minor engaging in sexually explicit conduct; and**
- o The licensee knew at least one of the performers in the visual depiction was a minor, and that the visual depiction was of a minor engaged in sexually explicit conduct.**

12. The licensee's guilty plea was based upon the following facts:

- o On or about March 9, 2013, the licensee was knowingly and intentionally using eDonkey peer-to-peer (P2P) file sharing network program to download and view images of minors engaged in sexually explicit conduct.**
- o On or about April 30, 2013, law enforcement agents removed numerous electronic devices belonging to the licensee from the licensee's residence pursuant to a search warrant.**
- o Subsequent forensic examination of the licensee's electronic devices revealed multiple still images and videos containing material involving the sexual exploitation of minors on various devices belong to the licensee. Included among these images were images of prepubescent children engaged in sexually explicit conduct with adults. The images appear to be actual minor children; furthermore, one or more of the images contained on the licensee's electronic devices were of actual minors previously identified by law enforcement agents, according to the forensic report from the National Center for Missing and Exploited Children.**

13. On or about October 23, 2015, the licensee also entered a supplemental plea agreement in which he admitted additional facts related to the charges on which he was indicted but which was sealed in federal court.
14. The statutory punishment for Count I is imprisonment for not less than 5 years and not more than 20 years, a fine of not more than \$250,000 and a term of supervised release of not less than 5 years nor more than life.
15. The licensee is scheduled to be sentenced on January 28, 2016.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Surrender:

1. The licensee's osteopathic license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(4) and (9). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Surrender.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Surrender.

AGREED ORDER OF SURRENDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending Complaint without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF SURRENDER:**


1. The licensee hereby SURRENDERS his Kentucky osteopathic license, in lieu of revocation, with that surrender to become effective immediately upon the filing of this Agreed Order of Surrender, and continuing until further order of the Panel.
2. Immediately upon the filing of this Agreed Order of Surrender, the licensee shall not engage in any act which would constitute the "practice of medicine or osteopathy" as that term is defined by KRS 311.550(10) - the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - in the Commonwealth of Kentucky, until approved to do so by the Panel.
3. The Panel shall not consider a petition for reinstatement of his license by the licensee until the licensee is released from prison and for a minimum period of two years from the date of filing of this Agreed Order of Surrender. The provisions of KRS 311.607 shall apply to any request for reinstatement filed by the licensee.
 - a. The licensee understands and agrees that, if he should petition for reinstatement of his license, the burden shall be upon him to satisfy the Panel that he is presently of good moral character and qualified both physically and mentally to resume the practice of osteopathy without undue risk or danger to his patients or the public.
 - b. The licensee understands and agrees that the decision whether or not to permit him to resume the practice of osteopathy within the Commonwealth of Kentucky lies in the sole discretion of the Panel.
 - c. The licensee understands and agrees that, if he files a petition for reinstatement, the Board shall require him to successfully complete a clinical skills assessment, at his expense, before the Panel will consider his petition and to assist the Panel in its consideration of the petition.
4. If the Board should receive information that, after the date of filing of this Agreed Order of Surrender, the licensee has performed an act which would constitute the "practice of medicine or osteopathy" within the Commonwealth of Kentucky, it shall refer the licensee to the Attorney General or appropriate Commonwealth Attorney for prosecution of such acts of practicing osteopathy without a license.
5. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order of Surrender, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Surrender, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has


occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree that the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Surrender.

6. The licensee understands and agrees that any violation of the terms of this Agreed Order of Surrender would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13) and may provide a legal basis for criminal prosecution for practicing osteopathy without a license.


SO AGREED on this 18th day of February, 2011.


FOR THE LICENSEE:


BRET A. DUNNING, D.O.


STEPHEN W. OWENS
COUNSEL FOR THE LICENSEE

FOR THE BOARD:


C. WILLIAM BRISCOE, M.D.
CHAIR, HEARING PANEL A


LEANNE K. DIAKOV
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
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Tel. (502) 429-7150

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MAY 17 2013

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COMMONWEALTH OF KENTUCKY
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IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH OF KENTUCKY HELD BY BRET A. DUNNING, D.O., LICENSE NO. 03077, 39 HILLSIDE CENTER DRIVE, P.O. BOX 1794, PRESTONSBURG, KENTUCKY 41653

COMPLAINT

Comes now the Complainant Randel C. Gibson, D.O., Chair of the Kentucky Board of Medical Licensure's Inquiry B, and on behalf of the Panel which met on May 16, 2013, states for its Complaint against the licensee, Bret A. Dunning, D.O., as follows:

1. At all relevant times, Bret A. Dunning, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's osteopathic specialty is Family Medicine.
3. On April 30, Kentucky State Police (KSP) detectives executed a search warrant at the licensee's address. Following the search, the licensee was arrested and charged with Possession of Matter Portraying a Sexual Performance by a Minor. According to the Uniform Citation, detectives observed 3 images on the licensee's computer involving sexual acts by children age 7 or under. The offense charged is a Class D Felony.
4. The licensee's practice is located next to a pre-school, Learning Ladder Academy.
5. The licensee was arraigned on May 1, 2013. He entered a plea of "Not Guilty" and posted a \$25,000 bond. His office was temporarily closed as of May 3, 2013.

According to the report, which quoted the Assistant County Attorney for Floyd County, KY, the licensee is required to stay 1,000 feet away from "...any school, daycare, or public place where there may be underage children present." The report

also noted that he is prohibited from possessing a computer or electronic device and was placed on home incarceration.

6. The licensee is scheduled for a preliminary hearing on May 15, 2013 and KSP detectives expect to present his case to a Floyd County Grand Jury in the near future.
7. By his conduct, the licensee has violated KRS 311.595(4) and (9). Accordingly, legal grounds exist for disciplinary action against his Kentucky osteopathic license.
8. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:
 - (a) His failure to respond may be taken as an admission of the charges;
 - (b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

9. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for November 13 & 14, 2013 at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice osteopathy held by Bret A. Dunning, D.O.

This 17th day of May, 2013.



RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed to Thomas J. Hellmann, Esq., 415 West Main Street, P.O. Box 676, Frankfort, Kentucky 40602-0676 and mailed via certified mail return-receipt requested to Bret A. Dunning, D.O., License No. 03077, 39 Hillside Center Drive, P.O. Box 1794, Prestonsburg, Kentucky 41653 and Stephen W. Owens, Esq., P.O. Box 1426, Pikeville, Kentucky 41514 on this 17th day of May, 2013.

C. Lloyd Vest II

C. LLOYD VEST II
General Counsel
Kentucky Board of Medical Licensure
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EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through the Chair of its Inquiry Panel B, considered this matter between scheduled meetings, pursuant to 201 KAR 9:240, Section 1(3). Pursuant to that regulation, the Chair of Inquiry Panel B considered an investigative memorandum by Billy Madden, Medical Investigator, which included a News Update by WKYT-TV posted May 3, 2013; an article by the Floyd County Times dated May 2, 2013; Uniform Citation regarding the licensee dated April 30, 2013; and, a Search Warrant for the licensee's home and vehicles, along with the supporting affidavit.

Having considered all of this information and being sufficiently advised, the Chair of Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1), and 201 KAR 9:240, Section 1(3):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and 201 KAR 9:240, Section 1(3) and based upon the information available to him, the Chair of Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Bret A. Dunning, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's osteopathic specialty is Family Medicine.

3. On April 30, Kentucky State Police (KSP) detectives executed a search warrant at the licensee's address. Following the search, the licensee was arrested and charged with Possession of Matter Portraying a Sexual Performance by a Minor. According to the Uniform Citation, detectives observed 3 images on the licensee's computer involving sexual acts by children age 7 or under. The offense charged is a Class D Felony.
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5. The licensee was arraigned on May 1, 2013. He entered a plea of "Not Guilty" and posted a \$25,000 bond. His office was temporarily closed as of May 3, 2013. According to the report, which quoted the Assistant County Attorney for Floyd County, KY, the licensee is required to stay 1,000 feet away from "...any school, daycare, or public place where there may be underage children present." The report also noted that he is prohibited from possessing a computer or electronic device and was placed on home incarceration.
6. The licensee is scheduled for a preliminary hearing on May 15, 2013 and KSP detectives expect to present his case to a Floyd County Grand Jury in the near future.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, the Chair of Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Suspension:

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a

physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

3. There is probable cause to believe that the licensee has violated KRS 311.595(4) and (9).
4. The Panel Chair concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 520 U.S. 924 (1997), 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Chair of Inquiry Panel B hereby ORDERS that the license to practice osteopathy in the Commonwealth of Kentucky held by Bret A. Dunning, D.O., is SUSPENDED and Dr. Dunning is prohibited from performing any act which constitutes the "practice of medicine," as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

The Chair of Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

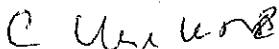
SO ORDERED this 8th day of May, 2013.



RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and, a copy was mailed via certified mail return-receipt requested to Bret A. Dunning, D.O., 39 Hillside Center Drive, P.O. Box 1794, Prestonsburg, KY 41653 on this 9th day of May, 2013.



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