

FILED OF RECORD

MAR - 5 2020

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1457

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH  
OF KENTUCKY HELD BY CURTIS S. GALE-DYER, D.O., LICENSE NO.  
03368, 2404 SOUTHVIEW DRIVE, LEXINGTON, KENTUCKY 40503

**THIRD AMENDED AGREED ORDER**

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through Hearing Panel A, and Curtis S. Gale-Dyer, D.O., (“the licensee”), and, based upon the licensee’s request for termination of certain terms and conditions, hereby ENTER INTO the following **THIRD AMENDED AGREED ORDER**:

**STIPULATIONS OF FACT**

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

1. At all relevant times, Curtis S. Gale-Dyer, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is physical medicine and rehabilitation.
3. In or around August 2012, the Office of Inspector General (“OIG”) Division of Health Care Services requested a review of the licensee’s prescribing patterns, as part of a House Bill 1 compliance inspection of pain management facilities.
4. On or around August 7, 2012, OIG Investigator, Stephen C. Johnson, reviewed and analyzed the licensee’s KASPER records (for the period of August 1, 2011 until August 2, 2012) and identified fifteen (15) patients (based on age, addictive drug combinations, polypharmacy and distance traveled) which he forward to the OIG Division of Health Care Services and to Board for further investigation.

5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients; as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance or gross negligence in regard to at least ten (10) patients. In summary, the Board consultant stated

... Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised in Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. ... The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. ... In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only." 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr.

Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will “hopefully lessen the chance of becoming dependent on opioids.”

Dr. Gale-Dyer also failed to recognize a Blood Pressure of 80/50 (Patient J) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer’s qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs. ...

6. On January 17, 2013, the Board’s Inquiry Panel B chose to issue a Complaint and Emergency Order of Suspension against the licensee’s license, after the Panel reviewed the investigation and the licensee appeared before and was heard by the Panel.
7. The Emergency Order of Suspension was affirmed following an emergency hearing, which was held on March 12, 2013, at the licensee’s request. The licensee did not appeal.
8. On February 28 and March 1 and 2, 2013, the licensee attended and completed the “Prescribing Controlled Drugs” course at the University of Florida.
9. On March 8, 2013, the licensee attended and completed the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado, and enrolled in the CPEP Personalized Implementation Program (PIP).
10. On June 20, 2013, the licensee resolved the Complaint by entering into an Agreed Order which, in part, restricted the licensee to the practice of medicine in the specialty of Physical Medicine and Rehabilitation in a fully-accredited tertiary medical care

center that provides both inpatient and outpatient services and in no other specialty or facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee may practice medicine (subject to any specific conditions/restrictions to deemed necessary to ensure patient safety).

11. On or about August 20, 2013, the licensee requested and the Panel Chair approved that the licensee be allowed to practice at Story Consulting Service, Inc., subject to the terms and conditions set forth in an Amended Agreed Order.
12. In June 2014, the licensee successfully completed the post-documentation seminar Personalized Implementation Program (PIP).
13. On or about October 16, 2014, the licensee requested and the Hearing Panel approved that the licensee could also be allowed to practice in his own “free standing health clinic” in Lexington, where he plans to use OMM and education as the primary means of care, subject to terms and conditions set forth in a Second Amended Agreed Order. The Second Amended Agreed Order was amended in August 2013 and again in October 2014 to allow the licensee to perform physical examinations at any of nine (9) Story Consulting Services, Inc., locations and to practice osteopathic manipulative medicine (“OMM”) in his own “free standing health clinic” in Lexington. All other substantive terms remained unchanged.
14. In October 2017, the licensee requested that the Second Amended Agreed Order be terminated. The Panel chose to amend the Second Amended Agreed Order, rather than terminate it. The Panel noted that the licensee had not prescribed any controlled substances since February 2013 and thus had not maintained a controlled substance

log from which they could review relevant charts and determine whether concerns about his prescribing practices had been effectively remediated.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Third Amended Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties resolved the Complaint without an evidentiary hearing by entering into an informal resolution such as the Agreed Order and subsequent Second and now Third Amended Agreed Order.

THIRD AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the licensee's request for termination of certain terms and conditions, the parties hereby ENTER INTO the following **THIRD AMENDED AGREED ORDER:**

1. The license to practice osteopathy in the Commonwealth of Kentucky held by Curtis S. Gale-Dyer, D.O., is SUBJECT TO THE TERMS AND CONDITIONS OF THIS AMENDED AGREED ORDER FOR AN INDEFINITE PERIOD OF

TIME, effective immediately upon the filing of this Third Amended Agreed Order.

2. During the effective period of this Third Amended Agreed Order:
  - a. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log shall include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets shall be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions shall be maintained in the following manner: 1) patient; 2) chart; and 3) log;
  - b. The licensee SHALL permit, and aid and assist as necessary, the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
  - c. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Third Amended Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Third Amended Agreed Order;
  - d. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on any terms determined by the Panel or its staff, before the Panel will consider a request to terminate terms/conditions ¶¶2(a)-(d) of this Third Amended Agreed Order. To clarify for the licensee herein, the Panel has determined that the reviews must at least be relevant to the licensee's osteopathic practice, whatever that may be, and his prescribing of controlled substances; and
  - e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Third Amended Agreed Order, 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 Third Amended Agreed Order, 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 and stipulate that a violation of any term or condition of this Third Amended Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, 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 Third Amended Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Third Amended Agreed Order 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.

SO AGREED on this 5<sup>th</sup> day of MARCH, 2020.

FOR THE LICENSEE:

  
\_\_\_\_\_  
CURTIS S. GALE-DYER, D.O.

  
\_\_\_\_\_  
LISA ENGLISH HINKLE  
CHRISTOPHER J. SHAUGHNESSY  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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KENNETH J. PAYNE, M.D.  
CHAIR, HEARING PANEL A



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LEANNE K. DIAKOV  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1457

DEC 08 2014

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IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH OF KENTUCKY HELD BY CURTIS S. GALE-DYER, D.O., LICENSE NO. 03368, 2404 SOUTHVIEW DRIVE, LEXINGTON, KENTUCKY 40503

**SECOND AMENDED AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through Hearing Panel A, and Curtis S. Gale-Dyer, D.O., ("the licensee"), and, based upon the licensee's request for practice location approval, hereby ENTER INTO the following **SECOND AMENDED AGREED ORDER**:

**STIPULATIONS OF FACT**

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

1. At all relevant times, Curtis S. Gale-Dyer, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's medical specialty is physical medicine and rehabilitation.
3. In or around August 2012, the Office of Inspector General ("OIG") Division of Health Care Services requested a review of the licensee's prescribing patterns, as part of a House Bill 1 compliance inspection of pain management facilities.
4. On or around August 7, 2012, OIG Investigator, Stephen C. Johnson, reviewed and analyzed the licensee's KASPER records (for the period of August 1, 2011 until August 2, 2012) and identified fifteen (15) patients (based on age, addictive drug combinations, polypharmacy and distance traveled) which he forward to the OIG Division of Health Care Services and to Board for further investigation.

5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients; as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance of gross negligence in regard to at least ten (10) patients. In summary, the Board consultant stated

... Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised in Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. ... The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. ... In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only." 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr.

Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will “hopefully lessen the chance of becoming dependent on opioids.”

Dr. Gale-Dyer also failed to recognize a Blood Pressure of 80/50 (Patient J) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer’s qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs. ...

6. On January 17, 2013, the Board’s Inquiry Panel B chose to issue a Complaint and Emergency Order of Suspension against the licensee’s license, after the Panel reviewed the investigation and the licensee appeared before and was heard by the Panel.
7. The Emergency Order of Suspension was affirmed following an emergency hearing, which was held on March 12, 2013, at the licensee’s request. The licensee did not appeal.
8. On February 28 and March 1 and 2, 2013, the licensee attended and completed the “Prescribing Controlled Drugs” course at the University of Florida.
9. On March 8, 2013, the licensee attended and completed the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado, and enrolled in the CPEP Personalized Implementation Program (PIP).
10. On June 20, 2013, the licensee resolved the Complaint by entering into an Agreed Order which, in part, restricted the licensee to the practice of medicine in the specialty of Physical Medicine and Rehabilitation in a fully-accredited tertiary medical care

center that provides both inpatient and outpatient services and in no other specialty or facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee may practice medicine (subject to any specific conditions/restrictions to deemed necessary to ensure patient safety).

11. On or about August 20, 2013, the licensee requested and the Panel Chair approved that the licensee be allowed to practice at Story Consulting Service, Inc., subject to the terms and conditions set forth in an Amended Agreed Order.
12. On or about October 16, 2014, the licensee requested and the Hearing Panel approved that the licensee could also be allowed to practice in his own "free standing health clinic" in Lexington, where he plans to use OMM and education as the primary means of care, subject to terms and conditions set forth in this Second Amended Agreed Order.

#### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Second Amended Agreed Order.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties resolved the Complaint without an evidentiary hearing by entering into an informal resolution such as the Agreed Order and subsequent Second Amended Agreed Order.

**SECOND AMENDED AGREED ORDER**

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the licensee's request for practice location approval, the parties hereby ENTER INTO the following **SECOND AMENDED AGREED ORDER**:

1. The license to practice osteopathy in the Commonwealth of Kentucky held by Curtis S. Gale-Dyer, D.O., is SUBJECT TO THE TERMS AND CONDITIONS OF THIS AMENDED AGREED ORDER FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Second Amended Agreed Order.
2. During the effective period of this Second Amended Agreed Order:
  - a. The licensee SHALL ONLY practice osteopathy in the specialty of Physical Medicine and Rehabilitation in a fully-accredited tertiary medical care center that provides both inpatient and outpatient services. As such, the licensee shall only dispense or otherwise professionally utilize controlled substances on patients who are registered patients of that medical care facility and who are simultaneously submitting to physical rehabilitative procedures at that facility.
    - i. The licensee SHALL NOT practice in any other specialty or in any other facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider whether the licensee will prescribe controlled substances in that practice location and the nature of the practice, including the licensee's proposed duties and hours to be worked. If approved, the licensee shall not change practice locations without first

obtaining written approval by the Panel or its Chair for such change. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety.

1. The licensee is hereby approved to:

- a. Perform physical examinations for Social Security, Veterans Administration and the Railroad Retirement Board at any of the nine (9) Story Consulting Services, Inc., office locations in Louisa, South Williamson, Elizabethtown, Frankfort, Lebanon, Franklin, Prestonsburg, Williamsburg or Somerset, Kentucky. The licensee SHALL NOT prescribe, dispense or otherwise professionally utilize controlled substances with/to any person he examines within his practice at Story Consulting Services, Inc.; and
  - b. To practice osteopathic manipulative medicine ("OMM") at Lexington Osteopathic, Inc., 101 Malabu Drive, Suite 10, Lexington, KY 40503. The licensee SHALL NOT prescribe, dispense or otherwise professionally utilize controlled substances with/to any person as part of his practice at/through Lexington Osteopathic, Inc.
- ii. The licensee understands and agrees that he shall not seek amendment or termination of the above term/condition, ¶2(a), for at least four (4) years from June 20, 2013, the date of filing of the original Agreed Order;
- b. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log shall include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets shall be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions shall be maintained in the following manner: 1) patient; 2) chart; and 3) log;
  - c. The licensee SHALL permit, and aid and assist as necessary, the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;



- d. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Second Amended Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Second Amended Agreed Order;
  - e. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate terms/conditions ¶¶2(b)-(e) of this Second Amended Agreed Order;
  - f. The licensee SHALL complete the CPEP Personalized Implementation Program (PIP), at his expense, as directed by CPEP's staff and without any delay. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the PIP promptly after completing that program. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations from the Documentation Seminar and PIP to the Board's Legal Department promptly after their completion. The licensee understands and agrees that he SHALL neither seek amendment nor petition the Panel for reconsideration of this term/condition, ¶2(f), until he has successfully completed the PIP;
  - g. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE in the amount of five-thousand dollars (\$5,000.00) according to the following schedule: at least \$250.00 each month for twenty (20) months, with payment due on the first day of each month beginning June 1, 2013, and continuing until such time as the fine is paid in full; and
  - h. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Second Amended Agreed Order, 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 Second Amended

Agreed Order, 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 and stipulate that a violation of any term or condition of this Second Amended Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, 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 Second Amended Agreed Order.


4. The licensee understands and agrees that any violation of the terms of this Second Amended Agreed Order 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.

SO AGREED on this 8<sup>th</sup> day of December, 2014.

FOR THE LICENSEE:

  
\_\_\_\_\_  
CURTIS S. GALE-DYER, D.O.  
  
\_\_\_\_\_  
MOLLY NICOL LEWIS  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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



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LEANNE K. DIAKOV

General Counsel

Kentucky Board of Medical Licensure

310 Whittington Parkway, Suite 1B

Louisville, Kentucky 40222

Tel. (502) 429-7150

AUG 26 2013

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
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**AMENDED AGREED ORDER**

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**STIPULATIONS OF FACT**

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5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients; as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance of gross negligence in regard to at least ten (10) patients. In summary, the Board consultant stated

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Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will “hopefully lessen the chance of becoming dependent on opioids.”

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6. On January 17, 2013, the Board’s Inquiry Panel B chose to issue a Complaint and Emergency Order of Suspension against the licensee’s license, after the Panel reviewed the investigation and the licensee appeared before and was heard by the Panel.
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center that provides both inpatient and outpatient services and in no other specialty or facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee may practice medicine (subject to any specific conditions/restrictions to deemed necessary to ensure patient safety).

11. On or about August 20, 2013, the licensee requested and the Panel Chair approved that the licensee be allowed to practice at Story Consulting Service, Inc., subject to the terms and conditions set forth in this Amended Agreed Order.

#### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties resolved the Complaint without an evidentiary hearing by entering into an informal resolution such as the Agreed Order and subsequent Amended Agreed Order.

### AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the licensee's request for practice location approval, the parties hereby ENTER INTO the following **AMENDED AGREED ORDER**:

1. The license to practice osteopathy in the Commonwealth of Kentucky held by Curtis S. Gale-Dyer, D.O., is SUBJECT TO THE TERMS AND CONDITIONS OF THIS AMENDED AGREED ORDER FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Amended Agreed Order.
2. During the effective period of this Amended Agreed Order:
  - a. The licensee SHALL ONLY practice medicine in the specialty of Physical Medicine and Rehabilitation in a fully-accredited tertiary medical care center that provides both inpatient and outpatient services. As such, the licensee shall only dispense or otherwise professionally utilize controlled substances on patients who are registered patients of that medical care facility and who are simultaneously submitting to physical rehabilitative procedures at that facility.
    - i. The licensee SHALL NOT practice in any other specialty or in any other facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider whether the licensee will prescribe controlled substances in that practice location and the nature of the practice, including the licensee's proposed duties and hours to be worked. If approved, the licensee shall not change practice locations without first obtaining written approval by the Panel or its Chair for such change. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety.
      1. The licensee is hereby approved to perform physical examinations for Social Security, Veterans Administration and the Railroad Retirement Board at any of the nine (9) Story Consulting Services, Inc., office locations in Louisa,

South Williamson, Elizabethtown, Frankfort, Lebanon, Franklin, Prestonsburg, Williamsburg or Somerset, Kentucky. The licensee SHALL NOT prescribe, dispense or otherwise professionally utilize controlled substances with/to any person he examines within his practice at Story Consulting Services, Inc.

- ii. The licensee understands and agrees that he shall not seek amendment or termination of the above term/condition, ¶2(a), for at least four (4) years from June 20, 2013, the date of filing of the Agreed Order;
- b. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log must include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log;
- c. The licensee SHALL permit, and aid and assist as necessary, the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
- d. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Amended Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Amended Agreed Order;
- e. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate terms/conditions ¶¶2(b)-(e) of this Amended Agreed Order;
- f. The licensee SHALL complete the CPEP Personalized Implementation Program (PIP), at his expense, as directed by CPEP's staff and without any delay. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the PIP promptly after completing that program. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that

CPEP will provide a copy of any evaluations from the Documentation Seminar and PIP to the Board's Legal Department promptly after their completion. The licensee understands and agrees that he SHALL neither seek amendment nor petition the Panel for reconsideration of this term/condition, ¶2(f), until he has successfully completed the PIP;

- g. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE in the amount of five-thousand dollars (\$5,000.00) according to the following schedule; at least \$250.00 each month for twenty (20) months, with payment due on the first day of each month beginning June 1, 2013, and continuing until such time as the fine is paid in full;
  - h. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board the costs of the proceedings in the amount of five-thousand four-hundred and fifty-seven dollars (\$5,457.00), within six (6) months from entry of this Amended Agreed Order; and
  - i. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Amended Agreed Order, 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 Amended Agreed Order, 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 and stipulate that a violation of any term or condition of this Amended Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only

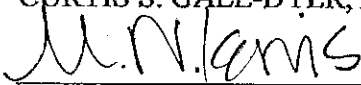
relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Amended Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Amended Agreed Order 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.

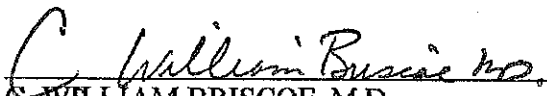
SO AGREED on this 21 day of August, 2013.

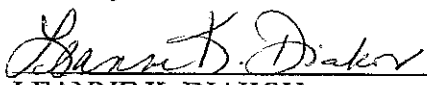
FOR THE LICENSEE:

  
\_\_\_\_\_  
CURTIS S. GALE-DYER, D.O.

  
\_\_\_\_\_  
MOLLY NICOL LEWIS  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

  
\_\_\_\_\_  
LEANNE K. DIAKOV  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

JUN 20 2013

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1457

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH  
OF KENTUCKY HELD BY CURTIS S. GALE-DYER, D.O., LICENSE NO.  
03368, 2404 SOUTHVIEW DRIVE, LEXINGTON, KENTUCKY 40503

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Hearing Panel A, and Curtis S. Gale-Dyer, D.O., ("the licensee"), and, based upon their mutual desire to fully and finally resolve the Complaint without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER**:

**STIPULATIONS OF FACT**

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

1. At all relevant times, Curtis S. Gale-Dyer, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's medical specialty is physical medicine and rehabilitation.
3. In or around August 2012, the Office of Inspector General ("OIG") Division of Health Care Services requested a review of the licensee's prescribing patterns, as part of a House Bill 1 compliance inspection of pain management facilities.
4. On or around August 7, 2012, OIG Investigator, Stephen C. Johnson, reviewed and analyzed the licensee's KASPER records (for the period of August 1, 2011 until August 2, 2012) and identified fifteen (15) patients (based on age, addictive drug combinations, polypharmacy and distance traveled) which he forward to the OIG Division of Health Care Services and to Board for further investigation.

5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients; as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance of gross negligence in regard to at least ten (10) patients. In summary, the Board consultant stated

... Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised in Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. ... The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. ... In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only." 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr.

Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will "hopefully lessen the chance of becoming dependent on opioids."

Dr. Gale-Dyer also failed to recognize a Blood Pressure of 80/50 (Patient J) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer's qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs. ...

6. On January 17, 2013, the Board's Inquiry Panel B chose to issue a Complaint and Emergency Order of Suspension against the licensee's license, after the Panel reviewed the investigation and the licensee appeared before and was heard by the Panel.
7. The Emergency Order of Suspension was affirmed following an emergency hearing, which was held on March 12, 2013, at the licensee's request. The licensee did not appeal.
8. On February 28 and March 1 and 2, 2013, the licensee attended and completed the "Prescribing Controlled Drugs" course at the University of Florida.
9. On March 8, 2013, the licensee attended and completed the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado, and enrolled in the CPEP Personalized Implementation Program (PIP).

#### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky osteopathic license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

**AGREED ORDER**

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

1. The license to practice osteopathy in the Commonwealth of Kentucky held by Curtis S. Gale-Dyer, D.O., is SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREED ORDER FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order:
  - a. The licensee SHALL ONLY practice medicine in the specialty of Physical Medicine and Rehabilitation in a fully-accredited tertiary medical care center that provides both inpatient and outpatient services. As such, the licensee shall only dispense or otherwise professionally utilize controlled substances on patients who are registered patients of that medical care facility and who are simultaneously submitting to physical rehabilitative procedures at that facility.

- i. The licensee SHALL NOT practice in any other specialty or in any other facility unless and until the Panel or its Chair has approved, in writing, the practice location at which the licensee will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider whether the licensee will prescribe controlled substances in that practice location and the nature of the practice, including the licensee's proposed duties and hours to be worked. If approved, the licensee shall not change practice locations without first obtaining written approval by the Panel or its Chair for such change. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety.
  - ii. The licensee understands and agrees that he shall not seek amendment or termination of the above term/condition, ¶2(a)(i) and (ii), for at least four (4) years from the date of filing of this Agreed Order;
- b. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log must include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log;
- c. The licensee SHALL permit, and aid and assist as necessary, the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
- d. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;
- e. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on terms determined by the Panel

or its staff, before the Panel will consider a request to terminate terms/conditions ¶¶2(b)-(e) of this Agreed Order;

- f. The licensee SHALL complete the CPEP Personalized Implementation Program (PIP), at his expense, as directed by CPEP's staff and without any delay. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the PIP promptly after completing that program. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations from the Documentation Seminar and PIP to the Board's Legal Department promptly after their completion. The licensee understands and agrees that he SHALL neither seek amendment nor petition the Panel for reconsideration of this term/condition, ¶2(f), until he has successfully completed the PIP;
- g. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE in the amount of five-thousand dollars (\$5,000.00) according to the following schedule: at least \$250.00 each month for twenty (20) months, with payment due on the first day of each month beginning June 1, 2013, and continuing until such time as the fine is paid in full;
- h. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board the costs of the proceedings in the amount of five-thousand four-hundred and fifty-seven dollars (\$5,457.00), within six (6) months from entry of this Agreed Order; and
- i. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, 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, 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

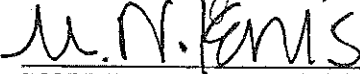
parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order 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.


SO AGREED on this 20<sup>th</sup> day of June, 2013.

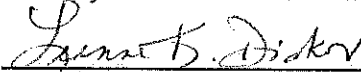
FOR THE LICENSEE:

  
CURTIS S. GALE-DYER, D.O.

  
MOLLY NICOL LEWIS  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

  
LEANNE K. DIAKOV  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

FEB 21 2013

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1457

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH  
OF KENTUCKY HELD BY CURTIS S. GALE-DYER, D.O., LICENSE NO.  
03368, 2404 SOUTHVIEW DRIVE, LEXINGTON, KENTUCKY 40503

**EMERGENCY ORDER OF SUSPENSION**

The Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, considered this matter at its January 17, 2013, meeting. At that meeting, Inquiry Panel B considered a memorandum by Jon Marshall, Medical Investigator, dated December 18, 2012; an investigative report from Stephen C. Johnson, Office of the Inspector General, Drug Enforcement, dated August 7, 2012; correspondence from the licensee, Curtis Gale-Dyer, D.O., undated, regarding “scope of practice”; the licensee’s Investigative Physician Profile/Background; the licensee’s curriculum vitae; correspondence from the Board consultant, dated November 17, 2012, and the consultant’s Expert Review Worksheets; correspondence from the licensee, dated December 13, 2012, with a per patient rebuttal statement to the Board consultant’s report; a psychological evaluation of the licensee, performed by John D. Ranseen, Ph.D., University of Kentucky, dated January 5, 2009; MedScape CME Tracker report, regarding CME credits earned by the licensee between January 2012 and December 2012; an unnamed patient follow-up note, dated December 13, 2012; and correspondence from the Board consultant, dated December 17, 2012. The licensee was given notice and was present at the Panel’s January 17, 2013, meeting and he was heard by the Panel before the Panel chose to take action in this matter.

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

**FINDINGS OF FACT**

Pursuant to KRS 13B.125(2) and based upon the information available to it, 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, Curtis S. Gale-Dyer, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's osteopathic specialty is physical medicine and rehabilitation.
3. In or around August 2012, the Office of Inspector General ("OIG") Division of Health Care Services requested a review of the licensee's prescribing patterns, as part of a House Bill 1 compliance inspection of pain management facilities.
4. On or around August 7, 2012, OIG Investigator, Stephen C. Johnson, reviewed and analyzed the licensee's KASPER records (for the period of August 1, 2011 until August 2, 2012) and identified fifteen (15) patients (based on age, addictive drug combinations, polypharmacy and distance traveled) which he forward to the OIG Division of Health Care Services and to Board for further investigation.
5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients; as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed.

6. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance or gross negligence in regard to at least ten (10) patients. Specifically,

- In regard to Patient A, the Board consultant found that the licensee demonstrated gross negligence, stating: "An adequate history at every visit is imperative, clearly once a clear diagnosis has been reached it is possible that repeated examination could be of limited benefit and so is not essential. It is imperative that a clear working diagnosis be reached and documented. That diagnosis should be consistent with the clinical evaluation or otherwise explained. ... Any physician can make a mistake, should this be an isolated or even occasional event I would let it go with a suggestion that record keeping be improved upon. There is however a very disturbing pattern of documentation and prescribing that represents a danger to patients. Dr. Gale-Dyer has the benefit of working in an academic institution, he is a recent graduate of a well regarded residency program and is Board Certified, there is no excuse for this poor level of medical practice."
- In regard to Patient B, the Board consultant found that the licensee demonstrated gross incompetence, stating: "The patient was continued on opioids without adequate documentation of valid medical reasons. ... Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with chronic pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education."
- In regard to Patient C, the Board consultant found that the licensee demonstrated gross incompetence, stating: "The patient was continued on opioids without adequate documentation of a valid medical reason. ... Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with low back pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids."
- In regard to Patient F, the Board consultant found that the licensee demonstrated gross negligence, stating: "An adequate history at every visit is imperative. The pain did not improve on the Percocet and Soma, to continue it requires some kind of justification in the notes. ... Dr. Gale-Dyer demonstrates a consistent pattern of not recording an adequate history, not documenting the reasons for reaching a diagnosis and failing to document reasonable justification for the continuation of opioids despite what I would

regard as treatment failure. That constitutes an imminent danger to at risk patients in Kentucky.”

- In regard to Patient G, the Board consultant found that the licensee demonstrated gross ignorance or gross negligence, stating: “The patient was continued on very high doses of opioids without clear documentation of a valid medical reason. It would appear that Dr. Gale-Dyer knew that the dosages were inappropriate but did not wean the patient purely because of the patient’s objection. ... Dr. Gale-Dyer demonstrates either gross ignorance or negligence of basic principles of patient management. These failings clearly require Board intervention. This case suggests that Dr. Gale-Dyer is an imminent danger to Kentucky patients.”
- In regard to Patient H, the Board consultant found that the licensee demonstrated gross ignorance, stating: “The patient had end stage liver disease but was prescribed a medication containing Acetaminophen on a regular basis. When the patient states his pain is worse there is no explanation as to why the medication continued at an ineffective dose. The initial history is adequate, follow up histories are inadequate with a lack of justification for the prescribing of opioids. ...”
- In regard to Patient J, the Board consultant found that the licensee demonstrated gross incompetence or negligence, stating: “A patient with a Blood Pressure of 80/50 must be regarded as being unstable. Such a finding needs attention. At the very least I would expect a physician to recheck the BP and if necessary resuscitate the patient. It would have been reasonable to call EMS or transfer the patient to the ER. Simply suggesting PCP follow up is poor medicine. Dr. Gale-Dyer never explains his long term plan, does not consider the risks/benefits of opioids or justify the prescribing of opioids. When all of these facts are considered together Dr. Gale-Dyer must be considered a danger to patients. ... This failing represents an imminent danger to patients and necessitates urgent Board action.”
- In regard to Patient K, the Board consultant found that the licensee demonstrated gross incompetence, stating: “Dr. Gale-Dyer fails to explain the goals of prescribing opioids or document any risk/benefit analysis. ...Dr. Gale-Dyer demonstrates an inability to document treatment goals or perform any kind of risk analysis on a patient being prescribed opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education.”
- In regard to Patient N, the Board consultant found that the licensee demonstrated gross incompetence, gross ignorance or gross negligence, stating: “The patient was seen repeatedly by Dr. Gale-Dyer, never does he explain the basis of his diagnosis or offer up any kind of treatment plan or risk/benefit analysis for the use of opioids. ... Dr. Gale-Dyer demonstrates

substandard care for this patient with substandard documentation. It is difficult to determine whether this is a result of incompetence, ignorance or negligence. If this were an isolated instance then the matter could be addressed by further education and practice under the supervision of another physician over an extended period. This case however must be dealt with in the context of other cases reviewed.”

- In regard to Patient O, the Board consultant found that the licensee demonstrated gross negligence, stating: “An adequate history at every visit is imperative. At the first visit an adequate examination should be documented. A list of differential diagnoses should be considered in this situation. The pain did not improve on the Percocet, to continue it requires some kind of justification in the notes. ... Any physician can miss a diagnosis or make an error in documentation. Should this chart be an isolated or even occasional event, I would let it go with a suggestion that the physician take more care with both record keeping and planning of treatment. There is however a disturbing pattern of documentation and prescribing that represents a danger to patients. ... “

7. In summary, the Board consultant stated

... Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised if Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer’s notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of “grossly intact” is concerning. ... The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. ... In his scope of practice letter Dr. Gale-Dyer he states “I only use opioids for breakthrough pain

management only." 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr. Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will "hopefully lessen the chance of becoming dependent on opioids."

Dr. Gale-Dyer also failed to recognize a Blood Pressure of 80/50 (Patient J) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer's qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs. ...

The Board consultant's report is attached and incorporated herewith in its entirety.

### **CONCLUSIONS OF LAW**

Pursuant to KRS 13B.125(2) and based upon the information available to it, 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(9), as illustrated by KRS 311.597(3) and (4).

4. The Panel 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 osteopathic practice.
6. The United States Supreme Court has ruled that it is not a 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*, 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, Inquiry Panel B hereby ORDERS that the license to practice osteopathy in the Commonwealth of Kentucky held by Curtis Gale-Dyer, D.O., is SUSPENDED and Dr. Gale-Dyer is prohibited from performing any act which constitutes the "practice of 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 - until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

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

SO ORDERED this 21<sup>st</sup> day of February, 2013.

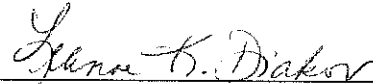


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RANDEL C. GIBSON, D.O.  
CHAIR, INQUIRY PANEL B

**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. Copies were mailed via certified mail return-receipt requested to the licensee, Curtis Gale-Dyer, D.O., 2404 Southview Drive, Lexington, Kentucky 40503; and to his counsel, Lisa English Hinkle, 201 East Main Street, Suite 1000, Lexington, KY 40507, on this 2/8 day of February, 2013.



\_\_\_\_\_  
Leanne K. Diakov  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

# Hamburg Pain

Dr. D. Paul Harries  
MB BCH, FRCS, M. Pain Med

Telephone (859) 264-7246  
Fax (859) 264-0074

2408 Sir Barton Way Suite 125  
Lexington KY 40509

November 17<sup>th</sup> 2012

Mr. John Marshall  
Kentucky Board of Medical Licensure,  
310 Whittington Parkway,  
Suite 1B,  
Louisville,  
KY 40222.

Case No. 12096      Dr. Gale-Dyer

Dear Mr. Marshall,

I have looked at the charts that you sent me several times and have studied the information provided by Dr. Gale-Dyer.

Dr. Gale-Dyer graduated from the Physical Medicine and Rehabilitation Program at the University of Kentucky in June 2011 and subsequently became Board Certified. He is an attending Physician at the VA Hospital and teaches residents as a part of his duties. Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised if Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. I regard the term "grossly intact" as meaning "not really examined" and I think many other physicians would agree with me on this. The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of the notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. I find it surprising that a physician would admit to this in additional documentation offered to the Board. In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only". 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr. Gale-Dyer also states that by restricting his prescribing

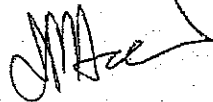
to no more than 120 Percocet 10s per month it will "hopefully lessen the chance of becoming dependant on opioids".

Dr. Gale Dyer also failed to recognize a Blood Pressure of 80/50 ( [REDACTED] ) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer's qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either a reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs.

In my opinion Dr. Gale-Dyer is an imminent threat to the safety of patients in Kentucky and emergent action is required pending further investigation of possible explanations for his practice standards.

Yours Faithfully



Dr. D. Paul Harries

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 3/22/2012, his typed note for that visit does not include the severity, character, radiation, exacerbating or relieving factors. The examination reveals no significant abnormal findings. A diagnosis of low back pain with lumbar radiculopathy is made despite there being no mention of any leg symptoms and there being a normal examination. There is no mention of any imaging study or any other justification for making this diagnosis. There is certainly no justification for the prescribing of opioids. The note documents Oxycodone 5mg every 8 hours being prescribed #120. Clearly it is unusual to prescribe 120 tablets when a medication should only be taken three times a day. The KASPER report shows that Oxycontin 10mg #60 and Percocet 5 # 60 were filled. Clearly this matter may need to be investigated further.

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

**3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.**

a. **Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.**

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Negligence

An adequate history at every visit is imperative, clearly once a clear diagnosis has been reached it is possible that repeated examination could be of limited benefit

and so is not essential. It is imperative that a clear working diagnosis be reached and documented. That diagnosis should be consistent with the clinical evaluation or otherwise explained.

**4. Other questions from the Medical Board (ignore if blank)**

**5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.**

Please see above

**6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:**

- a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.**

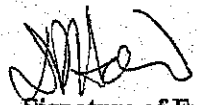
**Or,**

**Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?**

- b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.**

Any physician can make a mistake, should this note be an isolated or even occasional event I would let it go with a suggestion that record keeping be improved upon. There is however a very disturbing pattern of documentation and prescribing that represents a danger to patients. Dr. Gale-Dyer has the benefit of working in an academic institution, he is a recent graduate of a well regarded residency program and is Board Certified, there is no excuse for this poor level of medical practice

**Date of Review**  
11/3/2012

  
**Signature of Expert**

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: 

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient once on 3/22/2012 for chronic low back and neck pain. The history of the pain does not include pain severity but is better documented than in most other charts. There is no explanation as to why he reaches his diagnoses. It is noteworthy that Dr. Gale-Dyer refers the patient out for occipital nerve blocks, this is surprising as this is a very simple procedure. This leaves me with the impression that Dr. Gale-Dyer is running an "opioid clinic" and not a "pain clinic". Subsequent visits have inadequate documentation of pain history. A possible KASPER discrepancy is mentioned on 5/17/2012 but there is no follow up information documented in the notes.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction:

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

**Gross Incompetence**

The patient was continued on opioids without adequate documentation of valid medical reasons. The documentation by Dr. Gale-Dyer is inadequate to justify these prescriptions.

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

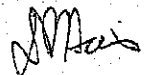
b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with chronic pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education

Date of Review

11/4/2012

Revised Feb/2009

  
Signature of Expert

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 3/8/2012 for low back pain, again the history is limited and the severity of pain is not documented. A diagnosis of acute on chronic low back pain is made and the patient prescribed Percocet and Soma. Soma is well known to be effective for acute exacerbations of pain, this prescription is appropriate for the clinical condition but there is inadequate documentation. When next seen by Dr. Gale-Dyer the patient remains on this combination of medications. There is no rationale for continuing these medications in the long term, no discussion of a long term treatment plan. The patient is seen on several more occasions, from the notes I am unable to understand what exactly Dr. Gale-Dyer is treating or what the long term goals are.

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

- Yes, I can form an opinion.  
 No, I cannot form an opinion.  
 I need more information (specify):

**3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.**

**a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.**

- Below minimum standards  
 Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

**Gross Incompetence**

The patient was continued on opioids without clear documentation of a valid medical reason. The documentation by Dr. Gale-Dyer is inadequate to justify these prescriptions.

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

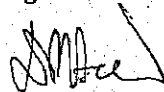
Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with low back pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids

Date of Review

11/4/2012

Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient on 3/22/2012. The history is inadequate, there is no explanation as to how the diagnoses are arrived at, there is no comprehensible treatment plan. At the first visit Dr. Gale-Dyer states "Oxycodone 5mg QID #120 for just this month. The patient receives the same dose at subsequent visits with no explanation. Fioricet is also prescribed repeatedly. On 5/17 2012 Dr. Gale-Dyer states "We will again try and talk to the patient about decreasing Oxycodone to 3 times a day. On 7/10/2012 Soma is added. In his summary for the Board Dr. Gale-Dyer states that he tried repeatedly to stop the Fioricet but the patient was resistant.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

- Yes, I can form an opinion.
- No, I cannot form an opinion.
- I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

- Below minimum standards
- Within minimum standards

- b. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards  
 Within minimum standards

- c. Records.

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards  
 Within minimum standards

- d. Overall Opinion. Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.  
 Clearly within minimum standards  
 Borderline Case

- e. Gross Ignorance, Gross Negligence, Gross Incompetence. If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Dr. Gale-Dyer's documentation raises concerns which I will address in the summary letter. Dr. Gale-Dyer also appears by his own admission not to be in control of the controlled substances. If he wants to stop a medication he should, the patient being "resistant" is not a justification for continued prescribing of any medication, controlled or not!

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have...", or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

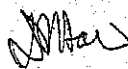
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Please see summary letter

Date of Review  
11/17/2012  
Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient on 4/12/12 for headaches, Fibromyalgia and back pain. Dr. Gale-Dyer does not make a note of the severity, character, precise location, exacerbating or relieving factors. The effect of the medications is not noted. The office visit includes a procedure note, the name of the procedure and the indication for it are not noted. I have no idea what Dr. Gale-Dyer was doing and have no idea how he reached the list of diagnoses listed. There is no documentation to support the prescribing of Norco. Subsequent visits have inadequate documentation to explain what is being treated and the goals of treatment. Multiple Urine drug screens are inappropriate, there is no mention of these in the notes. Urine Drug Screens are regularly ordered but the results seem to be ignored.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

- Yes, I can form an opinion.
- No, I cannot form an opinion.
- I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

- a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. Records.

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. Overall Opinion. Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. Gross Ignorance, Gross Negligence, Gross Incompetence. If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Dr. Gale-Dyer's documentation raises concerns which I will address in the summary letter.

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

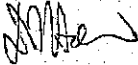
Or,

Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Please see summary letter

Date of Review  
11/17/2012  
Revised Feb/2009

  
Signature of Expert

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient once on 4/5/2012. Patient describes back, knee and ankle pain. Patient was recently incarcerated - reason not documented. There is inadequate documentation of the patient's pain, again the phrase "otherwise no changes" appears. A diagnosis of lumbar radiculopathy and low back pain is made, there is no explanation as to how this diagnosis is made. The patient is prescribed Oxycodone and Soma with no mention of any kind of risk assessment. No treatment goals are mentioned. The patient is seen on several subsequent occasions, not once is an adequate history of illness recorded. The controlled substances are continued despite pain being recorded as an 8/10 in severity. There is never an explanation as to why controlled substances are necessary

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

\_\_\_\_\_ Within minimum standards

- b. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

  X   Below minimum standards

\_\_\_\_\_ Within minimum standards

- c. Records.

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

  X   Below minimum standards

\_\_\_\_\_ Within minimum standards

- d. Overall Opinion. Based on the foregoing, what is your overall opinion?

  X   Clearly below minimum standards.

\_\_\_\_\_ Clearly within minimum standards

\_\_\_\_\_ Borderline Case

- e. Gross Ignorance, Gross Negligence, Gross Incompetence. If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Negligence

An adequate history at every visit is imperative. The pain did not improve on the Percocet and Soma, to continue it requires some kind of justification in the notes

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

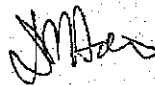
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates a consistent pattern of not recording and adequate history, not documenting the reasons for reaching a diagnosis and failing to document reasonable justification for the continuation of opioids despite what I would regard as treatment failure. This constitutes an imminent danger to at risk patients in Kentucky

Date of Review  
11/3/2012

Signature of Expert



Revised Feb/2009

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 7/5/2012. for chronic neck pain and headache. Dr. Gale-Dyer states that the pain is well controlled and other features of symptoms are "unchanged". As Dr. Gale-Dyer had never seen the patient previously. Despite this the pain is recorded as 7/10 in severity. There is inadequate documentation of the location, nature and timing of the pain. Exacerbating and relieving factors are not documented. The patient is continued on Oxycodone 10mg #120 as well as a Fentanyl 100mcg patch. There is inadequate documentation to justify these prescriptions and there is no risk\ benefit discussion or any long term treatment plan. Dr. Gale-Dyer sees the patient on two more occasions and continues this regimen despite pain scores of 7/10 and 8/10.

These notes become more concerning when reviewed in the context of Dr. Gale-Dyer's explanatory note for the Board. He states that he discussed an opioid wean but the patient was unwilling. The physician should remain in control of the opioid medication supply at all times. If Dr. Gale-Dyer felt a wean is appropriate he should have done so. In the treatment note Dr. Gale-Dyer lists lumbar radiculopathy as being one of the diagnoses. In his summary to the Board he states that there were no clear radicular symptoms sufficient to start neurontin. This Oxymoron is concerning and an explanation is necessary. I can only reach one of two conclusions: either Dr. Gale-Dyer is "listing diagnoses to try and justify opioids without adequate thought or he does not understand that a lumbar radiculopathy by definition requires the presence of radicular symptoms.

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the

physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

**Gross Negligence**

The patient was continued on very high dosages of opioids without clear documentation of a valid medical reason. It would appear that Dr. Gale-Dyer new that the dosages were inappropriate but did not wean the patient purely because of the patient's objection.

**4. Other questions from the Medical Board (ignore if blank)**

**5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have...", or I would have not..."; you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.**

Please see above

**6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:**

- a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

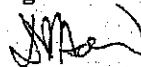
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

- b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates either gross ignorance or negligence of basic principles of patient management. These failings clearly require Board intervention. This case suggests that Dr. Gale-Dyer is an imminent danger to Kentucky patients.

Date of Review  
11/4/2012

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient once on 6/26/2012. The initial history is adequate as is the examination. Dr. Gale-Dyer states that the MRI of cervical spine was reviewed but does not provide details. He attributes the symptoms to degenerative spinal disease. He notes that the patient has end stage liver disease and starts the patient on Percocet 7.5 120 per month. At follow up the history of the pain is inadequate but the pain has dropped to a 4/10 in severity. The Percocet is continued. On 8/21/2012 the patient is again seen, the history is inadequate, he states that the pain is an 8/10 in severity and that the patient is requesting an increase in pain medication. The Percocet is continued despite the end stage liver disease.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

- Yes, I can form an opinion.  
 No, I cannot form an opinion.  
 I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

- a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. Records.

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. Overall Opinion. Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. Gross Ignorance, Gross Negligence, Gross Incompetence. If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Ignorance

The patient had end stage liver disease but was prescribed a medication containing Acetaminophen on a regular basis. When the patient states his pain is worse there is no explanation as to why the medication is continued at an

ineffective dose. The initial history is adequate, follow up histories are inadequate with a lack of adequate justification for the prescribing of opioids.

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

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a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

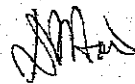
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates substandard care for a patient with end stage liver disease. I consider the notes to be of a very poor level of quality for a specialist in Physical Medicine and Rehabilitation. This error shows either gross ignorance or negligence, I am unsure as to which of these. I think this single instance could be addressed by further education and practice under the supervision of another physician over an extended period.

Date of Review  
11/4/2012


Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: 

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient on 4/26/2012. There is no significant documentation of the patient's pain in the physician note, "no changes in back pain" is an inadequate history for when a patient is first seen by a physician if opioids are being prescribed. Opioids are continued despite pain scores of 7/10 and 8/10 with no rationalization. It is noteworthy that the patient had benefit from previous facet injections but there is no discussion of lumbar radiofrequency neurotomy. Eventually discharged for being a no show for a Pill Count.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

- Yes, I can form an opinion.
- No, I cannot form an opinion.
- I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

- Below minimum standards
- Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards  
 Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards  
 Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.  
 Clearly within minimum standards  
 Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Dr. Gale-Dyer's documentation raises concerns which I will address in the summary letter.

4. **Other questions from the Medical Board** (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

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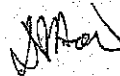
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Please see summary letter

Date of Review  
11/17/2012  
Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 5/3/2012. The history is very limited and does not include the numerical severity of the pain, this history is certainly of a low standard and is barely acceptable. A detailed history is documented but it is not relevant to the patient's complaints. The examination is lengthy but more detail on relevant areas would be appropriate. It is unclear to me what "grossly intact" means. In common with many other notes there seems to be a lack of accurate and specific examination findings. Oxycodone is increased to 10mg #100, the reason for this is unclear, there is certainly no documented explanation of medical necessity. There is no risk \ benefit analysis for opioids and no suggestion of a long term treatment strategy. At subsequent visits there is an inadequate history of the pain and again inadequate medical justification for the prescribing of Oxycodone.

On 7/19/2012 the patient was found to have a blood pressure of 80/50, Dr. Gale-Dyer documents a suggestion that the patient see her PCP regarding this.

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

**3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.**

a. **Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.**

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Negligence

A patient with a Blood Pressure of 80/50 must be regarded as being unstable.

Such a finding needs attention. At the very least I would expect a physician to recheck the BP and if necessary resuscitate the patient. It would have been reasonable to call EMS or transfer the patient to the ER. Simply suggesting PCP follow up is poor medicine.

Dr. Gale-Dyer never explains his long term plan, does not consider the risks\ benefits of opioids or justify the prescribing of opioids.

When all of these facts are considered together Dr. Gale-Dyer must be considered a danger to patients.

**4. Other questions from the Medical Board (ignore if blank)**

**5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have...., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.**

Please see above

**6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:**

- a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.**

**Or,**

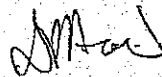
**Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?**

- b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.**

Dr. Gale-Dyer demonstrates substandard care for this patient with substandard documentation. Failing to recognize a blood pressure of 80/50 as a problem suggests either marked incompetence or negligence. This failing represents an imminent danger to patients and necessitates urgent Board action.

**Date of Review**  
11/4/2012  
**Revised Feb/2009**

**Signature of Expert**



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient on 3/22/2012 for low back pain. The initial history and examination is adequate. A diagnosis of back and leg pain secondary to obesity is made. No imaging results are either mentioned or ordered. Patient is prescribed Percocet #90.

I am concerned that Dr. Gale-Dyer did not consider it necessary to obtain a lumbar MRI scan to look for possible serious pathology. There is no clear treatment plan or goal. Had Dr. Gale-Dyer stated "I am going to prescribe the patient opioids in the hope that they will increase activity level and reduce weight" then that would have been reasonable. Sadly there is no documented goal and no risk/benefit analysis.

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

**3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.**

a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Incompetence

Dr. Gale-Dyer fails to explain the goals of prescribing opioids or document any risk/benefit analysis.

4. **Other questions from the Medical Board (ignore if blank)**

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

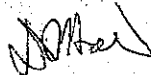
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates an inability to document treatment goals or perform any kind of risk analysis on a patient being prescribed opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education

Date of Review  
11/4/2012  
Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer saw this patient once on 3/15/2012 for low back pain. History was inadequate, no rationale for prescriptions. I can not understand how Dr. Gale-Dyer's assessment of chronic low back pain with radicular symptoms secondary to sacroilitis and DJD of Lumbar spine was arrived at. Subsequently patient was discharged as was a no show for a pill count that was ordered when a caller alleged the patient was harassing an old lady for pain meds

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Dr. Gale-Dyer's documentation raises concerns which I will address in the summary letter.

4. **Other questions from the Medical Board (ignore if blank)**

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

- a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

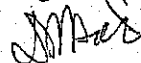
Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

- b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Please see summary letter

Date of Review  
11/17/2012  
Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name [REDACTED]

Expert's Name: Dr. David Paul Harries

1. Brief description of symptom, dx and course of treatment:

Dr. Gale-Dyer first saw this patient on 5/31/2012. The history is adequate although the lack of documentation of radiation of the pain is concerning for a specialist initial evaluation. The examination uses the term "grossly intact", it is unclear to me what this means! The symptoms could be secondary to foraminal stenosis which can respond to epidural steroid or surgery. Facet pain is also a possible explanation for the pain. No long term plan is explained, there is no discussion of referral for spinal interventions, it appears that Dr. Gale-Dyer is committing the patient to long term opioids.

2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

a. Diagnosis. Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards  
 Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards  
 Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.  
 Clearly within minimum standards  
 Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Dr. Gale-Dyer's documentation raises concerns which I will address in the summary letter.

4. **Other questions from the Medical Board (ignore if blank)**

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Please see summary letter

Date of Review  
11/17/2012  
Revised Feb/2009

Signature of Expert



KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 4/12/2012. The initial history is adequate as is the examination. There is no explanation as to the reasons for making the diagnoses listed, no explanation of the long term treatment goals or plan. Subsequent visits do not include an adequate history of the pain, there is no opioid risk assessment, no discernable treatment goals or long term plan.

Dr. Gale-Dyer notes that the patient has pain radiating to the right thigh as far as the knee. Facet arthropathy is mentioned on the Lumbar MRI. The most likely source for the pain would be somatic referred facet pain. This is never mentioned or discussed by Dr. Gale-Dyer. Given this information I can not understand how he makes a diagnosis of lumbar radiculopathy.

It should be noted that this chart includes an improperly filed note on a different patient [REDACTED]

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

**3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.**

- a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards  
 Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards  
 Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards  
 Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.  
 Clearly within minimum standards  
 Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s). If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

Gross Incompetence

The patient was seen repeatedly by Dr. Gale-Dyer, never does he explain the basis of his diagnosis or offer up any kind of treatment plan or risk \ benefit analysis for the use of opioids

4. Other questions from the Medical Board (ignore if blank)

5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have..., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.

Please see above

6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:

a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.

Or,

Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?

b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.

Dr. Gale-Dyer demonstrates substandard care for this patient with substandard documentation. It is difficult to determine whether this is as a result of incompetence, ignorance or negligence. If this were an isolated instance then the matter could be addressed by further education and practice under the supervision of another physician over an extended period. This case however must be dealt with in the context of other cases reviewed.

Date of Review  
11/4/2012

  
Signature of Expert

KENTUCKY BOARD OF MEDICAL LICENSURE

EXPERT REVIEW WORKSHEET

Case No. 12096

Patient Name: [REDACTED]

Expert's Name: Dr. David Paul Harries

**1. Brief description of symptom, dx and course of treatment:**

Dr. Gale-Dyer first saw this patient once on 5/24/2012. He states that the patient had an attack of MS two years previously and has subsequently suffered from chronic back and leg pain. The history of presenting illness is adequate. Dr. Dr. Gale-Dyer uses the term "grossly intact" to describe range of motion, reflexes and sensory examination. This is clearly inadequate as in this kind of clinical situation it is imperative that the physician document whether there are upper motor neuron signs or not. He attributes the back pain to degenerative disc disease and Multiple Sclerosis, the logic is not explained. The possibility of neuropathic pain or of post transverse myelitis back pain is not mentioned. There is no mention of imaging studies. The patient is started on Lortab and Topamax. The patient is next seen on 7/5/12, the pain is documented as "unchanged from previous notes and histories", this is in my opinion completely inadequate. The patient states the Lortab was of no benefit so is changed to Percocet. The possibility that this is pure neuropathic pain is not mentioned. Again the examination is non committal, grossly intact appears several times. The reflexes are said to be equal and symmetric but there is no mention of whether they are brisk or not. He is seen on two more occasions and the Percocet continued despite the pain being recorded as 8 or 9/10 in severity. On both of these occasions the history was inadequate

**2. Can you form an opinion? Based on your background and experience and review of all information provided you, and assuming that the treatment as documented was provided, can you form an opinion as to whether the care rendered by the care provider, including diagnosis, treatment or record keeping, departed from or failed to conform to the minimal standards of acceptable and prevailing medical practice (in the medical community at large)?**

Yes, I can form an opinion.

No, I cannot form an opinion.

I need more information (specify):

3. What is your opinion? Please use the definitions below as "guidelines" to be used in defining standard of practice. You are not limited to these guidelines in forming your opinion, but please state your own additional criteria if applicable.

- a. **Diagnosis.** Evaluation of a medical problem using means such as history, physical examination, laboratory, and radiographic studies, when applicable.

Below minimum standards

Within minimum standards

- b. **Treatment.** Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.

Below minimum standards

Within minimum standards

- c. **Records.**

Maintenance of records which should contain, at a minimum, the following: (1) appropriate history and physical and/or mental examination for the patient's chief complaint relevant to the physician's specialty; (2) results of diagnostic tests (when indicated); (3) a working diagnosis; (4) notes on treatment(s) undertaken; (5) a record by date of all prescriptions for drugs, with names of medications, strengths, dosages, quantity, and number of refills; and (6) a record of billings.

Below minimum standards

Within minimum standards

- d. **Overall Opinion.** Based on the foregoing, what is your overall opinion?

Clearly below minimum standards.

Clearly within minimum standards

Borderline Case

- e. **Gross Ignorance, Gross Negligence, Gross Incompetence.** If you found that this physician did not meet the minimum standards of care in treating a patient(s), did you also conclude that any of these departures from the minimum standards of care were so serious that you consider them to exhibit gross ignorance, gross negligence, and/or gross incompetence on the physician's part. If "yes," please identify each of these instances, classify it appropriately and explain your reasoning in reaching that conclusion(s).

If "yes," please also indicate whether you found a pattern of gross ignorance, gross negligence and/or gross incompetence in this physician's practice as evidenced by the records reviewed and explain your conclusion(s).

**Gross Negligence**

An adequate history at every visit is imperative. At the first visit and adequate examination should be documented. A list of differential diagnoses should be considered in this situation. The pain did not improve on the Percocet, to continue it requires some kind of justification in the notes

**4. Other questions from the Medical Board (ignore if blank)**

**5. Explain your opinion. If you opined that practice was below minimum standard for any of the above reasons, state the correct minimal standard of practice (NOTE: It is not sufficient to say "I would have...., or I would have not...", you should be able to testify that "the minimal standard of practice in the medical community at large would be to...") Use extra sheets as necessary to explain your opinion and complete this report.**

Please see above

**6. If you determine from your review that the physician has failed to meet the standard of acceptable practice in a specific area(s), please answer the following questions as well:**

**a. Is it your opinion that the standard of practice violations you have identified may be addressed by the Board in an orderly process, extending over some period of time (6 months to 2-3 years) through remedial education and training, and subsequent monitoring by the Board.**

**Or,**

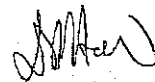
**Are the violations of such a nature that the Board must act immediately to restrict or suspend the doctor's license to protect patients or the public from imminent danger?**

**b. If you answered that the Board must act immediately to avoid imminent danger, please identify the imminent danger involved and examples of the violations that create such a danger.**

Any physician can miss a diagnosis or make an error in documentation. Should this chart be an isolated or even occasional event I would let it go with a suggestion that the physician take more care with both record keeping and planning of treatment. There is however a very disturbing pattern of documentation and prescribing that represents a danger to patients. Dr. Gale-Dyer has the benefit of working in an academic institution, he is a recent graduate of a well regarded residency program and is Board Certified, there

is no excuse for this poor level of medical practice. He continues to prescribe opioids within adequate documentation and when inadequate patient benefit is apparent. He also fails to consider other possible explanations for the pain that may benefit from alternative treatment.

**Date of Review**  
11/3/2012

  
**Signature of Expert**

**Revised Feb/2009**

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1457

FEB 21 2013

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH OF KENTUCKY HELD BY CURTIS S. GALE-DYER, D.O., LICENSE NO. 03368, 2404 SOUTHVIEW DRIVE, LEXINGTON, KENTUCKY 40503

**COMPLAINT**

Comes now the Complainant Randel C. Gibson, D.O., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on January 17, 2013, states for its Complaint against the licensee, CURTIS S. GALE-DYER, D.O., as follows:

1. At all relevant times, Curtis S. Gale-Dyer, D.O., was licensed by the Board to practice osteopathy in the Commonwealth of Kentucky.
2. The licensee's osteopathic specialty is physical medicine and rehabilitation.
3. In or around August 2012, the Office of Inspector General ("OIG") Division of Health Care Services requested a review of the licensee's prescribing patterns, as part of a House Bill 1 compliance inspection of pain management facilities.
4. On or around August 7, 2012, OIG Investigator, Stephen C. Johnson, reviewed and analyzed the licensee's KASPER records (for the period of August 1, 2011 until August 2, 2012) and identified fifteen (15) patients (based on age, addictive drug combinations, polypharmacy and distance traveled) which he forward to the OIG Division of Health Care Services and to Board for further investigation.
5. In or around October 2012, a Board consultant reviewed fifteen (15) of licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices as to diagnosis of thirteen (13) patients;

as to treatment of fifteen (15) patients; and as to recordkeeping in thirteen (13) charts reviewed.

6. The Board consultant also concluded that the licensee committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance or gross negligence in regard to at least ten (10) patients. Specifically,

- In regard to Patient A, the Board consultant found that the licensee demonstrated gross negligence, stating: "An adequate history at every visit is imperative, clearly once a clear diagnosis has been reached it is possible that repeated examination could be of limited benefit and so is not essential. It is imperative that a clear working diagnosis be reached and documented. That diagnosis should be consistent with the clinical evaluation or otherwise explained. ... Any physician can make a mistake, should this be an isolated or even occasional event I would let it go with a suggestion that record keeping be improved upon. There is however a very disturbing pattern of documentation and prescribing that represents a danger to patients. Dr. Gale-Dyer has the benefit of working in an academic institution, he is a recent graduate of a well regarded residency program and is Board Certified, there is no excuse for this poor level of medical practice."
- In regard to Patient B, the Board consultant found that the licensee demonstrated gross incompetence, stating: "The patient was continued on opioids without adequate documentation of valid medical reasons. ... Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with chronic pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education."
- In regard to Patient C, the Board consultant found that the licensee demonstrated gross incompetence, stating: "The patient was continued on opioids without adequate documentation of a valid medical reason. ... Dr. Gale-Dyer demonstrates an inability to document the diagnosis and treatment of a patient with low back pain, he fails to justify ongoing use of opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids."
- In regard to Patient F, the Board consultant found that the licensee demonstrated gross negligence, stating: "An adequate history at every visit is imperative. The pain did not improve on the Percocet and Soma, to continue it requires some kind of justification in the notes. ... Dr. Gale-Dyer

demonstrates a consistent pattern of not recording an adequate history, not documenting the reasons for reaching a diagnosis and failing to document reasonable justification for the continuation of opioids despite what I would regard as treatment failure. That constitutes an imminent danger to at risk patients in Kentucky.”

- In regard to Patient G, the Board consultant found that the licensee demonstrated gross ignorance or gross negligence, stating: “The patient was continued on very high doses of opioids without clear documentation of a valid medical reason. It would appear that Dr. Gale-Dyer knew that the dosages were inappropriate but did not wean the patient purely because of the patient’s objection. ... Dr. Gale-Dyer demonstrates either gross ignorance or negligence of basic principles of patient management. These failings clearly require Board intervention. This case suggests that Dr. Gale-Dyer is an imminent danger to Kentucky patients.”
- In regard to Patient H, the Board consultant found that the licensee demonstrated gross ignorance, stating: “The patient had end stage liver disease but was prescribed a medication containing Acetaminophen on a regular basis. When the patient states his pain is worse there is no explanation as to why the medication continued at an ineffective dose. The initial history is adequate, follow up histories are inadequate with a lack of justification for the prescribing of opioids. ...”
- In regard to Patient J, the Board consultant found that the licensee demonstrated gross incompetence or negligence, stating: “A patient with a Blood Pressure of 80/50 must be regarded as being unstable. Such a finding needs attention. At the very least I would expect a physician to recheck the BP and if necessary resuscitate the patient. It would have been reasonable to call EMS or transfer the patient to the ER. Simply suggesting PCP follow up is poor medicine. Dr. Gale-Dyer never explains his long term plan, does not consider the risks/benefits of opioids or justify the prescribing of opioids. When all of these facts are considered together Dr. Gale-Dyer must be considered a danger to patients. ... This failing represents an imminent danger to patients and necessitates urgent Board action.”
- In regard to Patient K, the Board consultant found that the licensee demonstrated gross incompetence, stating: “Dr. Gale-Dyer fails to explain the goals of prescribing opioids or document any risk/benefit analysis. ...Dr. Gale-Dyer demonstrates an inability to document treatment goals or perform any kind of risk analysis on a patient being prescribed opioids. These deficiencies could be handled in an orderly fashion providing Dr. Gale-Dyer stops prescribing opioids pending further education.”
- In regard to Patient N, the Board consultant found that the licensee demonstrated gross incompetence, gross ignorance or gross negligence,

stating: "The patient was seen repeatedly by Dr. Gale-Dyer, never does he explain the basis of his diagnosis or offer up any kind of treatment plan or risk/benefit analysis for the use of opioids. ... Dr. Gale-Dyer demonstrates substandard care for this patient with substandard documentation. It is difficult to determine whether this is a result of incompetence, ignorance or negligence. If this were an isolated instance then the matter could be addressed by further education and practice under the supervision of another physician over an extended period. This case however must be dealt with in the context of other cases reviewed."

- In regard to Patient O, the Board consultant found that the licensee demonstrated gross negligence, stating: "An adequate history at every visit is imperative. At the first visit an adequate examination should be documented. A list of differential diagnoses should be considered in this situation. The pain did not improve on the Percocet, to continue it requires some kind of justification in the notes. ... Any physician can miss a diagnosis or make an error in documentation. Should this chart be an isolated or even occasional event, I would let it go with a suggestion that the physician take more care with both record keeping and planning of treatment. There is however a disturbing pattern of documentation and prescribing that represents a danger to patients. ... "

7. In summary, the Board consultant stated

... Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised if Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. ... The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was

resistant. This can only in my opinion be interpreted as failing to control the medication supply. ... In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only." 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr. Gale-Dyer also states that by restricting his prescribing to no more than 120 Percocet 10s per month it will "hopefully lessen the chance of becoming dependent on opioids."

Dr. Gale-Dyer also failed to recognize a Blood Pressure of 80/50 (Patient J) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer's qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs. ...

The Board consultant's report is attached and incorporated herewith in its entirety.

8. By his conduct, the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, legal grounds exist for disciplinary action against his Kentucky osteopathic license.
9. 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.
10. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for August 20, 21, 22 and 23, 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 CURTIS GALE-DYER, D.O.

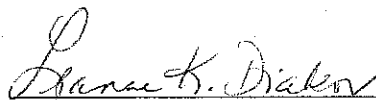
This 21<sup>st</sup> day of February, 2013.



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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; a copy was mailed via first-class postage prepared to Thomas J. Hellmann, Esq., Hearing Officer, P.O. Box 676, 415 West Main Street, Frankfort, Kentucky 40602-0676; and copies were mailed via certified mail return-receipt requested to the licensee, Curtis Gale-Dyer, D.O., 2404 Southview Drive, Lexington, Kentucky 40503; and to his counsel, Lisa English Hinkle, 201 East Main Street, Suite 1000, Lexington, KY 40507, on this 21<sup>st</sup> day of February, 2013.



\_\_\_\_\_  
Leanne K. Diakov  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

# Hamburg Pain

Dr. D. Paul Harries  
MB BCh, FRCS, M. Pain Med

Telephone (859) 264-7246  
Fax (859) 264-0074

2408 Sir Barton Way Suite 125  
Lexington KY 40509

November 17<sup>th</sup> 2012

Mr. John Marshall  
Kentucky Board of Medical Licensure,  
310 Whittington Parkway,  
Suite 1B,  
Louisville,  
KY 40222.

Case No. 12096      Dr. Gale-Dyer

Dear Mr. Marshall,

I have looked at the charts that you sent me several times and have studied the information provided by Dr. Gale-Dyer.

Dr. Gale-Dyer graduated from the Physical Medicine and Rehabilitation Program at the University of Kentucky in June 2011 and subsequently became Board Certified. He is an attending Physician at the VA Hospital and teaches residents as a part of his duties. Physical Medicine and Rehabilitation is the primary specialty that best prepares physicians for the prescribing of opioids. As a graduate of the University of Kentucky program I would be very surprised if Dr. Gale-Dyer was completely unaware of narcotic prescribing standards in Kentucky.

Dr. Gale-Dyer's notes are uniformly of a low standard. He obtains a borderline adequate history of pain when a patient is new to the clinic but otherwise fails to adequately document presenting symptoms. The examination is often inadequate or irrelevant and the repeated appearance of "grossly intact" is concerning. I regard the term "grossly intact" as meaning "not really examined" and I think many other physicians would agree with me on this. The diagnoses seem to be picked out of thin air with no explanation or deductive reasoning. Alternative treatments such as interventional pain management is often ignored. I do not think that the notes are adequate to justify any of the diagnoses listed in the majority of the notes. Dr. Gale-Dyer fails to lay out a long term treatment plan and seems to make no attempt at risk benefit analysis while prescribing controlled substances. Urine Drug Screens are often ordered but the results never mentioned in the notes.

Dr. Gale-Dyer provided summaries for each chart that raised additional concerns. He stated on more than one occasion that he wanted to reduce the prescribing of a medication but the patient was resistant. This can only in my opinion be interpreted as failing to control the medication supply. I find it surprising that a physician would admit to this in additional documentation offered to the Board. In his scope of practice letter Dr. Gale-Dyer he states "I only use opioids for breakthrough pain management only". 120 Oxycodone tablets a month is a surprising prescription for breakthrough pain, this suggests to me that Dr. Gale-Dyer may not be familiar with what breakthrough pain means! Dr. Gale-Dyer also states that by restricting his prescribing

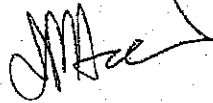
to no more than 120 Percocet 10s per month it will "hopefully lessen the chance of becoming dependant on opioids".

Dr. Gale Dyer also failed to recognize a Blood Pressure of 80/50 ( [REDACTED] ) as being potentially dangerous.

I find it very hard to reconcile the documentation reviewed with Dr. Gale-Dyer's qualifications, the disparity is so marked that it concerns me. The most obvious explanation for the above is that Dr. Gale-Dyer is an impaired physician; whether by Psychiatric disease, substance abuse or some other factor. If this is not the case then the lack of insight shown by Dr. Gale-Dyer is alarming and suggests either a reckless indifference to the well being of patients or a major deficiency in the training of Kentucky Residency programs.

In my opinion Dr. Gale-Dyer is an imminent threat to the safety of patients in Kentucky and emergent action is required pending further investigation of possible explanations for his practice standards.

Yours Faithfully



Dr. D. Paul Harries