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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1821
ADMINISTRATIVE ACTION NO. 18-KBML-0242

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUITE B, LAWRENCEBURG, KENTUCKY 40342-0288

AGREED ORDER OF PERMANENT SURRENDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Hearing Panel A, and Kenneth Hines, M.D., ("the licensee"), and, based upon their mutual desire to fully and finally resolve the complaint, hereby ENTER INTO the following **AGREED ORDER OF PERMANENT SURRENDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Kenneth Hines, M.D. ("the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. On or about September 19, 2017, the licensee was indicted on one (1) count of trafficking in a controlled substance in the first degree, by knowingly and unlawfully manufacturing, distributing, dispensing, selling, transferring or possessing with intent to manufacture, distribute, dispense or sell 10 or more dosage units of a controlled substance classified as a Schedule II Controlled Substance known as Morphine, a Class C Felony.
4. On or about October 6, 2017, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.

5. On or about April 2, 2019, the licensee's counsel contacted the Board and indicated that the licensee intends to enter a plea of guilty to the charges or to amended charges based on the undisputed fact that he unlawfully transferred a controlled substance to a confidential informant. According to his counsel, the licensee's permanent surrender without possibility of reinstatement is a material consideration in ongoing negotiations for his plea agreement in the criminal case.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(4) and (9), as illustrated by KRS 311.597(4), and KRS 311.595(12). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Permanent Surrender.
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 of Permanent Surrender.

AGREED ORDER OF PERMANENT SURRENDER

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, the parties hereby ENTER INTO the following **AGREED ORDER OF PERMANENT SURRENDER:**

1. The licensee, Kenneth Hines, M.D., hereby SURRENDERS his Kentucky medical license INDEFINITELY AND PERMANENTLY, effective immediately upon the filing of this Agreed Order of Permanent Surrender;

    a. From the date of filing of this Agreed Order of Permanent Surrender forward, the licensee SHALL never perform any act which would constitute the "practice of medicine," as that term is defined in 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 – within the Commonwealth of Kentucky;

    b. The licensee understands and agrees that any violation of the terms of this Agreed Order of Permanent Surrender may provide a legal basis for additional disciplinary action and a legal basis for criminal prosecution for practicing medicine without a license. If the Board should receive information that, after the date of filing of this Agreed Order of Permanent Surrender, the licensee has performed an act which would constitute the "practice of medicine" within the Commonwealth of Kentucky, it will aggressively pursue the criminal prosecution of the licensee for such acts, to the full extent of the law; and

    c. As an express condition for the entry of this Agreed Order of Permanent Surrender, each party understands and agrees that neither the Board nor any Panel of the Board shall ever consider any petition for reinstatement of license, any motion or request for modification or change of the terms of this Agreed Order or special request for consideration for relief filed by the licensee. This Agreed Order of Permanent Surrender is expressly designed to serve as the complete and final termination of the legal relationship between this Board and this licensee. It is further understood and agreed by the licensee that any communication by the licensee and/or his agents to the Board attempting to revive that legal relationship will be returned to him and/or his agent without being provided or forwarded to any Board or Panel member.

2. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Permanent Surrender, the licensee's practice shall constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Permanent Surrender, the Panel Chair is authorized by law to enter an Emergency

Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this 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 of Permanent Surrender.

3. The licensee understands and agrees that any violation of the terms of this Agreed Order of Permanent Surrender may provide a legal basis for additional disciplinary action or criminal prosecution.

SO AGREED on this 8 day of April, 2019.

FOR THE LICENSEE:

Kenneth E Hines

KENNETH HINES, M.D.

CHRISTOPHER A. SPEDDING
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

DALE E. TONEY, M.D.
CHAIR, HEARING PANEL A

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

WAIVER OF RIGHTS

I, Kenneth Hines, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 1821. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order of Permanent Surrender as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order of Permanent Surrender, I understand that further proceedings will be conducted in accordance with KRS 311.530 *et seq*, and I will have the right to raise any objections normally available in such proceedings.

Executed this 6 day of April, 2019.

Kenneth E Hines

KENNETH HINES, M.D.
RESPONDENT

CHRISTOPHER A. SPEDDING
COUNSEL FOR THE RESPONDENT

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1821

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUITE B, LAWRENCEBURG, KENTUCKY 40342-0288

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 November 16, 2017, states for its Complaint against the licensee, Kenneth Hines, M.D., as follows:

1. At all relevant times, Kenneth Hines, M.D. ("the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. On or about September 19, 2017, the licensee was indicted on one (1) count of trafficking in a controlled substance in the first degree, by knowingly and unlawfully manufacturing, distributing, dispensing, selling, transferring or possessing with intent to manufacture, distribute, dispense or sell 10 or more dosage units of a controlled substance classified as a Schedule II Controlled Substance known as Morphine, a Class C Felony.
4. On or about October 6, 2017, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
5. By his conduct, the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(12). Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.

6. 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.

7. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for January 22, 2018, 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 in the Commonwealth of Kentucky held by KENNETH HINES, M.D.

This 20th day of November, 2017.

Randel C Gibson DO

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 to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and a copy was mailed via certified mail return-receipt requested to the licensee, Kenneth Hines, M.D., License No. 16365, P.O. Box 288, 504 West Broadway, Suite B, Lawrenceburg, Kentucky 40342-0288, on this 20th day of November, 2017.

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

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1821

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUITE B, LAWRENCEBURG, KENTUCKY 40342-0288

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure ("the Board"), acting by and through the Chair of its Inquiry Panel B, considered an Indictment, filed September 19, 2017, in Anderson Circuit Court, 53rd Judicial Circuit, Kentucky, Case No. 17-CR-00134, and having considered this information and being sufficiently advised, the Chair of Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

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

1. At all relevant times, Kenneth Hines, M.D. ("the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. On or about September 19, 2017, the licensee was indicted on one (1) count of trafficking in a controlled substance in the first degree, by knowingly and unlawfully manufacturing, distributing, dispensing, selling, transferring or possessing with intent to manufacture, distribute, dispense or sell 10 or more dosage units of a controlled substance classified as a Schedule II Controlled Substance known as Morphine, a Class C Felony.

CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical 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(4), and KRS 311.595(12).
4. 201 KAR 9:240 §1 provides,

   (1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky in accordance with KRS 311.592 and 13B.125.
   (2) ...
   (3) (a) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky if the panel chair determines that a basis for an emergency order as established in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel.

5. 201 KAR 9:240 §3 provides

   (1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety or welfare, pursuant to KRS 311.592 and 13B.125.

(2) If the Board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to a controlled substance, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license....

6. The Inquiry Panel Chair concludes there is probable cause to believe this licensee's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

7. The Board may draw logical and reasonable inferences about a licensee's practice by considering certain facts about a licensee's practice. If there is proof that a licensee has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the licensee 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 licensee's practice presents representative proof of the nature of that licensee's practice in general. Accordingly, probable cause to believe that the licensee has committed certain violations in the recent past presents probable cause to believe that the licensee will commit similar violations in the near future, during the course of the licensee's medical practice.

8. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 520 U.S. 924 (1997), 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

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

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Chair of Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Kenneth Hines, M.D., is SUSPENDED and Dr. Hines is prohibited from performing any act which constitutes the "practice of medicine or osteopathy," as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - until the Board's hearing panel has finally resolved the Complaint after receipt of the court documents resolving the criminal charges in the indictment discussed in this pleading or until such further Order of the Board.

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

SO ORDERED this 6th day of October, 2017.

Randel C Gibson DO

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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to the licensee, Kenneth Hines, M.D., License No. 16365, P.O. Box 288, 504 West Broadway, Suite B, Lawrenceburg, Kentucky 40342-0288, on this 6th day of October, 2017.

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

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1526

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH E. HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUITE B, LAWRENCEBURG, KENTUCKY 40342-0288

SECOND AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel B, and Kenneth E. Hines, M.D., ("the licensee"), and, based upon their mutual desire to resolve the pending noncompliance investigation without an evidentiary hearing, 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, Kenneth E. Hines, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. In or around the fall of 2012, the Kentucky Board of Medical Licensure requested that the Cabinet for Health and Family Services, Office of Inspector General (OIG), review the top prescribers of controlled substances in the 403, 404 and 420 zip codes.
4. The licensee was identified as the top prescriber of controlled substances in the 403 zip code area.
5. On or about December 27, 2012, OIG Investigator, Jill E. Lee, R.Ph., reviewed and analyzed the licensee's KASPER records (for the period of December 6, 2011

through December 5, 2012) and identified fourteen (14) of the licensee's patients based upon patients receiving combinations of short-acting narcotic pain medications, patients using multiple pharmacies to obtain controlled substance prescriptions and improper refills of controlled substances based on days' supply. The KASPER analysis indicated a wide-spread problem of issuing new controlled prescriptions to patients before all refills on previous prescriptions were exhausted. It was also noted that of the fourteen patients, the licensee had requested a KASPER on only six of the patients selected. Ms. Lee forwarded the patient names to the Board for further investigation.

6. OIG also reported that Patient A filled controlled substance prescriptions from four (4) different pharmacies each month. OIG collected seventeen prescriptions with a total of sixty-six refills from the four pharmacies for a one year period. All prescriptions were written by the licensee during 2011 and 2012 for a one-month supply of hydrocodone/APAP 10mg with three-five refills.

7. On or about January 8, 2013, OIG investigators interviewed the licensee about the prescriptions to Patient A. During the interview, the licensee acknowledged that he had written all of the prescriptions and that he personally knew and trusted the patient. When asked if he used the KASPER system, the licensee indicated that he did use KASPER and was not sure why there wasn't a copy of a KASPER in Patient A's chart. OIG reviewed the licensee's KASPER query history and found that the licensee had never queried KASPER for Patient A.

8. On or about February 7, 2013, OIG investigators interviewed Patient A, who stated substantially as follows: he has been the licensee's patient for about twenty years; he

visited the licensee almost monthly by appointment or by drop-in and was briefly examined and then issued new prescriptions; he obtained new prescriptions early by showing the licensee old prescription bottles that had zero refills left on them; the licensee never questioned him when he needed a prescription but just looked at the old bottle and if he noticed zero refills, he would write a new prescription and throw away the old bottle; the licensee did not subject Patient A to any opioid screening tests (urine tests, random pill counts, pharmacy contracts, KASPERs); Patient A acknowledged deceiving the licensee and stated that the licensee dismissed him as a patient on or after January 8, 2013.

9. In or around July 2013, a Board consultant reviewed the licensee's patient charts for the patients identified in the course of the OIG investigation, and concluded that the licensee departed from or failed to conform to acceptable and prevailing medical practices, noting overall

> ... Urine drug screens need to be a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.
>
> Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient [B] had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on XANAX on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.
>
> Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient [C] on October 26, 2012 from four times per day to every four hours without a phone call or office note documenting the reason for more frequent dosing. Patient [A?] was seen by Dr. Hines on June 25, 2012 for the chief complaint of diarrhea, chills and headache. The office note did not address the complaint, but rather discussed pain management, which involved refills of Vicodin.

> The most common record keeping issue involved Dr. Hines and his failure to notice how long prescriptions should have lasted. He issued new controlled prescriptions to patients before all refills of previous prescriptions were exhausted.
>
> Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. .... Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs ...
>
> ... It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. ...
>
> In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

The Board Consultant's narrative report is attached hereto and incorporated herewith in its entirety.

10. In a letter to the Board's Medical Investigator, dated August 8, 2013, the licensee stated

> I do realize that I have been negligent in adhering to the new Narcotic Law and from your review I have learned that my record keeping is poor as well.
> ...
> We are not a Pain Clinic. We are a medical office that treats Chronic Pain on the side, mostly our own long-established patients. We have been using Kasper since its beginning and have dismissed many patients for inappropriate Kasper reports. We just were not doing it on all patients. I am one of the few Care-Givers in this area who see the Un-employed and Un-insured, as well as the only physician who volunteers to run the "Free Medical Clinic" located in Anderson County.
>
> For forty years of service, I have tried to be a competent provider for my patients, their families and serve the community. I have had a great awakening of the importance of the Narcotic Laws! Already, we have caught three patients selling their Lortabs to purchase Cocaine.
> ...

I am negligent. I have read and re-read the Narcotic Laws. I have attended Pain Conferences and I plan to take the Internet Courses you offer. My entire office and I have been working many hours, from the first day of notification, implementing new procedures into our system to help us follow the Narcotic Laws with our patients. We constantly go over our plans and procedures to improve even better on our record keeping. I am confident in three to six months, we will be on your top list for efficient record keeping and can use us as an example to others.

11. In a letter to the Board's Executive Director, dated September 7, 2013, the licensee stated

> ... I have admitted that I have been negligent in obeying the new narcotic law. Since this investigation started, I have done over a hundred urine drug screens and hundreds of Kaspers trying to catch up. I have found several substance abusers with cocaine and pot, as well as opiates. I now understand the importance of the new law.
>
> However, I am neither a drug clinic nor a pill pusher. I have tried to choose my patients on the merits of their health record and examination. This is not enough, I now see. I am voluntarily giving up my narcotic license and include it in this letter.
> ...
> ... If you take my medical license, you will be putting my patients at risk because we take all insurances, including Medicaid and Medicare. There are so few doctors who will accept new Medicare or Medicaid patients. I am over pain management. We have dismissed hundreds of patients for drug abuse, even before the narcotic law was passed, and you can see them listed as we kept a record of every dismissal. We called the Attorney General's office many times to report the worse ones until they told us to stop calling them.
>
> ... I have chosen to give up my narcotic license voluntarily ... I am trying to find other physicians or pain clinics for my cancer patients, chronic pain patients and kids with ADHD. I am willing to work with the Board in anyway ...

12. On or about June 27, 2013, OIG investigators interviewed Dr. Gregory Hood to verify prescriptions of Androgel written for the licensee. Dr. Hood stated that he had initially prescribed Androgel to the licensee in February 2011 and again in November 2012 and May 2013. At no time did a pharmacist contact him about refilling the prescriptions. During an office visit of May 15, 2013, Dr. Hood ran a KASPER and

found that the licensee had also self-prescribed Androgel. Dr. Hood advised the licensee to stop self-prescribing and to utilize Dr. Hood for any prescriptions.

13. When OIG investigators interviewed the licensee about the self-prescribed Androgel, the licensee stated that he must have been out of a prescription and the pharmacist asked him to write one to himself until they had a chance to check with Dr. Hood for a refill.

14. On or about October 7, 2013, the licensee chose to resolve the Board's investigation by entering into an Agreed Order of Indefinite Restriction, pursuant to which he was restricted from prescribing, dispensing or professionally utilizing controlled substances until approved to do so by the Panel, required that he pay a fine of $5,000 and to reimburse the Board's costs of $2,006.25. The Agreed Order of Indefinite Restriction also provided that the Panel would not consider a request by the licensee to resume the professional utilization of controlled substances unless and until: at least six (6) months had passed; he successfully completed the "Prescribing Controlled Drugs" course at Vanderbilt University Medical Center or the University of Florida; he successfully completed the CPEP Documentation Seminar; and he enrolled in the CPEP Personalized Implementation Program (PIP).

15. On or about January 8-10, 2014, the licensee completed the "Prescribing Controlled Drugs" course at Vanderbilt University Medical Center.

16. On or about March 7, 2014, he completed the CPEP Documentation (Medical Record Keeping) Seminar and enrolled in the CPEP Personalized Implementation Program (PIP).

17. On or about March 17, 2014, the licensee paid the fine and reimbursed the Board's costs.

18. Six months passed on April 7, 2014.

19. On or about May 15, 2014, the Board's Inquiry Panel B chose to reinstate the licensee's prescribing privileges, subject to the terms and conditions set forth in an Amended Agreed Order of Indefinite Restriction, which required, in part, that

    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;

        i. All log sheets SHALL be consecutively numbered, legible (i.e. printed or typed), and SHALL reflect "call-in" and refill information;

        ii. Prescriptions SHALL be maintained in the following manner: 1) patient; 2) chart; and 3) log;
        ...

20. On or about October 22, 2015, the licensee completed the PIP.

21. On or about December 22, 2016, the Board's medical investigator inspected the licensee's "controlled substances log" and found that the licensee was non-compliant with the Amended Agreed Order of Indefinite Restriction because he had not recorded 42% of prescriptions written.

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 medical license is subject to regulation and discipline by the Board.

2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and 311.595(13). 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 may fully and finally resolve this matter without an evidentiary hearing by entering into an informal resolution such as this Second Amended Agreed Order.

SECOND AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to resolve the pending noncompliance investigation without an evidentiary hearing, the parties hereby ENTER INTO the following **SECOND AMENDED AGREED ORDER:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Kenneth E. Hines, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Second Amended Agreed Order (hereinafter "Agreed Order").
2. During the effective period of this Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:

    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;

i. All log sheets SHALL be consecutively numbered, legible (i.e. printed or typed), and SHALL reflect "call-in" and refill information;

ii. Prescriptions SHALL be maintained in the following manner: 1) patient; 2) chart; and 3) log;

b. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substances 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 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;

d. The licensee understands and agrees that at least two (2) favorable consultant reviews must be completed, on terms determined by the Panel or its staff, before the Panel will consider a request to modify or terminate this Agreed Order;

e. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE in the amount of $1,000.00 within six months of the date of entry of this Agreed Order; and

f. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee expressly acknowledges and 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 9 day of Feb, 2017.

FOR THE LICENSEE:

Kenneth E. Hines MD

KENNETH E. HINES, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:

Russell L. Travis M.D.

RUSSELL L. TRAVIS, M.D.
CHAIR, INQUIRY PANEL B

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

July 18, 2013

Kevin Payne
Medical Investigator
Kentucky Board of Medical Licensure
316 Morehead Drive
Frankfort, KY 40601

Dear Mr. Payne,

I have completed the review of fourteen charts from the practice of Dr. Kenneth Hines. For each of the patient charts I have typed a summary of their visits including my evaluation of his diagnosis, treatment, and record keeping skills. Twelve of the fourteen charts had issues that caused them not to meet minimum standards either in treatment or record keeping. I would prefer that you go directly to each expert review worksheet for specifics. I have documented below the areas that were of most concern from the review.

Dr. Hines had two patients, who had discrepancies in their urine drug screens. Patient SD had 120 Lortab filled on September 25, 2011, but his urine drug screen was negative for Hydrocodone on October 20, 2011. The urine drug screen was noted but there was no notation of the discrepancy with it not containing the medication or documentation as to how it could have been negative. One possible explanation could have been that the patient increased the medicine on his own. If he ran out early by doing this, then the urine sample may have been negative; however this reasoning was not documented. Patient HF had a urine drug screen in 2009 that was appropriate for Xanax and Hydrocodone, but metabolites of Darvocet were also present. Darvocet was not noted to have been prescribed to this patient. This was not addressed in the progress notes.

Urine drug screens need to a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.

Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient JJ had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on Xanax on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.

Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient SC on October 26, 2012 from four times per day to every four hours without a phone call or office note

documenting the reason for more frequent dosing. Patient JP was seen by Dr. Hines on June 25, 2012 for the chief complaint of diarrhea, chills, and headache. The office note did not address the complaint, but rather discussed pain management, which involved refills of Vicodin.

The most common record keeping issue involved Dr. Hines and his failure to notice how long prescriptions should have lasted. He issued new controlled prescriptions to patients before all refills of previous prescriptions were exhausted.

Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. To prevent this type of diversion, I would recommend that he strictly adhere to the guidelines of House Bill One that went into effect at the end of 2012 that call for contracts for controlled substances, especially for Hydrocodone, as this was the prescription that was filled early the most often in Dr. Hines' practice. Next, Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs as instructed by House Bill One.

Besides using contracts, urine drug screens, and KASPER reports, I feel that Dr. Hines would benefit from a CME course regarding the management of patients that are prescribed narcotics. It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. Finally, a pharmacist from the state needs to randomly audit the KASPER reports run by Dr. Hines to make sure they are appropriate.

In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

Sincerely,

Timothy A. Bratton, MD

FILED OF RECORD

MAY 27 2014

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1526

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH E. HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUITE B, LAWRENCEBURG, KENTUCKY 40342-0288

AMENDED AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel B, and Kenneth E. Hines, M.D., ("the licensee"), and, based upon their mutual desire to reinstate the licensee's prescribing privileges, hereby ENTER INTO the following **AMENDED AGREED ORDER OF INDEFINITE RESTRICTION:**

STIPULATIONS OF FACT

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

1. At all relevant times, Kenneth E. Hines, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. In or around the fall of 2012, the Kentucky Board of Medical Licensure requested that the Cabinet for Health and Family Services, Office of Inspector General (OIG), review the top prescribers of controlled substances in the 403, 404 and 420 zip codes.
4. The licensee was identified as the top prescriber of controlled substances in the 403 zip code area.
5. On or about December 27, 2012, OIG Investigator, Jill E. Lee, R.Ph., reviewed and analyzed the licensee's KASPER records (for the period of December 6, 2011

through December 5, 2012) and identified fourteen (14) of the licensee's patients based upon patients receiving combinations of short-acting narcotic pain medications, patients using multiple pharmacies to obtain controlled substance prescriptions and improper refills of controlled substances based on days' supply. The KASPER analysis indicated a wide-spread problem of issuing new controlled prescriptions to patients before all refills on previous prescriptions were exhausted. It was also noted that of the fourteen patients, the licensee had requested a KASPER on only six of the patients selected. Ms. Lee forwarded the patient names to the Board for further investigation.

6. OIG also reported that Patient A filled controlled substance prescriptions from four (4) different pharmacies each month. OIG collected seventeen prescriptions with a total of sixty-six refills from the four pharmacies for a one year period. All prescriptions were written by the licensee during 2011 and 2012 for a one-month supply of hydrocodone/APAP 10mg with three-five refills.
7. On or about January 8, 2013, OIG investigators interviewed the licensee about the prescriptions to Patient A. During the interview, the licensee acknowledged that he had written all of the prescriptions and that he personally knew and trusted the patient. When asked if he used the KASPER system, the licensee indicated that he did use KASPER and was not sure why there wasn't a copy of a KASPER in Patient A's chart. OIG reviewed the licensee's KASPER query history and found that the licensee had never queried KASPER for Patient A.
8. On or about February 7, 2013, OIG investigators interviewed Patient A, who stated substantially as follows: he has been the licensee's patient for about twenty years; he

visited the licensee almost monthly by appointment or by drop-in and was briefly examined and then issued new prescriptions; he obtained new prescriptions early by showing the licensee old prescription bottles that had zero refills left on them; the licensee never questioned him when he needed a prescription but just looked at the old bottle and if he noticed zero refills, he would write a new prescription and throw away the old bottle; the licensee did not subject Patient A to any opioid screening tests (urine tests, random pill counts, pharmacy contracts, KASPERs); Patient A acknowledged deceiving the licensee and stated that the licensee dismissed him as a patient on or after January 8, 2013.

9. In or around July 2013, a Board consultant reviewed the licensee's patient charts for the patients identified in the course of the OIG investigation, and concluded that the licensee departed from or failed to conform to acceptable and prevailing medical practices, noting overall

> ... Urine drug screens need to be a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.
>
> Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient [B] had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on XANAX on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.
>
> Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient [C] on October 26, 2012 from four times per day to every four hours without a phone call or office note documenting the reason for more frequent dosing. Patient [A?] was seen by Dr. Hines on June 25, 2012 for the chief complaint of diarrhea, chills and headache. The office note did not address the complaint, but rather discussed pain management, which involved refills of Vicodin.

> The most common record keeping issue involved Dr. Hines and his failure to notice how long prescriptions should have lasted. He issued new controlled prescriptions to patients before all refills of previous prescriptions were exhausted.
>
> Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. .... Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs ...
>
> ... It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. ...
>
> In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

The Board Consultant's narrative report is attached hereto and incorporated herewith in its entirety.

10. In a letter to the Board's Medical Investigator, dated August 8, 2013, the licensee stated

> I do realize that I have been negligent in adhering to the new Narcotic Law and from your review I have learned that my record keeping is poor as well.
> ...
> We are not a Pain Clinic. We are a medical office that treats Chronic Pain on the side, mostly our own long-established patients. We have been using Kasper since its beginning and have dismissed many patients for inappropriate Kasper reports. We just were not doing it on all patients. I am one of the few Care-Givers in this area who see the Un-employed and Un-insured, as well as the only physician who volunteers to run the "Free Medical Clinic" located in Anderson County.
>
> For forty years of service, I have tried to be a competent provider for my patients, their families and serve the community. I have had a great awakening of the importance of the Narcotic Laws! Already, we have caught three patients selling their Lortabs to purchase Cocaine.
> ...

I am negligent. I have read and re-read the Narcotic Laws. I have attended Pain Conferences and I plan to take the Internet Courses you offer. My entire office and I have been working many hours, from the first day of notification, implementing new procedures into our system to help us follow the Narcotic Laws with our patients. We constantly go over our plans and procedures to improve even better on our record keeping. I am confident in three to six months, we will be on your top list for efficient record keeping and can use us as an example to others.

11. In a letter to the Board's Executive Director, dated September 7, 2013, the licensee stated

> ... I have admitted that I have been negligent in obeying the new narcotic law. Since this investigation started, I have done over a hundred urine drug screens and hundreds of Kaspers trying to catch up. I have found several substance abusers with cocaine and pot, as well as opiates. I now understand the importance of the new law.
>
> However, I am neither a drug clinic nor a pill pusher. I have tried to choose my patients on the merits of their health record and examination. This is not enough, I now see. I am voluntarily giving up my narcotic license and include it in this letter.
>
> ...
>
> ... If you take my medical license, you will be putting my patients at risk because we take all insurances, including Medicaid and Medicare. There are so few doctors who will accept new Medicare or Medicaid patients. I am over pain management. We have dismissed hundreds of patients for drug abuse, even before the narcotic law was passed, and you can see them listed as we kept a record of every dismissal. We called the Attorney General's office many times to report the worse ones until they told us to stop calling them.
>
> ... I have chosen to give up my narcotic license voluntarily ... I am trying to find other physicians or pain clinics for my cancer patients, chronic pain patients and kids with ADHD. I am willing to work with the Board in anyway ...

12. On or about June 27, 2013, OIG investigators interviewed Dr, Gregory Hood to verify prescriptions of Androgel written for the licensee. Dr. Hood stated that he had initially prescribed Androgel to the licensee in February 2011 and again in November 2012 and May 2013. At no time did a pharmacist contact him about refilling the prescriptions. During an office visit of May 15, 2013, Dr. Hood ran a KASPER and

found that the licensee had also self-prescribed Androgel. Dr. Hood advised the licensee to stop self-prescribing and to utilize Dr. Hood for any prescriptions.

13. When OIG investigators interviewed the licensee about the self-prescribed Androgel, the licensee stated that he must have been out of a prescription and the pharmacist asked him to write one to himself until they had a chance to check with Dr. Hood for a refill.

14. On or about October 7, 2013, the licensee chose to resolve the Board's investigation by entering into an Agreed Order of Indefinite Restriction, pursuant to which he was restricted from prescribing, dispensing or professionally utilizing controlled substances until approved to do so by the Panel, required that he pay a fine of $5,000 and to reimburse the Board's costs of $2,006.25. The Agreed Order of Indefinite Restriction also provided that the Panel would not consider a request by the licensee to resume the professional utilization of controlled substances unless and until: at least six (6) months had passed; he successfully completed the "Prescribing Controlled Drugs" course at Vanderbilt University Medical Center or the University of Florida; he successfully completed the CPEP Documentation Seminar; and he enrolled in the CPEP Personalized Implementation Program (PIP).

15. On or about January 8-10, 2014, the licensee completed the "Prescribing Controlled Drugs" course at Vanderbilt University Medical Center.

16. On or about March 7, 2014, he completed the CPEP Documentation (Medical Record Keeping) Seminar and enrolled in the CPEP Personalized Implementation Program (PIP).

17. On or about March 17, 2014, the licensee paid the fine and reimbursed the Board's costs.

18. Six months passed on April 7, 2014.

19. On or about May 15, 2014, the Board's Inquiry Panel B chose to reinstate the licensee's prescribing privileges, subject to the terms and conditions set forth in this Amended Agreed Order of Indefinite Restriction.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order of Indefinite Restriction.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing and reinstate the licensee's prescribing privileges by entering into an informal resolution such as this Amended Agreed Order of Indefinite Restriction.

AMENDED AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to reinstate the licensee's prescribing privileges, the

parties hereby ENTER INTO the following **AMENDED AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Kenneth E. Hines, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Amended Agreed Order of Indefinite Restriction (hereinafter "Agreed Order").

2. During the effective period of this Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:

    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;

        i. All log sheets SHALL be consecutively numbered, legible (i.e. printed or typed), and SHALL reflect "call-in" and refill information;

        ii. Prescriptions SHALL be maintained in the following manner: 1) patient; 2) chart; and 3) log;

    b. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substances 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 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;

d. The licensee understands and agrees that at least two (2) favorable consultant reviews must be completed, on terms determined by the Panel or its staff, before the Panel will consider a request to modify or terminate this Agreed Order;

e. The licensee SHALL successfully complete the CPEP Personalized Implementation Program ("PIP"), at his expense, as directed by CPEP's staff;

i. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the PIP promptly after completing that program;

ii. 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 PIP to the Board's Legal Department promptly after their completion; and

f. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee expressly acknowledges and 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 27th day of May, 2014.

FOR THE LICENSEE:

Kenneth E Hines MD

KENNETH E. HINES, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:

Randel Gibson DO

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

Leanne K Diakov

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

July 18, 2013

Kevin Payne
Medical Investigator
Kentucky Board of Medical Licensure
316 Morehead Drive
Frankfort, KY 40601

Dear Mr. Payne,

I have completed the review of fourteen charts from the practice of Dr. Kenneth Hines. For each of the patient charts I have typed a summary of their visits including my evaluation of his diagnosis, treatment, and record keeping skills. Twelve of the fourteen charts had issues that caused them not to meet minimum standards either in treatment or record keeping. I would prefer that you go directly to each expert review worksheet for specifics. I have documented below the areas that were of most concern from the review.

Dr. Hines had two patients, who had discrepancies in their urine drug screens. Patient SD had 120 Lortab filled on September 25, 2011, but his urine drug screen was negative for Hydrocodone on October 20, 2011. The urine drug screen was noted but there was no notation of the discrepancy with it not containing the medication or documentation as to how it could have been negative. One possible explanation could have been that the patient increased the medicine on his own. If he ran out early by doing this, then the urine sample may have been negative; however this reasoning was not documented. Patient HF had a urine drug screen in 2009 that was appropriate for Xanax and Hydrocodone, but metabolites of Darvocet were also present. Darvocet was not noted to have been prescribed to this patient. This was not addressed in the progress notes.

Urine drug screens need to a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.

Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient JJ had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on Xanax on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.

Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient SC on October 26, 2012 from four times per day to every four hours without a phone call or office note

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Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. To prevent this type of diversion, I would recommend that he strictly adhere to the guidelines of House Bill One that went into effect at the end of 2012 that call for contracts for controlled substances, especially for Hydrocodone, as this was the prescription that was filled early the most often in Dr. Hines' practice. Next, Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs as instructed by House Bill One.

Besides using contracts, urine drug screens, and KASPER reports, I feel that Dr. Hines would benefit from a CME course regarding the management of patients that are prescribed narcotics. It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. Finally, a pharmacist from the state needs to randomly audit the KASPER reports run by Dr. Hines to make sure they are appropriate.

In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

Sincerely,

Timothy A. Bratton, MD

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1526

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KENNETH E. HINES, M.D., LICENSE NO. 16365, P.O. BOX 288, 504 WEST BROADWAY, SUTIE B, LAWRENCEBURG, KENTUCKY 40342-0288

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel B, and Kenneth E. Hines, M.D., ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION**:

STIPULATIONS OF FACT

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

1. At all relevant times, Kenneth E. Hines, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is general medicine.
3. In or around the fall of 2012, the Kentucky Board of Medical Licensure requested that the Cabinet for Health and Family Services, Office of Inspector General (OIG), review the top prescribers of controlled substances in the 403, 404 and 420 zip codes.
4. The licensee was identified as the top prescriber of controlled substances in the 403 zip code area.
5. On or about December 27, 2012, OIG Investigator, Jill E. Lee, R.Ph., reviewed and analyzed the licensee's KASPER records (for the period of December 6, 2011

through December 5, 2012) and identified fourteen (14) of the licensee's patients based upon patients receiving combinations of short-acting narcotic pain medications, patients using multiple pharmacies to obtain controlled substance prescriptions and improper refills of controlled substances based on days' supply. The KASPER analysis indicated a wide-spread problem of issuing new controlled prescriptions to patients before all refills on previous prescriptions were exhausted. It was also noted that of the fourteen patients, the licensee had requested a KASPER on only six of the patients selected. Ms. Lee forwarded the patient names to the Board for further investigation.

6. OIG also reported that Patient A filled controlled substance prescriptions from four (4) different pharmacies each month. OIG collected seventeen prescriptions with a total of sixty-six refills from the four pharmacies for a one year period. All prescriptions were written by the licensee during 2011 and 2012 for a one-month supply of hydrocodone/APAP 10mg with three-five refills.

7. On or about January 8, 2013, OIG investigators interviewed the licensee about the prescriptions to Patient A. During the interview, the licensee acknowledged that he had written all of the prescriptions and that he personally knew and trusted the patient. When asked if he used the KASPER system, the licensee indicated that he did use KASPER and was not sure why there wasn't a copy of a KASPER in Patient A's chart. OIG reviewed the licensee's KASPER query history and found that the licensee had never queried KASPER for Patient A.

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visited the licensee almost monthly by appointment or by drop-in and was briefly examined and then issued new prescriptions; he obtained new prescriptions early by showing the licensee old prescription bottles that had zero refills left on them; the licensee never questioned him when he needed a prescription but just looked at the old bottle and if he noticed zero refills, he would write a new prescription and throw away the old bottle; the licensee did not subject Patient A to any opioid screening tests (urine tests, random pill counts, pharmacy contracts, KASPERs); Patient A acknowledged deceiving the licensee and stated that the licensee dismissed him as a patient on or after January 8, 2013.

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> ... Urine drug screens need to be a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.
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> Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient [B] had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on XANAX on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.
>
> Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient [C] on October 26, 2012 from four times per day to every four hours without a phone call or office note documenting the reason for more frequent dosing. Patient [A?] was seen by Dr. Hines on June 25, 2012 for the chief complaint of diarrhea, chills and headache. The office note did not address the complaint, but rather discussed pain management, which involved refills of Vicodin.

> The most common record keeping issue involved Dr. Hines and his failure to notice how long prescriptions should have lasted. He issued new controlled prescriptions to patients before all refills of previous prescriptions were exhausted.
>
> Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. .... Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs ...
>
> ... It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. ...
>
> In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

The Board Consultant's narrative report is attached hereto and incorporated herewith in its entirety.

10. In a letter to the Board's Medical Investigator, dated August 8, 2013, the licensee stated

> I do realize that I have been negligent in adhering to the new Narcotic Law and from your review I have learned that my record keeping is poor as well. ...
>
> We are not a Pain Clinic. We are a medical office that treats Chronic Pain on the side, mostly our own long-established patients. We have been using Kasper since its beginning and have dismissed many patients for inappropriate Kasper reports. We just were not doing it on all patients. I am one of the few Care-Givers in this area who see the Un-employed and Un-insured, as well as the only physician who volunteers to run the "Free Medical Clinic" located in Anderson County.
>
> For forty years of service, I have tried to be a competent provider for my patients, their families and serve the community. I have had a great awakening of the importance of the Narcotic Laws! Already, we have caught three patients selling their Lortabs to purchase Cocaine.

...
I am negligent. I have read and re-read the Narcotic Laws. I have attended Pain Conferences and I plan to take the Internet Courses you offer. My entire office and I have been working many hours, from the first day of notification, implementing new procedures into our system to help us follow the Narcotic Laws with our patients. We constantly go over our plans and procedures to improve even better on our record keeping. I am confident in three to six months, we will be on your top list for efficient record keeping and can use us as an example to others.

11. In a letter to the Board's Executive Director, dated September 7, 2013, the licensee stated

> ...I have admitted that I have been negligent in obeying the new narcotic law. Since this investigation started, I have done over a hundred urine drug screens and hundreds of Kaspers trying to catch up. I have found several substance abusers with cocaine and pot, as well as opiates. I now understand the importance of the new law.
>
> However, I am neither a drug clinic nor a pill pusher. I have tried to choose my patients on the merits of their health record and examination. This is not enough, I now see. I am voluntarily giving up my narcotic license and include it in this letter.
> ...
> ... If you take my medical license, you will be putting my patients at risk because we take all insurances, including Medicaid and Medicare. There are so few doctors who will accept new Medicare or Medicaid patients. I am over pain management. We have dismissed hundreds of patients for drug abuse, even before the narcotic law was passed, and you can see them listed as we kept a record of every dismissal. We called the Attorney General's office many times to report the worse ones until they told us to stop calling them.
>
> ... I have chosen to give up my narcotic license voluntarily ... I am trying to find other physicians or pain clinics for my cancer patients, chronic pain patients and kids with ADHD. I am willing to work with the Board in anyway
> ...

12. On or about June 27, 2013, OIG investigators interviewed Dr, Gregory Hood to verify prescriptions of Androgel written for the licensee. Dr. Hood stated that he had initially prescribed Androgel to the licensee in February 2011 and again in November 2012 and May 2013. At no time did a pharmacist contact him about refilling the

prescriptions. During an office visit of May 15, 2013, Dr. Hood ran a KASPER and found that the licensee had also self-prescribed Androgel. Dr. Hood advised the licensee to stop self-prescribing and to utilize Dr. Hood for any prescriptions.

13. When OIG investigators interviewed the licensee about the self-prescribed Androgel, the licensee stated that he must have been out of a prescription and the pharmacist asked him to write one to himself until they had a chance to check with Dr. Hood for a refill.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Indefinite Restriction.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending grievance

without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Kenneth E. Hines, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Order.

2. During the effective period of this Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:

    a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;

    b. The Panel will not consider a request by the licensee to resume the professional utilization of controlled substances unless and until the following conditions have been satisfied and verification provided:
        i. At least six (6) months have passed from the date of filing of this Agreed Order of Indefinite Restriction;
        ii. The licensee has successfully completed the "Prescribing Controlled Drugs" course at The Center for Professional Health at Vanderbilt University Medical Center, Nashville, TN, Tel. (615) 936-0678 or the University of Florida, 8491 N.W. 39th Avenue, Gainesville, Florida , Tel. (352) 265-5549, at his expense; and
        iii. The licensee has successfully completed the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230, Tel. (303) 577-3232, *and* enrolled in the CPEP Personalized Implementation Program (PIP).

    c. If the Panel should grant the licensee's request to resume the professional utilization of controlled substances, it will do so by an Amended Agreed Order of Indefinite Restriction, which shall include any conditions deemed necessary by the Panel at that time and shall at least require that
        i. The licensee shall complete the PIP, at his expense, as directed by CPEP's staff. 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; and

ii. The licensee shall maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and which shall be subject to periodic review of the log and relevant records by Board agents upon request and at least two (2) favorable consultant reviews before the Amended Agreed Order of Indefinite Restriction may be terminated.

d. 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 November 1, 2013, and continuing until such time as the fine is paid in full;

e. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board the costs of the proceedings in the amount of two-thousand and six dollars and twenty-five cents ($2,006.25), within six (6) months from entry of this Agreed Order of Indefinite Restriction; and

f. 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 of Indefinite Restriction, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Indefinite Restriction, 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 of Indefinite Restriction

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 of Indefinite Restriction.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Indefinite Restriction 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 27 day of Sept, 2013.

FOR THE LICENSEE:

Kenneth E Hines MD
KENNETH E. HINES, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:

RUSSELL L. TRAVIS, M.D.
ACTING CHAIR, INQUIRY PANEL B

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

July 18, 2013

Kevin Payne
Medical Investigator
Kentucky Board of Medical Licensure
316 Morehead Drive
Frankfort, KY 40601

Dear Mr. Payne,

I have completed the review of fourteen charts from the practice of Dr. Kenneth Hines. For each of the patient charts I have typed a summary of their visits including my evaluation of his diagnosis, treatment, and record keeping skills. Twelve of the fourteen charts had issues that caused them not to meet minimum standards either in treatment or record keeping. I would prefer that you go directly to each expert review worksheet for specifics. I have documented below the areas that were of most concern from the review.

Dr. Hines had two patients, who had discrepancies in their urine drug screens. Patient SD had 120 Lortab filled on September 25, 2011, but his urine drug screen was negative for Hydrocodone on October 20, 2011. The urine drug screen was noted but there was no notation of the discrepancy with it not containing the medication or documentation as to how it could have been negative. One possible explanation could have been that the patient increased the medicine on his own. If he ran out early by doing this, then the urine sample may have been negative; however this reasoning was not documented. Patient HF had a urine drug screen in 2009 that was appropriate for Xanax and Hydrocodone, but metabolites of Darvocet were also present. Darvocet was not noted to have been prescribed to this patient. This was not addressed in the progress notes.

Urine drug screens need to a routine part of the process of prescribing controlled substances. Just as important as ordering them, is paying attention to their results. Dr. Hines failed to adequately address and document the possible rationale for the inconsistent urine drug tests.

Running KASPER reports is an important process in helping prevent prescription drug abuse. Equally important is the appropriate interpretation of the results. Patient JJ had a KASPER report run for a February 9, 2013 appointment that was interpreted as being appropriate on May 20, 2013, when it showed early refills on Xanax on May 11th and 14th of 2012 at different pharmacies. Dr. Hines failed to acknowledge this in the chart.

Documentation for the increase in pain medicine is important as well as addressing the chief complaint for the office visit. Dr. Hines increased the dose of Lortab for Patient SC on October 26, 2012 from four times per day to every four hours without a phone call or office note

documenting the reason for more frequent dosing. Patient JP was seen by Dr. Hines on June 25, 2012 for the chief complaint of diarrhea, chills, and headache. The office note did not address the complaint, but rather discussed pain management, which involved refills of Vicodin.

The most common record keeping issue involved Dr. Hines and his failure to notice how long prescriptions should have lasted. He issued new controlled prescriptions to patients before all refills of previous prescriptions were exhausted.

Dr. Hines' lack of attention to refills of controlled substances allowed multiple patients to get early refills at different pharmacies. To prevent this type of diversion, I would recommend that he strictly adhere to the guidelines of House Bill One that went into effect at the end of 2012 that call for contracts for controlled substances, especially for Hydrocodone, as this was the prescription that was filled early the most often in Dr. Hines' practice. Next, Dr. Hines needs to routinely order drug screens and appropriately address them. The most important action that would have prevented a majority of the early refills by Dr. Hines' patients (besides paying attention to the refills from the prior office note in the chart) would be the regular use of KASPERs as instructed by House Bill One.

Besides using contracts, urine drug screens, and KASPER reports, I feel that Dr. Hines would benefit from a CME course regarding the management of patients that are prescribed narcotics. It was not an isolated issue in his practice to fail to pay attention to prior refills. This oversight caused multiple unnecessary refills. Finally, a pharmacist from the state needs to randomly audit the KASPER reports run by Dr. Hines to make sure they are appropriate.

In conclusion, Dr. Hines failed to conform to the standards of acceptable and prevailing medical practice in the Commonwealth of Kentucky by consistently failing to pay attention to the number of refills that patients had remaining on prior prescriptions of controlled substances. This lack of attention to detail allowed multiple patients to get early refills at different pharmacies.

Sincerely,

Timothy A. Bratton, MD