COMMUNE OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 789
ADMINISTRATIVE ACTION NO. 01-KBML-0343

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY E. GARY HOGAN, M.D., LICENSE NO. 17916, T.J. SAMSON HOSPITAL, ER, GLASGOW, KENTUCKY 42141

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and E. Gary Hogan, M.D., and, based upon their mutual desire to fully and finally resolve the pending Complaint 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, E. Gary Hogan, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee’s medical specialty is Emergency Medicine.

3. In 1984, the Board received a grievance reporting that the licensee was illegally prescribing controlled substances. After reviewing the consultant’s review of selected patients charts and a report by the Board investigator that the licensee’s prescribing patterns had drastically improved, the Inquiry Panel initially took no formal action, but placed the licensee’s license on informal monitor status.
4. On November 19, 1990, the Board's Inquiry Panel A issued an Order of Temporary Suspension in Case No. 405, alleging that the licensee had prescribed large amounts of controlled substances to 24 patients without appropriate medical necessity. On November 30, 1990, the Panel issued a Complaint, alleging that the licensee had prescribed excessive amounts of controlled substances, and that his prescribing practices were medically inappropriate. On December 28, 1990, the Panel substituted an Order of Temporary Restriction for its previous Order of Temporary Suspension; the licensee was restricted from prescribing or utilizing controlled substances classified as Schedule II, III, IV, V or VI. On February 12, 1992, the parties informally resolved Case No. 405, by entering into an Agreed Order, placing the licensee's medical license on probation for five years, subject to the following terms and conditions:

   a. Must complete U.K. mini-residency on "The Prescribing and Use of Controlled Substances" during the Spring 1991 session;
   b. During first year, may only prescribe or utilize Schedule II, III, IV, V controlled substances in hospital setting for hospitalized in-patients;
   c. Must maintain appropriate, adequate and legible medical records;
   d. Must permit Board's agents to monitor his prescribing habits and treatment of patients, by permitting record review;
   e. Must pay costs of investigation; and,
   f. Must comply with Medical Practice Act.

5. On January 27, 1995, the Panel Chair directed a letter to the licensee, noting that the licensee was apparently not keeping charts on his patients and required his patients to maintain their own charts. The licensee had told a Board investigator, during an investigation of a new grievance, that he did not keep charts on any of his patients since his office closings a few years earlier. The licensee had stated that, while some patients came to see him at his home or in the Emergency Room
at T.J. Samson Hospital in Glasgow, he required them to maintain their own
“patient chart.” In the January 1995 letter, the licensee was advised that failure to
keep appropriate and adequate charts on each patient would be considered a
violation of his probation.

6. At its July 20, 1995 meeting, the Panel reviewed a report that, while the licensee
did not appear to be prescribing excessive amounts of controlled substances, he
did continue to prescribe medications for non-emergency situations and
documentation did not always coincide with the prescriptions he had written. The
Panel ordered further investigation.

7. On June 20, 2001, Patient A filed a grievance with the Board regarding her
relationship with the licensee. Patient A provided the following information:

She was employed in the out-patient surgery department at T.J. Samson Hospital,
where she met the licensee. During a casual conversation in the hospital one day
in 1998, the licensee made several flattering comments to Patient A and then
asked if he could do anything for her. When she commented that she had a
headache, the licensee wrote a prescription for her for 50 Percocet tablets.
According to Patient A, after she had obtained a couple more prescriptions from
the licensee, the licensee asked what he would get in return. He then asked to see
her without her clothes on, for her to remove her pants and underwear. When she
agreed, the licensee took her to Exam Room 5 in the Emergency Room and had
her undress. After she did so, he gave her another controlled substances
prescription. The licensee continued writing controlled substances prescriptions
for her and she continued undressing in the Exam Rooms for him. They first had
intercourse in the doctor’s lounge bathroom, where the licensee had spread a
blanket on the floor. Afterwards, he provided her with another controlled
substance prescription. This pattern continued for some time and the licensee had
Patient A come to his home to get a prescription. She estimates that they had
intercourse twice at the hospital, while the licensee was on duty, and eight times
at his residence. Patient A believes she became addicted to the controlled
substances after receiving so many from the licensee during this period. In order
to stop this cycle, she quit her job at the hospital in July 1999. When she told the
licensee about her decision, he reminded her that she knew where he was if she
needed any more prescriptions.
8. The licensee has acknowledged that he prescribed Lortab for Patient A, while she was a hospital employee, to treat her migraine headaches on a few occasions. He also noted that he has treated Patient A's family and has allowed them to come to his home for treatment. However, the licensee denies that he required Patient A to undress or to have sex with him in exchange for controlled substances prescriptions. The licensee notes that Patient A "came on strong" with him and wanted to have a relationship with him. The licensee states that Patient A came to his home one night after he had been drinking. He recalled getting a blanket, but has no other recall of the events of that night. Patient A told him later that they had sex and she wanted to leave her husband for him. The licensee believes that Patient A has made false allegations because she wants to get out of her marriage. The licensee notes that, at the time, he was drinking so much alcohol that he had no recall of the events at his home with Patient A.

9. A review of Patient A's prescription records revealed that the licensee had prescribed either Percocet or Lortab to this patient on 37 separate occasions from April 1998 through July 1999, for a total of 1190 doses. The records indicated that she was seen by the licensee at the hospital on four of these occasions.

10. On May 31, 2000, the Board received a report from the Drug Control Branch that the licensee had written a substantial number of controlled substance prescriptions for family members. The report also noted that there were several other patients for whom the licensee routinely wrote controlled substances prescriptions and included a KASPER report regarding 16 such patients.
11. On August 31, 2000, the Board received a report from the Board of Pharmacy which alleged that the licensee has: a) inappropriately prescribed Oxycontin for Patient B; b) written prescriptions on T.J. Samson Hospital Rx blanks for individuals whom he saw outside of the hospital's Emergency Room; c) failed to maintain charts or medical records on several patients for whom he has prescribed controlled substances in large amounts, with refills; and, d) prescribed controlled substances on T.J. Samson Rx blanks for individuals who lived in an area outside of the hospital's vicinity but presented to the hospital for treatment. An investigator for this Board noted that the licensee appeared to be conducting a family practice out of the hospital's Emergency Room, because he was writing controlled substances prescriptions regularly for a specific number of patients at that location.

12. On September 8, 2000, the Board received information from the Board of Nursing that Patient H was a nurse who had received controlled substances prescriptions from the licensee and had become addicted to those substances.

13. Patient H related that she was formerly married to the licensee. She asserted that she has taken pain medications for migraine headaches since 1995. Patient H asserted that initially the licensee wrote prescriptions for her for Percocet and then Lortab, increasing the dosage from .5 mg to 10 mg for 60 tablets per week. Patient H asserted that she knew that she didn't need this medication and attempted unsuccessfully to stop her use. When she discussed this with the licensee, he responded, "...you seem so much happier when you take them. They really help you." After becoming addicted to these medications through the licensee's
prescribing, she was forced to enter treatment for drug addiction. Patient H states that she has been sober since February 17, 2000.

14. A review of prescribing records for the licensee revealed the following:

   a. Between May 1997 and December 2000, the licensee had prescribed controlled substances to Patients B-J, who were his relatives, on 616 occasions, for a total of more than 21,000 doses;
   b. The vast majority of these prescriptions were for Oxycontin, Percocet and Lortab;
   c. Patients A, B and H were abusing controlled substances to such an extent that the licensee knew or should have known they were doing so;
   d. The licensee failed to adequately address addiction problems with a number of these patients;
   e. The licensee prescribed thousands of controlled substances for persons who were never seen or evaluated in the T.J. Samson Emergency Room;
   f. The licensee failed to maintain medical records/charts documenting the need for the amounts of controlled substances written; and,
   g. The licensee failed to properly maintain his controlled substances log, because the log does not accurately reflect his prescribing habits.

15. While the licensee stated that he had maintained a controlled substances log for all controlled substances prescribed, he conceded that he does not maintain patient charts. He stated that, if the patient was seen at the hospital, he documents their chart there accordingly.

16. Patient and prescribing records were submitted to a Board consultant for review.

   The consultant has concluded variously, in two separate reports:

   Dr. Hogan’s pattern of prescribing, based solely upon documentation of the above-noted quantities and frequencies, is clearly excessive and a blatant disregard for the acceptable and prevailing practice of medicine within the Commonwealth of Kentucky and constitutes a danger to the health, welfare and safety of this patient. If it were true that Dr. Hogan has engaged in sexual activity with this patient, under these circumstances, while on-duty and in-exchange for prescriptions, that fact alone would indicate unethical, grossly negligent and malpractice-able acts. Taken as a whole, both behaviors constitute a series of dangerous acts, which irrefutably depart from the standards of medical practice, are grossly negligent and clearly posed a danger to the physical and mental health of this patient.

.....
Review of the above-mentioned medical records of only the family members indicates that over a 43-month period, Dr. Hogan prescribed narcotics and other controlled substances to his relatives on 616 separate occasions. These prescriptions translated into more than 21,000 doses of narcotics and other controlled substances during the same period. The medical conditions of these patients fail to justify, in ANY form, the amount and frequency of the narcotics. The overwhelming majority of the prescriptions were written for oxycodone, oxycodone (Percocet) and hydrocodone (Lortab). This data is found in Table 1.

Dr. Hogan has prescribed thousands of doses of narcotics and controlled substances for patients that were never seen or evaluated in the emergency department of T.J. Sampson Hospital and for which there is no medical record. The log of controlled substances kept by Dr. Hogan does not come close to accurately reflecting the gross prescribing habits of this practitioner. The failure of a physician to maintain accurate medical records documenting the need for prescribed controlled substances is a gross deviation from the standard of medical practice in this state.

Dr. Hogan's pattern of prescribing, based solely upon documentation of the above-noted quantities and frequencies, is clearly excessive and a blatant disregard for the acceptable and prevailing practice of medicine within the Commonwealth of Kentucky. In my opinion, his prescribing practices constitute a danger to the health, welfare and safety of his patients. His behavior constitutes a series of dangerous acts, which irrefutably depart from the standards of medical practice, are grossly negligent and clearly pose a danger to the physical and mental health of his patients.

17. The licensee's daughter died in a car accident on December 14, 1992. Although he had never done so before that time, he began drinking alcohol in 1993 to help cope with his grief. When he drank, he would drink approximately a fifth of moonshine or Wild Turkey whiskey. The licensee denies ever drinking while driving or when he was scheduled for work. In 1996, his drinking increased to 1-2 times per week. The licensee states that he stopped drinking in 1998, with the help of Patient V. He never sought treatment for his drinking and never attended any AA meetings. He noted that he drank socially at a December 2000 Christmas party, but hasn't had alcohol since that time.
18. The licensee has denied, and continues to deny, the essence of many of the allegations contained in the grievance filed with the Board on June 20, 2001, and many of the conclusions expressed by the Board’s consultant.

19. By agreement of the parties, the licensee completed a clinical skills assessment program at the Colorado Personalized Education for Physicians (CPEP), Denver, Colorado, at his expense. In the assessment report, the evaluators recommended that the licensee have diagnostic testing of his cognitive functioning, prior to entering into a Learning Plan. The evaluators recommended that the licensee enter a supervised, moderately intensive education plan to enhance his skills, ensure consistent and appropriate patient management, and incorporate his knowledge of patient care documentation into actual daily use. The evaluators recommended that Dr. Hogan address the following educational areas identified during the assessment:

- basic pathophysiology of common disease states;
- thorough and detailed approach to patient management issues;
- development of a strategy to ensure that all problems are addressed;
- management of head trauma, gestational diabetes, preeclampsia, postpartum hemorrhage, coronary artery disease, acute pain;
- antibiotic use in community acquired pneumonia;
- EMTALA transfer criteria;
- ECG interpretation;
- Documentation: implement a documentation strategy to ensure inclusion of pertinent details of the history and physical exam, differential diagnosis and clinical discussion in all patient chart notes; document charts in an organized and logical manner.

In addition to a structured learning plan, the evaluators also recommended that the licensee establish a relationship with an experienced educational preceptor.
20. By agreement of the parties, CPEP prepared and submitted an educational plan to be implemented by the licensee and the Board.

21. Pursuant to an Emergency Order issued by the Inquiry Panel, the licensee’s Kentucky medical license has been suspended since May 17, 2001.

STIPULATED CONCLUSIONS OF LAW

Based upon the foregoing Stipulations of Fact, 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 foregoing Stipulations of Fact, the licensee has engaged in conduct which violates KRS 311.595(9), as illustrated by KRS 311.597(1)(c) and (d), (3) and (4). Accordingly, there are legal bases for disciplinary action against the licensee’s Kentucky medical license.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending Complaint 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 Complaint without evidentiary proceedings, the parties ENTER INTO the following AGREED ORDER OF INDEFINITE RESTRICTION:
1. By law, the Emergency Order of Suspension filed on May 17, 2001 is not maintained after the filing of this Agreed Order of Indefinite Restriction. Upon the filing of this Agreed Order of Indefinite Restriction, the licensee may resume the active practice of medicine, subject to the terms and conditions contained herein:

2. Upon the licensee's return to the active practice of medicine, the licensee's Kentucky medical license SHALL BE RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, with such restriction/limitation commencing immediately upon the filing of this Agreed Order of Indefinite Restriction.

3. 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:
   
a. The licensee may only resume the active practice of medicine after the Panel has approved a preceptor, who has also been approved by the Medical Director of CPEP. Furthermore, the licensee may only practice during those periods of time when an approved preceptor is available personally or by reliable alternative communication. If the approved preceptor(s) should terminate the agreement to act as a preceptor, the licensee shall immediately notify the Board's investigator of such fact. If no approved preceptor is in place at any given time, the licensee SHALL NOT engage in the practice of medicine unless and until another preceptor has been approved by the Medical Director, CPEP, and by the Panel;
b. The licensee SHALL FULLY COMPLY with all terms and conditions of the Education Plan, which is fully adopted by the parties and fully incorporated, by attachment, into this Agreed Order of Indefinite Restriction;

c. The licensee shall immediately take all necessary steps to permit and provide for the CPEP Medical Director to provide the Board's investigator with quarterly written reports, detailing the licensee's compliance with the Education Plan and his progression through the various requirements;

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

c. The Panel SHALL NOT consider a request by the licensee to modify Condition 3d for a minimum period of one year from the date of filing of this Agreed Order of Indefinite Restriction. Before the Panel will consider such a request the licensee must provide satisfactory proof that he has successfully completed an approved mini-residency on "The Use and Prescribing of Controlled Substances." If the Panel should consider such a request for modification, it shall be in the sole discretion of the Panel to decide whether to grant the request; the burden of persuasion shall be on the licensee to satisfy the Panel that he may safely resume the professional utilization of controlled substances under conditions specified by the Panel. If the Panel should grant such a request, it shall do so by an Amended Agreed Order of Indefinite Restriction with terms and
conditions deemed necessary by the Panel at the time, but with the following restrictions: a) no prescribing of controlled substances to himself or family members; b) must maintain a controlled substances log for ALL controlled substances prescribed or dispensed; c) maintain a legible and adequate patient record for each patient encounter, in a S.O.A.P. format, which provides an adequate basis for the diagnosis and treatment provided; and, d) permit Board's agents to review controlled substances log and patient records, upon request;

f. Within twenty (20) days of the date of filing of this Agreed Order of Indefinite Restriction, the licensee shall meet with the Medical Director, Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP), to arrange for and schedule all necessary evaluations/assessments to determine whether the licensee requires treatment for substance abuse and/or dependence. The licensee shall successfully complete each evaluation arranged by IPP at the time(s) scheduled and shall take all necessary steps to permit and to arrange for IPP to receive written reports of each assessment/evaluation conducted;

g. If the Medical Director concludes, after reviewing the assessment/evaluation report(s), that the licensee requires treatment for substance abuse and/or dependency, the Medical Director shall advise the licensee of such fact, in writing, at the earliest time possible. If the licensee receives such written notification that treatment is necessary, he SHALL ENTER INTO a contractual relationship with IPP, within twenty
(20) days of the date of the written notification. If the licensee enters into a contractual relationship with IPP after written notification, he shall fully comply with all terms and conditions of that contractual relationship;

h. During the month of May 2003, the licensee shall complete a neuropsychological evaluation by an evaluator approved by the Board, at a time and location scheduled by the Board's staff. The results of such neuropsychological evaluation shall be considered by the Panel upon receipt and prior to any modification of the terms of this Agreed Order.

i. The licensee SHALL NOT engage in sexual contact with any female patient(s);

j. The licensee SHALL NOT engage in sexual contact with any employee of his medical practice or any employee of a medical facility at which the licensee is employed;

k. The licensee SHALL NOT engage in sexual harassment of any female patient, employee of his medical practice or employee of a medical facility at which the licensee is employed. Sexual harassment is defined as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) such conduct interferes with an individual's work or academic performance environment creates an intimidating, hostile, or offensive work or academic environment or (2) accepting or rejecting such conduct affects or may be perceived to affect employment decisions or academic evaluations concerning the individual;
1. The licensee SHALL NOT VIOLATE any provision of KRS 311.595 and/or 311.597.

4. The licensee expressly agrees that, if the licensee 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 Chairperson 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 Indefinite Restriction;

5. The licensee understands and agrees that any violation of the provisions of this Agreed Order of Indefinite Restriction may serve as the basis for additional disciplinary action against his Kentucky medical license, pursuant to KRS
311.595(13), including revocation of his medical license.

SO AGREED this 18th day of June, 2002.

FOR THE LICENSEE:

E. Gary Hogan, M.D.

COUNSEL FOR DR. HOGAN

FOR THE BOARD:

Dave McClark
CHAIR, INQUIRY PANEL A

C. Lloyd Vest II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

ENTERED: 06/18/02
WAIVER OF RIGHTS

I, E. Gary Hogan, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 789. 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.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order of Indefinite Restriction 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 Indefinite Restriction, 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 18th day of April, 2002.

E. GARY HOGAN, M.D.
Respondent

Counsel for Dr. Hogan
EDUCATION PLAN
for
E. Gary Hogan, M.D.

This Education Plan was developed based upon areas of need identified in the CPEP Assessment conducted in November 2001, data gathered by the CPEP Medical Education Director (MED) and information obtained from the Kentucky Board of Medical Licensure. The CPEP Assessment was structured to evaluate Dr. Hogan's fund of medical knowledge, patterns of clinical reasoning and judgment, quality of documentation of patient care, and ability to communicate with patients. The purpose of this Education Plan is to provide a framework in which the client can address educational needs that will ultimately improve the quality of patient care.

CPEP bases Education Plans on a model of adult learning in which the learner is responsible for participation, documentation of progress, and improvements and changes in medical practice. CPEP uses information from the client (physician-learner) and the teachers (mentors, preceptors, medical education director) to make quarterly reports to the privileging body that is involved in the planned practice enhancements.

OBJECTIVES

OBJECTIVE I: To update general medical knowledge in the field of family practice with particular attention to the following content areas:
1) Cardiology, including coronary artery disease
2) Infectious disease
3) Acute pain management
4) Emergency medicine, including head trauma
5) EMTALA transfer criteria
6) Antibiotic use in community acquired pneumonia
7) Pathophysiology

A. Performance Objectives

1) Dr. Hogan will review two (2) journal articles for each of the content areas listed above and prepare a summary for each article, describing how the information will be integrated into clinical practice. Dr. Hogan can choose the articles himself, but they must be approved by the MED.

2) Dr. Hogan will complete one or more comprehensive CME courses, such as "Core Curriculum in Adult Primary Care Medicine: 2001 (CD-ROM set)", to encompass all of the diseases/categories listed above. The courses will be approved by the Associate Medical Director. Certificates of completion will be submitted to CPEP.
3) Dr. Hogan will adopt guidelines as appropriate on the management of the diseases/conditions listed above that were developed by physician organizations such as the American Academy of Family Physicians or the Colorado Clinical Guidelines Collaborative. Dr. Hogan will also develop guidelines as needed.

4) Dr. Hogan will address the disease/categories listed above with his preceptor. See Objective II.

5) Dr. Hogan will maintain an active education log, documenting all activities, to be submitted to CPEP by the 1st of each month for review by the Associate Medical Director.

B. Evaluation Methods

1) The preceptor will provide feedback to Dr. Hogan on his medical knowledge in family medicine at the time of their meetings.

2) The preceptor will provide monthly written and verbal feedback to the Associate Medical Director and the Assistant Director of CPEP on Dr. Hogan's progress for the duration of the Education Plan.

3) The Associate Medical Director will review the article outlines, charts, and logs with timely feedback to and discussion with Dr. Hogan during the monthly telephone conversations.

4) Dr. Hogan's medical knowledge in the above content areas will be reassessed at CPEP following completion of the Education Plan.

OBJECTIVE II: To improve medical knowledge in obstetrics, especially in regards to gestational diabetes, preeclampsia, and postpartum hemorrhage

A. Performance Objectives

1) Dr. Hogan has recently voluntarily discontinued Obstetrics as an active part of his practice. If this is a permanent change and he is not responsible, at times, for covering the Obstetric patients of others, then his new orientation obviates completion of this objective. Dr. Hogan will be required to make this decision official through written communication with the Kentucky Board of Medical Licensure.

2) Dr. Hogan will identify a specialist of Family Practice whose practice involves substantial obstetrics to CPEP's satisfaction to act as his preceptor. This preceptor will:
   a. be currently board certified, in active practice, without board or licensing body-censure, who is acceptable to CPEP;
   b. be willing and able to meet with Dr. Hogan twice a month for four (4) months, then once a month for the duration of the Education Plan, to review at least six (5) charts from Dr. Hogan's practice per session;
   c. submit chart reviews to CPEP by the 1st of each month; and
   d. be available to discuss Dr. Hogan's progress with the Associate Medical Director and Assistant Director of CPEP on a monthly basis.
3) Dr. Hogan will provide twelve (12) charts per month for the first four (4) months, then six (6) charts a month for the remainder of the Education Plan, for review with his preceptor. Dr. Hogan will ensure that two (2) obstetric cases are reviewed each session. Discussions will focus on medical knowledge in family medicine, with particular attention to obstetrics. In addition, the diseases/conditions listed in Objective I will be the starting point for the selection of cases.

4) Dr. Hogan will submit copies of four (4) of the charts used in the preceptor meetings (with all identifying information removed) to CPEP by the 1st of each month for review by the Associate Medical Director.

B. Evaluation Methods

1) The preceptor will provide feedback to Dr. Hogan on his medical knowledge in obstetrics at the time of their meetings.

2) The preceptor will provide monthly written and verbal feedback to the Associate Medical Director and the Assistant Director of CPEP on Dr. Hogan’s progress for the duration of the Education Plan.

3) The Associate Medical Director will review the charts and logs with timely feedback to and discussion with Dr. Hogan during the monthly telephone conversations.

4) Dr. Hogan’s medical knowledge in obstetrics will be reassessed at CPEP following completion of the Education Plan.

OBJECTIVE III: To improve skills in the interpretation of electrocardiograms (EKGs)

A. Performance Objectives

1) Dr. Hogan will purchase the EKG textbook and practice guide Rapid Interpretation of EKGs by Dubin to use in self-study and to review with his preceptor.

2) Dr. Hogan will arrange to shadow a physician once a month to interpret and review at least ten (10) “live” EKGs per session.

3) Dr. Hogan will review five (5) EKG interpretations with his preceptor at each meeting. The EKG’s to be reviewed can be from Dr. Hogan’s practice or the preceptor’s practice.

4) Dr. Hogan will maintain an active education log, documenting all activities, to be submitted by the 1st of each month for review by the Associate Medical Director.

B. Evaluation Methods

1) The preceptor will provide feedback to Dr. Hogan on his EKG interpretation at the time of their meetings.

2) The preceptor will provide monthly written and verbal feedback to the Associate Medical Director and Assistant Director of CPEP on Dr. Hogan’s progress for the duration of the Education Plan.
3) The Associate Medical Director will review the EKG course work, the preceptor reports, and the education logs with timely feedback to and discussion with Dr. Hogan during their monthly telephone conversations.

4) Dr. Hogan's skills in the interpretation of EKGs will be reassessed at CPEP following completion of the Education Plan.

OBJECTIVE IV: To demonstrate consistent application of documentation principles in patient charts and attention to detail in patient evaluations

A. Performance Objectives

1) Dr. Hogan will work with his preceptor during their meetings to learn appropriate application of documentation principles. Dr. Hogan's own charts will be reviewed by the preceptor and Associate Medical Director for appropriate and accurate documentation.

2) Dr. Hogan will attend a documentation seminar and participate in a follow-up program, if available. The course must be approved by the Associate Medical Director prior to attendance. A certificate of completion will be submitted to CPEP.

3) Dr. Hogan will ensure that all medical records are legible and contain the following information (refer to the attached Medical Record Checklist and Progress Note Checklist for further clarification):
   a. up-to-date problem list;
   b. up-to-date medication list and allergy list; and
   c. dated progress notes containing the following information:
      i. subjective data (including complete personal and family history and review of systems),
      ii. objective data (including well-described physical examination),
      iii. assessment (including differential diagnoses and medical reasoning), and
      iv. plan (including appropriate laboratory testing and treatment).

4) Dr. Hogan will arrange to have his preceptor observe him during at least ten (10) patient encounters in order to ensure that Dr. Hogan's patient evaluations are thorough and well documented. The patient encounters must consist of a variety of conditions, including a well exam for a woman, man, and child; chronic illness such as hypertension, diabetes, and asthma; and acute illness such as flu, gastrointestinal pain, and headache.

5) Dr. Hogan will initiate the use of a system to ensure that all patient problems are addressed, such as Weed's system.

6) Dr. Hogan will maintain an active education log, documenting all activities, to be submitted to CPEP by the 1st of each month for review by the Associate Medical Director.
B. Evaluation Methods

1) The preceptor will provide feedback to Dr. Hogan on his application of documentation principles and thoroughness of patient evaluations at the time of their meetings.

2) The preceptor will provide monthly written and verbal feedback to the Associate Medical Director and Assistant Director of CPEP on Dr. Hogan's progress for the duration of the Education Plan.

3) The Associate Medical Director will review the documentation seminar follow-up chart reports and education logs with timely feedback to and discussion with Dr. Hogan during their monthly telephone conversations.

4) Dr. Hogan's application of documentation principles in patient charts will be reassessed at CPEP following completion of the Education Plan.

DURATION

The Education Plan is estimated to take approximately twelve (12) months. It may be extended or shortened at the discretion of CPEP depending on progress towards meeting the stated educational goals. If new education needs are uncovered during the course of this plan, these will be addressed.

REASSESSMENT

Dr. Hogan will return to CPEP within two (2) to six (6) months following the completion of the Education Plan for a Post Education Evaluation.

SUMMARY

Dr. Hogan is a family physician from Kentucky. His license was suspended in May 2001 after the Kentucky Board of Medical Licensure conducted an investigation on his practice. Dr. Hogan participated in a CPEP Assessment in December of 2001 in an effort to reinstate his medical license and at the recommendation of the Board. The areas of deficits in Dr. Hogan's medical performance identified in the Assessment have been addressed in the objectives of this Education Plan.

SIGNATURES

E. Gary Hogan, M.D.  
3-21-02  
Date

Mark Goosmann, M.D.  
3-21-02  
Date

Associate Medical Director for Education Services
COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 789

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY E. GARY HOGAN, M.D., LICENSE NO. 17916, T. J. SAMSON HOSPITAL, ER, GLASGOW, KENTUCKY 42141

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its April 26, 2001 meeting. At that meeting, Inquiry Panel B considered a Panel Memorandum prepared by Beth Robertson, Medical Investigator, dated April 6, 2001; a grievance filed against the licensee, dated June 13, 2000 and received by the Board on June 20, 2000; a copy of pharmacy records from Glasgow, Kentucky's KMART Pharmacy, Park Avenue Pharmacy, Ely Drugs, Inc., and Towne and Country Drugs, showing prescriptions authorized by the licensee for the grievant; an August 29, 2000 written response from the licensee; a copy of KRS 510.010; a copy of Current Opinion 8.14 of the American Medical Association's Code of Medical Ethics; a January 31, 2001 written report by a Board consultant.

At its April 26, 2001 meeting, Inquiry Panel B also considered a Panel Memorandum prepared by Beth Robertson, Medical Investigator, dated April 16, 2001; a report from Duncan McCracken, R.Ph, Pharmacist Consultant, Cabinet for Health Services' Drug Control Branch, dated February 11, 2000 and received by the Board on May 31, 2000; an August 29, 2000 written response from the licensee received by the Board on August 30, 2000; an undated written response from the licensee, received by the Board on September 11, 2000; and an April 12, 2001 report by the Board consultant.
Having considered all of the above 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 the Emergency Order of Suspension:

1. At all relevant times, E. Gary Hogan, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is Emergency Medicine.

3. On June 20, 2000, a grievance was filed with the Board by Patient "A", who alleged that the licensee gave her a prescription for 50 Percocet tablets that lasted approximately 2-3 weeks, after she remarked to him, in early Spring of 1998, that she had a headache.

4. In her grievance, Patient A alleged that the licensee continued to prescribe controlled substances to her, without "doing any kind of test," until she was "hooked on drugs to where [she] could not go without them." Patient A alleged that after she became "hooked on drugs," the licensee started asking her what he would get in return for the prescriptions he wrote for her. At this point, Patient A alleged, the license "took full advantage and he enjoyed knowing he had that power."

5. On May 31, 2000, the Board received a report, dated February 11, 2000, from the Cabinet for Health Services' Drug Control Branch (the "Cabinet"), containing allegations that the licensee has written "a substantial quantity of controlled
substances for family member.” The report also contains allegations that there are several other patients for whom Dr. Hogan has “routinely written prescriptions for controlled substances.” The report included a KASPER report on sixteen (16) patients, Patients B, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V, for whom the licensee has allegedly routinely written prescriptions for controlled substances.

6. On August 31, 2000, the Board received information from the Kentucky Board of Pharmacy, containing allegations that: 1) the licensee has inappropriately prescribed OxyContin for Patient B; 2) the licensee has written prescriptions on T. J. Samson Hospital Rx Blanks for patients he has not seen in that hospital’s ER; 3) the licensee has failed to maintain charts or medical records on several patients for whom he has prescribed controlled substances in large quantities with refills; 4) the licensee has prescribed, on T. J. Samson Hospital Rx Blanks, controlled substances for “patients” who have presented at the hospital from areas not in the hospital’s vicinity.

7. On September 8, 2000, the Board received information from the Kentucky Board of Nursing’s Investigation and Discipline Branch, reporting, among other things, Patient H’s drug addiction and Patient H’s allegation that she received prescriptions for controlled substances from the licensee.

8. Subsequently, the Board opened an investigation of the matters complained of. During its investigation, a Board investigator, among other things, interviewed Patient A; Duncan McCracken, Pharmacist Consultant with the Cabinet; Patient H; the licensee; and Patient V.

9. When interviewed by the Board’s investigator, Patient A further alleged that after the licensee prescribed the 50 Percocet tablets to her, he began making comments
concerning her appearance and fragrance and he then became more intimate, making statements such as, "I could feel you and make you feel good" and "Why don't you come to work without underwear so I can imagine you?" In addition, Patient A alleged that she had sexual intercourse with the licensee in exchange for the prescriptions that he would, thereafter, give her. She also alleged that the inappropriate sexual encounters occurred at the hospital, while the licensee was on duty as the ER physician, and they also occurred at the licensee’s home. Further, Patient A alleged that the licensee asked her what he would get in return for the prescriptions, after she had received a couple of prescriptions from him. After a couple of months, Patient A alleged, the prescriptions would only last a week. She further alleged that after they had intercourse for the first time (in the doctors’ lounge bathroom where the licensee had spread a pink blanket on the floor and asked her to disrobe) the licensee pulled a completed prescription for 50 Percocet tablets from his shirt pocket and said to her, “See you next time.” A few weeks later, Patient A alleged, she asked the licensee for another prescription and he requested that she come to his home. She alleged that upon her arrival at the licensee’s home, she asked for the prescription and the licensee told her that they would “take care of that later.” Thereafter, the licensee asked Patient A to disrobe while he watched. Patient A alleged that he then fondled her breast and genitalia and they had intercourse. Afterwards, Patient A alleged, the licensee gave her a prescription for Percocet and cautioned her not to tell anyone. She also alleged that, a few weeks later, she again went to the licensee’s home, at the licensee’s request, where the same inappropriate conduct that occurred there on the prior visit was repeated. Patient A also alleged that
the licensee would give her prescriptions 2-3 times in the ER, but would reduce the tablets or refuse to give her another prescription until she came to his home. Initially, Patient A alleged, she would make up a reason not to go, and the licensee would not give her a prescription. Patient A alleged that this lasted only 1-2 weeks, however, because she would not go very long without a prescription. Eventually, Patient A alleged, she was going to the licensee’s home approximately once a month to get from him the prescriptions she needed. Finally, Patient A alleged that, in February 1999, she quit her job in an attempt to get away from the licensee and the easy access to prescriptions. She also alleged that she told the licensee why she was quitting her job. In response, Patient A alleged, the licensee stated that she knew where he was, if she needed anything (i.e., drugs).

10. When interviewed by the Board’s investigator, Duncan McCracken, Pharmacist Consultant with the Cabinet, alleged that the licensee was writing a lot of prescriptions for controlled substances for several of his family members. In addition, he stated that it appears that the licensee is running a family practice from the T. J. Samson Hospital, because there are several patients for whom he regularly prescribes controlled substances.

11. When interviewed by the Board’s investigator, Patient H asserted that, since 1996, she has taken pain medications for migraine headaches. She further asserted that the licensee initially wrote her prescriptions for Percocet and then for Lortab, which increased from .5 mg to 10mg up to 60 tablets per week. Patient H alleged that the licensee gave her the prescriptions in order to control her as she would have to come to Glasgow, Kentucky to get the prescriptions. Patient H asserted that she knew she
did not need the medication and attempted, unsuccessfully, to get off of them. She alleged that when she discussed with the licensee her desire to stop taking the medications, the licensee stated, “Honey, you seem so much happier when you take them” and “They really help you.” Finally, when interviewed, Patient H stated that she has been in treatment for her drug addiction. She further stated that she has been sober since February 17, 2000.

12. When interviewed by the Board’s investigator, the licensee stated, in response to Patient A’s allegations, that his recollection was that Patient A “came on strong to him” and “asked what she could do for him.” He further stated that Patient A came to his home late one night to talk. The licensee stated that he did not recall the date or time of this visit or what Patient A talked about. He did, however, remember getting a blanket. The licensee stated that he does not remember whether or not he had sex with Patient A because, at that time in his life, he was drinking a lot of alcohol. He further stated that, in 1998, he completely stopped drinking, with the help of a close friend who he identified as Patient V.

13. When interviewed by the Board’s investigator, Patient V stated that she has received medical treatment and prescriptions for controlled substances from the licensee, who is a “good friend” of hers. Patient V further stated that the licensee told her that he thought he had a problem with alcohol and that he made the decision to quit drinking after she returned to Glasgow, Kentucky in 1999.

14. During the Board’s investigation, the Board’s investigator obtained information and documents, including KASPER reports that contain information about controlled substances that the licensee has prescribed for nine (9) of his family members,
Patients B, C, D, E, F, G, H, I, and J. The investigator also obtained information and documents pertaining to the licensee's prescribing practices concerning Patients A, K, L, M, N, O, P, Q, R, S, T, U, V, and W, who are not members of the licensee's family. A review of the information contained in the documents reveals the following additional information:

a. Over the approximate 15-month period beginning in April of 1998 and ending in July of 1999, the licensee prescribed narcotics to Patient A on 37 separate occasions. Patient A's medical records indicate only four (4) visits to T. J. Samson Hospital when she was seen by the licensee during the same period. A total of 1,190 doses were prescribed from April 1998 to July 1999. All of the prescriptions were written for oxycodone (Percocet) or hydrocodone (Lortab).

b. Over the approximate 43-month period beginning in May of 1997 and ending in December of 2000, the licensee prescribed narcotics and other controlled substances to his relatives, Patients B-J, on 616 separate occasions. These prescriptions translated into more than 21,000 doses of narcotics and other controlled substances (i.e., an excessive amount of controlled substances prescriptions) during the same period;

c. The overwhelming majority of the prescriptions that the licensee inappropriately prescribed for Patients B-J were for OxyContin, oxycodone (Percocet) and hydrocodone (Lortab);

d. The licensee's prescribing of controlled substances to Patients A, B, and H indicate that the patients were abusing their medications and/or addicted to them and, in
light of the circumstances, the licensee knew or should have known abuse/addiction was occurring;

e. the licensee failed to adequately treat patients with their addiction problems and, in fact, perpetuated and/or initiated the problem of drug abuse in Patients A, B, and H;

f. the licensee has prescribed thousands of doses of narcotics and controlled substances for patients who were never seen or evaluated in the emergency department of T. J. Samson Hospital;

g. the licensee has failed to maintain medical charts/records documenting the need for the excessive amounts of narcotics and controlled substances that he prescribes for his patients; and

h. the licensee has failed to maintain properly his controlled substances log; the licensee's log does not accurately reflect his prescribing habits.

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 basis 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(5) and KRS 311.595(9), as illustrated by KRS 311.597(1), (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 medical practice.

6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61

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 medicine in the Commonwealth of Kentucky held by E. Gary Hogan, M.D., is SUSPENDED and Dr. Hogan is prohibited from practicing medicine in the Commonwealth of Kentucky 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 upon receipt by the licensee.

SO ORDERED this 17th day of May, 2001.

[Signature]
PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B
CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed to E. Gary Hogan, M.D., T. J. Samson Hospital, ER, Glasgow, Kentucky 42141 via certified mail return-receipt requested on this 17th day of May, 2001.

Y. DENISE PAYNE WADE
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046
COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 789

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY E. GARY HOGAN, M.D., LICENSE NO. 17916, T. J. SAMSON HOSPITAL, ER, GLASGOW, KENTUCKY 42141

COMPLAINT

Comes now the Complainant Preston P. Nunnolley, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on April 26, 2001, states for its Complaint against the licensee, E. Gary Hogan, M.D., as follows:

1. At all relevant times, E. Gary Hogan, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is Emergency Medicine.

3. On June 20, 2000, a grievance was filed with the Board by Patient "A", who alleged that the licensee gave her a prescription for 50 Percocet tablets that lasted approximately 2-3 weeks, after she remarked to him, in early Spring of 1998, that she had a headache.

4. In her grievance, Patient A alleged that the licensee continued to prescribe controlled substances to her, without "doing any kind of test," until she was "hooked on drugs to where [she] could not go without them." Patient A alleged that after she became "hooked on drugs," the licensee started asking her what he would get in return for the prescriptions he wrote for her. At this point, Patient A alleged, the license "took full advantage and he enjoyed knowing he had that power."
5. On May 31, 2000, the Board received a report, dated February 11, 2000, from the Cabinet for Health Services' Drug Control Branch (the "Cabinet"), containing allegations that the licensee has written "a substantial quantity of controlled substances for family member." The report also contains allegations that there are several other patients for whom Dr. Hogan has "routinely written prescriptions for controlled substances." The report included a KASPER report on sixteen (16) patients, Patients B, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V, for whom the licensee has allegedly routinely written prescriptions for controlled substances.

6. On August 31, 2000, the Board received information from the Kentucky Board of Pharmacy, containing allegations that: 1) the licensee has inappropriately prescribed OxyContin for Patient B; 2) the licensee has written prescriptions on T. J. Samson Hospital Rx Blanks for patients he has not seen in that hospital's ER; 3) the licensee has failed to maintain charts or medical records on several patients for whom he has prescribed controlled substances in large quantities with refills; 4) the licensee has prescribed, on T. J. Samson Hospital Rx Blanks, controlled substances for "patients" who have presented at the hospital from areas not in the hospital's vicinity.

7. On September 8, 2000, the Board received information from the Kentucky Board of Nursing's Investigation and Discipline Branch, reporting, among other things, Patient H's drug addiction and Patient H's allegation that she received prescriptions for controlled substances from the licensee.

8. Subsequently, the Board opened an investigation of the matters complained of. During its investigation, a Board investigator, among other things, interviewed
Patient A; Duncan McCracken, Pharmacist Consultant with the Cabinet; Patient H; the licensee; and Patient V.

9. When interviewed by the Board's investigator, Patient A further alleged that after the licensee prescribed the 50 Percocet tablets to her, he began making comments concerning her appearance and fragrance and he then became more intimate, making statements such as, "I could feel you and make you feel good" and "Why don't you come to work without underwear so I can imagine you?" In addition, Patient A alleged that she had sexual intercourse with the licensee in exchange for the prescriptions that he would, thereafter, give her. She also alleged that the inappropriate sexual encounters occurred at the hospital, while the licensee was on duty as the ER physician, and they also occurred at the licensee's home. Further, Patient A alleged that the licensee asked her what he would get in return for the prescriptions, after she had received a couple of prescriptions from him. After a couple of months, Patient A alleged, the prescriptions would only last a week. She further alleged that after they had intercourse for the first time (in the doctors' lounge bathroom where the licensee had spread a pink blanket on the floor and asked her to disrobe) the licensee pulled a completed prescription for 50 Percocet tablets from his shirt pocket and said to her, "See you next time." A few weeks later, Patient A alleged, she asked the licensee for another prescription and he requested that she come to his home. She alleged that upon her arrival at the licensee's home, she asked for the prescription and the licensee told her that they would "take care of that later." Thereafter, the licensee asked Patient A to disrobe while he watched. Patient A alleged that he then fondled her breast and genitalia and they had intercourse.
Afterwards, Patient A alleged, the licensee gave her a prescription for Percocet and cautioned her not to tell anyone. She also alleged that, a few weeks later, she again went to the licensee's home, at the licensee's request, where the same inappropriate conduct that occurred there on the prior visit was repeated. Patient A also alleged that the licensee would give her prescriptions 2-3 times in the ER, but would reduce the tablets or refuse to give her another prescription until she came to his home. Initially, Patient A alleged, she would make up a reason not to go, and the licensee would not give her a prescription. Patient A alleged that this lasted only 1-2 weeks, however, because she would not go very long without a prescription. Eventually, Patient A alleged, she was going to the licensee's home approximately once a month to get from him the prescriptions she needed. Finally, Patient A alleged that, in February 1999, she quit her job in an attempt to get away from the licensee and the easy access to prescriptions. She also alleged that she told the licensee why she was quitting her job. In response, Patient A alleged, the licensee stated that he knew where he was, if she needed anything (i.e., drugs).

10. When interviewed by the Board's investigator, Duncan McCracken, Pharmacist Consultant with the Cabinet, alleged that the licensee was writing a lot of prescriptions for controlled substances for several of his family members. In addition, he stated that it appears that the licensee is running a family practice from the T. J. Samson Hospital, because there are several patients for whom he regularly prescribes controlled substances.

11. When interviewed by the Board's investigator, Patient H asserted that, since 1996, she has taken pain medications for migraine headaches. She further asserted that the
licensee initially wrote her prescriptions for Percocet and then for Lortab, which increased from .5 mg to 10mg up to 60 tablets per week. Patient H alleged that the licensee gave her the prescriptions in order to control her as she would have to come to Glasgow, Kentucky to get the prescriptions. Patient H asserted that she knew she did not need the medication and attempted, unsuccessfully, to get off of them. She alleged that when she discussed with the licensee her desire to stop taking the medications, the licensee stated, “Honey, you seem so much happier when you take them” and “They really help you.” Finally, when interviewed, Patient H stated that she has been in treatment for her drug addiction. She further stated that she has been sober since February 17, 2000.

12. When interviewed by the Board’s investigator, the licensee stated, in response to Patient A’s allegations, that his recollection was that Patient A “came on strong to him” and “asked what she could do for him.” He further stated that Patient A came to his home late one night to talk. The licensee stated that he did not recall the date or time of this visit or what Patient A talked about. He did, however, remember getting a blanket. The licensee stated that he does not remember whether or not he had sex with Patient A because, at that time in his life, he was drinking a lot of alcohol. He further stated that, in 1998, he completely stopped drinking, with the help of a close friend who he identified as Patient V.

13. When interviewed by the Board’s investigator, Patient V stated that she has received medical treatment and prescriptions for controlled substances from the licensee, who is a “good friend” of hers. Patient V further stated that the licensee told her that he
thought he had a problem with alcohol and that he made the decision to quit drinking after she returned to Glasgow, Kentucky in 1999.

14. During the Board’s investigation, the Board’s investigator obtained information and documents, including KASPER reports that contain information about controlled substances that the licensee has prescribed for nine (9) of his family members, Patients B, C, D, E, F, G, H, I, and J. The investigator also obtained information and documents pertaining to the licensee’s prescribing practices concerning Patients A, K, L, M, N, O, P, Q, R, S, T, U, V, and W, who are not members of the licensee’s family. A review of the information contained in the documents reveals the following additional information:

a. Over the approximate 15-month period beginning in April of 1998 and ending in July of 1999, the licensee prescribed narcotics to Patient A on 37 separate occasions. Patient A’s medical records indicate only four (4) visits to T. J. Samson Hospital when she was seen by the licensee during the same period. A total of 1,190 doses were prescribed from April 1998 to July 1999. All of the prescriptions were written for oxycodone (Percocet) or hydrocodone (Lortab).

b. Over the approximate 43-month period beginning in May of 1997 and ending in December of 2000, the licensee prescribed narcotics and other controlled substances to his relatives, Patients B-J, on 616 separate occasions. These prescriptions translated into more than 21,000 doses of narcotics and other controlled substances (i.e., an excessive amount of controlled substances prescriptions) during the same period;
c. The overwhelming majority of the prescriptions that the licensee inappropriately prescribed for Patients B-J were for OxyContin, oxycodone (Percocet) and hydrocodone (Lortab);

d. the licensee's prescribing of controlled substances to Patients A, B, and H indicate that the patients were abusing their medications and/or addicted to them and, in light of the circumstances, the licensee knew or should have known abuse/addiction was occurring;

e. the licensee failed to adequately treat patients with their addiction problems and, in fact, perpetuated and/or initiated the problem of drug abuse in Patients A, B, and H;

f. the licensee has prescribed thousands of doses of narcotics and controlled substances for patients who were never seen or evaluated in the emergency department of T. J. Samson Hospital;

g. the licensee has failed to maintain medical charts/records documenting the need for the excessive amounts of narcotics and controlled substances that he prescribes for his patients; and

h. the licensee has failed to maintain properly his controlled substances log; the licensee's log does not accurately reflect his prescribing habits.

15. By his conduct, as discussed herein, the licensee has violated KRS 311.595(5) and KRS 311.595(9), as illustrated by KRS 311.597(1), (3), and (4). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.

16. 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.

17. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for
    October 2, 3 & 4, 2001, 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. 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 medicine held by E. Gary Hogan, M.D..

    This 17th day of May, 2001.

    [Signature]
    PRESTON P. NUNNELLEY, M.D.
    CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. C. William
Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington
Parkway, Suite 1B, Louisville, Kentucky 40222 and a copy was mailed, postage prepaid,
to Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; and a copy was mailed via certified mail to E. Gary Hogan, M.D., T. J. Samson Hospital, ER, Glasgow, Kentucky 42141 on this 17th day of May, 2001.

Y. DENISE PAYNE WADE
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