

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1403

JUN 12 2012

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DON V. BRYSON, M.D., LICENSE NO. 20818, 509  
10<sup>TH</sup> STREET, PAINTSVILLE, KENTUCKY 41240

**AGREED ORDER OF SURRENDER**

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

**STIPULATIONS OF FACT**

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

1. At all relevant times, Don V. Bryson, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Practice.
3. On May 7, 2003, the Board's Inquiry Panel B issued Complaint No. 891 against the licensee's Kentucky medical license, alleging that he engaged in inappropriate prescribing of controlled substances. On the same date, the Panel issued an Emergency Order of Restriction, prohibiting the licensee from prescribing or dispensing controlled substances pending resolution of the Complaint. The licensee completed the Prescribing Controlled Drugs: Critical Issues and Common Pitfalls course at Vanderbilt University Medical Center during March

26-28, 2003. On August 28, 2003, the parties resolved the Complaint by entering into an Agreed Order of Indefinite Restriction. Under the terms of that Agreed Order of Indefinite Restriction, the licensee continued to be restricted from prescribing or utilizing controlled substances until approved to do so by the Panel. In order to request such approval, the licensee had to successfully complete an approved documentation program. The licensee completed the Documentation Seminar offered by the Center for Personalized Education for Physicians (CPEP) on September 2, 2003. He also enrolled in the CPEP Documentation Post-program. In December 2003, the Panel denied the licensee's request to resume prescribing and dispensing of controlled substances. On June 3, 2004, the parties entered into an Agreed Order, following the licensee's completion of CPEP's Documentation Post-program. Under the terms of the Agreed Order, the licensee was permitted to prescribe and dispense controlled substances so long as his prescribing and dispensing was supervised by the Panel. Following a favorable consultant review, the Panel issued an Order Terminating Agreed Order in Case No. 891 on March 1, 2006.

4. On October 10, 2011, the Board received a grievance from the Office of Attorney General's Medicaid Fraud & Abuse Control Unit, reporting that the licensee appeared to violate the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky in his utilization of controlled substances.
5. The Board obtained 15 patient records from the licensee's practice for review by a Board consultant. The consultant concluded that the licensee's diagnosis, treatment and record-keeping were below minimum standards and his overall

opinion was that the licensee's practice was clearly below minimum standards.

The consultant further concluded, in part,

### **Diagnosis**

Patients often had musculoskeletal complaints documented that were either acute, chronic, or a mix in nature. There was limited diagnostic information in the chart to suggest that there was ongoing attention to medical reports of care beyond that involving musculoskeletal pain or anxiety. Some patients were noted to have antihypertensive medications in their regimen, but chronic medical issues such as hyperlipidemia, renal function, and diabetes were not apparently addressed within the sampling of patients which was reviewed.

There was no evidence of documentation that would represent a standard medical History & Physical. Some reviews were noted regarding physical function for insurance companies, but these addressed functional capacity and not elements common to a physical exam.

*Diagnosis is below minimal standards. Documentation was poor throughout charts and laboratory testing was rare within charts reviewed. Radiological reports were present and indicated some pathology, but questionable as to pathology that would necessitate regular controlled medications that would include: benzodiazapines, muscle relaxants, and hydrocodone.*

### **Treatment**

The diagnosis of most of the patients included musculoskeletal and anxiety related conditions. Charts related to back pain had MRI reports, but were not felt to be severe enough to warrant longstanding short acting narcotics. If patients were to need longstanding pain control, a long-acting agent would seem more appropriate.

Patients may receive change in their dosing and trial of different medications, but aggressive weaning was not felt to be a focus.

Of the charts reviewed, patients with borderline documentation and symptoms were provided narcotic medications on a regular basis.

Chart review seemed to indicate a practice focused on continued renewal of controlled medications with poor attention to vital sign documentation, physical finding documentation, and thorough assessment & planning focused on the patient as a whole.

*Treatment is below minimal standards. Care of the patient begins with care of the chart and the documentation that describes the diligence of care rendered by the physician. Charting demonstrates a disregard for descriptive elements necessary to provide care in a longitudinal fashion. Treatment appears to be focused on providing patients with refills for controlled medications with limited evidence of in depth medical work-ups.*

### **Charts**

The charts for patients under Dr. Bryson's care contained a paucity of information. Medication lists and problem lists were at the front of each chart and

progress notes were present for each date of service. Laboratory reports and imaging studies if present were in the last part of the chart. Progress notes contained date of visit and few if any vital signs. Seldom if ever was there a listing of medical systems such as:

HEENT

Cardiovascular

Respiratory

Gastrointestinal

Neurological

Musculoskeletal

Psychiatric

Other areas of a standard History and Physical were often not present. These would include Social History, Family History, Past Medical History, Past Surgical History, and Review of Systems. Documentation was scant at best and would not represent the standard for medical documentation that would allow for appropriate coding & billing and for proper communication to current and subsequent medical providers in the administration of continual medical care.

*Documentation of patient visits was clearly below minimum standards. Patients must have vital signs, multiple system assessments, focused physical exams, and indications for current use of controlled medications. The limited documentation within the charts of Dr. Bryson casts question as to the sincere delivery of medical care beyond that of continued prescribing of controlled substances.*

6. After reviewing the consultant's findings, the licensee responded, in part,

I have reviewed your consultant's report and understand the concerns. I realized that I could not record enough hand written notes to satisfy investigators and that I could not afford the financial costs of electronic records so I sold my practice and have retired from primary care effective 4/1/12. I have entered into a two year contract and will be doing independent evaluations which will not include nor require any prescribing of medications. I need my license in order to do this. I have no desire nor any plans to treat patients ever again. The first three recommendations by the consultant do not apply since I am retired. Number four will certainly be kept in compliance.

7. In a subsequent letter, the licensee stated, "Also, I have terminated my malpractice insurance since I have retired and purchased a tail-end policy to cover me from my retirement date of 4/1/12 through 4/1/13. This should show that I have no intention of ever doing private practice again."

### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's 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(1), (3) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Surrender.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending investigation without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Surrender.
4. For the purposes of KRS 311.607, this Agreed Order of Surrender is the legal equivalent of an order of revocation.

### AGREED ORDER OF SURRENDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending investigation without an evidentiary hearing, the parties hereby ENTER INTO the following

#### **AGREED ORDER OF SURRENDER:**

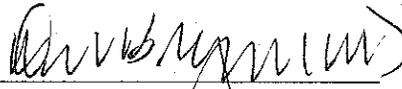
1. The licensee SHALL SURRENDER his license to practice medicine within the Commonwealth of Kentucky, in lieu of revocation, with that surrender to become effective immediately upon the date of filing of this Agreed Order of Surrender and continuing indefinitely.

2. During the effective period of this Agreed Order of Surrender, the licensee SHALL NOT perform any act within the Commonwealth of Kentucky which would constitute the “practice of medicine or osteopathy,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities,” unless and until approved to do so by the Panel, in response to a properly filed petition for reinstatement.
3. If the licensee should petition for reinstatement, the provisions of KRS 311.607(2) and (3) SHALL apply to the Panel’s consideration of the petition. The Panel will not consider a petition for reinstatement prior to two (2) years from the date of filing of this Agreed Order of Surrender. The burden shall be upon the licensee to satisfy the Panel that he is presently of good moral character and qualified both physically and mentally to resume the active practice of medicine without undue risk or danger to patients or the public. The licensee must also reimburse the costs of the investigation in the amount of \$2,550.00 at the time of filing of the petition for reinstatement. The licensee understands and agrees that the Panel may require him to complete an approved assessment(s) and/or an approved evaluation(s), at his expense, to assist the Panel in its evaluation of his petition for reinstatement. The discretion whether to grant the petition for reinstatement lies in the sole discretion of the Panel. If the Panel should grant the petition, it will do so by Order or Agreed Order with terms and conditions fixed by the Panel based upon the information available to the Panel at that time.

4. The licensee SHALL NOT violate any provisions of KRS 311.595 and/or 311.597.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Surrender, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Surrender, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree 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 Surrender.
6. The licensee understands and agrees that any violation of the terms of this Agreed Order of Surrender would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13) and may provide a legal basis for criminal prosecution for practicing medicine without a license.

SO AGREED on this 5<sup>th</sup> day of JUNE, 2012.

FOR THE LICENSEE:

  
DON V. BRYSON, M.D.

COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

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

  
C. LLOYD VEST II  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
(502) 429-7150