# KENTUCKY BOARD OF MEDICAL LICENSURE

**Matt Bevin**
Governor

Hurstbourne Office Park
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
Telephone (502) 429-7150
www.kbml.ky.gov

**Preston P. Nunnelley, M.D.**
President

June 8, 2016

FILED OF RECORD
JUN 08 2016
K.B.M.L.

David A. Dao, M.D.
License No. 22439
4657 Shepherdsville Road
Elizabethtown, KY 42701

RE: Approval to Progress to "Onsite Consultation" Phase

Dear Dr. Dao:

Having reviewed your Amended Agreed Order; a letter from your counsel, Clay B. Wortham, dated June 6, 2016; a letter from Mary Minobe of CPEP, dated June 1, 2016; a letter from William J. Godfrey, M.D., dated May 11, 2016; and records from the Secretary of State regarding Heartland Medical Clinic, I hereby approve your request to progress to the next phase of your Educational Intervention Plan, **Precepted Education**, during which you must

- Meet with your preceptor, Dr. Godfrey, twice monthly;
- Continue to review and address your learning goals with your preceptor, including hypothetical case discussion, medical literature reviews, and chart reviews/case-based discussions;
- Continue to submit patient charts to CPEP for review; and
- Integrate feedback from your preceptor and CPEP into your practice.

Sincerely,

C. William Briscoe MD

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

cc: Mary D. Minobe, CPEP
William J. Godfrey, M.D.
Clay B. Wortham, Esq.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 4657 SHEPHERDSVILLE ROAD, ELIZABETHTOWN, KENTUCKY 42701

# AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Hearing Panel A, and David A. Dao, M.D. ("the licensee"), and, based upon their mutual desire to allow the licensee to resume the practice of medicine, hereby ENTER INTO the following **AMENDED AGREED ORDER**:

## STIPULATIONS OF FACT

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

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On or about July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses after an undercover investigation.
4. In October 2003, the licensee was indicted by the Jefferson County Grand Jury for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances.
5. On or about October 16, 2003, the Board filed a Complaint and Emergency Order of Suspension against the licensee's Kentucky medical license.

6. In or around March 2004, the licensee was indicted in Nelson County, Kentucky with eight (8) felony counts of Obtaining Controlled Substances by Fraud and Deceit and eight (8) counts of Complicity to Obtain Controlled Substances by Fraud and Deceit. At or around the same time, the licensee was re-indicted in Jefferson County, Kentucky with twenty-one (21) felony counts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Prohibited Activities Relating to Controlled Substances.
7. On or about May 11, 2004, the Board issued an Amended Complaint and Amended Emergency Order of Suspension.
8. During the Board's investigation into the criminal charges against the licensee, the Board learned that the licensee had become sexually interested in a patient who had been referred to his practice, Patient A; during the initial evaluation, the licensee performed a complete physical examination, including a genital examination, for Patient A who had been referred for collapsed lungs and chest pain; shortly after his first appointment, the licensee made Patient A his office manager; according to Patient A, he quit that job because of inappropriate remarks made by the licensee; after he quit, the licensee pursued him aggressively, finally arranging to provide controlled substance prescriptions to him in exchange for sexual acts; this continued for some time, with Patient A and the licensee meeting at hotel rooms and some of these meetings were recorded; at some point, the licensee began splitting some of the prescriptions with Patient A and gave Patient A money to fill the prescriptions; the licensee also assisted Patient A to fill the controlled substances prescriptions in a variety of names of other persons; police were able to identify approximately 33 fraudulent prescriptions as part of their investigation; with Patient A's assistance, the police were able to put together a sufficient case to arrest the

licensee and bring charges against him in two counties; around the same time, the licensee was placed on a corrective action plan by Hardin Memorial Hospital due to disruptive conduct and referred to the Kentucky Physicians Health Foundation ("the Foundation") for evaluation and anger management; after his arrest, the licensee was tested by the hospital and tested positive for Ultram/Tramadol; and as a result of the drug test results and the criminal charges, the licensee's hospital privileges became suspended on September 13, 2003.

9. On or about November 9, 2004, after a jury trial in Jefferson County, the licensee was convicted on six (6) felony counts of Obtaining Drugs by Fraud and Deceit. The jury recommended a sentence of two (2) years and eight (8) months on each felony count.

10. On or about January 6, 2005, the licensee was sentenced in Jefferson Circuit Court to two (2) years and eight (8) months on each felony conviction. The Court granted the licensee's request for probation and placed the licensee on five (5) years supervised probation.

11. On or about February 17, 2005, the licensee surrendered his license to practice medicine in the Commonwealth of Kentucky by entering into an Agreed Order of Surrender.

12. At the time the licensee surrendered his Kentucky medical license, he was awaiting trial on the indictments in Nelson County. In April 2005, the Nelson County charges were dismissed, without prejudice, based in part upon the other felony convictions in Jefferson County.

13. In or around May 2007, the licensee completed a clinical skills assessment in the specialty of pulmonology at the Center for Personalized Education for Physicians ("CPEP"). The Assessment Summary included the following information:

## A. Medical Knowledge

During this Assessment, Dr. Dao demonstrated medical knowledge that was outdated and also contained gaps that would not likely be fully explained by his time away from practice. His areas of relative strength included occupational lung disease and pulmonary embolism.

Dr. Dao's knowledge of current pharmacology was deficient. He demonstrated some deficits that were surprising based on the common nature of the disorders; this was true in the areas of COPD, asthma, and the solitary pulmonary nodule. Other areas of identified need pertained to conditions that would likely be relatively infrequent, especially in a rural practice, such as pulmonary vasculitis or interstitial lung disease.

In the area of critical care, Dr. Dao showed that he lacked competence with acid-base disorders, ventilator management, ventilator-associated pneumonia, and current evaluation and treatment of shock. It will be important for Dr. Dao to address these particular areas prior to resuming practice in the inpatient setting.

Dr. Dao's performance in discussions pertaining to procedures was mixed. He did well in discussing techniques for bronchoscopy. While he was also able to do this regarding central venous catheter insertion, he was not able to easily discuss potential complications of this procedure. His discussion of Swan-Ganz catheter insertion was good, except for a minor point. Dr. Dao volunteered that transtrachael needle aspiration was a personal limitation.

## B. Clinical Reasoning

During the Assessment, Dr. Dao demonstrated clinical judgment and reasoning that were generally sound, though with some areas for improvement. In most hypothetical cases, he demonstrated the ability to gather information in a logical, organized, and complete fashion. While his knowledge deficits sometimes impacted his ability to navigate through the cases, his general approach was logical. At times his formulation of differential diagnoses lacked the structure that would assist him in formulating more thorough lists. Dr. Dao required a moderate amount of cueing from the consultant to consider certain diagnoses as well as treatments. In a few instances, Dr. Dao did not recommend plans that seemed adequately aggressive for the scenario, for example, the case of respiratory failure and acidosis; thus it was not clear if he properly perceived the acuity of illness.

Dr. Dao demonstrated awareness of some of his limitations, and indicated that he would refer to a colleague or referral center in those instances;

however, it was not clear if he understood the breadth of his limitations. In light of the fact that no charts were available for review and the duration of time away from practice, CPEP cannot comment about Dr. Dao's application of knowledge in practice.

...

**D. Documentation**

Dr. Dao performed acceptably on the SP documentation exercise, indicating that he understands the important components of an adequate note. His documentation was evaluated solely on the basis of notes written at CPEP, as charts from his former practice were not available. For this reason, no assessment of his ability to manage and organize a complete chart can be made.

...

**F. Summary**

Overall, Dr. Dao's knowledge was outdated and contained gaps. His clinical judgment and reasoning were generally sound, with some areas for improvement. Dr. Dao's communication skills were good with peers and SP's; although the SP's had difficulty understanding his accent. His documentation for the SP encounters was adequate. His cognitive function screen was within normal limits. It is not clear whether Dr. Dao has a health condition that could impact the practice of medicine.

At the licensee's direction, CPEP developed an Educational Intervention Plan.

14. In or around October 2007, the licensee completed the "Maintaining Proper Boundaries" program at the Vanderbilt University Medical Center.

15. In or around November 2007, the Panel considered a request by the licensee to reinstate his license and voted to defer action until the licensee completed any evaluation(s) recommended by the Kentucky Physicians Health Foundation ("the Foundation"). In addition, the Panel asked the licensee to outline his employment history since 2003 and to provide a detailed work plan. The Panel voted that practice location approval would be a condition required if the licensee were ever permitted to resume practice.

16. In or around March 2009, the Foundation referred the licensee to Keystone Center for a psychological assessment, where he received Axis I diagnoses of R/O PTSD and R/O MDD and it was noted

> Dr. Dao's *objective* assessment indicated that he was resistant to being forthright and honest about his sexual relationship with B.C. and indicated an overall pattern of guardedness. This is understandable considering his desire to keep secret the exact nature of his relationship with B.C. During and after the polygraph exam, Dr. Dao disclosed the sexual nature of his relationship with B.C. and appeared over whelmed with emotion. He acknowledged that he possibly disclosed at this time because he could no longer carry the secret due to the emotional and physical toll it placed upon him. Projective testing suggests that Dr. Dao has difficulty processing his feelings and tends toward not being emotionally vulnerable. He can also be interpersonally naïve. Physically, Dr. Dao is poorly managing his diabetes and is in need of increased self care and medical management.
>
> Several inconsistencies were noted in the records provided. They have been noted throughout the report. For example, according to the Order of Surrender, there was significant evidence that Dr. Dao was engaged in a sexual relationship with B.C. including video surveillance of Dr. Dao with B.C. with his "shirt off and pants undone." Additionally, Dr. Dao denied drug use as part of the allegations. Yet, his testing indicated otherwise on September 7, 2003. He was positive for Ultram. Finally, even while at Keystone, Dr. Dao denied paying for sex. Yet he indicated that he deducted monies owed to him by B.C. for sexual favors. Dr. Dao denied trading drugs for sex while admitting to prescribing narcotics for B.C. while they engaged in a sexual relationship. Dr. Dao continues to maintain a pattern of deception that is inconsistent with the level of accountability necessary for a practicing physician.
>
> Upon completion of the assessment process, Dr. Dao was encouraged to take time to address his traumatic experiences in childhood and as an adult coming to America in 1995. He was encouraged to address his denial and the assault to his integrity related to the events with B.C. It is the opinion of the assessment team that Dr. Dao is not safe to practice medicine at this time. This opinion is offered within reasonable certainty and based upon available information.

17. Two years later, the licensee returned to the same evaluator, but at Pine Grove Behavioral Health, where he received an Axis I diagnosis of Mood Disorder NOS and the evaluator reached the following conclusions and recommendations:

...

Mary Gannon, MD noted that Dr. Dao "lacked the foundation to navigate difficult situations, both interpersonally and in a complex profession". Dr. Gannon noted a need to control, avoidance, withholding information and magical thinking as problematic. She also opined re-instatement of Dr. Dao's medical license as the primary motivation for therapy. I believe that fundamentally this remains unchanged and despite Dr. Dao's verbalization that he wants to obtain his license, his investment in therapy was less than enthusiastic and other factors may be the source of his motivation. His choice to travel to Vietnam instead of continuing to address therapeutic issues is concerning. During this evaluation Dr. Dao stated that regaining his medical license was a matter of "family honor."

Despite this statement, his investment appears less than robust. After Dr. Dao stopped treatment with Dr. Gannon in February of 2010, there appeared to be little investment with his new therapist. Dr. Dao said that he did not participate in therapy while in Vietnam and has only seen Dr. Kaveh Zamanian once since his return to the US and that appears to be in effort to obtain a letter in support of license re-instatement.

Dr. Montgomery noted that Dr. Dao appeared to have difficulties with information processing. Neuropsychological screening did not suggest gross difficulties. However, in reviewing records, it was noted that Dr. Dao tends to have poor decision-making despite his overall level of ability. His choices have resulted in significant consequences over the years yet he continues to function in this manner. He is generally not forthright regarding details of events unless challenged and at times he will tell different versions of a story to different interviewers. For example, he initially stated that he volunteered in a hospital Vietnam. Yet, by the end of the week he stated that he worked there. According to the records (8-8-11), he informed Dr. Brady that he practiced medicine in Vietnam and was paid $1000 per month. Additionally, notes dated 5/12/09 reference inconsistencies between Dr. Gannon, Dr. Brady and myself regarding Dr. Dao's control of his diabetes and his ability to return to work. Although one might hypothesize that language may play a role in his ability to receive and integrate information, current testing and history do not support language as a major contributor, especially, in light of his previous success in the United States.

...

In my opinion, Dr. Brady's notes are telling of some of the difficulties Dr. Dao has had interpersonally. As far back as April, 2002, Dr. Brady notes "...he would unilaterally chose to do his own thing". This remains a concern to this day and without a high degree of structure and accountability he is at risk for further boundary related practice issues.

**RECOMMENDATIONS**

...

1. Given that Dr. Dao has not progressed in outpatient therapy to the level expected to practice medicine safely and with the necessary integrity the profession demands, it is our recommendation that he attend a residential program to address his character deficits. Options include, The Professional Enhancement Program at Pine Grove, Sante' Center for Healing, or the Professional Renewal Center.

2. Dr. Dao will need to complete a polygraph without evidence of deception prior to re-instatement of his license.

3. Dr. Dao will need to complete a professional boundaries course if has not done so in the past three years.

4. Random urine and polygraph examinations are recommended.

5. A highly structured practice plan with a restricted DEA license is necessary if/when he is able to return to medical practice.

18. From November 2011 through January 5, 2012, the licensee participated in the recommended Professional Enhancement Program ("PEP") at Pine Grove, where he received additional Axis I diagnoses of Occupational Problem (Professional Sexual Misconduct, boundary violations) and Complex PTSD. The Discharge Summary included the following Brief Summary of Overall Progress:

> Dr. Dao was admitted to the Professional Enhancement Program (PEP) on 11/07/2011. Dr. Dao's treatment focused on his vocational sexual misconduct, personality traits, depression and anxiety, trauma, and relational issues with his spouse and family. While at PEP, Dr. Dao received feedback about his lack of awareness around his personality and relational issues and his difficulty taking responsibility for his boundary violations. He struggled with interpersonal relationships, particularly with recognizing how his personality traits inhibited his ability to function and be genuine in relationships with his peers and wife. During his time here he did gain an understanding of his role in unhealthy relationships and was able to take more responsibility for his actions. He also gained and practiced valuable new coping and relational skills. Overall, Dr. Dao gained an awareness of his maladaptive behaviors while in treatment and would benefit from continued work to maintain his progress, to continue to process his vocational sexual misconduct, and to further address his personality traits. Dr. Dao agreed to follow through with discharge plans to seek employment outside of the medical field where he can practice health boundaries and continue to process treatment issues with an outpatient therapist. It was recommended that he return to PEP in....

19. The licensee returned to PEP on June 4 and was discharged on June 15, 2012. The Discharge Summary included the following Return to Work Recommendations:

> Pending the approval of the Kentucky Board of Medical Examiners and the Kentucky Physicians Health Foundation Dr. Dao may return to the practice of medicine with appropriate continuous monitoring. Pending approval of the Kentucky Board of Medical Examiners to return to practice, it is recommended that Dr. Dao sign a contract with the Kentucky Physicians Health Foundation for after-care monitoring and follow all recommendations and guidelines of this contract. Return to the Professional Enhancement Program (PEP) in one year (June 2013) for a 5-day reevaluation to assess for further workplace recommendations. It will be his responsibility to call PEP in order to set this up at least 2 weeks prior to entrance. Prior to acceptance of any position Dr. Dao should discuss employment options with his therapist. Once employment in medicine is obtained, it is recommended that Dr. Dao participate in PEP care monitoring. It is Dr. Dao's responsibility to contact PEP in order to begin this process. Participate in polygraph testing to be completed in one year at PEP upon his return for reevaluation.

20. In or around October 2012, the Panel considered the above information and voted to defer action until the licensee successfully completed an updated CPEP Clinical Skills Assessment and obtained an Education Plan, if recommended.

21. In or around February 2012, the licensee participated in an updated CPEP Clinical Skills Assessment in the specialty of pulmonology from which CPEP found in part

> During this Assessment, Dr. Dao demonstrated medical knowledge that was marginally acceptable with gaps in some areas important to practice. His knowledge appeared stronger in topics pertinent to the outpatient setting. His clinical judgment and reasoning were lacking overall. Dr. Dao's communication skills were adequate, with room for improvement, with Simulated Patients (SPs); his communication skills with peers was professional. His documentation for the SP encounters was marginally adequate with the need for improvement.
>
> The educational needs identified in this Assessment are listed in *Section III. Assessment Findings.*
>
> Review of a history and physical exam conducted in January 2013 did not reveal any conditions that should affect Dr. Dao's medical practice. Dr. Dao also submitted a discharge summary from Professional Enhancement

> Program (PEP) pertaining to a June 2012 admission. Some of the diagnoses identified have the potential to impact medical practice and/or were related to previous licensure discipline (boundary violations). His cognitive function screen results were below expectations. ....

22. In or around May 2013, the licensee completed a neuropsychological evaluation, which found no Axis I diagnoses. In the Summary and Discussion, the evaluator concluded, in part,

> The results of the neuropsychological evaluation revealed that, at the time of the testing, Dr. Dao emotionally was free of debilitating anxiety, depression, or psychological turmoil to the extent that it would affect his ability to function in activities of daily living or manage the practice of medicine.
>
> Neuropsychologically, the man is functioning in the Average Range with High Average skills in perceptual reasoning and working memory. His Average performances in processing speed and verbal comprehension still were within anticipated parameters especially for someone who was born and raised in a foreign country with English as a second language.
>
> ...
>
> Again, diagnostically the results of this evaluation give no evidence of cortical or subcortical dysfunction or cognitive impairment that would impede this gentleman's ability to return to the practice of medicine.
>
> It is recommended that as he returns to the practice of medicine that he follows the recommendations offered in his last visit to the Professional Enhancement Program in 2012.

23. In or around July 2013, CPEP developed an updated Educational Intervention Plan for the licensee in the specialty of pulmonology, which anticipated that the licensee would have 100% direct supervision.

24. In or around August 2013, the Panel considered the above information and voted to defer action on the licensee's petition for reinstatement until he presented an appropriate practice plan.

25. On or about March 14, 2014, the licensee submitted for the Panel's consideration a plan to practice internal medicine in Elizabethtown, Kentucky, with Dr. William Godfrey.

However, because the licensee had presented himself as a pulmonologist and submitted to clinical skills assessments only in the specialty of pulmonology in 2007 and 2013, CPEP could not comment or approve of his plan to practice internal medicine.

26. In or around April 2014, the Panel chose to defer action on the licensee's request to reinstate his medical license until he returned to CPEP and completed an assessment in Internal Medicine and obtained an education plan, if recommended.

27. In or around August 2014, the licensee returned to CPEP and completed an assessment in outpatient internal medicine. CPEP noted that the licensee had not practiced medicine in the United States since 2005 and that he had not practiced in a primary care or internal medicine setting outside of residency training. Although the licensee had participated in two different internal medicine review CMEs in the prior 36 months, he still demonstrated significant deficiencies which may be difficult to remediate. Overall, CPEP found that the licensee "demonstrated a very limited fund of knowledge in outpatient and inpatient internal medicine with broad-based and significant deficiencies in the majority of areas covered." It was noted that he demonstrated "significant and broad deficiencies in areas common to primary care," his knowledge of health maintenance was "globally inadequate," and he demonstrated unacceptable knowledge of basic physical examinations and medications. The licensee demonstrated inadequate clinical judgment and reasoning, his thought processes were slow and disorganized. In one case he omitted a pulmonary condition from a differential diagnosis – this was noted to be especially concerning because the licensee is a pulmonologist.

28. In or around November 2014, CPEP developed an Educational Intervention Plan for the licensee in the practice of outpatient internal medicine. The Educational Intervention

Plan requires that the licensee have 100% direct supervision from his Preceptor, Dr. William Godfrey, during all outpatient internal medicine patient encounters for an indeterminate period of time. CPEP does not recommend that the licensee be allowed to practice in a higher acuity inpatient setting without first completing a residency program, given his demonstrated deficiencies in managing emergent scenarios and in treatment planning.

29. On or about April 16, 2015, the Panel agreed to allow the licensee to resume the practice of medicine pursuant to the terms and conditions set forth in an Agreed Order.

30. In December 2015, CPEP issued Progress Report I in regard to the licensee's education plan and stated

> Dr. Dao demonstrated compliance with and dedication to his Plan during this reporting period. To progress with his Plan, this report is being provided to the KBML for their consideration in determine if Dr. Dao may proceed to End of Day Review, which is the next step in the Point of Care Experience. ...

Dr. Dao's preceptor, Dr. Godfrey, has submitted a written report detailing his 100% supervision of Dr. Dao one day each week for a period of 3-4 months and stating that he believes that Dr. Dao is ready to proceed to the next phase of his education plan, requiring end of day review.

31. The licensee's Agreed Order required, in part, that "upon completion of each phase of the Educational Intervention Plan, the licensee SHALL obtain the Panel's written approval prior to proceeding with subsequent portions of the Educational Intervention Plan."

32. On February 18, 2016, the licensee appeared before the Panel and acknowledged that he had violated the Agreed Order because he and his preceptor, Dr. Godfrey, had proceeded to the next phase of his Educational Intervention Plan without the Panel's approval.

## STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky 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), (8), (9) – as illustrated by KRS 311.597(1) – (13) and (21). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may allow the licensee to resume the practice of medicine pursuant to this Amended Agreed Order.

## AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to allow the licensee to resume the practice of medicine, the parties hereby ENTER INTO the following **AMENDED AGREED ORDER:**

1. The license to practice medicine in the Commonwealth of Kentucky held by David A. Dao, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Amended Agreed Order;
2. During the effective period of this Amended Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS until further order of the Panel:
    a. The licensee's practice of medicine is EXPRESSLY RESTRICTED/LIMITED to the practice of **internal medicine in an outpatient office-based environment,** and he SHALL NEITHER practice in an inpatient setting (including but not

limited to nursing homes) NOR provide any treatment for conditions outside of the specialty of internal medicine, unless and until approved to do so by the Panel;

b. The licensee SHALL NOT perform any act which would constitute the "practice of medicine," as that term is defined in KRS 311.550(10), *unless and until* the Panel or its Chair has approved, in writing, the specific practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety and may require additional conditions and/or restrictions as a condition of it granting approval for a new practice location. The parties agree that the Panel or its Chair must approve any change in practice location for the licensee in writing and prior to the licensee commencing the practice of medicine at any location(s);

    i. The licensee is hereby approved to and SHALL ONLY practice internal medicine one (1) day each week at the office-based outpatient practice of William J. Godfrey, M.D., 914 West Dixie Avenue, Elizabethtown, Kentucky 42701;

c. The licensee SHALL comply with and shall successfully complete all requirements of his CPEP Educational Intervention Plan, at his expense and as directed by CPEP, a copy of which is attached;

d. The licensee SHALL TAKE ALL NECESSARY STEPS, including the execution of waivers and/or releases, to ensure that CPEP provides timely written reports to the Panel outlining his compliance with the Educational Intervention Plan. The licensee SHALL further ensure that CPEP shall notify the Board immediately if the licensee should fail to comply with the Educational Intervention Plan or practices medicine in a manner that creates a danger or risk of danger to the health or safety of patients or the public;

e. Upon completion of each phase of the Educational Intervention Plan, the licensee SHALL obtain the Panel or Panel Chair's written approval prior to proceeding with subsequent portions of the Educational Intervention Plan. The licensee SHALL ensure that the Panel or Panel Chair is provided with all written evaluation reports by CPEP and a written (or in person) report from William J. Godfrey, M.D., in order to make a fully informed decision at each interval;

f. If deemed necessary and appropriate by CPEP, the licensee SHALL SUCCESSFULLY COMPLETE the Post-Education Assessment, at his expense and as directed by CPEP; and

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

3. The licensee expressly agrees that if he should violate any term or condition of this Amended Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Amended Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Amended Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Amended Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Amended Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 26 day of February 2016.

FOR THE LICENSEE:

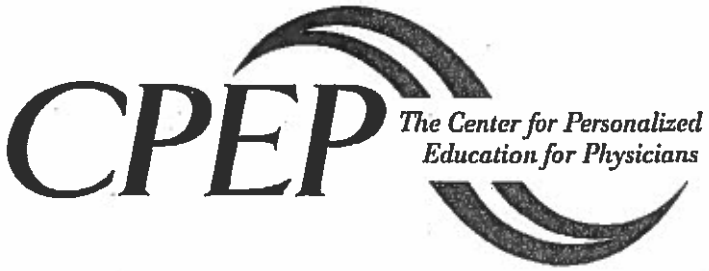
DAVID A. DAO, M.D.

CLAY B. WORTHAM
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

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




# EDUCATIONAL INTERVENTION PROGRAM

# EDUCATION PLAN

## Developed November 2014

## for

## David A. Dao, M.D.

NATIONALLY RECOGNIZED ▪ PROVEN LEADER ▪ TRUSTED RESOURCE

720 S. Colorado Boulevard, Suite 1100-N
Denver, Colorado 80246
Phone: 303-577-3232
Fax: 303-577-3241
www.cpepdoc.org

# EDUCATION PLAN

## OVERVIEW



## APPENDICES

## I. INTRODUCTION

Dr. Dao has not practiced in the United States since 2005. His previous practice experience was in pulmonology. Dr. Dao has not practiced in a primary care or internal medicine setting outside of residency training. Due to the difficulties in identifying a preceptorship in pulmonology, Dr. Dao presented to CPEP for a clinical skills Addendum in internal medicine in August 2014, which identified areas of educational need. The development of this Education Plan (Plan) was based on those needs. The Plan was also based on data gathered by CPEP and information obtained from Dr. Dao. The purpose of this Plan is to provide a framework in which Dr. Dao can address his educational needs in outpatient internal medicine.

For a complete history of Dr. Dao's CPEP activities, see his August 2014 Assessment Report (release date November 7, 2014).

**Important to Note:**
During his Assessment, Dr. Dao demonstrated a significant number of educational needs related to outpatient internal medicine. It is CPEP's opinion that an attempt at supervised remedial education in the area of outpatient internal medicine may be appropriate for Dr. Dao. However, based on the information that Dr. Dao provided to CPEP, it appeared that he participated in two different internal medicine review Continuing Medical Education (CME) activities in the past 36 months and still had numerous knowledge deficiencies recognized during the Addendum, which suggests that he may have difficulty remediating.

Educational programs developed by CPEP cannot provide the same rigor or level of supervision as a residency program, and CPEP cannot guarantee that Dr. Dao will be able to access the educational resources needed for him to successfully address his educational needs outside of a residency setting. Areas such as Dr. Dao's clinical judgment and reasoning can be challenging to remediate and may require time to ensure success. In light of the extent of the deficiencies identified, any remediation would require interest by the Board, extensive resources, and full commitment by Dr. Dao. CPEP recognizes that decisions about licensing or privileging are made at the local level and based on many factors other than the Assessment.

A glossary of Educational Intervention terms is enclosed.

### FOCUS OF PLAN

Outpatient Internal Medicine: This Plan addresses Dr. Dao's practice of outpatient internal medicine. If areas of educational need other than those addressed in this Plan are identified while Dr. Dao is participating in the Plan, CPEP will notify the referring organization and Dr. Dao and determine if the educational needs can be addressed within the context of this Plan.

Inpatient Internal Medicine: Based on Dr. Dao's performance during the Addendum, in particular his deficiencies in managing emergent hypothetical scenarios and in treatment planning, Dr. Dao did not demonstrate ability to safely practice in a higher-acuity inpatient setting.

## LIMITATIONS

CPEP cannot guarantee that a Preceptor and/or an appropriate setting can be identified to address this Plan.

- A CPEP Associate Medical Director spoke with Dr. William Godfrey on May 20, 2014, regarding serving as Dr. Dao's educational Preceptor should Dr. Dao participate in CPEP Assessment activities pertaining to the practice of outpatient internal medicine and areas in need of improvement are identified. The AMD concluded that Dr. Godfrey would be an acceptable Preceptor candidate and emphasized that, given the past collegial relationship between Dr. Dao and Dr. Godfrey, it is important to understand that as the Preceptor, Dr. Godfrey would be in the role of an educator and evaluator.

## HEALTH CONSIDERATIONS

Review of public Kentucky Board of Medical Licensure (Board) documents indicate that Dr. Dao may have a health condition that could interfere with his ability to return to medical practice. Dr. Dao provided CPEP with a copy of a history and physical dated July 2014, but it did not include information about the present status of the health condition known to the Board. Dr. Dao also provided CPEP with a copy of a neuropsychological examination conducted May 2013, which did not reveal any cognitive concerns.

- If he has not already done so, Dr. Dao should undergo an evaluation by a state physician health program to be sure that any health condition(s) that might affect his ability to return to active clinical practice are well controlled.

CPEP does not monitor participants' health issues. CPEP will contact Dr. Dao and/or the referring organization if concerns arise indicating that health issues may be impacting Dr. Dao's ability to complete the Plan activities.

## LICENSING

Because CPEP Education plans are practice-based, physician-participants must have a medical license in order to complete a Plan. Some activities, such as self-study, may be completed without a medical license. *It is the participant's responsibility* to ensure that he practices within the parameters of his licensure status.

## DESIGN

The individual Learning Goals described below in *Section II* were derived from the findings of the Assessment. This Plan was designed to address those Learning Goals through Medical Knowledge Enhancement and Patient Care Enhancement educational activities described in *Section III* as Modules A and B. Evaluation of Dr. Dao's progress and oversight of his participation will be provided by the CPEP Associate Medical Director. The Plan is designed around continuous and timely participation so that maximum educational benefit is received and ongoing progress is made. Following is more detailed information about the Modules and the Associate Medical Director oversight.

*Note:* The requirements of this Plan are not intended to supersede or exclude any requirements specific to his employer, credentialing, or licensure regulations. However, some activities may be applicable to both the Plan and such requirements.

### A. Medical Knowledge Enhancement (Module A)

The Medical Knowledge Enhancement Learning Goals are addressed independently by the participant as well as through discussions with the Preceptor. The activities are designed to improve the participant's medical knowledge specific to the Learning Goals. Other improvements are generally realized as a result of the activities. A Preceptor is not needed to begin the activities described in Module A. CPEP encourages Dr. Dao to begin the activities as soon as he has initiated the Plan. The recommended activities include:

- Independent/unsupervised self-study;
- Evidence-based research;
- Continuing medical education activities and/or courses.

### B. Patient Care Enhancement (Module B)

Dr. Dao will work with a Preceptor who has a practice similar to his. He will participate in Point of Care (PoC) activities as described below. Subsequently, Dr. Dao will participate in a longitudinal learning experience that is reliant on regularly scheduled Preceptor Meetings. The PoC Experience will be completed prior to Dr. Dao seeing patients independently/unsupervised as described in *Module B*. During these experiences Dr. Dao will:

- Address his more immediate educational needs by initially seeing patients with direct supervision. He will then progress through decreasing levels of supervision and ultimately see patients independently/unsupervised;
- Retrospectively review charts with the Preceptor of patients for whom Dr. Dao provided independent/unsupervised care;
- Receive one-on-one coaching and constructive feedback with regard to medical knowledge, clinical judgment and documentation, particularly with regard to those areas identified in the Plan Learning Goals (see *Section II*);
- Discuss and reinforce new information and skills gained for full integration into daily patient care;
- Appreciate the value of lifelong learning, peer relationships, and self-assessment to the quality of patient care.

### C. Oversight

The Associate Medical Director oversight includes Preceptor training, consideration of the feedback provided by the Preceptor and review of educational materials submitted by Dr. Dao (see *Section V*). The Associate Medical Director will regularly communicate with and provide ongoing feedback and coaching to Dr. Dao and the Preceptor with regard to Dr. Dao's progress.

## II. LEARNING GOALS

### A. Medical Knowledge

Although Dr. Dao will be practicing in an outpatient setting, it will be appropriate for him to participate in self-study to address the Medical Knowledge educational needs pertaining to inpatient care so that he is adequately knowledgeable about these topics and when to refer a patient for treatment of such conditions.

To improve evidenced-based medical knowledge including, but not limited to, the following areas:

1. Comprehensive and intensive review of internal medicine;*
2. Cardiology:**
   a. Comprehensive review of ECG interpretation including but not limited to, common rhythm abnormalities such as atrial fibrillation, conduction system disorders, Q waves, ST segments, and T waves;*
   b. Office and emergency room treatment of acute coronary syndrome, including dosing and administration of aspirin and use of morphine;
   c. Nitroglycerin: indications for sublingual versus intravenous use; [Ph]
   d. Management recommendations in patients with known coronary artery disease;
   e. Medication management of congestive heart failure, including systolic and diastolic heart failure;
   f. Atrial fibrillation: management recommendations and selection of anti-coagulation, including newer medications such as Xarelto; [Ph]
   g. Warfarin management, including international normalized ratio goals; [Ph]
   h. Antihypertensive medications, including but not limited to:
      1) Beta blockers: options, side effects, contraindications; [Ph]
      2) Angiotensin-converting enzyme inhibitors: options, indications, contraindications, side effects; [Ph]
   i. Causes and evaluation of secondary hypertension;
   j. Diagnosis of hypertensive urgency versus hypertensive emergency;
   k. Evaluation (including assessment of renal function) and treatment of hypertensive emergency in the inpatient setting, including medication options and recommendations regarding rate for lowering the blood pressure;
3. Pulmonary:
   a. Treatment of pulmonary embolus, including but not limited to, indications for thrombolytic medications;
   b. Low-molecular-weight heparin: indications and use; [Ph]
   c. Causes of respiratory distress in a hospitalized patient admitted with diagnosis of pneumonia;
4. Infectious disease:
   a. Sepsis: pathophysiology, early goal-directed therapy guidelines, use of Vancomycin;
   b. Management of cellulitis in the inpatient setting;
   c. Diagnosis of chlamydia;
   d. Diagnosis of urinary tract infection, urinalysis interpretation;

e. Healthcare-associated pneumonia: diagnosis and treatment;

5. Endocrinology:
   a. Diabetes mellitus:
      1) Current recommendations regarding blood sugar, lipids, and blood pressure control;
      2) Medications available, including but not limited to, DPP-4 inhibitors, GLP1 receptor agonists;
   b. Dosing of thyroid replacement in elderly patients when initiating treatment of hypothyroidism and timing for checking the thyroid-stimulating hormone level after dose adjustments;
   c. Treatment of osteoporosis, medication options: mechanism of action, side effects;[Ph]
6. Gastroenterology:
   a. Indications for endoscopy;
   b. Causes and evaluation of chronic diarrhea;
   c. Diagnosis of pancreatitis;
   d. Cirrhosis: screening recommendations for hepatocellular carcinoma;
7. Nephrology:**
   a. Common medications that affect renal function; [Ph]
   b. Classification of renal insufficiency with glomerular filtration rate, and recommendations by class;
   c. Evaluation of renal insufficiency;
8. Hematology:**
   a. Evaluation of iron-deficiency anemia;
   b. Evaluation and treatment of macrocytic anemia;
   c. Treatment of idiopathic thrombocytopenic purpura;
9. Musculoskeletal disorders:
   a. Back pain:
      1) Causes;
      2) Physical examination;
      3) Management options other than nonsteroidal anti-inflammatory drugs;
   b. Knee complaints:
      1) Causes;
      2) Physical examination of knee, including common provocative testing;
      3) Indications for imaging;
10. Health maintenance, including but not limited to:**
   a. Screening for substance abuse (tobacco, alcohol, illicit substances) in both females and males;
   b. Breast cancer screening recommendations, including indications for BRCA testing: initiation, frequency, cessation;
   c. Screening recommendations for chlamydia in females;
   d. Colon cancer screening recommendations: initiation, frequency, cessation;
   e. Prostate cancer screening controversy;
   f. Osteoporosis screening recommendations: initiation, frequency;
   g. Lack of indications for routine cardiac stress testing;
   h. Adult immunizations:

1) Gardasil: indications;
2) Pneumovax: indications;
3) Influenza vaccine: indications;
4) Zostavax: indications;

11. Mental health:**
    a. Diagnosis of depression;
    b. Medication options for treatment of depression: indications, mechanism of action, side effects; [Ph]
    c. Diagnosis of anxiety;
    d. Medication options for treatment of anxiety: indications, mechanism of action, side effects; [Ph]
    e. Medications to treat insomnia; [Ph]
12. Women's health:
    a. Causes and evaluation of breast mass;
    b. Causes and evaluation of vaginal discharge;
    c. Management of menopausal symptoms.

[Ph]These needs are relevant to pharmacology but are grouped under disease categories for simplicity.
*Topic summary not required.
**Subtopics may be combined into one summary; two references required.
*(See III.C below for description of topic summaries.)*

## B. Clinical Judgment

To *consistently* demonstrate appropriate clinical judgment in the areas that include, but are not limited to, the following:

1. Ability to gather information in an organized and complete fashion;
2. Demonstration of consistently logical thought processes;
3. Structured formulation of differential diagnoses;
4. Consistent ability to correctly assess acuity of illness;
5. Adequate ability to respond to emergent situations;
6. Satisfactory patient care, including ability to develop treatment plans from beginning to end;
7. Appropriate use of consultants;
8. Justification for testing.

## C. Documentation

***The following are based on the recommendations generated from the simulated patient documentation exercise conducted in Dr. Dao's 2013 Assessment:***

The participant will learn principles of documentation that are based on recommendations and requirements of nationally recognized organizations such as the Joint Commission and Centers for Medicare and Medicaid Services (CMS) and recommendations of national specialty societies and will *consistently* demonstrate appropriate patient care documentation that includes, but is not limited to, the following:

1. Coaching from a Preceptor or experienced colleague;
2. Consideration of attending a medical recordkeeping course that includes a follow-up component, depending on progress with coaching.

*Guideline*
Adequate documentation requires inclusion of sufficient detail in visit notes such that the notes "stand alone" and determination of the level of care provided does not require verbal input from the documenting physician to be fully understood. Ultimately, adequate documentation includes chart organization and systems tools that allow another physician to easily assume care of a patient.

### D. Practice-based Learning

1. Expanded variety of medical resources.

### E. Physician-Patient Communication Skills

***The following are based on the recommendations generated from the simulated patient communication exercise conducted in Dr. Dao's 2013 Assessment:***

To *consistently* demonstrate appropriate communication skills in the areas that include, but are not limited to, the following:

1. Consideration of accent modification training if his patients and colleagues are largely English speaking;
2. Incorporation of a routine of assessing patient comprehension rather than presuming that the patient understands what is being said.

## III. PERFORMANCE OBJECTIVES

Performance Objectives are specific educational activities that provide focused learning experiences designed to assist the participant with achievement of the Learning Goals (*Section II*). The participant will integrate newly learned information into his daily practice and demonstrate long-term improved patient care during Module B Activities.

### MODULE A
### MEDICAL KNOWLEDGE ENHANCEMENT

Module A activities do not require approval of a Preceptor to initiate. Dr. Dao will:

- Document all activities, including ongoing case-based activities, continuing medical education activities (CME) and self-study on an Education Log provided by CPEP;
- Participate in self-study activities during participation in the Plan that demonstrate lifelong learning skills;
- Submit certificates of completion for any courses, if applicable.

## Timelines

.The timelines below are recommended to maximize participation in the Plan.

- Independent/unsupervised activities, such as self-study, should be initiated immediately once the Plan has been signed.
- Topic/subtopic summaries should be completed by the sixth month of Plan activities.
- Courses and/or CME activities should be completed no later than the fourth month of participation.

*Guideline*

The list of Medical Knowledge topics is extensive; therefore, it will be essential that Dr. Dao develop a strategy that ensures he submits all topic/subtopic summaries within six months of initiating the Plan so that he has ample time to demonstrate his application of new knowledge to his actual patient care during the Precepted Education component.

## Associate Medical Director Approval of Resources

Dr. Dao may identify resources other than those mentioned below; however, the Associate Medical Director must approve those resources in order for the activities to be applicable to the Plan. If Dr. Dao identifies a course(s) other than those recommended below, he must submit a brochure at least 60 days prior to the course date if the course is date specific. He should receive approval of resources prior to incorporating those resources into his Plan activities.

## A. Courses

Dr. Dao will:

1. Within the first four months of participation in the Plan, complete a comprehensive internal medicine review course, which should include a component pertinent to pharmacology, such as the Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians. Information can be found at http://www.acponline.org;
   a. If Dr. Dao previously completed the MKSAP, he will research and discuss other review courses with the Associate Medical Director;
2. The Associate Medical Director will monitor Dr. Dao's documentation skills to determine if he would benefit from participating in a documentation course. If such a recommendation is made more information would be provided to Dr. Dao at that time.

It will be important for Dr. Dao to attend a comprehensive review early in his participation in the Plan rather than later so that he has time to integrate newly learned skills and sufficiently demonstrate his maintenance improvements in charts reviewed.

## B. Electrocardiogram Interpretation Activities

***Important to note:***

- Dr. Dao should not be responsible for ECG interpretation (without over-reading) prior to demonstrating competence to his Preceptor.

Dr. Dao will:

1. Read the textbook and practice guide Rapid Interpretation of EKGs by Dubin or Clinical Electrocardiography: A Simplified Approach by Ary L. Goldberger, and review with the Preceptor;
2. Review at least 25 to 30 ECGs using resources such as:
   a. "Alan E. Lindsay ECG Learning Center" on the University of Utah School of Medicine website located at http://ecg.utah.edu/introduction
   b. http://www.ecg-interpretation.blogspot.com/
3. Document independent/unsupervised ECG reading and review as well as ECGs reviewed with the Preceptor on Education Logs.

## C. Evidence-Based Self-Study

The purpose of this module is to demonstrate self-directed learning and to create educational resources for reference. Dr. Dao will:

1. Submit a brief paragraph, case based discussion, outline, or algorithm to summarize the major points learned;
   a. In preparing the submission, Dr. Dao will use *at least two resources for each of the topics and subtopics* listed in the Medical Knowledge Enhancement Learning Goals (except for those indicated with asterisks). The submission should explain the applicability of knowledge to his practice, including how he will utilize the learned information in his practice. If the information is not applicable to his practice, he should explain his rationale;
      1) Appropriate resources are current, peer-reviewed, evidence-based medical references. Notes from a pertinent conference may be utilized with prior Associate Medical Director approval;
2. Identify and become familiar with the resources for current guidelines relevant to the Medical Knowledge Learning Goals;
   a. Document and submit appropriate clinical guideline resources on an Education Log;
3. Subscribe to *The Medical Letter* or *Prescriber's Letter* for current pharmacology review;
4. Procedures for Primary Care, by John L. Pfenninger, M.D., FAAFP, Michael Tuggy, M.D., Grant C. Fowler, M.D., and Jorge Garcia, M.D.;
5. Participate in self-study relevant to his practice for the duration of the Plan.

## D. Case-Based Activities

Dr. Dao will:

1. Participate in case-based self-study activities such as those offered online by the Cleveland Clinic Center for Continuing Education: http://www.clevelandclinicmeded.com/

## E. Practice-based Learning

Dr. Dao will:

1. Review current peer-reviewed, evidence-based medical literature pertinent to internal medicine throughout the duration of the Plan;
2. Utilize appropriate Internet web sites and other medical resources.

### F. Computer-Based Medical Information Resources

Dr. Dao will:

1. If he does not already do so, utilize electronic resources at the point of care, such as a handheld device and/or computer with access to the Internet. Software or web sites should assist with immediate access to up-to-date medical information relevant to medication prescribing and drug interactions, and patient care decisions, including formulating an adequate differential diagnosis, interpreting test results and evaluating treatment options.

### G. Communication

Dr. Dao will:

1. Receive Preceptor coaching and feedback as a result of the patient encounters observed by the Preceptor;
2. Incorporate a routine of assessing patient comprehension rather than presume that the patient understands what is being said;
3. Consider accent modification training;
4. Participate in more structured communication educational experience if, based on Preceptor feedback, the Associate Medical Director determines that Dr. Dao would benefit from such an experience. More information would be provided if such a recommendation is made.

## MODULE B
## PATIENT CARE ENHANCEMENT

During the activities described in this Module the Preceptor will provide feedback to Dr. Dao with regard to improvements in all areas of the Learning Goals. The Preceptor will coach Dr. Dao to integrate improved knowledge, decision-making and documentation into daily patient care. All meetings and activities will be documented on an Education Log provided by CPEP.

### Timeline

- See *Section IV* for complete time frames for the Preceptor approval process and initiation of the Point of Care Experience and Preceptor Meetings.
- Once initiated, Preceptor Meetings and chart reviews will continue for the duration of the Plan.

### A. Point of Care Experience – Outpatient Setting

During this experience Dr. Dao will:

1. Shadow:
   a. Shadow his Preceptor for approximately one day in the outpatient setting;
   b. Discuss each case including diagnosis, management options and expected outcomes;
   c. Document the cases specifying condition/diagnosis on the PoC Case Log provided by CPEP

2. Supervision:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, manage patients with 100% direct supervision at the PoC by the Preceptor:
      1) Direct supervision is defined as side-by-side observation of the patient encounter by the Preceptor;
   b. Discuss each case including management options and expected outcomes;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP;
3. Concurrent Case Review:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, review each case with the Preceptor prior to releasing the patient to determine if the exam and evaluation have been adequate and if the plan is appropriate;
   b. Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor when the note is completed or when the dictations are available, and receive feedback on management and documentation of the patient visit;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP;
4. End of Day Review:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, review each case with the Preceptor at the end of each day to determine if the exam and evaluation have been adequate and if the plan is appropriate;
   b. Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor when the note is completed or when the dictations are available, and receive feedback on management and documentation of the patient visit;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP
5. Onsite Consultation:
   a. Manage patients with immediate onsite physician consultation available if needed for approximately one month;*
      1) The onsite physician may be someone other than the Preceptor, but should be someone who understands the expectation of their role and who has been approved by the Associate Medical Director;
   b. Implement weekly PoC meetings. During these meetings:
      1) Retrospectively review each case and outcome with the Preceptor;**
      2) Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor and receive feedback on management and documentation of the patient visit;
   c. After seeing patients for three weeks, submit six charts to the Associate Medical Director for review to evaluate Dr. Dao's readiness to progress to the Precepted Education Experience addressing outpatient care;

d. Document every case specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP and submit the Case Log along with the charts mentioned immediately above;

6. Conclusion:
   a. At the completion of the above activities, the participant will:
      1) Ensure that the Preceptor speaks with the Associate Medical Director and submits a written report documenting Dr. Dao's readiness to proceed to independent/ unsupervised patient care in the outpatient setting;
      2) Receive notification from the Associate Medical Director that the PoC Experience has been completed.

*One month is an estimated timeframe and may be lengthened if it is determined that Dr. Dao would receive educational benefit from extending the experience.

**If Dr. Dao's patient volume is too large to allow review of each case, he and the Preceptor should review no fewer than six cases per weekly meeting that are relevant to his Plan Learning Goals as much as possible.

## B. PRECEPTED EDUCATION

It will be important that the Preceptor Meetings and activities are thorough and that the Preceptor provides objective feedback sufficient to support Dr. Dao's improvement with regard to the specific Plan Learning Goals. All meetings and activities will be documented on an Education Log provided by CPEP.

*Guideline*

Having knowledge is distinct from applying knowledge. It is essential that, when reviewing charts, the Preceptor determine whether or not the participant *applied* his knowledge to actual patient care.

### PRECEPTOR MEETINGS

After completion of the PoC Experience, Dr. Dao will:

1. Meet with the Preceptor twice monthly for the duration of the Plan. To provide a quality learning experience, CPEP recommends that each meeting be a minimum of two hours;
2. With the Preceptor and in conjunction with the activities described below in *Preceptor Meeting Activities*, utilize the following to address the Learning Goals:
   a. Chart review and case-based discussions;
   b. Hypothetical case discussions;
   c. Topic discussions;
   d. Current medical literature reviews;
   e. Utilization of appropriate Internet web sites and other medical resources.

*Guideline*

Although impromptu collegial discussions may occur outside of Preceptor Meetings, such discussions are separate from the Preceptor Meeting requirement.

## PRECEPTOR MEETING ACTIVITIES

### Chart Review Objectives

Charts are the primary method of evaluating the participant's application of knowledge and clinical judgment and reasoning. Therefore, charts submitted to the Preceptor and the Associate Medical Director as described below should demonstrate the participant's integration of feedback and information learned as a result of completing Module A activities. Submitted charts should reflect consistent improvements in overall patient care.

Charts reviewed during Preceptor Meetings will be those of patients for whom Dr. Dao provided independent/unsupervised care. Charts as described below should address the Plan Learning Goals as much as possible.

During the Precepted Education, Dr. Dao will:

1. Retrospective Chart Reviews:
   a. Submit to the Preceptor for review no fewer than 24 redacted* charts per month (12 charts per twice-monthly sessions);
      1) The Preceptor may also specify cases to be reviewed;
      2) Redacted* copies of charts should be submitted to the Preceptor in time for the Preceptor to review them before the meetings;
   b. Submit to CPEP by the fifth of *every other* month (month to be determined), six of the 24 redacted* charts used in the Preceptor Meetings;
      1) The Associate Medical Director may also specify charts to be submitted;
   c. Cases should be specifically relevant to the Plan as well as representative of the scope of Dr. Dao's practice as much as possible.
2. Didactic Discussions and Coaching:
   a. Clinical Judgment:
      1) With the Preceptor, discuss the Clinical Judgment Learning Goals and application of knowledge to patient care;
      2) Develop and discuss with the Preceptor systems (protocols, algorithms, and/or chart templates) or other strategies for organizing the clinical evaluation to ensure that the Clinical Judgment Learning Goals are addressed and that improvements are integrated into his daily patient care;
      3) To assist with completing the above objective, review and discuss with the Preceptor the University of California San Diego (UCSD) web site, *A Practical Guide to Clinical Medicine*, at http://meded.ucsd.edu/clinicalmed/thinking.htm.
   b. Documentation:
      1) Receive coaching from the Preceptor that addresses general documentation principles as well as the specific areas of need described in Learning Goal C, *Documentation*, including strategies and/or use of chart templates for improved documentation;
   c. Medical Knowledge:
      1) Discuss with the Preceptor each topic and subtopic identified in Module A, including applicable and current evidence-based guidelines as available. Dr. Dao should also discuss his topic/subtopic summaries with the Preceptor;

d. Communication:
   1) Receive coaching and review reference materials described in the Plan related to communication skills;

3. Lifelong Learning:
   a. Develop lifelong learning skills:
      1) Discuss and develop a plan with the Preceptor for maintaining current standards in internal medicine after conclusion of the Educational Intervention. Discuss the plan with the Associate Medical Director and demonstrate ongoing learning throughout the duration of the Plan. The plan should:
         a) Incorporate computer-based resources;
         b) Integrate evidence-based medicine resources;
         c) Promote lifelong learning;
         d) Include activities that address clinical decision-making, such as case studies and grand rounds.
   b. CPEP encourages Dr. Dao to:
      1) Review and reflect on the status of his learning and improvements on an ongoing basis;
      2) Keep a learning journal on his reflections, including which activities were beneficial, or not beneficial, and why.

* *Refer to Appendix B, Privacy of Individually Identifiable Health Information*

*Guidelines*

- During the Preceptor Meetings, the Preceptor should provide coaching and recommendations to the participant to ensure that improvements in all Learning Goals identified in the Plan are collectively and consistently applied to Dr. Dao's actual patient care.
- The participant's progress will be determined based on the achievement of the Learning Goals and in consideration with generally accepted standards of care. The constraints of a physician's practice circumstances, such as the availability of local medical resources, are taken into consideration when reviewing a physician's actual practices.

## IV. INITIATING THE PLAN

### A. Determining the Start Date and Beginning Educational Activities

1. Dr. Dao will sign and return the Plan to CPEP within two weeks of receiving notification of licensure. He will then:
   a. Initiate the Plan the first day of the month following CPEP's receipt of the signed Plan;
   b. Receive an Education Notebook from CPEP with directions, Education Logs, resources, and other information to complete the educational activities;
   c. Initiate and document self-study activities and course participation;

d. *After reviewing* the Preceptor qualifications described in the *Preceptor Job Description* (attached) identify a Preceptor candidate if Dr. Dao has not already done so;
   1) The Preceptor must be board certified in the same specialty and have a practice similar to Dr. Dao's;

2. Provide a copy of the Plan, the attached *Preceptor Job Description* and Confidentiality Statement, and a copy of the Assessment Report to the proposed Preceptor so that the approval process, as described below, can progress accordingly.

### B. Preceptor Approval

Dr. William Godfrey was approved to serve as Dr. Dao's Preceptor on May 20, 2014, in anticipation of the possibility that Dr. Dao would be granted licensure to participate in a CPEP Education Plan pertaining to the practice of outpatient internal medicine.

*Guideline*

For the participant's educational benefit, the Preceptor must meet the qualifications as described in the *Preceptor Job Description*. Additionally, CPEP must approve the Preceptor in order for any precepted activities to be applicable to the Plan.

## V. PARTICIPATION AND MONITORING

Consistent participation in educational activities, including regular and timely submission of materials and participation in scheduled CPEP conference calls, enhances the educational experience. Such participation may also impact the duration of the Plan. Because the Associate Medical Director must be able to evaluate the participant's ongoing progress and provide timely and pertinent feedback, Dr. Dao will:

1. Maintain Education and PoC Case Logs:
   a. Education Logs should document all educational activities including Preceptor Meetings and the content of the Meetings, and those activities that are outside of the scope of the Plan but relevant to his practice;
   b. PoC Case Logs should document PoC activities as previously described in Module B;
2. Submit materials:
   a. By the fifth of every month, submit:
      1) Education Logs;
      2) Preceptor Report forms completed by the Preceptor;
      3) Other materials relevant to the Plan or as requested by the Associate Medical Director;
   b. By the fifth of every month and until the following has been completed, submit:
      1) Case Logs for the PoC activities;
      2) Topic/subtopic summaries;
      3) CME certificates and/or other documentation of completed activities specified in the Plan (if applicable);

3. Submit Charts:
   a. Either monthly or every other month, as directed by CPEP, submit charts,** as described in Module B. Charts must be complete and if possible, include one year of patient care. More information will be provided when the Plan is initiated;
   b. At the request of the Associate Medical Director, submit randomly selected charts for review from Dr. Dao appointment schedule;
4. Communication:
   a. Participate in calls with CPEP as requested;
   b. Respond to emails or letters from CPEP in a timely fashion;
5. Be responsible for his and his Preceptor's participation in the Plan activities and his educational progress;
6. Demonstrate maintenance of improvements for all Learning Goals prior to conclusion of the Patient Care Enhancement activities.

**See *Module B, Retrospective Chart Review* to determine if charts should be submitted monthly or every other month

## FORMATIVE EVALUATION
Evaluation of Educational Progress

Ongoing progress is measured using formative evaluation tools such as regular chart reviews, review of topic/subtopic summaries, participant and Preceptor discussions with the Associate Medical Director, and written Preceptor Reports.

Approximately every four months, Progress Reports will be generated and provided to Dr. Dao and to other entities for which Dr. Dao has provided authorization. The Progress Reports will capture Dr. Dao's progress as demonstrated during Formative Evaluations conducted during that reporting period.

## SUMMATIVE EVALUATION
Post-Education Evaluation

Following the completion of the Plan activities, Dr. Dao will participate in a Post-Education Evaluation (Evaluation) to demonstrate that he achieved the Learning Goals and successfully completed the Educational Intervention. The Evaluation will be focused on the areas identified as Learning Goals in the Plan and will consider Dr. Dao's scope of practice. (See Section 5.1(e) of the CPEP *Educational Intervention Participation Agreement* for more information.)

- Dr. Dao will schedule the Evaluation no sooner than two months, and no later than four months, following notification from CPEP that he has completed the Plan activities.

## VI. ESTIMATED DURATION

### Plan Learning Goals and Performance Objectives

Most participants complete an Education Plan in approximately 12-18 months. The actual duration varies depending on many factors including the scope of educational needs identified.

### CONDITIONS

- Modifying an approach to overall patient care, specifically application of knowledge, clinical judgment and documentation may be challenging. Additionally, certain aspects of the Plan cannot be predicted, such as spectrum of patients and cases presented, as well as the participant's dedication to the educational activities. Therefore, the duration of the Plan can only be estimated.
- CPEP reserves the right to change the content and/or duration of the Education Plan.
- CPEP is not responsible for ensuring that the participant obtains any required privileges or credentials while participating in the Education Plan; this is the responsibility of the participant.
- Once the participant has completed the Education Plan and/or has been authorized to complete the Post-Education Evaluation, CPEP is no longer reviewing charts or providing educational services to the participant.
- If Dr. Dao does not engage in this Plan by January 21, 2016, CPEP may require completion of additional Assessment activities to ensure that Dr. Dao's current educational needs are addressed.

### SIGNATURES

David A. Dao, M.D. — Date 12/5/2015

Patricia Kelly, M.D.
Associate Medical Director — Date

*Return the signed original Education Plan to CPEP. Keep copies of the Plan for your reference and to forward to Preceptor candidates.*

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 4657 SHEPHERDSVILLE ROAD, ELIZABETHTOWN, KENTUCKY 42701

# AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Hearing Panel A, and David A. Dao, M.D. ("the licensee"), and, based upon their mutual desire to allow the licensee to resume the practice of medicine, hereby ENTER INTO the following **AGREED ORDER**:

## STIPULATIONS OF FACT

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

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On or about July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses after an undercover investigation.
4. In October 2003, the licensee was indicted by the Jefferson County Grand Jury for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances.
5. On or about October 16, 2003, the Board filed a Complaint and Emergency Order of Suspension against the licensee's Kentucky medical license.

6. In or around March 2004, the licensee was indicted in Nelson County, Kentucky with eight (8) felony counts of Obtaining Controlled Substances by Fraud and Deceit and eight (8) counts of Complicity to Obtain Controlled Substances by Fraud and Deceit. At or around the same time, the licensee was re-indicted in Jefferson County, Kentucky with twenty-one (21) felony counts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Prohibited Activities Relating to Controlled Substances.

7. On or about May 11, 2004, the Board issued an Amended Complaint and Amended Emergency Order of Suspension.

8. During the Board's investigation into the criminal charges against the licensee, the Board learned that the licensee had become sexually interested in a patient who had been referred to his practice, Patient A; during the initial evaluation, the licensee performed a complete physical examination, including a genital examination, for Patient A who had been referred for collapsed lungs and chest pain; shortly after his first appointment, the licensee made Patient A his office manager; according to Patient A, he quit that job because of inappropriate remarks made by the licensee; after he quit, the licensee pursued him aggressively, finally arranging to provide controlled substance prescriptions to him in exchange for sexual acts; this continued for some time, with Patient A and the licensee meeting at hotel rooms and some of these meetings were recorded; at some point, the licensee began splitting some of the prescriptions with Patient A and gave Patient A money to fill the prescriptions; the licensee also assisted Patient A to fill the controlled substances prescriptions in a variety of names of other persons; police were able to identify approximately 33 fraudulent prescriptions as part of their investigation; with Patient A's assistance, the police were able to put together a sufficient case to arrest the

licensee and bring charges against him in two counties; around the same time, the licensee was placed on a corrective action plan by Hardin Memorial Hospital due to disruptive conduct and referred to the Kentucky Physicians Health Foundation ("the Foundation") for evaluation and anger management; after his arrest, the licensee was tested by the hospital and tested positive for Ultram/Tramadol; and as a result of the drug test results and the criminal charges, the licensee's hospital privileges became suspended on September 13, 2003.

9. On or about November 9, 2004, after a jury trial in Jefferson County, the licensee was convicted on six (6) felony counts of Obtaining Drugs by Fraud and Deceit. The jury recommended a sentence of two (2) years and eight (8) months on each felony count.

10. On or about January 6, 2005, the licensee was sentenced in Jefferson Circuit Court to two (2) years and eight (8) months on each felony conviction. The Court granted the licensee's request for probation and placed the licensee on five (5) years supervised probation.

11. On or about February 17, 2005, the licensee surrendered his license to practice medicine in the Commonwealth of Kentucky by entering into an Agreed Order of Surrender.

12. At the time the licensee surrendered his Kentucky medical license, he was awaiting trial on the indictments in Nelson County. In April 2005, the Nelson County charges were dismissed, without prejudice, based in part upon the other felony convictions in Jefferson County.

13. In or around May 2007, the licensee completed a clinical skills assessment in the specialty of pulmonology at the Center for Personalized Education for Physicians ("CPEP"). The Assessment Summary included the following information:

## A. Medical Knowledge

During this Assessment, Dr. Dao demonstrated medical knowledge that was outdated and also contained gaps that would not likely be fully explained by his time away from practice. His areas of relative strength included occupational lung disease and pulmonary embolism.

Dr. Dao's knowledge of current pharmacology was deficient. He demonstrated some deficits that were surprising based on the common nature of the disorders; this was true in the areas of COPD, asthma, and the solitary pulmonary nodule. Other areas of identified need pertained to conditions that would likely be relatively infrequent, especially in a rural practice, such as pulmonary vasculitis or interstitial lung disease.

In the area of critical care, Dr. Dao showed that he lacked competence with acid-base disorders, ventilator management, ventilator-associated pneumonia, and current evaluation and treatment of shock. It will be important for Dr. Dao to address these particular areas prior to resuming practice in the inpatient setting.

Dr. Dao's performance in discussions pertaining to procedures was mixed. He did well in discussing techniques for bronchoscopy. While he was also able to do this regarding central venous catheter insertion, he was not able to easily discuss potential complications of this procedure. His discussion of Swan-Ganz catheter insertion was good, except for a minor point. Dr. Dao volunteered that transtrachael needle aspiration was a personal limitation.

## B. Clinical Reasoning

During the Assessment, Dr. Dao demonstrated clinical judgment and reasoning that were generally sound, though with some areas for improvement. In most hypothetical cases, he demonstrated the ability to gather information in a logical, organized, and complete fashion. While his knowledge deficits sometimes impacted his ability to navigate through the cases, his general approach was logical. At times his formulation of differential diagnoses lacked the structure that would assist him in formulating more thorough lists. Dr. Dao required a moderate amount of cueing from the consultant to consider certain diagnoses as well as treatments. In a few instances, Dr. Dao did not recommend plans that seemed adequately aggressive for the scenario, for example, the case of respiratory failure and acidosis; thus it was not clear if he properly perceived the acuity of illness.

Dr. Dao demonstrated awareness of some of his limitations, and indicated that he would refer to a colleague or referral center in those instances;

however, it was not clear if he understood the breadth of his limitations. In light of the fact that no charts were available for review and the duration of time away from practice, CPEP cannot comment about Dr. Dao's application of knowledge in practice.

...

**D. Documentation**

Dr. Dao performed acceptably on the SP documentation exercise, indicating that he understands the important components of an adequate note. His documentation was evaluated solely on the basis of notes written at CPEP, as charts from his former practice were not available. For this reason, no assessment of his ability to manage and organize a complete chart can be made.

...

**F. Summary**

Overall, Dr. Dao's knowledge was outdated and contained gaps. His clinical judgment and reasoning were generally sound, with some areas for improvement. Dr. Dao's communication skills were good with peers and SP's; although the SP's had difficulty understanding his accent. His documentation for the SP encounters was adequate. His cognitive function screen was within normal limits. It is not clear whether Dr. Dao has a health condition that could impact the practice of medicine.

At the licensee's direction, CPEP developed an Educational Intervention Plan.

14. In or around October 2007, the licensee completed the "Maintaining Proper Boundaries" program at the Vanderbilt University Medical Center.

15. In or around November 2007, the Panel considered a request by the licensee to reinstate his license and voted to defer action until the licensee completed any evaluation(s) recommended by the Kentucky Physicians Health Foundation ("the Foundation"). In addition, the Panel asked the licensee to outline his employment history since 2003 and to provide a detailed work plan. The Panel voted that practice location approval would be a condition required if the licensee were ever permitted to resume practice.

16. In or around March 2009, the Foundation referred the licensee to Keystone Center for a psychological assessment, where he received Axis I diagnoses of R/O PTSD and R/O MDD and it was noted

> Dr. Dao's *objective* assessment indicated that he was resistant to being forthright and honest about his sexual relationship with B.C. and indicated an overall pattern of guardedness. This is understandable considering his desire to keep secret the exact nature of his relationship with B.C. During and after the polygraph exam, Dr. Dao disclosed the sexual nature of his relationship with B.C. and appeared over whelmed with emotion. He acknowledged that he possibly disclosed at this time because he could no longer carry the secret due to the emotional and physical toll it placed upon him. Projective testing suggests that Dr. Dao has difficulty processing his feelings and tends toward not being emotionally vulnerable. He can also be interpersonally naïve. Physically, Dr. Dao is poorly managing his diabetes and is in need of increased self care and medical management.
>
> Several inconsistencies were noted in the records provided. They have been noted throughout the report. For example, according to the Order of Surrender, there was significant evidence that Dr. Dao was engaged in a sexual relationship with B.C. including video surveillance of Dr. Dao with B.C. with his "shirt off and pants undone." Additionally, Dr. Dao denied drug use as part of the allegations. Yet, his testing indicated otherwise on September 7, 2003. He was positive for Ultram. Finally, even while at Keystone, Dr. Dao denied paying for sex. Yet he indicated that he deducted monies owed to him by B.C. for sexual favors. Dr. Dao denied trading drugs for sex while admitting to prescribing narcotics for B.C. while they engaged in a sexual relationship. Dr. Dao continues to maintain a pattern of deception that is inconsistent with the level of accountability necessary for a practicing physician.
>
> Upon completion of the assessment process, Dr. Dao was encouraged to take time to address his traumatic experiences in childhood and as an adult coming to America in 1995. He was encouraged to address his denial and the assault to his integrity related to the events with B.C. It is the opinion of the assessment team that Dr. Dao is not safe to practice medicine at this time. This opinion is offered within reasonable certainty and based upon available information.

17. Two years later, the licensee returned to the same evaluator, but at Pine Grove Behavioral Health, where he received an Axis I diagnosis of Mood Disorder NOS and the evaluator reached the following conclusions and recommendations:

...

Mary Gannon, MD noted that Dr. Dao "lacked the foundation to navigate difficult situations, both interpersonally and in a complex profession". Dr. Gannon noted a need to control, avoidance, withholding information and magical thinking as problematic. She also opined re-instatement of Dr. Dao's medical license as the primary motivation for therapy. I believe that fundamentally this remains unchanged and despite Dr. Dao's verbalization that he wants to obtain his license, his investment in therapy was less than enthusiastic and other factors may be the source of his motivation. His choice to travel to Vietnam instead of continuing to address therapeutic issues is concerning. During this evaluation Dr. Dao stated that regaining his medical license was a matter of "family honor."

Despite this statement, his investment appears less than robust. After Dr. Dao stopped treatment with Dr. Gannon in February of 2010, there appeared to be little investment with his new therapist. Dr. Dao said that he did not participate in therapy while in Vietnam and has only seen Dr. Kaveh Zamanian once since his return to the US and that appears to be in effort to obtain a letter in support of license re-instatement.

Dr. Montgomery noted that Dr. Dao appeared to have difficulties with information processing. Neuropsychological screening did not suggest gross difficulties. However, in reviewing records, it was noted that Dr. Dao tends to have poor decision-making despite his overall level of ability. His choices have resulted in significant consequences over the years yet he continues to function in this manner. He is generally not forthright regarding details of events unless challenged and at times he will tell different versions of a story to different interviewers. For example, he initially stated that he volunteered in a hospital Vietnam. Yet, by the end of the week he stated that he worked there. According to the records (8-8-11), he informed Dr. Brady that he practiced medicine in Vietnam and was paid $1000 per month. Additionally, notes dated 5/12/09 reference inconsistencies between Dr. Gannon, Dr. Brady and myself regarding Dr. Dao's control of his diabetes and his ability to return to work. Although one might hypothesize that language may play a role in his ability to receive and integrate information, current testing and history do not support language as a major contributor, especially, in light of his previous success in the United States.

...

In my opinion, Dr. Brady's notes are telling of some of the difficulties Dr. Dao has had interpersonally. As far back as April, 2002, Dr. Brady notes "...he would unilaterally chose to do his own thing". This remains a concern to this day and without a high degree of structure and accountability he is at risk for further boundary related practice issues.

**RECOMMENDATIONS**

...

1. Given that Dr. Dao has not progressed in outpatient therapy to the level expected to practice medicine safely and with the necessary integrity the profession demands, it is our recommendation that he attend a residential program to address his character deficits. Options include, The Professional Enhancement Program at Pine Grove, Sante' Center for Healing, or the Professional Renewal Center.
2. Dr. Dao will need to complete a polygraph without evidence of deception prior to re-instatement of his license.
3. Dr. Dao will need to complete a professional boundaries course if has not done so in the past three years.
4. Random urine and polygraph examinations are recommended.
5. A highly structured practice plan with a restricted DEA license is necessary if/when he is able to return to medical practice.

18. From November 2011 through January 5, 2012, the licensee participated in the recommended Professional Enhancement Program ("PEP") at Pine Grove, where he received additional Axis I diagnoses of Occupational Problem (Professional Sexual Misconduct, boundary violations) and Complex PTSD. The Discharge Summary included the following Brief Summary of Overall Progress:

> Dr. Dao was admitted to the Professional Enhancement Program (PEP) on 11/07/2011. Dr. Dao's treatment focused on his vocational sexual misconduct, personality traits, depression and anxiety, trauma, and relational issues with his spouse and family. While at PEP, Dr. Dao received feedback about his lack of awareness around his personality and relational issues and his difficulty taking responsibility for his boundary violations. He struggled with interpersonal relationships, particularly with recognizing how his personality traits inhibited his ability to function and be genuine in relationships with his peers and wife. During his time here he did gain an understanding of his role in unhealthy relationships and was able to take more responsibility for his actions. He also gained and practiced valuable new coping and relational skills. Overall, Dr. Dao gained an awareness of his maladaptive behaviors while in treatment and would benefit from continued work to maintain his progress, to continue to process his vocational sexual misconduct, and to further address his personality traits. Dr. Dao agreed to follow through with discharge plans to seek employment outside of the medical field where he can practice health boundaries and continue to process treatment issues with an outpatient therapist. It was recommended that he return to PEP in....

19. The licensee returned to PEP on June 4 and was discharged on June 15, 2012. The Discharge Summary included the following Return to Work Recommendations:

> Pending the approval of the Kentucky Board of Medical Examiners and the Kentucky Physicians Health Foundation Dr. Dao may return to the practice of medicine with appropriate continuous monitoring. Pending approval of the Kentucky Board of Medical Examiners to return to practice, it is recommended that Dr. Dao sign a contract with the Kentucky Physicians Health Foundation for after-care monitoring and follow all recommendations and guidelines of this contract. Return to the Professional Enhancement Program (PEP) in one year (June 2013) for a 5-day reevaluation to assess for further workplace recommendations. It will be his responsibility to call PEP in order to set this up at least 2 weeks prior to entrance. Prior to acceptance of any position Dr. Dao should discuss employment options with his therapist. Once employment in medicine is obtained, it is recommended that Dr. Dao participate in PEP care monitoring. It is Dr. Dao's responsibility to contact PEP in order to begin this process. Participate in polygraph testing to be completed in one year at PEP upon his return for reevaluation.

20. In or around October 2012, the Panel considered the above information and voted to defer action until the licensee successfully completed an updated CPEP Clinical Skills Assessment and obtained an Education Plan, if recommended.

21. In or around February 2012, the licensee participated in an updated CPEP Clinical Skills Assessment in the specialty of pulmonology from which CPEP found in part

> During this Assessment, Dr. Dao demonstrated medical knowledge that was marginally acceptable with gaps in some areas important to practice. His knowledge appeared stronger in topics pertinent to the outpatient setting. His clinical judgment and reasoning were lacking overall. Dr. Dao's communication skills were adequate, with room for improvement, with Simulated Patients (SPs); his communication skills with peers was professional. His documentation for the SP encounters was marginally adequate with the need for improvement.
>
> The educational needs identified in this Assessment are listed in *Section III. Assessment Findings.*
>
> Review of a history and physical exam conducted in January 2013 did not reveal any conditions that should affect Dr. Dao's medical practice. Dr. Dao also submitted a discharge summary from Professional Enhancement

> Program (PEP) pertaining to a June 2012 admission. Some of the diagnoses identified have the potential to impact medical practice and/or were related to previous licensure discipline (boundary violations). His cognitive function screen results were below expectations. ....

22. In or around May 2013, the licensee completed a neuropsychological evaluation, which found no Axis I diagnoses. In the Summary and Discussion, the evaluator concluded, in part,

> The results of the neuropsychological evaluation revealed that, at the time of the testing, Dr. Dao emotionally was free of debilitating anxiety, depression, or psychological turmoil to the extent that it would affect his ability to function in activities of daily living or manage the practice of medicine.
>
> Neuropsychologically, the man is functioning in the Average Range with High Average skills in perceptual reasoning and working memory. His Average performances in processing speed and verbal comprehension still were within anticipated parameters especially for someone who was born and raised in a foreign country with English as a second language.
>
> ...
>
> Again, diagnostically the results of this evaluation give no evidence of cortical or subcortical dysfunction or cognitive impairment that would impede this gentleman's ability to return to the practice of medicine.
>
> It is recommended that as he returns to the practice of medicine that he follows the recommendations offered in his last visit to the Professional Enhancement Program in 2012.

23. In or around July 2013, CPEP developed an updated Educational Intervention Plan for the licensee in the specialty of pulmonology, which anticipated that the licensee would have 100% direct supervision.

24. In or around August 2013, the Panel considered the above information and voted to defer action on the licensee's petition for reinstatement until he presented an appropriate practice plan.

25. On or about March 14, 2014, the licensee submitted for the Panel's consideration a plan to practice internal medicine in Elizabethtown, Kentucky, with Dr. William Godfrey.

However, because the licensee had presented himself as a pulmonologist and submitted to clinical skills assessments only in the specialty of pulmonology in 2007 and 2013, CPEP could not comment or approve of his plan to practice internal medicine.

26. In or around April 2014, the Panel chose to defer action on the licensee's request to reinstate his medical license until he returned to CPEP and completed an assessment in Internal Medicine and obtained an education plan, if recommended.

27. In or around August 2014, the licensee returned to CPEP and completed an assessment in outpatient internal medicine. CPEP noted that the licensee had not practiced medicine in the United States since 2005 and that he had not practiced in a primary care or internal medicine setting outside of residency training. Although the licensee had participated in two different internal medicine review CMEs in the prior 36 months, he still demonstrated significant deficiencies which may be difficult to remediate. Overall, CPEP found that the licensee "demonstrated a very limited fund of knowledge in outpatient and inpatient internal medicine with broad-based and significant deficiencies in the majority of areas covered." It was noted that he demonstrated "significant and broad deficiencies in areas common to primary care," his knowledge of health maintenance was "globally inadequate," and he demonstrated unacceptable knowledge of basic physical examinations and medications. The licensee demonstrated inadequate clinical judgment and reasoning, his thought processes were slow and disorganized. In one case he omitted a pulmonary condition from a differential diagnosis – this was noted to be especially concerning because the licensee is a pulmonologist.

28. In or around November 2014, CPEP developed an Educational Intervention Plan for the licensee in the practice of outpatient internal medicine. The Educational Intervention

Plan requires that the licensee have 100% direct supervision from his Preceptor, Dr. William Godfrey, during all outpatient internal medicine patient encounters for an indeterminate period of time. CPEP does not recommend that the licensee be allowed to practice in a higher acuity inpatient setting without first completing a residency program, given his demonstrated deficiencies in managing emergent scenarios and in treatment planning.

29. On or about April 16, 2015, the Panel agreed to allow the licensee to resume the practice of medicine pursuant to the terms and conditions set forth in this Agreed Order, contingent upon William J. Godfrey, M.D. providing a written attestation that he has read and acknowledged the terms of supervision stated herein.

## STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky 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), (8), (9) – as illustrated by KRS 311.597(1) – and (21). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may allow the licensee to resume the practice of medicine pursuant to this Agreed Order.

## AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to allow the licensee to resume the practice of medicine, the parties hereby ENTER INTO the following **AGREED ORDER:**

1. The license to practice medicine in the Commonwealth of Kentucky held by David A. Dao, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this 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 until further order of the Panel:

    a. The licensee's practice of medicine is EXPRESSLY RESTRICTED/LIMITED to the practice of **internal medicine in an outpatient office-based environment**, and he SHALL NEITHER practice in an inpatient setting (including but not limited to nursing homes) NOR provide any treatment for conditions outside of the specialty of internal medicine, unless and until approved to do so by the Panel;

    b. The licensee SHALL NOT perform any act which would constitute the "practice of medicine," as that term is defined in KRS 311.550(10), *unless and until* the Panel or its Chair has approved, in writing, the specific practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety and may require additional conditions and/or restrictions as a condition of it granting approval for a new practice location. The parties agree that the Panel or its Chair must approve any change in practice location for the licensee in writing and prior to the licensee commencing the practice of medicine at any location(s);

        i. The licensee is hereby approved to and SHALL ONLY practice internal medicine one (1) day each week while under the 100% direct supervision of William J. Godfrey, M.D., at Dr. Godfrey's office-based outpatient practice located at 914 West Dixie Avenue, Elizabethtown, Kentucky 42701;

c. The licensee SHALL comply with and shall successfully complete all requirements of his CPEP Educational Intervention Plan, at his expense and as directed by CPEP, a copy of which is attached;

d. The licensee SHALL TAKE ALL NECESSARY STEPS, including the execution of waivers and/or releases, to ensure that CPEP provides timely written reports to the Panel outlining his compliance with the Educational Intervention Plan. The licensee SHALL further ensure that CPEP shall notify the Board immediately if the licensee should fail to comply with the Educational Intervention Plan or practices medicine in a manner that creates a danger or risk of danger to the health or safety of patients or the public;

e. Upon completion of each phase of the Educational Intervention Plan, the licensee SHALL obtain the Panel's written approval prior to proceeding with subsequent portions of the Educational Intervention Plan. The licensee SHALL ensure that the Panel is provided with all written evaluation reports by CPEP and a written (or in person) report from William J. Godfrey, M.D., in order to make a fully informed decision at each interval;

f. If deemed necessary and appropriate by CPEP, the licensee SHALL SUCCESSFULLY COMPLETE the Post-Education Assessment, at his expense and as directed by CPEP; and

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

3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate

danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 12 day of May, 2015.

FOR THE LICENSEE:

FOR THE LICENSEE:

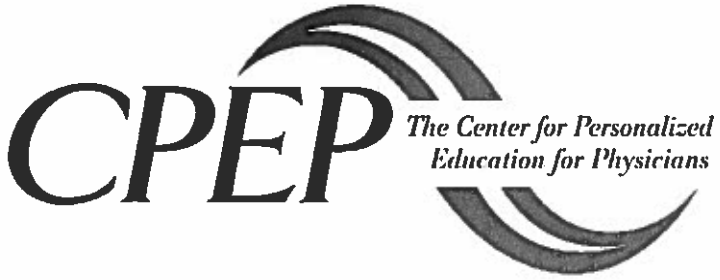
DAVID A. DAO, M.D.

CLAY B. WORTHAM
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

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




# EDUCATIONAL INTERVENTION PROGRAM

# EDUCATION PLAN

## Developed November 2014

## for

## David A. Dao, M.D.

NATIONALLY RECOGNIZED ▪ PROVEN LEADER ▪ TRUSTED RESOURCE

**720 S. Colorado Boulevard, Suite 1100-N**
**Denver, Colorado 80246**
**Phone: 303-577-3232**
**Fax: 303-577-3241**
**www.cpepdoc.org**

# EDUCATION PLAN

## OVERVIEW



### APPENDICES

# I. INTRODUCTION

Dr. Dao has not practiced in the United States since 2005. His previous practice experience was in pulmonology. Dr. Dao has not practiced in a primary care or internal medicine setting outside of residency training. Due to the difficulties in identifying a preceptorship in pulmonology, Dr. Dao presented to CPEP for a clinical skills Addendum in internal medicine in August 2014, which identified areas of educational need. The development of this Education Plan (Plan) was based on those needs. The Plan was also based on data gathered by CPEP and information obtained from Dr. Dao. The purpose of this Plan is to provide a framework in which Dr. Dao can address his educational needs in outpatient internal medicine.

For a complete history of Dr. Dao's CPEP activities, see his August 2014 Assessment Report (release date November 7, 2014).

**Important to Note:**
During his Assessment, Dr. Dao demonstrated a significant number of educational needs related to outpatient internal medicine. It is CPEP's opinion that an attempt at supervised remedial education in the area of outpatient internal medicine may be appropriate for Dr. Dao. However, based on the information that Dr. Dao provided to CPEP, it appeared that he participated in two different internal medicine review Continuing Medical Education (CME) activities in the past 36 months and still had numerous knowledge deficiencies recognized during the Addendum, which suggests that he may have difficulty remediating.

Educational programs developed by CPEP cannot provide the same rigor or level of supervision as a residency program, and CPEP cannot guarantee that Dr. Dao will be able to access the educational resources needed for him to successfully address his educational needs outside of a residency setting. Areas such as Dr. Dao's clinical judgment and reasoning can be challenging to remediate and may require time to ensure success. In light of the extent of the deficiencies identified, any remediation would require interest by the Board, extensive resources, and full commitment by Dr. Dao. CPEP recognizes that decisions about licensing or privileging are made at the local level and based on many factors other than the Assessment.

A glossary of Educational Intervention terms is enclosed.

## FOCUS OF PLAN

Outpatient Internal Medicine: This Plan addresses Dr. Dao's practice of outpatient internal medicine. If areas of educational need other than those addressed in this Plan are identified while Dr. Dao is participating in the Plan, CPEP will notify the referring organization and Dr. Dao and determine if the educational needs can be addressed within the context of this Plan.

Inpatient Internal Medicine: Based on Dr. Dao's performance during the Addendum, in particular his deficiencies in managing emergent hypothetical scenarios and in treatment planning, Dr. Dao did not demonstrate ability to safely practice in a higher-acuity inpatient setting.

## LIMITATIONS

CPEP cannot guarantee that a Preceptor and/or an appropriate setting can be identified to address this Plan.

- A CPEP Associate Medical Director spoke with Dr. William Godfrey on May 20, 2014, regarding serving as Dr. Dao's educational Preceptor should Dr. Dao participate in CPEP Assessment activities pertaining to the practice of outpatient internal medicine and areas in need of improvement are identified. The AMD concluded that Dr. Godfrey would be an acceptable Preceptor candidate and emphasized that, given the past collegial relationship between Dr. Dao and Dr. Godfrey, it is important to understand that as the Preceptor, Dr. Godfrey would be in the role of an educator and evaluator.

## HEALTH CONSIDERATIONS

Review of public Kentucky Board of Medical Licensure (Board) documents indicate that Dr. Dao may have a health condition that could interfere with his ability to return to medical practice. Dr. Dao provided CPEP with a copy of a history and physical dated July 2014, but it did not include information about the present status of the health condition known to the Board. Dr. Dao also provided CPEP with a copy of a neuropsychological examination conducted May 2013, which did not reveal any cognitive concerns.

- If he has not already done so, Dr. Dao should undergo an evaluation by a state physician health program to be sure that any health condition(s) that might affect his ability to return to active clinical practice are well controlled.

CPEP does not monitor participants' health issues. CPEP will contact Dr. Dao and/or the referring organization if concerns arise indicating that health issues may be impacting Dr. Dao's ability to complete the Plan activities.

## LICENSING

Because CPEP Education plans are practice-based, physician-participants must have a medical license in order to complete a Plan. Some activities, such as self-study, may be completed without a medical license. *It is the participant's responsibility* to ensure that he practices within the parameters of his licensure status.

## DESIGN

The individual Learning Goals described below in *Section II* were derived from the findings of the Assessment. This Plan was designed to address those Learning Goals through Medical Knowledge Enhancement and Patient Care Enhancement educational activities described in *Section III* as Modules A and B. Evaluation of Dr. Dao's progress and oversight of his participation will be provided by the CPEP Associate Medical Director. The Plan is designed around continuous and timely participation so that maximum educational benefit is received and ongoing progress is made. Following is more detailed information about the Modules and the Associate Medical Director oversight.

*Note:* The requirements of this Plan are not intended to supersede or exclude any requirements specific to his employer, credentialing, or licensure regulations. However, some activities may be applicable to both the Plan and such requirements.

### A. Medical Knowledge Enhancement (Module A)

The Medical Knowledge Enhancement Learning Goals are addressed independently by the participant as well as through discussions with the Preceptor. The activities are designed to improve the participant's medical knowledge specific to the Learning Goals. Other improvements are generally realized as a result of the activities. A Preceptor is not needed to begin the activities described in Module A. CPEP encourages Dr. Dao to begin the activities as soon as he has initiated the Plan. The recommended activities include:

- Independent/unsupervised self-study;
- Evidence-based research;
- Continuing medical education activities and/or courses.

### B. Patient Care Enhancement (Module B)

Dr. Dao will work with a Preceptor who has a practice similar to his. He will participate in Point of Care (PoC) activities as described below. Subsequently, Dr. Dao will participate in a longitudinal learning experience that is reliant on regularly scheduled Preceptor Meetings. The PoC Experience will be completed prior to Dr. Dao seeing patients independently/unsupervised as described in *Module B.* During these experiences Dr. Dao will:

- Address his more immediate educational needs by initially seeing patients with direct supervision. He will then progress through decreasing levels of supervision and ultimately see patients independently/unsupervised;
- Retrospectively review charts with the Preceptor of patients for whom Dr. Dao provided independent/unsupervised care;
- Receive one-on-one coaching and constructive feedback with regard to medical knowledge, clinical judgment and documentation, particularly with regard to those areas identified in the Plan Learning Goals (see *Section II*);
- Discuss and reinforce new information and skills gained for full integration into daily patient care;
- Appreciate the value of lifelong learning, peer relationships, and self-assessment to the quality of patient care.

### C. Oversight

The Associate Medical Director oversight includes Preceptor training, consideration of the feedback provided by the Preceptor and review of educational materials submitted by Dr. Dao (see *Section V*). The Associate Medical Director will regularly communicate with and provide ongoing feedback and coaching to Dr. Dao and the Preceptor with regard to Dr. Dao's progress.

## II. LEARNING GOALS

### A. Medical Knowledge

Although Dr. Dao will be practicing in an outpatient setting, it will be appropriate for him to participate in self-study to address the Medical Knowledge educational needs pertaining to inpatient care so that he is adequately knowledgeable about these topics and when to refer a patient for treatment of such conditions.

To improve evidenced-based medical knowledge including, but not limited to, the following areas:

1. Comprehensive and intensive review of internal medicine;*
2. Cardiology:**
   a. Comprehensive review of ECG interpretation including but not limited to, common rhythm abnormalities such as atrial fibrillation, conduction system disorders, Q waves, ST segments, and T waves;*
   b. Office and emergency room treatment of acute coronary syndrome, including dosing and administration of aspirin and use of morphine;
   c. Nitroglycerin: indications for sublingual versus intravenous use; [Ph]
   d. Management recommendations in patients with known coronary artery disease;
   e. Medication management of congestive heart failure, including systolic and diastolic heart failure;
   f. Atrial fibrillation: management recommendations and selection of anti-coagulation, including newer medications such as Xarelto; [Ph]
   g. Warfarin management, including international normalized ratio goals; [Ph]
   h. Antihypertensive medications, including but not limited to:
      1) Beta blockers: options, side effects, contraindications; [Ph]
      2) Angiotensin-converting enzyme inhibitors: options, indications, contraindications, side effects; [Ph]
   i. Causes and evaluation of secondary hypertension;
   j. Diagnosis of hypertensive urgency versus hypertensive emergency;
   k. Evaluation (including assessment of renal function) and treatment of hypertensive emergency in the inpatient setting, including medication options and recommendations regarding rate for lowering the blood pressure;
3. Pulmonary:
   a. Treatment of pulmonary embolus, including but not limited to, indications for thrombolytic medications;
   b. Low-molecular-weight heparin: indications and use; [Ph]
   c. Causes of respiratory distress in a hospitalized patient admitted with diagnosis of pneumonia;
4. Infectious disease:
   a. Sepsis: pathophysiology, early goal-directed therapy guidelines, use of Vancomycin;
   b. Management of cellulitis in the inpatient setting;
   c. Diagnosis of chlamydia;
   d. Diagnosis of urinary tract infection, urinalysis interpretation;

e. Healthcare-associated pneumonia: diagnosis and treatment;

5. Endocrinology:
   a. Diabetes mellitus:
      1) Current recommendations regarding blood sugar, lipids, and blood pressure control;
      2) Medications available, including but not limited to, DPP-4 inhibitors, GLP1 receptor agonists;
   b. Dosing of thyroid replacement in elderly patients when initiating treatment of hypothyroidism and timing for checking the thyroid-stimulating hormone level after dose adjustments;
   c. Treatment of osteoporosis, medication options: mechanism of action, side effects;[Ph]
6. Gastroenterology:
   a. Indications for endoscopy;
   b. Causes and evaluation of chronic diarrhea;
   c. Diagnosis of pancreatitis;
   d. Cirrhosis: screening recommendations for hepatocellular carcinoma;
7. Nephrology:**
   a. Common medications that affect renal function; [Ph]
   b. Classification of renal insufficiency with glomerular filtration rate, and recommendations by class;
   c. Evaluation of renal insufficiency;
8. Hematology:**
   a. Evaluation of iron-deficiency anemia;
   b. Evaluation and treatment of macrocytic anemia;
   c. Treatment of idiopathic thrombocytopenic purpura;
9. Musculoskeletal disorders:
   a. Back pain:
      1) Causes;
      2) Physical examination;
      3) Management options other than nonsteroidal anti-inflammatory drugs;
   b. Knee complaints:
      1) Causes;
      2) Physical examination of knee, including common provocative testing;
      3) Indications for imaging;
10. Health maintenance, including but not limited to:**
   a. Screening for substance abuse (tobacco, alcohol, illicit substances) in both females and males;
   b. Breast cancer screening recommendations, including indications for BRCA testing: initiation, frequency, cessation;
   c. Screening recommendations for chlamydia in females;
   d. Colon cancer screening recommendations: initiation, frequency, cessation;
   e. Prostate cancer screening controversy;
   f. Osteoporosis screening recommendations: initiation, frequency;
   g. Lack of indications for routine cardiac stress testing;
   h. Adult immunizations:

1) Gardasil: indications;
2) Pneumovax: indications;
3) Influenza vaccine: indications;
4) Zostavax: indications;

11. Mental health:**
    a. Diagnosis of depression;
    b. Medication options for treatment of depression: indications, mechanism of action, side effects; [Ph]
    c. Diagnosis of anxiety;
    d. Medication options for treatment of anxiety: indications, mechanism of action, side effects; [Ph]
    e. Medications to treat insomnia; [Ph]
12. Women's health:
    a. Causes and evaluation of breast mass;
    b. Causes and evaluation of vaginal discharge;
    c. Management of menopausal symptoms.

[Ph]These needs are relevant to pharmacology but are grouped under disease categories for simplicity.
*Topic summary not required.
**Subtopics may be combined into one summary; two references required.
*(See III.C below for description of topic summaries.)*

## B. Clinical Judgment

To *consistently* demonstrate appropriate clinical judgment in the areas that include, but are not limited to, the following:

1. Ability to gather information in an organized and complete fashion;
2. Demonstration of consistently logical thought processes;
3. Structured formulation of differential diagnoses;
4. Consistent ability to correctly assess acuity of illness;
5. Adequate ability to respond to emergent situations;
6. Satisfactory patient care, including ability to develop treatment plans from beginning to end;
7. Appropriate use of consultants;
8. Justification for testing.

## C. Documentation

***The following are based on the recommendations generated from the simulated patient documentation exercise conducted in Dr. Dao's 2013 Assessment:***

The participant will learn principles of documentation that are based on recommendations and requirements of nationally recognized organizations such as the Joint Commission and Centers for Medicare and Medicaid Services (CMS) and recommendations of national specialty societies and will *consistently* demonstrate appropriate patient care documentation that includes, but is not limited to, the following:

1. Coaching from a Preceptor or experienced colleague;
2. Consideration of attending a medical recordkeeping course that includes a follow-up component, depending on progress with coaching.

*Guideline*
Adequate documentation requires inclusion of sufficient detail in visit notes such that the notes "stand alone" and determination of the level of care provided does not require verbal input from the documenting physician to be fully understood. Ultimately, adequate documentation includes chart organization and systems tools that allow another physician to easily assume care of a patient.

### D. Practice-based Learning

1. Expanded variety of medical resources.

### E. Physician-Patient Communication Skills

***The following are based on the recommendations generated from the simulated patient communication exercise conducted in Dr. Dao's 2013 Assessment:***

To *consistently* demonstrate appropriate communication skills in the areas that include, but are not limited to, the following:

1. Consideration of accent modification training if his patients and colleagues are largely English speaking;
2. Incorporation of a routine of assessing patient comprehension rather than presuming that the patient understands what is being said.

## III. PERFORMANCE OBJECTIVES

Performance Objectives are specific educational activities that provide focused learning experiences designed to assist the participant with achievement of the Learning Goals (*Section II*). The participant will integrate newly learned information into his daily practice and demonstrate long-term improved patient care during Module B Activities.

### MODULE A
### MEDICAL KNOWLEDGE ENHANCEMENT

Module A activities do not require approval of a Preceptor to initiate. Dr. Dao will:

- Document all activities, including ongoing case-based activities, continuing medical education activities (CME) and self-study on an Education Log provided by CPEP;
- Participate in self-study activities during participation in the Plan that demonstrate lifelong learning skills;
- Submit certificates of completion for any courses, if applicable.

## Timelines

The timelines below are recommended to maximize participation in the Plan.

- Independent/unsupervised activities, such as self-study, should be initiated immediately once the Plan has been signed.
- Topic/subtopic summaries should be completed by the sixth month of Plan activities.
- Courses and/or CME activities should be completed no later than the fourth month of participation.

*Guideline*

The list of Medical Knowledge topics is extensive; therefore, it will be essential that Dr. Dao develop a strategy that ensures he submits all topic/subtopic summaries within six months of initiating the Plan so that he has ample time to demonstrate his application of new knowledge to his actual patient care during the Precepted Education component.

## Associate Medical Director Approval of Resources

Dr. Dao may identify resources other than those mentioned below; however, the Associate Medical Director must approve those resources in order for the activities to be applicable to the Plan. If Dr. Dao identifies a course(s) other than those recommended below, he must submit a brochure at least 60 days prior to the course date if the course is date specific. He should receive approval of resources prior to incorporating those resources into his Plan activities.

## A. Courses

Dr. Dao will:

1. Within the first four months of participation in the Plan, complete a comprehensive internal medicine review course, which should include a component pertinent to pharmacology, such as the Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians. Information can be found at http://www.acponline.org;
   a. If Dr. Dao previously completed the MKSAP, he will research and discuss other review courses with the Associate Medical Director;
2. The Associate Medical Director will monitor Dr. Dao's documentation skills to determine if he would benefit from participating in a documentation course. If such a recommendation is made more information would be provided to Dr. Dao at that time.

It will be important for Dr. Dao to attend a comprehensive review early in his participation in the Plan rather than later so that he has time to integrate newly learned skills and sufficiently demonstrate his maintenance improvements in charts reviewed.

## B. Electrocardiogram Interpretation Activities

***Important to note:***

- Dr. Dao should not be responsible for ECG interpretation (without over-reading) prior to demonstrating competence to his Preceptor.

Dr. Dao will:

1. Read the textbook and practice guide Rapid Interpretation of EKGs by Dubin or Clinical Electrocardiography: A Simplified Approach by Ary L. Goldberger, and review with the Preceptor;
2. Review at least 25 to 30 ECGs using resources such as:
   a. "Alan E. Lindsay ECG Learning Center" on the University of Utah School of Medicine website located at http://ecg.utah.edu/introduction
   b. http://www.ecg-interpretation.blogspot.com/
3. Document independent/unsupervised ECG reading and review as well as ECGs reviewed with the Preceptor on Education Logs.

## C. Evidence-Based Self-Study

The purpose of this module is to demonstrate self-directed learning and to create educational resources for reference. Dr. Dao will:

1. Submit a brief paragraph, case based discussion, outline, or algorithm to summarize the major points learned;
   a. In preparing the submission, Dr. Dao will use *at least two resources for each of the topics and subtopics* listed in the Medical Knowledge Enhancement Learning Goals (except for those indicated with asterisks). The submission should explain the applicability of knowledge to his practice, including how he will utilize the learned information in his practice. If the information is not applicable to his practice, he should explain his rationale;
      1) Appropriate resources are current, peer-reviewed, evidence-based medical references. Notes from a pertinent conference may be utilized with prior Associate Medical Director approval;
2. Identify and become familiar with the resources for current guidelines relevant to the Medical Knowledge Learning Goals;
   a. Document and submit appropriate clinical guideline resources on an Education Log;
3. Subscribe to *The Medical Letter* or *Prescriber's Letter* for current pharmacology review;
4. Procedures for Primary Care, by John L. Pfenninger, M.D., FAAFP, Michael Tuggy, M.D., Grant C. Fowler, M.D., and Jorge Garcia, M.D.;
5. Participate in self-study relevant to his practice for the duration of the Plan.

## D. Case-Based Activities

Dr. Dao will:

1. Participate in case-based self-study activities such as those offered online by the Cleveland Clinic Center for Continuing Education: http://www.clevelandclinicmeded.com/

## E. Practice-based Learning

Dr. Dao will:

1. Review current peer-reviewed, evidence-based medical literature pertinent to internal medicine throughout the duration of the Plan;
2. Utilize appropriate Internet web sites and other medical resources.

### F. Computer-Based Medical Information Resources

Dr. Dao will:

1. If he does not already do so, utilize electronic resources at the point of care, such as a handheld device and/or computer with access to the Internet. Software or web sites should assist with immediate access to up-to-date medical information relevant to medication prescribing and drug interactions, and patient care decisions, including formulating an adequate differential diagnosis, interpreting test results and evaluating treatment options.

### G. Communication

Dr. Dao will:

1. Receive Preceptor coaching and feedback as a result of the patient encounters observed by the Preceptor;
2. Incorporate a routine of assessing patient comprehension rather than presume that the patient understands what is being said;
3. Consider accent modification training;
4. Participate in more structured communication educational experience if, based on Preceptor feedback, the Associate Medical Director determines that Dr. Dao would benefit from such an experience. More information would be provided if such a recommendation is made.

## MODULE B
## PATIENT CARE ENHANCEMENT

During the activities described in this Module the Preceptor will provide feedback to Dr. Dao with regard to improvements in all areas of the Learning Goals. The Preceptor will coach Dr. Dao to integrate improved knowledge, decision-making and documentation into daily patient care. All meetings and activities will be documented on an Education Log provided by CPEP.

### Timeline

- See *Section IV* for complete time frames for the Preceptor approval process and initiation of the Point of Care Experience and Preceptor Meetings.
- Once initiated, Preceptor Meetings and chart reviews will continue for the duration of the Plan.

### A. Point of Care Experience – Outpatient Setting

During this experience Dr. Dao will:

1. Shadow:
   a. Shadow his Preceptor for approximately one day in the outpatient setting;
   b. Discuss each case including diagnosis, management options and expected outcomes;
   c. Document the cases specifying condition/diagnosis on the PoC Case Log provided by CPEP

2. Supervision:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, manage patients with 100% direct supervision at the PoC by the Preceptor:
      1) Direct supervision is defined as side-by-side observation of the patient encounter by the Preceptor;
   b. Discuss each case including management options and expected outcomes;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP;
3. Concurrent Case Review:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, review each case with the Preceptor prior to releasing the patient to determine if the exam and evaluation have been adequate and if the plan is appropriate;
   b. Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor when the note is completed or when the dictations are available, and receive feedback on management and documentation of the patient visit;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP;
4. End of Day Review:
   a. For a period of time to be determined by the Preceptor and Associate Medical Director, review each case with the Preceptor at the end of each day to determine if the exam and evaluation have been adequate and if the plan is appropriate;
   b. Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor when the note is completed or when the dictations are available, and receive feedback on management and documentation of the patient visit;
   c. Document the cases specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP
5. Onsite Consultation:
   a. Manage patients with immediate onsite physician consultation available if needed for approximately one month;*
      1) The onsite physician may be someone other than the Preceptor, but should be someone who understands the expectation of their role and who has been approved by the Associate Medical Director;
   b. Implement weekly PoC meetings. During these meetings:
      1) Retrospectively review each case and outcome with the Preceptor;**
      2) Have each note for the above patient encounters reviewed for completeness and overall quality by the Preceptor and receive feedback on management and documentation of the patient visit;
   c. After seeing patients for three weeks, submit six charts to the Associate Medical Director for review to evaluate Dr. Dao's readiness to progress to the Precepted Education Experience addressing outpatient care;

d. Document every case specifying the condition/diagnosis and procedure and/or treatment plan for each patient on the PoC Case Log provided by CPEP and submit the Case Log along with the charts mentioned immediately above;

6. Conclusion:
   a. At the completion of the above activities, the participant will:
      1) Ensure that the Preceptor speaks with the Associate Medical Director and submits a written report documenting Dr. Dao's readiness to proceed to independent/ unsupervised patient care in the outpatient setting;
      2) Receive notification from the Associate Medical Director that the PoC Experience has been completed.

*One month is an estimated timeframe and may be lengthened if it is determined that Dr. Dao would receive educational benefit from extending the experience.

**If Dr. Dao's patient volume is too large to allow review of each case, he and the Preceptor should review no fewer than six cases per weekly meeting that are relevant to his Plan Learning Goals as much as possible.

## B. PRECEPTED EDUCATION

It will be important that the Preceptor Meetings and activities are thorough and that the Preceptor provides objective feedback sufficient to support Dr. Dao's improvement with regard to the specific Plan Learning Goals. All meetings and activities will be documented on an Education Log provided by CPEP.

*Guideline*

Having knowledge is distinct from applying knowledge. It is essential that, when reviewing charts, the Preceptor determine whether or not the participant *applied* his knowledge to actual patient care.

### PRECEPTOR MEETINGS

After completion of the PoC Experience, Dr. Dao will:

1. Meet with the Preceptor twice monthly for the duration of the Plan. To provide a quality learning experience, CPEP recommends that each meeting be a minimum of two hours;
2. With the Preceptor and in conjunction with the activities described below in *Preceptor Meeting Activities*, utilize the following to address the Learning Goals:
   a. Chart review and case-based discussions;
   b. Hypothetical case discussions;
   c. Topic discussions;
   d. Current medical literature reviews;
   e. Utilization of appropriate Internet web sites and other medical resources.

*Guideline*

Although impromptu collegial discussions may occur outside of Preceptor Meetings, such discussions are separate from the Preceptor Meeting requirement.

## PRECEPTOR MEETING ACTIVITIES

### Chart Review Objectives

Charts are the primary method of evaluating the participant's application of knowledge and clinical judgment and reasoning. Therefore, charts submitted to the Preceptor and the Associate Medical Director as described below should demonstrate the participant's integration of feedback and information learned as a result of completing Module A activities. Submitted charts should reflect consistent improvements in overall patient care.

Charts reviewed during Preceptor Meetings will be those of patients for whom Dr. Dao provided independent/unsupervised care. Charts as described below should address the Plan Learning Goals as much as possible.

During the Precepted Education, Dr. Dao will:

1. Retrospective Chart Reviews:
   a. Submit to the Preceptor for review no fewer than 24 redacted* charts per month (12 charts per twice-monthly sessions);
      1) The Preceptor may also specify cases to be reviewed;
      2) Redacted* copies of charts should be submitted to the Preceptor in time for the Preceptor to review them before the meetings;
   b. Submit to CPEP by the fifth of *every other* month (month to be determined), six of the 24 redacted* charts used in the Preceptor Meetings;
      1) The Associate Medical Director may also specify charts to be submitted;
   c. Cases should be specifically relevant to the Plan as well as representative of the scope of Dr. Dao's practice as much as possible.
2. Didactic Discussions and Coaching:
   a. Clinical Judgment:
      1) With the Preceptor, discuss the Clinical Judgment Learning Goals and application of knowledge to patient care;
      2) Develop and discuss with the Preceptor systems (protocols, algorithms, and/or chart templates) or other strategies for organizing the clinical evaluation to ensure that the Clinical Judgment Learning Goals are addressed and that improvements are integrated into his daily patient care;
      3) To assist with completing the above objective, review and discuss with the Preceptor the University of California San Diego (UCSD) web site, *A Practical Guide to Clinical Medicine*, at http://meded.ucsd.edu/clinicalmed/thinking.htm.
   b. Documentation:
      1) Receive coaching from the Preceptor that addresses general documentation principles as well as the specific areas of need described in Learning Goal C, *Documentation*, including strategies and/or use of chart templates for improved documentation;
   c. Medical Knowledge:
      1) Discuss with the Preceptor each topic and subtopic identified in Module A, including applicable and current evidence-based guidelines as available. Dr. Dao should also discuss his topic/subtopic summaries with the Preceptor;

d. Communication:
   1) Receive coaching and review reference materials described in the Plan related to communication skills;

3. Lifelong Learning:
   a. Develop lifelong learning skills:
      1) Discuss and develop a plan with the Preceptor for maintaining current standards in internal medicine after conclusion of the Educational Intervention. Discuss the plan with the Associate Medical Director and demonstrate ongoing learning throughout the duration of the Plan. The plan should:
         a) Incorporate computer-based resources;
         b) Integrate evidence-based medicine resources;
         c) Promote lifelong learning;
         d) Include activities that address clinical decision-making, such as case studies and grand rounds.
   b. CPEP encourages Dr. Dao to:
      1) Review and reflect on the status of his learning and improvements on an ongoing basis;
      2) Keep a learning journal on his reflections, including which activities were beneficial, or not beneficial, and why.

* *Refer to Appendix B, Privacy of Individually Identifiable Health Information*

*Guidelines*

- During the Preceptor Meetings, the Preceptor should provide coaching and recommendations to the participant to ensure that improvements in all Learning Goals identified in the Plan are collectively and consistently applied to Dr. Dao's actual patient care.
- The participant's progress will be determined based on the achievement of the Learning Goals and in consideration with generally accepted standards of care. The constraints of a physician's practice circumstances, such as the availability of local medical resources, are taken into consideration when reviewing a physician's actual practices.

## IV. INITIATING THE PLAN

### A. Determining the Start Date and Beginning Educational Activities

1. Dr. Dao will sign and return the Plan to CPEP within two weeks of receiving notification of licensure. He will then:
   a. Initiate the Plan the first day of the month following CPEP's receipt of the signed Plan;
   b. Receive an Education Notebook from CPEP with directions, Education Logs, resources, and other information to complete the educational activities;
   c. Initiate and document self-study activities and course participation;

d. *After reviewing* the Preceptor qualifications described in the *Preceptor Job Description* (attached) identify a Preceptor candidate if Dr. Dao has not already done so;
   1) The Preceptor must be board certified in the same specialty and have a practice similar to Dr. Dao's;
2. Provide a copy of the Plan, the attached *Preceptor Job Description* and Confidentiality Statement, and a copy of the Assessment Report to the proposed Preceptor so that the approval process, as described below, can progress accordingly.

### B. Preceptor Approval

Dr. William Godfrey was approved to serve as Dr. Dao's Preceptor on May 20, 2014, in anticipation of the possibility that Dr. Dao would be granted licensure to participate in a CPEP Education Plan pertaining to the practice of outpatient internal medicine.

*Guideline*

For the participant's educational benefit, the Preceptor must meet the qualifications as described in the *Preceptor Job Description*. Additionally, CPEP must approve the Preceptor in order for any precepted activities to be applicable to the Plan.

## V. PARTICIPATION AND MONITORING

Consistent participation in educational activities, including regular and timely submission of materials and participation in scheduled CPEP conference calls, enhances the educational experience. Such participation may also impact the duration of the Plan. Because the Associate Medical Director must be able to evaluate the participant's ongoing progress and provide timely and pertinent feedback, Dr. Dao will:

1. Maintain Education and PoC Case Logs:
   a. Education Logs should document all educational activities including Preceptor Meetings and the content of the Meetings, and those activities that are outside of the scope of the Plan but relevant to his practice;
   b. PoC Case Logs should document PoC activities as previously described in Module B;
2. Submit materials:
   a. By the fifth of every month, submit:
      1) Education Logs;
      2) Preceptor Report forms completed by the Preceptor;
      3) Other materials relevant to the Plan or as requested by the Associate Medical Director;
   b. By the fifth of every month and until the following has been completed, submit:
      1) Case Logs for the PoC activities;
      2) Topic/subtopic summaries;
      3) CME certificates and/or other documentation of completed activities specified in the Plan (if applicable);

3. Submit Charts:
   a. Either monthly or every other month, as directed by CPEP, submit charts,** as described in Module B. Charts must be complete and if possible, include one year of patient care. More information will be provided when the Plan is initiated;
   b. At the request of the Associate Medical Director, submit randomly selected charts for review from Dr. Dao appointment schedule;
4. Communication:
   a. Participate in calls with CPEP as requested;
   b. Respond to emails or letters from CPEP in a timely fashion;
5. Be responsible for his and his Preceptor's participation in the Plan activities and his educational progress;
6. Demonstrate maintenance of improvements for all Learning Goals prior to conclusion of the Patient Care Enhancement activities.

**See *Module B, Retrospective Chart Review* to determine if charts should be submitted monthly or every other month

## FORMATIVE EVALUATION
### Evaluation of Educational Progress

Ongoing progress is measured using formative evaluation tools such as regular chart reviews, review of topic/subtopic summaries, participant and Preceptor discussions with the Associate Medical Director, and written Preceptor Reports.

Approximately every four months, Progress Reports will be generated and provided to Dr. Dao and to other entities for which Dr. Dao has provided authorization. The Progress Reports will capture Dr. Dao's progress as demonstrated during Formative Evaluations conducted during that reporting period.

## SUMMATIVE EVALUATION
### Post-Education Evaluation

Following the completion of the Plan activities, Dr. Dao will participate in a Post-Education Evaluation (Evaluation) to demonstrate that he achieved the Learning Goals and successfully completed the Educational Intervention. The Evaluation will be focused on the areas identified as Learning Goals in the Plan and will consider Dr. Dao's scope of practice. (See Section 5.1(e) of the CPEP *Educational Intervention Participation Agreement* for more information.)

- Dr. Dao will schedule the Evaluation no sooner than two months, and no later than four months, following notification from CPEP that he has completed the Plan activities.

## VI. ESTIMATED DURATION

### Plan Learning Goals and Performance Objectives

Most participants complete an Education Plan in approximately 12-18 months. The actual duration varies depending on many factors including the scope of educational needs identified.

### CONDITIONS

- Modifying an approach to overall patient care, specifically application of knowledge, clinical judgment and documentation may be challenging. Additionally, certain aspects of the Plan cannot be predicted, such as spectrum of patients and cases presented, as well as the participant's dedication to the educational activities. Therefore, the duration of the Plan can only be estimated.
- CPEP reserves the right to change the content and/or duration of the Education Plan.
- CPEP is not responsible for ensuring that the participant obtains any required privileges or credentials while participating in the Education Plan; this is the responsibility of the participant.
- Once the participant has completed the Education Plan and/or has been authorized to complete the Post-Education Evaluation, CPEP is no longer reviewing charts or providing educational services to the participant.
- If Dr. Dao does not engage in this Plan by January 21, 2016, CPEP may require completion of additional Assessment activities to ensure that Dr. Dao's current educational needs are addressed.

### SIGNATURES

David A. Dao, M.D. — Date 12/5/2015

Patricia Kelly, M.D.
Associate Medical Director — Date

*Return the signed original Education Plan to CPEP. Keep copies of the Plan for your reference and to forward to Preceptor candidates.*

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917
ADMINISTRATIVE ACTION NO. 03-KBML-0448

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 1234 WOODLAND DRIVE, ELIZABETHTOWN KENTUCKY 42701

# AGREED ORDER OF SURRENDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and David A. Dao, M.D. (hereafter "the licensee"), 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 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, David A. Dao, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses after an undercover investigation.
4. In October 2003, the licensee was indicted by the Jefferson County Grand Jury for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances.

5. The Board filed a Complaint and Emergency Order of Suspension against the licensee's Kentucky medical license on October 16, 2003. Based upon the licensee's March 18, 2004 indictment in Nelson County, Kentucky charging him with eight (8) felony counts of Obtaining Controlled Substances by Fraud and eight (8) felony counts of Complicity to Obtaining Controlled Substances by Fraud, the Board issued an Amended Complaint and Amended Emergency Order of Suspension against the licensee on May 11, 2004.
6. In March 2004, the licensee was re-indicted in Jefferson County, Kentucky, Case No. 04CR0870, charging the licensee with twenty-one (21) felony counts of Trafficking in a Controlled Substance; Obtaining Drugs by Fraud and Deceit; and Prohibited Activities Relating to Controlled Substances. The charged criminal acts were alleged to have occurred between February 2001 through July 2003.
7. Following a November 9, 2004 jury trial on the Jefferson County Indictment no. 04CR0870, the licensee was convicted by a Jefferson County Jury on six (6) felony counts of Obtaining Drugs by Fraud and Deceit. The jury recommended a sentence of two (2) years and eight (8) months on each felony count.
8. On January 6, 2005, the licensee was sentenced in Jefferson Circuit Court to two (2) years and eight (8) months on each felony conviction. The Court granted the licensee's request for probation and placed the licensee on five (5) years supervised probation.
9. The licensee is awaiting trial on Case No. 04CR00066 in Nelson County, Kentucky.

## 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 Kentucky medical license is subject to regulation and discipline by the Board.
2. While the licensee denies engaging in any unprofessional or illegal conduct, he agrees that the fact issues raised in the Stipulations of Fact constitute sufficient grounds to impose sanctions against his Kentucky medical license pursuant to KRS 311.595(4) and KRS 311.595(9), as illustrated by 311.597(1). Accordingly, there are legal grounds upon which the Board may impose disciplinary sanctions 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, without an evidentiary hearing, by entering into an informal resolution such as this Agreed Order of Surrender.

## AGREED ORDER OF SURRENDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and based upon their mutual desire to finally resolve this matter without further action by either party, the parties hereby ENTER INTO the following AGREED ORDER OF SURRENDER:

1. The licensee shall SURRENDER his Kentucky medical license, in lieu of revocation, with that surrender to become effective immediately upon the filing of this Agreed Order of Surrender, and continuing until further Order of the Panel.

2. Following the effective date of the surrender of his license, the licensee may not engage in any act which would constitute the "practice of medicine" as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – until approved to do so by the Panel.

3. With the exceptions set out in paragraph 4, infra, the licensee may not petition for reinstatement of his Kentucky medical license for a period of not less than two (2) years from date of filing of this Agreed Order of Surrender. The Panel shall only consider a request from the licensee for reinstatement if the licensee's request includes a complete clinical skills assessment report of an evaluation from the Center for Personalized Education for Physicians (hereafter "CPEP") at 14001 East Iliff Avenue, Suite 206, Aurora, CO 80014; (303) 750-7150. The licensee shall be solely responsible for the costs of the CPEP Evaluation. The provisions of KRS 311.607 shall apply to any request for reinstatement filed by the licensee. The burden shall be upon the licensee to satisfy the Panel that he is presently of good moral character and is qualified both physically and mentally to resume the practice of medicine, without undue risk or danger to his patients or the public. If the Panel should permit the licensee to resume the active practice of medicine, it will do so by appropriate order, which shall include all terms and conditions deemed appropriate by the Panel following their review of the information available.

4. If the licensee is successful in the presentation of his appeal to the Kentucky Court of Appeals or Supreme Court to reverse his Jefferson Circuit Court felony conviction or his criminal case is remanded to Jefferson Circuit Court for a retrial, the Panel agrees to set aside/vacate this Agreed Order of Surrender. If the Panel should set aside/vacate this Agreed Order of Surrender pursuant to this section, the parties agree that the licensee's Kentucky Medical License will revert to the status at the time of the filing of this Agreed Order of Surrender, which will subject the licensee's Kentucky medical license to an Emergency Order of Suspension and Complaint. If the Panel should set aside/vacate this Agreed Order of Surrender pursuant to this section, the Board may exercise any option available under KRS 311.591 and 311.592. If the Board should pursue further disciplinary proceedings against the licensee's Kentucky medical license after setting aside/vacating this Agreed Order of Surrender under this section, the Board shall consider any time between the filing of this Agreed Order of Surrender and the filing of an Order setting aside/vacating the Agreed Order of Surrender as time in which the licensee's Kentucky medical license was suspended for the purpose of computing the maximum period of sanction that may be imposed pursuant to the further disciplinary proceedings, if applicable.

5. The licensee understands and agrees that any violation of the provisions of this Agreed Order of Surrender shall also constitute grounds for additional disciplinary action against his Kentucky medical license, including revocation.

SO AGREED on this 3rd day of February, 2005.

FOR THE LICENSEE:

DAVID A. DAO, M.D.

J. FOX DEMOISEY, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

DONALD L. SWIKERT, M.D.
CHAIR, INQUIRY PANEL A

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-8046

## WAIVER OF RIGHTS

I, David A. Dao, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 917. 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 Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order of 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 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 3RD day of FEBRUARY, 2005.

DAVID A. DAO, M.D.

J. FOX DEMOISEY, ESQ.
COUNSEL FOR DR. DAO

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 1234 WOODLAND DRIVE, ELIZABETHTOWN KENTUCKY 42701

## AMENDED 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 22, 2004 meeting. At that meeting, Inquiry Panel B considered a Memorandum from the Board's Assistant General Counsel dated April 2, 2004; the Complaint filed of record October 16, 2003; the Indictment No. 04-CR-0870 in Jefferson Circuit Court, Criminal Division; and the Indictment in Nelson Circuit Court, No. 04-CR-00066. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following AMENDED EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

### FINDINGS OF FACT

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

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses. The Metro Narcotics Unit

had a surveillance video of the licensee meeting a patient and obtaining hydrocodone that the patient obtained by calling in a prescription using the licensee's DEA number. The July 25, 2003 arrest citation for the licensee describes that the licensee was

> "observed on video surveillance exchanging $174.00 in hotel room for Hydrocodone (Schedule III Cont. Sub.) pills in unlabeled Rx bottle. Detectives obtained audio recordings of Def. [licensee] phoning to meet w/ co-defendant [Patient A] @ listed time @ specified location. Defendant acted in concert w/ co-defendant on 7/19/03 in order to unlawfully obtain Vicodin ES (Schedule III Cont. Sub.) from Walgreens pharmacy @ 2800 S. Hurstbourne Lane. Defendant unlawfully prescribed controlled substances to co-defendant on various dates between 2001-2003."

4. During the course of the investigation, the Board investigator interviewed Sgt. Stivers to discuss the investigation of the licensee by the Louisville Police Department, Metro Narcotics Unit. Sgt. Stivers reported to the investigator as follows:

On July 19, 2003, Walgreen Pharmacy contacted him regarding fraudulent prescribing in which a man was calling prescriptions into the pharmacy and identifying himself as the licensee. When the individual came into the pharmacy to pick up the prescription called in under a fictitious name of Nathan Short, he was detained by the police and subsequently provided a one hour taped statement in which Patient A reported that he had known the licensee since 2000, first as a legitimate patient and then as an office manager for his practice in Elizabethtown. Later, the licensee began to solicit homosexual relations in exchange for prescriptions for hydrocodone. Patient A and the licensee met regularly, sometimes weekly, at motels in Hardin County. Initially, the licensee wrote personal checks and prescriptions to Patient A in exchange for sex and part of the drugs. The licensee's wife, Teresa Dao, M.D., discovered the checks written by her husband to Patient A and insisted they stop.

Patient A's friends, Mr. R. B. and Mr. A. W., videoed the licensee arriving at Bluegrass Inn in Hardin County on September 3, 2001. The video showed the licensee entering Patient A's motel room. Later Patient A emerged from the room and held a prescription (post dated September 4, 2001) for Lortab 7.5mg #60 up to the camera along with $100 in cash, which the licensee had given him. Patient A turned over the September 3, 2001 video to Metro Narcotics.

Patient A stated all their meetings involved sex and/or drugs. The licensee gave him money to fill the prescription, then met with him and paid him additional money when they had homosexual relations and split the pills. On more than one occasion, Patient A saw the licensee consume pills for his alleged pain. In May 2003, the licensee gave Patient A a blank prescription with the DEA number circled for the purpose of calling in prescriptions. On the day of his arrest, Patient A stated he had called several pharmacies with prescriptions for Vicodin ES, using the names of R.B., the fictitious names of James Barnes, Chris Hodge, and Nathan Short and in the name of Patient B (a legitimate patient, although the narcotics were not intended for the patient).

Sgt. Stivers monitored a half dozen phone calls between Patient A and the licensee. The calls placed between July 20 and 25, 2003, discussed that Patient A was under suspicion for phoning in prescriptions and the licensee questioned if Patient A had gotten medicine that week. They then arranged to meet at Red Carpet Inn in Jefferson County on July 25, 2003. The room had video and audio surveillance. The licensee was filmed with his shirt off and his pants undone. He exchanged $174 for a bottle of pills and as soon as the licensee picked up the bottle of pills, Louisville Police arrested him and charged him with unlawful prescribing, trafficking in a controlled substance, and complicity in obtaining drugs by fraud and deceit. The licensee pled not guilty at his arraignment.

Sgt. Stivers stated that the licensee admitted meeting Patient A in the motel room in Hardin County on September 3, 2001. He also admitted he knew Patient A was under suspicion for calling in prescriptions with the licensee's DEA number.

**5.** Patient A was interviewed and detailed his history with the licensee. Patient A's Family Practice Physician referred him to the licensee because he had experienced two collapsed lungs and was having continuing chest pains. He first met the licensee as a patient in September 2000. In November 2000, the licensee asked him to be the office manager, as Ms. Fenwick was leaving to take a job in Lexington. Patient A believes he worked there approximately six weeks. During his employment he did not call in prescriptions or have access to a prescription pad. He resigned from the job because of inappropriate things that the licensee continuously said to him. In his letter of resignation, he wrote it was for personal reasons. Patient A states he never told Dr. Teresa Dao of the advances her

husband had made to him. Immediately after Patient A left their employment, the licensee began to intensely pursue him, calling many times a day and driving to Bardstown to find him.

Patient A believes the licensee mailed several prescriptions to his home, but then the licensee arranged to meet with him at a motel to exchange money for prescriptions and homosexual acts. They met frequently and the licensee wrote or called in Hydrocodone prescriptions for Patient A. During this six-month period, the licensee wrote Patient A checks totaling $4500. The licensee also began to request Patient A give him some of the Hydrocodone that the licensee had prescribed. On February 20, 2001, the licensee prescribed Oxycontin 20mg #30, because he had heard a lot about the drug and wanted to try it.

Patient A states that Dr. Teresa Dao became aware of checks her husband was writing to Patient A and in June 2001, went to Patient A's minister. Dr. Teresa Dao presented evidence of a suspected affair and as a result Patient A lost his job at the church on July 5, 2001. As a result of this action and arguments that the Daos were having, the licensee and Patient A did not meet from May 29, 2001 until September 3, 2001. Patient A's friends videotaped the September 3, 2001 meeting at Bluegrass Inn. Patient A states he kept the only copy of the video and turned it over to police after his arrest. In September 2001, the licensee began paying Patient A cash to avoid detection by his wife. Patient A estimated he received an average of $200 cash at each of his meetings with the licensee.

Patient A does not believe Dr. Teresa Dao was aware of their exchange of drugs, however one time she received a call from a pharmacy for verification of a

prescription called in for Patient A. This was during the period of time when the licensee and Patient A were not supposed to be talking. In a further effort to avoid detection by his wife, in February 2002, the licensee began using the names of legitimate patients to prescribe Hydrocodone for Patient A.

Patient A used the licensee's pager to call him. He would enter 1212, which signified the licensee was to call Patient A and arrange to meet. Sometimes the licensee was hard to get in touch with and Patient A could not call his home because of his wife. As a last resort, Patient A called Hardin Memorial Hospital and asked the switchboard to page the licensee to call "Dr. Conley." This signified that Patient A had the Hydrocodone and was ready to schedule a meeting in which drugs would be split, homosexual favors given, and money exchanged.

The licensee and Patient A usually met on weeknights after work. They met frequently at Bluegrass Inn, Commonwealth Lodge, and Motel 6 in Elizabethtown and Red Carpet Inn in Louisville and on several occasions at Freeman Lake. Patient A registered for the motel rooms in his own name because proof of identity was required. The licensee reimbursed him for the room and gave him money for the prescription to be filled. The dates of motel meeting should coincide with prescriptions written or called in by the licensee. (NOTE: Records detailing room charges for Patient A obtained from Motel 6 coincide with dates prescriptions were written/obtained by the licensee or Patient A) Patient A knew the pharmacy location and patient name the licensee used when

calling in the prescription, because he was present with the licensee when the pharmacies were called.

In May 2003, the licensee tore a blank prescription off his pad and circled his DEA number. He instructed Patient A to use the DEA and begin calling in the prescriptions because the licensee was "tired of doing it himself, but he still wanted the medicine." May 15, 2003, was the first time Patient A called in a prescription stating he was the licensee. Previously all prescriptions had either been written or called in by the licensee, mostly using Hardin County pharmacies. From May until his arrest on July 19, 2003, Patient A called in prescriptions to various pharmacies from Louisville to Hopkinsville, whichever was most convenient. He used the fictitious names previously mentioned and the name of his friend R. B., and also the legitimate patient names the licensee had previously used. The pharmacies frequently had to verify the prescription and would contact the licensee for authorization, which he gave. On Thursday July 17, 2003, the licensee told Patient A he was going out of town for the weekend and to "get what medicine he could." Brian called up to eight pharmacies that weekend to get as much medicine as he could.

Patient A states that as time progressed, the licensee began to take more of the Hydrocodone for himself. Sometimes he took a few pills and other times he took a whole bottle. The split was based on whatever the license wanted. Patient A stated the licensee had extreme mood swings, but commented that the licensee was usually happy when they were meeting at motel rooms, as long as Patient A went along with what the licensee wanted him to do. Patient A believes it was the

licensee's intention to get him hooked on the Hydrocodone to keep him coming back to their meetings. Patient A denies he ever took a prescription pad from the licensee's office, had access to prescription blanks, or ever signed the licensee's name. He only used the licensee's DEA number when instructed by the licensee to do so beginning in May 2003.

6. The licensee contacted the Board in response to the grievance against him. He reported that he would like to explain the situation further, but was told by counsel not to make any statements regarding this matter. The licensee states he was charged with something he did not do by a former employee who did this and set him up. He is anxious to clear his name in court. The former employee was discharged as a patient in October 2001. The patient discharge notice was not in the former employee's medical file and the licensee explained it was kept in a separate folder. The licensee provided a copy of the employment discharge notice and the patient discharge notice for this individual.

7. Sherry Fenwick, Office Manager for the licensee and his wife, Dr. Teresa Dao, stated that over the weekend of July 18, 2003, eight pharmacies had left messages with the answering service to verify call-ins for narcotic prescriptions. On Monday July 21, 2003, Ms. Fenwick reported this information to the Pharmacy Board and to Elizabethtown Narcotics Division. Ms. Fenwick knew the licensee was in New York over the weekend and would not have called in the prescriptions. In addition, it had been office policy for the past year, not to call in any controlled substance prescription. (A former female employee in billing, had used the licensee's DEA# to call in a narcotic prescription for her husband. The

pharmacist had recognized the caller's voice and had notified police who confronted the individual.)

On July 21, 2003, Ms. Fenwick became aware for the first time of the names of Chris Hodge, Nathan Short, and R. B.. These individuals had never been seen in the licensee's office; the names were not in the computer system. A.W. had been a patient and two names of legitimate patients were used for call in prescriptions –Patients B and C. Patient C was a very sick man, frequently in the hospital. Patient C told Ms. Fenwick that he only used Radcliff Drugs to fill his prescriptions and Ms. Fenwick had verified that all prescriptions filled at Radcliff Drugs corresponded with office records of prescriptions written by the licensee for Patient C.

Patient A's medical record could not be located, but Ms. Fenwick believed the licensee had it in his possession. Patient A had not been seen as a patient since November 17, 2000, per data in the computer system. He was employed as office manager in November 2000, when Ms. Fenwick took another job in Lexington, but he was no longer employed there when she returned to work for the licensee in February 2001.

On September 4, 2003, Ms. Fenwick provided a copy of Patient A's medical records. She reported that she was incorrect in her earlier report that he had not been seen after November 17, 2000, as a patient. She said November 17, 2000, was the last visit that had been billed to an insurance provider, but Patient A had been seen on subsequent visits in February, May, and September 2001, as self-pay and the computer showed no record of these visits. (NOTE: On August 19, 2003,

as the Board Investigator sat in Ms. Fenwick's office, she informed the investigator that A. W. was seen as a patient only one time on May 2, 2001, and he was self-pay. This information was available on her database. Paula York, Drug Enforcement, verified Dr. Teresa Dao requested a KASPER on Patient A on August 19, 2003, and August 30, 2003. The Daos would have had a list of all prescriptions written by the licensee for Patient A and the examination dates of 12/20/00, 2/20/01, 5/2/01, and 9/24/01 match prescriptions that were written by the licensee to him. Patient A was questioned about the office visits and he insisted he did not visit the office after his employment there ended. He had medical insurance except for the period of time when the licensee employed him.)

8. Linda Samuels Bragg, Director Medical Staff Services, Hardin County Memorial Hospital, reported that the licensee had been the subject of many complaints in the past years and the hospital Medical Executive Committee took a strong stance in 2002, and put the licensee on a corrective action plan due to his disruptive behavior. As part of the Corrective Action Plan, the licensee was referred to IPP for evaluation and anger management. Periodic meetings have occurred as suggested by the Corrective Action Plan. As a result of the news release regarding the licensee's arrest, the MEC asked the licensee to submit to a drug test on August 22, 2003, and not to do any invasive procedure until the results were known. On September 7, 2003, test results showed the licensee tested positive for Ultram/Tramadol. While completing the drug requisition form, the licensee failed to list Ultram as a medication he was currently taking.

Subsequently, the licensee admitted he had taken samples of Ultram for back & leg pain.

The switchboard staff at the hospital distinctly recalled that the licensee received calls on a regular basis from a man who identified himself as "Dr. Conley" and asked that the licensee be paged to call him. When staff beeped the licensee, he would frequently ask them to dial the number "Dr. Conley" had left for him. The hospital telephone records revealed that between September 10, 2001 and April 24, 2003 the licensee returned numerous calls to telephone numbers attributed to Patient A.

As a result of the criminal charges, the licensee's use of the hospital's telephone system to make and receive personal calls, and the licensee's positive test for Ultram, all clinical privileges at the hospital were suspended on September 12, 2003.

9. On October 16, 2003, a criminal indictment is expected to be returned by the Jefferson County Grand Jury against the licensee for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances. The licensee's arraignment on the criminal charges will occur in Jefferson Circuit Court on October 20, 2003.

10. A review of the KASPER records verified the licensee wrote 19 Hydrocodone prescriptions for Patient A beginning September 20, 2000, and continuing through October 15, 2001. From February 2, 2002 through April 29, 2003, the Hydrocodone prescriptions were written or called in for Patients B and C, two

legitimate patient names, but the correct birth dates, social security numbers, and addresses for the legitimate patients were not used. From May 15, 2003, through July 13, 2003, KASPER records verify 14 prescriptions for Hydrocodone were filled for various individuals, some of who were identified by Patient A as fictitious.

11. On October 18, 1990, Panel B reviewed a Grievance against the licensee and decided that five additional charts would be obtained for review. On April 18, 1991, Panel B reviewed the further investigation and noted that the consultant stated that the licensee had altered patient records during the course of the investigation. The licensee was asked to enter into an Agreed Order subject to periodic chart review and ordered to pay a fine. On October 17, 1991, Panel B withdrew their previous recommendation and suggested Dr. Dao's medical practice be monitored for an indefinite period.
12. On October 16, 2003, the Inquiry Panel entered a Complaint and Emergency Order of Suspension against Dr. Dao's Kentucky Medical license.
13. In March 2004, the licensee was re-indicted in Jefferson County, Kentucky, Case No. 04CR0870, charging the licensee with twenty-one (21) felony counts of Trafficking in a Controlled Substance; Obtaining Drugs by Fraud and Deceit; and Prohibited Activities Relating to Controlled Substances. The charged criminal acts were alleged to have occurred between February 2001 through July 2003.
14. On or about March 18, 2004, the licensee was indicted in Nelson County, Kentucky, Case No. 04CR00066, charging him with eight (8) felony counts of Obtaining Controlled Substances by Fraud and eight (8) felony counts of

Complicity to Obtaining Controlled Substances by Fraud. The charged criminal acts were alleged to have occurred between May 15, 2003 through July 13, 2003.

15. The Panel finds 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.

## 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 Amended 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 (4), (6), (10), (21) and KRS 311.595(9), as illustrated by 311.597(1)(a), (b), (c), (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 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

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

## AMENDED 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 David A. Dao, M.D., is SUSPENDED and Dr. Dao is prohibited from practicing medicine in the Commonwealth of Kentucky until the resolution of the Amended 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 _____ day of May, 2004.

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 copies were mailed via certified mail return-receipt requested to Patrick J. Renn, Esq., 500 West Jefferson Street, Suite 2000, Louisville, Kentucky 40202 and David A. Dao, M.D., 1234 Woodland Drive, Elizabethtown, Kentucky 42701 on this _____ day of May, 2004.

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917
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## AMENDED COMPLAINT

Comes now the Complainant Preston P. Nunnelley, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on April 22, 2004, states for its Amended Complaint against the licensee, David A. Dao, M.D., as follows:

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses. The Metro Narcotics Unit had a surveillance video of the licensee meeting a patient and obtaining hydrocodone that the patient obtained by calling in a prescription using the licensee's DEA number. The July 25, 2003 arrest citation for the licensee describes that the licensee was

> "observed on video surveillance exchanging $174.00 in hotel room for Hydrocodone (Schedule III Cont. Sub.) pills in unlabeled Rx bottle. Detectives obtained audio recordings of Def. [licensee] phoning to meet w/ co-defendant [Patient A] @ listed time @ specified location. Defendant acted in concert w/ co-defendant on 7/19/03 in order to unlawfully obtain Vicodin ES (Schedule III Cont. Sub.) from Walgreens pharmacy @ 2800 S. Hurstbourne Lane. Defendant unlawfully prescribed controlled substances to co-defendant on various dates between 2001-2003."

4. During the course of the investigation, the Board investigator interviewed Sgt. Stivers to discuss the investigation of the licensee by the Louisville Police Department, Metro Narcotics Unit. Sgt. Stivers reported to the investigator as follows:

On July 19, 2003, Walgreen Pharmacy contacted him regarding fraudulent prescribing in which a man was calling prescriptions into the pharmacy and identifying himself as the licensee. When the individual came into the pharmacy to pick up the prescription called in under a fictitious name of Nathan Short, he was detained by the police and subsequently provided a one hour taped statement in which Patient A reported that he had known the licensee since 2000, first as a legitimate patient and then as an office manager for his practice in Elizabethtown. Later, the licensee began to solicit homosexual relations in exchange for prescriptions for hydrocodone. Patient A and the licensee met regularly, sometimes weekly, at motels in Hardin County. Initially, the licensee wrote personal checks and prescriptions to Patient A in exchange for sex and part of the drugs. The licensee's wife, Teresa Dao, M.D., discovered the checks written by her husband to Patient A and insisted they stop.

Patient A's friends, Mr. R. B. and Mr. A. W., videoed the licensee arriving at Bluegrass Inn in Hardin County on September 3, 2001. The video showed the licensee entering Patient A's motel room. Later Patient A emerged from the room and held a prescription (post dated September 4, 2001) for Lortab 7.5mg #60 up to the camera along with $100 in cash, which the licensee had given him. Patient A turned over the September 3, 2001 video to Metro Narcotics.

Patient A stated all their meetings involved sex and/or drugs. The licensee gave him money to fill the prescription, then met with him and paid him additional money when they had homosexual relations and split the pills. On more than one occasion, Patient A saw the licensee consume pills for his alleged pain. In May 2003, the licensee gave Patient A a blank prescription with the DEA number circled for the purpose of calling in prescriptions. On the day of his arrest, Patient A stated he had called several pharmacies with prescriptions for Vicodin ES, using the names of R.B., the fictitious names of James Barnes, Chris Hodge, and Nathan Short and in the name of Patient B (a legitimate patient, although the narcotics were not intended for the patient).

Sgt. Stivers monitored a half dozen phone calls between Patient A and the licensee. The calls placed between July 20 and 25, 2003, discussed that Patient A was under suspicion for phoning in prescriptions and the licensee questioned if Patient A had gotten medicine that week. They then arranged to meet at Red Carpet Inn in Jefferson County on July 25, 2003. The room had video and audio surveillance. The licensee was filmed with his shirt off and his pants undone. He

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Sgt. Stivers stated that the licensee admitted meeting Patient A in the motel room in Hardin County on September 3, 2001. He also admitted he knew Patient A was under suspicion for calling in prescriptions with the licensee's DEA number.

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Patient A used the licensee's pager to call him. He would enter 1212, which signified the licensee was to call Patient A and arrange to meet. Sometimes the licensee was hard to get in touch with and Patient A could not call his home because of his wife. As a last resort, Patient A called Hardin Memorial Hospital and asked the switchboard to page the licensee to call "Dr. Conley."

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In May 2003, the licensee tore a blank prescription off his pad and circled his DEA number. He instructed Patient A to use the DEA and begin calling in the prescriptions because the licensee was "tired of doing it himself, but he still wanted the medicine." May 15, 2003, was the first time Patient A called in a prescription stating he was the licensee. Previously all prescriptions had either been written or called in by the licensee, mostly using Hardin County pharmacies. From May until his arrest on July 19, 2003, Patient A called in prescriptions to various pharmacies from Louisville to Hopkinsville, whichever was most

convenient. He used the fictitious names previously mentioned and the name of his friend R. B., and also the legitimate patient names the licensee had previously used. The pharmacies frequently had to verify the prescription and would contact the licensee for authorization, which he gave. On Thursday July 17, 2003, the licensee told Patient A he was going out of town for the weekend and to "get what medicine he could." Brian called up to eight pharmacies that weekend to get as much medicine as he could.

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discharged as a patient in October 2001. The patient discharge notice was not in the former employee's medical file and the licensee explained it was kept in a separate folder. The licensee provided a copy of the employment discharge notice and the patient discharge notice for this individual.

7. Sherry Fenwick, Office Manager for the licensee and his wife, Dr. Teresa Dao, stated that over the weekend of July 18, 2003, eight pharmacies had left messages with the answering service to verify call-ins for narcotic prescriptions. On Monday July 21, 2003, Ms. Fenwick reported this information to the Pharmacy Board and to Elizabethtown Narcotics Division. Ms. Fenwick knew the licensee was in New York over the weekend and would not have called in the prescriptions. In addition, it had been office policy for the past year, not to call in any controlled substance prescription. (A former female employee in billing, had used the licensee's DEA# to call in a narcotic prescription for her husband. The pharmacist had recognized the caller's voice and had notified police who confronted the individual.)

On July 21, 2003, Ms. Fenwick became aware for the first time of the names of Chris Hodge, Nathan Short, and R. B.. These individuals had never been seen in the licensee's office; the names were not in the computer system. A.W. had been a patient and two names of legitimate patients were used for call in prescriptions –Patients B and C. Patient C was a very sick man, frequently in the hospital. Patient C told Ms. Fenwick that he only used Radcliff Drugs to fill his prescriptions and Ms. Fenwick had verified that all prescriptions filled at Radcliff

Drugs corresponded with office records of prescriptions written by the licensee for Patient C.

Patient A's medical record could not be located, but Ms. Fenwick believed the licensee had it in his possession. Patient A had not been seen as a patient since November 17, 2000, per data in the computer system. He was employed as office manager in November 2000, when Ms. Fenwick took another job in Lexington, but he was no longer employed there when she returned to work for the licensee in February 2001.

On September 4, 2003, Ms. Fenwick provided a copy of Patient A's medical records. She reported that she was incorrect in her earlier report that he had not been seen after November 17, 2000, as a patient. She said November 17, 2000, was the last visit that had been billed to an insurance provider, but Patient A had been seen on subsequent visits in February, May, and September 2001, as self-pay and the computer showed no record of these visits. (NOTE: On August 19, 2003, as the Board Investigator sat in Ms. Fenwick's office, she informed the investigator that A. W. was seen as a patient only one time on May 2, 2001, and he was self-pay. This information was available on her database. Paula York, Drug Enforcement, verified Dr. Teresa Dao requested a KASPER on Patient A on August 19, 2003, and August 30, 2003. The Daos would have had a list of all prescriptions written by the licensee for Patient A and the examination dates of 12/20/00, 2/20/01, 5/2/01, and 9/24/01 match prescriptions that were written by the licensee to him. Patient A was questioned about the office visits and he

insisted he did not visit the office after his employment there ended. He had medical insurance except for the period of time when the licensee employed him.)

8. Linda Samuels Bragg, Director Medical Staff Services, Hardin County Memorial Hospital, reported that the licensee had been the subject of many complaints in the past years and the hospital Medical Executive Committee took a strong stance in 2002, and put the licensee on a corrective action plan due to his disruptive behavior. As part of the Corrective Action Plan, the licensee was referred to IPP for evaluation and anger management. Periodic meetings have occurred as suggested by the Corrective Action Plan. As a result of the news release regarding the licensee's arrest, the MEC asked the licensee to submit to a drug test on August 22, 2003, and not to do any invasive procedure until the results were known. On September 7, 2003, test results showed the licensee tested positive for Ultram/Tramadol. While completing the drug requisition form, the licensee failed to list Ultram as a medication he was currently taking. Subsequently, the licensee admitted he had taken samples of Ultram for back & leg pain.

The switchboard staff at the hospital distinctly recalled that the licensee received calls on a regular basis from a man who identified himself as "Dr. Conley" and asked that the licensee be paged to call him. When staff beeped the licensee, he would frequently ask them to dial the number "Dr. Conley" had left for him. The hospital telephone records revealed that between September 10, 2001 and April 24, 2003 the licensee returned numerous calls to telephone numbers attributed to Patient A.

As a result of the criminal charges, the licensee's use of the hospital's telephone system to make and receive personal calls, and the licensee's positive test for Ultram, all clinical privileges at the hospital were suspended on September 12, 2003.

9. On October 16, 2003, a criminal indictment is expected to be returned by the Jefferson County Grand Jury against the licensee for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances. The licensee's arraignment on the criminal charges will occur in Jefferson Circuit Court on October 20, 2003.

10. A review of the KASPER records verified the licensee wrote 19 Hydrocodone prescriptions for Patient A beginning September 20, 2000, and continuing through October 15, 2001. From February 2, 2002 through April 29, 2003, the Hydrocodone prescriptions were written or called in for Patients B and C, two legitimate patient names, but the correct birth dates, social security numbers, and addresses for the legitimate patients were not used. From May 15, 2003, through July 13, 2003, KASPER records verify 14 prescriptions for Hydrocodone were filled for various individuals, some of who were identified by Patient A as fictitious.

11. On October 18, 1990, Panel B reviewed a Grievance against the licensee and decided that five additional charts would be obtained for review. On April 18, 1991, Panel B reviewed the further investigation and noted that the consultant stated that the licensee had altered patient records during the course of the

investigation. The licensee was asked to enter into an Agreed Order subject to periodic chart review and ordered to pay a fine. On October 17, 1991, Panel B withdrew their previous recommendation and suggested Dr. Dao's medical practice be monitored for an indefinite period.

12. On October 16, 2003, the Inquiry Panel entered a Complaint and Emergency Order of Suspension against Dr. Dao's Kentucky Medical license.

13. In March 2004, the licensee was re-indicted in Jefferson County, Kentucky, Case No. 04CR0870, charging the licensee with twenty-one (21) felony counts of Trafficking in a Controlled Substance; Obtaining Drugs by Fraud and Deceit; and Prohibited Activities Relating to Controlled Substances. The charged criminal acts were alleged to have occurred between February 2001 through July 2003.

14. On or about March 18, 2004, the licensee was indicted in Nelson County, Kentucky, Case No. 04CR00066, charging him with eight (8) felony counts of Obtaining Controlled Substances by Fraud and eight (8) felony counts of Complicity to Obtaining Controlled Substances by Fraud. The charged criminal acts were alleged to have occurred between May 15, 2003 through July 13, 2003.

15. By his conduct, the licensee has violated KRS 311.595(4), (6), (10), (21) and KRS 311.595(9), as illustrated by 311.597(1)(a), (b), (c), (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 paragraphs 12 – 14 of the Amended 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 Amended Complaint is scheduled for July 7 and 8, 2004 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 David A. Dao, M.D.

This _____ day of May, 2004.

PRESTON P. NUNNELLEY, M.D.
CHAIR, INQUIRY PANEL B

## CERTIFICATE OF SERVICE

I certify that the original of this Amended 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 to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204; and copies were mailed via certified mail return-receipt requested to Patrick J. Renn, Esq., 500 West Jefferson Street, Suite 2000, Louisville, Kentucky 40202 and David A. Dao, M.D., 1234 Woodland Drive, Elizabethtown, Kentucky 42701 on this _____ day of May, 2004.

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 1234 WOODLAND DRIVE, ELIZABETHTOWN KENTUCKY 42701

## 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 October 16, 2003 meeting. At that meeting, Inquiry Panel B considered a Memorandum from Betty Prater, Medical Investigator, dated September 23, 2003; a Uniform Citation, Case No. 03-0999, issued by the Jefferson County Police Department dated July 25, 2003 against the licensee; and a Prescription Table prepared by Betty Prater, Medical Investigator. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

## FINDINGS OF FACT

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

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses. The Metro Narcotics Unit

had a surveillance video of the licensee meeting a patient and obtaining hydrocodone that the patient obtained by calling in a prescription using the licensee's DEA number. The July 25, 2003 arrest citation for the licensee describes that the licensee was

> "observed on video surveillance exchanging $174.00 in hotel room for Hydrocodone (Schedule III Cont. Sub.) pills in unlabeled Rx bottle. Detectives obtained audio recordings of Def. [licensee] phoning to meet w/ co-defendant [Patient A] @ listed time @ specified location. Defendant acted in concert w/ co-defendant on 7/19/03 in order to unlawfully obtain Vicodin ES (Schedule III Cont. Sub.) from Walgreens pharmacy @ 2800 S. Hurstbourne Lane. Defendant unlawfully prescribed controlled substances to co-defendant on various dates between 2001-2003."

4. During the course of the investigation, the Board investigator interviewed Sgt. Stivers to discuss the investigation of the licensee by the Louisville Police Department, Metro Narcotics Unit. Sgt. Stivers reported to the investigator as follows:

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as the Board Investigator sat in Ms. Fenwick's office, she informed the investigator that A. W. was seen as a patient only one time on May 2, 2001, and he was self-pay. This information was available on her database. Paula York, Drug Enforcement, verified Dr. Teresa Dao requested a KASPER on Patient A on August 19, 2003, and August 30, 2003. The Daos would have had a list of all prescriptions written by the licensee for Patient A and the examination dates of 12/20/00, 2/20/01, 5/2/01, and 9/24/01 match prescriptions that were written by the licensee to him. Patient A was questioned about the office visits and he insisted he did not visit the office after his employment there ended. He had medical insurance except for the period of time when the licensee employed him.)

8. Linda Samuels Bragg, Director Medical Staff Services, Hardin County Memorial Hospital, reported that the licensee had been the subject of many complaints in the past years and the hospital Medical Executive Committee took a strong stance in 2002, and put the licensee on a corrective action plan due to his disruptive behavior. As part of the Corrective Action Plan, the licensee was referred to IPP for evaluation and anger management. Periodic meetings have occurred as suggested by the Corrective Action Plan. As a result of the news release regarding the licensee's arrest, the MEC asked the licensee to submit to a drug test on August 22, 2003, and not to do any invasive procedure until the results were known. On September 7, 2003, test results showed the licensee tested positive for Ultram/Tramadol. While completing the drug requisition form, the licensee failed to list Ultram as a medication he was currently taking.

Subsequently, the licensee admitted he had taken samples of Ultram for back & leg pain.

The switchboard staff at the hospital distinctly recalled that the licensee received calls on a regular basis from a man who identified himself as "Dr. Conley" and asked that the licensee be paged to call him. When staff beeped the licensee, he would frequently ask them to dial the number "Dr. Conley" had left for him. The hospital telephone records revealed that between September 10, 2001 and April 24, 2003 the licensee returned numerous calls to telephone numbers attributed to Patient A.

As a result of the criminal charges, the licensee's use of the hospital's telephone system to make and receive personal calls, and the licensee's positive test for Ultram, all clinical privileges at the hospital were suspended on September 12, 2003.

9. On October 16, 2003, a criminal indictment is expected to be returned by the Jefferson County Grand Jury against the licensee for criminal acts of Trafficking in a Controlled Substance, Obtaining Drugs by Fraud and Deceit, and Unauthorized Prescribing, Dispensing or Administering of Controlled Substances. The licensee's arraignment on the criminal charges will occur in Jefferson Circuit Court on October 20, 2003.

10. A review of the KASPER records verified the licensee wrote 19 Hydrocodone prescriptions for Patient A beginning September 20, 2000, and continuing through October 15, 2001. From February 2, 2002 through April 29, 2003, the Hydrocodone prescriptions were written or called in for Patients B and C, two

legitimate patient names, but the correct birth dates, social security numbers, and addresses for the legitimate patients were not used. From May 15, 2003, through July 13, 2003, KASPER records verify 14 prescriptions for Hydrocodone were filled for various individuals, some of who were identified by Patient A as fictitious.

11. On October 18, 1990, Panel B reviewed a Grievance against the licensee and decided that five additional charts would be obtained for review. On April 18, 1991, Panel B reviewed the further investigation and noted that the consultant stated that the licensee had altered patient records during the course of the investigation. The licensee was asked to enter into an Agreed Order subject to periodic chart review and ordered to pay a fine. On October 17, 1991, Panel B withdrew their previous recommendation and suggested Dr. Dao's medical practice be monitored for an indefinite period.

12. The Panel finds 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.

## 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 (4), (6), (10), (21) and KRS 311.595(9), as illustrated by 311.597(1)(a), (b), (c), (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 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

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

## EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by David A. Dao, M.D., is SUSPENDED and Dr. Dao 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 16th day of October, 2003.

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 copies were mailed via certified mail return-receipt requested to Frank P. Doheny, Jr., Esq., 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202 and David A. Dao, M.D., 1234 Woodland Drive, Elizabethtown, Kentucky 42701 on this 16th day of October, 2003.

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 917

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID A. DAO, M.D., LICENSE NO. 22439, 1234 WOODLAND DRIVE, ELIZABETHTOWN KENTUCKY 42701

## COMPLAINT

Comes now the Complainant Preston P. Nunnelley, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on October 16, 2003, states for its Complaint against the licensee, David A. Dao, M.D., as follows:

1. At all relevant times, David A. Dao, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Pulmonary Disease.
3. On July 30, 2003, Sergeant Bill Stivers contacted the Board and advised that the licensee had been arrested for drug-related offenses. The Metro Narcotics Unit had a surveillance video of the licensee meeting a patient and obtaining hydrocodone that the patient obtained by calling in a prescription using the licensee's DEA number. The July 25, 2003 arrest citation for the licensee describes that the licensee was

> "observed on video surveillance exchanging $174.00 in hotel room for Hydrocodone (Schedule III Cont. Sub.) pills in unlabeled Rx bottle. Detectives obtained audio recordings of Def. [licensee] phoning to meet w/ co-defendant [Patient A] @ listed time @ specified location. Defendant acted in concert w/ co-defendant on 7/19/03 in order to unlawfully obtain Vicodin ES (Schedule III Cont. Sub.) from Walgreens pharmacy @ 2800 S. Hurstbourne Lane. Defendant unlawfully prescribed controlled substances to co-defendant on various dates between 2001-2003."

4. During the course of the investigation, the Board investigator interviewed Sgt. Stivers to discuss the investigation of the licensee by the Louisville Police Department, Metro Narcotics Unit. Sgt. Stivers reported to the investigator as follows:

On July 19, 2003, Walgreen Pharmacy contacted him regarding fraudulent prescribing in which a man was calling prescriptions into the pharmacy and identifying himself as the licensee. When the individual came into the pharmacy to pick up the prescription called in under a fictitious name of Nathan Short, he was detained by the police and subsequently provided a one hour taped statement in which Patient A reported that he had known the licensee since 2000, first as a legitimate patient and then as an office manager for his practice in Elizabethtown. Later, the licensee began to solicit homosexual relations in exchange for prescriptions for hydrocodone. Patient A and the licensee met regularly, sometimes weekly, at motels in Hardin County. Initially, the licensee wrote personal checks and prescriptions to Patient A in exchange for sex and part of the drugs. The licensee's wife, Teresa Dao, M.D., discovered the checks written by her husband to Patient A and insisted they stop.

Patient A's friends, Mr. R. B. and Mr. A. W., videoed the licensee arriving at Bluegrass Inn in Hardin County on September 3, 2001. The video showed the licensee entering Patient A's motel room. Later Patient A emerged from the room and held a prescription (post dated September 4, 2001) for Lortab 7.5mg #60 up to the camera along with $100 in cash, which the licensee had given him. Patient A turned over the September 3, 2001 video to Metro Narcotics.

Patient A stated all their meetings involved sex and/or drugs. The licensee gave him money to fill the prescription, then met with him and paid him additional money when they had homosexual relations and split the pills. On more than one occasion, Patient A saw the licensee consume pills for his alleged pain. In May 2003, the licensee gave Patient A a blank prescription with the DEA number circled for the purpose of calling in prescriptions. On the day of his arrest, Patient A stated he had called several pharmacies with prescriptions for Vicodin ES, using the names of R.B., the fictitious names of James Barnes, Chris Hodge, and Nathan Short and in the name of Patient B (a legitimate patient, although the narcotics were not intended for the patient).

Sgt. Stivers monitored a half dozen phone calls between Patient A and the licensee. The calls placed between July 20 and 25, 2003, discussed that Patient A was under suspicion for phoning in prescriptions and the licensee questioned if Patient A had gotten medicine that week. They then arranged to meet at Red Carpet Inn in Jefferson County on July 25, 2003. The room had video and audio surveillance. The licensee was filmed with his shirt off and his pants undone. He

exchanged $174 for a bottle of pills and as soon as the licensee picked up the bottle of pills, Louisville Police arrested him and charged him with unlawful prescribing, trafficking in a controlled substance, and complicity in obtaining drugs by fraud and deceit. The licensee pled not guilty at his arraignment.

Sgt. Stivers stated that the licensee admitted meeting Patient A in the motel room in Hardin County on September 3, 2001. He also admitted he knew Patient A was under suspicion for calling in prescriptions with the licensee's DEA number.

5. Patient A was interviewed and detailed his history with the licensee. Patient A's Family Practice Physician referred him to the licensee because he had experienced two collapsed lungs and was having continuing chest pains. He first met the licensee as a patient in September 2000. In November 2000, the licensee asked him to be the office manager, as Ms. Fenwick was leaving to take a job in Lexington. Patient A believes he worked there approximately six weeks. During his employment he did not call in prescriptions or have access to a prescription pad. He resigned from the job because of inappropriate things that the licensee continuously said to him. In his letter of resignation, he wrote it was for personal reasons. Patient A states he never told Dr. Teresa Dao of the advances her husband had made to him. Immediately after Patient A left their employment, the licensee began to intensely pursue him, calling many times a day and driving to Bardstown to find him.

Patient A believes the licensee mailed several prescriptions to his home, but then the licensee arranged to meet with him at a motel to exchange money for prescriptions and homosexual acts. They met frequently and the licensee wrote or called in Hydrocodone prescriptions for Patient A. During this six-month period, the licensee wrote Patient A checks totaling $4500. The licensee also began to request Patient A give him some of the Hydrocodone that the licensee had

prescribed. On February 20, 2001, the licensee prescribed Oxycontin 20mg #30, because he had heard a lot about the drug and wanted to try it.

Patient A states that Dr. Teresa Dao became aware of checks her husband was writing to Patient A and in June 2001, went to Patient A's minister. Dr. Teresa Dao presented evidence of a suspected affair and as a result Patient A lost his job at the church on July 5, 2001. As a result of this action and arguments that the Daos were having, the licensee and Patient A did not meet from May 29, 2001 until September 3, 2001. Patient A's friends videotaped the September 3, 2001 meeting at Bluegrass Inn. Patient A states he kept the only copy of the video and turned it over to police after his arrest. In September 2001, the licensee began paying Patient A cash to avoid detection by his wife. Patient A estimated he received an average of $200 cash at each of his meetings with the licensee.

Patient A does not believe Dr. Teresa Dao was aware of their exchange of drugs, however one time she received a call from a pharmacy for verification of a prescription called in for Patient A. This was during the period of time when the licensee and Patient A were not supposed to be talking. In a further effort to avoid detection by his wife, in February 2002, the licensee began using the names of legitimate patients to prescribe Hydrocodone for Patient A.

Patient A used the licensee's pager to call him. He would enter 1212, which signified the licensee was to call Patient A and arrange to meet. Sometimes the licensee was hard to get in touch with and Patient A could not call his home because of his wife. As a last resort, Patient A called Hardin Memorial Hospital and asked the switchboard to page the licensee to call "Dr. Conley."

This signified that Patient A had the Hydrocodone and was ready to schedule a meeting in which drugs would be split, homosexual favors given, and money exchanged.

The licensee and Patient A usually met on weeknights after work. They met frequently at Bluegrass Inn, Commonwealth Lodge, and Motel 6 in Elizabethtown and Red Carpet Inn in Louisville and on several occasions at Freeman Lake. Patient A registered for the motel rooms in his own name because proof of identity was required. The licensee reimbursed him for the room and gave him money for the prescription to be filled. The dates of motel meeting should coincide with prescriptions written or called in by the licensee. (NOTE: Records detailing room charges for Patient A obtained from Motel 6 coincide with dates prescriptions were written/obtained by the licensee or Patient A) Patient A knew the pharmacy location and patient name the licensee used when calling in the prescription, because he was present with the licensee when the pharmacies were called.

In May 2003, the licensee tore a blank prescription off his pad and circled his DEA number. He instructed Patient A to use the DEA and begin calling in the prescriptions because the licensee was "tired of doing it himself, but he still wanted the medicine." May 15, 2003, was the first time Patient A called in a prescription stating he was the licensee. Previously all prescriptions had either been written or called in by the licensee, mostly using Hardin County pharmacies. From May until his arrest on July 19, 2003, Patient A called in prescriptions to various pharmacies from Louisville to Hopkinsville, whichever was most

convenient. He used the fictitious names previously mentioned and the name of his friend R. B., and also the legitimate patient names the licensee had previously used. The pharmacies frequently had to verify the prescription and would contact the licensee for authorization, which he gave. On Thursday July 17, 2003, the licensee told Patient A he was going out of town for the weekend and to "get what medicine he could." Brian called up to eight pharmacies that weekend to get as much medicine as he could.

Patient A states that as time progressed, the licensee began to take more of the Hydrocodone for himself. Sometimes he took a few pills and other times he took a whole bottle. The split was based on whatever the license wanted. Patient A stated the licensee had extreme mood swings, but commented that the licensee was usually happy when they were meeting at motel rooms, as long as Patient A went along with what the licensee wanted him to do. Patient A believes it was the licensee's intention to get him hooked on the Hydrocodone to keep him coming back to their meetings. Patient A denies he ever took a prescription pad from the licensee's office, had access to prescription blanks, or ever signed the licensee's name. He only used the licensee's DEA number when instructed by the licensee to do so beginning in May 2003.

6. The licensee contacted the Board in response to the grievance against him. He reported that he would like to explain the situation further, but was told by counsel not to make any statements regarding this matter. The licensee states he was charged with something he did not do by a former employee who did this and set him up. He is anxious to clear his name in court. The former employee was

discharged as a patient in October 2001. The patient discharge notice was not in the former employee's medical file and the licensee explained it was kept in a separate folder. The licensee provided a copy of the employment discharge notice and the patient discharge notice for this individual.

7. Sherry Fenwick, Office Manager for the licensee and his wife, Dr. Teresa Dao, stated that over the weekend of July 18, 2003, eight pharmacies had left messages with the answering service to verify call-ins for narcotic prescriptions. On Monday July 21, 2003, Ms. Fenwick reported this information to the Pharmacy Board and to Elizabethtown Narcotics Division. Ms. Fenwick knew the licensee was in New York over the weekend and would not have called in the prescriptions. In addition, it had been office policy for the past year, not to call in any controlled substance prescription. (A former female employee in billing, had used the licensee's DEA# to call in a narcotic prescription for her husband. The pharmacist had recognized the caller's voice and had notified police who confronted the individual.)

On July 21, 2003, Ms. Fenwick became aware for the first time of the names of Chris Hodge, Nathan Short, and R. B.. These individuals had never been seen in the licensee's office; the names were not in the computer system. A.W. had been a patient and two names of legitimate patients were used for call in prescriptions –Patients B and C. Patient C was a very sick man, frequently in the hospital. Patient C told Ms. Fenwick that he only used Radcliff Drugs to fill his prescriptions and Ms. Fenwick had verified that all prescriptions filled at Radcliff

Drugs corresponded with office records of prescriptions written by the licensee for Patient C.

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investigation. The licensee was asked to enter into an Agreed Order subject to periodic chart review and ordered to pay a fine. On October 17, 1991, Panel B withdrew their previous recommendation and suggested Dr. Dao's medical practice be monitored for an indefinite period.

12. By his conduct, the licensee has violated KRS 311.595(4), (6), (10), (21) and KRS 311.595(9), as illustrated by 311.597(1)(a), (b), (c), (3) and (4). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.

13. 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.

14. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for May 5 & 6, 2004 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 David A. Dao, M.D.

This 16th day of October, 2003.

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 to Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; and copies were mailed via certified mail return-receipt requested to Frank P. Doheny, Jr., Esq., 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202 and David A. Dao, M.D., 1234 Woodland Drive, Elizabethtown, Kentucky 42701 on this 16th day of October, 2003.

L. Chad Elder by C WJ, LSO

L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046