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K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1977

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PAUL E. McLAUGHLIN, M.D., LICENSE NO. 24118, 250 FOXGLOVE DRIVE, SUITE 6, MT. STERLING, KENTUCKY 40353

**ORDER OF REVOCATION**

Pursuant to KRS 311.591(7) and KRS 13B.120, at its meeting on March 17, 2022, the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Hearing Panel B, took up this matter for final action. Hearing Panel B considered the Complaint; the Hearing Officer’s Findings of Fact, Conclusions of Law and Recommended Order, dated February 7, 2022; the Board’s Exceptions, filed February 22, 2022; the licensee’s Exceptions, filed February 22, 2022; and a memorandum from Board counsel, dated February 22, 2022.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS AND ADOPTS the Hearing Officer’s Findings of Fact and Conclusions of Law and INCORPORATES them BY REFERENCE into this Order. (Attachment) Hearing Panel B hereby MODIFIES, IN PART, Findings of Fact #60 and #61 to read as follows:

60. Hence there is no dispute that she has received training to administer BOTOX injections, and the Board has not asserted that she has not received training. However, more than mere training is required in order to be qualified to administer BOTOX in Kentucky. Procedures involving the administration of BOTOX and fillers are considered medical procedures within the cosmetic profession, a licensed profession. By law, in Kentucky licensed estheticians, who also receive similar or greater training than Fairshinda, may only administer BOTOX under a physician’s “immediate supervision” (specifically defined as “physically present in the same room and overseeing the activities at all times”). (Exhibit 3; DVD IV, 5/12/2021, 12:13:00-12:27:56 p.m.)

61. It is not an acceptable medical practice for physicians to delegate the administration of BOTOX or dermal fillers to unlicensed persons, such as medical assistants, regardless of their training. Licensed estheticians may only administer BOTOX under a physician's "immediate supervision." Therefore, it is nonsensical that a physician may allow an unlicensed person to administer BOTOX, with little or no supervision. (Exhibits 3 and 4; DVD IV, 5/12/2021, 12:13:00-12:27:56 p.m.)


Hearing Panel B FURTHER ACCEPTS AND ADOPTS the Hearing Officer's recommended order.

Having considered all statutorily available sanctions, the nature of the violations in this case, the licensee's lack of insight as demonstrated by his implicit authorization of conduct for which he has previously been sanctioned, and the licensee's support of and engagement in deceptive, dishonest and untruthful conduct, the Hearing Panel has determined that revocation is the appropriate sanction. Accordingly, Hearing Panel B

**ORDERS:**

1. The license to practice medicine held by Paul E. McLaughlin, M.D., is hereby REVOKED and he shall not perform any act which constitutes 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 – in the Commonwealth of Kentucky;
2. The provisions of KRS 311.607 SHALL apply to any petition for reinstatement filed by the licensee; and
3. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the costs of these proceedings in the amount of \$28,827.96, prior to filing any petition for reinstatement of his license to practice medicine in the Commonwealth of Kentucky.

SO ORDERED on this 21<sup>st</sup> day of March, 2022.

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

**CERTIFICATE OF SERVICE**

I certify that the original of the foregoing Order of Revocation was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed, first-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed, certified return-receipt requested, to the licensee Paul E. McLaughlin, M.D., License No. 24118, 250 Foxglove Drive, Suite 6, Mt. Sterling, Kentucky 40353 and his counsel, Benjamin J. Weigel, Esq., O'Bryan, Brown & Toner, PLLC, 401 South Fourth Street, Suite 2200, Louisville, Kentucky 40202 on this 21<sup>st</sup> day of March, 2022.



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

**EFFECTIVE DATE AND APPEAL RIGHTS**

Pursuant to KRS 311.593(1) and 13B.120, the effective date of this Order will be thirty (30) days after this Order of Revocation is received by the licensee or the licensee's attorney, whichever shall occur first.

The licensee may appeal from this Order, pursuant to KRS 311.593 and 13B.140-.150, by filing a Petition for Judicial Review in Jefferson Circuit Court within thirty (30) days after this Order is mailed or delivered by personal service. Copies of the petition shall be served by the licensee upon the Board and its General Counsel or Assistant General Counsel. The Petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested, along with a copy of this Order.

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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1977

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PAUL E. McLAUGHLIN, M.D., LICENSE NO. 24118, 250 FOXGLOVE DRIVE, SUITE 6, MT. STERLING, KENTUCKY 40353

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDED ORDER**

The Kentucky Board of Medical Licensure [hereinafter "the Board"] brought this action against the license of Paul E. McLaughlin, M.D., charging him with violating the Board's statutes governing the practice of medicine. The hearing officer conducted the administrative hearing on May 11 and 12, and November 3 and 8, 2021. Hon. Leanne K. Diakov represented the Board, and Hon. Benjamin J. Weigel represented Dr. McLaughlin, who also attended the hearing.

Previously, on November 17 and December 4 and 8, 2020, the hearing officer conducted a separate administrative hearing on the *Emergency Order of Suspension* issued by the Board against Dr. McLaughlin's license. (The record of the administrative hearing on the emergency order was incorporated into the record of the *Complaint* action. Therefore, the exhibits for the combined record of the two hearings are marked sequentially as Exhibits 1 through 27, and the DVDs of the combined seven days of administrative hearings will be referenced sequentially in this recommendation as DVDs I-VII.) In the hearing on the emergency order the issue before the hearing officer was whether based upon the same allegations that are set forth in the *Complaint* there was substantial evidence of a violation of law that constituted an immediate danger to the public health, safety, or welfare of his patients or the general public. KRS 13B.125(3).

The hearing officer found there was. *Final Order Affirming Emergency Order of Suspension*, dated December 14, 2020.

In this action, the issue before the hearing officer is whether the preponderance of the evidence admitted at the administrative hearing on the *Complaint* supports the Board's assertion that Dr. McLaughlin's conduct violated the Board's statutes governing the practice of medicine, and if he did, whether his license should be subject to sanction by the Board for any statutory violations that he was found to have committed. After considering the testimony of the witnesses, the exhibits admitted into evidence, and the arguments of counsel, the hearing officer finds Dr. McLaughlin has engaged in the misconduct set forth in the *Complaint* in violation of the Board's statutes and recommends the Board take any appropriate action against Dr. McLaughlin's license for those violations. In support of his recommendation the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

#### **FINDINGS OF FACT**

##### **I. The Charges Against Dr. McLaughlin.**

1. Dr. McLaughlin has been licensed to practice medicine in Kentucky since 1985, and his medical specialty is Family Medicine. DVD I, 9:31-9:32 a.m.; Exhibit 1, Tab A, marked page 690.

2. On October 30, 2020, the Board issued the *Complaint* charging Dr. McLaughlin with having engaged in several acts that violated the statutes governing the practice of medicine in Kentucky. Exhibit 1, Tab D (hereinafter, the *Complaint*).

3. The allegations of misconduct focus on the actions of Dr. McLaughlin in relation to the conduct of his wife, Fairshinda McLaughlin, in providing care and

treatment to the person identified in the *Complaint* as Patient A. Id.; DVD V, 1:32 p.m.

4. The Board alleges that in the summer of 2019 Dr. McLaughlin failed to provide appropriate oversight of Fairshinda's conduct and improperly delegated to her his medical responsibilities related to the administration of BOTOX injections, to the diagnosis and treatment of Patient A's medical complaints, and to the issuance of prescriptions in response to those complaints. *Complaint*, numbered paragraphs 4-8, pages 1-4.

5. The focus of the evidence at the administrative hearing regarding the alleged misconduct by Dr. McLaughlin was upon the BOTOX injections Patient A received from Fairshinda on May 29, 2019, and the antibiotic prescriptions Patient A received on August 21 and 28, 2019, after she spoke by telephone with Fairshinda about a lingering sinus infection. Exhibit 1, Tab A, marked pages 740-742; Exhibit 15, marked page 27.

6. Fairshinda served as office manager of Dr. McLaughlin's medical practice during the time period at issue in this action. DVD V, 2:01-2:03 p.m.

7. Fairshinda also runs Medical Center Skin Care (hereinafter "the Clinic") at a separate location for which Dr. McLaughlin is the supervisory physician. DVD I, 9:33 and 11:18 a.m.

8. The conduct at issue in this action involved Patient A's interactions with Fairshinda through the Clinic, and although Dr. McLaughlin admits that he never talked to or examined Patient A in May or August 2019, he asserts that in his position as supervisory physician for the Clinic he approved all treatment and prescriptions for Patient A only after talking with Fairshinda. DVD I, 9:33 a.m., 10:02-10:03 a.m.

9. The Clinic is located in Suite 4 on the first floor of the same building in Mt. Sterling, Kentucky, that Dr. McLaughlin has his medical practice, which is located on the second floor in Suite 6. DVD I, 9:32-9:33 a.m.; Exhibit 1, Tab A, marked page 690.

10. The Board also alleges that under the Board's statutes Dr. McLaughlin was required to, but did not, perform a medical examination of Patient A after she had contacted Fairshinda and sought treatment from her on several occasions for a lingering sinus infection. *Complaint*, numbered paragraphs 4-8, pages 1-4.

11. Based upon that conduct, the Board alleges Dr. McLaughlin violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11). *Id.*, numbered paragraph 10, page 4.

12. Under KRS 311.595(9), a physician may be disciplined if he has "engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof."

13. Pursuant to KRS 311.597(4), the term "dishonorable, unethical, or unprofessional conduct" is defined to include "any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky . . . ."

14. Under KRS 311.595(11), a physician is subject to discipline if he "aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art."

## **II. Dr. McLaughlin Settled a Previous Board Action Involving Similar Misconduct.**

15. Fairshinda operated a second business, Location Vaccination, that provided

vaccinations for employees of area businesses. DVD V, 9:15-9:16 a.m.; Exhibit 1, Tab A, marked page 761.

16. As noted in the *Complaint* the current allegations and charges against Dr. McLaughlin must be reviewed and considered in the context of the Board's previous action against him, which also involved misconduct by Fairshinda and which the parties resolved by the *Agreed Order* dated July 19, 2019. *Complaint*, Paragraph 3, page 1; Exhibit 1, Tab A, marked pages 761-767 [hereinafter "*Agreed Order*"].

17. In the *Agreed Order* the Board found that Fairshinda operated Location Vaccination under the authority of Dr. McLaughlin's medical license, and after a number of persons who received vaccinations suffered adverse reactions, the Board found he failed to perform a medical assessment of the individuals and failed to provide adequate oversight of Fairshinda when she prescribed antibiotics to those individuals under the authority of his medical license. *Agreed Order*, marked pages 761-767.

18. Although he denied in the *Agreed Order* having engaged in any misconduct, one of the Stipulations of Fact of the parties, which is similar to the allegations in this action, related to patients being "assessed and prescribed antibiotics by the licensee's wife, under the licensee's name and without a physical assessment or medically appropriate cultures or susceptibility testing." *Id.*, Stipulations of Fact 3, marked pages 761-762.

19. The Stipulations of Fact in the *Agreed Order* go on to state "the licensee appeared before the Inquiry Panel, which opined that the licensee's blanket delegation of his professional and medical responsibilities to an unqualified and unlicensed person [Fairshinda] without sufficient oversight, and his failure to evaluate, treat and report the



patients with adverse vaccinations reactions appropriately, constitutes a failure to conform to prevailing medical practices in the Commonwealth of Kentucky and contributed to a public health crisis.” *Id.*, Stipulation of Fact 12, marked page 764.

20. Based upon the parties’ Stipulations of Fact in the *Agreed Order*, the Board concluded that Dr. McLaughlin “has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11), which are the same statutory violations at issue in this action. *Id.*, Stipulated Conclusion of Law 2, marked page 764; *Complaint*, Paragraph 10, page 4.

21. Hence, although Dr. McLaughlin did not admit to any misconduct in that earlier action, there can be no dispute the Board found he had violated the Board’s statutes by engaging in conduct substantially similar to the alleged misconduct in this action, and therefore, during the time period at issue in this case, he was well aware of the type of misconduct that Fairshinda had previously engaged in under authority of his medical license and of his duties and responsibilities related to care that he, rather than Fairshinda, was required to provide to patients.

**III. An Overview of the Treatment Provided To Patient A at Issue in This Action.**

22. Patient A and Fairshinda have been friends since childhood, and Patient A has received various cosmetology services, including BOTOX injections, from Fairshinda at the Clinic for several years. DVD I, 11:18 a.m.; DVD IV, 9:50-9:54 a.m.; Exhibit 1, Tab A, marked page 700.

23. Although she provides vaccinations and cosmetology services, Fairshinda is not herself a licensed healthcare professional and is not licensed by the Kentucky Board

of Cosmetology to provide cosmetology services. DVD V, 12:16-12:17 p.m.; DVD VI, 9:31 a.m.

24. Each year around her birthday, June 22, Patient A gets BOTOX treatments and fillers, and consistent with that pattern, on May 29, 2019, she received from Fairshinda at the Clinic BOTOX injections in her face and forehead that later resulted in some facial swelling. DVD I, 11:25 a.m.; DVD IV, 10:03 a.m.; DVD V, 10:35 a.m.; Exhibit 1, Tab A, marked page 700.

25. Sometime thereafter, Patient A came down with a bad sinus infection, and around the first of July she received treatment from a friend who worked at another medical practice. DVD IV, 10:14-10:16 a.m., 11:03 a.m.

26. Patient A suffers from seasonal allergies, but her sinus infection that summer was not the typical infection she experienced with her allergies since this one lingered more than a few days and wouldn't seem to go away. DVD IV, 9:48 and 10:23 a.m.

27. When Patient A contacted Fairshinda at the Clinic on August 21, 2019, about touch-ups for the earlier BOTOX treatment, she was still suffering from the sinus infection, and for that reason, Fairshinda did not provide the cosmetic services but offered to treat the sinus infection. DVD I, 11:25-11:27 a.m.; DVD IV, 10:05 and 10:07 a.m.

28. On August 21, 2019, Fairshinda called in prescriptions for Patient A under authority of Dr. McLaughlin's medical license for six Azithromycin 250mg tablets and twenty-one prednisone 10mg tablets. Exhibit 1, marked pages 739-741; DVD I, 11:27 a.m.

29. When Patient A continued to suffer from the sinus infection, on August 28, 2019, Fairshinda called in a prescription for fourteen tablets of Augmentin 500mg. Exhibit 1, marked page 742.

30. Both Fairshinda and Dr. McLaughlin assert that for each prescription issued to Patient A, Fairshinda consulted with Dr. McLaughlin, and he authorized the prescriptions. DVD V, 1:40 and 2:05 p.m.; Exhibit 1, Tab A, marked pages 740-742; Exhibit 15, marked pages 26-27.

31. Thereafter, Patient A sought additional treatment from other healthcare providers and eventually from the Montgomery County Health Department. Exhibit 1, marked pages 695-696.

32. Upon being notified by Montgomery County Health Department of Patient A's complaints regarding Fairshinda's treatment of the sinus infection, the Kentucky Department of Public Health forwarded the complaints to the Board in light of the previous investigation of Dr. McLaughlin and Location Vaccination that was settled with the entry of the *Agreed Order*. Id.

#### **IV. The Board's Consultant Found Misconduct By Dr. McLaughlin.**

33. In response to the complaint from the Department of Public Health, the Board conducted its own investigation of the new allegations and requested its consultant, Dr. Marcy C. Rutherford, to review the conduct of Dr. McLaughlin based upon the relevant information provided to her by the Board. DVD II, 2:07-2:09 p.m.

34. At the administrative hearing Dr. Rutherford was qualified as an expert in Family Medicine. DVD IV, 2:03-2:04 p.m.

35. Dr. Rutherford issued a report that found Dr. McLaughlin failed to provide adequate oversight of the BOTOX injections and of the care and treatment provided by Fairshinda to Patient A, and he failed to perform his own necessary examination of Patient A prior to issuing prescriptions for her medical complaints. Exhibit 1, Tab A, marked pages 753-757.

36. Based upon her report's findings and conclusions, the Board issued the charges of misconduct against Dr. McLaughlin in this action. *Complaint*; Exhibit 1, Tab A, marked pages 753-757.

37. In his defense and in his three written responses to Patient A's allegations, Dr. McLaughlin "categorically den[ied] that there has been any improper delegation of responsibility in [Patient A's] care under my medical license" and asserted that "all of the orders and procedures identified in her medical record were carried out with my knowledge and understanding." Exhibit 1, Tab A, marked pages 750-751, at 751; 752; and 758-759.

38. In addition, Dr. McLaughlin asserted that "as supervisory physician I was aware of [Patient A's] BOTOX Cosmetic injections," and "Fairshinda's only role was to administer the injections themselves." *Id.*, marked page 752.

**V. An Overview of the Hearing Officer's Findings Regarding the Allegations of Misconduct.**

39. There are a number of factual issues that must be resolved in assessing the merits of Dr. Rutherford's opinions regarding the deficiencies in Dr. McLaughlin's oversight of Fairshinda's conduct and the adequacy of his own conduct relative to

performing a medical evaluation and examination of Patient A regarding her sinus infection.

40. Based upon the review and consideration of the entire record in this action, including the testimony of the witnesses and the exhibits admitted into evidence, the hearing officer finds that Dr. McLaughlin failed to provide adequate oversight of Fairshinda's BOTOX injections and failed to provide oversight of the care and treatment of Patient A's sinus infection in August 2019.

41. The hearing officer also finds Dr. McLaughlin improperly delegated to Fairshinda the care and treatment of Patient A's sinus infection, and permitted her to call in prescriptions to treat the infection without adequate oversight.

42. Even if Dr. McLaughlin was not aware of the specific actions of Fairshinda related to Patient A in August 2019, he was aware of her previous misconduct involving Location Vaccination, and by failing to take appropriate actions to end her latest misconduct, he implicitly authorized her to continue to engage in the same type of conduct for which he had been previously sanctioned.

43. In addition, whether or not Dr. McLaughlin was aware of Fairshinda's specific actions regarding the treatment of Patient A's sinus infection, he should have been, and he violated the standards governing the practice of medicine when he failed to perform an examination of Patient A after she requested a second round of antibiotics to treat the infection.

44. Dr. McLaughlin's and Fairshinda's testimony at the administrative hearing was inconsistent in many respects from that of Patient A as to the care and treatment she received at the Clinic.

45. In addition, Dr. McLaughlin's and Fairshinda's testimony differed markedly from that of the John Marshall, the Board's investigator, regarding his interactions with them when he served the subpoena for Patient A's medical records.

46. The preponderance of the evidence admitted at the administrative hearing showed not only that Dr. McLaughlin and Fairshinda engaged in the misconduct alleged by the Board and found by Dr. Rutherford, which served as the basis for her opinions, but the hearing officer found Dr. McLaughlin and Fairshinda to have been repeatedly deceptive, dishonest, and untruthful throughout the Board's investigation and at the administrative hearing regarding their conduct and his oversight of the care and treatment provided by Fairshinda to Patient A.

47. The evidence also shows that throughout the course of the Board's investigation and during the administrative hearing, Dr. McLaughlin supported, adopted, and ratified the deceptive, dishonest, and untruthful conduct and statements of Fairshinda and engaged in his own deceptive and dishonest conduct in an effort to hide Fairshinda's misconduct and his violations of the Board's statutes governing the practice of medicine.

48. The hearing officer found the testimony of both the Board's investigator and Patient A to be believable and accurate and that Dr. McLaughlin and Fairshinda fabricated his progress notes for Patient A after receipt of the Board's subpoena in an effort to support their assertion that Dr. McLaughlin, rather than Fairshinda, had directed the care and treatment of Patient A's sinus infection and had authorized the prescriptions for her.

**VI. Dr. McLaughlin Provided Little Oversight of Fairshinda's BOTOX Injections.**

49. Although Fairshinda ran both Location Vaccination and the Clinic, they appear to have been operated independently of Dr. McLaughlin's medical practice.

50. None of the allegations in this action relate to services provided through Location Vaccination.

51. The Clinic is open just one day a week, on Wednesday, for eight hours. DVD I, 9:34 a.m.

52. In addition to various cosmetology services and treatments, which included moisturizers, chemical peels, skin bleaching, and weight loss, Fairshinda provided BOTOX injections at the Clinic. DVD I, 11:41-44 a.m.

53. BOTOX is a toxin that decreases musculature and inhibits muscle contraction, and cosmetic BOTOX contains the same active ingredient as medical BOTOX. DVD V, 11:32; Exhibit 23, page 4.

54. BOTOX Cosmetic is a more diluted form of the botulinum toxin than is BOTOX for medical use, but both contain an FDA "black box" warning, which is the strictest labeling requirement, notifying practitioners of potentially serious and life-threatening adverse reactions. DVD V, 11:32-11:35 a.m. and 2:09 p.m.; Exhibits 22 and 23.

55. There are serious complications associated with BOTOX injections since a recipient may experience loss of strength, muscle weakness, or impaired vision, and BOTOX is contraindicated if there is an infection at the proposed injection site. Exhibit 23, pages 4 and 7; DVD V, 12:20-12:21 p.m.

56. In addition, the toxic effects of BOTOX may spread beyond the site of injection in the hours or weeks after injection. Exhibit 23, pages 1 and 5.

57. Physicians are cautioned that in administering BOTOX Cosmetic they “must understand the relevant neuromuscular and/or orbital anatomy of the area involved,” and specific instructions are provided in the FDA-approved labeling for the injection technique and sites for injection around the patient’s eyes. Exhibit 23, pages 6 and 12-13.

58. Fairshinda does have extensive training and experience in the administration of vaccines and BOTOX injections. DVD I, 11:18-11:23 a.m.

59. She previously worked in a dental office where she administered medical BOTOX injections, and since 2005 she has attended numerous seminars and programs related to BOTOX injections. Id.; Exhibits 5-7.

60. Hence, there is no dispute that she is qualified to administer BOTOX injections under appropriate supervision, and the Board has not asserted that she was unqualified.

61. The parties also do not dispute, however, that Fairshinda is required to provide BOTOX injections under the supervision of a healthcare professional, such as Dr. McLaughlin. See Exhibit 3.

62. Dr. McLaughlin described himself as the “decision maker” for the Clinic and its supervisory physician, and in that role he was responsible for overseeing the administration of BOTOX injections. DVD I, 9:33 and 9:46-9:47 a.m.

63. Fairshinda testified that Dr. McLaughlin saw each of her new cosmetic BOTOX clients in order to make the initial determination whether the person was



eligible for BOTOX injections. DVD I, 11:42 a.m.

64. Fairshinda also testified that approximately once a month Dr. McLaughlin performed a patient assessment and will give BOTOX injections himself at the Clinic for patients from his medical practice because they were used to seeing him. DVD I, 11:43-11:44 a.m.

65. Dr. McLaughlin kept his role overseeing the Clinic separate from his medical practice since he does not provide diagnosis or treatment for patients at the Clinic and does not perform cosmetic procedures in his own medical office. DVD I, 9:37-9:38 a.m.

66. Although he was authorized through his medical license to purchase BOTOX and other prescription products for the Clinic, Dr. McLaughlin isn't familiar enough with Fairshinda's work to know the number of clients who received services at the Clinic. DVD I, 9:38-9:40 a.m.

67. He stated that if Fairshinda had doubts about whether a person qualified for a BOTOX injection, she'd contact him, and he would go downstairs to the Clinic to evaluate whether she should administer BOTOX to the patient. DVD I, 9:45 a.m.

68. Both Dr. McLaughlin and Fairshinda asserted that he is immediately available by telephone at his medical practice or within a couple of minutes for an in-person consultation at her Clinic regarding BOTOX injections. DVD I, 10:43-10:44 and 11:24-11:25 a.m.

69. In spite of Dr. McLaughlin's assertion that he is the decision maker for the Clinic and was available for consultations, only if Fairshinda has doubts about whether one of her clients qualifies for BOTOX treatments will she contact him so that he may

come down to the Clinic to evaluate the person. DVD I, 9:45 a.m.

70. She also asserted, however, that she has never needed to call him about an issue with a patient's BOTOX injection. DVD I, 11:24-11:25 a.m.

71. Patient A discovered through a friend that Fairshinda had opened the Clinic and they made appointments together to get BOTOX injections. DVD IV, 9:50 a.m.

72. Patient A didn't know Dr. McLaughlin until she met him through Fairshinda and the Clinic. DVD IV, 9:50-9:51 a.m.

73. Initially, Dr. McLaughlin provided the BOTOX and filler injections for Patient A, but she later received those injections from Fairshinda at the Clinic. DVD IV, 9:35, 9:50-9:51, and 10:08 a.m.; Exhibit 1, marked page 700.

74. Sometime before 2018 Dr. McLaughlin performed an initial assessment and created a chart for Patient A, but later he relied upon Fairshinda to be the primary point of contact between him and Patient A for her BOTOX injections. DVD I, 9:59 and 10:08 a.m.

75. Dr. McLaughlin had such a limited contact with Patient A regarding her BOTOX injections that he testified that he couldn't recall whether he had given Patient A cosmetic BOTOX injections, but stated he would defer to Patient A's memory if she stated he had. DVD I, 9:56-9:57 a.m.

76. Patient A went to the Clinic two to three times a year and on various occasions received from Fairshinda BOTOX injections, JUVEDERM fillers, and an over-the-counter appetite suppressant. DVD IV, 9:52-9:54 a.m.

77. Thus, the preponderance of the evidence supports the conclusion that after the initial contact with Dr. McLaughlin, the oversight and administration of Patient A's

BOTOX injections was turned over to Fairshinda who provided all services related to them at her Clinic and without any further oversight by Dr. McLaughlin or consultation with him.

**VII. Dr. McLaughlin Had A Limited History of Providing Medical Care to Patient A.**

78. Dr. McLaughlin stated Patient A had come to see him in his medical practice “off and on but not on a regular basis” because she didn’t always have insurance, and Patient A never understood Dr. McLaughlin to be her primary care physician. DVD I, 9:56 a.m.; DVD IV, 9:30 a.m.

79. She recalled seeing him on a few occasions over the years, once in Fairshinda’s Clinic around 2007 for fillers in her lips, another time for an illness, and in 2014 for skin lesions. DVD IV, 9:34-9:36 a.m. and 9:38-9:39 a.m.; Exhibit 15, marked pages 14-18.

80. In 2007 Patient A also had an x-ray taken by Dr. McLaughlin’s medical practice when it provided those services in the same office as the Clinic, and in 2011 he prescribed her a medicated shampoo after she had discussed it with Fairshinda. DVD IV, 9:33-9:37 a.m.; Exhibit 15, marked pages 22 and 25.

81. Dr. McLaughlin’s medical records for Patient A do not indicate he treated her for a sinus infection before August 21, 2019, and it was understood at the administrative hearing that he had not seen her for at least two years. Exhibit 15, marked pages 26-27; DVD II, 2:50, 2:52, 2:56, 3:08 p.m.

82. Generally, Patient A received her medical care at walk-in clinics, and she hadn’t used Dr. McLaughlin for her medical care because he was not taking new patients

or didn't accept her insurance when she did contact his office for care. DVD IV, 9:31-9:32 a.m.

83. At one point Patient A had told Fairshinda about not having a primary care physician, but Fairshinda never suggested Dr. McLaughlin could or would be her physician. DVD IV, 9:51 a.m.

84. Dr. McLaughlin acknowledged that he was not Patient A's primary care physician and that Fairshinda was point of contact on August 21 and 28, 2019, for Patient A's sinus infection. DVD I, 9:56 and 10:07-10:08 a.m.

85. Furthermore, he admitted that he never performed an assessment or evaluation of Patient A for her sinus infection. DVD I, 10:51 and 11:05 a.m.

86. In spite of his limited involvement with Patient A's medical care, Dr. McLaughlin asserted he was very familiar with her history of seasonal allergies, which he stated were worse in summer and were characterized by sinus pressure and drainage. DVD I, 10:03 and 10:50 a.m.

87. He testified her allergies were a chronic, recurrent condition, and her symptoms in August 2019 were consistent with what she had experienced in the past with seasonal allergies. DVD I, 10:51-10:52 a.m.

88. Based upon the information provided to him by Fairshinda, Dr. McLaughlin asserted that in August 2019 Patient A thought she had developed a sinus infection as a result of her seasonal allergies, which seemed reasonable to him. DVD I, 10:02-10:03, 10:50-10:52 a.m.; Exhibit 15, marked page 27.

89. Dr. McLaughlin emphasized in his testimony that since the focus of Patient A's complaint was on her seasonal allergies and nasal congestion, he believed that a

sinus infection resulting from her allergies was a reasonable diagnosis and justified his issuing the prescriptions without him seeing the patient. DVD I, 10:49-10:50 a.m.

90. Thus, Dr. McLaughlin asserted he did not feel the need to talk with or examine her, and he authorized her prescriptions for prednisone and a Z-Pak on August 21, 2019. DVD 10:02-10:03 a.m. and 10:51-10:52 a.m.

91. Even though Dr. McLaughlin testified Patient A's sinus infection was associated with her seasonal allergies, the progress note Fairshinda drafted for August 21, 2019, in which the issue was first addressed, makes no mention of seasonal allergies, but instead, the note states that for the past two weeks Patient A had been experiencing "a terrible sinus infection," a sore throat, and eyes that were "matted with green and yellow crustiness." Exhibit 15, marked page 27.

92. In contrast to Dr. McLaughlin's assertion that he was familiar with Patient A's seasonal allergies, Patient A testified that she did not recall Dr. McLaughlin ever treating her allergies or sinus infections and stated that if Dr. McLaughlin knew of her history of sinus infections, it was only because Fairshinda had told him. DVD IV, 9:48-9:49 a.m.

93. Furthermore, she was not aware that Fairshinda had consulted with Dr. McLaughlin about her sinus infection. DVD IV, 10:17 a.m.

94. Thus, it's unclear the basis for Dr. McLaughlin's assertion that he was knowledgeable about Patient A's allergies and sinus infections.

#### **VIII. The Record Shows that Fairshinda Treated Patient A's Sinus Infection.**

95. After being contacted by Patient A on August 21, 2019, about her sinus

infection, Fairshinda said she would get her something to knock out the infection and asked Patient A whether she was allergic to any medications. DVD IV, 10:17 a.m.

96. Patient A received a prescription for a steroid, prednisone, and a Z-Pak under authority of Dr. McLaughlin's medical license. Exhibit 1, marked page 740-741; Exhibit 15, marked page 27; Exhibit 18, marked page 5.

97. A Z-Pak is one of the most commonly prescribed antibiotic therapies, and it would not be uncommon for a staff member to call in such a prescription to a pharmacy for a physician who has prescribed it for a patient. DVD V, 12:00-12:03 p.m.

98. Patient A and Fairshinda exchanged text messages later that afternoon and over the next several days regarding the prescriptions she received and the status of her infection. DVD IV, 11:22 a.m.; Exhibit 18, marked pages 4-17.

99. The hearing officer notes that in support of her assertion that she always consulted with Dr. McLaughlin on prescriptions for patients, Fairshinda testified that she "has no clue" about prescribing medications, such as the dosage, frequency, or even how to pronounce a medication's name. DVD I, 11:49 a.m.

100. In contrast to those assertions, Dr. McLaughlin had been found in the earlier Board action to have delegated his prescribing authority to Fairshinda, and she was found to have prescribed antibiotics for patients even though she lacked knowledge, expertise, and medical authority to do so. Exhibit 1, Tab A, marked pages 761-762, 764.

101. Throughout her text messages with Patient A, Fairshinda not only represented herself to be knowledgeable about antibiotics, she never expressed any need to consult with Dr. McLaughlin and never suggested she had consulted with him and

was simply forwarding his medical advice or treatment decisions. Exhibit 18, marked pages 4-17.

102. The day after she first discussed the sinus infection with Fairshinda on August 21, 2019, Patient A sent a text message asking whether she could drink wine while on steroids and a Z-Pak, to which Fairshinda responded, "No on the wine, steroids, and antibiotics!!!" Exhibit 18, marked pages 5-6.

103. Five days later, on August 26, 2019, Patient A notified Fairshinda "I'm finished with my medicine today but my ear still hurts and I'm still stopped up" and asked if she needed another medication because "I've never really been sick for this long with the sinus infection." Exhibit 18, marked page 7.

104. Fairshinda responded a minute later with the text, "It's still working - it takes a long time for the inflammation in your inner ear to go down! Do you still have a few days left on the z-pack [sic]?" Id.

105. Patient A reported that she had taken the last antibiotic the day before and went on to ask, "Do I need more medicine? This is really lingering. I haven't been on any antibiotics or steroids for a long time so I figured I'd knock it out." Id, marked pages 7-8.

106. Nineteen minutes later, Fairshinda responded, "I thought it would too! And no - we just have to wait it out!" Id, marked page 8.

107. Patient A reported the next morning that "it looks like it's still like an active infection so should I give it another day or two even though I'm out of medicine . . . ?" Id., marked page 9.

108. Fairshinda responded an hour later, "Do you want to try taking augmentin now???" Id.

109. Augmentin is a antibiotic with a different spectrum of coverage than a Z-Pak and would be more likely to cure the infection if the patient is not improving with a Z-Pak. DVD V, 2:05-2:06 p.m.

110. Since Augmentin is a legend drug, it too may be submitted electronically or called into a pharmacy by a person such as Fairshinda as an agent of the practitioner. DVD V, 12:01-12:03 p.m.

111. Patient A texted in response a few minutes later, "My eyes are really swollen, my ear hurts a Lysol des [sic] my throat" and "but I can wait it out." Exhibit 18, marked page 10.

112. When Patient A didn't immediately hear back, she texted Fairshinda almost fifty minutes later asking, "What do u think I should do," to which Fairshinda responded less than a minute later, "I think it'll pass and you should wait it out or else you'll get a yeast infection." Id.

113. Later that same day Patient A notified Fairshinda of her continuing symptoms and asked, "Are you sure I don't need any other medicine? I took that medicine like I was supposed to." Id., marked page 13.

114. The following morning on August 28, 2019, Fairshinda responded by stating, "I'll call in some augmentin if you're not allergic to anything!" Id., marked page 14.

115. When Patient A responded by asking, "Is that better than pennacilin [sic]?" Fairshinda stated, "It's in the same fam as pervk [sic]" and assured her that "Augmentin is better because it can treat a broader range of bacteria's more then pervk [sic] can." Id.; Exhibit 1, marked page 742.



116. The records show that on August 28, 2019, a prescription was issued to Patient A under authority of Dr. McLaughlin's medical license for Augmentin 500mg to be taken twice a day for seven days. Exhibit 1, marked page 742.

117. In response to Fairshinda's text message later that afternoon to Patient A asking whether she had "started taking the amoxil [sic, presumably referring to the Augmentin] yet???", she responded, "Yes." Exhibit 18, marked page 16.

118. Dr. McLaughlin's progress note related to his issuing the prescription for Augmentin, however, is dated August 30, 2019. Exhibit 15, marked page 27.

119. Hence, the date on the progress notes is incorrect, but the mistaken date is consistent with the Board's assertion that the progress notes for Patient A were not drafted until after the Board issued the subpoena for Patient A's medical records on December 4, 2019. Exhibit 15, page 1.

120. Patient A did called Fairshinda on August 30, 2019, and asked for a different antibiotic because she was still experiencing drainage from her eyes and nose. DVD IV, 10:18 a.m.

121. Patient A testified that in response, Fairshinda stated she would call in another prescription, and when the Kroger pharmacy reported to Patient A that it hadn't received the prescription request, Patient A contacted Fairshinda who stated she had called in the prescription. DVD IV, 10:18-10:19 a.m.

122. Dr. McLaughlin testified, however, that he refused to issue a third prescription to Patient A on that date unless she first came into the office for an appointment, and he asserted that he had a specific recollection of refusing to call in that third prescription. DVD V, 2:07-2:08 p.m.; Exhibit 15, marked page 27.

123. The August 30, 2019, progress notes states that a prescription for Augmentin had been issued and makes no mention of a request for Patient A to make an appointment to be seen by Dr. McLaughlin. Exhibit 15, marked page 27.

124. There is a progress note dated September 2, 2019, that seems to support Dr. McLaughlin's assertion that Patient A had been asked to make an appointment with him since it states she "still felt sick and thinks a 2<sup>nd</sup> round [of steroids] will knock it out. Also, wants diflucan for yeast infection. Relayed message to PEM [Paul E. McLaughlin]. Says she needs to come in and be seen before anything else can be done for her at this time." Exhibit 15, marked page 27.

125. Dr. McLaughlin testified that as a result of his requirement that she schedule an appointment, Patient A was angry with Fairshinda and did not show up for the appointment. DVD V, 2:07-2:08 p.m.

126. The progress note for September 4, 2019, also seems to support Dr. McLaughlin's contention since it states, "NO SHOW- NO CALL - MISSED APPT!!!" [emphasis in original]. Exhibit 15, marked page 27.

127. Patient A asserted, however, that much of the September 2, 2019, progress note is not true. DVD IV, 10:21 a.m.

128. Although she had asked Fairshinda about getting a prescription for Diflucan, she never had an understanding that she had to see Dr. McLaughlin to receive any prescription, never had an appointment to come into the office, and never missed an appointment with him. DVD IV, 10:20-10:21 a.m.

129. In addition, at 3:51 p.m. on September 2, 2019, the very day that Dr. McLaughlin allegedly had Fairshinda notify Patient A that she needed to be seen in the

office before she received another prescription, Patient A sent Fairshinda a lengthy text message which makes no mention of an appointment. Exhibit 18, marked page 17.

130. The message opens with “Happy Labor Day!” and states “I know ur over my sickness as much as I am” but Patient A asks if Fairshinda “could call in diflucan or something” because she was still experiencing severe symptoms in her sinuses and eyes. Id.

131. Patient A concluded her September 2, 2019, text message by stating, “There’s not really any sense in me going to a doctor when you’ve already given me two rounds of anabiotic’s [sic] and steroids last week so is there anything that you can think of that I should do . . . . I know what you’re thinking damn bitch I’m not a doctor but you’re kind of my doctor.” Id.

132. There was no evidence admitted at the administrative hearing that showed Fairshinda texted a response or responded to the request for Diflucan, and Patient A reported that Fairshinda never offered for her to see Dr. McLaughlin for the infection. DVD IV, 10:20 and 10:24 a.m.

133. Patient A would have willingly gone to an appointment if Fairshinda had scheduled one in light of how sick she felt, and nothing in the text messages suggest that Patient A had been asked to make an appointment or that there was any conflict between them regarding an appointment. DVD IV, 10:24 a.m.

134. In addition, the text messages don’t suggest that Fairshinda was simply relaying information from Dr. McLaughlin to Patient A or that Fairshinda was consulting with Dr. McLaughlin, and given the short time period between some of the

medical questions from Patient A and the responses from Fairshinda, the text messages do not support a finding that she consulted with him.

135. In fact, the text messages provide ample support for Patient A's earlier impression that Fairshinda was a registered nurse, which Patient A thought was the reason she always wore scrubs and at times, a lab coat at the Clinic. DVD IV, 11:11 and 11:57 a.m.

136. Patient A stated at the beginning of her testimony at the administrative hearing that she was testifying only because she was subpoenaed to be there. DVD IV, 9:30 a.m.

137. Although Patient A was a reluctant witness, the hearing officer found her to be credible, candid, and truthful in her testimony about the care and treatment received from Fairshinda and Dr. McLaughlin's medical practice.

138. The hearing officer did not find her to have any hostility or animosity toward either Fairshinda or Dr. McLaughlin, and she had no reason to be mistaken, confused, or unsure of the care and treatment received.

139. Certainly, the Board's findings in the earlier Board action related to Fairshinda prescribing antibiotics to patients and the exchange of text messages between her and Patient A in August and September 2019 refute Fairshinda's assertion that she had "no clue" about prescribing antibiotics. DVD I, 11:49 a.m.; Exhibit 1, marked pages 761-767.

140. In addition, the exchange of text messages offers compelling evidence that Fairshinda was providing the treatment for Patient A and was prescribing her antibiotics

without first consulting with and receiving specific authorization for the prescriptions from Dr. McLaughlin.

141. Hence, based upon the evidence admitted at the administrative hearing, the hearing officer finds the assertions by Dr. McLaughlin and Fairshinda that she consulted with him about Patient A, that he authorized her prescriptions, and that he directed to have Patient A schedule an appointment before receiving a third prescription for her sinus infection to be false.

142. The preponderance of the evidence also shows that Dr. McLaughlin failed to provide oversight of Fairshinda's conduct even though he had been previously sanctioned by the Board for the same type of prescribing practices and lack of patient assessment at issue in this action. Exhibit 1, *Agreed Order*, marked pages 761-767.

143. The preponderance of the evidence supports the conclusion that Dr. McLaughlin knew or should have known that Fairshinda was engaging in the same type of misconduct that resulted in the previous *Agreed Order* and that he took no action to have her stop her conduct or willfully allowed it to continue.

144. The main documentary evidence in support of the assertions by Dr. McLaughlin and Fairshinda that she consulted with him and that he authorized Patient A's prescriptions are the progress notes written by Fairshinda dated August 21 and 30 and September 2, 2019. Exhibit 15, marked page 27.

145. For each date on which Patient A received a prescription medication, the progress note states that Fairshinda consulted with "PEM" [Paul E. McLaughlin], and he initialed the note indicating he approved of the wording of the note and authorized the prescription. *Id.*

**IX. Dr. McLaughlin and Fairshinda Attempted to Deceive the Board's Investigator about the Availability of Patient A's Medical Records.**

146. In her testimony Patient A raised substantial questions about the accuracy and truthfulness of the care and treatment recorded in her progress notes, and the fact that the Board was unable to obtain copies on the date they were subpoenaed, but instead received them by mail two days later, gave additional weight to the Board's assertion the progress notes were fabricated by Fairshinda and Dr. McLaughlin in an attempt to bolster his defense to Board's allegations of misconduct.

147. Mr. Marshall has been an investigator for the Board for ten years, and he previously worked twenty-four years with the Kentucky State Police where he spent ten years as a uniformed trooper and fourteen years as a detective. DVD IV, 1:17 p.m.

148. Mr. Marshall arrived unannounced at the Clinic on Wednesday, December 4, 2019, to speak with Fairshinda about the allegations involving the medical care Patient A received through the Clinic and to subpoena her medical records. DVD IV, 1:18-1:19 and 1:25 p.m.; Exhibit 1, marked pages 695-696.

149. Mr. Marshall went to the Clinic in Suite 4 instead of Dr. McLaughlin's medical practice in Suite 6 because that's where Mr. Marshall understood Patient A received treatment from Fairshinda. DVD IV, 1:29 p.m.

150. Upon entering Suite 4, he waited for the elderly man and woman to complete their business with the woman at the office window, but he didn't overhear or pay attention to their discussion with the office employee. DVD IV, 1:26 p.m.

151. Mr. Marshall then introduced himself to the woman, reported that he worked for the Board, and needed to subpoena some records. DVD IV, 1:19 p.m.

152. He asked for Mrs. McLaughlin and was "almost positive" that he did not mention that he was seeking the medical records for Patient A. DVD IV, 1:18 and 1:28 p.m.

153. The woman told him that Mrs. McLaughlin was not available and would not be back until Friday. DVD IV, 1:18-1:19 p.m.

154. Mr. Marshall left his card with the woman and asked her to have Mrs. McLaughlin call him. DVD IV, 1:19 p.m.

155. Before leaving, he asked "point blank" for the name of the employee with whom he was speaking, and she responded, "Judy." DVD IV, 1:19 and 1:28 p.m.

156. Mr. Marshall had not heard the name Judy mentioned prior to his approaching the window. DVD IV, 1:26 p.m.

157. He did not present the subpoena to "Judy" in Suite 4 but went upstairs to the receptionist in Dr. McLaughlin's office in Suite 6 since he oversaw the Clinic. DVD IV, 1:29 p.m.

158. Mr. Marshall asked for Dr. McLaughlin, and was taken back to his office. DVD IV, 1:19 p.m.

159. Mr. Marshall explained why he was there, gave Dr. McLaughlin the subpoena, and told him that the person in question was Patient A. DVD IV, 1:29 and 1:31 p.m.

160. Mr. Marshall noticed a picture of a woman on Dr. McLaughlin's desk and asked whether she was his wife, and Dr. McLaughlin stated it was and that she was in the office downstairs. DVD IV, 1:19 p.m.

161. Mr. Marshall informed him that the woman in the picture was the same person in Suite 4 who identified herself as Judy, and Dr. McLaughlin had trouble understanding what he was saying because Judy is the name of the receptionist for his medical practice in Suite 6. DVD I, 10:45 a.m.; DVD IV, 1:19 p.m.

162. Mr. Marshall reported that Dr. McLaughlin was "a little upset" that Fairshinda had identified herself as Judy, but he told Mr. Marshall that Fairshinda must have been scared if she had misidentified herself. DVD I, 10:46 a.m.; DVD IV, 1:21 p.m.

163. Dr. McLaughlin then left his office for a few minutes to go downstairs to get Fairshinda. DVD IV, 1:30 p.m.

164. Upon returning to his office with Fairshinda, Dr. McLaughlin again explained that Fairshinda had been scared, and she handed Mr. Marshall her cell phone which had Patient A on the line. DVD I, 10:46 a.m.; DVD IV, 1:21 p.m.

165. Fairshinda had allegedly called Patient A to inform her that Mr. Marshall was seeking her medical records, and Patient A allegedly admonished Fairshinda at the time saying, "Don't you dare give them [my] medical records." DVD V, 1:36 p.m.

166. Patient A told Mr. Marshall that she was upset and informed him that she hadn't filed the complaint with the Board, didn't want to be part of "this," and was "done," at which point he handed the cell phone back to Fairshinda. DVD IV, 1:20 p.m.

167. Later, Patient A called Mr. Marshall back to provide additional information, but she never submitted the written statement that he asked her to send him during their conversation. DVD IV, 1:35-1:36 p.m.

168. After finally correctly identifying Fairshinda and serving Dr. McLaughlin with the subpoena for Patient A's medical records, Fairshinda told Mr. Marshall that the



records were not available because they were stored at their home and would have to be mailed to him. DVD IV, 1:21 p.m.

169. If Patient A's medical records were stored at their home, Fairshinda could have easily informed Mr. Marshall of that fact while he was in Suite 4, and there would have been no reason to lie about her identity.

170. The fact that Fairshinda chose to lie about her name and then contacted Patient A about the Board seeking her medical records and had her talk with Mr. Marshall suggests that Fairshinda knew that at least some of Patient A's medical records, such as her progress notes, did not exist.

171. At the administrative hearing, Dr. McLaughlin actively supported the deception by asserting the medical records for Patient A had been unavailable on the date the subpoena was served because a realtor who had been retained to sell Suite 4 had a key to the property, and for security purposes, the records for the Clinic's clients were stored at the McLaughlin's house. DVD I, 9:55 and 10:48 a.m.

172. Since there were no locking cabinets in Suite 4, which was required under HIPAA for storage of medical records, Fairshinda allegedly stored Patient A's medical records at their house, even though locking cabinets were available upstairs in Suite 6, where presumably all other patient records for the medical practice were stored. DVD I, 10:49 a.m.; DVD V, 1:37 and 1:48 p.m.

173. Dr. McLaughlin testified that Fairshinda would transport the records for the Clinic from their house to Suite 4 on the days it was open, and since Patient A didn't have an appointment at the clinic on the day Mr. Marshall served the subpoena, her records weren't available that day. DVD I, 10:49 a.m.

174. Neither Fairshinda nor Dr. McLaughlin explained, however, why they stored Patient A's medical records at their home rather than in Suite 6 since the records would be much more accessible both to the medical practice and to the Clinic if they were stored in Suite 6 rather than at their home.

175. Although Mr. Marshall had the impression that Fairshinda transcribed medical records at their house, no suggestion was made at the administrative hearing that Fairshinda had been in the process of entering any information related to Patient A, whose last contact with Fairshinda for the sinus infection was three months earlier. DVD IV, 1:22 p.m.; Exhibit 15, marked page 27.

176. Two days after he served the subpoena Mr. Marshall received in the mail Dr. McLaughlin's medical records for Patient A. DVD IV, 1:22 p.m.; Exhibit 15.

177. The medical records included just two pages of progress notes with seven entries spanning the time period from June 22, 2018, through September 4, 2019, and five of the notes are for the two week time period of August 21 and September 4, 2019, that relate to Patient A's sinus infection. Exhibit 15, marked pages 26-27.

178. The most reasonable explanation for Fairshinda's statements and conduct on December 4, 2019, and Mr. Marshall's inability to obtain Patient A's medical records on that date, is that the progress notes didn't exist and that Dr. McLaughlin and Fairshinda needed time to create the records subpoenaed by the Board.

179. The hearing officer also notes that at the administrative hearing there was sharply contrasting testimony regarding the recollections of Mr. Marshall and those of Fairshinda and Dr. McLaughlin regarding their interactions on December 4, 2019, when he sought to subpoena Patient A's medical records.

180. Fairshinda testified that during her encounter with Mr. Marshall in Suite 4 she never identified herself as Judy, but instead, he must have been confused after hearing her mention the name of Dr. McLaughlin's receptionist, Judy, to the two individuals who were in line ahead of him at the office window. DVD I, 11:32-11:33, and 11:35 a.m.

181. According to Fairshinda, she was busy with other clients, and therefore, she sent Mr. Marshall upstairs to get the medical records since he could be taken care of immediately in that office. DVD I, 11:32 a.m.; DVD V, 1:33-1:34 p.m.

182. At the administrative hearing on the emergency order, Dr. McLaughlin acknowledged that he had identified Fairshinda to Mr. Marshall based upon the picture on his desk, and he admitted having been trouble understanding why Fairshinda had identified herself as Judy when he met her in Suite 4. DVD I, 10:45 a.m.

183. Dr. McLaughlin didn't understand why she had not correctly identified herself when sending Mr. Marshall upstairs to Suite 6. DVD I, 10:45 a.m.

184. Dr. McLaughlin testified further at the emergency hearing that he corrected Mr. Marshall as to Fairshinda's availability by stating, "no, she's downstairs," and went to Suite 4 to bring her to meet with him. *Id.*

185. At the administrative hearing on the *Complaint*, however, Dr. McLaughlin testified that Mr. Marshall never told him that Fairshinda had represented herself to be Judy. DVD V, 2:11 p.m.

186. Instead, Dr. McLaughlin asserted Mr. Marshall stated the woman in Suite 4 had denied being Fairshinda and only later did Dr. McLaughlin hear about the accusation that she had identified herself as Judy. DVD V, 2:11 p.m.

187. Presumably, at the administrative hearing Dr. McLaughlin was attempting to more closely align himself with Fairshinda's testimony that she hadn't identified herself to Mr. Marshall as Judy.

188. Nevertheless, Dr. McLaughlin conceded that Mr. Marshall asked for Fairshinda, and she had lied to Mr. Marshall about her identity.

**X. Fairshinda's Has a History of Making False and Misleading Statements.**

189. In the earlier investigation of Location Vaccination Fairshinda made similar false and misleading representations to state officials about her actions.

190. The state and local officials who investigated the outbreak of infections among persons receiving vaccinations from Location Vaccination found Fairshinda to have been deceptive, dishonest, and untruthful during the investigation in an effort to deflect responsibility from herself and Dr. McLaughlin for the infections.

191. In addition to serving as the Acting State Epidemiologist Mr. Thoroughman, who testified at the administrative hearing about the earlier investigation of Location Vaccination, is a Captain in the U.S. Public Health Service, is assigned to the Center for Disease Control, and has been detailed to the Kentucky Department for Public Health since 2002. DVD V, 9:08 a.m.

192. His investigation found that there were one hundred and one severe reactions in patients who received vaccinations from Location Vaccination, and a number of those reactions included serious infections that required surgical intervention. DVD IV, 9:19-9:21 a.m.

193. All of those infections apparently occurred at one just one factory where Location Vaccination administered flu vaccines. DVD VI, 11:08 a.m.

194. Mr. Thoroughman testified about the scope of Fairshinda's dishonest and deceptive conduct during the course of that investigation.

195. In a telephone call to the Center for Disease Control Fairshinda had used a different first name and misrepresented herself as an R.N., had failed to report adverse reactions after being directed to do so by the CDC, had asserted she was the only person administering vaccinations for Location Vaccination when there had been at least two additional persons, and had falsely stated that the CDC directed her to throw all vaccines and related material away because they were expired, which she allegedly did, but unexpired vaccines were later found in the business's refrigerator. DVD V, 9:24-9:27 a.m.

196. Mr. Thoroughman summarized Fairshinda's conduct in the earlier investigation, which is equally applicable to her conduct in this action, as her engaging in a pattern of conduct of holding back the whole truth while appearing to cooperate. DVD IV, 9:27 a.m.

197. Consequently, it's certainly believable and consistent with her past conduct not only that Fairshinda would lie to Mr. Marshall about her name but that in lying she would identify herself as another employee in Dr. McLaughlin's medical practice. Exhibit 25, marked page 65.

198. In addition, the hearing officer notes Mr. Marshall did not testify that Fairshinda sent him up to Suite 6, and consequently, in her panic she may have hoped

that he would simply leave and return on another day to meet with her rather than go to speak with Dr. McLaughlin.

199. More significant, however, in assessing the credibility of the contrasting testimony among the witnesses is the fact Mr. Marshall is a trained investigator with over twenty years of experience in law enforcement and police investigations, and he went to Suite 4 specifically to speak with Fairshinda.

200. The assertions that Mr. Marshall did not ask for Fairshinda upon arrival in Suite 4, did not ask for the name of the employee who told him she was not available, and did not make a mental note of the name of the person with whom he spoke and gave his business card after asking her to have Fairshinda contact him, is not believable for an investigator of his training and experience.

201. Furthermore, it is not believable that Mr. Marshall would fail to inform Dr. McLaughlin of the name Fairshinda actually used when notifying him that his wife had just lied to the Board's investigator.

202. The fact that Fairshinda clumsily used the name of another office employee when her ruse was immediately and readily exposed does not call into question Mr. Marshall's memory or credibility but only highlights the fact that she is not skilled at deception.

#### **XI. Dr. McLaughlin and Fairshinda Fabricated Patient A's Progress Notes.**

203. Fairshinda's lack of skill at deception was also on display in the progress notes she created for Patient A. DVD IV, 1:21-1:22 p.m.; Exhibit 15, marked pages 26-27.

204. Fairshinda's notes for treatment provided through the Clinic are not recorded separately but are included as part of Dr. McLaughlin's Progress Notes for Patient A, and some of her notes are included within the same note for the medical care allegedly provided at the direction of Dr. McLaughlin. Exhibit 15, marked pages 26-27. [See for example, the note dated 8/21/2019, on marked page 27 which references Patient A being too sick for a chemical peel but also includes the treatment provided for her sinus infection.]

205. Some inconsistencies between the progress notes and Patient A's recollection of the treatment she received has already been noted, but other discrepancies highlight the fact that the notes were fabricated and crafted in a manner to support Dr. McLaughlin's defense to the Board's allegations.

206. The first note provided to the Board for Patient A is dated June 22, 2018, and records a lactic acid peel for Patient A's face and neck and the accompanying statement, "Note: Patient's birthday is today!!! N/C for chemical peel." Exhibit 15, marked page 26.

207. Patient A testified, however, that although she received annual BOTOX treatments around her June 22 birthday, she did not receive a lactic acid peel on June 22, 2018, or at any other time, and never received anything for free from the Clinic. DVD IV, 10:03, 10:09 and 10:12 a.m.

208. Patient A explained that since she has fair skin and freckles and works outside during the summertime, a chemical peel is "not really something I do," and she didn't even know that Fairshinda provided that service at the Clinic. DVD IV, 9:54-9:55 a.m.

209. Thus, Patient A stated the entire note was wrong. DVD IV, 10:09-10:12 am.

210. The hearing officer also notes that in 2018 Patient A's birthday, June 22, was on a Friday, a day of the week that the Clinic was not scheduled to be open, but since Patient A regularly received services from the Clinic around her birthday, that date could have been a ready reference for fabricating a record of her treatment at the Clinic. DVD IV, 10:03 a.m.

211. The next progress note dated almost a year later, Wednesday, May 29, 2019, states that Patient A had BOTOX treatment on her face at her "crows feet," but in fact, Patient A reported she had stopped receiving treatment in that area in 2017 or early 2018. DVD IV, 10:10-10:12 a.m.

212. Although Patient A recalled receiving Retin-A from the Clinic, she reported that she had received it only once and would not have received a refill on that date. DVD IV, 10:12 a.m.

213. The next three progress notes dated August 21 and 30 and September 2, 2019, relate to Patient A's treatment for her sinus infection. Exhibit 15, marked page 27.

214. The progress note dated August 21, 2019, in which Fairshinda allegedly "consulted" with Dr. McLaughlin before Patient A was prescribed prednisone and a Z-Pak, states that Patient A was too sick for a chemical peel, but again, she reported never receiving those treatments from Fairshinda. DVD IV, 9:54 a.m.

215. The next progress note dated August 30, 2019, indicates that Dr. McLaughlin was consulted prior to Patient A being prescribed Augmentin, but that prescription was actually issued on August 28, 2019, which is consistent with the progress note being hastily fabricated after the fact and in response to the subpoena.



Exhibit 1, marked page 742; and Exhibit 15, marked page 27.

216. Since Patient A would certainly know about the sensitivity of her skin, about whether she had agreed to receive chemical peels from Fairshinda in 2018 or 2019, and about whether she received treatments for free, either on her birthday or on other occasions, her testimony about the numerous errors in the progress notes is credible and compelling.

217. The final progress note for Patient A dated September 4, 2019, provides additional insight into the fact the notes were actually fabricated by Dr. McLaughlin and Fairshinda.

218. The note succinctly states in all capital letters "NO SHOW- NO CALL - MISSED APPT!!!" Exhibit 15, marked page 27.

219. Even if Patient A had been informed that Dr. McLaughlin had to see her before prescribing additional antibiotics, which Patient A denied, the fact that a patient missed a scheduled appointment can't be unusual for a medical practice and would not seem to merit the emphasis placed on that fact in the progress note.

220. In contrast to the information recorded in the progress note, Patient A testified that Fairshinda had never told her she needed to be seen by Dr. McLaughlin, and considering how sick she was at the time, she testified she would have gone to an appointment if one had been scheduled. DVD IV, 10:24 a.m.

221. The assertion that Patient A missed her appointment was important, however, to Dr. McLaughlin's claim that he was actively engaged in her care and treatment and had appropriately scheduled her for an appointment when his previous efforts to treat her sinus infection were unsuccessful.

222. At the time the records were subpoenaed, Fairshinda thought Patient A may have filed a complaint with the Board about having a reaction to her BOTOX injection, and Patient A thought the Board was investigating “because of the antibiotic’s [sic] being called into the pharmacy.” Exhibit 26, pages 6 and 9.

223. Thus, considering the fact that the Board had subpoenaed Dr. McLaughlin’s medical records for Patient A, Fairshinda in her haste seems to have clumsily emphasized in the progress note Patient A’s alleged failure to appear for an appointment, which would support Dr. McLaughlin’s defense that he had treated her appropriately and could not be responsible if her infection persisted after she failed to appear for her appointment.

224. After considering all the evidence in the record, the hearing officer finds the preponderance of the evidence supports the conclusion that Dr. McLaughlin’s progress notes for Patient A were fabricated in the interval between receipt of the subpoena and their submission to Mr. Marshall.

225. The hearing officer notes that Dr. McLaughlin signed off on four of the notes approving the treatment for Patient A’s sinus infection, and therefore, he was an active participant both in fabrication of the progress notes and in the effort to deceive the Board into believing the notes were created contemporaneously with Patient A’s treatment and that he, rather than Fairshinda, authorized the treatment and the prescriptions.

## **XII. Fairshinda’s Sought to Have Patient A Participate in the Deception.**

226. The hearing officer also notes that during the Board’s investigation, Fairshinda actively sought the assistance of Patient A in the deception as shown by their

exchange of text messages.

227. Within an hour of Mr. Marshall serving the subpoena for Patient A's medical records, Fairshinda sent a text message to Patient A asking her to email Mr. Marshall and report she had "stopped by the office one day and Paul [Dr. McLaughlin] called in some antibiotics and a steroid for your sinus infection . . . ." Exhibit 26, page 8.

228. When Patient A responded agreeing to the request, Fairshinda became more specific by asking her, "Let them know Doc did see you and decided to call you in something for your sinus infection . . . ." Exhibit 26, page 9.

229. Certainly, Patient A had no reason to know the significance of the change in Fairshinda's request from Patient A merely stopping by the office to actually being seen by Dr. McLaughlin, and the hearing officer notes that neither Fairshinda nor Dr. McLaughlin ever asserted at the administrative hearing that he actually saw or examined Patient A.

230. Thus, through her text messages Fairshinda was implicitly admitting that Dr. McLaughlin was not involved in Patient A's care and treatment.

231. When Patient A responded that she would send the email to Mr. Marshall, Fairshinda wrote back, "Thanks Sweetie! By you sending him an email with that in, it will really help out!" Exhibit 26, page 10.

232. Fairshinda must have felt satisfied when Patient A responded, "I would never say anything to throw you under the bus. . . ." since Fairshinda wrote back, "I soooo needed to hear that!" Exhibit 26, page 10.

233. The fact that Fairshinda from her first interaction with Mr. Marshall on December 4, 2019, engaged in a pattern of deceit and deception is compelling additional

evidence in support of the determination that Dr. McLaughlin was never involved in Patient A's care or treatment, was never consulted about her sinus infection, never directly authorized the prescriptions, and never requested that she schedule an appointment to be evaluated and treated for the infection.

234. In spite of the earlier investigation of Location Vaccination and the parties *Agreed Order* related to that investigation, Dr. McLaughlin either made insufficient efforts to stop the misconduct or simply permitted her to continue with her same misconduct related to the care and treatment of his patients' medical complaints.

**XIII. Dr. Rutherford's Findings of Misconduct Are Consistent with the Evidence Admitted at the Administrative Hearing.**

235. The hearing officer notes that Dr. Rutherford's opinions were provided without the benefit of the testimony of Patient A or the other witnesses' testimony and the exhibits regarding the dishonesty and deception by Fairshinda and Dr. McLaughlin in the creation of Patient A's progress notes and the care and treatment provided to her.

236. Yet, Dr. Rutherford's opinions, and her understanding of the facts based upon the medical records and other documents provided for her review, are consistent with the hearing officer's own findings that Fairshinda provided BOTOX injections for Patient A with little oversight by Dr. McLaughlin and that she treated Patient A's sinus infection without sufficient oversight by Dr. McLaughlin.

237. Based upon her review of the medical records, Dr. Rutherford found that Fairshinda, without the benefit of proper training and medical credentials, was given too much autonomy in treating Patient A, and considering the marital relationship between Dr. McLaughlin and Fairshinda, his medical judgment may have been compromised by

allowing her to have that autonomy. DVD II, 3:10 p.m.; Exhibit 1, Tab A, marked page 757.

238. Dr. Rutherford stated that Dr. McLaughlin by allowing Fairshinda to take a limited patient history, to make medical decisions, and to treat a patient who Dr. McLaughlin hadn't examined in two years constituted a deviation from the standards of care. DVD II, 3:07-3:08 p.m.; Exhibit 1, Tab A, marked page 757.

239. Dr. Rutherford was concerned that Dr. McLaughlin had not evaluated Patient A's medical condition and was not even aware of Patient A's treatment prior to it being rendered, and Dr. Rutherford had the impression that Patient A was Fairshinda's patient rather than Dr. McLaughlin's. DVD II, 3:13-3:16 p.m. and 3:20 p.m.

240. That impression was reinforced by the fact the misconduct related to Patient A wasn't an "isolated incident" but was a continuation of the same conduct addressed in the Board's previous action against Dr. McLaughlin. DVD II, 3:15- 3:16 p.m.; Exhibit 1, Tab A, marked pages 761-767.

241. At the time she submitted her report to the Board, Dr. Rutherford was not aware of the Board's earlier investigation of Dr. McLaughlin or of the *Agreed Order* that resolved that action. DVD IV, 2:07-2:08 p.m.

242. She was aware, however, of the grievance submitted to the Board by Mr. Thoroughman and the emails from other public health officers that contained information about their investigation of Location Vaccination. DVD IV, 2:35-2:37 p.m.; Exhibit 1, Tab A, 695-729.

243. Dr. Rutherford found that given Fairshinda's recent history of mishandling vaccines, it was a violation of the standards of acceptable and prevailing medical practice

in Kentucky for Dr. McLaughlin to allow her to administer care to a patient since she was not a licensed professional. DVD IV, 2:11-2:13 p.m.

244. Dr. Rutherford found that if Dr. McLaughlin was aware of Patient A's medical history, it would have been appropriate for him, not Fairshinda, to issue her initial prescriptions to treat the sinus infection, but he was required to examine her prior to issuing the second prescription for Augmentin. DVD IV, 2:21-2:24 p.m.

245. Thus, Dr. Rutherford's concern with Dr. McLaughlin's conduct focused more on his actions related to Patient A's second contact with Fairshinda and the second prescription rather than on the first. DVD II, 3:18-3:19 p.m.

246. Dr. Rutherford explained that the first antibiotic prescription can be defended if the person is a family friend, and "that happens" when helping someone out. DVD, 2:23 p.m.

247. She also stated, however, that by "family friend" she was referring to a personal friend of Dr. McLaughlin, whom he knows well, and not of Fairshinda. DVD IV, 2:33 p.m.

248. As addressed previously, Patient A was a friend of Fairshinda, not Dr. McLaughlin, and he had little involvement with any of the care and treatment that had ever been provided to Patient A.

249. Even without considering whether Patient A could be classified as a friend of Dr. McLaughlin, there is no question he failed to examine her prior to issuing the second prescription for an antibiotic.

250. Because Dr. McLaughlin did not have an established doctor/patient relationship with Patient A and had not seen her in over two years, Dr. McLaughlin's

failure to examine Patient A prior to issuing the prescription for Augmentin on August 28, 2019, was a violation of the standards of acceptable and prevailing medical practice in Kentucky. DVD II, 3:09 p.m. and 3:19-3:22 p.m.

251. Dr. Rutherford believed that the issuance of one prescription for Augmentin was not by itself grounds to take action against McLaughlin's medical license, but the Board was justified to take action in light of her broader concerns about his conduct. DVD II, 3:21 and 3:24 p.m.

252. Several additional issues were addressed at the administrative hearing that required clarification regarding the basis for Dr. Rutherford's opinions.

253. At the administrative hearing on the *Emergency Order* there was some confusion over whether Dr. Rutherford in preparing her report had mistakenly believed Fairshinda's BOTOX injections in May 2019 caused Patient A's eye complaints.

254. One source of the confusion was her description of the medical issue that formed the basis for her review, which she described as "BOTOX treatment led to eye complaints." Exhibit 1, Tab A, marked page 754.

255. In addition, the confusion was based in part on Patient A's own belief after she sought treatment for the infection from the Montgomery County Health Department in the fall of 2019 that there was a possible connection between the BOTOX injections and her sinus infection based upon the earlier investigation of Location Vaccination. DVD IV, 10:06 a.m.

256. There is no dispute, however, that the earlier BOTOX treatment did not cause Patient A's eye complaints. Exhibit 1, Tab A, marked pages 717, 731-734; Exhibit 10.

257. Dr. Rutherford testified that she did not believe in her review of the allegations against Dr. McLaughlin and documents provided to her that the BOTOX treatments caused Patient A's eye complaints. DVD II, 2:11 p.m., 2:19-2:21 p.m., and 2:35 p.m.

258. Therefore, there is no basis to conclude that Dr. Rutherford was mistaken as to the cause of Patient A's complaint of eye discomfort or that Dr. Rutherford used that complaint as the basis for any of her opinions regarding the care and treatment provided to her by Fairshinda and Dr. McLaughlin. DVD II, 2:56 p.m.

259. Another area of confusion from Dr. Rutherford's report that was clarified at the hearing on the *Emergency Order* was her assertion that because Dr. McLaughlin and Fairshinda were married, "their relationship would interfere with judgment in the care of patients" and that his "judgment may be compromised." Exhibit 1, Tab A, marked pages 756-757.

260. In her testimony, however, Dr. Rutherford acknowledged that it is not a violation of any medical standard or below the standard of care for Fairshinda to work in the medical practice of her husband and under his supervision. DVD II, 3:06-3:07 p.m. and 3:10-3:13 p.m.

261. Therefore, in spite of the suggestion to the contrary in the Expert Review Worksheets, there is no basis for finding a violation of the standards of acceptable and prevailing medical practice simply due to the fact Fairshinda worked in Dr. McLaughlin's medical practice and under his supervision. DVD II, 2:58 p.m.

262. Dr. Rutherford also acknowledged that a physician may handle simple medical problems based upon a telephone call or text message from a patient without



requiring an office visit, and the physician may have office personnel call in prescriptions for antibiotics for a patient. DVD II, 2:39-2:40 p.m.

263. In addition to challenging the merits of Dr. Rutherford's findings and opinions, Dr. McLaughlin challenged her credibility as an expert witness based upon a presentation she made in the summer of 2021 to a local school district against a face mask mandate in response to COVID. DVD VI, 9:39-9:44 a.m.; 9:49-10:04 a.m.

264. The hearing officer found the proposed evidence in support of the challenge was inadmissible because it was not properly authenticated and was not relevant to the specific medical practice issues before him in this action. DVD VI, 9:40, 10:04, and 10:40-10:42 a.m.

#### **XIV. The Efforts at Deception Continued to the Conclusion of the Administrative Hearing.**

265. Although not related directly to the allegations of misconduct in this action, a final factual matter needs to be addressed since it relates to the general credibility of Dr. McLaughlin and Fairshinda and may be relevant to any sanction the Board may choose to impose in this action. DVD VI, 10:39-10:42 a.m.

266. Well after the start of the administrative hearing for this action but shortly before its conclusion, Fairshinda wrote a note dated August 11, 2021, on one of Dr. McLaughlin's prescription pads exempting a "patient" from a school-imposed mask requirement. DVD VI, 10:45-10:46 a.m.; Exhibit 27.

267. The note reads, "Patient is unable to wear a mask due to childhood asthma and allergies. Patient also has generalized anxiety disorder exacerbated by restricting airway and lung capacity." Exhibit 27, page 3.

268. Fairshinda had previously written an almost identical note on July 1, 2020, for the same “patient,” which was almost a year after the filing of the *Agreed Order* on July 19, 2019. Id.; Exhibit 1, Tab A, marked pages 761-767.

269. In addition to composing the note, Fairshinda forged Dr. McLaughlin’s signature on both prescription pad notes, but she asserted that Dr. McLaughlin didn’t know anything about the notes. DVD VI, 10:59 a.m.; Exhibit 27, page 1.

270. In acknowledging she should not have written the notes, Fairshinda explained she signed them like she would sign work orders or for packages for Dr. McLaughlin. DVD VI, 10:59 a.m.

271. Certainly, Fairshinda by her conduct did not display any appreciation for the gravity of the conduct that resulted in the previous sanction of Dr. McLaughlin’s license or for the current charges, and she showed no hesitancy in forging his signature on an official prescription pad for his medical practice.

272. In the hearing officer’s effort to understand whether the person for whom Fairshinda created the note was an actual patient of the medical practice, he and Fairshinda engaged in an exchange that is consistent with Dr. Thoroughman’s assessment of Fairshinda’s conduct during the Location Vaccination investigation, that she would hold back the whole truth while attempting to maintain the appearance of cooperation. DVD IV, 9:27 a.m.:

- Q. You signed these [prescription pads] for one of Dr. McLaughlin’s patients?
- A. For someone that’s been seen at our house, yes.
- Q. Seen where?
- A. At our house.
- Q. The person has not been seen by Dr. McLaughlin?
- A. He’s seen her, yes.

- Q. Seen her as a patient? You said at our house. So I'm just trying to clarify.  
A. I mean yes, she's been seen at the house. He knows her. Is that what you mean?  
Q. No, has he treated her for a medical condition?  
A. I'm not sure. I don't know.

DVD VI, 10:47 a.m. (hearing officer's transcription of testimony)

273. The hearing officer notes that in Fairshinda's previous testimony and in her text exchanges with Patient A, Fairshinda herself used the term "seeing" a patient as an analogous term for a physician "examining" a patient, as when she requested Patient A to "let [the Board] know Doc did see you and decided to call you in something for your sinus infection . . . ." Exhibit 26, page 9.

274. Therefore, Fairshinda's testimony near the end of the administrative hearing was emblematic of her dishonest and deceptive conduct throughout the investigative and administrative hearing processes, and all of her efforts at deception in this action were adopted, supported, or ratified, and never repudiated, by Dr. McLaughlin.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.
2. The administrative hearing was conducted in accordance with the provisions of KRS Chapter 13B, KRS 311.565(1)(g), and KRS 311.591.
3. Under KRS 13B.090(7), the Board had the burden to prove by a preponderance of the evidence the allegations against Dr. McLaughlin.
4. The Board has met its burden to prove Dr. McLaughlin violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11).

5. Under KRS 311.595(9), a physician is subject to discipline if he has “engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof.”

6. Pursuant to KRS 311.597(4), the term “dishonorable, unethical, or unprofessional conduct” is also defined to include “any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association . . . .”

7. Dr. McLaughlin violated KRS 311.595(9), as illustrated by KRS 311.597(4), by failing to provide oversight of Fairshinda’s conduct related to administering BOTOX injections to Patient A and by allowing Fairshinda to provide medical care and treatment to Patient A for her sinus infection in the summer of 2019, which included allowing her under authority of his license to issue prescriptions for treatment of that infection.

8. In light of the Board’s previous action involving Dr. McLaughlin’s oversight of Location Vaccination and the misconduct by Fairshinda in treating patients and prescribing medications, Dr. McLaughlin was aware of or should have been aware of Fairshinda’s misconduct in this action, and he either explicitly condoned her continuing to engage in the same type of misconduct or took inadequate measures to ensure she would not or could not engage in the misconduct.

9. Because Dr. McLaughlin was either explicitly aware of the treatment provided to Patient A through Fairshinda or implicitly authorized her to provide that type of medical care, he also violated those statutes by failing to perform his own

examination of the patient when she contacted Fairshinda a second time after the first set of prescriptions failed to alleviate the symptoms and cure the infection.

10. Under KRS 311.595(11), a physician is subject to discipline if he “employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art.”

11. The preponderance of the evidence supports the conclusion that Dr. McLaughlin violated KRS 311.595(11) by aiding, assisting, or abetting Fairshinda to engage in the misconduct found in this action related to the care and treatment of Patient A and in the prescribing of medications for her.

12. Dr. McLaughlin was aware of Fairshinda’s previous misconduct as set forth in the *Agreed Order*, but he either implicitly condoned her misconduct by taking inadequate measures to end it or he explicitly condoned her continuing to treat patients under authority of his medical license.

13. Although a party to an administrative action may challenge an expert witness’s credibility based upon an allegation of bias, in this action Dr. McLaughlin attempted to challenge Dr. Rutherford’s credibility based upon her alleged statements regarding masking for schoolchildren as protection from COVID. None of the evidence offered in support of that assertion, however was properly authenticated at the hearing in order to ensure it credibly represented the statements made or positions taken by Dr. Rutherford. In addition, Dr. McLaughlin made no effort prior to the date on which the allegations of bias were made to have her subpoenaed in order for her to testify regard her alleged statements and how they could impact her general credibility as an expert or

her opinions on the specific medical issues before the hearing officer. Therefore, the proposed evidence was not properly authenticated and offered into evidence at the administrative hearing for the hearing officer's consideration regarding the credibility or expertise of Dr. Rutherford on the issues before the Board.

### **RECOMMENDED ORDER**

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. Paul E. McLaughlin in violation of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11) and take any appropriate action against his license for those violations.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.


A party also has a right to appeal the Final Order of the agency pursuant to KRS 13B.140(1) which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The

petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO RECOMMENDED this 7<sup>th</sup> day of February, 2022.

  
\_\_\_\_\_  
THOMAS J. HELLMANN  
HEARING OFFICER  
810 HICKMAN HILL RD  
FRANKFORT KY 40601  
(502) 330-7338  
thellmann@mac.com

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this RECOMMENDED ORDER was mailed this 7<sup>th</sup> day of February, 2022, by first-class mail, postage prepaid, to:

JILL LUN  
KY BOARD OF MEDICAL LICENSURE  
HURSTBOURNE OFFICE PARK STE 1B  
310 WHITTINGTON PKWY  
LOUISVILLE KY 40222

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

LEANNE K DIAKOV  
KY BOARD OF MEDICAL LICENSURE  
HURSTBOURNE OFFICE PARK STE 1B  
310 WHITTINGTON PKWY  
LOUISVILLE KY 40222

BENJAMIN J. WEIGEL  
O'BRYAN BROWN & TONER PLLC  
401 SOUTH FOURTH ST SUITE 2200  
LOUISVILLE KY 40202



THOMAS J. HELLMANN

1977FC



FILED OF RECORD

OCT 30 2020

K.B.M.L

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1977

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY PAUL E. McLAUGHLIN, M.D., LICENSE NO. 24118,  
250 FOXGLOVE DRIVE, SUITE 6, MT. STERLING, KENTUCKY 40353

**EMERGENCY ORDER OF SUSPENSION**

The Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel A, considered this matter at its October 15, 2020, meeting. At that meeting, Inquiry Panel A considered a memorandum by Jon Marshall, Medical Investigator, dated September 24, 2020; correspondence from Doug Thoroughman, PhD, MS, State Epidemiologist, dated October 31, 2019; e-mail correspondence between the Cabinet for Health and Family Services, the Montgomery County Health Department and the Medical Investigator, between September 27 and December 6, 2019; copies of prescriptions from the Kroger Pharmacy 02400712, August 2019; Laboratory – Comparative Report re Patient A from Saint Joseph – Mount Sterling, dated October 22, 2019; correspondence from the licensee to the Medical Investigator, undated; correspondence from the licensee to the Medical Investigator, dated April 10, 2020; a Board Consultant Report with Expert Review Worksheet, dated August 13, 2020; correspondence from the licensee to the Medical Investigator, dated September 11, 2020; e-mail correspondence from the Board Consultant to the Medical Investigator, dated September 23, 2020; and an Agreed Order, Case No. 1925, filed of record July 19, 2019.

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Having considered all of this information and being sufficiently advised, Inquiry Panel A 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 A concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Paul E. McLaughlin, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about July 19, 2019, the licensee became subject to an Agreed Order, Case No. 1925, after the Inquiry Panel found that the licensee's blanket delegation of his professional and medical responsibilities to an unqualified and unlicensed person (being his wife) without sufficient oversight, and his failure to evaluate, treat and report the patients with adverse vaccinations reactions appropriately, constituted a failure to conform to prevailing medical practices in the Commonwealth of Kentucky and contributed to a public health crisis.
4. On or about September 27, 2019, Patient A contacted Kelly Allen, RN, Nurse Supervisor for the Montgomery County Health Department ("MCHD"), and stated substantially as follows: she has been receiving Botox/fillers from the licensee's wife, Fairshinda McLaughlin, for several years; in the beginning, she received this from the licensee but starting several years ago, Mrs. McLaughlin began providing the treatment; in or around May or June 2019, she experienced swelling of her face after receiving Botox from Mrs. McLaughlin; Mrs. McLaughlin prescribed Trentinoin cream but she did not use it because of the price and the potential side effects; in late July 2019 or early August 2019, Mrs. McLaughlin administered

injections to her again, this time resulting in trouble to her eyes; in response, Mrs. McLaughlin called in Azrithomycin and Predinsone; when she reported no improvement, Mrs. McLaughlin prescribed amoxicillin (Augmentin); receiving no relief, she sought care at a walk-in clinic and with an eye doctor; at the time of her report to the MCHD, she reported her right eye was drawing inward, she was experiencing severe blurred vision and drainage, and that her eyes felt like they have grit in them.

5. On or about November 12, 2019, Doug Thoroughman, Ph.D., M.S., State Epidemiologist for the Kentucky Department of Public Health (“KDPH”) relayed Patient A’s report to the Board, stating “like the previous investigation, this report includes a patient stating that Mrs. McLaughlin is calling in prescriptions without office visits or testing, potentially without the supervision of a licensed medical provider. Our direct concern is the unsupervised administration of Botox/fillers by a non-licensed, non-medically trained individual, as well as potentially inappropriate prescribing which could lead to serious outcomes. Mrs. McLaughlin does not possess a medical license and has historically relied upon her husband’s medical license for prescribing antibiotics and steroids.”
6. On or about December 4, 2019, the Board’s medical investigator, Jon Marshall, visited the Medical Center Skin Care office, 250 Foxglove Drive, Suite 4, Mt. Sterling, Kentucky, where Patient A had received treatment and was met by a woman, who identified herself as “Judy”; “Judy” stated that Mrs. McLaughlin was not available and would not be back in the office until Friday; the medical investigator then went up to the next level to Suite 6, where the licensee’s office

was located, and met with the licensee in his office; while there, the investigator saw photos of "Judy" with the licensee and learned that "Judy" was in fact Mrs. McLaughlin; a subpoena was served for Patient A's original records to be produced immediately; however, because Patient A's medical records were "at home," they could not be produced; Mrs. McLaughlin mailed Patient A's records to the investigator two days later.

7. In written responses to the Board, the licensee stated, "[a]ll of the orders and procedures identified in the [Patient A's] medical record were carried out with my knowledge and understanding" and "[a]s supervisory physician, I was aware of [Patient A's] Botox Cosmetic injections. Fairshinda's only role was to administer the injections themselves."
8. On or about August 13, 2020, a Board consultant found that the licensee departed from or failed to conform to acceptable and prevailing medical practices, stating

I recommend immediate action to restrict his medical license to prevent harming patients. His spouse, Fairshinda McLaughlin is a non-licensed, non-medically trained person administering injections and calling in prescriptions for patients. I could not find evidence that Dr. McLaughlin examined [Patient A] prior to being prescribed antibiotics, which were reportedly called in by Fairshinda McLaughlin.

I am unable to conclude from the documentation whether Dr. McLaughlin was aware of treatment rendered by Mrs. McLaughlin. However, even if he was aware, given her lack of credentialing and licensure in nursing or other health care field, allowing her to perform procedures, particularly after her recent charges of mishandling vaccines, does not comply with acceptable and prevailing medical practice. I question the ethics of spouses working together in this way to provide care, as both individuals would be less likely to hold his/her spouse accountable for errors.

### CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11).
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 not a violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and 2) the statute provides for a prompt post-deprivation hearing. *Barry v. Barchi*, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); *FDIC v. Mallen*, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and *Gilbert v. Homar*, 117 S.Ct. 1807 (1997). *Cf.* KRS 13B.125(1).

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

#### **EMERGENCY ORDER OF SUSPENSION**

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel A hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Paul E. McLaughlin, M.D., is SUSPENDED and Dr. McLaughlin is prohibited from performing any act which constitutes 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 the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

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

SO ORDERED this 30<sup>th</sup> day of October, 2020.

*W. Saleem.*

WAQAR A. SALEEM, M.D.  
CHAIR, INQUIRY PANEL A

**CERTIFICATE OF SERVICE**

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to the licensee, Paul E. McLaughlin, M.D., License No. 24118, 250 Foxglove Drive, Suite 6, Mt. Sterling, Kentucky 40353, and to his counsel, Benjamin J. Weigel, Esq., O'Bryan, Brown & Toner, PLLC, 401 South Fourth Street, Suite 2200, Louisville, Kentucky 40202 on this 30<sup>th</sup> day of October, 2020.

*Leanne K. Diakov / SF*

Leanne K. Diakov  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
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OCT 30 2020

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1977

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PAUL E. McLAUGHLIN, M.D., LICENSE NO. 24118, 250 FOXGLOVE DRIVE, SUITE 6, MT. STERLING, KENTUCKY 40353

COMPLAINT

Comes now the Complainant Waqar A. Saleem, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel A, and on behalf of the Panel which met on October 15, 2020, states for its Complaint against the licensee, Paul E. McLaughlin, M.D., as follows:

1. At all relevant times, Paul E. McLaughlin, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about July 19, 2019, the licensee became subject to an Agreed Order, Case No. 1925, after the Inquiry Panel found that the licensee's blanket delegation of his professional and medical responsibilities to an unqualified and unlicensed person (being his wife) without sufficient oversight, and his failure to evaluate, treat and report the patients with adverse vaccinations reactions appropriately, constituted a failure to conform to prevailing medical practices in the Commonwealth of Kentucky and contributed to a public health crisis.
4. On or about September 27, 2019, Patient A contacted Kelly Allen, RN, Nurse Supervisor for the Montgomery County Health Department ("MCHD"), and stated substantially as follows: she has been receiving Botox/fillers from the licensee's wife, Fairshinda McLaughlin, for several years; in the beginning, she received this



from the licensee but starting several years ago, Mrs. McLaughlin began providing the treatment; in or around May or June 2019, she experienced swelling of her face after receiving Botox from Mrs. McLaughlin; Mrs. McLaughlin prescribed Trentinoin cream but she did not use it because of the price and the potential side effects; in late July 2019 or early August 2019, Mrs. McLaughlin administered injections to her again, this time resulting in trouble to her eyes; in response, Mrs. McLaughlin called in Azrithomycin and Predinsone; when she reported no improvement, Mrs. McLaughlin prescribed amoxicillin (Augmentin); receiving no relief, she sought care at a walk-in clinic and with an eye doctor; at the time of her report to the MCHD, she reported her right eye was drawing inward, she was experiencing severe blurred vision and drainage, and that her eyes felt like they have grit in them.

5. On or about November 12, 2019, Doug Thoroughman, Ph.D., M.S., State Epidemiologist for the Kentucky Department of Public Health (“KDPH”) relayed Patient A’s report to the Board, stating “like the previous investigation, this report includes a patient stating that Mrs. McLaughlin is calling in prescriptions without office visits or testing, potentially without the supervision of a licensed medical provider. Our direct concern is the unsupervised administration of Botox/fillers by a non-licensed, non-medically trained individual, as well as potentially inappropriate prescribing which could lead to serious outcomes. Mrs. McLaughlin does not possess a medical license and has historically relied upon her husband’s medical license for prescribing antibiotics and steroids.”

6. On or about December 4, 2019, the Board's medical investigator, Jon Marshall, visited the Medical Center Skin Care office, 250 Foxglove Drive, Suite 4, Mt. Sterling, Kentucky, where Patient A had received treatment and was met by a woman, who identified herself as "Judy"; "Judy" stated that Mrs. McLaughlin was not available and would not be back in the office until Friday; the medical investigator then went up to the next level to Suite 6, where the licensee's office was located, and met with the licensee in his office; while there, the investigator saw photos of "Judy" with the licensee and learned that "Judy" was in fact Mrs. McLaughlin; a subpoena was served for Patient A's original records to be produced immediately; however, because Patient A's medical records were "at home," they could not be produced; Mrs. McLaughlin mailed Patient A's records to the investigator two days later.
7. In written responses to the Board, the licensee stated, "[a]ll of the orders and procedures identified in the [Patient A's] medical record were carried out with my knowledge and understanding" and "[a]s supervisory physician, I was aware of [Patient A's] Botox Cosmetic injections. Fairshinda's only role was to administer the injections themselves."
8. On or about August 13, 2020, a Board consultant found that the licensee departed from or failed to conform to acceptable and prevailing medical practices, stating

I recommend immediate action to restrict his medical license to prevent harming patients. His spouse, Fairshinda McLaughlin is a non-licensed, non-medically trained person administering injections and calling in prescriptions for patients. I could not find evidence that Dr. McLaughlin examined [Patient A] prior to being prescribed antibiotics, which were reportedly called in by Fairshinda McLaughlin.

I am unable to conclude from the documentation whether Dr. McLaughlin was aware of treatment rendered by Mrs. McLaughlin. However, even if he was aware, given her lack of credentialing and licensure in nursing or other health care field, allowing her to perform procedures, particularly after her recent charges of mishandling vaccines, does not comply with acceptable and prevailing medical practice. I question the ethics of spouses working together in this way to provide care, as both individuals would be less likely to hold his/her spouse accountable for errors.

9. Simultaneous to the filing of this Complaint, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
10. By his conduct, the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11). Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.
11. 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.
12. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for February 24 & 25, 2021, at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date

shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine in the Commonwealth of Kentucky held by PAUL E. McLAUGHLIN, M.D.

This 30<sup>th</sup> day of October, 2020.

*W. Saleem*

WAQAR A. SALEEM, M.D.  
CHAIR, INQUIRY PANEL A

**CERTIFICATE OF SERVICE**

I certify that the original of this Complaint was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, Paul E. McLaughlin, M.D., License No. 24118, 250 Foxglove Drive, Suite 6, Mt. Sterling, Kentucky 40353, and to his counsel, Benjamin J. Weigel, Esq., O'Bryan, Brown & Toner, PLLC, 401 South Fourth Street, Suite 2200, Louisville, Kentucky 40202 on this 30<sup>th</sup> day of October, 2020.

*Leanne K. Diakov /sf*

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General Counsel  
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JUL 19 2019

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1925

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PAUL E. McLAUGHLIN, M.D., LICENSE NO. 24118, 250 FOXGLOVE DRIVE, SUITE 6, MT. STERLING, KENTUCKY 40353

**AGREED ORDER**

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

**STIPULATIONS OF FACT**

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

1. At all relevant times, Paul E. McLaughlin, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about January 9, 2019, the Commissioner of the Kentucky Department of Public Health ("KDPH") reported to the Board its investigation regarding an outbreak of vaccination reactions associated with a Montgomery County business, "Location Vaccination," which operates under and through the licensee. The KDPH stated that the outbreak was likely due to the preparation, storage and/or handling practices. The KDPH expressed concern that the primary operators, handlers and vaccinators were unlicensed medical providers, including the licensee's wife; and that when patients reported reactions, they were assessed and

prescribed antibiotics by the licensee's wife, under the licensee's name and without a physical assessment or medically appropriate cultures or susceptibility testing. According to the KDPH, the inappropriate prescribing of antibiotics could lead to serious outcomes, particularly in light of the steroid prescriptions given to several patients, and that disseminated mycobacterium infection could be fatal in the case of individuals with immune disorders. It was unclear to the KDPH whether the licensee was aware of the prescriptions being called in by his wife, but they were being submitted under his name and license.

4. On June 20, 2019, the licensee appeared before the Inquiry Panel and stated that he is not involved in the Location Vaccination business, it being operated separately and solely by his wife; that he and his wife first became aware of the outbreak during Thanksgiving week of 2018; and that it was appropriate to prescribe short term antibiotics in order to allow patients time to see their providers after the holiday. However, many of the antibiotic prescriptions under the licensee's name and license predated Thanksgiving week and the national Centers for Disease Control and Prevention ("CDC") records reflect that it was first contacted about the outbreak on November 5, 2018, the caller stating

... I'm reporting this from a doctor's office. We are a doctor's office in Mount Sterling, Kentucky. We had 16 patients with these abscess nodules a month after receiving the flu shot; like 3-4 weeks afterwards they're getting these big abscess nodule and they're not, um, antibiotics are not affected by it. We cultured it and it comes back negative for bacterial growth. We don't understand what the heck is going on.

5. On November 5, 2018, although the CDC instructed that the reactions be reported to the Kentucky Immunization Program in VAERS, a report was not submitted.

6. On November 13, 2018, the CDC was contacted again, the caller stating  

... I called last week about reporting a bunch of adverse events with our flu vaccine that they were getting cystic nodules. Everyone seems to be getting them. We don't understand why. And the doctor was asking if there is any way that we can like call CDC and see if they can test like our needles and syringes that we are using to see if there is something on those.
7. On November 13, 2018, although the CDC instructed that syringes may be tested at local, county and state health departments and provided information about submitting batches to the CDC, using Form 50.34, no specimens were submitted.
8. On December 4, 2018, the Clark County Health Department ("CCHD") treated three patients who reported that they received their vaccinations from Location Vaccination at the same time and location in Montgomery County. The CCHD reported the reactions to the Montgomery County Health Department ("MCHD").
9. On December 4, 2018, MCHD contacted Location Vaccination, which then confirmed the outbreak and that it had not reported into VAERS.
10. On or about December 18, 2018, the licensee was interviewed by the KDPH and it reported that the licensee confirmed to KDPH that he was aware of the reactions; stated that the CDC had been contacted but "wasn't really interested"; disclosed that he had received a vaccination in October 2018 and also suffered a reaction which resolved after treatment with antibiotics; and confirmed that he had received the regional and state alerts sent to providers and understood that he should counsel patients to seek care from their primary care providers.
11. On or about December 20, 2018, KDPH sent a letter to each company where employees received vaccinations through Location Vaccination and began receiving calls from patients who reported to the KDPH that they were being

contacted for treatment by the licensee's wife directly to have antibiotics and steroid prescriptions called-in, without any physical assessment or testing, and offering to pay for medical treatment.

12. On June 20, 2019, the licensee appeared before the Inquiry Panel, which opined that the licensee's blanket delegation of his professional and medical responsibilities to an unqualified and unlicensed person without sufficient oversight, and his failure to evaluate, treat and report the patients with adverse vaccinations reactions appropriately, constitutes a failure to conform to prevailing medical practices in the Commonwealth of Kentucky and contributed to a public health crisis.
13. The licensee denies that he delegated his professional or medical responsibilities or that he inappropriately responded to the vaccination reactions when he became aware of them.

#### 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 medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(11). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.



3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

**AGREED ORDER**

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

1. The license to practice medicine held by Paul E. McLaughlin, M.D., is hereby PLACED ON PROBATION FOR A PERIOD OF FIVE (5) YEARS, with that period of probation to become effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the *ProBE* Program offered through the Center for Personalized Education for Professionals (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232, at the earliest time available;
  - i. The licensee SHALL complete and "unconditionally pass" the *ProBE* Program at the time and date(s) scheduled, at his expense and as directed by CPEP's staff;
  - ii. The licensee SHALL provide the Board's staff with written verification that he has completed and "unconditionally passed" CPEP's *ProBE* Program, promptly after completing the program;
  - iii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations, reports or essays from the *ProBE* Program to the Board's Legal Department promptly after their completion;

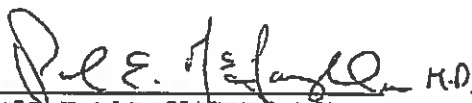
- b. Within sixty (60) days of the filing of this Agreed Order, the licensee SHALL complete at least five (5) hours of continuing medical education, certified in Category I, on a subject related to the administration of vaccines and follow up in the event of adverse vaccination reactions;
  - c. Within sixty (60) days of the filing of this Agreed Order, the licensee SHALL develop a written policy regarding the storage and administration of vaccines and protocols for follow up in the event of adverse vaccination reactions;
  - d. Within five (5) years of the filing of this Agreed Order, the licensee SHALL submit payment of a FINE in the amount of five-thousand dollars (\$5,000) pursuant to KRS 311.565(1)(v);
  - e. Within five (5) years of the filing of this Agreed Order, the licensee SHALL REIMBURSE the Board the amount of one-thousand seven hundred and ninety-three dollars and seventy-five cents (\$1,793.75) pursuant to KRS 311.565(1)(v); and
  - f. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly understands and agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this 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

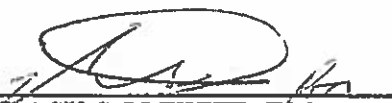
13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

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).

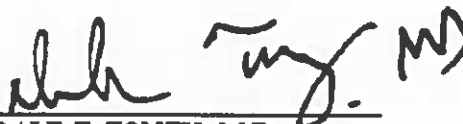
SO AGREED on this 9<sup>TH</sup> day of JULY, 2019.

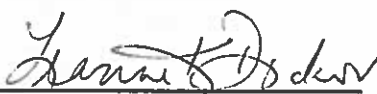
FOR THE LICENSEE:

  
PAUL E. McLAUGHLIN, M.D.

  
TRACY S. PREWITT, ESQ.  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

  
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