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K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2084

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PABLO A. MERCED, M.D., LICENSE NO. 24420, 1389 HIGHWAY 15 NORTH, JACKSON, KENTUCKY 41339

AGREED ORDER OF SURRENDER

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Hearing Panel A, and Pablo A. Merced, M.D., (“the licensee”), and, based upon their mutual desire to fully and finally resolve the complaint without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF SURRENDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Pablo A. Merced, 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. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services (“OIG”), reviewed the licensee’s prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

Date "Written"	Number of Unique Patients for Whom Dr. Merced Prescribed Controlled Substance Prescription(s)
05/19/2019	0
05/20/2019	10
05/21/2019	46
05/22/2019	40
05/23/2019	40
05/24/2019	19
07/01/2019	12
07/02/2019	34
07/03/2019	39
07/04/2019	1
07/05/2019	43

For six of the eleven days reviewed, OIG found that the licensee submitted coded claims for and received payment for Medicaid patient encounters that, based upon the minimum amount of time per encounter, would have consumed 13 or more hours/day. Based on the allegation that the licensee was out of the country for the date ranges evaluated, OIG recommended that a portion of the patient names for whom he appeared to prescribe during those dates be provided to the Board for review.

4. On or about November 5, 2022, a Board consultant completed a review of fourteen (14) of the licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices. The consultant noted a pattern of cut-and-paste notes with no meaningful SOAP information and that the licensee prescribed (primarily suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, prescribing to patients positive for methadone, no efforts to taper, and providing early refills. The consultant opined that the licensee "poses a threat to the health, safety, and wellbeing of patients." The consultant's narrative report and review worksheets in their entirety are incorporated herein by reference.

5. On or about November 16, 2022, the Board mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
6. On or about December 1, 2022, the Board e-mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
7. On or about December 19, 2022, the Board's medical investigator called the licensee and a receptionist stated to the investigator that the licensee was on vacation, and it was unknown when he would return.
8. On or about January 20, 2023, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
9. The licensee timely answered the Complaint and denied the allegations set forth therein. Further, the licensee explained that he did not respond to the Board's inquiries during the investigation because he was tending to his wife who had broken a hip; since issuance of the Board's emergency order, he has voluntarily relinquished his DEA registration; and he desires to retire from the practice of medicine.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has

engaged in conduct which violates the provisions of KRS 311.595(9) [as illustrated by KRS 311.597(4)], (10) and (12). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Surrender.

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

AGREED ORDER OF SURRENDER

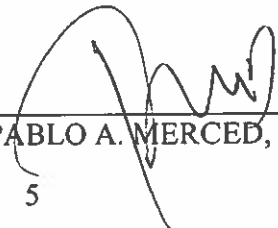
Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the licensee's desire to retire from the practice of medicine, the parties hereby ENTER INTO this **AGREED ORDER OF SURRENDER** with the following terms and conditions:

1. The licensee, Pablo A. Merced, M.D., hereby SURRENDERS his Kentucky medical license INDEFINITELY AND PERMANENTLY, effective immediately upon the filing of this Agreed Order of Surrender;
 - a. From the date of filing of this Agreed Order of Surrender forward, the licensee SHALL never perform any act which would constitute the "practice of medicine," as that term is defined in KRS 311.550(10) - the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - within the Commonwealth of Kentucky; and
 - b. As an express condition for the entry of this Agreed Order of Surrender, each party understands and agrees that neither Panel of the Board will ever consider any petition for reinstatement of license, any motion or request for modification or change of the terms of this Agreed Order or special request for consideration for relief filed by the licensee. This Agreed Order of Surrender is expressly designed to serve as the complete and final termination of the legal relationship between this Board and this licensee. It is further understood and agreed by the licensee that any communication by the licensee and/or his agents to the Board attempting to revive that legal relationship will be returned to him or his agent without being provided or forwarded to any Board member.

2. Pursuant to KRS 311.565(1)(v), the licensee SHALL submit to the Board reimbursement of its costs in the amount of **\$6,125.00** within six (6) months of the date of entry of this Agreed Order of Surrender.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Surrender, the licensee's practice shall constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Surrender, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Surrender.
4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Surrender may provide a legal basis for additional disciplinary action or criminal prosecution.

SO AGREED on this 24 day of April, 2023.

FOR THE LICENSEE:



PABLO A. MERCED, M.D.
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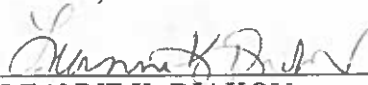


DAVID J. GUARNIERI, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



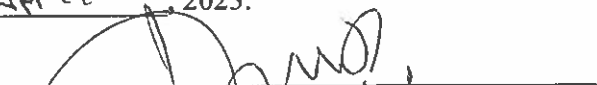
LEANNE K. DIAKOV
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
Tel. (502) 429-7150

WAIVER OF RIGHTS

I, Pablo A. Merced, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 2084. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's counsel.

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

Executed this 24 day of April, 2023.



PABLO A. MERCED, M.D.
RESPONDENT



DAVID J. GUARNIERI, ESQ.
COUNSEL FOR THE RESPONDENT

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BOARD OF MEDICAL LICENSURE
CASE NO. 2084

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EMERGENCY ORDER OF SUSPENSION

On January 19, 2023, the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, considered Panel Memoranda from Billy Madden, Medical Investigator, dated December 29, 2022; an Investigative Report, Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services, dated July 28, 2022; DEA Form-6 Report of Investigation, dated September 9, 2022; typed correspondence from the licensee, undated; a November 2022 Board consultant report with expert review worksheets; and the licensee’s Investigative Physician Profile/Background. In addition, the licensee was given notice of the Panel meeting and an opportunity to be heard; he did not appear. Having considered this information and being sufficiently advised, the Board 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, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support this Emergency Order of Suspension:

1. At all relevant times, Pablo A. Merced, 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. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services (“OIG”), reviewed the licensee’s prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

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For six of the eleven days reviewed, OIG found that the licensee submitted coded claims for and received payment for Medicaid patient encounters that, based upon the minimum amount of time per encounter, would have consumed 13 or more hours/day. Based on the allegation that the licensee was out of the country for the date ranges evaluated, OIG recommended that a portion of the patient names for whom he appeared to prescribe during those dates be provided to the Board for review.

4. On or about November 5, 2022, a Board consultant completed a review of fourteen (14) of the licensee’s patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices. The consultant noted a pattern of cut-and-paste notes with no meaningful SOAP information and that the licensee prescribed (primarily suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, prescribing to patients positive for

methadone, no efforts to taper, and providing early refills. The consultant opined that the licensee “poses a threat to the health, safety, and wellbeing of patients.” The consultant’s narrative report and review worksheets in their entirety are incorporated herein by reference.

5. On or about November 16, 2022, the Board mailed a copy of the Board consultant’s report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
6. On or about December 1, 2022, the Board e-mailed a copy of the Board consultant’s report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
7. On or about December 19, 2022, the Board’s medical investigator called the licensee and a receptionist stated to the investigator that the licensee was on vacation, and it was unknown when he would return.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal 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)], (10) and (12).
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 B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Pablo A. Merced, M.D., is SUSPENDED and Dr. Merced is prohibited from performing any act which constitutes the “practice of medicine or osteopathy,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, immediately effective upon service.

SO ORDERED this 20th day of January, 2023.



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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed via certified mail return-receipt requested to the licensee at his last address of which the board has record, Pablo A. Merced, M.D., License No. 24420, 1389 Highway 15 North, Jackson, Kentucky 41339 on this 20th day of January, 2023.



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

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COMPLAINT

Comes now the Complainant, Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on January 19, 2023, states for its Complaint against the licensee, Pablo A. Merced, M.D., as follows:

1. At all relevant times, Pablo A. Merced, 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. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services ("OIG"), reviewed the licensee's prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

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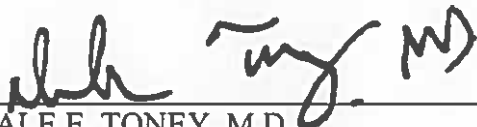
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8. On or about January 20, 2023, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
9. By his conduct, the licensee has violated KRS 311.595(9) [as illustrated by KRS 311.597(4)], (10) and (12). Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.
10. 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.
11. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for **June 27 & 28, 2023**, 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 Pablo A. Merced, M.D.

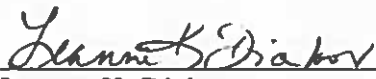
This 20th day of January, 2023.



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

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and a copy was mailed via certified mail return-receipt requested to the licensee at his last address of which the board has record, Pablo A. Merced, M.D., License No. 24420, 1389 Highway 15 North, Jackson, Kentucky 41339 on this 20th day of January, 2023.



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