

APR 11 2022

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2049

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY JOHN M. HORN, M.D., LICENSE NO. 24626, 478 WHIRLAWAY DRIVE, #100, DANVILLE, KENTUCKY 40422

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Inquiry Panel B, and John M. Horn, M.D., (hereafter “the licensee”), and, based upon their mutual desire to fully and finally resolve the pending investigation 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, John M. Horn, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is internal medicine.
3. In or around 2013, a representative of the Office of Inspector General (“OIG”) met with the licensee when it was discovered during a doctor-shopper investigation that the licensee had provided many overlapping prescriptions and was not using KASPER in accordance with Board regulations. OIG provided the licensee with guidance on the regulation, documentation and monitoring of patients on long-term controlled substances.
4. In or around November 2019, OIG received a report from a pharmacist relaying concerns about the licensee’s prescribing of controlled substances, specifically that the licensee may be inappropriately prescribing amphetamines to an elderly patient

who was unaware of the reason for the prescription and lacked sufficient diagnosis when questioned by the pharmacist.

5. In or around early 2021, OIG received two more reports from pharmacists relaying concerns that the licensee may be inappropriately prescribing and alleging that he was engaging in unprofessional and confrontational behavior.
6. On or about June 8, 2021, OIG completed a review of the licensee's KASPER data for the period of May 22, 2020 through May 22, 2021 and noted the following patterns of concern:
 - A high percentage of patients (38%) were receiving overlapping opioid prescriptions with a benzodiazepine or sedative, which can increase the risk for adverse outcomes;
 - The licensee prescribed higher MME than peers (52 MED daily level compared to 33 MED for other internal medicine physicians) which can greatly increase the risk of opioid overdose;
 - Long-term use of one or more controlled substances;
 - Combinations of controlled substances favored by persons who abuse or divert controlled substances;
 - Elderly patients receiving amphetamines with overlapping sedatives; and
 - Before June 2020, the licensee may not have been compliant with KASPER query requirements as set forth in the Board's regulations

Based on the above, OIG identified thirteen (13) patient charts illustrative of these concerns for further Board review.

7. A Board consultant completed a review of the charts, and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices, stating in part

... Dr. Horn continued to write high doses of narcotics without getting urine drug screens and Kasper reports every three months. Most of the patients did not even get proper consults with pain management, neurosurgery, orthopedics or physical therapy. ...

8. The Board consultant also found that the licensee committed a serious act or pattern of acts, which under the attendant circumstances, would be deemed to be gross negligence, stating in part

... Patients were given high doses of narcotics without any supervision, diagnostic procedures or consults. The medications were never changed according to the urine drug screens whether they were positive or negative. ...

9. The Board consultant also opined that although the licensee's practices requiring use of narcotics constitute a danger to the health, welfare and safety of his patients, he should be able to continue his practice of treating ailments other than pain management, anxiety, depression, obesity or insomnia which require use of narcotics of any schedule, unless and until he successfully completes remedial education and a period of supervision.

10. In or around February 2022, the licensee responded to the consultant's report, stating, in part

... You can be assured that for the few years I have done Kasper reports on every patient who are prescribed controlled medications as well as urine drug screens twice a year.

...

... [Y]ou should know that the vast majority of the burden of treating anxiety and depression lies with the primary care provider. To contend that I should refer all those patients to psychiatry is as simple-minded as it is impractical. We have only one psychiatrist in my small town of Danville who is deemed to be universally unhelpful and unliked by the patients I have referred to him in the past.

Likewise, there are not many psychiatrist in Lexington, nor would my patients be included to drive 1-3 hours to Lexington for treatment of anxiety or depression.

With respect to pain management, your assertion that "anything more than Norco 5 (mg) for long time use should be handled by pain management (specialists)" is utterly absurd. If that were truly the case, our small town would require at least five pain clinics and a city the size of Lexington probably 30-40. This would be a huge burden on the

pain clinic doctors and would incur a significant cost burden to the patients and to health care in American, not to mention travel costs in time and money to patients. If you were to carefully review my initial response to this query you would recognize that I have increased pain medications in a step-wise fashion over a period of years. ... In my 33-1/2 year career I have had two patients who died of opiate overdose. One was a depressed woman in her mid-twenties who died of a heroin overdose. The other was a woman in her late 40s who suffered from major depression and chronic arthritis pain. Shortly after an admission to our hospital's Behavioral Medicine Unit on treatment of major depression she ended her life with an overdose of opiates. Certainly, she would have ended her life through other means if opiates were unavailable. Perhaps, in her case psychiatric care failed her.

...

You may take consolation in the fact that I will be retiring later this year at the age of 65 after 34 years in the same practice in my small town of Danville, Ky. Soon, I will no longer be putting patients "at risk" as you see it.

I am very concerned for the fate and continued well-being and especially continued relief of chronic pain following my impending retirement.

...

11. Upon consideration of the licensee's response, the Board consultant did not change his previously stated findings or opinion.
12. The licensee was given notice and an opportunity to appear before the Inquiry Panel at its meeting of March 17, 2022, but he did not appear.
13. The licensee agreed to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.

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 engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS

311.595(12). 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 matter 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 matter without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice medicine in the Commonwealth of Kentucky held by John M. Horn, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order;

2. During the effective period of this Agreed Order, the licensee's medical license

SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. The licensee SHALL ONLY prescribe, dispense, or otherwise professionally utilize controlled substances to patients, when medically necessary, for up to and no more than a 72-hour period without refill and only for an acute medical condition;
 - b. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board's costs of \$12,600.00 within two (2) years from entry of this Agreed Order; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee understands and agrees that the Panel SHALL NOT consider a request by the licensee to resume the professional utilization of controlled substances beyond a 72-hour period unless and until the Board has received an

individualized clinical skills assessment and remediation plan (if recommended) following the licensee's completion of an individualized clinical skills assessment, at his expense, from LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania 17050, Tel. (717) 909-2590

- a. The licensee understands and agrees that both the licensee and the Board may provide relevant information to LifeGuard for consideration as part of a clinical skills assessment. In order to permit the Board to provide such relevant information, the licensee shall immediately notify the Board's Legal Department of any scheduled assessment dates once an assessment is scheduled and the licensee shall complete any necessary waiver/release to facilitate communication between the Board and LifeGuard.
4. The licensee understands and agrees that if the Panel should ever allow the licensee to resume the professional utilization of controlled substances beyond a period of 72-hours in the future, it will do so by an Amended Agreed Order, which shall provide for the licensee to maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for periodic review of the log and relevant records by Board agents upon request, along with any other conditions deemed necessary by the Panel at that time.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the

parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

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

SO AGREED on this 5 day of April, 2022.


FOR THE LICENSEE:




JOHN M. HORN, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:



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



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