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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1484

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PHILIP L. ROBERTS, M.D., LICENSE NO. 24979, P.O. BOX 396, BRENTWOOD, TENNESSEE 37024

**ORDER OF INDEFINITE RESTRICTION**

At its March 19, 2015, meeting, the Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Hearing Panel B, took up this case for final action. The members of Panel B reviewed the Complaint; the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Recommended Order; the licensee's exceptions, filed of record January 27, 2015; and a February 19, 2015, memorandum from the Board's General Counsel. Although the licensee was given notice of the meeting and an opportunity to be heard, he did not appear before the Panel.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS the hearing officer's Findings of Fact and Conclusions of Law and ADOPTS those Findings of Fact and Conclusions of Law and INCORPORATES them BY REFERENCE into this Order. (Attachment) Hearing Panel B FURTHER ACCEPTS AND ADOPTS the hearing officer's recommended order and in accordance with that recommended order, Hearing Panel B ORDERS:

1. The license to practice medicine held by Phillip L. Roberts, M.D., SHALL BE RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME to begin immediately upon the date of filing of this Order of Indefinite Restriction and continuing until further order of the Board;

2. During the effective period of this Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION until further order of the Board:

   a. The licensee's practice of medicine SHALL BE LIMITED/RESTRICTED to the practice of EMERGENCY MEDICINE in an emergency department or urgent care facility affiliated with an accredited hospital;

   b. The licensee SHALL ONLY prescribe, dispense, or otherwise professionally utilize controlled substances to persons who are registered patients of the emergency department or urgent care center affiliated with an accredited hospital, during the time the patient is admitted to the emergency department or urgent care center and, when medically-necessary, for up to a 72-hour period following the patient's discharge. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances in any other context and/or for any other person(s);

   c. The licensee SHALL NOT prescribe or dispense controlled substances to himself or to any immediate family member;

   d. Within twenty (20) days of the filing of this order, the licensee SHALL make all necessary arrangements to enroll in the Medical Record Keeping Seminar at the Center for Personalized Education for Physicians (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232, at the earliest time. The licensee shall complete the Medical Record Keeping Seminar at the time and date(s) scheduled, at his expense;

      i. The licensee SHALL also take all necessary steps to enroll in the CPEP Personalized Implementation Program. The licensee shall complete the Personalized Implementation Program, at his expense, as directed by CPEP's staff.
      ii. The licensee SHALL provide the Board's staff with written verification that he has successfully completed CPEP's Medical Record Keeping Seminar, promptly after completing the Seminar, and that he has enrolled in the 6-month Personalized Implementation Program;
      iii. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the 6-month Personalized Implementation Program promptly after completing that program.
      iv. 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 from the Medical Record Keeping Seminar and Personalized Implementation Program to the Board's Legal Department promptly after their completion;

e. Within six (6) months of the filing of this order, the licensee SHALL successfully complete the "Prescribing Controlled Drugs" course at The Center for Professional Health at Vanderbilt University Health Center, Nashville, Tennessee, Tel. (615) 936-0678 or the University of Florida, Gainesville, Florida , Tel. (352) 265-5300, at his expense;

f. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE to the Board in the amount of $15,000.00, within six (6) months from the date of entry of this order;

g. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE to the Board the costs of the proceedings in the amount of $17,872.31, within six (6) months from the date of entry of this order; and

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

SO ORDERED on this 23rd day of March, 2015.

Russell L. Travis M.D.
RUSSELL L. TRAVIS, M.D.
ACTING CHAIR, HEARING PANEL B

## CERTIFICATE OF SERVICE

I certify that the original of the foregoing Order of Indefinite Restriction 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, first-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 415 West Main Street, P.O. Box 676, Frankfort, Kentucky 40602-0676 and via certified-mail return receipt requested to the licensee, Philip L. Roberts, M.D., License No. 24979, P.O. Box 396, Brentwood, Tennessee 37024, and to his counsel, Frank Miller, Jr., 2808 Palumbo Drive, Suite 204, Lexington, Kentucky 40509, on this 23rd day of March, 2015.

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

## EFFECTIVE DATE AND APPEAL RIGHTS

Pursuant to KRS 311.593(1) and 13B.120, this Order will be effective immediately on filing. It is the Panel's opinion that based upon sufficient reasonable cause, the health, welfare, and safety of Dr. Roberts' patients or the general public would be endangered by delay.

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.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1484



IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PHILIP L. ROBERTS, M.D., LICENSE NO. 24979, P. O. BOX 396, BRENTWOOD, TENNESSEE 37024

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

The Kentucky Board of Medical Licensure brought this action against the license of Philip L. Roberts, M.D., charging him with violations of the Board's statutes governing the practice of medicine. Throughout the proceedings Hon. Leanne Diakov represented the Board, and Hon. Frank Miller, Jr., represented Dr. Roberts. The hearing was conducted over several days and concluded on October 29, 2014, with the presentation of closing arguments by counsel.

After considering the evidence admitted to the record and the arguments of counsel, the hearing officer finds that Dr. Roberts is guilty of some of the charges against him, and recommends the Board take any appropriate action against his license for his violations of the statutes governing the practice of medicine. In support of that recommendation the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

## FINDINGS OF FACT

### A. The Allegations Against Dr. Roberts

1. Dr. Philip L. Roberts is licensed to practice medicine in Kentucky, and his medical specialty is emergency medicine. Exhibit 60.

2. From April 2010 to May 2012, he served as medical director of the Abundant Living Medical Clinic ["Abundant Living"] in Lexington, Kentucky. Exhibit 60.

3. Abundant Living specializes in weight loss treatment, hormone replacement therapy, and vitamin supplements for men and women. Exhibit 8, first page.

4. When he started at Abundant Living, Dr. Roberts had no formal training in hormone replacement therapy. DVD V, 8:59 a.m. [The DVDs of the administrative hearing are marked 1 to 6, which number corresponds to the day of the recording for six-day administrative hearing, and all citations to testimony are referenced with a Roman numeral for the day of the hearing and the time of the testimony.]

5. Dr. Roberts came to the Board's attention as a result of allegations of misconduct filed by or on behalf of four patients.

6. Patient A allegedly suffered kidney failure as a result of the high doses of calcium and Vitamin D prescribed by Dr. Roberts. *Amended Complaint*, numbered paragraphs 4 and 5. Exhibit 10.

7. Patient B's physician notified the Board that Patient B had testosterone pellets inserted at Abundant Living that caused an increase in liver function tests, an elevated red blood cell count, and elevated triglycerides. *Amended Complaint*, numbered paragraphs 6 and 7; Exhibit 53.

8. The former medical director at Abundant Living notified the Board that two of her patients had received inappropriate and unsafe treatment at Abundant Living. Patients C had allegedly received extremely high doses of testosterone resulting in his being treated by an endocrinologist at Cleveland Clinic, and Patient D had allegedly received adrenal supplementation, estrogen therapy, and an HCG plan without appropriate medical consultation. *Amended Complaint*, numbered paragraphs 8-11; Exhibit 58.

9. At the request of the Board, Dr. Gordon P. Guthrie, who is board certified in Internal Medicine and Endocrinology, reviewed thirty-four of Dr. Roberts' patient charts from Abundant Living and found several deficiencies in his practice of medicine. Exhibit 18, page 2; Exhibit 19.

10. The Board asserted that based upon Dr. Guthrie's report, Dr. Roberts departed from or failed to conform to the acceptable and prevailing medical practices for patient treatment and record keeping for eighteen of the thirty-four patients and in his diagnosis for seventeen of those patients. The Board also asserted Dr. Guthrie found that Dr. Roberts demonstrated gross negligence, gross ignorance, gross incompetence, or malpractice. *Amended Complaint*, numbered paragraphs 12-13; Exhibit 19.

11. Based upon those allegations, the Board issued the *Complaint* on June 20, 2013, charging Dr. Roberts with violating KRS 311.595(9), as illustrated by KRS 311.597(3) and (4).

12. At the administrative hearing conducted in June 2014, Dr. Roberts testified that from December 2009 to July 2010 he had prescribed for himself compounded Testosterone/DHEA in non-emergency situations, and he testified that on June 8, 2010, he had prescribed that same and other medications to his wife, also in non-emergency situations. DVD I, 11:05-11:07 a.m.; Exhibit 5.

13. Based upon Dr. Roberts testimony, the Board issued the *Amended Complaint* on June 24, 2014, alleging his prescriptions for himself and his wife constituted misconduct in violation of the same statutes cited in the *Complaint*, KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). *Amended Complaint*, numbered paragraphs 15-27.

14. In his defense, Dr. Roberts asserts Dr. Guthrie is biased because he had raised questions with the Board regarding Dr. Roberts' medical practice prior to being assigned to act as Board consultant in this case. In addition, Dr. Roberts asserts he has acted appropriately in his care and treatment of all of his patients at Abundant Living, and he asserts that the prescriptions issued to himself and his wife were medically justified but that he stopped prescribing for himself and his wife when he realized the prescriptions could be a concern.

**B. Dr. Roberts Medical Training and Experience**

15. Dr. Roberts graduated from the University of Alabama Birmingham School of Medicine in 1985, and he has practiced for most of his medical career in emergency medicine. Exhibit 60.

16. Although he currently resides in Tennessee, for the last eight years he has worked twelve days per month in the emergency room at Paul B. Hall Regional Medical Center, Paintsville, Kentucky. DVD I, 10:17-10:18 a.m.; Exhibit 60.

17. In 2010 a friend of Dr. Roberts informed him that Abundant Living was searching for a medical director to oversee the clinic's hormone replacement therapy. DVD I, 10:19 a.m.

18. Dr. Roberts was interested in the position because eight years earlier he had begun providing hormone replacement therapy to himself after he had noticed a decrease in his work concentration, stamina, and energy. Id.

19. During Dr. Roberts' interview for the position, he informed the representatives of Abundant Living that he had no training in hormone replacement therapy, but he was interested in learning more about the therapy. DVD IV, 2:00-2:01 p.m.

20. The owner of the clinic, Michael Betts, is not a physician, and it was unclear from the evidence whether he had any medical training. Exhibit 58.

21. Mr. Betts and his son, Zach Betts, worked at the clinic, and the medical records for Zach were part of the patient reviewed by Dr. Guthrie. Exhibits 58.

22. Dr. Roberts was hired for the position of medical director, and he began working at the clinic in the spring of 2010. DVD I, 10:20 a.m.; Exhibit 60.

23. A short time later he accepted the offer of 25% or 33% ownership interest in the clinic as the sole physician associated with it. Id; DVD V, 9:03 a.m.

24. After he started practicing at Abundant Living, Dr. Roberts began taking on-line course work with The American Academy of Anti-Aging Medicine, and in December 2013 he became certified by the American Board of Anti-Aging/Regenerative Medicine, which was seven months after the Board filed the original *Complaint* in this action. DVD I, 10:13 a.m; Exhibits 1 and 60.

25. Dr. Roberts has also taken on-line course work from the University of South Florida in its masters program in Metabolic and Nutritional Medicine and graduated in August 2014. DVD I, 10:13 a.m.; Exhibit 60.

26. Dr. Roberts left Abundant Living in May 2012, and since June 2013, he has practiced medicine in his own preventive and anti-aging clinic in Tennessee. DVD I, 10:17 a.m.; Exhibit 60.

**C. The Care and Treatment Provided at Abundant Living**

27. Abundant Living promotes its "Complete Care Plan" as "a 12-month medical program that provides regular testing, review, treatment, adjustments and customized diagnosis of your specific needs." Exhibit 12, unmarked page 9.

28. The medical conditions addressed with the Complete Care Plan include low energy, poor sleep, anxiety, mood swings, headaches, weight gain, depression, lack of

sex drive, memory loss, hair loss, irritability, painful joints, muscle loss, and night sweats." Exhibit 8, unmarked page 4.

29. As part of the Complete Care Plan patients receive an initial review and physical diagnosis for "natural hormone replenishment" and for hypothyroidism, and the plan covers the cost of testing, compounded testosterone, estrogen, and progesterone as needed, hormone procedures and transdermal creams as needed, and twelve months of "medical grade vitamins and minerals" as ordered by the physician. Id.

30. For men, the Complete Care Plan included twelve months of testosterone supplements, plus estrogen blockers as needed. Exhibit 8, unmarked page 6.

31. The supplements were usually offered and provided through Abundant Living, and prescriptions for hormones were often filled by the clinic since the cost was often less than if the prescriptions were filled through a pharmacy. DVD I, 10:32 a.m.; Exhibits 9 and 14.

32. Abundant Living notified prospective clients that "we have treated and specializes in hormones for years and we are privileged to treat hundreds of patients who feel remarkably better when achieving the optimal hormone and vitamin levels laid out by our physician-led protocols." Exhibit 8, first page.

33. Most patients who were seen at Abundant Living had not been referred by their primary care physicians, but instead, Dr. Roberts stated they came to the clinic because they wanted to lose weight or felt terrible. DVD I, 10:24 a.m.

34. Usually, the patients signed up for a one-year Complete Care Plan, which cost $2,677.00 before any discounts. DVD I, 10:30 a.m. Exhibit 8, unmarked page 24.

35. Abundant Living did not accept health insurance, but a new patient could pay for a program with cash, check, credit card, or by the financing offered through the clinic. Id., 10:21 a.m.; Exhibit 8, unmarked page 4.

36. Dr. Roberts testified that some patients' deficiencies or abnormal lab values would be corrected within a year, but most patients would need to continue with the replacement therapy for life, much like a person who remains on blood pressure medicine once it has been prescribed. DVD I, 10:30 a.m.

37. During their initial visit to Abundant Living the prospective patients met with staff to discuss what programs were available through the clinic, and if the person was interested in enrolling in one, the staff would record the person's height and weight and would draw blood for analysis. Id., 10:26-10:27 a.m.

38. After the first visit, the patient was asked to return a week or two later to review the blood panel with the nurse practitioner or Dr. Roberts. Id., 10:28 a.m.

39. Dr. Roberts was physically present at Abundant Living on one or two days per week. DVD V, 9:03 a.m.

40. Dr. Roberts would review the patient's lab work and discuss the treatment options available based upon the individual's lab report. DVD I, 10:28-10:30 a.m.

41. If the patient's blood work showed no deficiency, no treatment plan would be offered, but that was very rare. DVD II. 9:02 a.m.

**D. The Opinions of the Board's Expert Witness**

42. Dr. Guthrie reviewed thirty-four of Dr. Roberts medical charts on behalf of the Board, and found deviations from the standard of care in eighteen of them. DVD II, 4:17 p.m.; Exhibit 19.

43. Dr. Guthrie offered no opinions for nine patients due to the patient charts being incomplete. DVD II, 1:09 p.m.

44. At the administrative hearing, Dr. Guthrie withdrew his criticism of the care provided to Patient Q after determining he was a candidate for testosterone cream in light of his initial low testosterone level and other symptoms supporting the therapy. DVD II, 11:00 a.m.

45. Dr. Guthrie also partially withdrew his criticism of the care provided to Patient W. He received appropriate care for his low testosterone level, but his blood test showed a PSA of 8.5, when a normal reading is below 4. That was a red flag for prostate cancer and should have been, but was not, acted upon by Dr. Roberts. DVD II, 11:20 and 11:23 a.m.; Exhibits 36A and Exhibit 36B, page 29.

46. In general, Dr. Guthrie found that many charts were deficient because information that would be expected in a chart, such as lab tests and histories were not present and many progress notes were left blank in spite of multiple patient visits. DVD II, 1:08 p.m.

47. Thus, for some patients, there were insufficient notes to justify the

treatment. For other patients, there were no progress notes at all, and it was unclear from the records what happened. DVD II, 1:11 p.m.

48. The lack of adequate progress notes was one of the two main deficiencies found by Dr. Guthrie in his review of Dr. Roberts' medical charts since the progress notes should reflect the physician's thinking. DVD II, 4:06 p.m.

49. A patient progress note is an essential part of the medical record, and a consulting physician can't treat a patient without one. The note need not be long, but must reflect what the physician is thinking in response to the patient's complaints. Without a progress note, a physician reviewing a chart is blind to what the physician is being told and what he has reacted to with his treatment. DVD II, 4:05-4:06 p.m.

50. The medical charts in this action contained checklists completed by the patient, but often there were no progress notes related to the patient's reported symptoms. DVD II, 3:33 p.m.

51. As an example, Dr. Guthrie noted that Patient A's medical chart has numerous checkmarks for her review of symptoms, such as fatigue, rash, shortness of breath, hot flashes, joint pain, and depression, but Dr. Roberts' progress notes are blank, except for one note for June 23, 2011, stating, "talked about HCG," a hormone that stimulates estrogen production. Exhibit 4, pages 10, 23, and 24. DVD II, 4:12 p.m.

52. As a result, there was not adequate follow-up information for Patient A to understand the nature of her complaints that she had marked on the form. DVD II, 4:10 p.m.

53. The other main deficiency found by Dr. Guthrie involved what he described as "a common pattern of treatment" by Dr. Roberts at the Abundant Living Medical Clinic. Exhibit 19.

54. Most of the charts indicated the patients had baseline screening for hormone and vitamin levels, but despite the test results that showed normal levels for thyroid, vitamin D, and testosterone, the patients received replacement therapy. DVD II, 9:59 a.m.; Exhibit 19.

55. That approach "struck a chord" with Dr. Guthrie since it's a deviation from the standards of medical practice for a physician to provide treatment for normal levels of hormones and vitamins rather than for deficiencies. DVD II, 9:59 a.m.

56. Dr. Guthrie stated it is outside the scope of acceptable medical practice for a physician to provide thyroid and testosterone hormone treatment to patients whose lab work has revealed no deficiency prior to the start of treatment. DVD II, 11:29 a.m.

57. In response to Dr. Guthrie's opinions, Dr. Roberts asserted that the literature is "overwhelmingly clear" that hormone replacement therapy for older persons can prevent heart disease and osteoporosis and can improve concentration and stamina and neurological and cognitive functions. DVD IV, 1:52 p.m.

58. He contrasted his own training in anti-aging medicine with that of Dr. Guthrie and his fellow endocrinologists who detect diseases and treat patients whose hormones fall outside the reference range. DVD IV, 2:03 p.m.

59. Dr. Roberts stated that the goal with his anti-aging therapy is to attain for the patient the best balance of hormones in the body, the levels that exist at ages 25-35 years, because the body operates better at those levels. DVD IV, 1:59 and 2:07 p.m.

60. Thus, Dr. Roberts' asserted his therapy is designed to optimize the patient's hormone and vitamin levels. DVD IV, 2:04 p.m.

61. Dr. Roberts also asserts that for male patients "when it comes to total testosterone levels, 'normal' is not very useful," and he asserts "female patients should be considered similarly." Exhibit 6, pages 5 and 7.

62. Dr. Roberts asserted that if he treats a male patient for low testosterone, he attempts to raise their level not simply to a point within the reference range but up to 550 since he asserted that will protect against certain diseases and medical conditions. DVD IV, 2:13 p.m.

63. The hearing officer notes that the evidence admitted at the administrative hearing, however, showed that Dr. Roberts testosterone replacement therapy often raised the male patients' testosterone levels to well past 550 and that he continued treatment even after the patients' testosterone level exceeded the normal range.

64. Dr. Guthrie stated that concept of optimization of hormone levels as advocated by Dr. Roberts is not in the vocabulary of most endocrinologist. A physician should not over-treat a patient, and to the extent optimization of hormones does occur, it is within, rather than outside, the normal range. DVD II, 4:08-4:09 p.m.

65. Dr. Roberts did not have any expert witnesses testify on his behalf and in response to Dr. Guthrie's opinions regarding the standards of acceptable and prevailing medical practice in Kentucky. Instead, Dr. Roberts relied upon his own opinions as informed by the course work he has taken and upon articles provided and cited in previous submissions to the Board. See Exhibits 3 and 6.

66. In reviewing and addressing the medical issues in this action, however, the hearing officer has relied upon the testimony of Dr. Guthrie and Dr. Thomas W. Ferguson who were qualified as experts based upon their training and experience. They addressed the specific patients and treatment at issue in this action, and their opinions were subject to scrutiny and clarification through examination by the parties' representatives.

67. In addition, no expert testified that the medical literature cited by Dr. Roberts to support his hormone replacement therapy reflected the standard of care in the medical community or the standards of acceptable and prevailing medical practice in Kentucky. Consequently, the hearing officer has not relied upon those articles in reviewing the issues in this action.

68. Dr. Roberts objected at the administrative hearing to Dr. Guthrie serving as the Board's consultant in this action, but the hearing officer finds the evidence does not support that assertion. After seeing Abundant Living's advertisements, Dr. Guthrie had notified the Board of his own concern regarding Dr. Roberts' hormone replacement therapy prior to being assigned as the consultant on the case. Exhibits 41-43. After

reviewing the record of the administrative hearing, the hearing officer finds there is no evidence that Dr. Guthrie has a personal bias against Dr. Roberts or had concluded he acted improperly prior to reviewing the medical charts. Dr. Guthrie's opinions were based upon the information provided in the patient records, which he cited and addressed to support his opinions regarding violations of the applicable medica standards. In addition, the hearing officer notes that Dr. Guthrie willingly changed his opinion for a few patients when additional information in a patient record was identified at the administrative hearing that could support the treatment provided by Dr. Roberts. Furthermore, there was no evidence to suggest that Dr. Guthrie's opinions were inconsistent with the standards of acceptable and prevailing medical practice related to his specialty of endocrinology. Therefore, the hearing officer finds that Dr. Guthrie was not biased against Dr. Roberts, and the evidence supports the conclusion that Dr. Guthrie's opinions were based solely upon his review of the medical records and upon the standards of acceptable and prevailing medical practice.

69. The hearing officer also notes that Dr. Guthrie's own opinions were consistent with those of Dr. Ferguson, who testified as an expert in nephrology, on the medical issues for which their expertise overlapped. Dr. Guthrie readily deferred to the opinions of Dr. Ferguson on the issue related to the effects of vitamin D on Patient A's kidneys, that were more appropriately addressed through Dr. Ferguson's own expertise.

70. After reviewing the record of the administrative hearing, the hearing officer finds that the preponderance of the evidence supports the vast majority of Dr. Guthrie's findings and opinions regarding the deficiencies in Dr. Roberts medical practice as set forth in Dr. Guthrie's report. Exhibit 19.

**F. Patient A's Renal Failure While Taking Vitamin D Supplements**

71. In the charts Dr. Guthrie reviewed, Dr. Roberts' treatment of Patient A stood out since she was hospitalized for renal failure after Dr. Roberts prescribed high doses of vitamin D. DVD II, 9:59 a.m.

72. Dr. Kimberly A. Hudson was the primary care physician for Patient A, but she decided to seek treatment from Dr. Roberts in an effort to lose weight and to use more natural remedies in place of some medications she was taking. DVD I, 11:41 a.m.

73. Patient A became aware of Abundant Living through television and advertisements. DVD I, 11:37 a.m.; Exhibit 4, page 10.

74. She was first seen at the clinic on June 9, 2011, when she was 57 years old. Exhibit 4, page 8.

75. Patient A paid $249 for her initial blood work, and signed up for Abundant Living's Complete Care Plan for $2,677, which was to be paid in twelve monthly installments of $191.67 financed through GE Money Bank's "CareCredit" application she submitted at the clinic. Exhibit 8, unmarked page 21 and 24.

76. On June 23, 2011, she had her first appointment with Dr. Roberts. He provided her with a form that shows the levels for various hormones and vitamins

based on her blood work, and next to those levels were the corresponding "optimal range" for her hormones and vitamins. Exhibit 8, first page.

77. Her vitamin and hormone levels were within the laboratory's reference range, but Dr. Roberts "optimal range" for each was at the high end or exceeded the reference range. Exhibit 4, pages 4-5; Exhibit 8, first page.

78. Consequently, Dr. Roberts provided Patient A with supplements of testosterone, estrogen, progesterone, Free T-3 thyroid hormone, Vitamin D-3, and Vitamin B-12. Exhibit 8, first page.

79. Abundant Living's form containing the blood work results reassures patients, "Please note, as with any medical field, Physicians sometimes differ on opinions of dosage and desired lab levels. Our medically sound protocols are based on 70+ years of Natural Hormone Replenishment." Id.

80. Dr. Roberts requested she stop taking three medications, and he also began to wean her off Cymbalta. DVD I, 11:45 a.m.; Exhibit 4, page 17.

81. He provided her a natural medication in place of the Cymbalta, and prescribed her progesterone tablets, a woman's multivitamin, 25,000 mg per day of vitamin D-3, Vitamin B-12, a natural thyroid medication, and a probiotic. DVD I, 11:54-11:55 a.m.; Exhibit 8, first page; Exhibit 4, page 22.

82. Initially, her vitamins were provided in plastic bags with instructions for taking them handwritten on the bags. DVD I, 11:54 a.m.

83. The multivitamin provided an additional 200 IU of vitamin D-3, and 500 mg of calcium. DVD I, 1:10-1:11 p.m.

84. There was a dispute at the administrative hearing between Dr. Roberts and Patient A about whether he had asked Patient A's to reduce vitamin D intake from 25,000 IU everyday to every other day, but the patient records for August 16 and September 16, 2011, indicate he asked her to reduce the amount to 25,000 IU every other day. DVD I, 1:09 p.m.; Exhibit 4, pages 22 and 26; Exhibit 6, page 3.

85. The issue is further confused by the fact a October 31, 2011, note in Patient A's chart from her primary care physician, Dr. Hudson, indicates Patient A informed Dr. Hudson that her vitamin D-3 had been reduced to once a week, but Dr. Ferguson's note of November 4, 2011, lists her vitamin D intake as 25,000 IU per day. Exhibits 48 and 65.

86. Patient A had multiple medical issues and had a history of medical procedures and surgeries. She maintained a list of all her medications and a history of her surgeries, which she kept with her at all times. DVD I, 12:16 p.m.; Exhibit 4, pages 13 and 17.

87. Throughout her testimony Patient A appeared to be extremely conscientious patient who followed the directions of her physicians. Consequently, the hearing officer finds that she took her vitamins as directed by Dr. Roberts, whether at 25,000 per day or every other day. Ultimately, the issue of how much vitamin D she was taking each day was not as important as whether there was adequate follow-up testing

by Dr. Roberts, irrespective of whether he asked her to reduce the initial dosage of 25,000 IU per day and whether she complied with that request.

88. A note in Dr. Roberts' patient chart for August 16, 2011, indicates that Patient A's glucose and vitamin D-3 needed to be monitored, but there's no indication in her medical records that he had her vitamin D level retested. Exhibit 4, page 26.

89. In early November 2011, Patient A had an appointment with her dermatologist to discuss the treatment for her psoriasis, but he needed to review her blood profile prior to prescribing a new medication. DVD I, 12:00 p.m.

90. Upon reviewing the results of the blood work, the dermatologist referred Patient A back to her primary care physician who immediately admitted Patient A to the hospital. DVD I, 12:00-12:01 p.m.; Exhibit 73, unmarked page 7.

91. Patient A was in acute renal failure due to the high level of calcium and Vitamin D in her blood. DVD I, 12:03 p.m.; Exhibits 11 and 46.

92. Patient A was hospitalized for six days, and her kidney function eventually returned to normal. DVD I, 12:04 p.m; Exhibit 46.

93. Patient A was told that if her dermatologist had not ordered the blood work or if she had waited to go to the hospital, she would have been on dialysis for the rest of her life or would have died as a result of her renal failure. DVD I, 12:04 p.m.

94. Shortly after her release from the hospital, Patient A filed a consumer

complaint with the Kentucky Attorney General, which forwarded the document to the Board for investigation. Exhibit 10.

95. In his written review of Patient A's care and treatment Dr. Guthrie found that she "suffered acute renal insufficiency, a life threatening event, from severe hypercalcemia caused by vitamin D intoxication caused by a high daily vitamin D dose prescribed by Dr. Roberts." Exhibit 19.

96. Dr. Guthrie asserted "the dose of vitamin D that he prescribed, 25,000 IU daily for nearly 5 months, is significantly above the 1 to 2000 IU daily recommended by the Institute of Medicine and others," and Dr. Guthrie noted Patient A's "baseline 25 OH vitamin D level before supplementation was normal at 30 ng/ml." Id.

97. For patients who do not have a vitamin D deficiency, Dr. Guthrie asserted large doses of that vitamin "are rarely if ever indicated." Id.

98. Dr. Guthrie stated the recommendation from the National Institute of Medicine is that a patient should receive no more than 5,000 IU of vitamin D per day. DVD II, 3:57 p.m.

99. The medical records support the conclusion that Patient A had reduced her vitamin D intake from 25,000 to 12,500 IU per day in August 2011 at the request of Dr. Roberts and remained at that level thereafter.

100. Dr. Guthrie found the case of Patient A "is all the more egregious because Dr. Roberts never checked a serum calcium measurement in all his subsequent months

of treatment, until her severe hypercalcemia and renal failure was incidentally discovered by her Rheumatologist [sic]." Exhibit 19.

101. Based upon his review of Dr. Roberts' patient records, Dr. Guthrie found "the pattern of care delivered by Dr. Roberts at [Abundant Living] clearly has produced harm," and "Dr. Roberts engaged in conduct that fails to conform to the standards of acceptable and prevailing medical practice, by exposing patients to real and potential risk from prescription of unnecessary medication." Id.

102. Dr. Ferguson, who was the consulting nephrologist for Patient A when she was hospitalized for renal failure and who continued to treat that condition after her discharge, was not as harsh in his assessment of Dr. Roberts, but Dr. Ferguson also found shortcomings in Dr. Roberts care and treatment of Patient A. Exhibits 44 and 46.

103. Dr. Ferguson does not prescribe for his own patients the large doses of vitamin D prescribed by Dr. Roberts, and Dr. Ferguson begins monitoring the patient's calcium levels and kidney function for patients six weeks after prescribing vitamin D and every three months thereafter. DVD III, 9:11-9:12 a.m.

104. Dr. Ferguson had initially concluded Dr. Roberts had given Patient A a toxic amount of vitamin D at 25,000 IU per day, but after some further research on vitamin D, he changed his opinion and believes the quantity provided to Patient A would not by itself be toxic. DVD III, 9:05 a.m.; Exhibit 45.

105. Dr. Ferguson came to believe Patient A had a hyper-sensitivity to vitamin D, which led to her kidney failure. DVD III, 9:05 a.m.; Exhibit 46.

106. Although Dr. Ferguson described Patient A's complication as "unique and fairly rare," he also stated, "this is not the first time that I have seen this happen with vitamin D replacement." Exhibit 46, page 2.

107. Consequently, Dr. Ferguson stated that based upon Patient A's intake of vitamin D, her "calcium levels [should] be monitored at reasonable intervals in patients treated with relatively large doses of vitamin D" and that "the serum creatinine be monitored as an indicator of renal function in these same patients." Dr. Ferguson asserted that monitoring "is especially true for patients who are on other medications [such as Patient A] that could affect their calcium levels (hydrochlorothiazide) and their renal function (Celebrex)." Exhibit 44, first page.

108. Dr. Ferguson's opinion is consistent with Dr. Guthrie's, who found Dr. Roberts failed to conform to the standards of acceptable and prevailing medical practice when he did not perform the necessary follow-up lab work for Patient A.

109. Dr. Ferguson asserted that "if the Abundant Living Medical Clinic is going to continue treating patients with high doses of vitamin D and calcium, then they should follow-up with lab work including a calcium level and a creatinine level after being on the replacement for two or three weeks. If everything is OK then they could monitor every three months or so." Exhibit 46, page 2.

110. Thus, in spite of the fact Patient A metabolizes vitamin D at a higher rate than most people, Dr. Ferguson did not change his recommendation that all patients

who receive high dose vitamin D and calcium supplements should have periodic lab work to monitor their condition. Exhibits 44 and 46.

111. Even thought there was a dispute whether Patient A had reduced her vitamin D intake as requested by Dr. Roberts and whether other medications she had been taking could have contributed to her renal failure, even at 12,500 IU per day of vitamin D, Dr. Ferguson believed that amount was more than Patient A's body was able to tolerate. DVD III, 9:16 a.m.

112. In light of Dr. Ferguson's opinion that Patient A's renal failure was caused by a combination of factors and not just the high dosage of vitamin D, Dr. Guthrie stated at the administrative hearing he would defer to Dr. Ferguson's judgment on that issue. DVD II, 4:02 p.m.

113. Therefore, the hearing officer finds Patient A's renal failure was not attributable solely to the large doses of vitamin D prescribed by Dr. Roberts, but the preponderance of the evidence supports the conclusion that Dr. Roberts failed to conduct appropriate follow-up testing for his patients placed on high doses of vitamin D, which would have allowed him to detect and prevent Patient A's renal failure.

114. The hearing officer notes that Dr. Ferguson implicitly agreed with Dr. Guthrie's criticism of Dr. Roberts progress notes when Dr. Ferguson stated that although Patient A's medical records indicated her vitamin D was reduced from 25,000 to 12,500 IU per day, he did not know why the amount had been reduced. DVD III, 9:15 a.m.

115. The hearing officer also notes Dr. Roberts did not offer an explanation at the administrative hearing why he believed Patient A's initial vitamin D level, which at 30 was at the low end of the reference range, necessitated a vitamin D supplement of 25,000 IU per day. Exhibit 4.

116. At the administrative hearing, Dr. Roberts testified he had previously been monitoring patients' vitamin D and calcium levels every six months, but he admitted it was a mistake on his part not to obtain follow-up test a few weeks after he began Patient A's therapy. DVD IV, 3:25 p.m.

117. In his letter to the Board dated February 21, 2013, Dr. Roberts reported he had reduced patients' vitamin D-3 supplements to 5,000 IU and then later to 3,000 IU per day "to avoid any future potential problems with patients." Exhibit 6, page 3.

118. Thus, Dr. Roberts has tacitly conceded that his initial treatment of Patient A with 25,000 IU of vitamin D was inappropriate, and the preponderance of the evidence supports the conclusion that Dr. Roberts was not aware at the time he treated Patient A of the appropriate and safe amount of vitamin D to prescribe to patients and of the need to conduct more regularly monitoring of the patients' vitamin D and calcium levels.

**G. Dr. Roberts' Testosterone Supplements for Women**

119. Dr. Guthrie also had strong objections to Dr. Roberts' prescribing testosterone to women. Exhibit 19.

120. At Dr. Roberts' initial review of the blood work with Patient A on June 23, 2011, he informed her that her testosterone level of 14 was below what he considered to be the optimal range of 150-250, and her estrogen level of 27 was below the optimal range of 80-150. Exhibit 8, first page.

121. Consequently, on June 23, 2011, Dr. Roberts implanted 200 mg of testosterone pellets and 10 mg of estrogen pellets in Patient A's right buttock. Exhibit 4, page 34.

122. Patient A's blood work from August 10, 2011 showed her testosterone level to be 229, and on October 11, 2011, her testosterone level was 118. On October 20, 2011, Dr. Roberts inserted 150 mg of testosterone pellets in her buttock. Exhibit 4, pages 2, 3, and 32.

123. Patient A testified her testosterone treatment was "the most horrible thing I ever went through."DVD I, 11:58 a.m.

124. She described herself as feeling "like a dog in heat, and I couldn't do anything about it." Id.

125. She didn't know what was causing those changes and had no idea they may be due to the testosterone implants. DVD I, 11:59 a.m.

126. Dr. Guthrie found that Patient A's hormone therapy "highlights a common practice exhibited in other records from his clinic, to prescribe pharmacological amounts of hormones to patients with no documentation of a corresponding hormone deficiency." Exhibit 19.

127. Testosterone is a Schedule III drug that is labeled for male use only. DVD II, 10:04 a.m.

128. Thus, there is no FDA approved use of testosterone for women, and testosterone is rarely, if ever, indicated for them and should never be administered to women in the potent pellet form. DVD II, 11:29 a.m., 3:42 p.m.

129. It is not an acceptable medial practice to increase a female patient's testosterone level to the reference range for a man. DVD II, 10:15 a.m.

130. Dr. Guthrie stated the administration of pellet testosterone treatment for women as "not within the realm of acceptable medical practice" and "just out of bounds." DVD II, 10:05 a.m.

131. Dr. Guthrie has refilled prescriptions for women who have been prescribed small amounts of testosterone cream by other physicians if the patient has reported a benefit from the testosterone and if it has not harmed her. DVD II, 3:38 p.m.

132. Usually, the treatment of women with testosterone should be performed with a topical application, but that is even controversial for women. DVD II, 10:37-10:38 a.m.

133. For women, testosterone poses a risk of virilization and cardiovascular disease. DVD II, 3:45 p.m.

134. In the charts reviewed by Dr. Guthrie, Dr. Roberts treated six female patients, in addition to Patient A, with testosterone pellets and three with testosterone cream. None of those nine women had a testosterone deficiency, and Dr. Roberts'

treatment brought most patients' testosterone level up to the range for men: Patients D, E (cream), F (cream), G, H, I (cream), J, L, and M. Exhibits 17, 22B, 23B, 24B, 25B, 26B, 27B, 28B, and 29B respectively.

135. Except for the two instances noted below, Dr. Guthrie found that Dr. Roberts' care and treatment of those women fell below the minimum standards for diagnosis, treatment, and records, and Dr. Guthrie's overall opinion was that Dr. Roberts' care and treatment of the patient was clearly below minimum standards. Exhibits 21, 22A (diagnosis- within minimum standards), 23A, 24A, 25A, 26A, 27A, 28A (overall opinion- borderline), and 29A respectively.

136. In his testimony at the administrative hearing Dr. Roberts did not directly address any of Dr. Guthrie's objections to the treatment with testosterone of the specific female patients at issue in this action, but instead, he seemed to rely upon the literature he had provided to the Board supporting the beneficial effects of some types of testosterone treatment for certain women. Exhibits 3 and 6.

**H. Dr. Roberts' Testosterone Therapy for Men**

137. Dr. Guthrie reviewed the medical charts of several male patients who were prescribed testosterone by Dr. Roberts.

138. For Patients P, S, T, U, and V, Dr. Guthrie found that Dr. Roberts diagnosis, treatment, and records were below minimum standards, and except for one patient, the overall opinion was the care and treatment was "clearly below minimum standards." Exhibits 30A, 32A, 33A, 34A, 35A (except for overall opinion- borderline) respectively.

139. Patient P is an example of Dr. Guthrie's concerns regarding those patients. When Patient P's blood was first tested by Abundant Living, he had a baseline testosterone level of 300 which was within the reference range. Exhibit 30B, page 15.

140. Since his testosterone level was on the lower side of the normal range, Dr. Guthrie believed Patient P could have been a candidate for testosterone therapy. DVD II, 10:50 a.m.

141. Prior to initiating treatment, however, the standard of care for a patient with a low but normal testosterone level is for the physician to question the patient very carefully about possible symptoms, and if there are no symptoms, the physician should not treat the condition but should monitor it. DVD II, 10:51 a.m.

142. A patient's symptoms for low testosterone almost always include fatigue, low sex drive, or sexual performance issues. DVD II, 3:40 p.m.

143. If there are symptoms, the physician may initiate treatment with a therapeutic topical treatment, but pellets are not the first line of treatment. DVD II, 10:51 a.m.

144. The patient chart indicates Patient P had sought treatment for occasional fatigue and "to feel more consistent energy daily." Ex 30B, pages 10 and 12.

145. On June 23, 2010, Dr. Roberts initiated testosterone therapy for Patient P with pellets that raised his testosterone level to above the reference range on three occasions: 2,433 on August 4, 2010, down to 897 on March 12, 2011, and up to 1316 on

August 4, 2011. Exhibit 30B, pages 3, 5. On two other occasions the testosterone level was within the reference range. Id., pages 4 and 6.

146. For men on testosterone therapy, the physician must watch very carefully for thickening of the blood which is reflected by high red blood cell production, high hemoglobin, and high hematocrit. DVD II, 10:53 a.m.

147. Dr. Guthrie described Patient P's blood work from August 4, 2010, as having "red flags all over it" due to the high testosterone level and the resulting thickening of his blood. DVD II, 10:53 a.m.

148. Patient P was at the edge of the danger range, and such patients are advised to have therapeutic phlebotomies to lower the red blood count. A blood bank, however, will not use that blood because of the high red blood cell count. DVD II, 10:54 a.m.

149. Similarly, Patient S had a normal baseline testosterone level of 272 on July 30, 2010, but received pellet testosterone therapy a week later and testosterone cream regularly over the next year. From September 2010 to July 2011 his testosterone level registered above the reference range on five of the seven tests and on one occasion as high as 1398. Exhibit 32B, pages 14-22, 38-46.

150. Patient T received testosterone cream and then testosterone pellets from Abundant Living after his baseline testosterone level was 331 on August 11, 2010, which was within the reference range. Exhibit 33B, pages 5, 38, and 41. There are no symptoms listed in his Patient T's medical records to support testosterone replacement therapy other than his goal to "be fit and healthy." Exhibit 33B, page 30.

151. Although Patient T's testosterone treatment was initiated at Abundant Living prior to Dr. Roberts working at the clinic, he continued prescribing testosterone when the patient's testosterone level was within the reference range and when his hemoglobin and hematocrit was above the normal range, which Dr. Guthrie described as a red flag and a complication from the treatment that required a therapeutic phlebotomy. DVD II, 11:07 a.m.; Exhibit 33B, pages 8 and 41.

152. Dr. Guthrie found that Patient U had testosterone pellets inserted on multiple dates in 2011, even when his testosterone levels were above the reference range. Exhibit 34B, pages 2-6, 8, 53, and 56.

153. Patient V had a normal testosterone level when Dr. Roberts initiated treatment for the patient's complaint of fatigue. Since that is a non-specific symptom, if the patient had indicated other symptoms such as low libido or erectile dysfunction, testosterone treatment would have been appropriate, but no other symptoms were recorded in the chart. DVD II, 11:17 a.m.; Exhibit 35B, pages 48.

154. After the treatment began, Patient V's testosterone level tested above the reference range on nine occasions and as high as 1443. Exhibit 35B, pages 31-42.

155. For Patients C, who received testosterone, Dr. Guthrie could not form an opinion on the care provided by Dr. Roberts. Exhibits 61A.

156. Patient C, however, was evaluated by another endocrinologist, Dr. Melissa Li-Ng, at Cleveland Clinic in Cleveland, Ohio, for a thyroid problem, and although Dr. Li-Ng did not testify at the administrative hearing, she issue a report that asserted the

patient had been prescribed six times the normal dose of testosterone cream and had received twice the usual number of testosterone pellets. Exhibit 62, marked page 3 of 6.

157. Dr. Li-Ng asserted that Patient C's testosterone treatment caused his testosterone level to exceed 3,000 at one point and resulted elevated blood counts and liver enzymes, but the patient's medical records from Abundant Living during the time period Dr. Roberts treated the patient show the highest testosterone reading to be 872 and the lowest to be 117. Exhibits 61A, pages 15 and 27; Exhibit 62.

158. Dr. Li-Ng did stop Patient C's testosterone therapy but advised him to decrease the dose, which indicates she believed that some level of testosterone therapy for the patient was appropriate. Exhibit 62, first page.

159. Dr. Roberts denied that he had prescribed Patient C with too much testosterone cream or pellets, and he stated he would have modified the treatment of the patient as a result of the latest blood tests, just as the patient's other physicians had done. DVD V, 9:24 a.m.

160. Patient C's primary care physician, Dr. Karla Groves, who was a former Medical Director at Abundant Living, was so concerned about the care Patient C and others had received at Abundant Living that she sent a letter to the Board requesting that it investigate the clinic, but her complaints focused on the clinic's owner and son. She did not mention Dr. Roberts. Exhibit 58.

161. In light of the fact that Dr. Guthrie provided no opinion on the care and treatment provided by Dr. Roberts to Patient C, the hearing officer finds the

preponderance of the evidence does not support the conclusion Dr. Roberts care and treatment for that patient was deficient.

**I. The Patients' Treatment With Thyroid Hormones and Adrenal Supplements**

162. Dr. Guthrie's objections to the thyroid hormone treatment provided to patients were similar to the objection to the testosterone therapy. It is a violation of the standards of acceptable and prevailing medical practice to give thyroid replacement therapy to patients whose lab work prior to the start of treatment do not indicate a deficiency. DVD II, 11:29 a.m.

163. Dr. Guthrie found the Dr. Roberts improperly prescribed thyroid hormone supplements to several patients in spite of the fact their baseline thyroid tests were normal: Patients D, E, F, G, H, J, L, M, V, and HH. Exhibit 21, 22A, 23A, 24A, 25A, 27A, 28A, 29A, 35A, and 37A respectively.

164. Dr. Guthrie had special concerns for the thyroid replacement therapy for Patient F. She was a seventy-eight year old female who had coronary artery bypass surgery. She had no thyroid deficiency but was prescribed thyroid replacement by Dr. Roberts. DVD II, 10:23 a.m.

165. Unless a patient had a thyroid deficiency, there was no justification to initiate hormone therapy, but for a person with coronary artery disease, such therapy can aggravate the condition and should not be initiated unless there is a deficiency. DVD II, 10:24 a.m.; Exhibit 23A.

166. Patient D's primary care physician, Dr. Groves, reported to the Board a concern that Patient D had been prescribed an adrenal supplement even though she had been previously diagnosed with an adrenal tumor. Exhibit 58.

167. Dr. Roberts testified that he prescribed an adrenal supplement to his patients due to the fact "most of us are stressed out," and the supplement helps the adrenal system function better and restores balance in the body. DVD IV, 2:57 p.m.

168. It was not clear from the evidence whether Patient D had ever been diagnosed with an adrenal tumor, whether it had been found to be malignant or benign, or whether the supplement prescribed by Dr. Roberts could increase the patient's risk of complications in light of her medical history. DVD IV, 12:02-12:04 p.m.

169. Dr. Guthrie did not include the prescribing of an adrenal supplement to Patient D as one of his own objections to Dr. Robert's treatment for patients. Exhibit 21.

170. Consequently, the preponderance of the evidence does not support the conclusion that the prescription of an adrenal supplement to Patient D was inappropriate based solely on the patient's medical history.

171. The Board also asserted Dr. Roberts did not provide an appropriate medical consultation with Patient D, who asserted she had not met him prior to the administrative hearing. DVD I, 2:59 p.m.

172. The medical records indicate on Patient D's three appointments at Abundant Living she met with the nurse practitioner, and there was no expert

testimony that Dr. Roberts was required to provide any of her treatment or care on those occasions.

**J. Dr. Roberts Self-Prescribing and Treatment of Family Members**

173. Dr. Roberts admits that he treated himself and his wife with various hormones, but he initially reported to the Board that the treatment was provided at his home in Tennessee. Exhibit 3, marked page 586.

174. Dr. Roberts testified the prescriptions were issued during the time period when he first started his own hormone replacement therapy. DVD VI, 10:08 a.m.

175. At the administrative hearing, Dr. Roberts acknowledged that he issued prescriptions for progesterone and thyroid medications for his wife and for testosterone cream for himself, which he filled at a pharmacy in Paintsville, Kentucky. DVD VI, 9:59, 10:02, and 10:21 a.m.; Exhibit 69.

176. Dr. Roberts admitted the prescriptions were not issued in an emergency situation, and the evidence shows that if either Dr. Roberts or his wife had a medical need for the prescriptions, they were available through other practitioners. DVD VI, 10:11 a.m.

177. When Dr. Roberts became aware that the self-prescribing could be a problem, he stopped prescribing the medications, and they are now being provided through other healthcare practitioners. DVD VI, 10:09 a.m.

## K. The Patients' Injuries From Dr. Roberts Treatment

178. Dr. Roberts asserts Dr. Guthrie has not provided any evidence that he "has harmed a single patient with hormone replacement therapy" or that any patient "suffered injury as a result of testosterone." Exhibit 6, page 8.

179. Dr. Guthrie, however, stated in his report to the Board that "a fundamental tenant for the practice of medicine is, first do no harm. The pattern of care delivered by Dr. Roberts at [Abundant Living] clearly has produced harm," citing specifically the testosterone pellet therapy for women and the large doses of vitamin D. Exhibit 19.

180. The hearing officer finds that Patient A's testimony regarding the physical and emotional effects of the testosterone therapy supports the conclusion she was harmed by the therapy, and the testimony regarding Dr. Roberts testosterone treatment and the resulting increase in red blood cell counts and hemoglobin and hematocrit levels of some of his male patients shows they were also exposed to harm by the treatment.

181. In addition, Patient A was certainly harmed by Dr. Roberts' failure to adequately monitor her calcium levels and kidney function after providing her with high doses of vitamin D.

## L. Dr. Roberts Did Not Ask Patient to Lie.

182. Dr. Roberts advised Patient B who had received testosterone pellet therapy to donate blood every three months, but the Board alleges the patient was told not to inform the blood center that he had been sent by Abundant Living. *Complaint*, page 3.

183. Patient B's medical records indicate Patient B was directed to donate blood every quarter, but he did not testify that Dr. Roberts, or anyone else from Abundant Living, advised him not to inform the blood bank who had sent him. Exhibit 13, page 22.

184. Dr. Roberts denied asking any patient to deceive a blood bank about receiving testosterone treatment for Abundant Living. DVD IV, 2:43 p.m.

185. Based upon a complaint to the Board by Patient B's treating physician, Dr. Hudson, the Board alleged that Patient B had an elevated red blood cell count, elevated triglycerides, and increased liver function tests as a result of his testosterone treatment. *Complaint*, page 2; Exhibit 53.

186. Dr. Guthrie, however, apparently did not have any objection to the treatment provided to Patient B since Dr. Guthrie did not testify about that patient, and his expert review worksheet for the patient was not admitted into evidence at the hearing.

187. Dr. Hudson herself testified that she could not attribute the elevated triglycerides and increased liver function tests to the testosterone treatment since the patient was on medications that could elevate those levels. DVD VI, 2:15 p.m.

188. Her main concern was the elevated red blood cell count and hematocrit level, but a phlebotomist she consulted informed her that those levels were not so elevated that the patient needed to give blood immediately. DVD VI, 2:18 p.m.

189. Therefore, the hearing officer finds the preponderance of the evidence does not support a finding that Dr. Roberts' testosterone therapy for Patient B was inappropriate or that Dr. Roberts advised the patient to conceal the fact he had been sent to the blood bank by Abundant Living.

## 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 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. Roberts.

4. The Board has met its burden of proof on most of the allegations against Dr. Roberts.

5. By his conduct, Dr. Roberts has violated KRS 311.595(9), as illustrated by KRS 311.597(3) and (4).

6. Pursuant to 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."

7. A physician is subject to discipline under KRS 311.595(9), as illustrated by KRS 311.597(3), if he engages in "a serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be

deemed to be gross incompetence, gross ignorance, or gross negligence, or malpractice."

8. A physician is subject to discipline under KRS 311.595(9), as illustrated by KRS 311.597(4), if he engages in:

> conduct which is calculated or has the effect of bringing the medical profession into disrepute, including but not limited to 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 or the code of ethics of the American Osteopathic Association.

9. The preponderance of the evidence supports the conclusion Dr. Roberts was grossly negligent, grossly ignorant, and grossly incompetent in violation of KRS 311.595(9), as illustrated by KRS 311.597(3), and he departed from and failed to conform to the standards of acceptable medical practice in Kentucky in violation of KRS 311.595(9), as illustrated by KRS 311.597(4).

10. Except for the specific cause of Patient A's renal failure, Dr. Guthrie's opinions and objections to Dr. Roberts medical practices were supported by the preponderance of the evidence admitted into evidence at the administrative hearing. Dr. Roberts violated the above-cited statutes by his failure to maintain appropriate patient records that would allow the Board's consultant and any other physicians treating his patients to conduct an adequate review and gain an adequate understanding of the medical care Dr. Roberts had provided to his patients. Dr. Roberts

also violated those statutes due to his failure to maintain sufficient progress notes of the treatment provided to the patients for whom Dr. Guthrie was able to form an opinion.

11. Dr. Roberts violated the above-cited statutes by providing hormones and vitamin supplements to patients who did not have a documented deficiency and a need for the hormones and supplements he provided to the patients.

12. Dr. Roberts violated the above-cited statutes by providing testosterone pellets to women who did not have a testosterone deficiency and by failing to administer less potent forms of testosterone, even assuming the women had a medical condition requiring testosterone treatment.

13. Dr. Roberts violated the above-cited statutes by failing to conduct adequate follow-up monitoring of the patients for whom he was prescribing supplements, which resulted in Patient A experiencing a life-threatening medical condition.

14. Dr. Roberts violated the above-cited statutes by providing high doses of testosterone to male patients without a documented deficiency, and as a result of the treatment provided some of the patients experienced dangerously high red blood cell counts and high levels of hemoglobin and hematocrit.

15. Dr. Roberts violated the above-cited statutes by failing to address Patient W's high PSA count.

16. Dr. Roberts vitamin D therapy for Patient A in combination with his failure to monitor her vitamin and calcium levels caused her injury and resulted in her hospitalization for renal failure, which is a violation of KRS 311.595(9), as illustrated by

KRS 311.597(3).

17. Pursuant to the American Medical Association's Code of Medical Ethics, Section 8.19, a physician should not treat himself or an immediate family member unless there is an emergency situation or an isolated setting where there is no qualified physician available. In addition, a physician should not write prescriptions for controlled substances himself or for immediate family members. Exhibit 68. Dr. Roberts violated those provisions of the AMA's Code of Medical Ethics when he self-prescribed testosterone for himself and hormones for his wife in circumstances that were not an emergency and not in an isolated setting. Consequently, by that conduct, Dr. Roberts violated KRS 311.595(9), as illustrated by KRS 311.597(4).

## RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends that the Kentucky Board of Medical Licensure find Philip L. Roberts, M.D., guilty of the violations set forth in this recommendation 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 12th day of January, 2015.

THOMAS J. HELLMANN
HEARING OFFICER
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FRANKFORT, KY 40602-0676
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## CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDED ORDER was mailed this 12th day of January, 2015, 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:

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