

MAY - 6 2022

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2053

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY JOHN T. MAHAN, M.D., LICENSE NO. 28822, 18 VILLAGE PLAZA, PMB 136, SHELBYVILLE, KENTUCKY 40065

AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and John T. Mahan, M.D. ("the licensee"), and, based upon their mutual desire to 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 T. Mahan, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is orthopedic surgery.
3. In or around June 2020, Clark Memorial Health summarily suspended the licensee's clinical privileges at its hospital after "clinical issues were identified."
4. On or about June 29, 2020, the summary suspension was lifted based upon the licensee's decision to "voluntarily refrain" from exercising his clinical privileges at the hospital until further notice.
5. Due to concerns related to [the licensee's] conduct in the practice of medicine, a drug screening was performed and was found to be positive for marijuana.

6. On or about July 10, 2020, after the drug screen returned positive for marijuana, Clark Memorial Health terminated his employment and automatically suspended the licensee's privileges at the hospital due to the fact that he no longer had malpractice insurance coverage and its belief that "the use of a substance while engaging in any medical professional business activity not only has the potential to be detrimental to patient care, it also materially impairs the ability of the physician to effectively perform physician's duties and obligations under his agreement and violated the employer's policies and medical staff bylaws."
7. In or around October 1, 2020, the licensee submitted an application for privileges at UofL Health.
8. On or about October 20, 2020, when asked for information regarding the termination and suspension of his privileges from Clark Memorial, Kim Munsterman of Bluegrass Spine Care submitted the following statement on the licensee's behalf:

My employment with Clark Physician Group was terminated as a result of hospital suspension. The hospital suspension resulted from the fact that I had attempted to perform a surgical case in June, 2020, on a patient who had already undergone the intended procedure the previous year. The usual safeguards to have prevented such an error such as scheduling records, anesthesia records, accurate clinical records of prior surgical history, the availability of most current imaging, and my own independent recollection had failed. The patient fortunately did not suffer any complications as a result of the surgery in question.

I had been the only spine surgeon at Clark Physician Group of what became a very busy practice. I lacked the adequate staffing and support to have sustained a high volume surgical practice. In spite of the failure of the many safeguards that might have been expected to prevent the error detailed above, the responsibility for this error that resulted in my hospital suspension and termination was mine alone.

9. On or about October 22, 2020, in response to a request for information regarding the termination and suspension of his privileges from Clark Memorial, Clark Memorial Health submitted the following statement:

Clinical issues were identified and Dr. Mahan voluntarily refrained from exercising his clinical privileges at Clark Memorial. Due to concerns related to Dr. Mahan's conduct in the practice of medicine a drug screening was performed, after it came back positive for marijuana his privileges along with his employment were terminated.

10. On or about January 12, 2021, the licensee submitted an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021, and answered "Yes" to Question No. 6, which asked: "Since you last registered, has any hospital or hospital medical staff removed, suspended, restricted, limited, probated, reprimanded or failed to renew your privileges for cause, or taken any other disciplinary action against your privileges?" The licensee submitted the following statement with his application:

My employment with Clark Physician Group was terminated as a result of hospital suspension. The hospital suspension resulted from the fact that I had attempted to perform a surgical case in June, 2020, on a patient who had already undergone the intended procedure the previous year. The usual safeguards to have prevented such an error such as scheduling records, anesthesia records, accurate clinical records of prior surgical history, the availability of most current imaging, and my own independent recollection had failed. The patient fortunately did not suffer any complications as a result of the surgery in question.

I had been the only spine surgeon at Clark Physician Group of what became a very busy practice. I lacked the adequate staffing and support to have sustained a high volume surgical practice. In spite of the failure of the many safeguards that might have been expected to prevent the error detailed above, the responsibility for this error that resulted in my hospital suspension and termination was mine alone.

11. On or about February 8, 2021, the licensee submitted a "Subject Statement" to the National Practitioner Data Bank in response to a report from Clark Memorial Health, in which he stated, in part:

... This action was based upon the results of a urine drug screen that demonstrated the presence of an illicit substance I had never consumed. I therefore dispute the accuracy of the test result in question and the veracity of the stated basis of this action. I was informed of the urine drug test results, my suspension of privileges, and my termination of employment on 7/10/202. I was absolutely shocked at the time to hear of the erroneous results of this urine drug screen. I was not given the opportunity at the time to dispute the results of this erroneous test result and in a termination letter hand delivered was informed: "it is not curable." ... On 7/10/2020, Clark Memorial Health informed me of their decision(s) as outlined above. There was no opportunity within this organization to dispute their claim as also outlined above. My focus was immediately set upon securing new employment elsewhere not on the false basis giving rise to the decision then made on my behalf by Clark Memorial Health. ...

12. On or about March 23, 2021, the licensee, through counsel, submitted a statement to the Board, "clarifying his letter of explanation for an affirmative answer on his most recent [2021] renewal application," in which he apprised the Board that "the positive drug screen for marijuana was at least a contributing factor in the termination of his privileges at Clark Memorial Hospital." He also stated that he "is adamant that he did not ingest marijuana and that the result must be a false-positive."

13. On or about March 24, 2021, UofL Health Shelbyville Hospital withdrew the licensee's privileges, stating

Based on information that UofL Health Shelbyville Hospital recently received pursuant to your Application to become a member of the Medical Staff, it was determined that the information you provided is incorrect, Specifically, although you accurately reported that your employment with the Clark Physician Group was terminated and that your hospital privileges were suspended, you failed to report that you had a positive screen for marijuana.

As a result, since the granting of your privileges was dependent upon the information that you provided in your Application, please be advised that your privileges have been withdrawn effective immediately.

14. On or about March 30, 2022, during the Board investigation into this matter, the licensee voluntarily met with the Kentucky Physicians Health Foundation and

disclosed a prior history of use of CBD oil for treatment of insomnia but denied deliberate ingestion of illicit substances. The licensee submitted to standard testing and the results were negative.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee is in violation of the provisions of KRS 311.595(21). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this matter and allow the licensee to resume the practice of medicine 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 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 T. Mahan, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order;
2. During the effective period of this Agreed Order, the licensee's Kentucky medical license shall be subject to the following terms and conditions:

- a. The licensee SHALL NOT perform any act which would constitute the “practice of medicine or osteopathy,” 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 – until further order of the Panel;
- b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL contact *either* LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania, 17050, Tel. (717) 909-2590 *or* Center for Personalized Education for Professionals (“CPEP”), 720 South Colorado Boulevard, Suite 1100-N, Denver Colorado 80246, Tel. (303) 577-3232, to schedule an individualized clinical competency assessment for the earliest dates available;
 - i. Both parties may provide relevant information to LifeGuard/CPEP for consideration as part of the assessment. In order to permit the Board to provide such relevant information, the licensee SHALL immediately notify the Board’s Legal Department of the assessment dates once the assessment is scheduled;
 - ii. The licensee SHALL travel to LifeGuard/CPEP and complete the assessment as scheduled, at his expense;
 - iii. The licensee expressly understands and agrees that LifeGuard/CPEP will issue an assessment report, in accordance with its internal policies;
 - iv. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that Lifeguard/CPEP will provide a copy of the assessment report to the Board’s Legal Department promptly after its completion;
 - v. If the assessment report includes a recommendation for an educational or remediation plan, the licensee SHALL immediately take all necessary steps to have such plan developed by LifeGuard/CPEP, at his expense, so that the proposed plan may be presented to the Panel for review along with the assessment report;
- c. Within thirty (30) days of the filing of this Agreed Order, the licensee SHALL complete a 72-hour inpatient evaluation, at his expense, at one of the following facilities:
 - Florida Recovery Center, 4001 SW 13th Street, Gainesville, Florida 32608, tel. 352/454-2158;

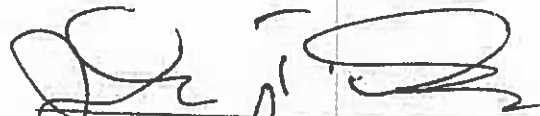
- Bradford Health Services, 1189 Allbritton Road, Warrior, Alabama 35180, tel. 205/807-3527; or
 - Positive Sobriety Institute, 680 N. Lake Shore Drive, Unit 800, Chicago, Illinois 60611, tel. 708/822-2255.
- ii. The licensee shall successfully complete the 72-hour inpatient evaluation at the chosen facility and shall take all necessary steps to permit and to arrange for the Kentucky Physicians Health Foundation to communicate with the facility and to receive written reports of the evaluation and to share that information with the Board; and
- d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The Panel SHALL NOT consider a request to terminate or modify this Agreed Order unless and until the licensee completes the terms and conditions stated in Paragraph 2b and 2c above.
4. 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.

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

SO AGREED on this 6th day of May, 2022.

FOR THE LICENSEE:




JOHN T. MAHAN, M.D.

BRIAN R. GOOD
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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



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