COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1594

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY JOHN W. RICHARD, M.D., LICENSE NO. 34055, 989
GOVERNORS LANE, SUITE 220, LEXINGTON, KENTUCKY 40513

AGREED ORDER

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

STIPULATIONS OF FACT

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

1. At all relevant times, John W. Richard, M.D., was licensed by the Board to
   practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is family medicine.

3. On or about March 7, 2013, the Board received an Investigative Report from the
   Office of Inspector General ("OIG") Division of Audits and Investigations which
   stated that while reviewing a KASPER report regarding an OIG complaint on
   Patient A, it was noticed that the licensee prescribed large amounts of controlled
   substances to Patient A. OIG reviewed and analyzed the licensee's KASPER
   records (for the period of February 1, 2012 until February 21, 2013) and identified
   twenty (20) patients (based on age, addictive drug combinations, polypharmacy,
distance traveled, early refills and similar last names) for further investigation by the Board.

4. In or around October 2013, a Board consultant reviewed twenty (20) of the licensee’s patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices; committed a serious act or a pattern of acts during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence or malpractice; and prescribed or dispensed medications with the knowledge that it will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose and/or in such amounts that he knew or should have known, under the attendant circumstances, that said amounts so prescribed or dispensed were excessive under accepted and prevailing medical practice standards. Overall, the consultant stated, in part,

... In general, records were often inaccurate or totally lacking for current medications being prescribed or lacked the dosage, number prescribed and refills given. Doses and medications were changed without notation in the records. Medications would suddenly appear in the medication list and nowhere noted in the chart. At times, current medication lists had the same medicine listed with 2 or 3 different dosages, plus listed medicine that had been discontinued for several months (or longer). Also with the records often being repetitious (duplications) it was difficult to know what was happening in a number of patients at any one time.

At least one third of the patients had no documentation of their diagnosis or current medications on their initial exam or visit. It appeared the patient’s word was taken as fact without documenting by KASPER, prior records, etc. ref. the controlled substances patient was taking. These were simply continued and the diagnosis was what the patient related. ... 

Too many times patients with anxiety and/or mood disorders were not evaluated as to the depth of their problem. ... They were simply started on medication for anxiety and/or depression. Sometimes just on antianxiety agent when both anxiety and depression were listed as diagnosis. ...
From a medical standpoint the most evident lack of care involved Diabetes. Essentially every visit stated “Blood sugars continue mildly elevated.” It was only rarely that readings were even specifically reviewed or was it evident that patient was providing a list of glucose readings. Some patients HbA1C were done, but not on 3 to 4 month basis and there were a couple of cases where Diabetes was well out of control when chart continued to indicate “sugars mildly elevated.”

... Some charts for years had no record in progress notes of prescribing information. Needless to say there was no rationale for changing medications, increasing dosage, etc. The use of Benzodiazepines was rather routine, but one case had the patient taking 3 different benzodiazepines daily. This did not appear to be justified nor medically acceptable. Another case the patient was prescribed very similar medications (same class) Neurontin and Lyrica. Perhaps this has been done before, but I am unaware of any indication of such. In addition, the use of phentermine was frequent and prolonged. In most cases as an anorectic, but in at least 5 to 6 patients they were continued for a long time (1 to 3 years) with no weight loss. Apparently, it was begin used off label for something else but this was not addressed in the chart as to what purpose being used for all this time. One elderly patient (over 80) actually said he “wanted it for energy” and was apparently given the medication for this.

... [O]n several charts drug abuse/dependency suddenly appeared in the past history or active problems without any discussion or detail concerning this. The patients were receiving narcotics and continued to receive them without any comment. This notation just appeared on charts after patient was seen for some time, even years. This leads into other problems of patients abusing medications and without control by the physician. A few were using 6 to 10 pharmacies in several cities, evident on KASPER, but continued to receive medications. ... The KASPER was always reported as appropriate. One patient was even dismissed from receiving any more controlled medications by the nurse practitioner at McCreary County, but soon was receiving narcotics from Dr. Richard. ...

In summary, the lack of adequate record keeping and shortcomings for basic prevailing and acceptable standards for prescribing controlled drugs, lack of long term plans and control of all aspects of patient care were very evident. Please see work sheets as the summary cannot possibly address each individual issue. ...
5. As Dr. Richard was no longer employed by the medical practices where he treated the patients at issue when the Board’s investigation commenced, he did not have access to the records maintained by his former employers when asked to respond to the Board consultant’s report. On or about April 30, 2014, the licensee responded to the Board consultant’s report, through counsel, stating in part,

... It is unfair to judge Dr. Richard based upon the incomplete and potentially inaccurate records that form the foundation of the consultant’s report. ... Because Dr. Richard utilized a template based system, he acknowledges that entries from different dates may contain similar information for the same patient. However, there should be records of labs, prescriptions and other entries reflecting the care provided to each patient. Dr. Richard does not know whether records were intentionally withheld from the Board, misplaced or simply never scanned into the electronic record. ...

The licensee asserts that, based on the Board consultant’s comments, it is appears that the Board does not possess and its consultant did not review all MRIs, X-ray reports, drug screens, prescriptions, consultant notes and lab results.

6. On or about July 17, 2014, the licensee appeared before the Panel, with counsel, and agreed to enter into this Agreed Order, in lieu of a formal Complaint and an Emergency Order of Restriction being issued against his license.

**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. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that
he has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (d), (3) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

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

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending grievance 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 W. Richard, 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 OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:

   a. Beginning on the date of entry of this Agreed Order, the licensee SHALL maintain a “controlled substances log” for all controlled substances prescribed. The controlled substances log SHALL include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect “call-in” and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log;
      i. The licensee SHALL permit the Board’s agents to inspect, copy and/or obtain the controlled substance log and other relevant
records, upon request, for review by the Board’s agents and/or consultants;

ii. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant’s identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board’s written notice. The licensee’s failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;

iii. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order;

b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the ProBe Program offered through the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230, Tel. (303) 577-3232, at the earliest time;

i. The licensee SHALL complete and “unconditionally pass” the ProBe Program at the time and date(s) scheduled, at his expense and as directed by CPEP’s staff;

ii. The licensee SHALL provide the Board’s staff with written verification that he has completed and “unconditionally passed” CPEP’s ProBe Program, promptly after completing the program;

iii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations, reports or essays from the ProBe Program to the Board’s Legal Department promptly after their completion;

c. Within twenty (20) days of the filing of this Agreed Order, if he has not already done so, the licensee SHALL take all necessary steps to enroll in the CPEP Personalized Implementation Program (PIP);

i. The licensee SHALL participate in and 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 the PIP promptly after completing that program;

iii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations from the Medical Record
Keeping Seminar and PIP to the Board's Legal Department promptly after their completion;

d. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board the costs of the proceedings in the amount of seven-thousand five-hundred dollars ($7,500.00), within twelve (12) months from the date of entry of this Agreed Order; and

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

3. 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.

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

SO AGREED on this 5th day of August, 2014.

FOR THE LICENSEE:

[Signature]

JOHN W. RICHARD, M.D.

[Signature]

BRIAN R. GOOD
COUNSEL FOR LICENSEE

FOR THE BOARD:

[Signature]

RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

[Signature]

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