

FILED OF RECORD

NOV 27 2019

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1881

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY RICHARD W. BAILEY, M.D., LICENSE NO. 38418, 457 HENSON ROAD, BOWLING GREEN, KENTUCKY 42104

AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel A, and RICHARD W. BAILEY, M.D., (hereafter "the licensee"), and, based upon their mutual desire to reinstate the licensee's prescribing privileges, hereby ENTER INTO the following AMENDED AGREED ORDER:

STIPULATIONS OF FACT

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

1. At all relevant times, Richard W. Bailey, M.D. ("the licensee"), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about March 2, 2018, the Board was contacted by Investigator Marcus Hopkins with the Kentucky Attorney General's Office. Mr. Hopkins stated that an investigation by Williamsburg Police Department of a shooting complaint at the home of Edna Moses, APRN resulted in the finding of drugs and drug paraphernalia throughout the home. He stated it was alleged that Ms. Moses and her sons have drug abuse issues and that drugs were being dispensed in the home. Mr. Hopkins stated that preliminary KASPER inquiries indicated that prescriptions were being issued to Edna Moses, APRN and the licensee from each

other. Ms. Moses had a collaborative agreement with the licensee and they both worked at 686 South Highway 25 West in Williamsburg, Kentucky.

4. On or about March 13, 2018, Stephen C. Johnson, an investigator with the Office of Inspector General, Drug Enforcement and Professional Practices Branch, reviewed and analyzed the licensee's KASPER records and noted concerns such as prescribing to family members and prescribing to employees.
5. Mr. Johnson identified six (6) of the licensee's patients for further investigation by the Board.
6. On or about April 5, 2018, the licensee responded, in writing, to the grievance. The licensee stated that he has been working at Preferred Healthcare, which is owned by Edna Moses, APRN and with whom he has a collaborative agreement. The licensee acknowledged treating his daughter, his son, the son of Edna Moses, APRN, the office manager at the practice, and a nurse in the practice. However, the licensee defended his care of each as limited and appropriate. The licensee stated that he treated Edna Moses, APRN and prescribed her controlled substances intermittently.
7. A Board consultant reviewed seven (7) of the licensee's patient charts, including his own patient chart demonstrating care rendered to him by Edna Moses, APRN.
8. The licensee found that the care rendered in all charts was below standards for diagnosis, treatment, record keeping, and overall. In four (4) charts, the Board consultant found that the care provided demonstrated gross ignorance, negligence, and incompetence. The Board consultant consistently noted that charts were missing documentation such as vitals, labs or imaging studies, or referrals.

9. The Board consultant opined that the licensee's care as demonstrated in the patient charts posed a threat to the safety and well-being of patients.
10. On or about July 9, 2018, the licensee responded, through counsel, in writing. The licensee stated that he strongly disagreed with the Board consultant's review of his patient charts and addressed the concerns in each patient chart.
11. The Board consultant reviewed the licensee's response and stated that he stood by his original findings and observations.
12. The licensee entered into an Agreed Order on September 4, 2018, which prohibited the prescribing of controlled substances by the licensee.
13. On September 11, 2019, the licensee requested modification of the Agreed Order to allow the prescribing of controlled substances. The licensee provided proof of his successful completion of the Medical Record Keeping Seminar, a prescribing controlled substances course, and ethics course, all of which were conditions of the Agreed Order. The licensee reimbursed the Board the costs of its investigation in full in August 2019.
14. On October 17, 2019, the Panel approved the licensee's request to reinstate prescribing of controlled substances, pursuant to terms and conditions set forth in this Amended Agreed Order.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Amended 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 has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending investigation without an evidentiary hearing by entering into an informal resolution such as this Amended Agreed Order.

AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to reinstate the licensee's prescribing privileges, the parties hereby ENTER INTO the following AMENDED AGREED ORDER:

1. The license to practice medicine in the Commonwealth of Kentucky held by RICHARD W. BAILEY, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Order;
2. During the effective period of this Amended Agreed Order, 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. Beginning immediately, the licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized. 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 SHALL be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions SHALL 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 Amended 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 Amended 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 modify or terminate this Amended Agreed Order. The licensee understands and agrees that no consultant reviews will be conducted unless and until the licensee has prescribed controlled substances to establish sufficient records for meaningful review;
- b. The licensee SHALL 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.
 - i. The licensee SHALL provide the Board's staff with written verification that he has enrolled in the 6-month Personalized Implementation Program;
 - ii. 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.
 - 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 Personalized Implementation Program to the Board's Legal Department promptly after their completion;
 - iv. The licensee understands and agrees that the licensee must successfully complete the Personalized Implementation Program before the Panel will consider a request to modify or terminate this Amended Agreed Order; and
- c. 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 Amended 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 Amended 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 Amended 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 Amended Agreed Order.
4. The licensee understands and agrees that any violation of the terms of this Amended Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 12 day of November 2019.

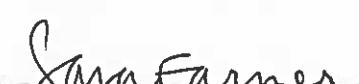
FOR THE LICENSEE:


RICHARD W. BAILEY, M.D.


DAVID F. BRODERICK
BRANDON T. MURLEY
COUNSEL FOR THE LICENSEE

FOR THE BOARD:


SANDRA R. SHUFFETT, M.D.
ACTING CHAIR, INQUIRY PANEL A


SARA FARMER
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Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
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(502) 429-7150

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AGREED ORDER

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STIPULATIONS OF FACT

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

1. At all relevant times, Richard W. Bailey, M.D. ("the licensee"), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about March 2, 2018, the Board was contacted by Investigator Marcus Hopkins with the Kentucky Attorney General's Office. Mr. Hopkins stated that an investigation by Williamsburg Police Department of a shooting complaint at the home of Edna Moses, APRN resulted in the finding of drugs and drug paraphernalia throughout the home. He stated it was alleged that Ms. Moses and her sons have drug abuse issues and that drugs were being dispensed in the home. Mr. Hopkins stated that preliminary KASPER inquiries indicated that

prescriptions were being issued to Edna Moses, APRN and the licensee from each other. Ms. Moses had a collaborative agreement with the licensee and they both worked at 686 South Highway 25 West in Williamsburg, Kentucky.

4. On or about March 13, 2018, Stephen C. Johnson, an investigator with the Office of Inspector General, Drug Enforcement and Professional Practices Branch, reviewed and analyzed the licensee's KASPER records and noted concerns such as prescribing to family members and prescribing to employees.
5. Mr. Johnson identified six (6) of the licensee's patients for further investigation by the Board.
6. On or about April 5, 2018, the licensee responded, in writing, to the grievance. The licensee stated that he has been working at Preferred Healthcare, which is owned by Edna Moses, APRN and with whom he has a collaborative agreement. The licensee acknowledged treating his daughter, his son, the son of Edna Moses, APRN, the office manager at the practice, and a nurse in the practice. However, the licensee defended his care of each as limited and appropriate. The licensee stated that he treated Edna Moses, APRN and prescribed her controlled substances intermittently.
7. A Board consultant reviewed seven (7) of the licensee's patient charts, including his own patient chart demonstrating care rendered to him by Edna Moses, APRN.
8. The licensee found that the care rendered in all charts was below standards for diagnosis, treatment, record keeping, and overall. In four (4) charts, the Board consultant found that the care provided demonstrated gross ignorance, negligence,

and incompetence. The Board consultant consistently noted that charts were missing documentation such as vitals, labs or imaging studies, or referrals.

9. The Board consultant opined that the licensee's care as demonstrated in the patient charts posed a threat to the safety and well-being of patients.
10. On or about July 9, 2018, the licensee responded, through counsel, in writing. The licensee stated that he strongly disagreed with the Board consultant's review of his patient charts and addressed the concerns in each patient chart.
11. The Board consultant reviewed the licensee's response and stated that he stood by his original findings and observations.
12. On August 16, 2018, the Board's Inquiry Panel A reviewed the investigation and the licensee, with counsel, appeared before and was heard by the Panel before it deliberated. The Panel and the licensee agree to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(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 investigation 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 investigation 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 RICHARD W. BAILEY, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this 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 until further order of the Board:
 - a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
 - b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the Medical Record Keeping Seminar at the Center for Personalized Education for Professionals (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;

c. 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 Professionals (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, 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;

d. Within one (1) year of the filing of this Agreed 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;

e. The licensee SHALL pay the costs of the investigation in the amount of \$2,187.50 within one (1) year from the date of entry of this Agreed Order; and

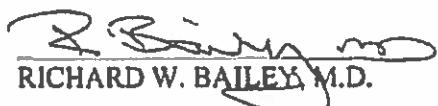
- f. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly understands and agrees that the Panel will not consider a request to resume the professional utilization of controlled substances unless and until the Board has received proof of the licensee's successful completion of the requirements of Paragraphs 2 (b)-(d).
4. The licensee expressly understands and agrees that if the Panel should grant the licensee's request to resume the prescribing, dispensing or professional utilization of controlled substances in the future, it will do so by an Amended Agreed Order, which shall at least require that:
 - a. The licensee maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for at least two (2) favorable consultant reviews of the log and relevant records by Board agents before the order may be terminated;
 - b. The licensee fully comply with the provisions of 201 KAR 9:260, Professional Standards for Prescribing or Dispensing Controlled Substances and the professional standards applicable to the licensee's specialty; and
 - c. Any other conditions deemed necessary by the Panel or Panel Chair at that time.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte*

presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

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

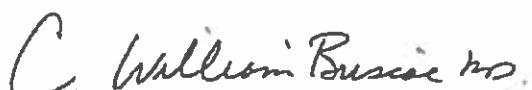
SO AGREED on this 31 day of August, 2018.

FOR THE LICENSEE:


RICHARD W. BAILEY, M.D.


DAVID F. BRODERICK
BRANDON T. MURLEY
COUNSEL FOR THE LICENSEE

FOR THE BOARD:


C. WILLIAM BRISCOE, M.D.
CHAIR, INQUIRY PANEL A

Sara Farmer

SARA FARMER

Assistant General Counsel

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