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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2011

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY THEODORE GERSTLE, M.D., LICENSE NO. 47125, 3363 TATES CREEK ROAD, SUITE 209, LEXINGTON, KENTUCKY 40502

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), by and through its Hearing Panel A, and THEODORE GERSTLE, M.D. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending Complaint 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, Theodore Gerstle, M.D. was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Plastic Surgery.
3. The licensee is currently subject to terms and conditions contained in 1) Agreed Order in KBML Case Number 1866, filed of record on June 27, 2018, and 2) Final Order in KBML Case Number 1944, filed of record on May 21, 2021.
4. On or about October 2, 2020, the Board received a grievance filed by Patient A regarding the licensee's performance of a surgical procedure at the licensee's office in November 2019.
5. The patient chart of Patient A was provided to a Board consultant who specializes in plastic surgery. The Board consultant found that the licensee's diagnosis, treatment, and records

were within minimum standards. However, the Board consultant found the case was overall borderline and stated, in part

It is my belief that it is below the standard of care to perform a general anesthetic requiring plastic surgery procedure in an unlicensed medical facility and not have a valid transfer agreement with a nearby hospital. This valid transfer agreement is a necessity in the unlikely event of an untoward patient outcome that would necessitate transfer to a licensed medical in-patient facility. A physician seeking a transfer agreement would have to have admitting privileges at a nearby hospital and have privileges to perform that procedure in the hospital setting.

6. The Board consultant stated that the AAAASF maintains that a 30-minute distance from operating room to hospital is mandated.
7. The Board considered the investigation at its meeting in July 2021. The Panel issued a Complaint on August 10, 2021.
8. On or about July 16, 2021, the licensee's facility received full accreditation by AAAASF. The accreditation expires July 16, 2024.
9. On or about October 22, 2021, the licensee earned a grade of "unconditional pass" from the PROBE Program offered through CPEP, as required by the terms and conditions of his Agreed Order in Case No. 1944.
10. On or about July 16, 2022, the licensee's facility received accreditation for having met the standards of a "Class C ambulatory surgery facility in which major surgical procedures are performed under intravenous Propofol or general anesthesia with external support of vital organs." The accreditation expires July 16, 2023.
11. The licensee's facility received an accreditation from Accreditation Association for Ambulatory Health Care, Inc., which expires on February 9, 2025.

12. On or about August 31, 2022, the licensee successfully completed the PROBE Plus Program offered through CPEP, as required by the terms and conditions of his Agreed Order in Case No. 1944.
13. On or about September 7, 2022, the licensee entered into a Transfer Agreement between his facility and UK HealthCare.

#### 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, he acknowledges that, 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(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 Complaint 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 the parties' mutual desire to fully and finally resolve this pending Complaint, 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 THEODORE GERSTLE, M.D., is hereby PLACED ON PROBATION FOR A PERIOD OF FIVE (5)

YEARS, with that period of probation to become 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 until further order of the Board:

- a. The licensee's surgical suite SHALL maintain:
  - i. Accreditation by AAAASF; and
  - ii. A transfer agreement with a hospital within thirty (30) minutes or less driving time of the licensee's surgical suite;
- b. Should the licensee not comply with (2)(a)(i)-(ii), the licensee SHALL NOT perform procedures utilizing conscious sedation (including, but not limited to nitrous oxide) but MAY perform procedures utilizing local anesthesia (i.e. lidocaine or its equivalent) in his surgical suite;
- c. The licensee SHALL pay the costs of the investigation in the amount of \$1,462.50 within six (6) months from the date of entry of this Agreed Order; and
- d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee understands and agrees that he shall not request and the Panel shall not consider a request for modification or termination of this Agreed Order prior to the expiration of the five-year probationary period;

4. The licensee understands and agrees that this Agreed Order is separate from and independent of Orders in KBML case numbers 1866 and 1944 and that the modification or termination of this Agreed Order shall not affect the term, conditions or duration of the Orders in KBML case numbers 1866 and 1944.

5. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order, the licensee's practice SHALL 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 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; and

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).

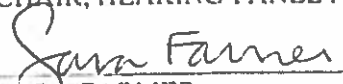
SO AGREED on this 28<sup>th</sup> day of September, 2022.

  
THEODORE GERSTLE, M.D.

  
L. CHAD ELDER  
COUNSEL FOR DR. GERSTLE

FOR THE BOARD:

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

  
SARA FARMER  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
(502) 429-7150

WAIVER OF RIGHTS

I, Theodore Gerstle, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 2011. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530 et seq., and I will have the right to raise any objections normally available in such proceedings.

Executed this 28<sup>th</sup> day of September, 2022.

  
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THEODORE GERSTLE, M.D.  
Respondent

  
\_\_\_\_\_  
L. CHAD ELDER  
COUNSEL FOR THE RESPONDENT

FILED OF RECORD

MAY 21 2021

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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1944

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY THEODORE GERSTLE, M.D., LICENSE NO. 47125, 3363 TATES CREEK ROAD, SUITE 209, LEXINGTON, KENTUCKY 40502

**ORDER OF INDEFINITE RESTRICTION**

At its May 20, 2021, 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 Amended Complaint, filed of record October 16, 2020; the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, dated April 21, 2021; the Board's exceptions, filed of record April 28, 2021; the licensee's exceptions, filed of record May 6, 2021; and a May 6, 2021 memorandum from the Board's counsel.

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) In addition, Hearing Panel B makes the following MODIFICATIONS to the Hearing Officer's Conclusions of Law:

Paragraph 11 is amended as follows:

201 KAR 9:081 Sect. (9) (2)(c) further provides that "Upon a finding by the Board that the licensee committed a violation, the appropriate panel shall consider and give weight to the legislative intent expressed in KRS 218A.205(3)(f) when exercising its discretion whether to impose discipline, including up to indefinite restriction or revocation, against the licensee."

Paragraph 12 is amended as follows:

Based upon the findings above, the hearing officer concludes that the Board has proven, by a preponderance of the evidence, that Dr. Gerstle's conviction related to controlled substances in that it involved behavior attempting to cover up the illegal dispensing of a specific controlled substance, Ritalin, within his practice. Therefore 201 KAR 9:081 Sect. (9) (2) (c) applies to whatever set of sanctions the Board might impose for Dr. Gerstle's violation of KRS 311.595 (4).

Paragraph 13 of the Conclusions of Law is removed.


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 Theodore Gerstle, 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;
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:
  - a. The licensee is indefinitely restricted from prescribing, dispensing, or otherwise professionally utilizing controlled substances;
  - b. Within thirty (30) days of the filing of this 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;
    - iv. If upon completion of the course, the licensee either "fails" or "conditionally passes" the *PROBE* Program, the licensee SHALL re-enroll for the next available course within thirty (30) days of receiving notice of the fail or unconditional pass;
  - c. Within thirty (30) days of "unconditionally passing" the *PROBE* Program offered through CPEP, the licensee SHALL enroll in *PROBE Plus* offered through CPEP;



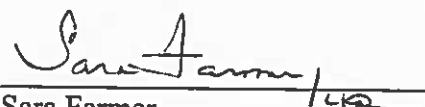
- i. The licensee SHALL successfully complete *PROBE Plus* at the time(s) and date(s) scheduled, at his expense and as directed by CPEP's staff;
    - ii. The licensee SHALL provide the Board's staff with written verification that he has successfully completed *PROBE Plus*, promptly after completing 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 Plus* to the Board's Legal Department promptly after their completion;
  - d. Within thirty (30) days of the filing of this Order, the licensee SHALL renew his contract with the Kentucky Physicians Health Foundation to run for a period of five (5) years from the date of this Order and SHALL maintain and fully comply with all requirements of that contractual relationship;
  - e. The licensee SHALL completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. The licensee SHALL ensure that any such medical treatment and prescribing is reported directly to the Board in writing by the treating physician within ten (10) days after the date of treatment. The licensee SHALL inform the treating physician of this responsibility and ensure timely compliance. The licensee's failure to inform the treating physician of this responsibility SHALL be considered a violation of this Order.
  - f. The licensee SHALL be subject to periodic, unannounced breathalyzer, blood and urine alcohol and/or drug analysis as desired by the Board, and under the conditions specified by the Board's testing agent, the purpose being to ensure that the licensee remain drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports SHALL be paid by the licensee, and the licensee SHALL pay those costs under the terms fixed by the Board's agent for testing. The licensee's failure to fully reimburse the Board's agent within that time frame SHALL constitute a violation 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 \$7,081.25 within one (1) year from entry of this Order; and
  - h. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. This Order being a final order following an administrative adjudication, and in keeping with the legislative intent set forth in KRS 218A.205(3)(f), neither this Order nor the terms and conditions set forth herein shall be subject to modification or termination.

SO ORDERED on this 21<sup>st</sup> of May, 2021.

  
WILLIAM C. THORNBURY, JR., M.D.  
CHAIR, INQUIRY 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 a copy was mailed to Keith Hardison, Esq., Hearing Officer, 2616 Bardstown Road, Louisville, Kentucky 40205; and copies were mailed via certified mail return-receipt requested to the licensee, Theodore Gerstle, M.D., License No. 47125, 3363 Bates Creek Road, Suite 209, Lexington, Kentucky 40502 and his counsel, L. Chad Elder, Esq., Elder & Good, PLLC, 159 St. Matthews Avenue, Suite 1, Louisville, Kentucky 40207 on this 21<sup>st</sup> day of May, 2021.

  
Sara Farmer  
Assistant 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, the effective date of this Order will be thirty (30) days after this Order is received by the licensee or the licensee's attorney, whichever shall occur first.

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. 1944

FILED OF RECORD

APR 26 2021

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY THEODORE GERSTLE, M.D., LICENSE NO. 47125, 3363 TATES CREEK ROAD, SUITE 209, LEXINGTON, KENTUCKY 40502

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

INTRODUCTION

This matter is before the hearing officer for the issuance of Findings of Fact and Conclusions of Law following an administrative hearing conducted on March 9 and 10, 2021. Hon. Sara Farmer represented the Kentucky Board of Medical Licensure (the "Board") and Hon. Chad Elder represented the licensee, Dr. Theodore Gerstle M.D., who was present throughout the hearing.

This matter arises from a *Complaint* issued by the Board on November 15, 2019, alleging that Dr. Gerstle violated KRS 311.595(9), as illustrated by KRS 311.597 (4), based upon a set of facts and circumstances that were brought to the Boards attention in a grievance filed by a patient, hereinafter referred to as "Patient A". The Board filed an *Amended Complaint* on October 16, 2020, incorporating the allegations made in the original complaint and adding an allegation that Dr. Gerstle had also violated KRS 311.595 (4) and (10). The factual basis for these additional allegations was Dr. Gersle's conviction in federal court of a felony offense and the circumstance of the offense to which he pled guilty.

After considering the testimony of the witnesses, the exhibits admitted into evidence and the arguments of counsel, the hearing officer finds that Dr. Gerstle is guilty of the allegations of misconduct against him and recommends the Board take appropriate action against Dr. Gerstle's license for these violations. In support of this recommendation the hearing officer submits the following findings of fact, conclusions of law and recommended order.

## FINDINGS OF FACT

### The Agreed Order

1. Dr. Gerstle is, and was, at all times relevant to this action, licensed by the Board to practice medicine in the Commonwealth of Kentucky. His specialty was Plastic Surgery. *Answer* filed 12/13/19 DVD 1, 9:16 am – 9:17 am<sup>1</sup>

2. Dr. Gerstle is in private practice in Lexington Kentucky. DVD 1, 9:18 am

3. Dr. Gerstle is a party to an Agreed Order with the Board entered into on June 26, 2018. The stipulation of facts included in the agreed order indicate that Dr. Gerstle arrived at a Lexington hospital in January of 2018 to perform surgery on a patient who had been admitted to the Emergency Department with a hand injury. At this time it was determined by the patient, as well as hospital staff, that Dr. Gerstle was under the influence of alcohol. Bd. Exhibit 1 pp. 1-3; DVD 1, 9:18 am - 9:19 am

4. On January 9, 2018, Dr. Gerstle met with Dr. Greg Jones M.D. of the Kentucky Physician Health Foundation (KPHF). Dr. Jones recommended that Dr. Gerstle be evaluated at a facility that works with physicians. Dr. Jones further advised that Dr. Gerstle not to return to the practice of medicine pending this evaluation. In a response filed with the Board, Dr. Gerstle disputed that he was under the influence of or had consumed alcohol at the time he appeared at the hospital but did admit he may have smelled of alcohol and given cause for others to be concerned. Bd. Exhibit 1 p.3

5. On February 7, 2018, Dr. Gerstle voluntarily resigned clinical privilege at that Hospital, Baptist Health Lexington, and on March 5, 2018, he agreed to an “Interim Agreed Order of Treatment”. Bd. Exhibit 1 p. 3

6. Dr. Gerstle entered residential treatment at the Richard J. Caron Foundation on February 8, 2018 and was discharged on April 1, 2018, with a diagnosis of Alcohol Use Disorder, Severe, and an unspecified “personality disorder” Bd. Exhibit 1 p.4, Ger. Exhibit 5<sup>2</sup>; DVD 1, 9:19 am

7. Upon discharge, the Caron Foundation recommended that he “follow recommendations for a monitored recovery” through the Foundation and on April 11, 2018, Dr.

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<sup>1</sup> In this document DVD 1 and 2 refer to the first and second day respectively of the video recording of the administrative hearing and the time reference is that shown on the recording.

<sup>2</sup> “Ger. Exhibit” references exhibits tendered by the licensee in this action and admitted into evidence.

Gerstle entered a five year contract with KPHF. Dr. Jones supported his return to the practice of medicine. Bd. Exhibit 1 p.4, Ger. Exhibit 5; DVD 1, 9:19 am

8. Based upon the factual stipulations made by Dr. Gerstle, along with his stipulation that his conduct violated KRS 311.595(7) and (21), the parties agreed that Dr. Gerstle's medical licensee was, effective immediately, "restricted/ limited" subject to the following terms for an indefinite period of time:

- Licensee shall maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of the contractual relationship;
- Licensee shall completely abstain from consumption a mood altering substances include alcohol unless prescribed by practitioner for a legitimate medical condition which must be reported to the Board within 10 days;
- Licensee is subject to periodic unannounced drug and/or alcohol testing at his own expense by the Board's testing agent; and,
- Licensee shall not violate any provisions of 311.595 and /or 311.587.

Bd. Exhibit 1 p.5, Ger. Exhibit. 5

9. Based upon the report from Dr. Greg Jones, Medical Director, and Dr. Tina Simpson, Associate Medical Director, of KPHF Dr. Gerstle entered an "aftercare and monitoring contract" on April 11. 2018, after successful completion of residential treatment for his substance abuse disorder. The required components of that agreement were that Dr. Gerstle:

- attend AA meetings no less than 3 per week and provide documentation
- Maintain an ongoing relationship with his AA sponsor
- participate in a physician's aftercare group
- submit to random observed drug screen and alcohol determinations
- professional accountably with interval reports from a professional at his worksite

Ger. Exhibit 5

10. As of February 9, 2021, Dr. Gerstle has fully complied with all directives of the KPHF aftercare directives. All reports, drug screens and alcohol determination results have been "appropriate". Ger. Exhibit 5; DVD 1, 2:47 pm - 2:49 pm

#### Patient A

11. In early July of 2018 Dr. Gerstle reopened his Plastic Surgery practice in Lexington. One of his first patients was Patient A. DVD 1, 10:02 am

12. As a result of her professional interactions with Dr. Gerstle over the next several months, Patient A filed a grievance with the Board. DVD 1, 11:45 am

13. The Board conducted an investigation and retained the services of a medical consultant, Dr. Marc Salzman M.D. Bd. Exhibit 18 and 19.

14. Dr. Gerstle responded in writing to both the Board's investigation and the consultant's review. Bd. Exhibit 5 and 7

15. The Board then issued a *Complaint* which was later incorporated into an *Amended Complaint*.

16. A primary component of Patient A's grievance, and the Board's ensuing disciplinary action, revolves around the scheduling of a surgical procedure for her that never took place because Dr. Gerstle did not have surgical privileges at the surgical center at which the procedure was scheduled. It is alleged that Patient A was not notified of certain pertinent facts and as a result she appeared prepared for surgery only to be turned away. *Complaint and Amended Complaint ¶4-15*

17. In the hearing of this matter, Dr. Gerstle contends that this was a mere "clerical or scheduling error" precipitated by the recent re-opening of his practice and the inexperience of newly hired staff. DVD 1, 10:02 am – 10:04 am, 11: 27 am and 2:49 pm – 2:53 pm

18. The Board however alleges that Dr. Gerstle's interactions with Patient A constituted dishonest and unethical behavior. *Amended Complaint ¶18*

19. A detailed review of the evidence in the record is necessary to resolve this dispute as to the proper interpretation of the circumstances surrounding Dr. Gerstle's encounters with Patient A.

20. According to a note in Patient A's medical record she first appeared in Dr. Gerstle's office on July 2, 2018, for a consultation for a Buttock Augmentation/Lift (commonly referred to as a Brazilian Butt Lift or BBL) and Mastopexy. Bd. Exhibit 6 p. 019; DVD 1, 9:40 am - 9:45 am

21. She was his first patient after re-opening his practice. DVD 1, 10:02 am

22. They discussed the risks of BBL and FFG (Facial Fat Grafting), the benefits, expected outcomes, and complication of these procedures. According to a note contained in Patient A's medical record the patient "understood and wishes to proceed" A next appointment was scheduled for July 11, 2018. Bd. Exhibit 6 p. 019; DVD 1, 11:46 am and 2:54 pm

23. Patient A left the office that day with a "Cost Estimate Worksheet" for a BBL, liposuction of thighs calves and knees and a "full facial fat graft. This estimate included a \$1400

fee for the "KY SURGERY CENTER" with a notation "D.O.S. (7/19)". This was an abbreviation for "date of service". Patient A paid the fee in full and made arrangements in her business and personal affairs in anticipation of surgery on July 19 as well as a period of recovery to follow. (The fee for the BBL was later refunded.) Bd. Exhibit 6 p. 003 and Bd. Exhibit 8; DVD 1, 11:47 am -11:48 am

24. This worksheet, except for a notation concerning an additional fee of \$2750 for an added Kybella treatment, was completed by Dr. Gerstle in the presence of Patient A that day during that visit. DVD 1, 11:50 am and 12:25 pm

25. These facts, established by the record, including the medical records maintained by Dr. Gerstle, are inconsistent with Dr. Gerstle's testimony that it is "very rare" for him set a date for surgery at his first meeting with a patient. In fact he admits that Patient A was very focused on setting a date for her surgery and he felt pressure to deliver the services she wanted. DVD 1, 10:46 am - 10:47 am and 2:55 pm - 2:59 pm

26. Dr. Gerstle told her the date of her surgery was July 19<sup>th</sup> at the Kentucky Surgery Center. DVD 1, 11:53 am

27. Patient A insisted on having her surgery performed under general anesthesia which was not possible in Dr. Gerstle's office at that time. DVD 1, 9:59 am and 11: 48 am

28. While Dr. Gerstle testified that there was no discussion concerning anesthesia on his first consultation, Patients A's testimony is consistent with the contents of the "Cost Estimate Worksheet" and more credible on this point. DVD 1, 9:59 am

29. Her next visit to Dr. Gerstle was on July 11, 2018, for "Pre - Op Buttock Augmentation/Lift FFG and 1<sup>st</sup> round Kybella Treatments" (injections to the neck for skin tightening). There was an extensive discussion of the surgical procedures but no mention of any new date for them. Bd. Exhibit. 6 p. 020; DVD 1, 11:55 am and 12:29 pm - 12:32 pm

30. On this same visit, Patient A was given prescriptions consistent with a surgical procedure such as a BBL scheduled for the near future. These include an antibiotic, a stool softener and 50 Oxycodone tablets. Bd. Exhibit. 6 p. 058; DVD 1, 10:40 am - 10:43 am

31. Dr. Gerstles testimony that he wrote the prescription for 50 oxycodone for the facial fat grafting is again inconsistent with the other evidence in the record including that of the expert witness and the statements made by Dr. Gerstle to Board Investigator Kevin Payne. DVD 1, 10:40 am - 10:42 am, 1:05 pm - 1:08 pm, 1:51 pm - 1:52 pm and 2:36 pm - 2:38 pm



32. This prescription, in any amount, would not be indicated for patient A's Kybella treatments as claimed by Dr. Gerstle in his interview with Board investigator Kevin Payne on February 6, 2019. Likewise, according to expert testimony, the timing of the issuance of these prescriptions is more consistent with a surgery scheduled for mid - July than mid-August. DVD 1, 1:05 pm - 1:08 pm, 1:14 pm, 1:34 pm - 1:36 pm, 1:51 pm - 1:54 pm and 2:34 pm - 2:38 pm

33. These prescriptions were filled by Patient A on July 14, 2018. Bd. Exhibit 6 p 053; DVD 1, 11:58 am - 12:01 pm

34. On July 11, 2018, Patient A signed a consent form for "focal lipodystrophy of thighs, calves, knees and abdomen" procedures consistent with a BBL. Bd. Exhibit 12; DVD 1, 11:58 am - 12:01 pm, 12:44 pm, 10:36 am - 10:38 am and 3:07 pm

35. That same day Patient A signed instruction that she was to follow on the night before surgery. This document, by its language, specifically indicates that the surgery was to take place at the Kentucky Surgery Center. Exhibit 6 p. 049 and Exhibit 10; DVD 1, 12:30 pm

36. The hearing officer finds, based upon the totality of the facts and circumstances presented, that the timing of all these events is more consistent with a surgery scheduled to take place in a few days (July 19) as opposed to a date in mid-August. DVD 1, 1:08pm - 1:14 pm, 1:34pm - 1:36 pm and 1:51 pm - 1:52 pm

37. Patient A continued in her belief that her surgery was scheduled for July 19, 2018, at the Kentucky Surgery Center. She sent Dr. Gerstle an email on **Monday**, July 16, 2018, at 9:52 am stating "I've got everything ready for **Thursday**. Couple of things I want to run by you." (emphasis added) She went on to ask questions about acid reflux and the need for special pillow for the ride home. Dr. Gerstle responded to her that same day at 3:23 pm answering her questions about the surgery but making no mention that the surgery was not scheduled for that following Thursday, the 19<sup>th</sup>. Bd. Exhibit 13; DVD 1, 10:44 am, 10:50 am and 12:01pm -12:03 pm;

38. Patient A appeared at the Kentucky Surgery Center in the early morning hours of July 19, 2018, ready for surgery only to be told that she her surgery was not scheduled there and that Dr. Gerstle does not do procedures there. She sent Dr. Gerstle an email and followed up with a phone call. He advised her, for the first time, that her surgery was not scheduled for that day but was scheduled for "next month". Bd. Exhibit 14; DVD 1, 12:02 pm -12:05 10:46 am - 10:49am



39. While she initially apologized to him for the mix up, she later, after reflection, realized that she had not been mistaken about the date of her surgery. DVD 1, 12:04 pm -12:07 pm

40. In his testimony Dr. Gerstle takes the position that this situation was more akin to a "clerical error" by his staff rather than actionable misconduct. Dr. Gerstle take the position in his testimony that he was not dishonest with Patient A and never intended to mislead her. He relies on several factors in his defense; all of which were considered by this hearing officer but found to be lacking and/or unpersuasive DVD 1, 10:02 am - 10:04 am, 3:04 pm – 3:06 pm and 3:28 pm– 3:30 pm

41. However in his response to the grievance filed against him (following the Board consultant's review) Dr. Gerstle, contrary to his testimony at the hearing, admitted that the original date for surgery was July 19, 2018. He however claims that on July 11, 2018, that date was "changed" to "mid-August". He further admits that he "...did not do a good job of making it clear to the patient that the date had moved". Exhibit 7; DVD 1, 10:51am – 10:56 am and 11:22am - 11:27 am

42. There is nothing in the medical record notes from the July 11, 2018, visit to verify a change of date for the surgery. Exhibit 6 p. 020; DVD 1, 10:53 am - 10 56 am

43. In his testimony Dr. Gerstle points out that the "instructions" for the night before surgery signed by Patient A on July 11, 2018, contains a surgery date of August 19, 2019, which interestingly is the same date but exactly one month later than the July date. Exhibit 6 p. 049: DVD 1, 10:56 am

44. Patient A did not see this date in the form when she signed it and was not told of any date change. DVD 1, 11:59 am and 12:29 – 12:32 pm

45. Furthermore, August 19, 2018, is a Sunday when Kentucky Surgery Center is not open and Dr. Gerstle would not be expecting to perform surgical procedures. Bd. Exhibit 10; DVD 1, 10:35am - 10:36 am

46. In addition Dr. Gerstle did not, on July 19, August 19, or anytime thereafter, have the proper credentials to perform surgery at the Kentucky Surgery Center. Dr. Gerstle indicates that he reasonably expected to be getting his credentials restored and for that reason he went ahead with scheduling surgeries there. Bd. Exhibit 7; DVD 1, 10:04 am

47. As found above, Patient A was insistent on having the BBL procedure done under

general anesthesia, therefore making a surgery center the only option at that time. DVD 1, 10:00 am – 10:02 am and 11:48 am

48. During his testimony Dr. Gerstle, was unable to produce or identify any written documentation of an attempt to regain credentials at the Kentucky Surgery Center. Likewise he was evasive in identifying anyone at the center who might have been assuring him that his credentials would be forthcoming even though he claims to have been assured that they would be. In fact he still does not have credential to perform surgery there as he has abandoned that effort. DVD 1, 10:03 am - 10:14 am

49. Dr. Gerstle did not inform Patient A about the situation with the Kentucky Surgery Center during her initial visit. DVD 1, 10:33 am and 11:07am

50. According to his testimony, he “felt” he had satisfactorily addressed Patient A’s “concerns” about his credentialing at some unspecified date during his later encounters with her. DVD 1, 3:29 pm and 3:53 pm

51. However, in response to Patient A’s grievance, Dr. Gerstle stated “In hindsight I certainly recognize where I should have been more transparent with the patient on my credentialing delay” Bd. Exhibit 7; DVD 1, 11:22 am - 11:27 am

52. Yet in his again inconsistent and confusing testimony Dr. Gerstle denies that the procedure for Patient A was ever scheduled for the Kentucky Surgery Center, claiming that the wrong “Cost Estimate Worksheet “ form had been utilized by his staff. DVD 1, 10:02 am -10:03 am

53. Patient A continued to see Dr. Gerstle for various procedures. She had a second round of Kybella treatments on August 9, 2018. She was then told at that time that he BBL was now scheduled for August 16, 2018. DVD 1, 12:08 pm

54. She had a facial fat grafting procedure on August 16, 2018 which she tolerated well. (She did not have a BBL that day) She had a 3rd round of Kybella treatments on September 7, 2018. Bd. Exhibit 6 pp. 25-30 and p. 48; DVD 1, 11:14 am and 3:21pm - 3:23pm

55. She returned to Dr. Gerstle’s office for the last time on October 10, 2018, for a follow-up visit concerning her previous procedure. During this visit Dr. Gerstle finally admitted that he did not have privileges at Kentucky Surgery Center. She became upset and left. Bd. Exhibit 6 p.31; DVD 1, 11:07am, 12:18 pm and 3:28 pm

56. She never rescheduled her BBL with Dr. Gerstle and in fact had it performed by

another physician on September 26, 2018. DVD 1, 12:22 pm

57. In mid - July 2018 the American Society of Plastic Surgeons (ASPS), of which Dr. Gerstle is a member, issued an "advisory" concerning the BBL procedure due to "an alarming number of deaths" occurring from this procedure. This organization warned about the proper placement of fat in the subcutaneous tissue as opposed to muscle. This advisory set forth several technical guidelines that surgeons should use for these procedures and went on to say that "Surgeons wishing to continue performing this procedure should strictly adhere to these guidelines." Bd. Exhibit 6 pp. 21 – 23 and Ger. Ex 6

58. This advisory did not direct or advise surgeons to stop performing these procedures. DVD 1, 11:14 am – 11:15 pm

59. Dr. Gerstle however stopped performing the BBL procedure for a time until, according to his testimony, the procedures for BBLs could be reviewed and evaluated by the ASPS and new guidelines issued. DVD 1, 11:05 am and 1:43pm - 1:45 pm

60. This was a reasonable decision. Both expert witnesses who testified agreed that if Dr. Gerstle did not feel comfortable doing these procedures he should not be doing them. DVD 1, 1:22 pm – 1:24 pm and 1:45 pm

61. However on August 9, during an office visit and a discussion concerning this advisory, Dr. Gerstle led Patient A to believe that all plastic surgeon were prohibited from performing these procedures. He did not clarify that this was an individual decision he had made which might differ from decisions made by other surgeons. DVD 1, 11:05 am, 12:09 pm - 12:12 pm and 3:18 pm - 3:21 pm

62. Dr. Gerstle told Patient A that there should be a decision on whether surgeons could resume performing BBLs by early September and convinced her to go ahead with the facial fat grafting but delay the BBL until later. She wanted to have both procedures done together but reluctantly agreed to do so. DVD 1, 12:11 pm - 12: 12 pm.

63. Dr. Gerstle later offered to perform the BBL in his office (once he received technical guidance from the ASPS). Patient A declined because she was adamant about wanting to be "totally out" (under general anesthesia) during the procedure citing an instance from a previous surgery where she had a bad experience. DVD 1, 11:06 am - 11:11 am and 12:13 pm – 12:18 pm

64. Sometime between August 16 and September 11, 2018, Patient A called the Kentucky Surgery Center and confirmed her suspicions that Dr. Gerstle still did not have surgical

privileges there. DVD 1, 12:36 pm - 12:40 pm

65. Only after confronting Dr. Gerstle with this information during her last office visit did he admit to this fact. Dr. Gerstle's misinformation, lack of candor and "purposeful deception" has caused Patient A to not trust doctors. DVD 1 12:23 pm - 12:26 pm

66. The Code of Medical Ethics of the American Medical Association requires that a physician "... must recognize responsibility to patients first and foremost." The physician patient relationship must be based upon trust and patients "have the right to receive information and ask questions about recommended treatments so they can make well -considered decisions about care". Bd. Exhibit 16

67. The hearing officer finds that a central theme of this code is honesty and truthfulness in the physician - patient relationship. The hearing officer finds that Dr. Gerstles conduct as it relates to his professional interactions with Patient A violates the principles of the Code of Medical Ethics of the American Medical Association. DVD 1, 11:19 am

68. Based upon the totality of the facts and circumstances of this case, as set forth in the specific factual findings above, the hearing officer findings, by a preponderance of the evidence, that Dr. Gerstle scheduled a surgery for Patient A on a date when he was not able to provide the service she required and further failed to adequately inform the patient of his inability to perform the surgery as requested. He further failed to provide Patient A with adequate information about the reasons for his inability to perform that surgery or about any alternative arrangements that could be made for the surgery.

69. Under the particular facts and circumstances of this case, as set forth in the specific factual findings above, the hearing officer finds, by a preponderance of the evidence that Dr. Gerstle failed to adequately inform Patient A of the situation with regards to his credentialing at facilities that could provide the services she required. This inadequate information hindered the patient's ability to make informed decision about her care and to make other arrangements for this surgery under the conditions she desired. This lack of information compounded the problems caused by Dr. Gerstle's failures regarding the scheduling of Patient A for the BBL.

70. The hearing officer further finds, by a preponderance of the evidence, based upon the above specific factual findings above, that Dr. Gerstle provided Patient A with misinformation about the BBL procedure, specifically as it relates to the scope of the "advisory"

put out by the ASPS, and his professional decision to cease these procedures. This prevented the Patient A from promptly seeking the services of another plastic surgeon if she so desired.

71. The hearing officer finds that this conduct also amounts to dishonorable and unprofessional behavior likely to deceive a patient, thereby causing harm to that patient and bring the medical profession into disrepute.

Felony Conviction

72. An Information filed in case # 20 – cr - 00047 in the United States District Court for the Eastern District Of Kentucky charged that on or about January 18, 2018, Dr. Gerstle "...aiding and abetting others, did knowingly alter, falsify and make a false entry in a record, to wit, patient medical records, with the intent to impede, obstruct and influence the investigation and proper administration of, or in relation to or contemplation of the dispensation of controlled substances, a matter within the jurisdiction of the Drug Enforcement Administration..." Bd. Exhibit 2; DVD 1, 9:19 am

73. Judgment was entered by that court on September 25, 2020, adjudicating Dr. Gerstle guilty of Aiding and Abetting Obstruction of Justice as charged in the information referenced above. He was sentenced to probation for five (5) years. In addition to the mandatory conditions of probation he was sentenced to home detention for twelve (12) months and was to serve six (6) consecutive weekends in intermittent confinement. Among the special conditions imposed upon his probation was the requirement that he abstain from consumption of alcohol, use prescription medication only as prescribed and not "distribute or administer" controlled substances. He was also fine of \$50,000. Bd. Ex.4 DVD 1, 9:30 am – 9:32 am

74. Dr. Gerstle was required to surrender his DEA certificate for 5 years meaning that he cannot prescribe controlled substances during this period. He has made arrangements to have other physicians within his practice to see any of his patients that require controlled substance prescriptions. DVD 1, 9:32 am - 9:35 am

75. In the plea agreement entered into by Dr. Gerstle he admitted that from February 3, 2016, through December 19, 2017, he diverted Methylphenidate (Ritalin) a schedule II controlled substance to two patients, one of whom was also his employee, which were then returned to him for his own use. Bd. Exhibit 3; DVD 1, 9:20 am – 9:25 am

76. Dr. Gerstle had been diagnosed as having ADD and prescribed Ritalin by his primary

care provider while in medical school and while in his residency in Boston. He was prescribed Ritalin for a short time upon his return to Lexington. However he did not have a valid prescription for this drug during the time alleged in the Information, February 3, 2016, through December 19, 2017. DVD 1, 9:22 am - 9:25 am

77. On January 18, 2018, agents from the Drug Enforcement Administration and the Kentucky Office of Inspector General went to his office seeking medical records for these two patients. Bd Exhibit 3; DVD 1, 9:21 am – 9:22 pm

78. Dr. Gerstle further admitted that he stated to the investigators that he did not have physical records at his office and that his computer servers were down. The agents offered to return after lunch and did so. In the meantime Dr. Gerstle created false paper medical records to coincide with the dates for the prescriptions for Methylphenidate he had written. He was assisted by the patient/employee who ran KASPER reports. Bd. Exhibit. 3; DVD 1, 9:24 am - 9:26 am

79. Dr. Gerstle provided these records to the agents upon their return. He also admitted that the prescription medications were diverted back to him for his own consumption. Bd Exhibit 3; DVD 1, 9:24 am - 9:26 am

80. At sentencing Dr. Gerstle received letters of support from Dr. Joshua Hensley M.D. who has worked with Dr. Gerstle for the last 3 years. He described Dr. Gerstle's practice as "...second to none in terms of outcomes and patient satisfaction." He explains that Dr. Gerstle's "bedside manner and constant devotion to his patients" is the reason for his professional success. Dr. Hensley goes on to acknowledge Dr. Gerstle's addiction but describes him as a "loving and devoted father" who is "like a brother" to him He goes on to state that he would "trust him with my life." Ger. Exhibit 7

81. Dr. Gerstle also received a letter of support from Dr. Frank Burke M.D. who stated that he has known Dr. Gerstle for several years through his church community. Dr. Gerstle is a senior officer in the Knights of Columbus and works with outreach service organizations. He is aware that Dr. Gerstle is in recovery through KPHF and attending AA meeting. Dr. Burke requested leniency at sentencing for Dr. Gerstle citing the terrible toll that his transgressions have taken "on his soul" and well as his private and public life. Ger. Exhibit 8

82. Dr. Gerstle, through the KPHF, meets weekly with other physicians who have similar issues to share their experiences. He now routinely has conversations with his patients about his addiction and the Agreed Order to which he is subject . He does community service work and

does not turn anyone down for reconstructive procedures regardless of their ability to pay. DVD  
1, 3:35 pm – 3:39 pm

### 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 KRS Chapter 13B and KRS 311.591.
3. Under KRS 13B.090 (7), the Board had the burden to prove the allegations against Dr. Gerstle by a preponderance of the evidence.
4. Pursuant to KRS 311.595 (4), a physician is subject to discipline if he is convicted (including by the entry of a plea of guilty) of a "...crime as defined in KRS 335B.010, if in accordance with KRS Chapter 335B."
5. KRS 335B.010 (4) provides that: "'Conviction of a crime' shall be limited to convictions of felonies or misdemeanors".
6. KRS 335B.020 provides, in pertinent part, that no person shall be disqualified from engaging in an occupation for which a license is required "... unless the crime for which convicted directly relates to the ... occupation for which the license is sought."
7. KRS 335B .020 (2) provides specific factors to consider in determining is a conviction directly relates to the occupation for which a license is sought.
8. The preponderance of the evidence supports the conclusion the Dr. Gerstle has been convicted in federal court of the felony offense of Aiding and Abetting Obstruction of Justice.
9. As found above, the underlying basis for this charge and ultimate conviction was Dr. Gerstle's actions in the falsification of medical records sought by a regulating authority as part of an investigation of possible crimes related to the dispensing of controlled substances. Accordingly the preponderance of the evidence supports the conclusion that Dr. Gersle has been convicted of a felony crime and, applying the factors set forth in KRS 335 .020 (2), that crime is one that directly relates to the practice of medicine.
10. Therefore the Board has proven, by a preponderance of the evidence, that Dr. Gerstle is subject to discipline for violation of KRS 311.595 (4).
11. 201 KAR 9:081 Sect. (9) (2)(c) further provides that if a licensee has been convicted

of a "felony offense relating to a controlled substances ..." the Board "... shall at a minimum permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction."

12. Based upon the findings above, the hearing officer concludes that the Board has proven, by a preponderance of the evidence, that Dr. Gerstle's conviction related to controlled substances in that it involved behavior attempting to cover up the illegal dispensing of a specific controlled substance, Ritalin, within his practice. Therefore 201 KAR 9:081 Sect. (9) (2) (c) (1) applies to whatever set of sanctions the Board might impose for Dr. Gerstle's violation of KRS 311.595 (4).

13. The exceptions to this mandatory penalty contained in 201 KAR 9:081 Sect. (9) (2) (c) (2) do not apply.

14. KRS 311.595 (10) provides that a licensee is subject to discipline if he "knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession."

15. Based upon the findings of fact above, the preponderance of the evidence supports the conclusion that Dr. Gerstle aided and abetted in the making of false statements regarding patient medical records and the Board has therefore met its burden of proof to prove a violation of KRS 311.595 (10).

16. KRS 311.595 (9) provides that a physician is subject to discipline if he "...engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member therefore." (emphasis added)

17. KRS 311.597 (4) provides illustrations of conduct which might prove behavior which constitutes a violation of KRS 311.595 (9). These behaviors include "... any departure from or failure to conform to the principles of medical ethics of the American Medical Association."

18. This statute goes on to provide that "... actual injury to a patient need not be established."

19. Based upon the findings above, the Board has met its burden of proof to establish a violation of 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 the Board find Dr. Gerstle guilty of violating KRS 311.595 (4), KRS 311.595(10) and KRS 311.595.(9), as illustrated by KRS 311.597 (4), and impose any appropriate sanction for those violations including the ban on prescribing controlled substances provided for by 201 KAR 9:081 Sect. (9) (2) (c).

### NOTICE OF RIGHT TO FILE EXCEPTIONS AND TO APPEAL

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. Transmittal of a recommended order may be sent by regular mail to the last known address of the party. Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal the circuit court will consider only the issues a party raised in written exceptions.

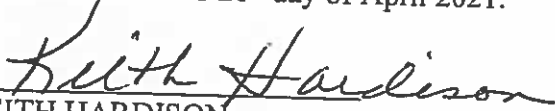
A party also has the right to appeal the Final Order of the agency pursuant to KRS 13B.140 (1 - 2) which states:

- (1) 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 by the agency's enabling statutes, within thirty (30) days after the date of 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.

(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Pursuant to KRS 23A.010 (4), "Such review (by 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 ORDERED this 21<sup>st</sup> day of April 2021.



KEITH HARDISON  
HEARING OFFICER  
2616 BARDSTOWN RD.  
LOUISVILLE KY 40205  
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keithdiver@bellsouth.net

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER was mailed this 21st day of April, 2021, 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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LOUISVILLE, KY 40207



KEITH HARDISON  
HEARING OFFICER

FILED OF RECORD

JUN 27 2018

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1866

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY THEODORE GERSTLE, M.D., LICENSE NO. 47125, 1760  
NICHOLASVILLE ROAD, SUITE 402, LEXINGTON, KENTUCKY 40503

AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), by and through its Inquiry Panel A, and THEODORE GERSTLE, M.D. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this 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, Theodore Gerstle, M.D. was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Plastic Surgery.
3. On or about January 15, 2018, the Board received a report that the licensee arrived at Baptist Health Lexington to perform a surgery and that it was suspected that he was under the influence of alcohol.
4. During an interview with a Board investigator, Dr. Jim Borders, Chief Medical Officer at Baptist Health Lexington stated that the situation involving the license was brought to the attention of the nursing staff by a patient, M.C. Dr. Borders gave the following the following information regarding the events that day: The patient was admitted to the Emergency Department with a hand injury and needed surgery. The ED physician, Dr.

Mark Spanier, called the licensee, who was on call that day. The licensee arrived at the hospital and went to the operating room to see the patient. Nursing staff notified the vice president over the Operating Room, who then notified Dr. Borders that the licensee appeared to be under the influence of alcohol. Dr. Borders then proceeded to the OR and spoke with the licensee. When Dr. Borders asked the licensee if he had been drinking, the licensee denied drinking and questioned who stated that he was intoxicated. When Dr. Borders replied that the patient brought it to nursing attention, the licensee went to the patient and confronted the patient. With Dr. Borders present, the patient stated he knew the signs of someone who had been drinking and did not want the licensee to do the procedure. Dr. Borders' own observations of the licensee were that his speech was thick and he smelled as though he had been drinking. The patient was transferred to another hospital for the procedure. When Dr. Borders asked the licensee to submit to blood and urine tests, the licensee evaded the procedure to obtain samples and eventually walked out of the Emergency Department. The licensee stated he was walking home, wearing only scrubs and a white coat in twenty degree weather.

5. The Board investigator interviewed the following staff members of the hospital who interacted with the licensee that morning: Melissa Young-Flynn, pre-op nurse; Dr. Mark Spanier, ER physician; Charles Robinson, surgical technician; Desiree Taulbee, surgical technician; and Stacie Thomsberry, Charge Nurse in the ER. All five (5) staff members stated that the licensee exhibited signs of impairment.
6. The Board investigator interviewed the licensee's medical assistant, Twana Pruitt, who interacted with the licensee that morning. Ms. Pruitt said that she was present with the

licensee in a room with a patient that morning, and that she smelled alcohol and noticed the licensee was slurring his words.

7. The Board investigator interviewed the emergency room patient, M.C., and his wife. Both stated that following the licensee's interactions with them in the operating room prep area, they believed he was drunk and did not want him to do the procedure on M.C. They then relayed their concerns to operating room nursing staff.
8. On or about January 15, 2018, the licensee's clinical privileges at Baptist Health Lexington were placed on precautionary suspension. On or about January 17, 2018, the Medical Executive Committee supported the continuation of the precautionary suspension. On or about February 7, 2018, while still under investigation, the licensee voluntarily resigned his clinical privileges at Baptist Health Lexington.
9. On or about January 29, 2018, the licensee met with Greg L. Jones, M.D., Medical Director of the Kentucky Physicians Health Foundation ("the Foundation"). Based upon information gathered during that interview, Dr. Jones recommended that the licensee undergo further evaluation at a facility with expertise in working with healthcare professionals. Dr. Jones also advised the licensee that he should not return to practice until the evaluation and/or residential treatment was completed.
10. The licensee responded in writing, through counsel, on or about February 2, 2018. The licensee stated that he "disputes that he was under the influence of alcohol at the hospital or that he had consumed alcohol on that day, although he does not dispute that he may have smelled of alcohol and that his conduct may have led others to be concerned."
11. On or about March 5, 2018, the licensee entered an Interim Agreed Order of Treatment.

12. The licensee entered into residential treatment at the Richard J. Caron Foundation on or about February 8, 2018 and was discharged on April 1, 2018 with Axis I diagnoses of: Alcohol Use Disorder, Severe and unspecified personality disorder.
13. Upon discharge, the Caron Foundation recommended the licensee follow recommendations for monitored recovery through the Foundation.
14. On or about April 11, 2018, the licensee entered into a five-year contract with the Foundation.
15. On or about April 13, 2018, Dr. Greg Jones supported the licensee's return to the active practice of medicine.

#### 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(7) and (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 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 the parties' mutual desire to fully and finally address this pending investigation, without an evidentiary hearing, the parties hereby enter into the following AGREED ORDER:

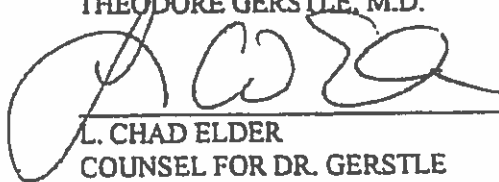
1. The license to practice medicine in the Commonwealth of Kentucky held by THEODORE GERSTLE, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Order;
2. During the effective period of this Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS until further order of the Board:
  - a. The licensee SHALL maintain his contractual relationship with the Kentucky Physicians Health Foundation and SHALL fully comply with all requirements of that contractual relationship;
  - b. The licensee SHALL completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. The licensee SHALL ensure that any such medical treatment and prescribing is reported directly to the Board in writing by my treating physician within ten (10) days after the date of treatment. The licensee SHALL inform the treating physician of this responsibility and ensure timely compliance. The licensee's failure to inform the treating physician of this responsibility SHALL be considered a violation of this Agreed Order.
  - c. The licensee SHALL be subject to periodic, unannounced breathalyzer, blood and urine alcohol and/or drug analysis as desired by the Board, and under the conditions specified by the Board's testing agent, the purpose being to ensure that the licensee remain drug and/or alcohol-free. The cost of such breathalyzer, blood and wine alcohol and/or drug analyses and reports SHALL be paid by the licensee, and the licensee SHALL pay those costs under the terms fixed by the Board's agent for testing. The licensee's failure to fully reimburse the Board's agent within that time frame SHALL constitute a violation of this Agreed Order, and
  - d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.



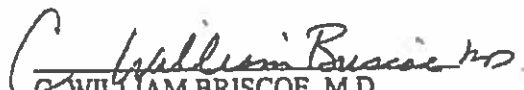
3. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order, the licensee's practice SHALL constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive 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 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; and
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).

SO AGREED on this 26<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
THEODORE GERSTLE, M.D.

  
\_\_\_\_\_  
L. CHAD ELDER  
COUNSEL FOR DR. GERSTLE

FOR THE BOARD:

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

*Sara Farmer*

**SARA FARMER**

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