

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.


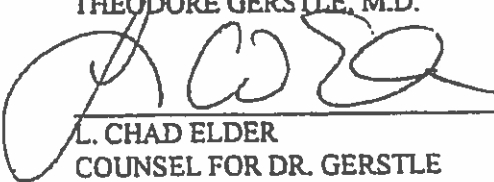
### AGREED ORDER

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 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 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*

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