

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1992

SEP 17 2021

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARCUS F. COX, M.D., LICENSE NO. 51821, 4258 RABER ROAD NORTHEAST, DOVER, OHIO 44622

ORDER OF REVOCATION

At its September 16, 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 Hearing Panel B considered the Complaint, filed of record April 16, 2021; the Emergency Order of Suspension, filed of record on April 16, 2021; the hearing officer's Findings of Fact, Conclusions of Law and Recommended Order, dated July 22, 2021; and a certified copy of the Entry of Order, the Report and Recommendation of Ronda Shamansky, Esq., Hearing Examiner, State Medical Board of Ohio and excerpt of draft Minutes of the State Medical Board, dated February 10, 2021. The licensee, Marcus F. Cox, M.D., did not file exceptions.

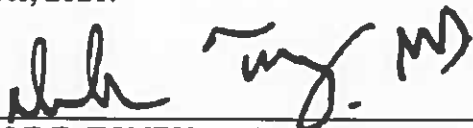
Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS the hearing officer's recommended Findings of Fact and Conclusions of Law and ADOPTS those Findings of Fact and Conclusions of Law and INCORPORATES them BY REFERENCE into this Order. (Attachment) Hearing Panel B FURTHER ACCEPTS AND ADOPTS the hearing officer's Recommended Order.

Hearing Panel B has determined that revocation is the appropriate sanction having given consideration to the following: all of the sanctions available under KRS 311.595, the nature of the violations in this case, the great weight and deference owed to the decision of the State Medical Board of Ohio which followed a full evidentiary hearing on the merits,

and the rationale for the decision of the State Medical Board of Ohio as articulated in the certified copy of the Entry of Order, the Report and Recommendation of Ronda Shamansky, Esq., Hearing Examiner, State Medical Board of Ohio and excerpt of draft Minutes of the State Medical Board. Accordingly, Hearing Panel B **ORDERS:**

1. The license to practice medicine held by Marcus F. Cox, M.D., is hereby **REVOKED** and he may not perform any act which constitutes the “practice of medicine,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – in the Commonwealth of Kentucky;
2. Within six (6) months from the date of entry of this order, the licensee **SHALL** reimburse the costs of these proceedings in the amount of \$750, pursuant to KRS 311.565(1)(v);
3. Within six (6) months from the date of entry of this order, the licensee **SHALL** submit payment of a fine in the amount of \$1,000, pursuant to KRS 311.565(1)(v);
and
4. The licensee shall not violate any provision of KRS 311.595 and/or 311.597.

SO ORDERED on this 17th day of September, 2021.



DALE E. TONEY, M.D.
CHAIR, HEARING PANEL B

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Order of Revocation was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed to Thomas J. Hellman, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601;

and copies were mailed via certified mail return-receipt requested to the licensee, Marcus F. Cox, M.D., License No. 51821, 4258 Raber Road NE, Dover, Ohio 44622, and to his counsel, Jeremy S. Rogers, Dinsmore and Shohl, LLC, 101 S. Fifth Street, Suite 2500, Louisville, Kentucky 40202 on this 17th day of September, 2021.

Sara Farmer

Sara Farmer
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
Tel. (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 of Revocation is received by the licensee.

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. 1992

FILED OF RECORD

JUL 22 2021

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARCUS F. COX, M.D., LICENSE NO. 51821, 4258 RABER ROAD NORTHEAST, DOVER, OHIO 44622

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER**

The Kentucky Board of Medical Licensure (hereinafter, "the Board") brought this action against the license of Marcus F. Cox, M.D., charging him with several violations of the statutes governing the practice of medicine in Kentucky. Hon. Sara Farmer represented the Board, and Hon. Jeremy S. Rogers and Hon. Rudy J. Ellis III represented Dr. Cox. The case is before the hearing officer on the *Motion for Summary Disposition* filed by the Board to which Dr. Cox filed a response opposing the motion. Finding substantial merit to the Board's position, the hearing officer grants the motion, and he recommends the Board find Dr. Cox guilty of violating the Board's statutes governing the practice of medicine as set forth in the *Complaint* and take any appropriate action against his license for those violations. In support of that recommendation the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. On April 16, 2021, the Board issued the *Complaint* charging Dr. Cox with violating KRS 311.595(12) and (17) as a result of action taken by the State Medical Board of Ohio (hereinafter, "the Ohio Board") against his licence to practice medicine in that state. *Complaint*, page 2.

2. The Board asserted that the Ohio Board found Dr. Cox in violation of the statutes governing the practice of medicine in Ohio by inappropriately touching one patient during a medical examination and by making inappropriate comments to another patient during at least two examinations. *Complaint*, page 2.

3. The Board alleged that as a result of that misconduct the Ohio Board “imposed a permanent revocation of the licensee’s license to practice medicine in Ohio and imposed a \$6,000 fine.” *Id.*

4. Under KRS 311.595(17), a physician is subject to discipline by the Board if his license has been disciplined by the licensing authority in any other state.

5. The Board further alleged that although Dr. Cox’s legal counsel notified the Board in correspondence dated March 8, 2021, of the entry of the Ohio Board’s order of permanent revocation, Dr. Cox failed to notify the Board of the entry of that order within ten days as required by 201 KAR 9:081(9)(2)(a)(2). *Id.*

6. Under KRS 311.595(12), a licensee is subject to discipline if he has violated any “valid regulation of the board.”

7. In his response to the *Complaint* Dr. Cox stated that the Ohio Board’s order disciplining his license to practice medicine in that state “speaks for itself” but otherwise denied the factual allegations set forth in that order. *Respondent Dr. Marcus F. Cox’s Answer to Complaint*, numbered paragraph 9, page 2.

8. Dr. Cox asserted he was without sufficient knowledge to know whether the Ohio Board’s order was provided to the Board within ten days as required by 201 KAR 9:081(9)(2)(a)(2). *Id.*, numbered paragraph 11, page 2.

9. After Dr. Cox filed his response, the Board filed its *Motion for Summary Disposition*, asserting there was no need to conduct an evidentiary hearing since there were no material facts in dispute and judgment against Dr. Cox was appropriate as a matter of law under KRS 13B.090(2).

10. Attached to the Board's motion is the *Entry of Order* filed by the Ohio Board which shows that on February 10, 2021, the Ohio Board "permanently revoked" Dr. Cox's license to practice medicine, that he was fined \$6,000, and that the Board received a copy of the Ohio Board's order twenty-nine days later, on March 11, 2021.

11. In response to the Board's motion Dr. Cox "acknowledges the authority of the Board under KRS 311.595(17) to suspend or revoke his Kentucky medical license at this time," but he asserted there remained a factual dispute regarding whether he failed to notify the Board of the Ohio Board's decision within ten days as required by 201 KAR 9:081, Section 9(2)(a)(2). *Respondent's Response to Motion for Summary Disposition*, pages 1-2.

12. Upon receipt of Dr. Cox's response to the Board's motion, the hearing officer requested the parties to stipulate to the date upon which Dr. Cox received the Ohio Board's order of revocation, and they stipulated he received that order on February 13, 2021. See email correspondence attached to the *Order Cancelling Administrative Hearing*, dated June 25, 2021.

13. Therefore, he was required to notify the Board of the entry of the Ohio Board's order no later than February 23, 2021, under the most generous interpretation of 201 KAR 9:081, Section 9(2)(a)(2), which would require a physician to notify the Board of the disciplinary action taken by another state within ten days of the physician's

receipt of the other state's order, rather than within ten days of the issuance of the other state's order.

14. Since Dr. Cox's correspondence to the Board was dated March 8, 2021, and was not received by the Board until March 11, 2021, Dr. Cox failed to comply with the requirements of 201 KAR 9:081, Section 9(2)(a)(2), under either interpretation of the provisions of the regulation.

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 the provisions of KRS Chapter 13B and KRS 311.565(1)(g) and KRS 311.591.

3. Pursuant to KRS 13B.090(2), the hearing officer may submit a recommended order without conducting an evidentiary hearing "if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law."

4. There are no genuine issues of material fact in dispute in this action, and judgement is appropriate as a matter of law.

5. Under KRS 13B.090(7), the Board had the burden to prove by a preponderance of the evidence the allegations against Dr. Cox.

6. The Board has met its burden to prove Dr. Cox violated KRS 311.595(12) and (17).

7. Pursuant to KRS 311.595(12), a licensee is subject to discipline if he "violates any valid regulation of the board," such as 201 KAR 9:081, Section 9(2)(a)(2).

8. Under 201 KAR 9:081, Section 9(2)(a)(2), "every licensee shall report to the board any disciplinary action taken or sanction imposed upon the person's license in any state, including surrendering a license or placing a license into inactive or retired status to resolve a pending licensing investigation, within ten (10) days."

9. Irrespective of whether the appropriate interpretation of 201 KAR 9:081, Section 9(2)(a)(2), requires the ten-day time period for notification to begin upon the issuance of the state board's disciplinary order or upon the licensee's receipt of the order, Dr. Cox did not notify the Board by February 23, 2021, that the Ohio Board had taken action against his license.

10. By failing to notify the Board within ten days of the Ohio Board's action, Dr. Cox violated KRS 311.595(12) by failing to comply with the requirements of 201 KAR 9:081, Section 9(2)(a)(2).

11. Under KRS 311.595(17), a licensee is subject to discipline if he "had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof."

12. Dr. Cox violated KRS 311.595(17) by having his license to practice medicine in Ohio permanently revoked.

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. Marcus F. Cox in violation of KRS 311.595(12) and (17) and take any appropriate action against his license for those violations.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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.

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

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 in the agency's enabling statutes, within thirty (30) days after 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.

Pursuant to KRS 23A.010(4), "Such review [by the 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 RECOMMENDED this 20th day of July, 2021.



THOMAS J. HELLMANN
HEARING OFFICER
810 HICKMAN HILL RD
FRANKFORT KY 40601
(502) 330-7338
thellmann@mac.com

CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDATION was mailed this 20~~th~~ day of July, 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:

SARA FARMER
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

JEREMY S ROGERS
RUDY J ELLIS III
DINSMORE & SHOHL LLP
101 S FIFTH STREET SUITE 2500
LOUISVILLE KY 40202



THOMAS J. HELLMANN

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FILED OF RECORD

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1992

APR 16 2021

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARCUS F. COX, M.D., LICENSE NO. 51821, 4258 RABER ROAD NORTHEAST, DOVER, OHIO 44622

EMERGENCY ORDER OF SUSPENSION

At its April 15, 2021 meeting, the Kentucky Board of Medical Licensure (hereafter “the Board”), acting through its Inquiry Panel A, considered a memorandum prepared by Michael S. Rodman, Executive Director, dated March 25, 2021; correspondence to the licensee from Mr. Rodman, dated February 22, 2021; an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021 submitted by the licensee, dated January 27, 2021; correspondence from Elizabeth Y. Collis, counsel for the licensee, dated March 8, 2021; an Entry of Order before the State Medical Board of Ohio, dated February 10, 2021; and an Emergency Order of Restriction filed March 26, 2021.

Having considered all of this information and being sufficiently advised, Inquiry Panel A ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel A concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Marcus F. Cox, M.D. (“the licensee”), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is Surgery.

3. On or about January 27, 2021, the licensee submitted an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021.

4. The licensee answered "Yes" to Question #3, which asked,

Since you last registered, have you been or are you currently under investigation by any State medical/osteopathic licensing board, Federal or International licensing authority, or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?

5. The licensee answered "Yes" to Question #8, which asked,

Since you last registered, are any legal proceedings regarding licensure presently pending against you by any State, Federal, or International licensure authority or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?

6. The licensee was also licensed by the State Medical Board of Ohio ("Ohio Board").

7. The Ohio Board held an administrative hearing regarding its allegations against the licensee in November 2020.

8. On or about February 10, 2021 the Ohio Board issued an Entry of Order regarding the medical license of the licensee.

9. The Ohio Board concluded that the licensee violated Ohio statutes in the following manner:

a. On or about July 2017, Patient 1 presented to the licensee's office for an examination of skin lesions on her leg, and that during the examination, Dr. Cox asked the patient to stand, that when she complied, Dr. Cox backed her to a wall, lifted her clothing and fondled her breasts, before abruptly leaving the examination room.

b. On or about November 2017 to January 2018, Dr. Cox treated Patient 2 for axillary abscesses, and that during at least two (2) examinations of that patient in his office, Dr. Cox made inappropriate comments to her.

10. The Entry of Order imposed a permanent revocation of the licensee's license to practice medicine in Ohio and imposed a \$6,000 fine.
11. The licensee, through counsel, notified the Board of the Entry of Order by correspondence dated March 8, 2021. The correspondence included a copy of the Entry of Order, however, it was not provided within ten (10) days of the February 10, 2021 entry date as required by the Board's regulation, 201 KAR 9:081(9)(2)(a)(2).

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel A finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated the provisions of KRS 311.595 (12) and (17).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician

has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel A hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by MARCUS F. COX, M.D., is SUSPENDED and Dr. Cox is prohibited from performing any act

which constitutes the “practice of medicine or osteopathy,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

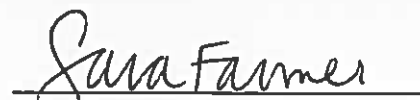
Inquiry Panel A further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 16th day of April, 2021.


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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to the licensee, Marcus F. Cox, M.D., License No. 51821, 2685 Beau Court NW, Apt. 3, Canton, Ohio 44708-1451, and to his counsel, Elizabeth Y. Collis, Dinsmore and Shohl, LLC, 191 W. Nationwide Blvd, Suite 300, Columbus, Ohio 43215 on this 16th day of April, 2021.


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

APR 16 2021

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1992

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IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARCUS F. COX, M.D., LICENSE NO. 51821, 4258 RABER ROAD NORTHEAST, DOVER, OHIO 44622

COMPLAINT

Comes now the Complainant Waqar A. Saleem, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel A, and on behalf of the Panel which met on April 15, 2021, states for its Complaint against the licensee, Marcus F. Cox, M.D., as follows:

1. At all relevant times, Marcus F. Cox, M.D. ("the licensee"), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Surgery.
3. On or about January 27, 2021, the licensee submitted an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021.
4. The licensee answered "Yes" to Question #3, which asked,

Since you last registered, have you been or are you currently under investigation by any State medical/osteopathic licensing board, Federal or International licensing authority, or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?

5. The licensee answered "Yes" to Question #8, which asked,

Since you last registered, are any legal proceedings regarding licensure presently pending against you by any State, Federal, or International licensure authority or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?

6. The licensee was also licensed by the State Medical Board of Ohio ("Ohio Board").

7. The Ohio Board held an administrative hearing regarding its allegations against the licensee in November 2020.
8. On or about February 10, 2021 the Ohio Board issued an Entry of Order regarding the medical license of the licensee.
9. The Ohio Board concluded that the licensee violated Ohio statutes in the following manner:
 - a. On or about July 2017, Patient 1 presented to the licensee's office for an examination of skin lesions on her leg, and that during the examination, Dr. Cox asked the patient to stand, that when she complied, Dr. Cox backed her to a wall, lifted her clothing and fondled her breasts, before abruptly leaving the examination room.
 - b. On or about November 2017 to January 2018, Dr. Cox treated Patient 2 for axillary abscesses, and that during at least two (2) examinations of that patient in his office, Dr. Cox made inappropriate comments to her.
10. The Entry of Order imposed a permanent revocation of the licensee's license to practice medicine in Ohio and imposed a \$6,000 fine.
11. The licensee, through counsel, notified the Board of the Entry of Order by correspondence dated March 8, 2021. The correspondence included a copy of the Entry of Order, however, it was not provided within ten (10) days of the February 10, 2021 entry date as required by the Board's regulation, 201 KAR 9:081(9)(2)(a)(2).
12. By his conduct, the licensee has violated KRS 311.595(12) and (17).

13. Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.

14. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

(a) His failure to respond may be taken as an admission of the charges;

(b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

15. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for June 29, 2021, at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

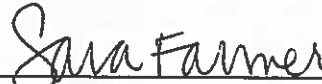
WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine in the Commonwealth of Kentucky held by MARCUS F. COX, M.D.

This 16th day of April, 2021.


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

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed to Thomas J. Hellman, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, Marcus F. Cox, M.D., License No. 51821, , 2685 Beau Court NW, Apt. 3, Canton, Ohio 44708-1451, and to his counsel, Elizabeth Y. Collis, Dinsmore and Shohl, LLC, 191 W. Nationwide Blvd, Suite 300, Columbus, Ohio 43215 on this 16th day of April, 2021.



Sara Farmer
Assistant General Counsel
Kentucky Board of Medical Licensure
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Louisville, Kentucky 40222
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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1992

MAR 26 2021

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARCUS F. COX, M.D., LICENSE NO. 51821, 4258 RABER ROAD NORTHEAST, DOVER, OHIO 44622

EMERGENCY ORDER OF RESTRICTION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through the Chair of its Inquiry Panel A, considered a memorandum prepared by Michael S. Rodman, Executive Director, dated March 25, 2021; correspondence to the licensee from Mr. Rodman, dated February 22, 2021; an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021 submitted by the licensee, dated January 27, 2021; correspondence from Elizabeth Y. Collis, counsel for the licensee, dated March 8, 2021; and an Entry of Order before the State Medical Board of Ohio, dated February 10, 2021.

Having considered all of this information and being sufficiently advised, the Chair of Inquiry Panel A ENTERS the following EMERGENCY ORDER OF RESTRICTION, in accordance with KRS 311.592(1) and 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, the Chair of Inquiry Panel A concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Restriction:

1. At all relevant times, Marcus F. Cox, M.D. ("the licensee"), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Surgery.

3. On or about January 27, 2021, the licensee submitted an Application for Renewal of Kentucky Medical/Osteopathic License for Year 2021.
4. The licensee answered "Yes" to Question #3, which asked,

Since you last registered, have you been or are you currently under investigation by any State medical/osteopathic licensing board, Federal or International licensing authority, or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?
5. The licensee answered "Yes" to Question #8, which asked,

Since you last registered, are any legal proceedings regarding licensure presently pending against you by any State, Federal, or International licensure authority or any drug licensure/enforcement authority with the exception of the Kentucky Medical Board?
6. The licensee was also licensed by the State Medical Board of Ohio ("Ohio Board").
7. The Ohio Board held an administrative hearing regarding its allegations against the licensee in November 2020.
8. On or about February 10, 2021 the Ohio Board issued an Entry of Order regarding the medical license of the licensee.
9. The Ohio Board concluded that the licensee violated Ohio statutes in the following manner:
 - a. On or about July 2017, Patient 1 presented to the licensee's office for an examination of skin lesions on her leg, and that during the examination, Dr. Cox asked the patient to stand, that when she complied, Dr. Cox backed her to a wall, lifted her clothing and fondled her breasts, before abruptly leaving the examination room.
 - b. On or about November 2017 to January 2018, Dr. Cox treated Patient 2 for axillary abscesses, and that during at least two (2) examinations of that patient in his office, Dr. Cox made inappropriate comments to her.

10. The Entry of Order imposed a permanent revocation of the licensee's license to practice medicine in Ohio and imposed a \$6,000 fine.
11. The licensee, through counsel, notified the Board of the Entry of Order by correspondence dated March 8, 2021. The correspondence included a copy of the Entry of Order, however, it was not provided within ten (10) days of the February 10, 2021 entry date as required by the Board's regulation, 201 KAR 9:081(9)(1)(e).

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, the Chair of Inquiry Panel A finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated the provisions of KRS 311.595(9).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician

has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF RESTRICTION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Chair of Inquiry Panel A hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by MARCUS F. COX, M.D., is RESTRICTED and Dr. Cox is prohibited from consulting,

evaluating, diagnosing or otherwise providing treatment for any female patients until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

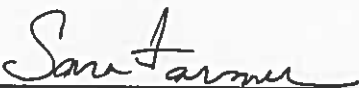
Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 26th day of March, 2021.


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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Restriction was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to the licensee, Marcus F. Cox, M.D., License No. 51821, 4258 Raber Road Northeast, Dover, Ohio 44622, and to his counsel, Elizabeth Y. Collis, Dinsmore and Shohl, LLC, 191 W. Nationwide Blvd, Suite 300, Columbus, Ohio 43215 on this 26th day of March, 2021.


Sara Farmer
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