

FILED OF RECORD

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K.B.M.L

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2025

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY DAVID N. SMITH, M.D., LICENSE NO. 52836, 1600
CHURCHILL DOWNS DRIVE, WAXHAW, NORTH CAROLINA 28173

ORDER OF REVOCATION

On March 17, 2022, 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 Panel reviewed the Complaint, filed November 4, 2021; the Emergency Order of Restriction, filed November 4, 2021; the Motion for Default Ruling, filed December 27, 2021; the hearing officer’s Recommended Order Granting Motion for Default Ruling, dated February 9, 2022; and a memorandum from Board counsel, dated February 25, 2022. The licensee, David N. Smith, M.D., did not file exceptions.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS AND ADOPTS AND INCORPORATES BY REFERENCE the hearing officer’s Recommended Order Granting Motion for Default Ruling into this Order. (Attachment) Having considered all statutorily available sanctions, Hearing Panel B hereby **ORDERS**:

1. The license to practice medicine held by David N. Smith, M.D., is hereby REVOKED and he shall 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. The provisions of KRS 311.607 SHALL apply to any petition for reinstatement filed by the licensee; and
3. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the costs of these proceedings in the amount of \$218.75, prior to filing any petition for reinstatement of his license to practice medicine in the Commonwealth of Kentucky.


SO ORDERED on this 21st day of March, 2022.



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

CERTIFICATE OF SERVICE

I certify that the original of this 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, first-class postage prepaid, to the hearing officer, Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, David N. Smith, M.D., at his mailing addresses of record, 1600 Churchill Downs Drive, Waxhaw, NC, 28173 and 4707 South Blvd., Charlotte, NC 28217 and via email to david.n.smith@yale.edu, on this 21st day of March, 2022.



Leanne K. Diakov
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 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.

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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2025

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID N. SMITH, M.D., LICENSE NO. 52836, 1600 CHURCHILL DOWNS DRIVE, WAXHAM, NORTH CAROLINA 28173

**RECOMMENDED ORDER GRANTING
MOTION FOR DEFAULT RULING**

This action is before the hearing officer on the *Motion for Default Ruling* filed by the Kentucky Board of Medical Licensure. The licensee, Dr. David N. Smith, has not filed a response. After reviewing the Board's motion, the hearing officer finds it has substantial merit and that Dr. Smith is in default. Therefore, the hearing officer recommends the Board issue a Final Order finding Dr. Smith guilty of the allegations set forth in the *Complaint* and take any appropriate action against his license for those violations. In support of his recommendation the hearing officer states the following:

On November 4, 2021, the Board issued the *Complaint* alleging Dr. Smith violated KRS 311.595(12) and (17). *Complaint*, page 3. Under KRS 311.595(12), a physician is subject to discipline for assisting in or abetting the violation of the medical practice act, and under KRS 311.595(17), a physician is subject to discipline if his medical license has been revoked, suspended, restricted, or limited in another state.

In support of those charges the Board alleged that on or about July 19, 2021, Dr. Smith entered into a consent order with the North Carolina Medical Board (the "NCMB") that sanctioned his license to practice medicine. The NCMB found that as the owner of a cardiology practice Dr. Smith neglected his medical practice by employing a nurse practitioner who was the only clinician consistently present at the practice to see

patients. The NCMB also found Dr. Smith neglected his medical practice by failing to inform patients of test results, by failing to follow up on diagnostic studies and formulate a treatment plan, and by failing to be available when patients attempted to contact him. *Complaint*, page 1. The NCMB also found that Dr. Smith was the owner or employee of several other clinics in which he displayed a similar pattern of neglect of his medical practice by “rarely being present at the clinics and [by providing] little supervision of the APPs (Advanced Practice Practitioners) who provided direct patient care.” *Id.*, pages 1-2.

In the consent order the NCMB found Dr. Smith’s conduct “constituted unprofessional conduct, including but not limited to a departure from or failure to conform to the ethics of the medical profession, or the committing of any act contrary to honesty, justice or good morals.” *Id.*, pages 2-3. For his unprofessional conduct the NCMB suspended Dr. Smith’s license to practice medicine for two years, but the suspension was stayed pending Dr. Smith’s compliance with several terms and conditions that included professional coaching and monitoring and restrictions on his practice of medicine. *Id.*, page 3.

In accordance with KRS 311.591(4) the Board mailed the *Complaint* to Dr. Smith by certified mail, return receipt requested, at his last known address of record with the Board. Attachments to the motion show Dr. Smith received copies of the *Complaint* at the two addresses of record with the Board. *Motion for Default Ruling*, Attachments 2 and 3. The Board also represents in its motion that Dr. Smith was served with a copy of the *Complaint* at the email address he had provided to the Board. *Id.*, page 2.

When Dr. Smith did not file a response to the *Complaint* as required by the provisions of KRS 311.591(4), the Board filed the *Motion for Default Ruling*. Thereafter, the hearing officer issued an order directing Dr. Smith to file a response to the Board's motion and a response to the *Complaint* by the deadline set in the order. Dr. Smith did not file anything in response to the hearing officer's order.

As a result of Dr. Smith's failure to respond to the *Complaint* or to the hearing officer's order, Dr. Smith is in default, and under the provisions of KRS 311.591(4), the Board may take his failure to respond to the allegations against him "as an admission of the charges." Based upon the factual allegations in the *Complaint* and his admission to those allegations, Dr. Smith is in violation of KRS 311.595(12) and (17).

Due to the hearing officer's issuance of a recommended order in this action, the administrative hearing scheduled for March 1, 2022, is canceled.

RECOMMENDED ORDER

Dr. David N. Smith is in default, and as a result, the hearing officer recommends the Board issue a Final Order finding the factual allegations in the *Complaint* to be true and that Dr. Smith has violated KRS 311.595(12) and 1(17). The hearing officer further recommends the Board take any appropriate action against Dr. Smith's 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

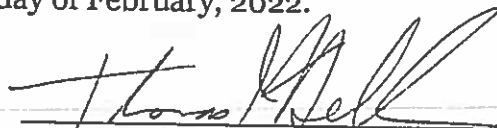
mailed within which to file exceptions to the recommendations with the agency head.

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 9th day of February, 2022.



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 9th day of February, 2022, 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:

DAVID N SMITH MD
1600 CHURCHHILL DOWNS DR
WHISH NC 28173

DAVID N SMITH MD
4707 SOUTH BOULEVARD
CHARLOTTE NC 28217

LEANNE K DIAKOV
GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222


THOMAS J. HELLMANN

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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2025

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID N. SMITH, M.D., LICENSE NO. 52836, 1600 CHURCHILL DOWNS DRIVE, WAXHAW, NORTH CAROLINA 28173

EMERGENCY ORDER OF RESTRICTION

The Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, considered this matter at its October 21, 2021, meeting. At that meeting, Inquiry Panel A reviewed a memorandum from Michael S. Rodman, Executive Director, dated October 5, 2021; a North Carolina Medical Board Consent Order, *In re: David Nathaniel Smith, M.D.*, dated on or about July 19, 2021; an email from Jessica Shelman with attachment, dated September 9, 2021; and considered email correspondence from the licensee to Ms. Shelman, dated October 20, 2021. The licensee was given notice of the meeting but did not appear.

Having considered all of this information and being sufficiently advised, 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, 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, David N. Smith, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is cardiovascular disease.

3. The licensee is also licensed to practice medicine in the State of North Carolina.
4. On or about July 19, 2021, the licensee entered into a Consent Order with the North Carolina Medical Board (“NCMB”) in which he admitted the following findings of facts:

The licensee owns Premier Cardiology in Charlotte. The practice was managed by an outside entity and employed a nurse practitioner (“NP”). In the Spring of 2019, the NCMB received complaints that the NP became the only clinician consistently present at the practice seeing patients and that the licensee was neglecting the practice. The allegations of neglect included a patient not being informed of diagnostic test results. In addition to not informing the patient or her primary care physician of the test results, the licensee reportedly failed to follow up on these diagnostic studies and formulate a treatment plan in response to the test results. When the patient attempted to contact the licensee to learn of test results, she was either unable to reach him or unable to leave messages on his voicemail. The NCMB received other complaints from patients being unable to reach the licensee despite numerous phone calls.

During this period of time, the licensee accepted other employment, including becoming the registered owner and Medical Director of Dynamic Health (a practice ostensibly owned by a chiropractor which offered integrative medicine therapies), a low testosterone clinic, and an opioid use disorder treatment or “Suboxone” clinic. The licensee also accepted locum tenens assignments, some of which were out of state. These additional practices and work assignments together contributed to the licensee’s lack of presence at Premier Cardiology.

The employed NP who was left running Premier Cardiology received little supervision from the licensee. Admission orders and other necessary documents went unsigned by the licensee, causing the practice to lose revenue. The NP and other staff employed by Premier Cardiology’s outside management company reported that by the end of their employment at Premier Cardiology, they were essentially working without pay.

In 2019, the licensee became the owner of the aforementioned Dynamic Health Medical Group, PLLC. Dynamic Health markets itself as an anti-aging medical practice. Dynamic Health & Pain Management was the subject of a prior NCMB investigation for violating the Corporate Practice of Medicine Doctrine. As a general rule, with few exceptions none of which are applicable here, NC medical practices must be owned by NCMD licensees. Dynamic Health attempts to circumvent the rule of physician ownership by setting up a physician as a “straw owner.” A “straw owner”

has no control over the practice, does not enjoy the profits of the practice, does not control the revenue of the practice, and cannot sell his or her ownership interest in the practice without the permission from the de facto lay owner, who in this case was Peter Cox, DC. A medical practice which follows the straw owner model of health care generally relies on advanced practice practitioners ("APP"), primarily physician assistants and nurse practitioners, to provide direct care to patients. The physician straw owner of the practice also serves as the primary supervising physician for the APPs and usually is not on site at the practice. The licensee was reported to be rarely at the practice despite being the primary supervising physician for the APPs employed by Dynamic Health.

Not only did the licensee agree to supervise the APPs at Dynamic Health, but he also supervised multiple APPs at the low testosterone clinic as well as his Suboxone clinic. Interviews of those APPs confirmed a similar pattern of the licensee rarely being present at the clinics and that he provided little supervision of the APPs who provided direct patient care.

5. Pursuant to the NCMB Consent Order, the licensee's conduct constituted unprofessional conduct, including but not limited to a departure from or failure to conform to the ethics of the medical profession, or the committing of any act contrary to honesty, justice or good morals.
6. Pursuant to the NCMB Consent Order, the licensee's North Carolina medical license became suspended for two years, with that suspension "stayed" upon the following substantive terms and conditions:
 - The licensee shall participate in a NCMB-approved executive coaching program;
 - The licensee shall practice in a NCMB-approved hospital or group practice setting and have a NCMB-approved practice monitor;
 - The licensee shall not own or operate his own practice, nor shall he be the medical director of a practice; and
 - The licensee shall not be the primary supervising physician for any APP.
7. The licensee did not report the NCMB Consent Order to this Board within ten (10) days as required by 201 KAR 9:081.

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 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 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 not a 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, Inquiry Panel A hereby ORDERS that, until such time as the Board's Hearing Panel B enters a final order resolving the simultaneously issued Complaint herewith, the license to practice medicine in the Commonwealth of Kentucky held by David N. Smith, M.D., is RESTRICTED as follows:

- The licensee SHALL NOT perform any act which would constitute the "practice of medicine or osteopathy," as that term is defined in 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 – *unless and until* the Inquiry Panel has approved, *in writing*, both the practice location at which he will practice medicine in the

Commonwealth of Kentucky and a Monitoring Physician, who shall be on-site at the same practice location at any and all times during which the licensee is engaged in the practice of medicine. The licensee shall neither request nor be approved to practice in any location *other than* a hospital or group practice setting in which he has identified and the Inquiry Panel has approved a Monitoring Physician;

- The licensee SHALL NOT own or operate his own practice within the Commonwealth of Kentucky;
- The licensee SHALL NOT serve as the medical director of any practice within the Commonwealth of Kentucky; and
- The licensee SHALL NOT supervise physician assistants, nurse practitioners or clinical pharmacist practitioners in the Commonwealth of Kentucky.

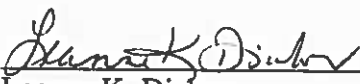
The Chair of Inquiry Panel A further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 4th day of November, 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; and copies were mailed via certified mail return-receipt requested to the licensee, David N. Smith, M.D., at his mailing addresses of record, 1600 Churchhill Downs Drive, Waxhaw, NC, 28173 and 4707 South Blvd., Charlotte, NC 28217 and via email to david.n.smith@yale.edu, on this 4th day of November, 2021.


Leanne K. Diakov
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
Tel. (502) 429-7150

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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2025

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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 October 21, 2021, states for its Complaint against the licensee, David N. Smith, M.D., as follows:

1. At all relevant times, David N. Smith, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is cardiovascular disease.
3. The licensee is also licensed to practice medicine in the State of North Carolina.
4. On or about July 19, 2021, the licensee entered into a Consent Order with the North Carolina Medical Board ("NCMB") in which he admitted the following findings of facts:

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5. Pursuant to the NCMB Consent Order, the licensee's conduct constituted unprofessional conduct, including but not limited to a departure from or failure to

conform to the ethics of the medical profession, or the committing of any act contrary to honesty, justice or good morals.

6. Pursuant to the NCMB Consent Order, the licensee's North Carolina medical license became suspended for two years, with that suspension "stayed" upon the following substantive terms and conditions:

- The licensee shall participate in a NCMB-approved executive coaching program;
- The licensee shall practice in a NCMB-approved hospital or group practice setting and have a NCMB-approved practice monitor;
- The licensee shall not own or operate his own practice, nor shall he be the medical director of a practice; and
- The licensee shall not be the primary supervising physician for any APP.

7. The licensee did not report the NCMB Consent Order to this Board within ten (10) days as required by 201 KAR 9:081.

8. By his conduct, the licensee has violated the provisions of KRS 311.595(12) and (17).

9. Accordingly, legal grounds exist for disciplinary action against the licensee's Kentucky medical license.

10. 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.

11. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for March 1, 2022, 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 held by DAVID N. SMITH, M.D.

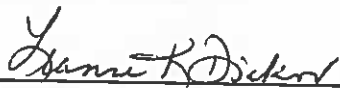
This 4th day of November, 2021.



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. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, David N. Smith, M.D., at his mailing addresses of record, 1600 Churchhill Downs Drive, Waxhaw, NC, 28173 and 4707 South Blvd., Charlotte, NC 28217 and via email to david.n.smith@yale.edu, on this 4th day of November, 2021.



Leanne K. Diakov
General Counsel
Kentucky Board of Medical Licensure
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