

FILED OF RECORD

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1889

NOV 30 2018

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID J. MARWIL, M.D., LICENSE NO. 17918, 1517 NICHOLASVILLE ROAD, LEXINGTON, KENTUCKY 40503

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and David J. Marwil, M.D., (hereafter "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, David J. Marwil, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. On or about May 10, 2018, the Office of Inspector General, Division of Audits and Investigations, Kentucky Drug Enforcement and Professional Practices ("OIG") received a complaint from a pharmacist regarding the licensee's prescribing of Norco 7.5mg, a Schedule II opioid, to his son.
4. Jill Lee, R.Ph. and Investigator with OIG, noted that she previously met with the licensee in 2016 when it was discovered during a doctor-shopping case that the licensee was failing to use KASPER prior to prescribing controlled substances.

During a January 2016 interview with the licensee, Ms. Lee learned that the licensee was unaware of other laws established by House Bill 1 and recommended he become educated on the new requirements related to prescribing controlled substances.

5. In March 2016, Ms. Lee revisited the licensee and again urged the licensee to become compliant with House Bill 1 requirements after learning that the licensee had not conducted any baseline or random drug screens on a patient receiving long-term pain management prescriptions.
6. In June 2017, Ms. Lee reviewed and analyzed the licensee's KASPER records (dated June 13, 2017 to June 13, 2018) and noted several concerns, including:
 - While the licensee issued controlled substance prescriptions to approximately 225 patients, he only obtained KASPER reports for 20 patients;
 - Relationship to the provider;
 - Long-term use of one or more controlled substances; and
 - Addictive drug combinations;

Ms. Lee identified sixteen (16) of the licensee's patients for further investigation by the Board.

7. The licensee's KASPER report indicated that between August 2017 and May 2018, the licensee had prescribed Gabapentin, Tramadol, Acetaminophen/Codeine, Hydrocodone/Acetaminophen, and Alprazolam at various times to his son. The KASPER report also indicated that the licensee had prescribed Testosterone to his wife in December 2017.
8. A review of the patient chart on the licensee's son revealed that the licensee ran a KASPER report on his son on July 18, 2018, the same date that the Board investigator presented the licensee with the grievance in this case.

9. A review of the patient chart on the licensee's wife revealed that the licensee ran a KASPER report on his wife on July 22, 2018, four (4) days after the Board investigator presented the licensee with the grievance in this case.
10. During an interview with the Board investigator, the licensee stated that he was not as diligent at running KASPER reports as he should have been. The licensee stated that he had prescribed hydrocodone for his son once or twice for lower back pain and that he had prescribed gabapentin to his wife for pain.
11. The licensee responded in writing to the grievance on or about July 30, 2018. The licensee explained circumstances that he believed justified prescribing controlled substances to his son.
12. A Board consultant reviewed the licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices in regard to diagnoses in eleven (11) charts, in regard to treatment in thirteen (13) charts, in regard to record keeping in two (2) charts, and overall in ten (10) charts.
13. In three (3) patient charts, the Board consultant found the licensee's conduct to rise to the level of gross ignorance and incompetence.
14. The licensee responded in writing to the Board consultant's review on or about October 7, 2018.
15. In a final report dated October 23, 2018, the Board consultant replied to the licensee's comments. His opinion of the original review did not change.
16. On November 15, 2018, the Board's Inquiry Panel B reviewed the investigation and the licensee, with counsel, appeared before and was heard by the Panel before

it deliberated. The Panel and the licensee agreed to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(12). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending investigation without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending investigation without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER:**

1. The license to practice medicine in the Commonwealth of Kentucky held by **DAVID J. MARWIL, M.D.**, is **RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME**, 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 OF RESTRICTION/LIMITATION until further order of the Board:

- a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
- b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the *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, within six (6) months of the filing of this Agreed Order;
 - 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;
- c. Within six (6) months of the filing of this Agreed Order, the licensee SHALL sit for and pass the Special Purpose Examination (SPEX) through the Federation of State Medical Boards (FSMB), P.O. Box 619850, Dallas, TX 75261-9850, phone (817) 868-4000;
 - i. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that FSMB will provide a copy of the SPEX results to the Board's Legal Department promptly after its completion;
- d. Within six (6) months of the filing of this Agreed Order, the licensee SHALL reimburse the Board's costs of the investigation in the amount of \$2,712.50; and

- e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly understands and agrees that the Panel SHALL NOT consider a request to resume the professional utilization of controlled substances unless and until the licensee submits proof that:
 - a. He successfully completed, on or after the date of entry of this Agreed Order and at his expense, a Board-approved course relating to HB1 from the approved course list available on the Board's website at <http://kbml.ky.gov>; and
 - b. He successfully completed, on or after the date of entry of this Agreed Order and at his expense, *either* the "Prescribing Controlled Drugs" course at The Center for Professional Health at Vanderbilt University Health Center, Nashville, Tennessee, Tel. (615) 936-0678, *or* "RX-21, PBI Prescribing Course: Opioids, Pain Management and Addiction" offered at multiple locations through Professional Boundaries, Inc., Tel. (904) 860-6204.
4. The licensee expressly understands and agrees that if the Panel should grant the licensee's request to resume the prescribing, dispensing or professional utilization of controlled substances in the future, it will do so by an Amended Agreed Order, which shall at least require that:
 - a. The licensee maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for at least two (2) favorable consultant reviews of the log and relevant records by Board agents before the order may be terminated;
 - b. The licensee fully comply with the provisions of 201 KAR 9:260, Professional Standards for Prescribing or Dispensing Controlled Substances and the professional standards applicable to the licensee's specialty; and
 - c. Any other conditions deemed necessary by the Panel or Panel Chair at that time.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125.

The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

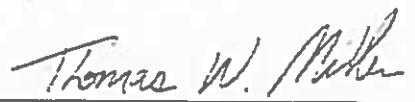
6. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 26th day of November, 2018

FOR THE LICENSEE:



DAVID J. MARWIL, M.D.



THOMAS W. MILLER
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

Sandra R. Shuffett MD

SANDRA R. SHUFFETT, M.D.
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