

DEC 14 2016

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 2725  
JAMES SANDERS BOULEVARD, SUITE A, PADUCAH, KENTUCKY 42001

**AMENDED ORDER OF INDEFINITE RESTRICTION**

At its November 17, 2016, 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 Complaint; the Hearing Officer's Recommended Order Granting Motion for Summary Disposition, filed of record October 31, 2016; an Amended Agreed Order, filed of record April 8, 2013; and an October 31, 2016, memorandum from the Board's counsel.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS the hearing officer's Recommended Order Granting Motion for Summary Disposition and ADOPTS the Recommended Order Granting Motion for Summary Disposition and INCORPORATES it BY REFERENCE into this Order. (Attachment) 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 Sean P. McDonald, M.D., SHALL BE RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME to begin immediately upon the date of filing of this Amended Order of Indefinite Restriction and continuing until further order of the Board;
2. During the effective period of this Amended Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION:

- a. Pursuant to 201 KAR 9:081 Section (9), the licensee is hereby permanently banned from prescribing, dispensing, or otherwise professionally utilizing controlled substances. Neither the Board nor the licensee shall request or consider this term to be subject to modification or termination;
- b. From the effective date of this Amended Order of Indefinite Restriction and continuing up to and through June 11, 2017:
  - i. The licensee SHALL NOT perform any act which would constitute the “practice of medicine,” 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 Panel or its Chair has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee’s proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions to ensure patient safety;
    - 1. The licensee is hereby approved to practice at Integrative Medicine and Chiropractic Regeneration Center, 2752 James Sanders Boulevard, Suite A, Paducah, Kentucky 42001;
  - ii. The licensee SHALL arrange for his employer or a supervising physician at the approved practice location to provide written reports to the Panel, every six (6) months during the effective period of this Order of Indefinite Restriction, detailing the licensee’s clinical competence;
  - iii. The licensee SHALL maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
  - iv. 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 must 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 must 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 Amended Order of Indefinite Restriction;

- v. 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 remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports will be paid by the licensee, and the licensee will 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 Amended Order of Indefinite Restriction; and

- c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

SO ORDERED on this 14<sup>th</sup> day of December, 2016.



RUSSELL L. TRAVIS, M.D.  
CHAIR, HEARING PANEL B

### CERTIFICATE OF SERVICE

I certify that the original of the foregoing Amended 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 copies were mailed, first-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and via certified-mail return receipt requested to the licensee, Sean P. McDonald, M.D., License No. 36051, 2725 James Sanders Blvd, Suite A, Paducah, Kentucky, 42001, and his counsel, Brian Good, Elder & Good, PLLC, 159 St. Matthews Avenue, Suite 1, Louisville, Kentucky 40207, on this 14<sup>th</sup> day of December, 2016.



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 of Indefinite Restriction 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.

FILED OF RECORD

OCT 31 2016

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 6420  
TUSCAN ROAD, KENTUCKY 42001

RECOMMENDED ORDER GRANTING  
MOTION FOR SUMMARY DISPOSITION

This action is before the hearing officer on the *Motion for Summary Disposition* filed by the Kentucky Board of Medical Licensure, and Dr. Sean P. McDonald has filed a response opposing the motion. *Response to Motion for Summary Disposition*. After reviewing the parties' pleadings and arguments and the applicable law, the hearing officer finds there is substantial merit to the Board's motion. Therefore, he recommends the Board issue a Final Order finding Dr. McDonald has engaged in the misconduct and has violated the Board's statutes as alleged in the *Complaint*. The hearing officer further recommends the Board take any appropriate action against Dr. McDonald's license for his violations of the Board's statutes governing the practice of medicine. In support of his recommendation the hearing officer states the following:

On August 18, 2016, the Board issued the *Complaint* alleging Dr. McDonald violated three sections of KRS 311.595. The Board charged that he had entered a guilty plea to a crime that is a felony under the laws of Kentucky or of the United States in violation of KRS 311.595(4), had knowingly made a false statement in a document executed in connection with his practice of medicine in violation of KRS 311.595(10), and had violated the terms of an agreed order issued by the Board in violation of KRS 311.595(13). *Complaint*, page 10.

In support of those violations the Board alleged that in October 2010 Dr. McDonald was evaluated by the Kentucky Physicians Health Foundation and was under contract with that organization beginning in January 2011 as a result of his illegal drug use and his drug dependence. *Complaint*, pages 4-5. The Board also alleged that in November 2011 Dr. McDonald was allowed to resume the practice of medicine in accordance with the terms set forth in the parties' *Agreed Order of Indefinite Restriction. Id.*, page 5. The Board further alleged that in May 2012 the parties entered into an amended agreed order that allowed Dr. McDonald to practice medicine in accordance with specific terms and conditions, and in March 2013 the Board authorized him to practice in a non-surgical environment pursuant to the terms set forth in the parties' *Amended Agreed Order. Id.*, page 6. Dr. McDonald does not dispute any of those allegations. *Answer*, page 1.

Dr. McDonald has also admitted that on June 22, 2016, he was charged with, and pled guilty to numerous federal felony charges. He admitted to having pled guilty to the possession of a controlled substance, Dilaudid, by misrepresentation, fraud, forgery, deception or subterfuge, and he admitted having lawfully obtained the medication for his patients but never provided it to them. *Complaint*, pages 6-10, *Answer*, page 1. Dr. McDonald also admitted that he pled guilty to wire fraud charges related to his obtaining money or property by false pretense, and he admitted that he pled guilty to making false statements to health insurers by indicating he provided medications and controlled substances to patients when, in fact, he did not. *Complaint*, pages 6-7; *Answer*, page 1.

Attached to the Board's *Motion for Summary Disposition* are Dr. McDonald's *Plea Agreement* in his criminal case and the *Order* of the United States District Court dated July 1,

2016. Those documents show that Dr. McDonald admitted to defrauding health insurance carriers and to obtaining Dilaudid by misrepresentation, fraud, and deception, and that he pled guilty to twelve criminal charges relating to that misconduct, which is the same misconduct as alleged in the *Complaint. Plea Agreement*, page 2; *Order*, page 2. For those crimes Dr. McDonald faced a maximum term of imprisonment of 113 years, a combined maximum fine of \$3,000,000, and a three year term of supervised release. *Plea Agreement*, page 2.

Also attached to the *Motion for Summary Disposition* is the *Amended Agreed Order* entered by the Board and Dr. McDonald that was filed of record on April 8, 2013. That order was effective for a period of five years, and among other provisions, he was prohibited from violating any provisions of the *Amended Agreed Order* or the provisions of KRS 311.595 or KRS 311.597. *Amended Agreed Order*, page 11.

In his *Response to Motion for Summary Disposition* Dr. McDonald acknowledges that he has entered a guilty plea to felony offenses in violation of KRS 311.595(4), but he does not acknowledge having violated KRS 311.595(10) or (13). In addition, he asserts there are genuine issues of material fact in dispute relating to those charges and that the provisions of KRS Chapter 13B do not authorize summary disposition in lieu of an administrative hearing.

The hearing officer disagrees with Dr. McDonald's assertions. Under KRS 13B.090(2), the hearing officer "may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law." In this action the Board has filed a written motion for summary disposition, and the facts as acknowledged by the parties show there

are no material facts in dispute and that Dr. McDonald is in violation of several of the Board's statutes. Therefore, the Board is entitled to judgment as a matter of law.

Dr. McDonald is in violation of KRS 311.595(4) as a result of his pleading guilty to twelve felony offenses. He has violated KRS 311.595(10) as a result of his pleading guilty to criminal conduct involving knowingly making false and fraudulent statements in documents submitted to health insurance carriers for payment for controlled substances that were never provided to patients. Dr. McDonald is in violation of KRS 311.595(13) as a result of his violating the terms of his *Amended Agreed Order* that prohibited him from violating any provision of KRS 311.595 during the period of time that the parties' agreed order was in effect.

#### **RECOMMENDED ORDER**

Based upon the undisputed facts and Dr. McDonald's violations of the Board's statutes, the hearing officer recommends the Board issue a Final Order finding Dr. McDonald guilty of the allegations against him as set forth in the *Complaint*. The hearing officer also recommends that the Board take any appropriate action against Dr. McDonald's license based upon his violations of KRS 311.595(4), (10), and (13).

#### **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 27<sup>th</sup> day of October, 2016.



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 27<sup>th</sup> day of October, 2016, 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:

BRIAN R GOOD  
L CHAD ELDER  
ELDER & GOOD PLLC  
159 ST MATTHEWS AVE STE 1  
LOUISVILLE KY 40207

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

  
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THOMAS J. HELLMANN

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NOV 22 2016

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 6420  
TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**ORDER OF INDEFINITE RESTRICTION**

At its November 17, 2016, 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 Complaint; the Hearing Officer's Recommended Order Granting Motion for Summary Disposition, filed of record October 31, 2016; an Amended Agreed Order, filed of record April 8, 2013; and an October 31, 2016, memorandum from the Board's counsel.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS the hearing officer's Recommended Order Granting Motion for Summary Disposition and ADOPTS the Recommended Order Granting Motion for Summary Disposition and INCORPORATES it BY REFERENCE into this Order. (Attachment) 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 Sean P. McDonald, 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 and continuing until further order of the Board;
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. Pursuant to 201 KAR 9:081 Section (9), the licensee is hereby permanently banned from prescribing, dispensing, or otherwise professionally utilizing controlled substances. Neither the Board nor the licensee shall request or consider this term to be subject to modification or termination;
- b. From the effective date of this Order of Indefinite Restriction and continuing up to and through June 11, 2017:
  - i. The licensee SHALL NOT perform any act which would constitute the "practice of medicine," 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 Panel or its Chair has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions to ensure patient safety;
    - 1. The licensee is hereby approved to practice at the Lone Oak Chiropractic Wellness and Rehab Center, 125 Augusta Avenue, Suite D, Paducah, Kentucky 42003;
  - ii. The licensee SHALL arrange for his employer or a supervising physician at the approved practice location to provide written reports to the Panel, every six (6) months during the effective period of this Order of Indefinite Restriction, detailing the licensee's clinical competence;
  - iii. The licensee SHALL maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
  - iv. 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 must 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 must 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 of Indefinite Restriction;

- v. 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 remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports will be paid by the licensee, and the licensee will 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 of Indefinite Restriction; and
- c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

SO ORDERED on this 22<sup>nd</sup> day of November, 2016.



RUSSELL L. TRAVIS, M.D.  
CHAIR, HEARING 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 copies were mailed, first-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and via certified-mail return receipt requested to the licensee, Sean P. McDonald, M.D., License No. 36051, 6420 Tuscan Road, Paducah, Kentucky, 42001, and his counsel, Brian Good, Elder & Good, PLLC, 159 St. Matthews Avenue, Suite 1, Louisville, Kentucky 40207, on this 22<sup>nd</sup> day of November, 2016.



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 of Indefinite Restriction 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.

FILED OF RECORD

OCT 31 2013

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 6420  
TUSCAN ROAD, KENTUCKY 42001

RECOMMENDED ORDER GRANTING  
MOTION FOR SUMMARY DISPOSITION

This action is before the hearing officer on the *Motion for Summary Disposition* filed by the Kentucky Board of Medical Licensure, and Dr. Sean P. McDonald has filed a response opposing the motion. *Response to Motion for Summary Disposition*. After reviewing the parties' pleadings and arguments and the applicable law, the hearing officer finds there is substantial merit to the Board's motion. Therefore, he recommends the Board issue a Final Order finding Dr. McDonald has engaged in the misconduct and has violated the Board's statutes as alleged in the *Complaint*. The hearing officer further recommends the Board take any appropriate action against Dr. McDonald's license for his violations of the Board's statutes governing the practice of medicine. In support of his recommendation the hearing officer states the following:

On August 18, 2016, the Board issued the *Complaint* alleging Dr. McDonald violated three sections of KRS 311.595. The Board charged that he had entered a guilty plea to a crime that is a felony under the laws of Kentucky or of the United States in violation of KRS 311.595(4), had knowingly made a false statement in a document executed in connection with his practice of medicine in violation of KRS 311.595(10), and had violated the terms of an agreed order issued by the Board in violation of KRS 311.595(13). *Complaint*, page 10.

In support of those violations the Board alleged that in October 2010 Dr. McDonald was evaluated by the Kentucky Physicians Health Foundation and was under contract with that organization beginning in January 2011 as a result of his illegal drug use and his drug dependence. *Complaint*, pages 4-5. The Board also alleged that in November 2011 Dr. McDonald was allowed to resume the practice of medicine in accordance with the terms set forth in the parties' *Agreed Order of Indefinite Restriction. Id.*, page 5. The Board further alleged that in May 2012 the parties entered into an amended agreed order that allowed Dr. McDonald to practice medicine in accordance with specific terms and conditions, and in March 2013 the Board authorized him to practice in a non-surgical environment pursuant to the terms set forth in the parties' *Amended Agreed Order. Id.*, page 6. Dr. McDonald does not dispute any of those allegations. *Answer*, page 1.

Dr. McDonald has also admitted that on June 22, 2016, he was charged with, and pled guilty to numerous federal felony charges. He admitted to having pled guilty to the possession of a controlled substance, Dilaudid, by misrepresentation, fraud, forgery, deception or subterfuge, and he admitted having lawfully obtained the medication for his patients but never provided it to them. *Complaint*, pages 6-10, *Answer*, page 1. Dr. McDonald also admitted that he pled guilty to wire fraud charges related to his obtaining money or property by false pretense, and he admitted that he pled guilty to making false statements to health insurers by indicating he provided medications and controlled substances to patients when, in fact, he did not. *Complaint*, pages 6-7; *Answer*, page 1.

Attached to the Board's *Motion for Summary Disposition* are Dr. McDonald's *Plea Agreement* in his criminal case and the *Order* of the United States District Court dated July 1,



2016. Those documents show that Dr. McDonald admitted to defrauding health insurance carriers and to obtaining Dilaudid by misrepresentation, fraud, and deception, and that he pled guilty to twelve criminal charges relating to that misconduct, which is the same misconduct as alleged in the *Complaint. Plea Agreement*, page 2; *Order*, page 2. For those crimes Dr. McDonald faced a maximum term of imprisonment of 113 years, a combined maximum fine of \$3,000,000, and a three year term of supervised release. *Plea Agreement*, page 2.

Also attached to the *Motion for Summary Disposition* is the *Amended Agreed Order* entered by the Board and Dr. McDonald that was filed of record on April 8, 2013. That order was effective for a period of five years, and among other provisions, he was prohibited from violating any provisions of the *Amended Agreed Order* or the provisions of KRS 311.595 or KRS 311.597. *Amended Agreed Order*, page 11.

In his *Response to Motion for Summary Disposition* Dr. McDonald acknowledges that he has entered a guilty plea to felony offenses in violation of KRS 311.595(4), but he does not acknowledge having violated KRS 311.595(10) or (13). In addition, he asserts there are genuine issues of material fact in dispute relating to those charges and that the provisions of KRS Chapter 13B do not authorize summary disposition in lieu of an administrative hearing.

The hearing officer disagrees with Dr. McDonald's assertions. Under KRS 13B.090(2), the hearing officer "may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law." In this action the Board has filed a written motion for summary disposition, and the facts as acknowledged by the parties show there

are no material facts in dispute and that Dr. McDonald is in violation of several of the Board's statutes. Therefore, the Board is entitled to judgment as a matter of law.

Dr. McDonald is in violation of KRS 311.595(4) as a result of his pleading guilty to twelve felony offenses. He has violated KRS 311.595(10) as a result of his pleading guilty to criminal conduct involving knowingly making false and fraudulent statements in documents submitted to health insurance carriers for payment for controlled substances that were never provided to patients. Dr. McDonald is in violation of KRS 311.595(13) as a result of his violating the terms of his *Amended Agreed Order* that prohibited him from violating any provision of KRS 311.595 during the period of time that the parties' agreed order was in effect.

#### **RECOMMENDED ORDER**

Based upon the undisputed facts and Dr. McDonald's violations of the Board's statutes, the hearing officer recommends the Board issue a Final Order finding Dr. McDonald guilty of the allegations against him as set forth in the *Complaint*. The hearing officer also recommends that the Board take any appropriate action against Dr. McDonald's license based upon his violations of KRS 311.595(4), (10), and (13).

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

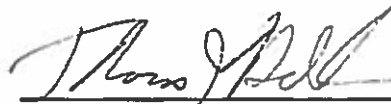
A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

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 27<sup>th</sup> day of October, 2016.



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 27<sup>th</sup> day of October, 2016, 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:

BRIAN R GOOD  
L CHAD ELDER  
ELDER & GOOD PLLC  
159 ST MATTHEWS AVE STE 1  
LOUISVILLE KY 40207

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

  
THOMAS J. HELLMANN

1742FC

AUG 18 2016

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051,  
6420 TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**COMPLAINT**

Comes now the Complainant C. William Briscoe, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel A, and on behalf of the Panel which met on August 18, 2016, states for its Complaint against the licensee, Sean P. McDonald, M.D., as follows:

1. At all relevant times, Sean P. McDonald, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is neurological surgery.
3. At all relevant times prior to October 4, 2010, the licensee maintained privileges to practice at Lourdes Hospital, in Paducah Kentucky.
4. According to Patient A, on or about September 26, 2010, the licensee entered Patient A's room at Lourdes Hospital around midnight and told her that he was there to check her Medtronic pain pump but would not explain to her why it was necessary. The licensee took a syringe with needle out of his coat pocket and poked around the site of her pump multiple times until he extracted a clear liquid with what appeared to be some blood in it. The procedure was very painful, causing Patient A to scream and requiring nurses to come into the room and hold her hand to calm her down. The licensee left the room after the patient told him not to touch her anymore. Patient A reported the incident to her pain management

physician, Riley Love, M.D., who took pictures of the needle marks around her pump site and refilled her pain pump.

5. On or about October 1, 2010, Patient A made an official complaint about her encounter with the licensee to Lourdes Hospital.
6. According to Riley Love, M.D., the pain management physician for Patient A, he never asked the licensee to see Patient A but did speak to the licensee after the events of September 26, 2010. The licensee told Dr. Riley that he saw Patient A's x-ray at the hospital and thought there may have been a problem with her pump and that after checking the pump, he concluded that the pain medication had been infused in the area around her the pump and not directly into it. Dr. Love noted that it is very important to check the port side of the pump if one is trying to determine if the pump is working correctly, but there is simply no reason to access the injection site except for the purpose of adding or removing medication. Based upon Dr. Love's physical examination of Patient A, it was clear that the licensee actually tried multiple times to access Patient A's injection site rather than the port side of the device. In addition, Dr. Love stated that providers typically use a clear plastic device which is placed on the skin over the injection site and clearly shows where to insert the needle. However, it was apparent that the licensee did not use such a device, which would account for his multiple attempts.
7. According to Patient B, on or about June 25, 2010, the licensee placed a pain pump in him at Lourdes Hospital. On or about July 16, 2010, the licensee replaced Patient B's pump at Western Baptist Hospital. In August 2010, Patient

B became concerned that the pain pump was not functioning properly. Patient B told the licensee of his concerns when he ran into the licensee at Lourdes Hospital while visiting his mother there. The licensee told Patient B to go to Western Baptist Hospital and he would check his pain pump there. At Western Baptist Hospital, the licensee stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee also told Patient B that he would “turn up” the pain pump. Patient B noticed that the licensee did not use any of the same instruments for adjusting the pain pump as used by his usual pain management physician, Riley Love, M.D. After leaving Western Baptist Hospital, Patient B suffered extreme pain. Patient B’s mother and brother told him that the licensee was looking for him and wanted him to report to the emergency room at Lourdes Hospital. When he presented at Lourdes, the licensee again stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee told Patient B that he would go to the pharmacy to get some medicine to put in to the pump to see if he could use it to pull any medicine back out of it. He returned a short time later and injected medicine into Patient B’s pump and then left again. The licensee returned with one of Dr. Love’s nurses and then explained that he would refill Patient B’s pain pump so that Dr. Love would not have to do it in a couple of days. Patient B believed it to be odd that the licensee then filled his pain pump, because the nurses usually did that task. Patient B did not see the licensee again. Patient B’s pain pump was replaced by another provider in January 2011.

8. In the fall of 2010, Laura Madison, Pharmacy Director at Lourdes Hospital, was notified by her staff that the licensee had not accounted for Dilaudid that he obtained from the hospital pharmacy for administration to a patient. After reviewing pharmacy records, she reported the incident to the Lourdes Hospital administration.
9. On or about October 4, 2010, Joseph Pittard, M.D., President of Lourdes Medical Staff called the licensee to his office to inquire about suspicions that the licensee had signed Dilaudid out of the hospital pharmacy without accounting for its use and an allegation that the licensee removed Dilaudid from a patient's pain pump.
10. During the interview, the licensee agreed to a physical exam. Tracking marks and injection sites were noted on his body. A ziplock bag containing a syringe with needle and a vial of saline and a vial of Dilaudid were found hidden in the licensee's left sock.
11. The licensee admitted to illegal drug usage and dependence and was admitted to Lourdes Hospital for psychiatric intervention and drug detoxification.
12. Following these events, and also on October 4, 2010, the Lourdes Medical Executive Committee suspended the licensee's privileges at Lourdes Hospital.
13. On or about October 13, 2010, the licensee was evaluated at the Kentucky Physicians Health Foundation ("the Foundation") and, upon its recommendation, entered into residential treatment at Metro Atlanta Recovery Residences ("MARR") on or about October 19, 2010.



14. On or about January 22, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.
15. Upon discharge, MARR concluded that Dr. McDonald was “physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor.”
16. On or about January 25, 2011, the licensee entered into an Aftercare Contract with the Foundation.
17. During the Board’s investigation of this matter, Patient A’s and Patient B’s medical records were forwarded to a Board consultant for review. The Board consultant concluded that the licensee failed to conform to or deviated from acceptable medical practices in his treatment of both Patients A and B. According to the Board consultant, the medical reports, pictorial images and medical attendants corroborate the licensee’s behaviors as alleged by Patients A and B. Protocol demands witness by one (preferably two) R.N.s or M.D.s when delivery or wasting of injectable narcotics takes place; however, multiple incidents of the receipt, delivery and wasting of injectable narcotics were not properly documented in the licensee’s practice.
18. In November 2011, the Board allowed the licensee to resume the practice of medicine, pursuant to terms and conditions set forth in an Agreed Order of Indefinite Restriction which restricted him from the practice of surgery or the professional utilization of controlled substance until he completed certain education and training requirements.

19. On January 25-27, 2012, the licensee completed the “Prescribing Controlled Drugs” course at Vanderbilt University School of Medicine.
20. On February 15-17, 2012, the licensee completed the “Maintaining Proper Boundaries” course at Vanderbilt University School of Medicine.
21. On April 12-14, 2012, the licensee participated in and unconditionally passed ProBe, an individualized ethics program offered through the Center for Personalized Education for Physicians.
22. On April 10, 2012, the Foundation submitted a letter to the Board which stated that the licensee was in compliance with his Foundation contract and that it did not believe that allowing him to resume the practice of surgery or the professional utilization of controlled substances would present a threat to his patients, the public or the licensee’s recovery.
23. In May 2012, the Board amended the Agreed Order of Indefinite Restriction to allow the licensee to practice subject to practice location approval and other terms and conditions of an Agreed Order.
24. In March 2013, the Board approved the licensee to practice in a non-surgical environment at the Lone Oak Chiropractic Wellness and Rehab Center, pursuant to terms and conditions set forth in an Amended Agreed Order.
25. On or about June 22, 2016, the licensee was charged with the following offenses by an Information filed in the United States District Court, Western District of Kentucky at Paducah, in Case Number 5:16-CR-14-TBR:
  - Four (4) counts of Wire Fraud by devising and intending to devise a scheme to defraud and to obtain money and property by false and

fraudulent pretenses, representations and promises from Lourdes Hospital and Western Baptist Hospital, and for the purpose of executing said scheme, knowingly transmitted, by means of wire communication, signals and sounds in interstate commerce, each violations of 18 U.S.C. § 1343.

- One (1) count of False Statements Related to Health Care Matters by knowingly and willfully making and causing to be made materially false, fictitious, and fraudulent statements and representations, and made and caused to be used materially false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items, and services, in that the defendant falsely indicated he provided medication to patients when he did not, in violation of 18 U.S.C. § 1035.
- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient N.W. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).
- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled

substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient E.C. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).

- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient K.L. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).
- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient B.J. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).

- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient C.M. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).
- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient S.B. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).
- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient B.Y. when in fact he never

provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).

26. On or about June 30, 2016, the licensee entered into a plea agreement in Case Number 5:16-CR-14-TBR in which the licensee pled guilty to each count of the Information as listed above.

27. The sentencing proceedings are scheduled for September 26, 2016.

28. On or about July 13, 2016, the Chair of the Board's Inquiry Panel A determined that the licensee's practices place his patients and the public at risk and in danger. As a result, the licensee was restricted from the prescribing, dispensing, or utilization of controlled substances in the Commonwealth of Kentucky pending resolution of this Complaint.

29. By his conduct, the licensee has violated KRS 311.595(4), (10) and (13).

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

31. 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.

32. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for November 29 and 30, 2016, 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 SEAN P. McDONALD, M.D.

This 18 day of August, 2016.

  
C. WILLIAM BRISCOE, 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, Sean P. McDonald, M.D., License No. 36051, 6420 Tuscan Road, Paducah, Kentucky, 42001, and his counsel, Brian Good, Elder & Good, PLLC, 159 St. Matthews Avenue, Suite 1, Louisville, Kentucky 40207, on this 18<sup>th</sup> day of August, 2016.

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

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1742

FILED OF RECORD  
JUL 13 2016  
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051,  
6420 TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**EMERGENCY ORDER OF RESTRICTION**

The Kentucky Board of Medical Licensure ("the Board"), acting by and through the Chair of its Inquiry Panel A, considered an Amended Agreed Order, filed April 8, 2013; a letter from the licensee's counsel, July 7, 2016; an Information, filed June 22, 2016, in the United States District Court, Western District of Kentucky, Case No. 5:16-CR-14-TBR; a Plea Agreement in Case No. 5:16-CR-14-TBR, filed June 30, 2016; and a Court Order in Case No. 5:16-CR-14-TBR, filed July 1, 2016, and having considered 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 him, the Chair of Inquiry Panel A concludes there is probable cause to make the following Findings of Fact, which support this Emergency Order of Restriction:

1. At all relevant times, Sean P. McDonald, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is neurological surgery.
3. At all relevant times prior to October 4, 2010, the licensee maintained privileges to practice at Lourdes Hospital, in Paducah Kentucky.



4. According to Patient A, on or about September 26, 2010, the licensee entered Patient A's room at Lourdes Hospital around midnight and told her that he was there to check her Medtronic pain pump but would not explain to her why it was necessary. The licensee took a syringe with needle out of his coat pocket and poked around the site of her pump multiple times until he extracted a clear liquid with what appeared to be some blood in it. The procedure was very painful, causing Patient A to scream and requiring nurses to come into the room and hold her hand to calm her down. The licensee left the room after the patient told him not to touch her anymore. Patient A reported the incident to her pain management physician, Riley Love, M.D., who took pictures of the needle marks around her pump site and refilled her pain pump.
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substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient N.W. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).

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- One (1) count of Possession of a Controlled Substance by Fraud by knowingly and intentionally obtaining Diluadid, a Schedule II controlled substance, by misrepresentation, fraud, forgery, deception, or subterfuge in that the defendant lawfully obtained controlled substances, in violation of his DEA registration, by misrepresenting that he was removing controlled substances to provide to patient B.Y. when in fact he never provided the controlled substances to the patient, in violation of 21 U.S.C. § 843(a)(3).

26. On or about June 30, 2016, the licensee entered into a plea agreement in Case Number 5:16-CR-14-TBR in which the licensee pled guilty to each count of the Information as listed above.

27. The sentencing proceedings are scheduled for September 26, 2016.

### **CONCLUSIONS OF LAW**

Pursuant to KRS 13B.125(2) and based upon the information available to him, 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 KRS 311.595(4), (10) and (13).

4. 201 KAR 9:240 §1 provides,

(1) An inquiry panel or the panel's chair, acting on behalf of the inquiry panel, may issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky in accordance with KRS 311.592 and 13B.125.

(2) ...

(3) (a) An inquiry panel's chair may act on behalf of the inquiry panel and issue an emergency order restricting or suspending a physician's license to practice medicine or osteopathy within the Commonwealth of Kentucky if the panel chair determines that a basis for an emergency order as established in subsection (1) of this section exists and the circumstances of the specific case warrant emergency action prior to the next regularly scheduled meeting of the inquiry panel.

5. 201 KAR 9:240 §3 provides

(1) If a licensee is indicted in any state for a crime classified as a felony in that state and the conduct charged relates to a controlled substance, that licensee's practice shall be considered an immediate danger to the public health, safety or welfare, pursuant to KRS 311.592 and 13B.125.

(2) If the Board receives verifiable information that a licensee has been indicted in any state for a crime classified as a felony in the state of indictment and the conduct charged relates to a controlled substance, the inquiry panel or panel chair, acting on behalf of the inquiry panel, shall immediately issue an emergency order suspending or restricting that licensee's Kentucky license....

6. The Inquiry Panel Chair concludes there is probable cause to believe this licensee's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

7. The Board may draw logical and reasonable inferences about a licensee's practice by considering certain facts about a licensee's practice. If there is proof that a licensee

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

8. 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, 520 U.S. 924 (1997), 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 Sean P. McDonald, M.D. is RESTRICTED and Dr. McDonald is prohibited from prescribing, dispensing, or otherwise professionally utilizing controlled substances until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

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

SO ORDERED this 13<sup>th</sup> day of July, 2016.

*C. William Briscoe M.D.*

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C. WILLIAM BRISCOE, 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, Sean P. McDonald, M.D., License No. 36051, 6420 Tuscan Road, Paducah, Kentucky, 42001, and his counsel, Brian Good, Elder & Good, PLLC, 159 St. Matthews Avenue, Suite 1, Louisville, Kentucky 40207, on this 13<sup>th</sup> day of July, 2016.

*Sara Farmer*

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

APR - 8 2013

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1359

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051,  
6420 TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**AMENDED AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by  
and through its Inquiry Panel A, and Sean P. McDonald, M.D. ("the licensee"), and,  
based upon the licensee's request for practice location approval, hereby ENTER INTO  
the following **AMENDED AGREED ORDER**:

**STIPULATIONS OF FACT**

The parties stipulate the following facts, which serve as the factual bases for this  
Amended Agreed Order:

1. At all relevant times, Sean P. McDonald, M.D., was licensed by the Board to  
practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is neurological surgery.
3. At all relevant times prior to October 4, 2010, the licensee maintained privileges  
to practice at Lourdes Hospital, in Paducah Kentucky.
4. According to Patient A, on or about September 26, 2010, the licensee entered  
Patient A's room at Lourdes Hospital around midnight and told her that he was  
there to check her Medtronic pain pump but would not explain to her why it was  
necessary. The licensee took a syringe with needle out of his coat pocket and  
poked around the site of her pump multiple times until he extracted a clear liquid  
with what appeared to be some blood in it. The procedure was very painful,

causing Patient A to scream and requiring nurses to come into the room and hold her hand to calm her down. The licensee left the room after the patient told him not to touch her anymore. Patient A reported the incident to her pain management physician, Riley Love, M.D., who took pictures of the needle marks around her pump site and refilled her pain pump.

5. On or about October 1, 2010, Patient A made an official complaint about her encounter with the licensee to Lourdes Hospital.
6. According to Riley Love, M.D., the pain management physician for Patient A, he never asked the licensee to see Patient A but did speak to the licensee after the events of September 26, 2010. The licensee told Dr. Riley that he saw Patient A's x-ray at the hospital and thought there may have been a problem with her pump and that after checking the pump, he concluded that the pain medication had been infused in the area around her the pump and not directly into it. Dr. Love noted that it is very important to check the port side of the pump if one is trying to determine if the pump is working correctly, but there is simply no reason to access the injection site except for the purpose of adding or removing medication. Based upon Dr. Love's physical examination of Patient A, it was clear that the licensee actually tried multiple times to access Patient A's injection site rather than the port side of the device. In addition, Dr. Love stated that providers typically use a clear plastic device which is placed on the skin over the injection site and clearly shows where to insert the needle. However, it was apparent that the licensee did not use such a device, which would account for his multiple attempts.

7. According to Patient B, on or about June 25, 2010, the licensee placed a pain pump in him at Lourdes Hospital. On or about July 16, 2010, the licensee replaced Patient B's pump at Western Baptist Hospital. In August 2010, Patient B became concerned that the pain pump was not functioning properly. Patient B told the licensee of his concerns when he ran into the licensee at Lourdes Hospital while visiting his mother there. The licensee told Patient B to go to Western Baptist Hospital and he would check his pain pump there. At Western Baptist Hospital, the licensee stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee also told Patient B that he would "turn up" the pain pump. Patient B noticed that the licensee did not use any of the same instruments for adjusting the pain pump as used by his usual pain management physician, Riley Love, M.D. After leaving Western Baptist Hospital, Patient B suffered extreme pain. Patient B's mother and brother told him that the licensee was looking for him and wanted him to report to the emergency room at Lourdes Hospital. When he presented at Lourdes, the licensee again stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee told Patient B that he would go to the pharmacy to get some medicine to put in to the pump to see if he could use it to pull any medicine back out of it. He returned a short time later and injected medicine into Patient B's pump and then left again. The licensee returned with one of Dr. Love's nurses and then explained that he would refill Patient B's pain pump so that Dr. Love would not have to do it in a couple of days. Patient B believed it to be odd that the licensee then filled his pain pump, because the

nurses usually did that task. Patient B did not see the licensee again. Patient B's pain pump was replaced by another provider in January 2011.

8. In the fall of 2010, Laura Madison, Pharmacy Director at Lourdes Hospital, was notified by her staff that the licensee had not accounted for Dilaudid that he obtained from the hospital pharmacy for administration to a patient. After reviewing pharmacy records, she reported the incident to the Lourdes Hospital administration.
9. On or about October 4, 2010, Joseph Pittard, M.D., President of Lourdes Medical Staff called the licensee to his office to inquire about suspicions that the licensee had signed Dilaudid out of the hospital pharmacy without accounting for its use and an allegation that the licensee removed Dilaudid from a patient's pain pump.
10. During the interview, the licensee agreed to a physical exam. Tracking marks and injection sites were noted on his body. A ziplock bag containing a syringe with needle and a vial of saline and a vial of Dilaudid were found hidden in the licensee's left sock.
11. The licensee admitted to illegal drug usage and dependence and was admitted to Lourdes Hospital for psychiatric intervention and drug detoxification.
12. Following these events, and also on October 4, 2010, the Lourdes Medical Executive Committee suspended the licensee's privileges at Lourdes Hospital.
13. On or about October 13, 2010, the licensee was evaluated at the Kentucky Physicians Health Foundation ("the Foundation") and, upon its recommendation, entered into residential treatment at Metro Atlanta Recovery Residences ("MARR") on or about October 19, 2010.



14. On or about January 22, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.
15. Upon discharge, MARR concluded that Dr. McDonald was "physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor."
16. On or about January 25, 2011, the licensee entered into an Aftercare Contract with the Foundation.
17. During the Board's investigation of this matter, Patient A's and Patient B's medical records were forwarded to a Board consultant for review. The Board consultant concluded that the licensee failed to conform to or deviated from acceptable medical practices in his treatment of both Patients A and B. According to the Board consultant, the medical reports, pictorial images and medical attendants corroborate the licensee's behaviors as alleged by Patients A and B. Protocol demands witness by one (preferably two) R.N.s or M.D.s when delivery or wasting of injectable narcotics takes place; however, multiple incidents of the receipt, delivery and wasting of injectable narcotics were not properly documented in the licensee's practice.
18. In November 2011, the Board allowed the licensee to resume the practice of medicine, pursuant to terms and conditions set forth in an Agreed Order of Indefinite Restriction which restricted him from the practice of surgery or the professional utilization of controlled substance until he completed certain education and training requirements.

19. On January 25-27, 2012, the licensee completed the "Prescribing Controlled Drugs" course at Vanderbilt University School of Medicine.
20. On February 15-17, 2012, the licensee completed the "Maintaining Proper Boundaries" course at Vanderbilt University School of Medicine.
21. On April 12-14, 2012, the licensee participated in and unconditionally passed ProBe, an individualized ethics program offered through the Center for Personalized Education for Physicians.
22. On April 10, 2012, the Foundation submitted a letter to the Board which stated that the licensee was in compliance with his Foundation contract and that it did not believe that allowing him to resume the practice of surgery or the professional utilization of controlled substance would present a threat to his patients, the public or the licensee's recovery.
23. In May 2012, the Board amended the Agreed Order of Indefinite Restriction to allow the licensee to practice subject to practice location approval and other terms and conditions of an Agreed Order.
24. In March 2013, the Board approved the licensee to practice in a non-surgical environment at the Lone Oak Chiropractic Wellness and Rehab Center, pursuant to terms and conditions set forth in this Amended Agreed Order.

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Amended 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 regarding the licensee's opioid dependence and suspension from Lourdes Hospital, the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (8) and (21), as well as KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (c). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order.
3. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that based upon the Stipulations of Fact regarding the licensee's alleged diversion of medications from the pain pumps of Patients A and B and the licensee's deviation from or failure to conform to acceptable and prevailing medical practices as stated in the Board consultant's report, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (c) and (4). Accordingly, there are legal grounds for the parties to enter into this Amended Agreed Order.
4. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Amended Agreed Order.

#### **AMENDED AGREED ORDER**

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the licensee's request for practice location approval, the parties hereby ENTER INTO the following **AMENDED AGREED ORDER:**

1. The license to practice medicine within the Commonwealth of Kentucky held by Sean P. McDonald, M.D., SHALL BE SUBJECT to this Amended Agreed Order for a period of five (5) years from the date of June 11, 2012.
2. During the effective period of this Amended Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
  - a. The licensee SHALL NOT perform any act which would constitute the "practice of medicine," 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 Panel or its Chair has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions to ensure patient safety;
    - i. The licensee is hereby approved to practice at the Lone Oak Chiropractic Wellness and Rehab Center, 125 Augusta Avenue, Suite D, Paducah, Kentucky 42003;

- b. The licensee SHALL NOT change practice locations without first obtaining written approval by the Panel or its Chair for such change. The parties agree that the Panel or its Chair may require additional provisions as a condition of it granting approval for a new practice location;
- c. The licensee SHALL arrange for his employer or a supervising physician at the approved practice location to provide written reports to the Panel, every six (6) months during the effective period of this Amended Agreed Order, detailing the licensee's clinical competence;
- d. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed, dispensed or professionally utilized. The controlled substances log must include date, patient name, patient complaint, medication prescribed/dispensed/professionally utilized, when it was last prescribed/dispensed/professionally utilized and how much on the last encounter. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner:
  - 1) patient; 2) chart; and 3) log;
- e. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
- f. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Amended Agreed Order. Once the Board receives the invoice from the consultant(s) for each

review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Amended Agreed Order;

- g. The licensee understands and agrees that at least one consultant review must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Amended Agreed Order;
- h. The licensee SHALL maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
- i. 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 must 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 must 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 Amended Agreed Order;
- j. 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 remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports will be paid by the licensee, and the licensee will 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 Amended Agreed Order; and

- k. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee agrees that if he should violate any term or condition of this Amended 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 Amended 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 Amended Agreed Order.

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

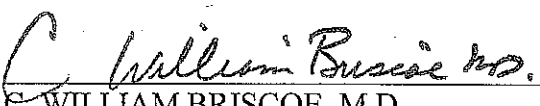
SO AGREED on this 28<sup>th</sup> day of March, 2013.


FOR THE LICENSEE:

  
SEAN P. McDONALD, M.D.

COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

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

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



COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1359

FILED OF RECORD

JUN 11 2012

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 6420 TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and Sean P. McDonald, M.D. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending grievance 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 of Indefinite Restriction:

1. At all relevant times, Sean P. McDonald, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is neurological surgery.
3. At all relevant times prior to October 4, 2010, the licensee maintained privileges to practice at Lourdes Hospital, in Paducah Kentucky.
4. According to Patient A, on or about September 26, 2010, the licensee entered Patient A's room at Lourdes Hospital around midnight and told her that he was there to check her Medtronic pain pump but would not explain to her why it was necessary. The licensee took a syringe with needle out of his coat pocket and poked around the site of her pump multiple times until he extracted a clear liquid with what appeared to be some blood in it. The procedure was very painful,

causing Patient A to scream and requiring nurses to come into the room and hold her hand to calm her down. The licensee left the room after the patient told him not to touch her anymore. Patient A reported the incident to her pain management physician, Riley Love, M.D., who took pictures of the needle marks around her pump site and refilled her pain pump.

5. On or about October 1, 2010, Patient A made an official complaint about her encounter with the licensee to Lourdes Hospital.
6. According to Riley Love, M.D., the pain management physician for Patient A, he never asked the licensee to see Patient A but did speak to the licensee after the events of September 26, 2010. The licensee told Dr. Riley that he saw Patient A's x-ray at the hospital and thought there may have been a problem with her pump and that after checking the pump, he concluded that the pain medication had been infused in the area around her the pump and not directly into it. Dr. Love noted that it is very important to check the port side of the pump if one is trying to determine if the pump is working correctly, but there is simply no reason to access the injection site except for the purpose of adding or removing medication. Based upon Dr. Love's physical examination of Patient A, it was clear that the licensee actually tried multiple times to access Patient A's injection site rather than the port side of the device. In addition, Dr. Love stated that providers typically use a clear plastic device which is placed on the skin over the injection site and clearly shows where to insert the needle. However, it was apparent that the licensee did not use such a device, which would account for his multiple attempts.

7. According to Patient B, on or about June 25, 2010, the licensee placed a pain pump in him at Lourdes Hospital. On or about July 16, 2010, the licensee replaced Patient B's pump at Western Baptist Hospital. In August 2010, Patient B became concerned that the pain pump was not functioning properly. Patient B told the licensee of his concerns when he ran into the licensee at Lourdes Hospital while visiting his mother there. The licensee told Patient B to go to Western Baptist Hospital and he would check his pain pump there. At Western Baptist Hospital, the licensee stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee also told Patient B that he would "turn up" the pain pump. Patient B noticed that the licensee did not use any of the same instruments for adjusting the pain pump as used by his usual pain management physician, Riley Love, M.D. After leaving Western Baptist Hospital, Patient B suffered extreme pain. Patient B's mother and brother told him that the licensee was looking for him and wanted him to report to the emergency room at Lourdes Hospital. When he presented at Lourdes, the licensee again stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee told Patient B that he would go to the pharmacy to get some medicine to put in to the pump to see if he could use it to pull any medicine back out of it. He returned a short time later and injected medicine into Patient B's pump and then left again. The licensee returned with one of Dr. Love's nurses and then explained that he would refill Patient B's pain pump so that Dr. Love would not have to do it in a couple of days. Patient B believed it to be odd that the licensee then filled his pain pump, because the

nurses usually did that task. Patient B did not see the licensee again. Patient B's pain pump was replaced by another provider in January 2011.

8. In the fall of 2010, Laura Madison, Pharmacy Director at Lourdes Hospital, was notified by her staff that the licensee had not accounted for Dilaudid that he obtained from the hospital pharmacy for administration to a patient. After reviewing pharmacy records, she reported the incident to the Lourdes Hospital administration.
9. On or about October 4, 2010, Joseph Pittard, M.D., President of Lourdes Medical Staff called the licensee to his office to inquire about suspicions that the licensee had signed Dilaudid out of the hospital pharmacy without accounting for its use and an allegation that the licensee removed Dilaudid from a patient's pain pump.
10. During the interview, the licensee agreed to a physical exam. Tracking marks and injection sites were noted on his body. A ziplock bag containing a syringe with needle and a vial of saline and a vial of Dilaudid were found hidden in the licensee's left sock.
11. The licensee admitted to illegal drug usage and dependence and was admitted to Lourdes Hospital for psychiatric intervention and drug detoxification.
12. Following these events, and also on October 4, 2010, the Lourdes Medical Executive Committee suspended the licensee's privileges at Lourdes Hospital.
13. On or about October 13, 2010, the licensee was evaluated at the Kentucky Physicians Health Foundation ("the Foundation") and, upon its recommendation, entered into residential treatment at Metro Atlanta Recovery Residences ("MARR") on or about October 19, 2010.

14. On or about January 22, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.
15. Upon discharge, MARR concluded that Dr. McDonald was "physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor."
16. On or about January 25, 2011, the licensee entered into an Aftercare Contract with the Foundation.
17. During the Board's investigation of this matter, Patient A's and Patient B's medical records were forwarded to a Board consultant for review. The Board consultant concluded that the licensee failed to conform to or deviated from acceptable medical practices in his treatment of both Patients A and B. According to the Board consultant, the medical reports, pictorial images and medical attendants corroborate the licensee's behaviors as alleged by Patients A and B. Protocol demands witness by one (preferably two) R.N.s or M.D.s when delivery or wasting of injectable narcotics takes place; however, multiple incidents of the receipt, delivery and wasting of injectable narcotics were not properly documented in the licensee's practice.
18. In November 2011, the Board allowed the licensee to resume the practice of medicine, pursuant to terms and conditions set forth in an Agreed Order of Indefinite Restriction which restricted him from the practice of surgery or the professional utilization of controlled substance until he completed certain education and training requirements.

19. On January 25-27, 2012, the licensee completed the "Prescribing Controlled Drugs" course at Vanderbilt University School of Medicine.
20. On February 15-17, 2012, the licensee completed the "Maintaining Proper Boundaries" course at Vanderbilt University School of Medicine.
21. On April 12-14, 2012, the licensee participated in and unconditionally passed ProBe, an individualized ethics program offered through the Center for Personalized Education for Physicians.
22. On April 10, 2012, the Foundation submitted a letter to the Board which stated that the licensee was in compliance with his Foundation contract and that it did not believe that allowing him to resume the practice of surgery or the professional utilization of controlled substance would present a threat to his patients, the public or the licensee's recovery.
23. In May 2012, the Board amended the Agreed Order of Indefinite Restriction to allow the licensee to practice according to terms and conditions set forth in this Agreed Order.

#### 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 regarding the licensee's opioid dependence and suspension from Lourdes Hospital, the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (8) and (21), as well as KRS

311.595(9), as illustrated by KRS 311.597(1)(a) and (c). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

3. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that based upon the Stipulations of Fact regarding the licensee's alleged diversion of medications from the pain pumps of Patients A and B and the licensee's deviation from or failure to conform to acceptable and prevailing medical practices as stated in the Board consultant's report, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (c) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

4. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance 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 grievance without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER:**

1. The license to practice medicine within the Commonwealth of Kentucky held by Sean P. McDonald, M.D., SHALL BE SUBJECT to this Agreed Order for a period of five (5) years from the date of filing of the Agreed Order.

2. During the effective period of this Agreed Order, the licensee's medical license

SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. The licensee SHALL NOT perform any act which would constitute the "practice of medicine," 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 Panel or its Chair has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions to ensure patient safety;
- b. The licensee SHALL NOT change practice locations without first obtaining written approval by the Panel or its Chair for such change. The parties agree that the Panel or its Chair may require additional provisions as a condition of it granting approval for a new practice location;
- c. The licensee SHALL arrange for his employer or a supervising physician at the approved practice location to provide written reports to the Panel,



every six (6) months during the effective period of this Agreed Order, detailing the licensee's clinical competence;

- d. The licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed, dispensed or professionally utilized. The controlled substances log must include date, patient name, patient complaint, medication prescribed/dispensed/professionally utilized, when it was last prescribed/dispensed/professionally utilized and how much on the last encounter. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner:  
1) patient; 2) chart; and 3) log;
- e. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
- f. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;

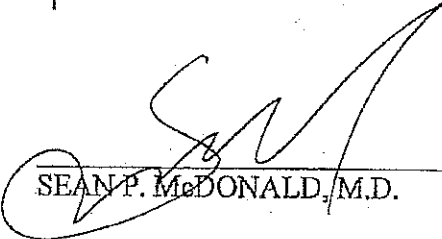
- g. The licensee understands and agrees that at least one consultant review must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order;
- h. The licensee SHALL maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
- a. 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 must 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 must 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;
- b. 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 remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports will be paid by the licensee, and the licensee will pay those costs under the terms fixed by the Board's agent for testing. The

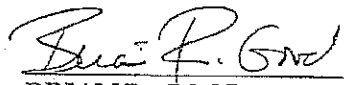
licensee's failure to fully reimburse the Board's agent within that time frame shall constitute a violation of this Agreed Order; and

- c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee 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.
5. 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), and may provide a legal basis for criminal prosecution.


SO AGREED on this 30 day of May, 2012.

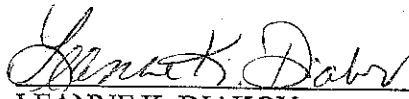
FOR THE LICENSEE:

  
SEAN P. McDONALD, M.D.

  
BRIAN R. GOOD  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

  
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Kentucky Board of Medical Licensure  
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JAN 03 2012

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1359

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SEAN P. McDONALD, M.D., LICENSE NO. 36051, 6420 TUSCAN ROAD, PADUCAH, KENTUCKY 42001

**AGREED ORDER OF INDEFINITE RESTRICTION**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and Sean P. McDonald, M.D. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION**:

**STIPULATIONS OF FACT**

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Indefinite Restriction:

1. At all relevant times, Sean P. McDonald, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is neurological surgery.
3. At all relevant times prior to October 4, 2010, the licensee maintained privileges to practice at Lourdes Hospital, in Paducah Kentucky.
4. According to Patient A, on or about September 26, 2010, the licensee entered Patient A's room at Lourdes Hospital around midnight and told her that he was there to check her Medtronic pain pump but would not explain to her why it was necessary. The licensee took a syringe with needle out of his coat pocket and poked around the site of her pump multiple times until he extracted a clear liquid

with what appeared to be some blood in it. The procedure was very painful, causing Patient A to scream and requiring nurses to come into the room and hold her hand to calm her down. The licensee left the room after the patient told him not to touch her anymore. Patient A reported the incident to her pain management physician, Riley Love, M.D., who took pictures of the needle marks around her pump site and refilled her pain pump.

5. The licensee denies the allegations stated in ¶ 4 above.
6. On or about October 1, 2010, Patient A made an official complaint about her encounter with the licensee to Lourdes Hospital.
7. According to Riley Love, M.D., the pain management physician for Patient A, he never asked the licensee to see Patient A but did speak to the licensee after the events of September 26, 2010. The licensee told Dr. Riley that he saw Patient A's x-ray at the hospital and thought there may have been a problem with her pump and that after checking the pump, he concluded that the pain medication had been infused in the area around her the pump and not directly into it. Dr. Love noted that it is very important to check the port side of the pump if one is trying to determine if the pump is working correctly, but there is simply no reason to access the injection site except for the purpose of adding or removing medication. Based upon Dr. Love's physical examination of Patient A, it was clear that the licensee actually tried multiple times to access Patient A's injection site rather than the port side of the device. In addition, Dr. Love stated that providers typically use a clear plastic device which is placed on the skin over the injection site and clearly shows where to insert the needle. However, it was apparent that

the licensee did not use such a device, which would account for his multiple attempts.

8. The licensee denies the allegations stated in ¶ 7 above.
9. According to Patient B, on or about June 25, 2010, the licensee placed a pain pump in him at Lourdes Hospital. On or about July 16, 2010, the licensee replaced Patient B's pump at Western Baptist Hospital. In August 2010, Patient B became concerned that the pain pump was not functioning properly. Patient B told the licensee of his concerns when he ran into the licensee at Lourdes Hospital while visiting his mother there. The licensee told Patient B to go to Western Baptist Hospital and he would check his pain pump there. At Western Baptist Hospital, the licensee stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee also told Patient B that he would "turn up" the pain pump. Patient B noticed that the licensee did not use any of the same instruments for adjusting the pain pump as used by his usual pain management physician, Riley Love, M.D. After leaving Western Baptist Hospital, Patient B suffered extreme pain. Patient B's mother and brother told him that the licensee was looking for him and wanted him to report to the emergency room at Lourdes Hospital. When he presented at Lourdes, the licensee again stuck Patient B with a needle at the pump site and explained that he was checking for a kink in the catheter. The licensee told Patient B that he would go to the pharmacy to get some medicine to put in to the pump to see if he could use it to pull any medicine back out of it. He returned a short time later and injected medicine into Patient B's pump and then left again. The licensee returned with

one of Dr. Love's nurses and then explained that he would refill Patient B's pain pump so that Dr. Love would not have to do it in a couple of days. Patient B believed it to be odd that the licensee then filled his pain pump, because the nurses usually did that task. Patient B did not see the licensee again. Patient B's pain pump was replaced by another provider in January 2011.

10. The licensee denies the allegations stated in ¶ 9 above.
11. In the fall of 2010, Laura Madison, Pharmacy Director at Lourdes Hospital, was notified by her staff that the licensee had not accounted for Dilaudid that he obtained from the hospital pharmacy for administration to a patient. After reviewing pharmacy records, she reported the incident to the Lourdes Hospital administration.
12. On or about October 4, 2010, Joseph Pittard, M.D., President of Lourdes Medical Staff called the licensee to his office to inquire about suspicions that the licensee had signed Dilaudid out of the hospital pharmacy without accounting for its use and an allegation that the licensee removed Dilaudid from a patient's pain pump.
13. During the interview, the licensee agreed to a physical exam. Tracking marks and injection sites were noted on his body. A ziplock bag containing a syringe with needle and a vial of saline and a vial of Dilaudid were found hidden in the licensee's left sock.
14. The licensee admitted to the non-medical use of and dependence upon Dilaudid. He was admitted to Lourdes Hospital for psychiatric intervention and drug detoxification.



15. Following these events, and also on October 4, 2010, the Lourdes Medical Executive Committee suspended the licensee's privileges at Lourdes Hospital.
16. On or about October 13, 2010, the licensee was evaluated at the Kentucky Physicians Health Foundation ("the Foundation") and, upon its recommendation, entered into residential treatment at Metro Atlanta Recovery Residences ("MARR") on or about October 19, 2010.
17. On or about January 22, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.
18. Upon discharge, MARR concluded that Dr. McDonald was "physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor."
19. On or about January 25, 2011, the licensee entered into an Aftercare Contract with the Foundation.
20. During the Board's investigation of this matter, Patient A's and Patient B's medical records were forwarded to a Board consultant for review. The Board consultant concluded that the licensee failed to conform to or deviated from acceptable medical practices in his treatment of both Patients A and B. According to the Board consultant, the medical reports, pictorial images and medical attendants corroborate the licensee's behaviors as alleged by Patients A and B. According to the Board consultant, protocol demands witness by one (preferably two) R.N.s or M.D.s when delivery or wasting of injectable narcotics takes place;

however, multiple incidents of the receipt, delivery and wasting of injectable narcotics were not properly documented in the licensee's practice.

21. The licensee has not practiced medicine since October 2010.

#### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact regarding the licensee's opioid dependence and suspension from Lourdes Hospital, the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (8) and (21), as well as KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (c). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Indefinite Restriction.
3. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that based upon the Stipulations of Fact regarding the licensee's alleged diversion of medications and alleged deviations from acceptable and prevailing medical practices, all of which are denied by the licensee, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (c) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Indefinite Restriction.

4. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.

**AGREED ORDER OF INDEFINITE RESTRICTION**

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 grievance without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Sean P. McDonald, 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 of Indefinite Restriction, the licensee's Kentucky medical/osteopathic license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:
  - a. The licensee SHALL NOT perform an act or practice which may constitute the practice of surgery unless and until approved to do so by the Panel;
  - b. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;

- c. The Panel will not consider a request by the licensee to resume the practice of surgery or the professional utilization of controlled substances unless and until the following conditions have been satisfied:
- i. At least six (6) months have elapsed since the filing of this Agreed Order of Indefinite Restriction;
  - ii. The licensee has successfully completed the "Prescribing Controlled Drugs" course at The Center for Professional Health at Vanderbilt University Medical Center, Nashville, TN, (615) 936-0678 or the University of South Florida, 3515 E. Fletcher Avenue, Tampa, Florida 33613 (813) 396-9217, at his expense;
  - iii. The licensee has successfully completed the "Maintaining Proper Boundaries" course at The Center for Professional Health at Vanderbilt University Health Center, Nashville, TN, (615) 936-0678, at his expense; and
  - iv. The licensee has successfully completed and passed the ProBe Program at the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230 – 303/577-3232, at his expense.
- d. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the courses and programs detailed in ¶¶2(c)(ii)-(iv) above, promptly upon their completion;
- e. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that the courses and

programs detailed in ¶¶2(c)(ii)-(iv) above will provide a copy of any reports or evaluations of the licensee's participation in those course and programs to the Board's Legal Department;

- f. The licensee shall maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
- g. 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 must 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 must 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;
- h. 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 remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports will be paid by the licensee, and the licensee will 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

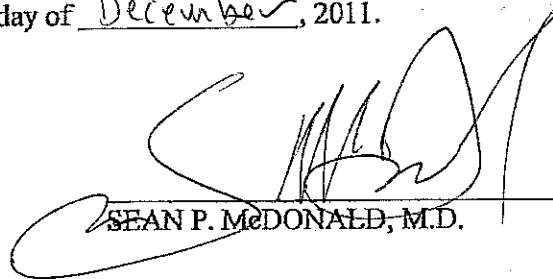
- i. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee agrees that it is within the discretion of the Panel to reinstate his ability to resume the practice of surgery or to prescribe, dispense or professionally utilize controlled substances and that if the Panel should grant the licensee's request to resume the practice of surgery or the professional utilization of controlled substances, it SHALL do so by an Amended Agreed Order of Indefinite Restriction, which may require that the licensee obtain practice location approval prior to resuming such practice and may provide for the licensee to maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for periodic review of the log and relevant records by Board agents upon request, along with any other conditions deemed necessary by the Panel at that time.
4. The licensee agrees that if he should violate any term or condition of this Agreed Order of Indefinite Restriction, 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 of Indefinite Restriction, 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 of Indefinite Restriction 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 of Indefinite Restriction.

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

SO AGREED on this 13<sup>th</sup> day of December, 2011.


FOR THE LICENSEE:



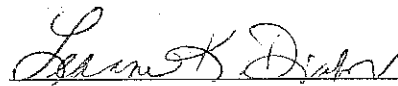
SEAN P. McDONALD, M.D.

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COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



LEANNE K. DIAKOV

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