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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2133

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MOUTAZ AL-NABHAN, M.D., LICENSE NO. 42043, 5724 HARRODS GLEN DRIVE, PROSPECT, KENTUCKY 40059

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Inquiry Panel A, and Moutaz Al-Nabhan, M.D. (hereafter “the licensee”), and, based upon their mutual desire to resolve the pending investigation, the parties hereby ENTER INTO the following **AGREED ORDER**:

**STIPULATIONS OF FACT**

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

1. At all relevant times, Moutaz Al-Nabhan, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is Pulmonary Disease.
3. The Board received a report filed by the Office of the Inspector General (“OIG”) advising that the licensee and other providers at Louisville Lung Care were not compliant with the provisions in KRS 218A.202 and 201 KAR 9:260 pertaining to KASPER registration and usage.
4. 201 KAR 9:260 was promulgated following the “Special Session” of the Kentucky General Assembly in April of 2012. Under this regulation, before procuring, dispensing or prescribing controlled substances to patients in Kentucky, a physician must have the following: (1) an active Kentucky Medical License; (2) a DEA

registration number specific for Kentucky; (3) an active KASPER account; and (4) must query KASPER under certain circumstances.

5. The licensee has had an active Kentucky medical license and active DEA since at least approximately September 2008. At the time of the OIG report, the licensee had an active KASPER account but had no listed delegates and made zero KASPER queries in the period reviewed. In the report, the OIG recognized that a vast majority of the licensee's patients are prescribed a short supply of controlled substances which may be exempt from the requirements of KASPER queries due to those patients being residents of a long-term in-patient facility per 201 KAR 9:260; however, not all were exempt. Thus, the OIG found the licensee was non-compliant with the requirements of 201 KAR 9:260 for professional standards for prescribing, dispensing, and administering controlled substances.
6. As part of the OIG investigation, Amy Whitley, Pharm.D., R.Ph., reviewed numerous providers at Louisville Lung Care, including the licensee, and explained her investigation efforts, in part,

On 4/24/23, I called Terri Prater (Office Manager) regarding the violations of KRS 218A.202 for 2 of the prescribers and violations of 201 KAR 9:260 for the 3 physicians [...] and explained to her the violations and the exact statutes and regulations that were not being followed. I also, informed her of the seriousness of the violations for these prescribers and asked if I should come and meet with them. She stated that she would be the one taking care of the situation, for all the providers anyway, and that she would get right on it. Yet, as of 5/30/23 the matter has still not been resolved in any way. No Kasper queries have been completed for any of the providers and 2 of the providers are still not signed up with the KASPER program, again violations of KRS 218A.202 and 201 KAR 9:260 [...].

Since education has been given to the office manager over 30 days has elapsed to correct these violations, and no violations have been corrected. This report will be forwarded to the appropriate personnel at [...] the Kentucky Board of Medical licensure for violations of KRS 218A.202 and 201 KAR 9:260 [...].

7. On or about August 17, 2023, Ms. Prater, by letter, informed the Board's Investigator, John Lewis, that,

Per our conversation yesterday, Wednesday August 16, 2023, please find documentation on [...] Moutaz Al-Nabhan, MD[,] [...] For Drs. Al-Nabhan and Jameel, you will see their KASPER account certificates showing active accounts. Both ran Reverse KASPER reports on Tuesday August 15, 2023, with no unauthorized prescriptions noted. A report on each individual person on the lists was also run. Also, you will see KASPER certificate on myself, Terri Prater, as Prescriber Delegate. [...]

Our practice is in the process of writing a policy that will be strictly adhered to regarding when a Reverse KASPER report will be run (monthly), and any chronic patients receiving a controlled substance will have a report run every three months, per KASPER's requirements. Also, before prescribing a controlled substance on a patient, a report will be run on that patient.

8. On or about August 19, 2023, Ms. Whitley confirmed that the licensee had registered to use KASPER, had listed Ms. Prater listed as his delegate and had performed one KASPER query on August 18, 2023.
9. The licensee agreed to enter into this Agreed Order in lieu of the issuance of a Complaint.

#### 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. Pursuant to 201 KAR 9:230 Section 2,

If a licensee prescribes, dispenses, or administers a controlled substance within the Commonwealth of Kentucky during any period when the licensee is not registered with the cabinet to use the KASPER system, each instance of prescribing or dispensing or administering shall:

- (1) Constitute a separate violation of:

(a) KRS 311.595(12) and (9), as illustrated by KRS 311.597(1)(b);  
or

(b) 311.850(1); and

(2) Serve as the basis for disciplinary sanctions pursuant to KRS 311.595 or 311.850.

3. 201 KAR 9:260 requires, under certain circumstances, that a licensee obtain and review a KASPER report for each patient to whom he/she prescribes, dispenses, or administers a controlled substance within the Commonwealth of Kentucky, for the twelve (12) month period immediately preceding the request and failure to do so shall constitute a violation of KRS 311.595(9) and (12) and may result in the imposition of sanctions.
4. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9) and (12). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
5. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending matter 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 resolve the pending investigation, the parties hereby ENTER INTO the following AGREED ORDER:

1. The license to practice medicine in the Commonwealth of Kentucky held by MOUTAZ AL-NABHAN, M.D., is hereby PLACED ON PROBATION FOR A PERIOD OF FIVE (5) YEARS, with that period of probation to become effective immediately upon the filing of this 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. Beginning immediately, the licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized. The controlled substances log SHALL include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit; and the date of the KASPER query associated with the prescription. Note: All log sheets shall be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions shall be maintained in the following manner: 1) patient; 2) chart; and 3) log;
  - i. 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;
- b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the ProBe Program offered through the Center for Personalized Education for Professionals (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232, at the earliest time;
  - i. The licensee SHALL complete and "unconditionally pass" the ProBe Program at the time and date(s) scheduled, at his expense and as directed by CPEP's staff;
  - ii. The licensee SHALL provide the Board's staff with written verification that he has completed and "unconditionally passed" CPEP's ProBe Program, promptly after completing the program;
  - iii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations, reports or essays from the ProBe Program to the Board's Legal Department promptly after their completion;
- c. Within four (4) years of the filing of this Agreed Order, the licensee SHALL submit payment of a FINE in the amount of \$10,000.00, pursuant to KRS 311.565(1)(v); and
- d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. The licensee expressly agrees that if he should violate any term or condition of 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 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.

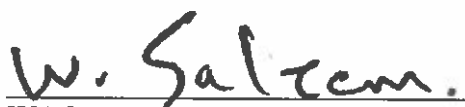
4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 3<sup>d</sup> day of Nov, 2023.

FOR THE LICENSEE:

  
MOUTAZ AL-NABHAN, M.D.  
  
COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:



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



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