COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. PA-51

IN RE: THE LICENSE TO PRACTICE AS A PHYSICIAN ASSISTANT IN THE COMMONWEALTH OF KENTUCKY HELD BY SHELEBRA K. BARTLEY, P.A.-C., LICENSE NO. PA1141, 7307 NORTH MAYO TRAIL, PIKEVILLE, KENTUCKY 41501

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and Shelebra K. Bartley, P.A.-C (hereafter "the licensee"), and, based upon their mutual desire to fully and finally resolve the pending investigation without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Shelebra K. Bartley, P.A.-C, was licensed by the Board to practice as a physician assistant within the Commonwealth of Kentucky.
2. On or about March 21, 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services ("OIG"), opened an investigation into the licensee's prescribing after several patients were noted in KASPER as having received long term diet prescriptions in KASPER from the licensee. At the time of the review, OIG noted that the licensee's supervising physician was listed as John Fleming, D.O., an emergency medicine physician, and that the licensee was associated with Bartley Medical Services, LLC (doing business as Bartley Medical Weight Loss & Coolsculpting), a business

entity registered to the licensee with the Kentucky Secretary of State. OIG reviewed and analyzed the licensee's KASPER records – which consisted of 80 pages and 1593 prescription records for the period dated August 27, 2021 through August 27, 2022 - and found that the licensee prescribed medications for weight loss (65%), testosterone for hormone replacement therapy (29%) and opioid use disorder (6%) and that the licensee administered or dispensed testosterone directly from office stock on 264 occasions. In contrast, Dr. Fleming's KASPER records for the same period consisted of 14 pages and 201 prescription records of primarily short-term opioid medications to patients for one-time, with no refills, and consistent with the scope of practice of an emergency room physician. OIG identified eight (8) patient charts, including that of the licensee's husband, for review by the Board.

3. On or about September 21, 2022, an interview was conducted with Dr. Fleming and he provided a written statement in which he stated substantially as follows: He was an alternate supervising physician for the licensee while he worked with her at Pikeville Medical Center and was her primary supervising physician until approximately December 2020.

4. On or about September 22, 2022, an interview was conducted with the licensee and she provided a written statement in which she stated substantially as follows: After Bill Webb, D.O., passed away in September 2021, Cassandra Kirkpatrick, M.D., became her supervising physician; Dr. Kirkpatrick's supervision is offsite, with communication by phone, text or email; Dr. Kirkpatrick reviews ten (10) charts each quarter; the licensee's self-described scope of practice is "nutritional counseling, diabetic counseling, lab ordering and reviewing, medication assistance for weight loss (both controlled and non-controlled medications are prescribed),

hormone replacement, and medication assisted treatment for opioid dependency for ten (10) patients.

5. On or about September 26, 2022, an interview was conducted with Cassandra Kirkpatrick, M.D., and she provided a written statement in which she stated substantially as follows: She has been the licensee's supervising physician since October 2021; her supervision is off-site with communication by telephone, text, email and fax; she reviews ten (10) of the licensee's patient charts every quarter; and she believes the licensee's services are appropriate.

6. In or around March 2023, a Board consultant completed a review of the eight (8) patient charts identified by OIG and found that the licensee violated Board regulations and engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof as described in KRS 311.597 by failing to conform to standards of acceptable and prevailing medical practice, stating for review in most, if not all, charts, in part as follows:

> ... There are three publicly available standards of care documents for Kentucky physicians available for anyone to review regarding the field and practice of Bariatric (Obesity) Medicine (non-surgical weight loss).
>
> The first is by the State of Kentucky: 201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances. Please see the attached submission that shows exactly where and how [the licensee] did not follow standard of care and Kentucky Statute based on this document. In summary of it: In this chart, there is no carefully prescribed diet, behavior modification and other appropriate supportive and collateral therapies on initial visit. There is not an adequate patient record in accordance with subsection (4) of that document. No eating habits, or complete weight history are asked on new patient forms. They do not inquire about other anorectic or other controlled substances used. They do not ask about patient's compliance to past programs. A menstruation history is not asked besides asking if the patient is pregnant or breastfeeding. (Regularity of periods, past pregnancies and complications of them.) There is a limited family history and only found on some charts. Although

standard physical exam is completed, specific obesity related components are missing. There is an incomplete evaluation of the patient's compliance. The chart simply documents: "Doing good. Diet plan working," or checks off: "Exercise regimen." It does not document macronutrient/exercise/ lifestyle change compliance.

All of these are required to be in compliance with the Kentucky 201 KAR 9:016 statute that was in effect at the time of treatment of this patient.

The second standard of care document available for anyone to review regarding "Professional Standards for the Prescribing and Dispensing of Controlled Substances for the Treatment of Other Conditions" is section 7 of 201 KAR 9:260. This chart is in violation of 201 KAR 9:260 from several items including not conducting a physical exam relevant to the medical complaint and related symptoms and document the information in the patient's medical record. Although a general physical exam was documented, other components were not done including standard obesity medicine related components. See physical exam deficiencies as ger ABBM standard of bariatric care on the board inspection worksheet submitted. Additionally missing are parts of the medical history relevant to the medical complaint. (See required medical history deficiencies listed on 201 KAR 9:016 review submitted. See medical history deficiencies as per ABBM standard of bariatric care on the board inspection worksheet submitted.) Section 7 (l)(d): Avoiding to provide more controlled substances than necessary by prescribing or dispensing only the amount of a controlled substance needed to treat the specific medical complaint (as no workup for metabolic or biochemical blockades were done which, if treated, could lessen the amount of medications needed); section 7(1)(f): not discussing how to properly dispose of any unused controlled substance; and section 7(2): Conforming to the standards of acceptable and prevailing practice for treatment of that medical complaint. Charting requirements by the American Board of Obesity Medicine were not followed as per the "standards of acceptable and prevailing practice for [bariatric/obesity] medicine."

The third standard of care document available for anyone to review regarding the field and practice of Obesity Medicine which is considered to be the national standards of care in bariatrics by the Obesity Medicine Association is the national Obesity Algorithm formerly entitled the OOEM guidelines. (Overweight and Obesity Evaluation and Management Guidelines.) They are found on their website. The American Board of Bariatric Medicine used these guidelines to inspect bariatric offices to document if they were following standard of care practice in bariatric medicine. Attached is the checklist used by inspectors that shows all of the deficits in [the licensee's] documentation and practice of care including everything noted in the Kentucky Statues plus deficits. Missing from the initial visit: During the initial visit, there are no questions about current dietary content. There is only a limited weight loss history which does not

ask about prior weights at prior ages or causes of weight gain. It does not ask what past diets worked, or if there were past side effects, or what the patient's compliance was to past programs. It does not ask about a current/prior diagnosis of eating disorders, and there is no eating disorder screen. There are no other helpful screening questions to assess for weight loss blockades such as for depression screening, alcohol CAGE questions, thyroid symptom screening, lifestyle struggles such as stress eating/mindless eating/fast food eating/sugar drinks. Current medical history and PMH are limited and patient cannot write in other diagnoses on the general medical history form. There is a family history that asks about a FH of overweight and 10 other items on the HRT medical history form. It does not ask about psychiatric FH. If the patient is not receiving hormone replacement therapy, then there is no FH. The chart does not inquire about which anorectic or other weight loss substances have been used. It does not ask dosages of past weight loss medications or if side effects occurred. It does not ask if past anorectic medications helped. There is an incomplete GYN history (See ABBM form). Although there was a general physical exam, it did not include standard bariatric components (see ABBM form). There are no measurements taken such as neck or waist. (Chart 1 and chart 3 have no physical exam prior to treatment. The only physical exam for chart 7 was: "A & Ox 3, obese frame." There was only a partial physical exam on Chart 6 including A&O x 3, CV, and lung.) There is no EKG and no correspondence with any physician prescribing other controlled medications. There is appropriate lab work on several charts, however, chart 2 has outdated labs > 1 year. No labs are done for Chart 3 or Chart 7. Chart 6 is missing a CMP & Lipid. Abnormal labs are often not addressed. There is no detailed patient assessment listing any obesity related co-morbidities, or patient barriers. There is no assessment of the class of obesity (ex: class I, II, III obesity). It does not list possible diagnoses discovered on new patient intake sheet. (Stating "Obesity Other" is not considered to be a detailed patient assessment.) There is no prescribed individualized meal plan. There are no macronutrients specified. There is no individualization of the plan to account for medical history or lifestyle challenges identified (such as low sodium for hypertension, lower cholesterol for cardiac, no journaling for binge eaters, etc). Exercise plans are general and limited. They do not include cardio or resistance training FITT plans (Frequency/Intensity/Time/type). There is no documentation about any Behavioral modification plan. Solutions to common barriers to weight loss such as stress/emotional eating, pre-planning, etc. are not documented. Screening for eating disorders is not done, and thus not addressed or treated. It does not include a detailed plan of obesity related comorbidities such as: Hypothyroidism: will repeat TSH, free T 4, Free T3 to look for blockade of t3 to t4 conversion and correct if found. There is no documentation of any individualized obesity investigation or work-up or how to change lifestyle challenges and barriers. There are no behavioral modification techniques or referrals for such plans presented. Missing from follow-up visits: No counseling is documented on meal plans, exercise, or behavioral medication on follow-ups. There is no documentation of correct food or beverage

choices and amounts, macronutrients recommended, short-term goals, etc. There is no individualization. There is limited detailed exercise, nutritional, or behavioral modification plan documented. Nutritional, behavioral, exercise changes are not seen based on patient outcomes or lab work. As in the initial visit, there are no detailed patient assessments on follow-ups listing any obesity related co-morbidities, or patient barriers. There is no assessment of the class of obesity (ex: class I, II, III obesity). There are no detailed plans on obesity related co-morbidities. (See ABBM form).

This chart is void of mandatory KY statue requirements of 201 KAR 9:016 (see listed deficiencies on this separate reported sheet.) This chart is also void of nationally published standards of bariatric care per the recommended guidelines (see attached) and the American Board of Obesity Medicine Chart Inspection requirements. (See listed deficiencies on this separate reported sheet.) This chart is also in violation of 201 KAR 9:260; 7-2: conforming to the standards of acceptable and prevailing practice for treatment of that medical complaint. (See attached listed deficiencies on this separate reported sheet.)"

...

[The licensee] may not have realized in the state of Kentucky all of the required state laws and national standards of care for practicing bariatric (obesity) medicine that now must be followed in order to be compliant with state regulations. Of course, it is the responsibility of the provider to make sure that she is following appropriate law. Unfortunately, this lack of knowledge has led this provider to be in violation of a multitude of Kentucky State regulations of 201 KAR 9:016 and 201 KAR 9:260 and not practicing standards of care in this field.

...

Bariatric (obesity) Medicine is now considered a subspecialty with the provider working up the patient for the complex disease and biochemical changes of obesity. The obesity medicine specialist looks for past and new obesity related co-morbidities and other reasons for their struggle with weight loss and helps to correct each barrier. No longer are the days where medications are just given to the patient. Highly detailed assessments of disease and detailed plans related to co-morbidities and contributors to the disease need documented. Short-term and long-term plans need to be in place. There are national board certifications and full fellowships in the field. For a provider to be practicing as a bariatrician (Obesity Medicine Specialist), he/she needs to be fully competent and compliant with standards of medicine in the field. [The licensee] may in fact have the bariatric competence and knowledge required of a bariatrician, but without fully documenting to prove this, I cannot show it. As noted above, since the charting that was done had no detailed written assessment of the patient, no evaluation for obesity related co-morbidities, or limited evidence that the physician had knowledge of, or took any action on that bariatric knowledge in regards to evaluating and monitoring comorbidities, and forming individualized plans for the best safety and well-being of the patient, I also have no way of assessing his level of competency based on these charts.

However, it doesn't change the fact that she was and still is in violation of a multitude of Kentucky State regulations of 201 KAR 9:016; 201 KAR 9:260; and not practicing standards of care in this field.
...

7. The Board consultant also noted a pattern of disregarding lab values. For instance, at least one patient was noted to have low testosterone despite elevated lab values without hormone supplements. Vitamin D 50,000 IU/weekly was routinely provided despite higher normal levels on labs; however, for one patient there was no documentation of treating the Vitamin D deficiency seen on lab work. Estradiol pellets were inserted despite normal lab levels; progesterone was provided despite elevated postmenopausal levels. In some instances, hormones were provided without documented lab levels at all.

8. The Board consultant also noted that the licensee treated an immediate family member, being her husband, in a non-acute non-emergency situation, without a physical exam and without querying KASPER (until under Board investigation).

9. In response to the Board Consultant's review, the licensee wrote as follows:

> I have reviewed the inspection report. I acknowledge I would benefit from an increase in knowledge of Kentucky state and national obesity medicine guidelines and standards of care. My charting needs to be improved to accurately document the individual time I have spent with my patients, especially when formulating their nutritional and exercise plan. I have not documented well. I recognize if it's not charted it has not been completed and my words today cannot accurately denote the time I have spent.
>
> Recognizing I need further education, I have joined the Obesity Medicine Association. I have registered for the course, "Fundamentals of Obesity Treatment", presented by OMA. I have revised patient forms - I am using registration forms published by OMA. Every patient I have seen since being in receipt consult report has filled out the new registration form, and the guidelines have been followed. My charting indicates the time I have spent counseling the patients on nutrition, exercise, medication assisted treatment, short and long term goals.

I have stopped prescribing any controlled substance for weight loss until I have further training, and I can increase my knowledge of the current Kentucky state guidelines and standards of care.

The majority of my patients are seen for nutritional counseling and are managed with medications that are not controlled. Unfortunately, the patients whom I have prescribed controlled medications for, my charting has not accurately depicted the individualized treatment plan.

I am dedicated to treating the obesity epidemic in Eastern Kentucky. I look forward to your guidance and recommendations to help me be a stronger provider.

10. On or about May 18, 2023, the licensee appeared before the Inquiry Panel and further explained her practices, her practice environment, relationship with her supervising physician, and specific patient care issues (including interpretation of labs). The licensee disclosed that she does not accept insurance but charges each patient approximately $25/office visit and that she sees up to sixty (60) patients/day. The licensee stated that she had ceased prescribing controlled substances since mid-March 2023 and that she had not provided medication assisted treatment for opioid use disorder since January 2023.
11. The licensee agreed to enter into this Agreed Order in lieu of the issuance of a Complaint and Emergency Order of Suspension.

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 Physician Assistant license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee engaged in conduct which violates the provisions of KRS 311.850(1)(p) and (s). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

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

1. The license to practice as a Physician Assistant within the Commonwealth of Kentucky held by Shelebra K. Bartley, P.A.-C., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
    a. The licensee SHALL NOT prescribe, administer, or otherwise professionally utilize controlled substances;
    b. The licensee SHALL NOT perform any act which would constitute the practice of a physician assistant, as that term is defined or contemplated by KRS 311.840, *et seq.*, in the Commonwealth of Kentucky, unless and until the Panel or its Chair has approved, in writing, the practice location at which she may practice as a physician assistant. 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/restrictions to ensure patient safety;
        i. The licensee shall not request and the Panel or Panel Chair shall not approve the licensee to practice in any location separate from the licensee's supervising physician;
        ii. The licensee shall not request and the Panel or Panel Chair shall not approve the licensee to practice with any supervising physician who is not board-certified in an AMBS or AOA specialty; and

iii. Once approved the licensee shall not practice outside of the scope of the supervising physician's board-certified specialty;

c. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board's costs of $3,543.75 within six (6) months from entry of this Agreed Order; and

d. The licensee SHALL NOT violate any provision of KRS 311.850.

3. As an express condition for the entry of this Agreed Order in lieu of a Complaint and Emergency Order of Suspension, each party understands and agrees that the Board shall not consider any petition for termination or modification of this Agreed Order. Any communication by the licensee and/or her agents to the Board attempting to revive this matter or modify or terminate the terms set forth in this Agreed Order will be returned without being provided or forwarded to any Board member.

4. The licensee expressly agrees that if she 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 311.852 and 13B.125. The parties further agree that if the Board should receive information that the licensee 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 311.852 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, pursuant to KRS 311.850(1)(o), and may provide a legal basis for criminal prosecution for practicing as a Physician Assistant without a license.

SO AGREED on this 31 day of May, 2023.

FOR THE LICENSEE:

SHELEBRA K. BARTLEY, P.A.-C.

COUNSEL FOR THE LICENSEE
MICHAEL B. HISSAM, ESQ.

FOR THE BOARD:

DALE E. TONEY, M.D.
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