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K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2042

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KATHARINE SUZANNE COX, M.D., LICENSE NO. 53380, 665 ROLLING CREEK LANE, LEXINGTON, KENTUCKY 40515

ORDER OF INDEFINITE RESTRICTION

On July 20, 2023, 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, filed January 25, 2022; the hearing officer's Findings of Fact, Conclusions of Law and Recommended Order, filed May 30, 2023; Dr. Cox's Exceptions, filed June 14, 2023; and a memorandum from the Board's counsel, dated June 23, 2023.

Having considered all the information available and being sufficiently advised, Hearing Panel B ACCEPTS the hearing officer's Findings of Fact and Conclusions of Law and ADOPTS those Findings of Fact and Conclusions of Law and INCORPORATES them 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 Katharine Suzanne Cox, 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 until further order of the Board:

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 approved to do so by the Panel;

b. The licensee shall not request and the Panel shall not consider a request to resume the practice of medicine until the licensee:

    i. Either,

        1. Completes inpatient treatment at one of the following Board-approved residential treatment facilities: Florida Recovery Center ("FRC"), 4001 SW 13th Street, Gainesville, Florida 32608, Tel. (352)-265-5549 or Metro Atlanta Recovery Residences ("MARR"), 801 Clearview Place, Doraville, GA 30340, Tel. (678)805-5126; or

        2. Obtains a second opinion 96-hour inpatient evaluation at Bradford Health Services, 1189 Allbritton Road, Warrior, Alabama 35180, Tel. (888) 577-0012 which states that she is not impaired and is safe to practice medicine without further treatment;

    ii. Enters into a contractual monitoring relationship with the Kentucky Physicians Health Foundation; and

    iii. Reimburses the Board the costs of the proceedings in the amount of $18,593.71, pursuant to KRS 311.565(1)(v).

c. A petition to resume the practice of medicine SHALL be accompanied by a favorable recommendation by the Medical Director of the Kentucky Physicians Health Foundation ("the Foundation"), which shall include:

    i. A copy of the discharge summary and statement of all aftercare requirements for the licensee from a residential treatment facility and any reports of other evaluations performed as outlined in paragraph 2(b)(i)(1) or any reports from a second opinion evaluation performed as outlined in Paragraph 2(b)(i)(2) above;

    ii. A copy of her monitoring contract with the Foundation;

    iii. An assessment that the licensee may safely resume the active practice of medicine without undue risk or danger to patients or the public; and

    iv. A statement of the licensee's specific plans for her return to medical practice in the Commonwealth of Kentucky, including prospective employer and practice descriptions; and

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

3. Should the Panel grant the licensee's request to resume the practice of medicine in the Commonwealth of Kentucky in the future, it will do so contingent upon the licensee entering into an Agreed Order containing terms and conditions deemed appropriate by the Panel based upon information available to it at that time.

SO ORDERED on this 24th day of July, 2023.

WILLIAM C. THORNBURY, JR., M.D.
ACTING CHAIR, HEARING PANEL B

CERTIFICATE OF SERVICE

I certify that the original of the 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; a copy was mailed to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified mail return-receipt requested to the licensee, Katharine Suzanne Cox, M.D., License No. 53380, Colchester East Hants Health, 207 Willow Street, Nova Scotia B2N5A1 Canada and to counsel for the licensee, Randall Strause, Esq. & Courtney Graham, Esq., Strause Law Group, PLLC, 804 Stone Creek Parkway, Suite One, Louisville, Kentucky 40223, on this 24th day of July, 2023.

Nicole A. King
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 counsel, 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.

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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2042

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY KATHARINE SUZANNE COX, M.D., LICENSE NO. 53380, 665 ROLLING CREEK LANE, LEXINGTON, KENTUCKY 40515

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

The Kentucky Board of Medical Licensure (hereinafter, "the Board") brought this action against the license of Katharine Suzanne Cox, M.D., charging her with violations of several statutes and a regulation governing the practice of medicine. The hearing officer conducted the administrative hearing on March 27-29, 2023. Hon. Nicole A. King and Hon. Leanne K. Diakov represented the Board, and Hon. Randall S. Strause and Hon. Courtney L. Graham represented Dr. Cox, who also attended the hearing.

After considering the testimony of the witnesses, the exhibits admitted into evidence, and the arguments of counsel, the hearing officer finds that Dr. Cox engaged in most of the misconduct set forth in the *Complaint* in violation of the Board's statutes and regulations, and he recommends the Board take any appropriate action against her license for those violations. In support of his recommendation the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. On January 25, 2022, the Board issued the *Complaint* charging Dr. Cox with violating several standards contained in KRS 311.595 governing the practice of medicine.

2. The Board alleges that Dr. Cox is subject to discipline under KRS 311.595(17) due to the fact her medical license has been disciplined by the College of Physicians &

Surgeons of Nova Scotia, Canada (hereinafter "the College of Physicians"), and the *Complaint* notes that she failed to promptly notify the Board of several orders issued by the College of Physicians against her license, allegedly in violation of 201 KAR 9:081(9)(2)(a)(2). *Complaint*, Paragraphs 3–6, pages 1-2. (The hearing officer understands that none of the orders from the College of Physicians were provided to the Board either by Dr. Cox or by the College of Physicians, and therefore, they were not available for submission as part of the record in this action.)

3. The Board also alleges that Dr. Cox is subject to discipline because she has "become addicted to a controlled substance" and has "become a chronic or persistent alcoholic," in violation of KRS 311.595(6) and (7) respectively. *Complaint*, Paragraphs 7-12, pages 2-4.

4. The factual basis for the allegations involving her use of controlled substances and alcohol relate to four separate events, the first three of which occurred in Nova Scotia where Dr. Cox was working: a DUI charge against her in September 2018, her alleged impairment at a hospital in April 2020, and her positive drug test for tramadol in July 2021.

5. The fourth event was Dr. Cox's positive urine tests for alcohol and her failure to disclose the alleged extent of her drinking to Dr. Tina F. Simpson, the Medical Director of the Kentucky Physicians Health Foundation (hereinafter, "the Foundation"). during their meeting on September 23, 2021. Exhibit 7 and Exhibit 8, marked pages 1 and 4 of 17.

6. In support of its allegation that the four events support violations of KRS 311.595(6) and (7), the Board relies in large part upon the Comprehensive Multi-Day

Evaluation of Dr. Cox at the Florida Recovery Center (hereinafter, "FRC") by the team led by Dr. Scott A. Teitelbaum, who serves as the FRC Medical Director and who drafted the report on behalf of the FRC. Exhibits 16 and 17, DVD II, 11:43 a.m. (The administrative hearing was held on three consecutive days, March 27-29, 2023, and the DVD for each day of the administrative hearing will be referenced sequentially in this recommendation as DVD I, II, and III, followed by the time stamp on the video recording for the relevant testimony.)

7. Dr. Cox had been referred to the FRC by Dr. Simpson. DVD I, 11:41-11:42 a.m.

8. Dr. Cox participated in the evaluation at FRC from October 26 to October 28, 2021. Exhibit 17, first page.

9. Dr. Teitelbaum met with Dr. Cox for fifteen to twenty minutes when she arrived at the FRC and for a total in excess of two hours as part of the evaluation process. DVD II, 11:47-11:48 a.m. and 11:52 a.m.

10. Dr. Jamie Smolen participated in Dr. Cox's evaluation as the psychiatric consultant for the FRC, and he focused on her mental health issues and psychiatric history. DVD II, 11:44-11:46 a.m.; Exhibit 17, marked pages 9-10 and 15-16 of 31.

11. Dr. Amanda Janner performed Dr. Cox's neuropsychological testing on behalf of the FRC. DVD II, 11:47 a.m.; Exhibit 17, marked pages 16-23 of 31.

12. Dr. Teitelbaum could not provide an exact number of hours he spent preparing Dr. Cox's report but stated "these evaluations take hours" for the review of reports by FRC consultants and collateral information listed in the report, making telephone calls, and speaking with people. DVD II, 12:16 p.m.

13. Dr. Cox's tests at the FRC for alcohol and drug use were negative. DVD II, 11:58 a.m.; Exhibit 17, marked page 13 of 31.

14. A week after the in-person evaluation, Dr. Teitelbaum and Dr. Simpson met with Dr. Cox by a Zoom meeting to discuss FRC's findings and recommendations. DVD I, 11:44-11:45 a.m.; DVD II, 11:48 and 11:51 a.m.

15. The FRC diagnosed Dr. Cox with an "unspecified alcohol use disorder," an "unspecified sedative and hypnotic use disorder" related to her use of Klonopin and Ambien, and an "unspecified opioid related use disorder" related to her use of tramadol. Exhibit 17, marked page 24 of 31; DVD II, 10:18 a.m.

16. The FRC recommended Dr. Cox refrain from practicing medicine, enter into a residential treatment facility with expertise in treating healthcare professionals, and return to the practice of medicine upon successful completion of treatment and with continued monitoring by the Foundation. Exhibit 17, marked page 30 of 31; DVD I, 10:46 a.m.

17. Dr. Teitelbaum stated that it was important for Dr. Cox to participate in a residential treatment program for healthcare professionals where she could feel safe to tell the truth about her substance and alcohol use. DVD II, 10:17-10:18 a.m.

18. This action was instituted after Dr. Cox declined to enter into treatment as recommended by the Foundation and the FRC. Exhibit 6, page 2; Exhibit 8, marked pages 14-15; DVD I, 11:52-11:56 a.m.

19. As to the allegation that she violated KRS 311.595(17), which subjects a licensee to discipline for actions taken against a license by "any other state, territory, or foreign nation," Dr. Cox asserts the suspension "was an error on [the College of

Physicians'] part and my suspension has been lifted." Therefore, Dr. Cox asserts she is not subject to discipline by the Board under that statute. Exhibit 4.

20. The hearing officer finds no merit to Dr. Cox's position since the College of Physicians took action against her license on more than one occasion, and the underlying allegations in those actions relate to her use of controlled substances, which are also at issue in this action. Hence, the suggestion that the Nova Scotia actions have been resolved because they were found to be without merit is not true, and the College of Physicians has action taken on her license on multiple occasions. (The hearing officer notes that full scope of the misconduct related to the College of Physicians' orders are unclear because they are unavailable, but there was no dispute that the College of Physicians' orders relate to Dr. Cox's impairment by use of controlled substances, which is an ongoing issue.)

21. As for the alleged violations of KRS 311.595(6) and (7), Dr. Cox denies being an alcoholic or addicted to a controlled substance. *Answer of Katharine Suzanne Cox, M.D. to Complaint*, Paragraph 12, unmarked page 4.

22. The preponderance of the evidence, however, supports the conclusion that Dr. Cox has violated KRS 311.595(6), (7), and (17) and engaged in the misconduct cited by the Board in support of those violations.

23. As additional defenses to the Board's allegations, Dr. Cox asserts that Dr. Teitelbaum and Dr. Simpson were biased against her, that they projected onto her their own issues with addiction and recovery, that they had a financial interest in her being found to be impaired and in need of treatment, that the FRC issued a "canned" evaluation that predetermined the outcome against her, that in contrast to the FRC, the

College of Physicians has reinstated her full license to practice medicine, that friends and family do not support the allegations of impairment, and that she now has no desire to practice medicine in Kentucky but simply wants to clear her good name and remove any impediment to future board certifications. DVD III, 2:18-2:28 pm.

24. The hearing officer found no merit to any of those additional defenses to the Board's charges.

25. In addition, the hearing officer found no merit to Dr. Cox's assertion that the Foundation failed to provide her options for facilities at which she could be treated, that the previous Foundation director's later employment with the FRC represented a conflict of interest or had an impact on the Foundation's later decision to send Dr. Cox to FRC for an evaluation, or that the FRC's participation in a seminar at which the Foundation was a sponsor somehow suggests a bias against Dr. Cox by either the Foundation or the FRC. DVD I, 11:42 a.m.; Exhibit 8, marked page 8 of 17; Exhibits 21-24.

26. Since the Board's *Complaint* was filed in response to the actions and recommendations of Dr. Teitelbaum and the FRC, the hearing officer will consider as an initial matter Dr. Teitelbaum's professional qualifications and Dr. Cox's allegations of bias and interest and lack of credibility of Dr. Teitelbaum, Dr. Simpson, and the FRC.

27. The hearing officer found Dr. Teitelbaum and Dr. Simpson to be thoroughly professional, measured in their review of the facts, frank in their assessment of Dr. Cox's past drug and alcohol use, and empathetic to Dr. Cox's personal and professional challenges.

28. In addition, the hearing officer found no evidence that either Dr. Teitelbaum or Dr. Simpson recommended any action or drew any conclusions about Dr. Cox, her circumstance, or her needs based upon anything other than the facts related to her conduct and their professional opinions as to what was in her best interest.

29. Dr. Simpson described Dr. Cox as a very lovely person and stated she enjoyed meeting and getting to know her. DVD I, 11:29 a.m.

30. What struck Dr. Simpson most during her interview with Dr. Cox was the personal difficulties she had experienced, which included "a lot of complications with her career, her move, parents stuff, and her disabled sister," and Dr. Simpson felt very empathetic toward Dr. Cox since she was "really going through a lot." DVD I, 11:33 a.m.

31. Dr. Simpson receives no incentives from the Foundation, the FRC, or any other organization for her referrals for evaluations or treatments, and frequently, she finds individuals referred to the Foundation do not need to undergo a 96-hour evaluation. DVD I, 11:26-11:27 a.m. and 11:42 a.m.

32. Nothing related to Dr. Simpson's recommendation for an evaluation suggests she considered anything but the facts related to Dr. Cox's individual circumstances and possible impairment, and the recommendation does not suggest any bias or an interest by Dr. Simpson beyond what may have been in the best interest of Dr. Cox and the medical profession to ensure she can practice medicine with reasonable care and safety.

33. Dr. Scott A. Teitelbaum, who serves as Vice Chair of the Department of Psychiatry and Chief of Addiction Medicine at the University of Florida and as Medical Director of the FRC, led the team that performed the evaluation of Dr. Cox on October

26-28, 2021. DVD II, 9:06-9:09 a.m.; Exhibits 16 and 17.

34. Dr. Teitelbaum has evaluated and treated over five thousand healthcare professionals and performs from four to seven evaluations per week. DVD II, 9:13-9:14 a.m.

35. Dr. Teitelbaum specializes in the evaluation and treatment of individuals engaged in "safety sensitive professions," such as physicians, pharmacists, dentists, and judges, but he primarily works with healthcare professionals. DVD II, 9:14 a.m.

36. Safety sensitive professionals include anyone who's job impacts other people, with the goal of the evaluation not only to assess how the illness has affected the person and their family but to determine whether the person has an impairing condition that impacts their ability to do their work with reasonable care and safety. DVD II, 9:15 a.m.

37. Dr. Teitelbaum stated that timely intervention for such individuals is critical, using the expression "we don't want to wait for the plane to crash before we do something." DVD II, 9:15 a.m.

38. The FRC works with approximately fifty-six different healthcare professional groups, and in the calendar year 2022 the FRC received referrals from twenty-five different states. DVD II, 9:17 a.m.

39. Based upon Dr. Teitelbaum's background, training, and experience, the hearing officer found him to have a high level of expertise in the field of addiction medicine and in the evaluation and treatment of healthcare professionals, such as Dr. Cox.

40. The hearing officer also found Dr. Teitelbaum to be professional, caring, and sympathetic toward Dr. Cox and similar professionals who have alcohol and substance use disorders, based in part on his own personal history with those conditions. Exhibit 18.

41. He noted that a professional who has to submit to an evaluation is facing a difficult time, and Dr. Cox was facing a lot of pain in her life, which he described as "palpable," with the loss of her parents for whom she was the primary caregiver. DVD II, 10:05 a.m.

42. Dr. Teitelbaum described Dr. Cox as pleasant during the evaluation, but she was very defensive and not feeling that she even warranted being at the FRC and very vague regarding her past use of sedative hypnotics. DVD II, 9:39 a.m. and 12:12 p.m.

43. Dr. Cox was focused on the hair test as the explanation for her being at the Foundation, and she didn't refer to the hair test as a false positive but as a "misinterpretation." DVD II, 9:39-9:40 a.m.

44. Dr. Teitelbaum found her explanation of the hair test results not to be plausible in light of the facts and medical evidence. DVD II, 10:14-10:15 a.m.

45. The hearing officer found that Dr. Teitelbaum provided a thorough and well-informed assessment of Dr. Cox based upon the facts related to her specific issues and needs, and he drew his conclusions based upon the facts and circumstances related to her use of alcohol and prescribed medications and based upon his background, training, and many years of experience in evaluating and treating healthcare professionals. Exhibits 16 and 17.

46. Contrary to Dr. Cox's assertion, the hearing officer did not find any support for her assertion that Dr. Teitelbaum had any bias against her or that his evaluation and conclusions regarding her need for treatment of alcohol and substance use were flawed or otherwise inappropriately influenced by his own past substance abuse history. Exhibit 17.

47. Finally, the hearing officer found no support for Dr. Cox's assertion that Dr. Teitelbaum crafted his report for the purpose of his own direct financial benefit or to advance his career at the FRC or the University of Florida.

48. In fact, the evidence showed that he avoided any direct, or even the appearance of any, financial interest in the assessments he provides through the FRC since he has purposefully structured his salary with the university so that he receives no additional compensation as the result of the income derived from the evaluation and treatment of patients, and he does not accept any compensation other than his expenses and minimal honorariums for speaking engagements with organizations that refer individuals to FRC for evaluations or treatment. DVD II, 9:24 and 11;39-11:43 a.m.

49. In spite of Dr. Cox's assertion to the contrary, the hearing officer found no evidence that the FRC's thirty-one page report, Exhibit 17, was "canned," but instead, the report clearly sets out its findings and conclusions, which are based upon a detailed review of the facts as presented by Dr. Cox and others, a consideration of her position regarding the allegations against her, and the expertise of the team at the FRC that were involved in her evaluation.

50. In addition, there was no evidence that either Dr. Teitelbaum or Dr. Simpson "projected" onto Dr. Cox their own past history of substance and alcohol use

instead of basing their conclusions and recommendations on the facts related to Dr. Cox's use of those substances, and there is no evidence in the record that either Dr. Teitelbaum or Dr. Simpson benefitted personally, professionally, or financially from any of the findings or recommendations they made regarding the evaluation, care, or treatment they asserted Dr. Cox needs to address her substance and alcohol use.

51. In contrast to the credible testimony provided by Dr. Teitelbaum and Dr. Simpson, Dr. Cox consistently downplayed her past alcohol use, denied driving under the influence of medications in spite of having testing positive for several medications after her arrest, and attributed her blackout at the hospital to sleepwalking caused by fatigue, with no credible medical evidence presented at the administrative hearing to support that assertion.

52. In addition, Dr. Cox has been found during several interviews and evaluations regarding the allegations against her in Nova Scotia and in Kentucky to be less than candid, truthful, and consistent regarding her past drug and alcohol use, which support the conclusion that she is not a credible source for information regarding those issues. For examples see: (1) "During the [College of Physicians'] investigation of this complaint, there were a number of conflicting drug use monitoring results as well as conflicting statements by Dr. Cox regarding the use of these medications at various times." Exhibit 9, page 1; (2) Ms. McGrath reported to the College of Physicians that Dr. Cox's "psychological testing revealed a high level of defensiveness which . . . 'undermines the tests' ability to identify any mental health problems that might be present, or even to rule out problems.'" Exhibit 17, marked page 14 of 31; (3) Ms. McGrath also found Dr. Cox's "explanations regarding the positive drug tests were 'implausible,'" and the

Foundatoin found her "insight and judgment fair to poor with regard to her substance related issues and how they relate to this evaluation, good otherwise." Exhibit 17, marked pages 14-15 of 31; and (4) Dr. Cox was less than fully truthful and candid with Dr. Simpson about her alcohol use and failed to mention an earlier DUI charge. Exhibit 8.

53. The hearing officer also found Dr. Cox not to be a credible witness as to the allegations against her. Dr. Cox asserted at the administrative hearing that she was not driving under the influence of controlled substances in 2018 in spite of having several medications in her body at the time of her arrest, insisted that she was not incapacitated and under the influence of controlled substances in the parking lot of a hospital in April 2021 in spite of having no memory of the events and being driven home from the hospital, and insisted that she had not taken tramadol and had not been drinking alcohol leading up to her interview with Dr. Simpson in September 2021, in spite of the medical evidence showing a positive drug test in July 2021 and positive alcohol tests in September 2021.

54. During the time period at issue in this action, Dr. Cox was licensed by the Board to practice medicine in Kentucky and her medical specialty is pediatrics and pediatric emergency medicine. Exhibits 1, 2, and 26.

55. Dr. Cox received her medical degree in 1976 from Dalhousie University in Halifax, Nova Scotia. Exhibit 26.

56. She worked for twenty years in Halifax, before being recruited by Baptist Memorial Hospital in Memphis, Tennessee, in 1995 along with Dr. Camilla R. Forsythe, a fellow physician and long-time family friend, to set up a pediatric emergency medical

program similar to that which she and Dr. Forsythe had established in Nova Scotia. DVD III, 9:24 a.m. and 10:26-10:27 a.m.; Exhibits 25 and 26.

57. Dr. Cox worked in Memphis and Nashville, Tennessee, for twenty years and returned to Nova Scotia part-time in 2012 and full-time in 2015, where she has worked as a physician for the Nova Scotia Health Authority and as a pediatric emergency specialist at Colchester East Hants Health Center. Exhibits 26.

58. Because Dr. Cox's father had a very hard time aging, she was forced to move back to Nova Scotia to assume responsibilities not only for him but also for her sister and mother. DVD III, 10:27 and 10:31 a.m.

59. Dr. Cox's sister, Donna, is seventy years old and has been hearing impaired and developmentally delayed since birth due to complications from Rh disease, which is caused by blood incompatibility in the uterus between mother and child and which affects the developing fetus's brain and hearing. DVD I, 9:35 a.m.; DVD III, 10:23 a.m.; Exhibit 29, page 5.

60. Dr. Cox's father died in 2015 and her mother eleven months later, and Dr. Cox is now the primary care giver for Donna, who is Dr. Cox's "priority" at this time. DVD I, 9:36 a.m.; Exhibit 29, page 5.

61. Since 2017, Dr. Cox has worked full-time with the Nova Scotia Health Authority performing locum tenens work, which involves filling in for physicians for a defined period of time at various hospitals throughout the province, and she is fully licensed to work as a physician in Nova Scotia. DVD III, 10:27-10:28 a.m.; Exhibits 26; Exhibit 29, page 5; and Exhibit 30.

62. Dr. Cox' locum tenens work required her to travel by car throughout Nova Scotia to locations up to one hundred and fifty miles from where she lives. DVD III, 10:29-10:31 a.m.

63. She can be required to stay in hotels for up to ten days at a time, and she often travels with Donna who stays in the same room as Dr. Cox. DVD III, 9:28 a.m.; Exhibit 17, marked page 10 of 31.

64. Donna who is very vocal can cry and scream and can be awake and noisy throughout the day and night, which makes it difficult to sleep. DVD III, 9:28 and 9:50 a.m.; Exhibit 17, marked page 10 of 31.

65. Dr. Forsythe, who has stayed in the same hotels with Dr. Cox and Donna, has heard Donna scream out many times during the day and night and "couldn't imagine sleeping in a room with Donna," and as a result, Dr. Forsythe has been concerned about Dr. Cox suffering from sleep deprivation. DVD III, 9:28-930 a.m.

66. There is no dispute that Dr. Cox has a loving and caring relationship with her sister, who Dr. Cox described as "sweet, loving, and kind." Exhibit 17, page 10 of 31.

67. Dr. Smolen in his psychiatric evaluation of Dr. Cox found, however, that she "has been chronically stressed by the caregiving responsibilities to manage her disabled sister's life." Exhibit 17, first page and marked page 10 of 31.

68. The Board opened an investigation of Dr. Cox on August 16, 2021, after receiving notification that the College of Physicians had suspended her medical license on August 5, 2021. Exhibit 3.

69. That suspension was imposed after a hair follicle test performed in July 2021 and conducted as part of the periodic testing required by the earlier College of

Physicians disciplinary action was positive for tramadol. DVD I, 10:01 a.m.; Exhibit 9, page 1.

70. In an earlier action the College of Physicians issued a formal complaint against Dr. Cox on April 8, 2020 "alleging she was impaired in the workplace," or more specifically, impaired in the parking lot of the hospital at which she was performing locum tenens work. DVD I, 9:47-9:48 a.m.; Exhibit 9, page 1.

71. The College of Physicians imposed various monitoring requirements and restrictions on her license to practice medicine as a result of that incident. DVD I, 9:52-9:53 a.m.

72. Her license was "restricted to outpatient scheduled pediatric patient care," and she was required to submit to periodic, random drug screens. Exhibit 9, page 1; DVD I, 10:06-10:07 a.m.

73. Dr. Cox was also required "to refrain from using all prescription and over the counter medication without notifying the College," and "following a positive hair drug test [for tramadol] in July 2021 . . . she was suspended on an interim basis" in an order dated August 5, 2021, which was the order that came to the attention of the Board. DVD I, 10:01 and 10:03 a.m.; Exhibit 9, page 1.

74. Dr. Cox's prescriptions for controlled substances date from her treatment for breast cancer in 2017 and from pelvic and hip fractures in February 2021, which prevented her from working for a period of time, and she had been prescribed tramadol for pain associated with those conditions. Exhibit 8, page 1, Exhibit 17, marked pages 6-7 of 31; DVD I, 10:01 a.m.

75. She was also prescribed sedative hypnotics, Klonopin and Ambien [zolpidem], after her diagnosis of breast cancer, but she asserted she never took those two medications together. Exhibit 17, marked page 6 of 31.

76. Dr. Cox had been prescribed Ambien to help her sleep. DVD I, 10:07 a.m.

77. She reported taking Klonopin "intermittently" between 2017 and March 2021 and stated she stopped taking tramadol in March 2021. Exhibit 17, marked page 6 of 31; DVD I, 10:01 a.m.

78. In April 2020 Dr. Cox drove with Donna to a small community in Nova Scotia for work, and after two nights in a hotel room with little sleep, she went to see a patient at the hospital. Exhibit 8, page 1.

79. Dr. Forsythe testified that Dr. Cox had been up all night with Donna screaming and was "absolutely exhausted," but since she has a hard time saying "no" to people, she had taken that locum tenens work to cover for another physician over Easter in spite of her acknowledged need to rest and recover. DVD III, 9:50-9:51 a.m.

80. Dr. Cox explained that "there was a huge need for doctors" in Nova Scotia during the 2018-2020 time period, and she tried to help out and fill in as much as possible through her locum tenens work because she felt an obligation to pay back after having been trained in the province. DVD III, 10:34 a.m.

81. Thus, many issues that Dr. Cox had been dealing with came to a head during the evening in April 2020 in the hospital parking lot.

82. Although Dr. Cox provided at the administrative hearing some details about the incident, she admitted that the information was second-hand because she has no memory of what occurred. DVD III, 10:38 a.m.

83. Dr. Cox had gone to the hospital to see a patient, but she discovered the person had already been discharged. DVD III, 10:39 a.m.

84. She returned to her car to charge her telephone and fell asleep, which she attributed to having been awake two days and two nights with Donna. DVD III, 10:38-10:39 a.m.

85. Dr. Cox denied having taken any medications or drinking alcohol prior to the incident. DVD III, 10:40 a.m.

86. She understands that she got out of her car to return to the hospital, and the staff person checking people at the door for COVID apparently realized something was wrong with Dr. Cox and called her name. DVD III, 10:38 a.m.

87. Dr. Cox asserted that at that point, "I abruptly came out of it," and was fine, and she denied having been escorted out of the hospital, stating the incident was similar to her sleepwalking when she was younger. DVD III, 10:38 and 10:40 a.m.

88. Although Dr. Cox asserts she was not impaired at the time, she acknowledged that she accepted the hospital staff person's offer to drive her home, stating "I felt that it was the safest thing to do." DVD III, 10:38-10:39 a.m.

89. A fellow physician on duty at the hospital was concerned enough about the incident to report it to the College of Physicians, and the investigation, suspensions, and monitoring of her medical practice and medications followed. Exhibit 8, page 1.

90. Dr. Teitelbaum's biggest concern for Dr. Cox was her history of workplace impairment for which he saw no explanation. DVD II, 9:45 a.m.

91. Dr. Teitelbaum noted that if a person cannot remember events, it's not due to fatigue but to a "blackout" since fatigue does not give that clinical presentation. DVD

II, 10:15-10:17 a.m.

92. While neither sleep apnea nor fatigue will give the clinical presentation of a blackout, sedative hypnotics and alcohol or sedative hypnotics and opioids can cause a blackout. DVD II, 10:17 a.m.

93. Thus, based upon Dr. Cox's own description and narrative of the circumstances related to her blackout, Dr. Teitelbaum found that Dr. Cox was "overtly impaired taking care of children in a hospital" and has a substance use disorder. DVD II, 10:15 a.m.

94. He also stated, however, that he wasn't being judgmental of Dr. Cox because of her workplace impairment, but she had simply crossed a line due to her illness. DVD II, 10:15 a.m.

95. Dr. Teitelbaum noted that he was especially concerned that Dr. Cox's referral to the College of Physicians started with her workplace impairment since most healthcare professionals he sees have been referred as a result of DUIs or family issues. DVD II, 10:16-10:17 a.m.

96. He stated that the impairment of a practicing physician is what the profession is trying to avoid. DVD II, 10:16 a.m.

97. Hence, Dr. Cox's inability to recall the events of that evening, the staff person confronting her at the door of the hospital, the allegation that she had been escorted out of the hospital, her agreement to be driven home, and a fellow physician reporting her to the College of Physicians do not support a finding that she was "fine" and "abruptly came out of it" when confronted by the hospital staff member and during subsequent events related to that incident.

98. Instead, the preponderance of the evidence supports the conclusion that Dr. Cox was impaired due to her taking controlled substances that evening at the hospital.

99. Dr. Cox testified that she later met with a physician specialist in Memphis who did not find she had sleep apnea but apparently found that she had been sleepwalking and suggested she not work so hard. DVD III, 10:41 a.m.

100. That physician did not testify at the administrative hearing, and his written report was not offered into evidence at the administrative hearing.

101. Hence, that physician's alleged diagnosis that Dr. Cox had been sleepwalking and that such a condition explains her lack of memory regarding the events are not credible without the physician or his report being available and subject to review as part of the administrative hearing process.

102. A representative of the College of Physicians contacted Dr. Cox about a week after the hospital incident, presumably as a result of the report from the fellow physician, and a formal complaint was issued on April 8, 2020 "alleging she was impaired in the workplace." DVD III, 10:43-10:44 a.m.; Exhibit 9.

103. Dr. Cox agreed not to practice medicine for six weeks during the process in Nova Scotia referred to as an "undertaking." DVD I, 9:47-9:50 a.m.

104. An "undertaking" appears to be an expedited, interim investigation of a non-patient complaint. Id.

105. As part of the undertaking the College of Physicians ordered Dr. Cox on June 16, 2020, to submit to a drug screen, meet with a gerontologist who assessed her cognitive ability, and have a head CT scan performed. DVD I, 9:50 a.m.; DVD III, 10:44-10:45 a.m.

106. Dr. Cox reported the that the urine drug screen was negative, and there was no deficiency found in her cognitive skills. DVD I, 9:50-9:51 a.m.

107. She was allowed to return to work at some point after the undertaking with restrictions. DVD I, 9:51-9:52 a.m.; Exhibit 9, page 1.

108. Thus, although no written orders from the College of Physicians were entered into evidence at the administrative hearing, Dr. Cox's license to practice medicine in Nova Scotia was certainly restricted or limited as a result of the undertaking and subsequent orders resulting from that process.

109. Dr. Cox asserted that she was later was found to have B-12 and iron deficiencies that could affect her energy level, and it greatly improved after treatment. DVD III, 10:44 a.m.

110. There was no evidence to support the conclusion that such deficiencies explained her impairment at the hospital.

111. Although Dr. Cox was eventually permitted to return to work after the undertaking, her case passed to a College of Physicians investigative committee for further action. DVD I, 9:52-9:53 a.m.

112. On April 15, 2021, College of Physicians entered an order that placed various limitations and restrictions on her license, including not working at night and only in an office setting. Id.; Exhibit 9.

113. In compliance with the College of Physicians' orders Dr. Cox estimated that she submitted to more that fifteen drug screens between April 2021 and April 2022. DVD I, 10:06 a.m.

114. On August 5, 2021, her license was suspended when a hair follicle test performed in July 2021 was positive for tramadol. Exhibit 9, page 1.

115. This was at least the third occasion on which her license was sanctioned, restricted, or limited by the College of Physicians.

116. On September 13, 2021, the Board directed Dr. Cox to contact the Foundation for an evaluation since she "may be dealing with an impairment issue." Exhibits 4 and 5.

117. Dr. Cox met with Dr. Simpson on September 23, 2021, for two to three hours. Exhibit 8, page 1; DVD I, 10:17 and 11:32 a.m.

118. Dr. Cox wasn't practicing medicine at the time of that meeting, apparently as a result of the restrictions on her license in Nova Scotia. DVD II, 12:11 p.m.

119. Dr. Simpson explained to her the role of the Foundation and its relationship with the Board. DVD I, 11:29 a.m.

120. Dr. Simpson informed Dr. Cox that she would not be diagnosed or treated by the Foundation, and that HIPAA guidelines would not apply because there would not be a doctor/patient relationship. Id.

121. Because the Foundation's information on Dr. Cox was limited to what the Board had provided, and since no information had yet been received from the College of Physicians, Dr. Simpson asked Dr. Cox to provide her view of the events that led to the referral from the Board. Id.

122. Dr. Cox attributed the April 2021 incident in the hospital parking lot to her lack of sleep caused by dealing with her sister, and while admitting she had previously taken tramadol and other prescribed medications for various medical problems, she

asserted that the positive July 2021 hair follicle test for tramadol was "flawed" and that she hadn't used any medications since March 2021. Exhibit 8, page 1; DVD I, 10:01 a.m.

123. Dr. Cox acknowledged that she has no expertise in hair follicle testing, and no objective medical evidence or expert testimony was provided at the adminitrative hearing in support of her assertion that the test was flawed or the results were erroneous. DVD I, 10:02 a.m.

124. Although Dr. Cox asserted the positive test in July 2021 for tramadol was the result of a "misinterpretation" of the test, Dr. Teitelbaum was never able to see a copy of the report issued after that test. DVD II, 9:39 a.m. and 12:13 p.m.

125. Dr. Teitelbaum noted, however, that a hair test would be positive for three months after taking tramadol, and therefore, Dr. Cox's assertion that she had not taken tramadol since March 2021 and that the test in July 2021 was therefore invalid was "not plausible." DVD II, 9:44 am., 10:14-10:15 a.m.

126. The positive hair test shows that Dr. Cox had used tramadol during the three months prior to the test, and the hearing officer finds her assertions to the contrary support the conclusion she was attempting to conceal the extent of her continued use of tramadol without any medical justification for taking the controlled substance. DVD II, 12:13 p.m.

127. Although all subsequent drug screens were negative for controlled substances, Dr. Teitelbaum stated that fact does "absolutely not" mean Dr. Cox is free of any problems associated with drug or alcohol use. DVD II, 10:55 a.m.

128. In fact, the "hallmark" of persons with a problem is to have periods of control, and it's uncommon for him to treat a person who did not have periods of

control. DVD II, 10:55-10:56 a.m.

129. In spite of the fact that Dr. Cox was directed by the Board to meet with the Foundation's Medical Director to discuss that she "may be dealing with an impairment issue," she failed to disclose during the interview with Dr. Simpson that she had an unresolved DUI charge against her related to her use of controlled substances that had been pending in Nova Scotia since September 2018. Exhibits 5; Exhibit 8, marked page 4 of 17; Exhibit 9, page 1.

130. The Foundation did not discover Dr. Cox's DUI charge until five days after the interview, September 28, 2021, when the Foundation reached out to the College of Physicians for additional information on Dr. Cox's suspension in Nova Scotia. DVD I, 11:35 a.m.; Exhibit 9, page 1.

131. In September 2018 Dr. Cox had been charged with DUI while driving to a small community in Nova Scotia for locum tenens work, but she denied having been on any medications for six to eight hours before she started the trip. DVD III, 9:56 a.m.; Exhibit 9, page 1.

132. Dr. Cox reported that an off-duty police officer saw her go over the center line in the road, followed her for some time, and contacted the Royal Mounted Canadian Police who arrested her for DUI. DVD III, 9:56-9:58 a.m.

133. Similar to her denial of impairment or the use of controlled substances on other occasions, Dr. Cox offers as an excuse to the DUI charge that her dog caused her to drive erratically during the time period that she was followed and observed by the off-duty police officer. DVD II, 1:42 and 2:33 p.m.

134. Dr. Cox informed Dr. Teitelbaum that after her arrest for DUI, Ambien, Klonopin, and tramadol were found in her car and in her urine. DVD II, 9:44 a.m.

135. Ambien and Klonopin are sedative hypnotics, and tramadol acts on the opioid receptor in the brain. DVD II, 9:44 a.m.

136. At the administrative hearing Dr. Cox asserted her Fifth Amendment right against self-incrimination and refused to answer questions about the DUI charge since that charge was still pending. DVD I, 10:09 a.m.; DVD III, 10:36-10:37 a.m.

137. Her counsel stated that the DUI case was delayed due to COVID and "it's probably not going forward." DVD I, 10:10 a.m.

138. It was unclear whether counsel meant that the charges would be dropped or that she would enter into some type of plea or diversion agreement.

139. Irrespective of how the criminal charges may be resolved, the hearing officer may draw an adverse inference in a civil proceeding when a party refuses to address on cross-examination matters related to criminal charges.

140. In this action the hearing officer draws an adverse inference from Dr. Cox's refusal to address matters related to her conduct at the time of the DUI arrest and finds she is attempting to conceal the fact that she was under the influence of controlled substances and impaired at the time of the police stop, just as she was later in the hospital parking lot.

141. Dr. Cox had also failed to disclose the DUI charge to the College of Physicians as is required on its annual renewal form for her medical license, and similar to the Foundation, the College of Physicians did not discover the pending charge until its investigation of the hospital parking lot incident. Exhibit 9, page 1.

142. At the administrative hearing Dr. Cox admitted that she had failed to notify Dr. Simpson of the pending DUI charge but asserted her failure was due to the belief the DUI was unrelated and irrelevant to her interview with the Foundation. DVD I, 10:21-10:22 a.m.

143. That assertion lacks any credibility in light of the fact the Board specifically directed her to meet with the Foundation because she "may be dealing with an impairment issue," and her failure to notify the Foundation of the charge was simply an effort to conceal facts that were very relevant to the allegations related to her later impairment at the hospital and to her possible addiction to a controlled substance. Exhibit 3.

144. In response to Dr. Simpson's question at the Foundation about her recent alcohol use, Dr. Cox stated that she had one glass of wine the night before their meeting, another two nights previously, and a third, four nights previously. Exhibit 8, marked page 2 of 17.

145. Upon receipt of the results from the tests ordered by the Foundation, Dr. Simpson notified Dr. Cox that although her tests were negative for controlled substance, they "are indicative of alcohol use at a level inconsistent with the history provided." Exhibit 8, marked page 4 of 17.

146. In light of the Foundation's test results and of her failure to disclose the earlier DUI, Dr. Simpson recommended "a 96-hour comprehensive evaluation at a center with expertise and experience with healthcare professionals." Exhibit 8, marked page 4 of 17.

147. Dr. Teitelbaum described as "remarkable" Dr. Cox's assertion that she only drinks twice a year but had drinks on three nights prior to her meeting with the Foundation. DVD II, 9:42 a.m.

148. Similar to her denial of impairment during the police stop, at the hospital, or in the time period before the hair follicle test, Dr. Cox denies that her recent alcohol use consisted of more than one glass of wine on three of the four days immediately preceding her meeting with Dr. Simpson on September 23, 2021. Exhibit 8, marked pages 1-2 of 17.

149. At the administrative hearing, Dr. Cox denied any regular or periodic consumption of alcohol by insisting, "I just don't drink." DVD III, 10:47 a.m.

150. As for the three occasions on which she drank before the meeting with Dr. Simpson, Dr. Cox testified "My history with alcohol is that I don't drink. This was an exception." DVD I, 10:25 a.m.

151. Dr. Cox's position was supported by Dr. Cox's daughter and Dr. Forsythe, both of whom have asserted she rarely drank and never appeared to have been impaired. DVD II, 2:27-2:29 and 2:36-2:38 p.m.; DVD III, 9:33-9:36 a.m.

152. Both Dr. Cox's daughter and Dr. Forsythe acknowledged they've gone substantial periods of time without seeing Dr. Cox in person, but they communicate with her on a regular, even daily basis. DVD II, 2:22-2:24 and 2:38 p.m. DVD III, 9:25 a.m.

153. Dr. Cox's urine screen for alcohol use as part of her evaluation by the Foundation revealed an EtG (Ethyl Glucuronide) level of 19.500, an EtS (Ethyl Sulfate) level of 7.360 and a PEth (Phosphatidyl Ethanol) level of 40.6. Exhibit 8, marked page 4 of 17.

154. The PEth test has been used widely for the past decade and looks back two to three weeks for alcohol consumption. DVD I, 12:52-12:54 p.m.

155. Twenty nanograms per milliliter is the cutoff for a positive PEth test, and most people can have one to two drinks four times per week and still be below the level of 20. DVD II, 1:34 and 1:37 p.m.

156. EtG and EtS tests measure alcohol consumption for approximately eighty hours prior to the test. DVD I, 12:54.

157. The cutoff for an EtG test to be considered positive for alcohol consumption is 250 and for EtS the cutoff is 100. DVD I, 1:23-1:24 p.m.

158. Dr. Teitelbaum could not have been more clear as to the meaning of Dr. Cox's test results for her consumption of alcohol in the period prior to her meeting with Dr. Simpson.

159. He testified that "numbers like this are flat-out a lot of alcohol." DVD II, 12:05 p.m.

160. Dr. Teitelbaum characterized the PEth test as "the most valuable biomarker to pick up significant drinking," and a PEth result over 20 shows the person "ingested significant amount of alcohol, period." DVD II, 10:02 a.m.

161. He added that no science to date would support the drinking history she provided. DVD II, 10:00 a.m.

162. As for Dr. Cox's EtG and EtS result, Dr. Teitelbaum stated that although many factors may impact the levels in EtG and EtS tests, "we can safely say in the case of her and those levels, they're not possible with the history she gave." DVD II, 12:03 p.m.

163. Although he couldn't state how frequently or the exact amount of alcohol Dr. Cox had consumed, Dr. Teitelbaum stated, "there's no science available at this time as we sit here today to support her report of alcohol use provided by EtG and EtS, nor the PETH." DVD II, 1:24 p.m.

164. He testified further that "she wasn't honest with Dr. Simpson or myself on her history of use of alcohol in the week prior to when those labs were submitted. Unequivocally, I can say that." Id.

165. And more specifically as to the EtG and EtS test results, Dr. Teitelbaum stated Dr. Cox had drank "a lot of alcohol" within the forty-eight hours before the test. DVD II, 1:25 p.m.

166. Dr. Cox submitted no expert testimony to contradict Dr. Teitelbaum's opinions regarding the extent of her recent alcohol use.

167. Furthermore, the assertions by Dr. Cox, her daughter, or Dr. Forsythe in support of her alleged limited consumption of alcohol are not supported by the EtG, EtS, and PEth tests.

168. Therefore, their assertions were not credible representations as to the amount Dr. Cox had been drinking, and Dr. Cox was likely misleading her daughter and friend as to the extent of her alcohol consumption when not in their presence.

169. Dr. Teitelbaum noted that Dr. Cox was not tested or monitored for alcohol use in Nova Scotia. DVD II, 12:15 p.m.; Exhibit 17, marked page 13 of 31.

170. Thus, Dr. Cox may have been misled through her interactions with and monitoring by the College of Physicians that the Foundation would not test her for alcohol use, and therefore, she may have believed she could substitute alcohol for

tramadol and other medications without discovery or consequence.

171. Dr. Cox even asserted the College of Physicians informed her to "go ahead and have moderate amounts of alcohol" since "they didn't have the same concerns at all" as Kentucky. DVD I, 10:25 a.m.

172. Dr. Teitelbaum, however, succinctly stated, "if you're going to monitor people for concerns related to substance use disorders, you test for alcohol metabolites." DVD II, 9:47 a.m.

173. Dr. Teitelbaum noted that the DSM ("Diagnostic and Statistical Manual of Mental Disorders") criteria for intoxication withdrawal for both sedative hypnotics and alcohol is identical. DVD II, 9:47 a.m.

174. He noted that every professional monitoring agency that he works with tests individuals for alcohol use, and as for the number of organizations that don't test, he listed as "zero, not in my twenty-four years, ever." DVD II, 9:47 a.m.

175. The fact that the College of Physicians was so out of the mainstream in that aspect of the appropriate level of monitoring of Dr. Cox suggests there are no grounds for the Board to defer to that agency's findings or conclusions regarding her current fitness to practice medicine in Kentucky or for future monitoring that may be appropriate regarding her use of controlled substances or alcohol.

176. Based upon the monitoring performed by the College of Physicians, Cox was likely surprised to discover the Foundation would test her for alcohol use, and she tried to anticipate the expected positive results by admitting to recent but limited alcohol intake.

177. When the tests showed that, in fact, Dr. Cox had drank a significant amount

of alcohol, she simply asserted the test must have been flawed and that "I don't drink," without providing any objective proof at the administrative hearing to refute the test results and to support her assertion. DVD I, 10:25 a.m.

178. Based upon Dr. Cox's consumption of a significant amount of alcohol shortly before her meeting with the Foundation and by her not being truthful about that fact, the preponderance of the evidence supports Dr. Teitelbaum's diagnosis that Dr. Cox has an "unspecified moderate alcohol use disorder." DVD II, 10:13-10:14 a.m.; Exhibit 17, marked page 21 of 31.

179. Dr. Cox's reported use of sedative hypnotics was also not credible.

180. She informed Dr. Teitelbaum that she had used Klonopin "intermittently" between 2017 and her alleged last use in March of 2021, but he stated she was "a very vague historian on her use of sedative hypnotics." Exhibit 17, marked page 6 of 31; DVD II, 12:12 p.m.

181. She also could not recall whether she took Klonopin and Ambien together or with alcohol and could not recall the dosage of her Klonopin prescription. Exhibit 17, marked page 6 of 31.

182. Therefore, Dr. Teitelbaum stated he did not know "one way or another" whether she took Klonopin or Ambien after March 2021. DVD II, 12:12 p.m.

183. Dr. Cox also told Dr. Teitelbaum that she had been prescribed Klonopin for "hot flashes," but he is not aware of the use of Klonopin or benzodiazepines for the treatment of that condition. Exhibit 17, marked page 6 of 31; DVD II, 10:25 a.m.

184. He noted that one third of the overdoses in the U.S. result from a combination of a sedative hypnotic, an opioid, and alcohol, and he was concerned that

Dr. Cox continued to take those medications for several years after being charged with a DUI. DVD II, 9:44 a.m.

185. Therefore, the preponderance of the evidence supports the conclusion that Dr. Cox attempted to conceal and downplay her use of Klonopin and Ambien, just as she did with her use of tramadol and alcohol.

186. The preponderance of the evidence also supports by Dr. Teitelbaum's diagnosis that Dr. Cox has an "unspecified sedative and hypnotic use disorder." Exhibit 17, marked page 24 of 31.

187. In addition, the preponderance of the evidence supports the conclusion that Dr. Cox cannot currently practice medicine with reasonable skill and safety, especially considering her impairment at the hospital and her receiving a DUI while driving to her locum tenens work. Exhibit 17, marked pages 29-30 of 31.

188. Dr. Teitelbaum found Dr. Cox to have "fair to poor [insight and judgment] with regard to her substance related issues and how they relate to this evaluation . . . ." Exhibit 17, marked page 15 of 31.

189. For that and other reasons, Dr. Teitelbaum believed Dr. Cox will benefit from treatment in a residential facility or another facility with a housing component for treating healthcare professionals at which she would be safe to tell the truth regarding the allegations that serve as the basis for the *Complaint* and the extent of her drug and alcohol problems. DVD II, 10:17-10:18 a.m.; Exhibit 17, marked pages 29-30 of 31.

190. The preponderance of the evidence supports the conclusion that Dr. Cox would benefit in the treatment of her alcohol and substance use issues by attending a residential treatment facility with expertise in treating healthcare professionals.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.

2. The administrative hearing was conducted in accordance with the provisions of KRS Chapter 13B and KRS 311.591.

3. Under KRS 13B.090(7), the Board had the burden to prove by a preponderance of the evidence the allegations against Dr. Cox.

4. The Board has met its burden to prove Dr. Cox violated KRS 311.595(6), (7), and (17).

5. The Board has not met its burden to prove Dr. Cox violated 201 KAR 9:081, Section 9(2)(a)(2).

6. Under that regulation, Dr. Cox was required to "report to the board any disciplinary action taken or sanction imposed upon the person's license in any state . . . within ten days." She asserts, however, that the regulation's reporting requirement is limited to discipline "imposed upon the person's license in any state" of the United States and not to discipline imposed by "a licensure board in a foreign country," such as the College of Physicians. *Answer of Katharine Suzanne Cox, M.D. to Complaint*, Paragraph 4, unmarked page 2.

7. The hearing officer finds there is substantial merit to Dr. Cox's position. The reporting requirements of that regulation are specifically limited to discipline imposed by a "state," whereas and in contrast, under the provisions of KRS 311.595(17), a licensee is subject to discipline in Kentucky when her license has been disciplined "in any other state, territory, or foreign nation." Thus, although the Board may discipline Dr. Cox

under KRS 311.595(17), for actions taken against her license in Nova Scotia, it may not also discipline her for failure to report the disciplinary actions imposed in Nova Scotia because it is a foreign nation or territory rather than a state.

8. Although no written orders from the College of Physicians were entered into evidence at the administrative hearing, the undisputed evidence showed that the College of Physicians disciplined her license on April 8, 2020, as shown by the restrictions and limitations placed on her license as part of the undertaking and subsequent orders resulting from that process. Her license was also disciplined on April 15, 2021, by the College of Physicians in an order placing various limitations and restrictions on her license, including not working at night and only in an office setting. Her license was disciplined a third time on August 5, 2021, when it was suspended after a hair follicle test performed in July 2021 was positive for tramadol. Exhibit 9, page 1. Therefore, the preponderance of the evidence shows that Dr. Cox has violated KRS 311.595(17).

9. Under KRS 311.595(6), a licensee who has "become addicted to a controlled substance" may be disciplined by the Board.

10. Pursuant to KRS 311.550(26), the term "addicted to a controlled substance" is defined as "an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic use of any narcotic drug or controlled substance resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of any narcotic drug or controlled substance."

11. The preponderance of the evidence shows that Dr. Cox has become addicted to a controlled substance in violation of KRS 311.595(6) as shown by her arrest for

driving under the influence of three medications and as shown by the actions related to her conduct in the hospital parking lot. Her addiction to a controlled substance was shown by the third instance when she tested positive for tramadol in July 2021 at a time when she allegedly hadn't used the controlled substance for many months, which supports the conclusion that she had no legitimate medical reason to have taken the medication within the time period covered by the positive hair follicle test.

12. Although Dr. Cox's guilt or innocence related to her DUI arrest has not been finally adjudicated, the hearing officer can draw an adverse inference from the fact she refused to answer questions at the administrative hearing about her conduct related to the traffic stop and arrest for DUI, without regard to her Fifth Amendment right against self-incrimination. The case law is settled that a person may assert her right against self-incrimination in a administrative and civil proceeding. *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973). Yet, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). The fact finder, however, may not infer guilt "if the failure to testify *alone* were taken as an admission of guilt, without regard to other evidence." *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 390 (7th Cir. 1995)(emphasis in original). "Silence is a relevant factor to be considered in light of the proffered evidence, but the direct inference of guilt from silence is forbidden." *Id*. Therefore, even though the hearing officer can draw an adverse inference from Dr. Cox's refusal to testify at the administrative hearing about the circumstances related to her arrest for DUI, the hearing officer is required to analyze the

evidence presented in order to make a determination whether the preponderance of the evidence supports the allegation that she violated KRS 311.595(6).

13. The hearing officer draws an adverse inference that Dr. Cox refused to answer questions related to her conduct at the time of her arrest for DUI because she was under the influence of controlled substances at that time. That adverse inference and her violation of KRS 311.595(6) is further supported by the second incident in which Dr. Cox was under the influence of controlled substances while in her car, but on that occasion when she at the hospital for work, rather than driving to a community to perform locum tenens work.

14. The hearing officer also notes that Dr. Cox admits that she was observed by an off-duty police officer driving erratically immediately prior to her arrest, that the police officer was concerned enough to report her driving to an officer on duty, that she was found to be under the influence of several controlled substances after the DUI arrest, and that her stated defense to the DUI charge, that her dog was the cause of her erratic driving, is of dubious validity.

15. The violation of KRS 311.595(6) is further supported by the fact Dr. Cox's addiction to a controlled substance caused "interference with the individual's social or economic functions" due to her arrest on her way to work on one occasion and due to her being prohibited from entering the hospital at which she was working and driven home on a second occasion. The violation of the statute was also shown by Dr. Cox's suspension from working as a physician by the College of Physicians as a result of her positive drug test.

16. The violation of KRS 311.595(6) is also supported by the fact Dr. Cox displayed a "loss of powers of self-control regarding the use of any narcotic drug or controlled substance" since she was under the influence of controlled substances while driving to work on one occasion and while at the hospital for work on another.

17. Under KRS 311.595(7), a licensee who has "become a chronic or persistent alcoholic" may be disciplined by the Board.

18. Pursuant to KRS 311.550(25), the term "chronic or persistent alcoholic" is defined as "an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of alcoholic beverages."

19. The preponderance of the evidence supports the conclusion that Dr. Cox is in violation of KRS 311.595(7) and is a chronic and persistent alcoholic as shown by her EtG, EtS, and PEth tests showing she drank a "substantial" amount of alcohol prior to her meeting with Dr. Simpson and as shown by her denial that she drank that much alcohol and by her assertion "I just don't drink." Her denials in the face of the objective medical evidence that she drank a substantial amount of alcohol in the time period leading up to her being interviewed about her possibly "dealing with an impairment issue" support the conclusion that she was not truthful and was attempting to hide the extent of her alcohol use and the fact that she engaged in the chronic, habitual, and persistent use of alcohol. In addition, Dr. Cox's use of alcohol interfered with her social and economic functions because it resulted in oversight by the Board and prevented her

from working in Kentucky as a physician. In addition, her loss of the power of self-control in her use of alcohol was shown by the fact she drank a substantial amount leading up to her interview with the Foundation to address whether she was dealing with an impairment issue.

20. The fact that Dr. Cox may have had a long period of sobriety since the Board has brought this action against her license is certainly commendable but that does not call into question whether she has impairment issues related to her use of alcohol or controlled substances. Instead, periods of sobriety are consistent with persons dealing with substance and alcohol use issues.

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. Katharine Suzanne Cox guilty of violating KRS 311.595(6), (7), and (17) and take any appropriate action against her license for the misconduct related to those violations.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

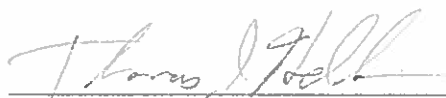
> A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

A party also has a right to appeal the Final Order of the agency pursuant to KRS 13B.140(1) which states:

> All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO RECOMMENDED this 30th day of May, 2023.



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 30th day of May, 2023, 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
Jill.Lun@ky.gov

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

NICOLE A KING
ASSISTANT GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222
nicolea.king@ky.gov

RANDALL S STRAUSE
COURTNEY L GRAHAM
STRAUSE LAW GROUP PLLC
804 STONE CREEK PKWY STE 1
LOUISVILLE KY 40223
rstrause@strauselawgroup.com
cgraham@strauselawgroup.com

THOMAS J. HELLMANN

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