

FILED OF RECORD

APR 20 2023

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2067

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY JAMES M. FOSTER, M.D., LICENSE NO. 32681, 275
SOUTH LIMESTONE, SUITE 150, LEXINGTON, KENTUCKY 40508

AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel A, and JAMES M. FOSTER, M.D., (hereafter "the licensee"), and, based upon their mutual desire to fully and finally resolve this pending investigation without an evidentiary hearing, hereby ENTER INTO the following **AMENDED AGREED ORDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, James M. Foster, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is General Medicine.
3. The Board opened an investigation pursuant to a grievance received on or about April 19, 2021 from an investigator with the Special Investigations Unit of Humana Insurance. The grievance expressed concern with the licensee's prescribing of Testosterone and Anastrozole.
4. In an interview with a Board investigator, the licensee stated that he prescribes testosterone for middle-aged men with low testosterone as a part of Testosterone Replacement Therapy. The licensee stated that this can cause estrogen to go up in

males and therefore he prescribes the drug Anastrozole to counter the effects of the estrogen. The licensee stated that while such use was off-label, it was standard practice.

- ~~5. The licensee responded to the grievance in writing on July 2, 2021, and again through his counsel on August 17, 2021.~~
6. The Board obtained twelve (12) medical charts of patients receiving Anastrozole and/or testosterone.
7. A Board consultant who is Board-certified in Endocrinology reviewed the licensee's twelve (12) patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices in regard to diagnoses in ten (10) charts, in regard to treatment in ten (10) charts, overall in ten (10) charts and was overall Borderline in two (2) charts. The Board consultant also found instances of gross negligence and gross ignorance. The Board consultant's report is attached to the Agreed Order filed of record September 2, 2022 and is incorporated in its entirety.
8. On or about April 19, 2022, the licensee responded in writing, through counsel, to the Board consultant's review of his patient charts. In his response, the licensee responded to the Board consultant's concerns and included a letter of support from Ashok Kadambi, M.D., a physician who practices hormone optimization in Ft. Wayne, Indiana. The licensee explained that he was completing a mentoring program with Dr. Kadambi. The licensee submitted an additional response, through counsel, on April 25, 2022.

9. On or about June 28, 2022, the Board consultant issued a final report after reviewing the licensee's responses. The Board consultant responded to the comments made by the licensee and Dr. Kadambi. The Board consultant's opinion from her initial review did not change.
10. On August 18, 2022, the Board's Inquiry Panel A reviewed the investigation. The licensee appeared, with counsel, and addressed the Panel. The Panel and the licensee agreed to enter into an Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.
11. The Agreed Order, filed of record on September 2, 2022, required that the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION until further order of the Board:
 - a. The licensee SHALL NOT practice medicine in the context of hormone replacement and/or optimization therapy until further order of the Panel;
 - b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL contact *either* the Center for Personalized Education for Physicians ("CPEP"), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232 *or* LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania, 17050, Tel. (717) 909-2590, to schedule a clinical skills assessment in hormone replacement and/or optimization therapy, for the earliest dates available to both CPEP/LifeGuard and the licensee;
 - i. Both parties may provide relevant information to CPEP/LifeGuard for consideration as part of the clinical skills assessment. In order to permit the Board to provide such relevant information, the licensee SHALL immediately notify the Board's Legal Department of the assessment dates once the assessment is scheduled;
 - ii. The licensee SHALL travel to CPEP/LifeGuard and complete the assessment as scheduled, at his expense;

- iii. The licensee expressly understands and agrees that CPEP/LifeGuard will issue its final assessment report, in accordance with its internal policies;
 - iv. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP/LifeGuard will provide a copy of the assessment report to the Board's Legal Department promptly after its completion;
 - v. If the assessment report recommends development of an educational plan or a remediation plan, the licensee SHALL take all necessary steps to arrange for CPEP/LifeGuard to immediately develop such a plan and enter into any necessary oversight monitoring agreement with CPEP/LifeGuard, at the licensee's expense, so that the proposed educational plan or remediation plan may be presented to the Panel for review along with the assessment report;
 - vi. The licensee expressly understands and agrees that if the CPEP/LifeGuard assessment report recommends that the licensee retrain in a residency or residency-like setting, the licensee SHALL NOT perform any act which would constitute the "practice of medicine or osteopathy," 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 – in the Commonwealth of Kentucky, unless and until approved to do so by the Panel;
- c. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE to the Board the costs of the investigation in the amount of \$7,787.50 within one (1) year from entry of this Agreed Order; and
 - d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
12. The licensee obtained a clinical skills assessment in hormone replacement/optimization therapy through the Center for Personalized Education for Professionals ("CPEP") in December 2022. CPEP issued an Assessment Report on April 3, 2023. The results of the assessment identified concerns, stating in sum:

Based on Dr. Foster's performance during this Assessment and the extent of educational needs identified, CPEP opines that Dr. Foster's performance in the area of hormone replacement/optimization is consistent with finding (c) [not safe to practice independently at this time], which involves remediating in a setting that can provide supervision, such as a residency, fellowship, or similar setting.

13. In or around April 2023, this Amended Agreed Order was entered into because the licensee agreed that if CPEP recommended that he "retrain in a residency or residency-like setting," the licensee shall not perform any act which would constitute the "practice of medicine or osteopathy," as that term is defined in KRS 311.550(10).

STIPULATED CONCLUSIONS OF LAW

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

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

AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending investigation

without an evidentiary hearing, the parties hereby ENTER INTO the following
AMENDED AGREED ORDER:

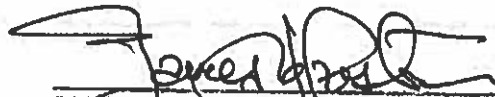
1. The license to practice medicine in the Commonwealth of Kentucky held by
~~JAMES M. FOSTER, M.D.~~, is RESTRICTED/LIMITED FOR AN INDEFINITE
PERIOD OF TIME, effective immediately upon the filing of this Amended
Agreed Order;
2. During the effective period of this Amended Agreed Order, the licensee's
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 or osteopathy," 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 – in the Commonwealth of
Kentucky, unless and until approved to do so by the Panel;
 - b. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE to the
Board the costs of the investigation in the amount of \$7,787.50 on or
before September 2, 2023; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or
311.597.
3. The licensee expressly understands and agrees that the Panel will not consider a
request to amend or terminate this Amended Agreed Order unless and until the
licensee has retrained in a residency or fellowship setting in an ABMS-recognized
specialty of endocrinology, obstetrics/gynecology or urology which include
components specific to hormone replacement.
4. The licensee expressly agrees that if he should violate any term or condition of
this Amended Agreed Order, the licensee's practice shall constitute an immediate
danger to the public health, safety, or welfare, as provided in KRS 311.592 and

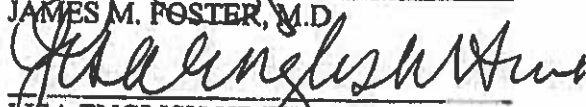
13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Amended Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation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

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

SO AGREED on this 20th day of April, 2023.

FOR THE LICENSEE:



JAMES M. FOSTER, M.D.


LISA ENGLISH HINKLE
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



NICOLE A. KING
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150