

JUN 15 2023

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2077

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MICHAEL R. HEILIG, M.D., LICENSE NO. 37035, 318 HIGHLAND PARK DRIVE, RICHMOND, KENTUCKY 40475

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Hearing Panel A, and Michael R. Heilig, M.D. (“the licensee”), and, based upon their mutual desire to fully and finally resolve the Complaint, 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, Michael R. Heilig, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is Orthopedic Surgery.
3. On or about November 20, 2018, the licensee entered into an Amended Agreed Order, Case No. 1876, pursuant to which he stipulated to the following facts:

- a) On or about May 14, 2018, the Board received a report from Robert Parker, hospital administrator for Clark Regional Medical Center, stating that the licensee was placed on leave and his privileges were suspended due to concerns of possible impairment in the hospital’s operating room.
- b) During an interview with a Board investigator, Mr. Parker stated that he received a call on May 10<sup>th</sup> that the staff had concerns about the licensee being impaired in the operating room. He stated that the licensee had completed two (2) surgeries and was about to begin the third. Mr. Parker stated he met with the licensee and felt he was impaired. He stated that the licensee submitted to a drug screen, was sent home and was advised his privileges were suspended pending the result of a referral to the Kentucky Physicians Health Foundation (“the Foundation”).

- c) A copy of the licensee's drug screen showed the presence of alpha-hydroxy-alprazolam, noroxycodone, oxycodone, and oxymorphone. The lab report result states the licensee submitted a prescription for Oxycodone from 2009.
- d) In a written statement provided by Brenda Turner, OR circulating Nurse, who worked with the licensee in the operating room on May 10, 2018, Ms. Turner described that the licensee "almost fell like he lost his balance" and "was talking a little weird" on the first surgery. Ms. Turner described the licensee as "losing his balance" and "not acting like himself" on the second surgery. Ms. Turner described that on the third surgery, the licensee "was walking backwards like stumbling with his eyes closed and mumbling" and that he "went to sit on a stool and almost missed the stool." Ms. Turner concluded by stating that "He tried to put the Esmarch on prior to draping, and I told him, 'Dr. Heilig, we need to drape first.' He was saying, 'we do, we do,' like he was confused on the order of what we do. We aborted the case when he had the drapes in his hand."
- e) The licensee was practicing as a partner at Kentucky Orthopedic Associates along with Greg Grau, M.D. and James Rice, M.D.
- f) During an interview with a Board investigator, Greg Grau, M.D. and the practice manager, Pat Smith, provided the following information. They stated that in light of the incident at the hospital, they reviewed some records and noticed that the licensee appeared to be self-prescribing Ambien, as well as phoning in prescriptions for Ambien for himself under Dr. Grau's and Dr. Rice's DEA registrations. It was also observed that the licensee had prescribed Ambien to his wife (seventeen times) and to his brother (twenty-four times). They stated the licensee had prescribed Tramadol once to his brother. Mr. Smith stated that neither the licensee's wife or brother are patients of the practice and there are no charts to verify the prescriptions. Drs. Grau and Rice provided written statements that they did not provide or have knowledge of any prescriptions to the licensee or his family.
- g) On or about May 14, 2018, the licensee met with Greg L. Jones, M.D., Medical Director of the Kentucky Physicians Health Foundation ("the Foundation"). Based upon information gathered during that interview, Dr. Jones recommended that the licensee undergo further evaluation at a facility with expertise in working with healthcare professionals.
- h) The licensee was assessed at Hazelden Betty Ford Foundation on or about June 3, 2018 and was subsequently diagnosed with Axis I diagnoses of Ambien Use Disorder, Mild and Percocet use Disorder, Mild.
- i) Hazelden did not recommend inpatient treatment, however, it recommended documented abstinence from all substances of abuse, individual therapy, and an evaluation with an addiction psychiatrist.

- j) The licensee signed a five-year contract with the Foundation on June 25, 2018, which includes a provision that the licensee will not return to the clinical practice of medicine until such time as he has accrued three (3) consecutive months of documented sobriety.
  - k) On or about June 22, 2018, the licensee provided a written response to the Board. The licensee stated that he performed orthopedic surgeries on his mother and his sister-in-law and believed medical records substantiated the need for prescription medication. He pledged that he will not treat or prescribe any medications to himself or his family members ever again, unless in an emergency situation. The licensee stated he has enrolled in the "Prescribing Controlled Drugs" course offered by Vanderbilt University. The licensee further acknowledged that he had a problem with Zolpidem and outlined the steps he is taking to address his problem.
  - l) On August 3, 2018, the licensee entered into an Agreed Order which prohibited the licensee from engaging in the practice of medicine in the Commonwealth of Kentucky until further order of the Panel (requiring at least ninety days of documented sobriety).
  - m) The licensee completed the *Proper Prescribing of Controlled Substance Prescription Drugs* at Vanderbilt University on August 15-17, 2018.
  - n) On September 20, 2018, the licensee submitted a request to resume the practice of medicine.
  - o) In a letter dated September 25, 2018, Dr. Jones, Medical Director for the Foundation, stated that the licensee has remained in compliance with the Foundation's directives and that it is his belief that granting the licensee's request to resume the practice of medicine would not pose any undue risk to the public nor place his personal recovery in jeopardy.
  - p) On November 15, 2018, the Panel approved the licensee's request to resume the practice of medicine, pursuant to terms and conditions set forth in this Amended Agreed Order.
4. Pursuant to the Amended Agreed Order, Case No. 1876, the licensee agreed to maintain and comply with his contractual relationship with the Kentucky Physicians Health Foundation, including abstention from the consumption of mood-altering substances, including alcohol (except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose) and to not violate any provision of KRS 311.595 or 311.597. The licensee also agreed that his violation of the Amended Agreed Order would constitute

an immediate danger to public health, safety or welfare and would be grounds for an emergency order.

5. On or about March 24, 2021, the Board received an anonymous grievance alleging prescribing violations by the licensee.
6. The Board requested that the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services (“OIG”), review and analyze the licensee’s prescribing patterns.
7. On or about April 15, 2022, Jill Lee, R.Ph., OIG Investigator, reviewed and analyzed the licensee’s KASPER records (dated January 1, 2020 through February 28, 2022) and identified fourteen (14) patient names for further review based on the following concerns:
  - The licensee appears to be practicing long term pain management with approximately 1 in 3 of his patients receiving more than 12 prescriptions and 1 in 10 patients receiving more than 40 prescriptions in the period reviewed;
  - Combinations of controlled substances favored by persons who misuse or divert drugs was observed;
  - Family members or household members prescribed similar medication;
  - The licensee’s 2021 Provider Report Card comparison data to similar specialty (Surgery-Orthopedic) shows the licensee prescribing twelve (12) times the number of opioids than peers (may be attributed to a very large practice or additionally practicing pain management);
  - The licensee may not have queried KASPER consistent with regulatory requirements of 201 KAR 9:260
8. On or about June 24, 2022, the Kentucky Physicians Health Foundation reported to the Board that the licensee had become noncompliant with his contractual relationship, having tested positive for fentanyl at a level of .08 ng/mL and norfentanyl at a level of 5.8 ng/mL (confirmed on retesting). According to the Kentucky Physicians Health Foundation, the

licensee was directed to undergo a residential evaluation at an approved facility and informed that he did not have its advocacy to engage in clinical practice.

9. On or about June 13-15, 2022, the licensee submitted to an evaluation at the Multidisciplinary Comprehensive Assessment Program of Chicago (“MCAP”) where he received the following Axis I diagnoses: Opioid Use Disorder – Moderate; Sedative/Hypnotic Use Disorder – Mild, in sustained remission; and Tobacco Use Disorder – Moderate. MCAP opined that he was not safe to practice medicine with reasonable skill and safety and recommended that he enter into a treatment program.
10. On or about June 22, 2022, the licensee entered treatment at the Positive Sobriety Institute (“PSI”) and was discharged on or about August 2, 2022.
11. On or about August 4, 2022, the licensee entered into a new contractual relationship with the Kentucky Physicians Health Foundation.
12. In or around August 2022, a Board consultant completed a review of twelve (12) of the licensee’s patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices and demonstrated gross negligence, gross ignorance or gross incompetence in every single case. Repeatedly, the Board consultant likened the licensee’s practice to that of a “pill mill” and noted “the same collection of diagnoses crops up in a suspicious, repetitive pattern,” “the same pattern of closely spaced visits for chronic conditions leads to same pattern of management with copious amounts of narcotics,” “large amounts of data are in his record, but most of it appears to afford the flimsiest pretext to prescribe more narcotics,” and that the licensee “appears to perform repetitive, perfunctory examinations on the basis of minimalistic, repetitive history taking to justify issuing narcotic pain pills on a chronic basis.” The Board consultant opined that

Dr. Heilig represents an imminent danger to the public. He is furnishing a deluge of narcotic pills to his community. This represents risk for addiction, overdose, diversion of the medications, and can contribute to an increase in drug related crime.

13. In or around September 2022, the licensee obtained and submitted a report from his own consultant regarding the same twelve (12) patient charts. The licensee's consultant opined that the licensee conformed to acceptable and prevailing medical practices and did not demonstrate gross negligence, gross ignorance or gross incompetence. The licensee's consultant opined that the licensee prescribed for a legitimate medical purpose and in the usual course of professional practice and noted that the licensee incorporated multi-modal regimens, including NSAIDs, gabapentinoids, physical therapy, interventional pain procedures, and surgical procedures when medically necessary. The licensee's consultant opined that the licensee's practice did not represent an imminent danger to the public.
14. After the licensee submitted additional explanation for his practice and produced his consultant's report, the Board consultant reviewed said information and did not amend his opinion.
15. Again, as he had done in August 2018, the licensee completed the *Proper Prescribing of Controlled Substance Prescription Drugs* at Vanderbilt University on October 19-21, 2022.
16. On or about November 17, 2022, the Board's Inquiry Panel B determined that the licensee had violated an agreed order and that the licensee's practices constitute a danger to the health, welfare and safety of his patients or the general public. As a result, the licensee's practice of medicine became restricted by emergency order.
17. After being fully advised by counsel, the licensee desires to resolve the Complaint by entering into this Agreed Order.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact, the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (9) [as illustrated by KRS 311.597(3) and (4)], (12) and (13). 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 the Complaint by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the Complaint, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice medicine within the Commonwealth of Kentucky held by Michael R. Heilig, M.D., 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 medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:
  - a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;

- i. The licensee understands and agrees that the Panel shall not consider a request by the licensee to resume the professional utilization of controlled substances until after the expiration of his contractual relationship with the Kentucky Physicians Health Foundation, August 4, 2027;
  - ii. The licensee understands and agrees that if the Panel should grant the licensee's request to resume the professional utilization of controlled substances, it shall do so by an amended agreed order, which shall provide for the licensee to maintain a "controlled substances log" for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for periodic review of the log and relevant records by Board agents upon request, along with any other conditions deemed necessary by the Panel at that time;
- b. Except as provided in subparagraph i immediately below, the licensee SHALL NOT perform or participate in any act which would constitute the "practice of surgery" - defined as "the diagnostic and/or therapeutic treatment of conditions or disease processes by use of any instruments causing localized alteration or transportation of live human tissue (which includes but is not limited to lasers, ultrasound, ionizing, radiation, scalpels, probes and needles), and/or the injection of diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and/or the central nervous system" - within the Commonwealth of Kentucky, unless and until approved to do so by the Panel;
  - i. The licensee may provide intramuscular cortisone injections;
  - ii. The licensee understands and agrees that the Panel will not consider a request by the licensee to perform or participate in any act which would constitute the "practice of surgery" unless and until the licensee has completed, at his expense, a clinical skills assessment (and obtained an education plan, if recommended), in the specialty of orthopedic surgery at either:
    - Center for Personalized Education for Professionals (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232; or
    - LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania 17040, Tel. (717) 909-2590;
  - iii. The licensee understands and agrees that if the Panel should grant the licensee's request to perform or participate in any act which would constitute the "practice of surgery," it will do so by an amended agreed order, which shall include terms and conditions deemed necessary by the Panel at that time;



- c. The licensee SHALL maintain the contractual relationship he entered into with the Kentucky Physicians Health Foundation in August 2022 and SHALL fully comply with all requirements of that contractual relationship, at his expense, through August 4, 2027. The licensee's failure to maintain and comply with any or all of the requirements of that contractual relationship SHALL be considered a violation of this Agreed Order;
  - d. The licensee SHALL completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. The licensee SHALL ensure that any such medical treatment and prescribing is reported directly to the Board, in writing, by his treating physician within ten (10) days after the date of treatment. The licensee SHALL inform the treating physician of this responsibility and ensure timely compliance. The licensee's failure to inform the treating physician of this responsibility SHALL be considered a violation of this Agreed Order;
  - e. The licensee SHALL submit to periodic, unannounced breathalyzer, blood and urine alcohol and/or drug analysis as desired by the Board, and under the conditions specified by the Board's testing agent, the purpose being to ensure that the licensee remains drug and/or alcohol-free. The cost of such breathalyzer, blood and urine alcohol and/or drug analyses and reports SHALL be paid by the licensee, and the licensee SHALL pay those costs under the terms fixed by the Board's agent for testing. The licensee's failure to fully reimburse the Board's agent within that time frame SHALL constitute a violation of this Agreed Order;
  - f. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE \$7,906.25 to the Board before August 4, 2027; and
  - g. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency

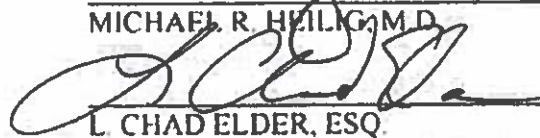
Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order, and

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

SO AGREED on this 12<sup>th</sup> day of May, 2023.

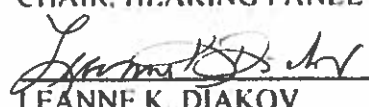
FOR THE LICENSEE:

  
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MICHAEL R. HEILIG, M.D.

  
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L. CHAD ELDER, ESQ.  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

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

  
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LEANNE K. DIAKOV  
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Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
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**WAIVER OF RIGHTS**

I, Michael R. Heilig, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 2077. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530 *et seq.*, and I will have the right to raise any objections normally available in such proceedings.

Executed this 12<sup>th</sup> day of May, 2023.

  
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MICHAEL R. HEILIG, M.D.  
RESPONDENT

  
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L. CHAD ELDER, ESQ.  
COUNSEL FOR THE RESPONDENT