

NOV 27 2023

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 956

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY HOWARD D. MARKOWITZ, M.D., LICENSE NO. 33813, 1004 LOOKOUT CIRCLE, LEXINGTON, KENTUCKY 40502

FIFTH AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Hearing Panel B, and Howard D. Markowitz, M.D. (hereafter “the licensee”), and, based upon consideration of the licensee’s request for practice location approval, hereby ENTER INTO the following **FIFTH AMENDED AGREED ORDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Howard D. Markowitz, 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 August 28, 2003, the licensee entered into an Agreed Order of Suspension, Order of Probation, Case No. 861, following a hearing on a Complaint in which it was found that the licensee violated KRS 311.595(9) when he engaged in sexual harassment (inappropriate verbal and physical contact) with seven (7) female employees of his practice.
4. The terms of the Agreed Order of Suspension, Order of Probation required that the licensee submit to evaluations at the direction of the Kentucky Physicians Health Foundation (“the Foundation”) and submit to the Foundation’s treatment recommendations.

5. On or about November 6 and 8, 2003, the licensee submitted to a psychosexual evaluation by Dennis Wagner, Ed.D. In summary, Dr. Wagner found

Dr. Markowitz's current psychological functioning does not seem significantly different from that found in 1998. He seems in general to be a man without significant psychopathology who has been unaware of his own stimulus value and the impact his comments and actions have on others. He does not appear to be sexually predatory or to have a Paraphilia.

Regarding treatment, it appears that Dr. Markowitz has not made good use of opportunities provided him, nor does he seem motivated to pursue treatment at this point. His personality seems such that establishing rapport may be difficult. He tends to rationalize excessively and [does] not like to talk about his problems. Prognosis for change is poor.

6. On or about December 18, 2003, the licensee submitted to a neuropsychological evaluation by Kent Hicks, Ed.D. In summary, Dr. Hicks made the following diagnoses and comments

Axis I: Diagnosis Deferred (799.9)
Axis II: Passive-Aggressive Personality Features, By Report
Axis III: No Diagnosis

Emotionally, again the assessment indicates that the examinee is free of debilitating anxiety, depression or psychological turmoil and perceives himself as adequately adjusted. He is experiencing mild reactive stress to his current vocational situation as well as a reported awareness of his verbal improprieties' that have affected his vocational situation. Following the course on boundaries, he views himself as having re-mediated his difficulties with inappropriate, impulsive sexual verbalizations and now cues himself with thoughts about his own daughters as a way of self-monitoring his speech. Still, the testing does indicate features that were present in the first testing in that he is attempting to present himself in a favorable light and deny problems. He may be unrealistic, inflexible, with an exaggerated sense of self-worth and minimizes the possibility that he would be viewed as having flaws. Dr. Markowitz' perceptions of his masculinity may indicate a need for competitiveness and a tendency to view women as subservient. Interpersonally, he may likely be seen by others as intolerant, insensitive, crude, coarse and narrow-minded. Such individuals would tend to project on to others blame for their own conditions and be reluctant or unable to comprehend the effects of their own actions on their life. In regard to treatment these persons perceive themselves as adjusted with a relatively low level of distress. Hence, engaging them in effective psychotherapy may be difficult.

7. On or about March 5, 2004, the licensee submitted to a psychiatric evaluation by Robert Elliott, M.D., who had previously treated the licensee in 1999. In summary, Dr. Elliott noted that the

licensee had engaged in numerous acts of unethical and unprofessional behavior dating back to his time of practicing in New York in the mid-1990's and commented

Even though Dr. Wagner's evaluation did not reveal a diagnosis of DSM IV Paraphilia, I do strongly feel that the clinical evidence indicates a sexual addiction problem secondary to a personality disorder. I think there's a strong indication that Dr. Markowitz's responses to psychological testing were slanted on his part in order to make himself look better and be free of any clinical pathology. His recurrent sexual behavior over the years indicates to me that he has a significant problem despite several attempts at intervention. A person with an addiction problem continues to engage in the same pathological behavior despite continued negative consequences and that has clearly been the case for Dr. Markowitz. I find it unlikely that he will change his behavior unless significant intervention takes place this time. I cannot advocate for sending him back out to treat patients again unless he has successfully completed residential sexual addiction treatment. I agree with Dr. Martorano's recommendation that following residential treatment completion, outpatient treatment may be more effective but that he would need to be continuously monitored. I would recommend that once he returns to practicing medicine that he have a chaperone present any time he is to examine a female patient and that this be documented in the medical record.

8. Following the licensee's psychiatric, neuropsychological, and psychosexual evaluations, the Foundation recommended that the licensee enter residential treatment and then a contractual relationship with the Foundation.
9. The licensee became non-compliant with the Agreed Order of Suspension, Order of Probation, Case No. 861, when he failed to follow through with the Foundation's recommendation for residential treatment.
10. In or around June 2004, a Complaint and an Emergency Order of Suspension were issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
11. On or about October 21, 2004, the licensee resolved the Complaint by entering into an Agreed Order of Indefinite Restriction, pursuant to which the licensee agreed:
 - Not to practice medicine until approved to do so by the Panel;
 - That the Panel will not consider a request to resume the practice of medicine unless it is accompanied by a favorable recommendation by the Foundation, which shall include: a copy of his contract with the Foundation; a copy of the discharge summary from any treatment facility or program attended by the licensee; if not

included in that discharge summary, a statement of all aftercare requirements for the licensee; and, an assessment from the Foundation's Medical Director that the licensee may safely resume the active practice of medicine without undue risk or danger to patients or the public; and

- That if the Panel would allow the licensee to resume the practice of medicine in the future, the Panel may do so by an Order including any conditions it deems appropriate, specifically including the requirement of using chaperones and a Foundation contract.

12. On or about April 14, 2014, the licensee entered treatment for sexual compulsivity and trauma at KeyStone Center ("KeyStone") in Chester, Pennsylvania.

13. On or about May 26, 2014, the licensee was discharged from KeyStone which noted

... In individual therapy, ... Dr. Markowitz was challenged to increase his emotional awareness so he could better identify the unmet needs that drive his addictive behavior. This proved to be difficult for Dr. Markowitz, as he conceptualized treatment concepts on a purely cognitive level, which interfered with his ability to identify and express emotion. This impeded his efforts to understand and relate to the emotions of others, particularly those who had been harmed by his behaviors.

...

In Relapse Prevention Groups, Dr. Markowitz identified healthy, risky and "bottom line" behaviors, and examined his offending cycle to find ways to interrupt it before relapse. In spite of all of this, he struggled to translate some of the skills he learned into observable behavioral change. While he could express some intellectual understanding of the concepts presented to him in therapy, his actions did not always reflect his internalization of these insights.

The prognosis for Dr. Markowitz is cautious at this time. Dr. Markowitz worked diligently throughout his time at KeyStone ECU, completing all assignments given to him and participating appropriately in all group sessions. He followed the suggestions of his individual and family therapists, and adhered to all treatment recommendations given by group facilitators. In spite of this, Dr. Markowitz still struggled to understand the inappropriateness of his behaviors and the impact that it has had on the lives of others. Having attended workshops in the past around the concept of boundaries, Dr. Markowitz often appeared to be reciting information and slogans related to therapeutic concepts (e.g. boundaries) but without being able to demonstrate an understanding of how they were relevant to his behaviors.

In addition, Dr. Markowitz's ability to empathize with his victims remains limited. ... This seems to be the biggest danger for him, as he often took a victim-blaming stance when discussing his sexual relationships at work, giving the impression that he does not feel responsible for his actions, nor that he should have been punished so harshly for his behavior. Dr. Markowitz was open about his desire to regain his medical license,

and admitted that this had fueled his desire to attend treatment. This external focus interfered with his ability to assimilate all of the concepts presented at the ECU and to internalize the experience of the therapeutic process.

...

14. Upon discharge, KeyStone recommended that, if he were allowed to resume the practice of medicine, that a supervising clinician be present at any and all places of work; that the supervising clinician be familiar with the licensee's previous issues and conduct quarterly staff surveys regarding the licensee's behavior; that the licensee participate in a 12-Step program for individuals with sexual compulsivity and boundary issues; and that the licensee engage in psychological treatment with a clinician experienced in the treatment of sexual compulsivity and boundary issues.
15. On or about July 15, 2014, the licensee entered into a contractual relationship with the Foundation to oversee his participation in a 12-Step program for individuals with sexual compulsivity and boundary issues and psychological treatment with a clinician experienced in the treatment of sexual compulsivity and boundary issues.
16. In October 2014, the licensee wrote to the Board requesting to be placed on the Panel's agenda to discuss lifting his restriction on practicing medicine. Since he had not practiced medicine in over ten (10) years, he was advised at that time to obtain a clinical skills assessment from CPEP before the Panel would consider his request.
17. On or about January 12 and 13, 2015, the licensee completed a CPEP clinical skills assessment during which time he reported to CPEP that he planned to limit his practice to providing non-operative orthopedics, workers' compensation evaluations, independent medical exams, and insurance case reviews. CPEP reported

During this Assessment, Dr. Markowitz demonstrated an adequate foundation of knowledge in the orthopedic topics discussed, but his knowledge was outdated. His clinical judgment and reasoning were good. ...His documentation for the Simulated

Patient (SP) encounters was good. Dr. Markowitz's communication skills were very good with SPs and adequate with peers.

18. In or around July 2015, CPEP developed an Educational Intervention Program ("Education Plan") to address the licensee's deficiencies in orthopedic surgery.
19. On or about November 19, 2015, the Panel allowed the licensee to resume the practice of medicine pursuant to terms and conditions set forth in an Amended Agreed Order, pursuant to which the licensee agreed, in part, to not treat "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 to not inject "diagnostic or therapeutic substances into body cavities, internal organs, joints, sensory organs, and/or the central nervous system;" to complete a Board-approved course relating to HB1; to maintain a contract with the Foundation for the purpose of monitoring his participation in counseling for sexual compulsivity; and to not be in the presence of a female patient unless he is accompanied at all times by a Board-approved chaperone and that the chaperone must be approved, in advance and in writing, by the Board or its staff.
20. In December 2015, the licensee completed a Board-approved course relating to HB1.
21. In April 2016, the licensee violated the Amended Agreed Order when he injected a patient with cortisone/lidocaine at her shoulder subacromial bursa.
22. In May 2016, the licensee further violated the Amended Agreed Order when he injected a patient with Depo/Marcaine at the origin of her extensor carpi radialis brevis at the elbow.
23. On July 21, 2016, the Foundation reported that the licensee has been attending counseling sessions for sexual compulsivity. The Foundation asked that it not be required to have a contract with the licensee for the purpose of monitoring the licensee's participation in said

counseling; the Foundation asked that the Board take over direct monitoring of and receipt of the required counseling reports.

24. In August 2016, the licensee entered into a Second Amended Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Suspension, to resolve the issue of his noncompliance by performing the injections in April and May 2016.
25. In September 2016, the licensee attended and passed the CPEP ethics course, ProBe.
26. In October 2016, a grievant alleged that the licensee had conducted an examination on a female patient at his home on or about March 16, 2016, prior to having an approved chaperone.
27. On or about December 1, 2016, the Board investigator interviewed the licensee, who stated substantially as follows: he did perform some examinations at his home before he had his current office; he did perform the alleged examination of a female patient in March 2016; he had a chaperone of his choosing present in the home during that examination; the chaperone was his then-girlfriend, now-wife, Susan Durachta; she had not been approved by the Board to act as a chaperone at the time of the examination in March 2016; he requested and she became a Board-approved chaperone on April 25, 2016.
28. On January 19, 2017, the Board's Inquiry Panel B reviewed the investigation of the licensee's non-compliance with the chaperone terms of the Amended Agreed Order and the licensee agreed to enter into a Third Amended Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Suspension. The Panel also considered the licensee's request to give steroidal injections and the Panel agreed to allow him to do so, contingent upon him entering into the terms and conditions set forth in a Third Amended Agreed Order.
29. On or about February 28, 2017, the licensee completed all requirements of the CPEP Education Plan. Charts reviewed during the plan consisted of both orthopedic consultations and

Independent Medical and Impairment Evaluations and the reviewer found that the licensee's patient care and documentation met generally accepted standards of medical practice. The CPEP reviewer provided the licensee feedback for ongoing integration into practice.

30. In April 2017, the licensee's counselor, Fred Hampton, LCSW, reported that there is "no therapeutic reason" for the licensee to continue in therapy.
31. The Third Amended Agreed Order required, in part, that the licensee cannot practice medicine without Panel approval of a practice location(s); the licensee may only request and may only be approved to practice in a group practice setting in which none of the Board-licensed group practitioners have a history of Board action; and the Panel may require additional conditions and/or restrictions as a condition of it granting approval for a practice location.
32. In May 2017, the licensee requested and the Panel approved one practice location, contingent upon the licensee entering into the terms and conditions set forth in a Fourth Amended Agreed Order.
33. In or around July 2023, the licensee requested that he be allowed to perform independent medical examinations on female "clients" and perform chart reviews for a nurse practitioner at Healthsource of Southeast (doing business as "Tates Creek Chiro"), owned and operated by Michael Pugh, D.C. , and with whom the licensee is in the office-sharing arrangement at 148 W Triverton Way, Suite 101a.
34. The Board's medical investigator contacted Dr. Pugh for more information about the proposed practice and found that the proposed chaperones for female "client" encounters would not satisfy the parameters to become approved.

35. On or about November 6, 2023, the licensee (in a letter with Dr. Pugh) clarified the request to sign off on charts of a nurse practitioner, Joey Creekbaum III, at Healthsource of Southeast (doing business as “Tates Creek Chiro”), and that he would not have any patient/client contact.
36. On or about November 14, 2023, the Panel Chair approved the licensee’s request to review and sign off on the Nurse Creekbaum’s charts, contingent upon the licensee entering into the terms and conditions set forth in this Fifth Amended Agreed Order.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Fifth 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 engaged in conduct which violates the provisions of KRS 311.595(9) and (13). Accordingly, there are legal grounds for the parties to enter into this Fifth Amended Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this matter without an evidentiary hearing by entering into an informal resolution such as this Fifth Amended Agreed Order.

FIFTH AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon consideration of the licensee’s request for practice location approval, the parties hereby ENTER INTO the following **FIFTH AMENDED AGREED ORDER**:

1. The license to practice medicine in the Commonwealth of Kentucky held by Howard D. Markowitz, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Fifth Amended Agreed Order;
2. During the effective period of this Fifth Amended Agreed Order, the licensee's Kentucky 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 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 – *unless and until* the Panel has approved, *in writing*, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies within the sole discretion of the Panel. In determining whether to approve a particular practice location, the Panel will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel may include specific conditions/restrictions to ensure patient safety. The licensee may only request practice location approval for a group practice setting in which none of the Board-licensed group practitioners have a history of Board action.
 - (i) Once a practice location becomes approved, the licensee SHALL NOT change practice locations without first obtaining *written* approval by the Panel for such change. The parties agree that the Panel may require additional conditions and/or restrictions as a condition of it granting approval for a new practice location;
 - (ii) The licensee is hereby approved ONLY to:
 - i. Conduct independent medical examinations/evaluations at the following location: **148 West Triverton Way, Suite 101a, Lexington, Kentucky;** and
 - ii. To review and sign off on the charts of nurse practitioner, Joey Creekbaum III, at Healthsource of Southeast (doing business as "Tates Creek Chiro"), **148 West Triverton Way, Suite 140a, Lexington, Kentucky.**
 - b. Except as specified in subparagraph (i) below, the licensee SHALL NEITHER perform NOR 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” – and, unless otherwise restricted pursuant to paragraph 2(a)(ii) above, the licensee shall only practice medicine to the extent necessary to provide non-operative orthopedics, workers’ compensation evaluations, independent medical exams, and insurance case reviews within the Commonwealth of Kentucky, unless and until approved to do so by the Panel;

- (i) The licensee may give steroid injections *if* the Panel approves, in writing, a practice setting for such injections. The licensee SHALL NOT provide such or *any* injections at the practice location(s) set forth in paragraph 2(a)(ii) above;
- c. The licensee SHALL NOT be in the presence of a female patient unless he is accompanied at all times by a Board-approved chaperone, who has signed and agreed to serve as a chaperone pursuant to a letter provided and dated by the Board for this purpose after entry of this Fifth Amended Agreed Order. If the approved chaperone must leave the examination room for any period of time, the licensee SHALL also leave the examination room until the approved chaperone may again be present;
 - (i) Any chaperone utilized by the licensee must not be a relative, by blood or by marriage, of the licensee and must not be engaged in a relationship of a romantic/intimate /sexual nature with the licensee;
 - (ii) Any chaperone utilized by the licensee must be approved, in writing and in advance, by the Board or its staff prior to acting as a chaperone;
 - (iii) The chaperone must agree in writing to 1) remain present and within direct eyesight and within clear hearing distance of the licensee and the patient throughout the entire period the licensee is with a female patient; 2) accurately record the chaperone’s presence, or absence, for the entire duration of such patient interaction in the patient’s chart, or the patient record maintained by that clinical setting; 3) immediately notify the designated contact person at the Board’s offices to report any violation of the chaperone requirement by the licensee. The licensee may submit and the Board or its agents may approve more than one chaperone to fulfill this requirement. The licensee SHALL be solely responsible for payment of the costs of such chaperone(s);
 - (iv) The licensee SHALL maintain a separate log documenting each patient seen with a chaperone and the name, title and location of the chaperone utilized. Upon request, the licensee shall permit the Board’s agents to review this log and shall take all necessary steps to arrange for the Board’s agents to review the patient(s)’ chart(s) and to interview the chaperone(s);

- (v) The licensee SHALL NOT have contact with or engage with male or female patients/clients at Healthsource of Southeast (doing business as “Tates Creek Chiro”), 148 West Triverton Way, Suite 140a, Lexington, Kentucky; and

- d. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Fifth Amended 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 Fifth 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 Fifth 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 Fifth Amended Agreed Order.
4. The licensee understands and agrees that any violation of the terms of this Fifth Amended Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 20 day of NOVEMBER, 2023.

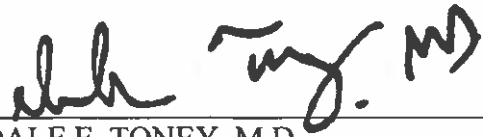
FOR THE LICENSEE:




HOWARD D. MARKOWITZ, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:



DALE E. TONEY, M.D.
CHAIR, HEARING PANEL B



LEANNE K. DIAKOV
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150