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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2084

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PABLO A. MERCED, M.D., LICENSE NO. 24420, 1389 HIGHWAY 15 NORTH, JACKSON, KENTUCKY 41339

**EMERGENCY ORDER OF SUSPENSION**

On January 19, 2023, the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, considered Panel Memoranda from Billy Madden, Medical Investigator, dated December 29, 2022; an Investigative Report, Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services, dated July 28, 2022; DEA Form-6 Report of Investigation, dated September 9, 2022; typed correspondence from the licensee, undated; a November 2022 Board consultant report with expert review worksheets; and the licensee’s Investigative Physician Profile/Background. In addition, the licensee was given notice of the Panel meeting and an opportunity to be heard; he did not appear. Having considered this information and being sufficiently advised, the Board enters the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1):

**FINDINGS OF FACT**

Pursuant to KRS 13B.125(2) and based upon the information available, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support this Emergency Order of Suspension:

1. At all relevant times, Pablo A. Merced, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is Family Medicine.

3. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services (“OIG”), reviewed the licensee’s prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

Date “Written”	Number of Unique Patients for Whom Dr. Merced Prescribed Controlled Substance Prescription(s)
05/19/2019	0
05/20/2019	10
05/21/2019	46
05/22/2019	40
05/23/2019	40
05/24/2019	19
07/01/2019	12
07/02/2019	34
07/03/2019	39
07/04/2019	1
07/05/2019	43

For six of the eleven days reviewed, OIG found that the licensee submitted coded claims for and received payment for Medicaid patient encounters that, based upon the minimum amount of time per encounter, would have consumed 13 or more hours/day. Based on the allegation that the licensee was out of the country for the date ranges evaluated, OIG recommended that a portion of the patient names for whom he appeared to prescribe during those dates be provided to the Board for review.

4. On or about November 5, 2022, a Board consultant completed a review of fourteen (14) of the licensee’s patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices. The consultant noted a pattern of cut-and-paste notes with no meaningful SOAP information and that the licensee prescribed (primarily suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, prescribing to patients positive for

methadone, no efforts to taper, and providing early refills. The consultant opined that the licensee “poses a threat to the health, safety, and wellbeing of patients.” The consultant’s narrative report and review worksheets in their entirety are incorporated herein by reference.

5. On or about November 16, 2022, the Board mailed a copy of the Board consultant’s report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
6. On or about December 1, 2022, the Board e-mailed a copy of the Board consultant’s report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
7. On or about December 19, 2022, the Board’s medical investigator called the licensee and a receptionist stated to the investigator that the licensee was on vacation, and it was unknown when he would return.

### **CONCLUSIONS OF LAW**

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Suspension:

1. The licensee’s Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician’s license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation;

or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

3. There is probable cause to believe that the licensee has violated KRS 311.595(9) [as illustrated by KRS 311.597(4)], (10) and (12).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
6. The United States Supreme Court has ruled that it is not a violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).


KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

**EMERGENCY ORDER OF SUSPENSION**

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Pablo A. Merced, M.D., is SUSPENDED and Dr. Merced is prohibited from performing any act which constitutes the “practice of medicine or osteopathy,” as that term is defined by 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 – until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, immediately effective upon service.

SO ORDERED this 20<sup>th</sup> day of January, 2023.

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

**CERTIFICATE OF SERVICE**

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed via certified mail return-receipt requested to the licensee at his last address of which the board has record, Pablo A. Merced, M.D., License No. 24420, 1389 Highway 15 North, Jackson, Kentucky 41339 on this 20<sup>th</sup> day of January, 2023.



Leanne K. Diakov

General Counsel

Kentucky Board of Medical Licensure

310 Whittington Parkway, Suite 1B

Louisville, Kentucky 40222

Tel. (502) 429-7150