

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2020

FEB 17 2023

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID W. SUETHOLZ, M.D., LICENSE NO. 18013, 5522 TAYLOR MILL ROAD, TAYLOR MILL, KENTUCKY 41015

**ORDER OF REVOCATION**

On February 16, 2023, the Kentucky Board of Medical Licensure (hereinafter “the Board”), acting by and through its Hearing Panel A, took up this case for final action. The members of Panel A reviewed the Amended Complaint, filed October 6, 2022; the hearing officer’s Findings of Fact, Conclusions of Law and Recommended Order, filed January 11, 2023; the licensee’s exceptions, filed January 26, 2023; and a January 26, 2023 memorandum from the Board’s counsel.

Having considered all the information available and being sufficiently advised, Hearing Panel A ACCEPTS the hearing officer’s findings of fact and conclusions of law and ADOPTS those findings and conclusions and INCORPORATES them BY REFERENCE into this Order; Hearing Panel A FURTHER ACCEPTS AND ADOPTS the hearing officer’s recommended order. (Attachment) Having considered all of the sanctions available under KRS 311.595, the legislative intent set forth in KRS 218A.205(3)(f), and the nature of the violations in this case, Hearing Panel A has determined that revocation is the appropriate sanction. Accordingly, Hearing Panel A **ORDERS**:

1. The license to practice medicine held by David W. Suetholz, M.D., is hereby REVOKED and he may not perform any act which constitutes the “practice of medicine,” 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 – in the Commonwealth of Kentucky;
2. The provisions of KRS 311.607 SHALL apply to any petition for reinstatement filed by the licensee. The Board shall not consider a petition for reinstatement of license pursuant to KRS 311.607 unless and until:


- a. At least two (2) years have passed from the date of filing of this Order of Revocation;
  - b. The licensee has satisfied all terms and conditions of the judgment, including but not limited to any terms of imprisonment, probation and/or supervised release, entered against him in *USA v. Suetholz*, Case No. 2:21-CR-00056-DLB-CJS (U.S. District Court, Eastern District of Kentucky);
  - c. The licensee has completed a complete a Board-approved clinical skills assessment(s) and/or evaluation(s), at his expense; and
  - d. Pursuant to KRS 311.565(1)(v), the licensee has fully reimbursed the Board the costs of the proceedings in the amount of \$1,187.50; and
3. If the licensee's license to practice medicine in the Commonwealth of Kentucky should ever become reinstated following a petition pursuant to KRS 311.607, that reinstatement SHALL be contingent upon the licensee entering into an agreed order pursuant to which the licensee SHALL be indefinitely and permanently banned from prescribing or dispensing controlled substances, in accordance with the legislative intent set forth in KRS 218A.205, and any other terms deemed appropriate by the Board at that time.

SO ORDERED on this 17<sup>th</sup> day of February, 2023.

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

### CERTIFICATE OF SERVICE

I certify that the original of the foregoing Order of Revocation 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 Keith Hardison, Esq., Hearing Officer, 2616 Bardstown Road, Louisville, Kentucky 40205; and copies were mailed, certified return-receipt requested, to the licensee, David W. Suetholz, M.D., License No. 18013, 346 Puckett Lane, Eminence, Kentucky 40019 and to his counsel, William H. Brammell, Esq., Kent Wicker, Esq., Kayla M. Campbell, Esq., Wicker/Brammell, PLLC, 323 West Main Street, 11<sup>th</sup> Floor, Louisville, Kentucky 40202 on this 17<sup>th</sup> day of February, 2023.

  
Leanne K. Diakov  
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 Revocation is received by the licensee or the licensee's attorney, 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.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2020

FILED OF RECORD

JAN 11 2023

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID W. SUETHOLZ M.D. LICENSE NO.18013, 5522 TAYLOR MILL ROAD, TAYLOR MILL, KENTUCKY, 41015

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND RECOMMENDED ORDER**

This action is before the hearing officer on the *Motion for Summary Disposition* (hereinafter the *Motion*) filed by the Kentucky Board of Medical Licensure (hereinafter the “Board”) on December 7, 2022. On December 27, 2022, Dr. David W. Suetholz, the licensee, filed a response opposing the motion entitled *Dr. Suetholz’s Response to Board’s Motion For Summary Disposition*, (hereinafter the *Response*). No reply has been filed. After reviewing the *Motion*, the *Response*, the other pleadings of record and the applicable law, the hearing officer finds there are no genuine issues of material fact in dispute and that judgment as a matter of law is appropriate pursuant to KRS 13B.090(2). Therefore the hearing officer recommends the Board grant the *Motion for Summary Disposition*, find Dr. Suetholz in violation of KRS 311.595 (4), KRS 311.595 (9), as illustrated by KRS 311.597(4) and KRS 311.595 (12), and impose any appropriate sanction(s) for those violations.

In support of this recommendation the hearing officer submits the following Findings of Fact, Conclusions of Law and Recommended Order:

**FINDINGS OF FACT**

1. At all relevant times Dr. Suetholz was licensed by the Board to practice medicine in the Commonwealth of Kentucky. *Answer to Amended Complaint ¶ 1*

2. Dr. Suetholz’s medical specialty is family medicine. *Answer to Amended Complaint ¶ 2*

3. Dr. Suetholz was the subject of an Agreed Order of Indefinite Restriction in case # 851

between 2003 and 2005. *Answer to Amended Complaint ¶ 3*

4. Dr. Suetholz was the subject of an Agreed Order of Indefinite Restriction in case # 1404 between 2012 and 2014. *Answer to Amended Complaint ¶ 4*

5. On or about October 14, 2021, Dr. Suetholz was indicted in the United States District Court for the Eastern District of Kentucky for 10 counts of felony offenses related to controlled substances. Specifically the indictment was for the offense of knowingly and intentionally distributing and dispensing controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, in violation of 21 United States Code, Section 841(a)(1). *Answer to Amended Complaint ¶¶ 5 - 6*

6. On October 15, 2021, an Emergency Order of Suspension was issued against his license to practice medicine in the Commonwealth of Kentucky. *Answer to Amended Complaint ¶ 7*

7. On or about November 23, 2021, the Board, through its Inquiry Panel B, issued a Complaint alleging that, based upon this indictment, Dr. Suetholz had violated KRS. 311.595 (9), as illustrated by KRS 311.597(4) and KRS 311.595(12). *Complaint generally*

8. Dr. Suetholz filed an Answer to this Complaint on December 17, 2021, denying the allegations in the Complaint and requesting that the matter be held in abeyance pending resolution of the criminal charges. *Answer generally*

9. With the agreement of the Board, the matter was held in abeyance by order of the hearing officer entered January 7, 2022. *Status Conference Report and Order Scheduling Next Status Conference dated January 7, 2022*

10. On March 24, 2022, a Superseding Indictment was issued against Dr. Suetholz which contained 25 counts of knowingly and intentionally distributing and dispensing controlled

substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, in violation of 21 United States Code, Section 841(a)(1). *Answer to Amended Complaint ¶ 8*

11. On September 15, 2022 a jury unanimously found Dr. Suetholz guilty of 12 counts of knowingly and intentionally distributing and dispensing controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice, in violation of 21 United States Code, Section 841(a)(1). *Answer to Amended Complaint ¶ 9*

12. These 12 Counts were found in Counts 10 -18 and Counts 23 -25 of the Superseding Indictment. *Answer to Amended Complaint ¶ 9*

13. Following this jury verdict, specifically on October 6, 2022, the Board filled its *Amended Complaint* and on November 24, 2022, Dr. Suetholz filed his *Answer to Amended Complaint*.

14. In his *Answer* Dr. Suetholz admitted the existence of the jury verdict but denied that this event, as it currently stands, constitutes a “conviction”, asserts that he has provided medical care consistent with the standards of practice of a reasonably prudent physician under the same or similar circumstances, that he did not engage in the practice or prescribing controlled substances in amounts greater than would be prescribed by a reasonably prudent physician under the same or similar circumstances, and further denies that he intentionally or knowingly acted in an unauthorized manner when he prescribed each controlled substance. He asserts that he did so with a legitimate medical purpose and intended to act within the usual course of professional practice. *Answer to Amended Complaint*, pp. 2 – 3 and ¶ 10

15. Based upon the jury verdict, which by law must be based upon proof beyond a reasonable doubt, it is found, by a preponderance of the evidence that Dr. Suetholz, on two occasions, September 15, 2018 and February 9, 2021, unlawfully prescribed the controlled substance Diazepam to an individual identified as D.K., thereby knowingly and intentionally

distributing and dispensing controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Amended Complaint ¶¶ 8 – 9; Answer to Amended Complaint ¶ 9*

16. Based upon the jury verdict, it is found, by a preponderance of the evidence that Dr. Suetholz, on various dates (seven in total) between, August 15, 2019, and August 26, 2021, unlawfully prescribed various controlled substances, specifically, Clonazepam, Zolpidem and Oxycodone to an individual identified as W.Y., thereby knowingly and intentionally distributing and dispensing controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Amended Complaint ¶¶ 8 – 9; Answer to Amended Complaint ¶ 9*

17. Based upon the jury verdict, it is found, by a preponderance of the evidence that Dr. Suetholz, on September 6, 2018, September 17, 2018 and May 14, 2019, also unlawfully prescribed controlled substances, including Tramadol and Alprazolam to an individual identified as L.P., thereby knowingly and intentionally distributing and dispensing controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Amended Complaint ¶¶ 8 – 9; Answer to Amended Complaint ¶ 9*

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.
2. The administrative proceeding was conducted in accordance with the provisions of KRS Chapter 13B and KRS 311.591.
3. Under KRS 13B.090 (7) the Board has the burden to prove, by a preponderance of the evidence, the allegations against Dr. Suetholz.

4. Pursuant to KRS 13B.090 (2), “the hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute”.

5. Summary proceeding, such as those contemplated by KRS 13B.090 (2), are generally appropriate when, construing all evidence in favor of the party against whom the motion is made, there are no disputed issues of fact upon which reasonable minds could differ. *Bierman v. Klapheke*, 967 S.W. 2d. 16, 18 – 19 (Ky.1998)

6. KRS 311.595 authorizes the Board to take disciplinary action against a medical license based upon certain conduct by the licensee. Disciplinary action may be taken if a licensee:

Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof. KRS 311.595 (9)

7. To provide more clarity to this statute, KRS 311.597 provides certain illustrations. One such illustration explains that such conduct includes “...any departure from, or failure to conform to standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky...” KRS 311.597 (4)

8. In his *Answer to Amended Complaint* the Licensee’s denies engaging in of any conduct that violates acceptable medical practices. However based upon the doctrine of issue preclusion, the finding of the jury that Dr. Suetholz, while acting in the usual course of his professional practice knowingly and intentionally distributed and dispensed controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose, requires a finding by this hearing officer that Dr. Suetholz has engaged in conduct that departs from, or failure to conform to, standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky. *Yeoman M.D. v. Commonwealth* 983 S.W. 2d 459, 465 (1998); *Gossage v. Roberts*, 904 S.W.2d 246 (Ky. Ct. App. 1995)

9. Notwithstanding the application of the concept of issue preclusion, Dr. Suetholz’s general denial of having committed conduct in violation of the applicable statutes is not



sufficient to overcome the Board's *Motion for Summary Disposition*.

Finally, under both the Kentucky and federal approach, a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some *affirmative evidence* showing that there is a genuine issue of material fact for trial. (emphasis added)

*Steevest, Inc. v. Scansteel Services Center, Inc.*, 807 S.W. 2d 476 (1991)

10. Accordingly, the hearing officer concludes, based upon the, Licensee's *Answer to Amended Complaint*, the above Findings of Fact and the applicable law, that the preponderance of the evidence supports the conclusion that that Dr. Suetholz is in violation of KRS 311.595 (9) as illustrated by KRS 311.597 (4)

11. Disciplinary action may also be taken against a licensee who has:

Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act including but not limited to, ... or any other valid regulation of the board.

KRS 311.595 (12)

12. 201 KAR 9:260 contains the Board's regulations regarding the utilization of controlled substances and prohibits prescribing controlled substances not for legitimate purposes in the usual course of medical practice and beyond the bounds of medical practice.

13. The finding of the jury that Dr. Suetholz, while acting in the usual course of his professional practice knowingly and intentionally distributed and dispensed controlled substances pursuant to prescriptions that were not issued for a legitimate medical purpose, requires a finding by this hearing officer that Dr. Suetholz has engaged in conduct that violates a valid regulation of the Board, specifically 201 KAR 9:260.

14. Accordingly the hearing officer concludes, based upon the, Licensee's *Answer to Amended Complaint*, the above Findings of Fact and the applicable law, that the preponderance of the evidence supports the conclusion that that Dr. Suetholz is in violation of KRS 311.595 (12).

15. And finally the Board alleges and argues that Dr. Suetholz has violated KRS 311.595 (4) which authorizes disciplinary action when a licensee has:

Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky of a crime as defined in KRS 335.010, if in accordance with KRS Chapter 335B. (emphasis added)

16. It is undisputed that a jury in the United States District Court for the Eastern District of Kentucky found Dr. Suetholz guilty, utilizing the "beyond a reasonable doubt" standard required in a criminal case, of 12 counts of violating 21 United States Code, Section 841(a)(1), a federal criminal statute. According to counsel for Dr. Suetholz, post-trial briefing is currently under way and a judgment will not be entered until the court rules on various post-trial motions. The issue as to this allegation is therefore purely one of law, specifically the interpretation of the term "conviction", as used in KRS 311.595 (4). *Answer to Amended Complaint* pp. 9 – 10 and *Response* pp. 2 – 4

17. The statute could certainly have been drafted more clearly and there seems to be no direct authority to give specific guidance as to its interpretation in this context.

18. It is certainly clear that administrative disciplinary action can be taken against a professional license based upon criminal conduct and re-litigation of the nature of that conduct is not required. *Kentucky Bar Association v. Horn* 4 S.W. 3d 135 (1999); *Kentucky Bar Association v. Rice* 229 S.W. 3d 903 (2007) ; See also 201 KAR 9:081 Section 9 (2) (c) (3) (a)

19. In reviewing the statute as a whole, it is noted that it authorizes disciplinary action upon the "entry of a guilty or nolo contendere plea " (emphasis added) and does not require that there be an entry of judgment upon that plea before disciplinary action is taken. Therefore it

seems consistent to not require that the jury verdict result in the entry of a judgement prior to the disciplinary action taking place.

20. In fact the Board's interpretation of KRS 395.595 (4) appears to be the most "non-technical" and "clear and coherent" interpretation of KRS 395.595 (4) possible utilizing "common and everyday meanings" of the statutory language. KRS 446.015

21. The Board's interpretation of KRS 395.595 (4) also appears to be in keeping with intent of the legislature in promptly addressing medical professionals who commit crimes. KRS 446.080

22. Accordingly the hearing officer concludes, based upon the *Amended Complaint*, Licensee's *Answer to Amended Complaint*, the above Findings of Fact and the applicable law, that the preponderance of the evidence supports the conclusion that that Dr. Suetholz is also in violation of KRS 311.595 (4).

### **RECOMMENDED ORDER**

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. David W. Suetholz guilty of violating KRS 311. 595 (4), KRS 311.595(9), as illustrated by KRS 311.597 (4), and KRS 311.595 (12), and impose any appropriate sanction(s) for these violations.

### **NOTICE OF RIGHT TO FILE EXCEPTIONS AND TO APPEAL**

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. Transmittal of a recommended order may be sent by regular mail to the last known address of the party. Failure to file exceptions will result in preclusion of judicial review of those issues not

specifically excepted to. On appeal the circuit court will consider only the issues a party raised in written exceptions.

A party also has the right to appeal the Final Order of the agency pursuant to KRS 13B.140 (1 - 2) which states:

- (1) Except as provided in KRS 452.005, 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 date of 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.
  
- (2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Pursuant to KRS 23A.010 (4), "Such review (by 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 ORDERED this 11th day of January 2023.



KEITH HARDISON  
HEARING OFFICER  
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LOUISVILLE KY 40205  
(502) 432-2332  
[hardisonkeith@gmail.com](mailto:hardisonkeith@gmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that the original of this **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** was hand delivered this 11th day of January 2023, to:

JILL LUN  
KY BOARD OF MEDICAL LICENSURE  
HURSTBOURNE OFFICE PARK STE 1B  
310 WHITTINGTON PKWY  
LOUISVILLE KY 40222

for filing; and a true copy was hand delivered this same date to:


HON. LEANNE K DIAKOV  
GENERAL COUNSEL  
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and a true copy was mailed first class mail to:

HON. WILLIAM H. BRAMMELL  
HON. KENT WICKER  
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KEITH HARDISON