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K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1888

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DAVID A. THOMAS, M.D., LICENSE NO. 27346,  
2217 BONNYCASTLE AVENUE, LOUISVILLE, KENTUCKY 40205

**SECOND AMENDED AGREED ORDER**

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, and David A. Thomas, M.D. (“the licensee”), and, based upon the licensee’s request for practice location approval, hereby ENTER INTO the following **SECOND AMENDED AGREED ORDER:**

**STIPULATIONS OF FACT**

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

1. At all relevant times, David A. Thomas, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee identifies his medical specialty as general medicine.
3. Formerly, the licensee practiced anesthesiology.
4. Between 2006 and 2014, the licensee was subject to board action through a series of agreed orders in KBML Case No. 1056, in which he stipulated to the following facts:
  - a. On February 21, 2006, the licensee was arrested and charged with multiple counts of Trafficking in Controlled Substances. It was alleged that the licensee was unlawfully prescribing Oxycontin and Hydrocodone to three individuals, away from the licensee’s hospital practice, and that no

examination was conducted and no medical records were maintained for the three individuals. The licensee allegedly received goods and services from two of the individuals in exchange for the prescriptions. While he had reportedly not met the third person, he also allegedly wrote prescriptions for controlled substances in her name and gave them to her husband along with prescriptions in the husband's name.

- b. In a taped interview, one of the individuals, who received prescriptions from the licensee, advised the detectives,

The licensee wrote prescriptions for Oxycontin and Hydrocodone in exchange for remodeling work and materials at the licensee's rental property. The licensee had never met this individual's wife, but provided controlled substance prescriptions in her name to him so that he could fill more prescriptions. The prescriptions were written on the job site at the rental property. There was no medical need for the prescriptions; they were written "as a favor." He had provided the licensee with kitchen and bath faucets and was supposed to give the licensee a 14-foot trailer in exchange for the prescriptions. The licensee gave him enough to split with a second individual.

- c. In a taped interview, the second individual advised the detectives,

He was working with the first individual on a remodeling job for the licensee. He suffered from diabetes and had bad circulation in his feet; part of his toes had been amputated. He was under the care of several doctors. The licensee asked to see his feet and then wrote him a prescription to "help him out." The licensee did not ask what other physicians had prescribed for him or what medications he was currently taking. He saw the licensee twice at the work site and the licensee gave him prescriptions for controlled substances both times. On two other occasions, the licensee gave the first individual extra controlled substances prescriptions to give to him. Each time he would fill a prescription, he would give about 20 pills back to the first individual.

- d. Following his arrest, the licensee was relieved of further duties by his group, Medical Center Anesthesiologists.

- e. Following his arrest, the licensee's privileges at Jewish Hospital and St. Mary's Healthcare were suspended on February 22, 2006.
- f. Prescription records indicated that the licensee, an anesthesiologist who practices in a hospital setting, wrote the controlled substance prescriptions for 22 individuals. A summary of the prescriptions for the three individuals named by Metro Narcotics showed the following breakdown:

**First Individual**

12/5/05	120 Hydrocodone/Acetaminophin 650mg/10mg
1/17/06	180 Hydrocodone/Acetaminophin 650mg/10mg
2/13/06	180 Hydrocodone/Acetaminophin 650mg/10mg
2/17/06	180 Lorcet

**First Individual's Wife**

1/25/06	40 Hydrocodone Bitartrate 500mg/10mg 100 Oxycontin 80mg
2/12/06	180 Oxycodone 40mg

**Second Individual**

11/21/05	70 Hydrocodone/Acetaminophin 650mg/10mg, 1 refill
12/5/05	100 Oxycontin 40mg
12/15/05	120 Oxycontin 40mg
1/17/06	120 Oxycontin 40mg
2/19/06	65 Oxycontin 80mg

Through his attorney, the licensee noted that he had not written controlled substance prescriptions for 3 of the 22 individuals and this was confirmed through follow-up. While the licensee questioned prescriptions for a fourth individual, records indicated that his DEA number, office address, and office phone number had been used in phone-in prescriptions for 4 prescriptions for 40 each Migrin-A 325mg/100mg/65mg. The licensee had advised detectives that he did not maintain medical records.

- g. The information gathered during the investigation was provided to a Board consultant for review. She concluded, in part,

Prescribing narcotics such as Oxycontin 80 mg without following the guidelines for prescribing controlled substances is a serious action and herein a pattern of actions that constitutes gross incompetence. The same behavior if not an intentional drug transaction may also indicate gross ignorance. The actions complained of herein and unexplained constitute a danger to the health and safety of others. In addition, the actions of a physician in contravention of the guidelines and the law are actions which leads to bringing the practice of medicine in disrepute.

- h. On June 14, 2006, the licensee entered into an Agreed Order of Indefinite Restriction, pursuant to which he was prohibited from the professional utilization of controlled substances. The criminal charges pending against the licensee had not been resolved at that time, so the Agreed Order of Indefinite Restriction only resolved part of the grievance. The parties understood and agreed that the Panel reserved the right to exercise any of the options available to it under KRS Chapter 311 upon the resolution of the criminal charges against the licensee.
- i. The Agreed Order of Indefinite Restriction also required that the licensee pay the \$225 costs of the proceeding, and provided that the Panel would not consider a request by the licensee to resume the professional utilization of controlled substances until the criminal charges against the licensee had been resolved, a minimum of six months had passed, and the licensee had successfully completed a course on prescribing controlled substances.
- j. The licensee completed the prescribing course at the University of South Florida on October 4-6, 2006. He paid the \$225 costs in November, 20, 2006.

- k. On March 28, 2008, the licensee entered a guilty plea in federal district court, pleading guilty to the felony offense of “having knowledge of the actual commission of a felony cognizable by a court of the United States – namely, the acquiring and obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge by P.H., in violation of Title 21, United States Code, Section 843(a)(3) – concealed and did not as soon as possible make known the same to some judge or some other person in civil or military authority under the United States.” In the Plea Agreement, Dr. Thomas indicated that he “will plead guilty because he is in fact guilty of the charges.” The underlying facts in the Plea Agreement indicate that Dr. Thomas wrote prescriptions for 100 pills of 80 mg Oxycontin, 40 pills of 10 mg Lortab, and for 160 pills of 40 mg Oxycontin to Pa.H., and “deliberately ignored a high probability that the controlled substances prescribed for Pa.H were in fact being obtained by P.H. by misrepresentation, deception and subterfuge.” Further, when contacted by law enforcement officers, Dr. Thomas “failed to explain all relevant information that he was aware of” and failed to report the felony. Dr. Thomas was sentenced on March 28, 2008, to two years probation, and a \$5000 fine. The government agreed to withdraw the other 17 criminal charges.
- l. In December 2009, the licensee entered into an Agreed Order, pursuant to which he was restricted from prescribing, dispensing or otherwise professionally utilizing controlled substances except for registered patients

of an Emergency Department while admitted and for up to 72 hours upon discharge.

m. In June 2014, the licensee entered into an Amended Agreed Order pursuant to which he was allowed to practice obstetric anesthesia in a hospital setting and while supervised continuously by an attending anesthesiologist.

5. The restrictions on the licensee's license, pursuant to the agreed orders in KBML Case No. 1056, expired on or about December 19, 2014.

6. After December 2014, the licensee began practicing bariatrics/obesity medicine.

7. On or about February 23, 2018, the Office of Inspector General, Division of Audits and Investigations ("OIG"), reported to the Board that the licensee's KASPER data (between February 11, 2017 and February 11, 2018) demonstrated that the licensee was dispensing #60 count phentermine 37.5 mg to a large number of patients. OIG noted the following concerns:

- Patients eighteen years of age being dispensed phentermine 37.5 mg;
- Phentermine 37.5 mg being dispensed in quantities of sixty for a 30-day supply; and
- Phentermine 37.5 mg being dispensed for more than three (3) months aggregate in a calendar year

OIG identified sixteen (16) patients illustrative of these concerns and recommended further review by the Board.

8. A Board consultant reviewed the charts of the sixteen (16) patients identified by OIG and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices and violated Board regulations, 201 KAR 9:016 and 201 KAR 9:260. In general, the consultant noted, in part, that the licensee

- Failed to adequately establish, adjust and document individualized treatment plans, including not providing a carefully prescribed diet, behavior

modification plan, other supportive and collateral therapies, and appropriate referrals where indicated;

- Failed to adequately obtain medical and lab history;
- Failed to obtain waist or neck circumferences or other manual measurements or appropriate objective criteria to support ongoing treatment for each patient;
- Failed to terminate controlled medications despite lack of weight loss and patient noncompliance; and
- Failed to discontinue use of Schedule IV controlled substances where there was no justification for continued use beyond three (3) months.

9. The consultant noted a pattern of practice that poses a danger to patients, including:

- Not recognizing or properly treating obesity-related comorbidities or other uncontrolled medication conditions;
- Not fully exploring patients' prior medical history and concurrent medical conditions and medication usage;
- Failing to provide instructions on how often to check blood sugar levels or counseling about hyperglycemia during weight loss with usage of insulin to insulin-dependent diabetic patients;
- Failing to perform/obtain an EKG and obtain cardiac consent for treatment to patients with known history of CAD;
- Failing to adequately obtain and follow up on labs.

10. The Board consultant's report is incorporated herein, in its entirety, by reference.

11. On or about September 14, 2018, the licensee responded to the consultant's report through counsel and strongly disagreed with the consultant's findings. The licensee stated, in part, that

- He ensures that all new patients have a BMI of 27+ or otherwise qualify for phentermine use under 201 KAR 9:016 Section (4)(d);
- He regularly obtains copies of each patient's KASPER report to ensure compliance with controlled substance policies;
- He provides each patient with detailed information on diet and exercise plans and notes in each chart that this information has been discussed as provided; and
- He maintains patient forms that evidence the majority of sample items found in 201 KAR 9:016 Section (4)(4) and otherwise provides appropriate referrals for those items not regularly documented.

12. On or about September 26, 2018, the Board consultant considered the licensee's response to the report and the consultant reaffirmed his/her original findings.

13. During the course of the Board's investigation, the licensee ceased practice with the bariatric/obesity medicine practice group "Horizon Weight Loss" – the clinic for which he practiced while treating the sixteen (16) patients involved in the Board's investigation – and began seeing patients out of his home.
14. On November 15, 2018, the licensee appeared before the Panel, with counsel, and agreed to enter into an Agreed Order, in lieu of a formal Complaint and an Emergency Order of Restriction being issued against his license, and pursuant to which the licensee was restricted from prescribing, dispensing, or otherwise professionally utilizing controlled substances and required to reimburse the Board's costs of \$5,206.25.
15. The Agreed Order also provided that the licensee could not request reinstatement of his ability to prescribe or dispense controlled substances unless and until he had completed a clinical skills assessment and obtained an education plan, if so recommended, from a Board-approved assessor.
16. In June 2019, the licensee completed a CPEP clinical skills assessment in the specialty of anesthesiology (excluding topics related to bariatrics, prescribing controlled substances or chronic pain management).
17. CPEP identified a number of deficiencies and, in November 2019, CPEP developed an Education Plan specific to the practice of anesthesiology to address the noted deficiencies, including that the licensee initially have 100% direct supervision in the perioperative setting through post-anesthesia care and receive one-on-one coaching specific to his medical knowledge, clinical judgment and documentation deficiencies.



18. In December 2019, the licensee requested that the Agreed Order be amended to allow him to resume the prescribing, dispensing and utilization of controlled substances so that he may pursue an opportunity in hospital-based anesthesiology at Hazard ARH Regional Medical Center.
19. On January 16, 2020, the Panel chose to allow the licensee to administer controlled substances for the purpose of practicing hospital-based anesthesiology, pursuant to terms and conditions set forth in the Amended Agreed Order.
20. Between December 2020 and May 2022, the licensee engaged in a CPEP Education Plan and progressed through graduated levels of supervision to unsupervised practice of hospital-based anesthesiology (at a Board-approved location, Hazard ARH). He successfully completed all components of the Education Plan in May 2022.
21. On or about March 23, 2023, the Panel Chair authorized this Second Amended Agreed Order in order to allow the licensee to practice up to 48 hours per week providing hospital-based OB anesthesia at Norton Hospital (downtown Louisville) and Norton Women's and Children's Hospital (St. Matthews).

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Second 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(4), and

KRS 311.595(12). Accordingly, there are legal grounds for the parties to enter into this Second Amended Agreed Order.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this matter by entering into an informal resolution such as this Second Amended Agreed Order.

### **SECOND AMENDED AGREED ORDER**

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

1. The license to practice medicine in the Commonwealth of Kentucky held by David A. Thomas, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Second Amended Agreed Order;
2. During the effective period of this Second 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. Except as provided in (i) below, the licensee SHALL NOT perform any act which would constitute the "practice of medicine," 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;
    - i. The licensee MAY practice hospital-based anesthesiology at a Board-approved location;
  - b. Except as provided in (i) below, 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 **MAY** administer controlled substances in a hospital-based setting for the purpose of practicing as a hospital-based anesthesiologist in a perioperative setting through post-anesthesia care;
    - ii. The licensee **SHALL** fully comply with the provisions of 201 KAR 9:260 and the professional standards applicable to the licensee's practice of hospital-based anesthesiology;
  - c. The licensee **SHALL NOT** practice as a hospital-based anesthesiologist unless and until the Panel or its Chair has approved, in writing, the practice location at which he will practice. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair 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 or its Chair may include specific conditions/restrictions to ensure patient safety. Once approved, the licensee shall not change practice locations without first obtaining written approval by the Panel or its Chair for such change. The parties agree that the Panel or its Chair may require additional conditions and/or restrictions as a condition of it granting approval for a new practice location;
    - i. The licensee is hereby approved to practice hospital-based anesthesiology at the following locations: **Norton Hospital** (downtown Louisville, Kentucky) and **Norton Women's and Children's Hospital** (St. Matthews, Kentucky); and
  - d. 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 **SHALL NOT** consider a request to allow the licensee to practice in other specialty or practice setting and/or a request to allow the licensee to prescribe, dispense or otherwise utilize controlled substances except as provided above, unless and until the licensee has completed a clinical skills assessment specific to a proposed practice specialty or setting *and* the prescribing of controlled substances for chronic pain management and bariatrics.

4. The licensee expressly understands and agrees that if the Panel should allow the licensee to resume the prescribing, dispensing or professional utilization of controlled substances beyond the parameters of ¶2(b)(i) above in the future, it will do so by an amended agreed order, which shall at least require that the licensee maintain a “controlled substances log” for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for at least two (2) favorable consultant reviews of the log and relevant records by Board agents, and any other terms deemed appropriate by the Panel at that time, before the order may be modified or terminated.
5. The licensee expressly understands and agrees that if he should violate any term or condition of this Second 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 Second 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 Second 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 Second Amended Agreed Order.

6. The licensee understands and agrees that any violation of the terms of this Second 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 23<sup>rd</sup> day of MARCH, 2023.


FOR THE LICENSEE:

  
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DAVID A. THOMAS, M.D.

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COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

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

  
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