

OCT 24 2023

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2124

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY RICHARD H. CALES, M.D., LICENSE NO. 36961, 1800 ARNOLD PALMER BOULEVARD, LOUISVILLE, KENTUCKY 40245

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel A, and Richard H. Cales, M.D., (“the licensee”), and, based upon their mutual desire to fully and finally resolve the pending investigation without an evidentiary hearing, 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, Richard H. Cales, M.D. (“the licensee”), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is internal medicine.
3. On or about October 31, 2022, the licensee reported to the Board that he had recently learned that his former clinic manager stole and diverted pre-signed controlled substance prescriptions from his office between June 2019 and May 2021.
4. The licensee admitted that, until his practice became able to prescribe electronically in mid-2019, it was his usual course of business for several years to pre-sign blank controlled substance prescription pads, explaining

... Because of Dr. Cales' medical practice activity outside of NuLease, on rare occasions Dr. Cales was unable to make it to the clinic in time to treat patients. In Dr. Cales' unexpected absence, a Nurse Practitioner at NuLease, who also had a buprenorphine prescribing waiver, would see patients until Dr. Cales arrived at the clinic. There was also one occasion where Dr. Cales was

admitted to the hospital for emergency de fibrillation which left all of his patients without access to treatment. At the time, NuLease had not yet implemented an electronic prescribing process. So, to address unique and unexpected situations like these, given the critical importance of maintaining access to treatment for his patients, Dr. Cales determined that he needed to implement emergency measures to ensure that a paper script signed by Dr. Cales could be issued by another buprenorphine waived provider where Dr. Cales was otherwise unavailable. Although EPCS has become more widely available and less expensive in recent years, at the time, NuLease could not initially afford either an electronic health record ("EHR") or an EPCS.

The emergency measures that Dr. Cales implemented were subject to strict limitations and restrictions. Dr. Cales maintained a limited amount of pre-signed prescriptions in a locked safe onsite at the Nu Lease clinic that could only be accessed by the clinic manager ... The pre-signed prescriptions were only to be used when (a) the recipient was a NuLease patient currently being treated; (b) another buprenorphine waived NuLease medical provider personally saw the patient because Dr. Cales was unable to; and (c) Dr. Cales was not in the office but personally authorized the prescription. ...

5. On or about September 4, 2023, a Board consultant completed a review of sixteen (16) of the licensee's patient charts from his practice at Nulease Medical Solutions and opined that the licensee was practicing within the acceptable and prevailing medical standards for medication assisted treatment in thirteen (13) of the charts reviewed. The consultant did not opine on the licensee's practices related to two (2) pain management patients and one (1) patient treated for alcohol use disorder.

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 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(10). 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 pending investigation without an evidentiary hearing 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 this pending matter without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER:**

1. The license to practice medicine held by Richard H. Cales, M.D., is hereby PLACED ON PROBATION FOR A PERIOD OF FIVE (5) YEARS, with that period of probation beginning immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS until further order of the Board:
 - a. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the *ProBe* Program offered through the Center for Personalized Education for Professionals (CPEP), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232, at the earliest time;
 - i. The licensee SHALL complete and "unconditionally pass" the *ProBe* Program at the time and date(s) scheduled, at his expense and as directed by CPEP's staff;
 - ii. The licensee SHALL provide the Board's staff with written verification that he has completed and "unconditionally passed" CPEP's *ProBe* Program, promptly after completing the program;
 - iii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations, reports or essays from the *ProBe*

Program to the Board's Legal Department promptly after their completion;

- b. Within six (6) months of the entry of this Agreed Order, the licensee SHALL reimburse the Board's costs of proceedings in the amount of \$3,500.00; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee may request termination of this Agreed Order prior to the expiration of five (5) years upon completion of the terms and conditions set forth in ¶2 above.
 4. 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.

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

SO AGREED on this 24 day of October, 2023.

FOR THE LICENSEE:



RICHARD H. CALES, M.D.

J. CHRISTOPHER COFFMAN, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



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