

MAY 22 2024

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2152

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY JOHN K. GARNER, M.D., LICENSE NO. 31140, 1846-1856 OLD LEBANON ROAD, CAMPBELLSVILLE, KENTUCKY 42718

AGREED ORDER

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and John K. Garner, 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, John K. Garner, M.D. ("the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is family medicine.
3. On or about December 13, 2018, the licensee entered into an Agreed Order, Case No. 1890, which is incorporated in its entirety herein by reference. The Agreed Order, Case No. 1890, was terminated on or about May 20, 2021.
4. On or about August 22, 2023, the licensee was indicted on one (1) count of devising or engaging in a scheme to defraud the Kentucky Medical Assistance Program in violation of KRS 205.8463(1)(5) and 502.020 and thirteen (13) counts of theft by deception in violation of KRS 514.040 and 502.020, all Class D felonies.
5. On or about December 22, 2023, in denying the licensee's motion to dismiss the charges, the Court entered, in part, the following findings:

Dr. Garner operates John K. Garner, M.D., P.S.C. d/b/a Campbellsville Family Health ("PSC"). His wife, Linda Garner, owned Central Kentucky Drug Treatment, Inc., ("CKDT"). During the period alleged in the indictments, October of 2018 through September of 2019, the PSC operated as a Medication Assisted Treatment ("MAT") program licensed with the Substance Abuse and Mental Health Services Administration ("SAMHSA") federal agency to assist patients fighting opioid addiction. As required by both state and federal law, Dr. Garner's patients in the MAT program had to be enrolled in a contemporaneous counseling program. ...

Dr. Garner, a Medicaid provider, referred his patients to CKDT, a non-Medicaid provider, for their counseling services. Linda Garner, John's wife, was the sole owner and operator of CKDT from October 2, 2015, when the organization was created, to August 17, 2021, when the organization was dissolved. CKDT provided counseling services exclusively for John's MAT program. Neither Linda nor CKDT were Medicaid participating providers. CKDT was located in the same office building as John's practice. The Commonwealth proffers the businesses shared employees.

On March 6, 2015, the Department of Medicaid Services amended administrative regulation 901 KAR 3 :005 to state that Medicaid providers could not charge cash for Medicaid covered services. On March 20, 2015, a provider letter was sent to all Medicaid providers, including John. Medicaid providers had until April 1, 2015, to comply with the administrative regulation changes.

CKDT charged patients \$300.00 per month for counseling and the Commonwealth alleges John and Linda set up a shell-company in CKDT for the purpose of circumventing the change to the applicable Kentucky Medicaid regulation, so they could charge Medicaid recipients cash for services for which Medicaid would otherwise pay. 901 KAR 3:005 Section 2(1)(c) provides, "if a provider renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the provider's Medicaid number or any other entity including a non-Medicaid provider, the recipient shall not be billed for the service." (emphasis added).

...

6. On or about December 22, 2023, the licensee entered an *Alford* plea of guilty to one (1) count of theft by deception in violation of KRS 514.040 and 502.020, a Class D felony. With the prosecutor's agreement, any conviction is diverted for two years and all other counts were dismissed.

7. The American Medical Association (AMA) Code of Medical Ethics is incorporated by reference in Kentucky's Medical Practice Act.
8. AMA Code of Medical Ethics Opinion 11.2.4 provides, in part, that

Respect for patients' autonomy is a cornerstone of medical ethics. Patients must rely on their physicians to provide information that patients would reasonably want to know to make informed, well-considered decisions about their health care. Thus, physicians have an obligation to inform patients about all appropriate treatment options, the risks and benefits of alternatives, and other information that may be pertinent, including the existence of payment models, financial incentives; and formularies, guidelines or other tools that influence treatment recommendations and care. Restrictions on disclosure can impede communication between patient and physician and undermine trust, patient choice, and quality of care.

Although health plans and other entities may have primary responsibility to inform patient-members about plan provisions that will affect the availability of care, physicians share in this responsibility.

Individually, physicians should:

- (a) Disclose any financial and other factors that could affect the patient's care.
 - (b) Disclose relevant treatment alternatives, including those that may not be covered under the patient's health plan.
 - (c) Encourage patients to be aware of the provisions of their health plan.
9. The licensee and the Board agreed to resolve the Board's pending investigation by entry of this Agreed Order in lieu of proceedings on a Complaint.

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(4) and (9), as illustrated by KRS

311.597(4). 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 John K. Garner, 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 thirty (30) days of the entry of this Agreed Order, the licensee shall enroll in the next available *Medical Ethics and Professionalism – Extended (ME-22 Extended)* program, including the post-course *Maintenance and Accountability Seminar (MAS-12)*, administered by Professional Boundaries, Inc. ("PBI") Education, <https://pbieducation.com/>, Tel. (904) 800-1237;
 - i. The licensee shall successfully complete all components of the program, including pre-course components and post-course weekly faculty-led group teleconference seminars, at his own expense and as directed by PBI;
 - ii. The licensee **SHALL** take all steps necessary, including signing any waiver and/or consent forms, to ensure that PBI Education will provide a copy of any essays, reports or evaluations (including but not limited to an Accomplishments, Impressions, and

Recommendations (AIR) Letter) from the ME-Extended and MAS-12 programs directly to the Board's Legal Department promptly after their completion;

iii. Failure to successfully complete the ME-Extended and MAS-12 programs in their entirety within twenty (24) months of entry of this Agreed Order shall be considered non-compliance with the terms of this Agreed Order and shall constitute grounds for an emergency order of suspension of the licensee's license to practice medicine in the Commonwealth of Kentucky; and

b. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

3. Upon successful completion of the terms and conditions stated in ¶2 above, the licensee may request termination of this Agreed Order.
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 22nd day of May, 2024.

FOR THE LICENSEE:



JOHN K. GARNER, M.D.




JOEY A. WRIGHT, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



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