

FILED OF RECORD

JUL 31 2023

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1914

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY TODD STEPHEN JAROSZ, M.D., LICENSE NO. 51109, 200 MEDICAL CENTER DRIVE, HAZARD, KENTUCKY 41701-9466

FIFTH AMENDED AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and Todd Stephen Jarosz, M.D., (hereafter "the licensee"), and, based upon their mutual desire to allow the licensee to practice medicine subject to terms and conditions set forth herein, hereby ENTER INTO the following

FIFTH AMENDED AGREED ORDER:

STIPULATIONS OF FACT

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

1. At all relevant times, Todd Stephen Jarosz, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is orthopaedic surgery.
3. In or around February 2019, the licensee entered into a Memorandum of Agreement and Stipulations with the State Board of Medical Examiners for South Carolina ("SCBME"), in which he stipulated to certain pertinent facts, including:
 - In January 2017, the licensee self-reported to the SCBME a brief sexual relationship with a patient, "DW." The licensee reported that he initially examined DW for unrelenting neck and arm pain. Ultimately, the licensee performed surgeries on DW. The licensee provided his personal contact to DW because she continued to have pain; he had provided his number to other patients in similar instances.

- DW began texting the licensee concerning her medical issues. Later, the messages became more personal in nature and the licensee shared personal information with DW. After a number of months, the licensee began a relationship with DW. The relationship ended after a few months. The licensee stated that after he unilaterally ended all contact with DW, she obtained an attorney and informed his employer. The licensee resigned his employment after an ultimatum and was ultimately terminated.
- Following his report to the SCBME, the licensee was referred to Atlanta Psychiatric Consultation Center (“APCC”) for an evaluation in June 2018. During his evaluation, the licensee disclosed prior boundary violations and sexual behavior in the workplace. Specifically, in 1997 or 1998, the licensee had a one-time sexual encounter with a non-patient whom he met in the hospital lobby while he was in fellowship; in 2001, he had a one-time sexual encounter with another non-patient; in 2011, he had a one-time sexual encounter with a nurse from his workplace; in 2011 or 2012, he had one or two sexual encounters with another patient; and in 2014, the licensee was reprimanded and referred to harassment training after he made a comment to a nurse which was perceived as inappropriate.
- Based on recommendations from APCC, the licensee underwent intensive residential treatment at Pine Grove (“Pine Grove”) Behavioral Health and Addiction Services between August 27 and November 16, 2018. Upon discharge, Pine Grove advocated for the licensee’s return to the practice of medicine with the following recommendations:
 - Follow all guidelines and recommendations of the SCBME;
 - Sign a monitoring contract to include quarterly polygraphs, random urine drug screens, a workplace monitor, and 12-Step meeting attendance;
 - Not work locum tenens positions;
 - Work no more than 50-55 hours/week;
 - Work no more than 15 call shifts/month;
 - Have a chaperone present for all female patient interactions, including during call shifts, with such chaperone having relevant information of the licensee’s history;
 - Not meet alone with female coworkers - a third person should be present for needed private encounters with female coworkers;
 - Return to Pine Grove four months after discharge for a follow up evaluation;
 - Maintain appropriate boundaries with his cell phone number – patients should not have access to his personal cell phone number and he should be extremely cautious about providing his cell phone number to coworkers;
 - Not attend social events with patients or staff; and
 - Not treat or prescribe for family, friends or coworkers.

4. When the licensee entered into the Memorandum of Agreement and Stipulations with the SCBME, he was practicing at ARH Regional Medical Center in Hazard, Kentucky (“ARH”) and he stated that he had been fully transparent with ARH; that ARH expressed support for him and a willingness to accommodate the recommendations of Pine Grove; and that ARH had offered him full-time employment as an orthopaedic surgeon.
5. On or about February 22, 2019, the SCBME entered two final orders against the licensee’s license to practice medicine in the State of South Carolina, the effect of which restricted the license for a period of not less than five (5) years.
6. On May 16, 2019, the Board’s Inquiry Panel B reviewed the order involving the licensee’s medical license in the State of South Carolina and chose to mirror the substantive terms and conditions, such as set forth in an Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.
7. Pursuant to the Agreed Order, filed of record June 10, 2019, the licensee was required, in part, to maintain and comply with a contractual relationship with the Kentucky Physicians Health Foundation (“KPHF”).
8. Under the terms of the KPHF contract, a licensee is required to check-in daily to see if he has been selected for drug and alcohol testing. If a licensee misses seven check-ins, he is required to undergo an evaluation to address the failure to comply with terms of their testing protocol.
9. On or about August 17, 2021, after having incurred his sixth missed check-in, the licensee met with the KPHF to review the policy and protocols regarding missed check-ins and to discuss strategies to ensure timely check-ins.

10. On or about August 22, 2021, the licensee incurred his seventh missed check-in.
11. On or about September 23-29, 2021, the licensee submitted to evaluation at Pine Grove. Upon discharge, Pine Grove recommended that the licensee continue in a contractual relationship with KPHF; observe restricted work hours and previously-recommended professional boundaries; and to engage with a new therapist and psychiatrist.
12. On or about October 22, 2021, KPHF reported that the licensee's noncompliance and the latest Pine Grove evaluation results.
13. On or about November 18, 2021, the Panel allowed the licensee to enter into an Amended Agreed Order, in lieu of the issuance of a Complaint. The terms and conditions set forth therein included, in part, a restriction that the licensee could not work more than two call shifts per seven-day week (i.e. 8 days/month).
14. On or about May 6, 2022, the SCBME partially modified its February 22, 2019 Order to temporarily lift its locum tenens restriction on his license (for a period of 1-year) because the licensee had become unemployed, conditioned on any locum tenens assignment being of no less than 90 days.
15. On or about May 19, 2022, upon the licensee's request, the Panel allowed the licensee to enter into a Second Amended Agreed Order, to expand the licensee's monthly allowable call shifts and to substantively mirror the SCBME terms related to locum tenens practice.
16. On or about October 27, 2022, upon the licensee's request for practice location approval, the Panel allowed the licensee to enter into a Third Amended Agreed Order.

17. On or about January 19, 2023, upon the licensee's request for additional practice location approval, the Panel allowed the licensee to enter into a Fourth Amended Agreed Order.
18. In or around April 2023, the licensee submitted to another re-evaluation at Pine Grove to discuss his ongoing recovery efforts and assess his compliance with the recovery aftercare plan. Although Pine Grove witnessed two instances in which the licensee demonstrated continued difficulty with maintaining boundaries during the evaluation, it found him to be truthful under polygraph examination. Overall, Pine Grove noted improvements and opined that the licensee should continue to improve as he follows aftercare recommendations. Pine Grove recommended that the licensee continue in a contractual relationship with KPHF; continue to observe restricted work hours and all previously-recommended professional boundaries; and to continue engagement with this therapist and medication management with his physician.
19. On or about July 20, 2023, upon the licensee's request for amendment of his practice location sites, the Panel allowed the licensee to enter into this Fifth Amended Agreed Order.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Fifth Amended Agreed Order:

1. The licensee's license to practice medicine in the Commonwealth of Kentucky 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(5), (9), as illustrated by KRS 311.597(4), and KRS 311.595(13) and (17). Accordingly, there are legal grounds for the parties to enter into this Fifth Amended Agreed Order.

3. The Board's regulation, 201 KAR 9:081, Section 9(4)(c) provides,

If a licensee has had disciplinary action taken against or sanctions imposed upon the licensee's license to practice medicine or osteopathy in any state, the appropriate panel:

1. Shall, at a minimum, impose the same substantive sanctions, up to and including permanent revocation or surrender, as a disciplinary sanction against the licensee's Kentucky license; and

2. In addition to those minimum sanctions, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

4. 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 Fifth Amended Agreed Order.

FIFTH AMENDED AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to allow the licensee to practice medicine subject to terms and conditions set forth herein, the parties hereby ENTER INTO the following

FIFTH AMENDED AGREED ORDER:

1. The license to practice medicine in the Commonwealth of Kentucky held by Todd Stephen Jarosz, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Fifth Amended Agreed Order;

2. During the effective period of this Fifth Amended Agreed Order, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. The licensee SHALL NOT practice in a locum tenens position in the Commonwealth of Kentucky;
- b. The licensee SHALL NOT perform any act which would constitute the "practice of medicine or osteopathy," 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 – unless and until the Panel has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel;
 - i. The licensee SHALL NOT request and the Panel shall not approve any practice assignment of less than ninety (90) days;
 - ii. In determining whether to approve a practice location, the Panel will particularly consider whether there will be appropriate supervision of the licensee and will require verifiable primary source documentation that the proposed worksite employer has reviewed this Fifth Amended Agreed Order and is able to accommodate the conditions set forth herein. The Panel may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked, and may include specific conditions/restrictions to ensure patient safety;
 - iii. Once approved, the licensee SHALL NOT change practice location without first obtaining written approval by the Panel Chair for such change;
 - iv. The licensee is hereby approved to practice from 1:00 p.m. – 7:00 p.m., Monday, Tuesday and Wednesday of each week (18 hours) at any of the following Chambers Medical Group locations:

4072 Taylorsville Road
Louisville, Kentucky

8019 Dixie Highway
Louisville, Kentucky

51 Cavalier Boulevard
Florence, Kentucky

- v. In addition, the licensee is hereby approved to practice 9:00 a.m. – 6:00 p.m. (9 hours), every other Thursday at the following Acute Injury Rehab (“AIR”) location:

166 Prosperous Place, Suite 220
Lexington, KY 40509

- vi. In addition, the licensee is hereby approved to practice up to twenty-five (25) hours/week performing disability evaluations on behalf of Liberty Medical Assessment, LLC, at any of the following locations:

4041 Preston Hwy., Suite 104
Louisville, KY 40213

1104 North Main Street
Monticello, KY 42633

113 W. Main Street
Leitchfield, KY 42754

989 Medical Park Drive
Maysville, KY 41056

- c. The licensee SHALL NOT practice more than 50-55 hours per week and SHALL NOT work more than twelve (12) call shifts per calendar month;
- d. The licensee SHALL NOT treat or prescribe to family, friends or co-workers;
- e. The licensee SHALL NOT meet alone with female coworkers and SHALL ensure that a third person is present for any necessary private encounter with a female coworker;
- f. The licensee SHALL NOT share his personal cell phone number with coworkers, unless it is necessary and related to his practice of medicine;
- g. The licensee SHALL NOT attend social events with patients or staff;
- h. The licensee SHALL NOT engage in any personal interaction or communication with a patient outside of the office setting, either in person, or by written, electronic or telephonic communication, and he SHALL NOT give out his personal cell phone number to any patient;
- i. The licensee SHALL NOT be in the presence of, personally interact with or provide treatment to a female patient, unless he is accompanied at all times by an individual who has previously agreed to serve as a chaperon, under the terms specified in the standard letter provided by the Board for this purpose. If the approved chaperon must leave the presence of the licensee and the female patient for any period of time, no matter how brief, the licensee SHALL stop his interaction with or treatment of the female patient

and leave the presence of the female patient until the approved chaperon may again be present;

- i. Any chaperon utilized by the licensee must be approved, in advance, by the Board or its staff and must agree in writing to 1) remain present and within direct eyesight and within clear hearing distance of the licensee and the patient throughout the entire period the licensee is with a female patient; 2) accurately record the chaperon's presence, or absence, for the entire duration of such patient interaction in the patient's chart, or the patient record maintained by that clinical setting; 3) immediately notify the designated contact person at the Board's offices to report any violation of the chaperon requirement by the licensee. The licensee may submit and the Board or its agents may approve more than one chaperon to fulfill this requirement. The licensee shall be solely responsible for any payment of the costs related to the use of a chaperon(s);
 - ii. The licensee shall maintain a separate log documenting each patient seen with a chaperon and the name, title and location of the chaperon utilized. Upon request, the licensee shall permit the Board's agents to review this log and shall take all necessary steps to arrange for the Board's agents to review the patient(s)' chart(s) and to interview the chaperon(s);
- j. The licensee SHALL maintain and fully comply with all requirements of his KPHF contractual relationship;
- i. As part of that contractual relationship, KPHF will regularly coordinate with the SC Board of Medical Examiners or their designated Physicians Health Program agents to ensure that the licensee is fully complying with the terms of his orders with the SC Board of Medical Examiners;
 - ii. As part of that contractual relationship, the licensee SHALL be required to attend 12-Step meetings as deemed appropriate by the KPHF and which shall, at least, be comparable to such meetings as required by the SC Board of Medical Examiners;
 - iii. As part of that contractual relationship, the licensee SHALL be required to identify and obtain approval from the KPHF for a workplace monitor at any practice location in which he may practice in the Commonwealth of Kentucky;
 - iv. As part of that contractual relationship, the licensee shall be subject to periodic, unannounced breathalyzer, blood and urine alcohol and/or drug analysis, at the licensee's expense. The licensee's

failure to fully reimburse the testing agent or the KPHF within specified periods SHALL constitute a violation of this Fifth Amended Agreed Order;

- v. As part of that contractual relationship, the licensee shall be subject to bi-annual polygraph examinations with a Board-approved examiner, at the licensee's expense. The licensee's failure to fully reimburse the examiner or the KPHF within specified periods SHALL constitute a violation of this Fifth Amended Agreed Order;
 - vi. Regardless of any term or condition to the contrary within his KPHF contract, the licensee SHALL NOT miss a check-in or call-in to determine whether the licensee shall be subject to a screen. The licensee expressly understands and agrees that his failure to check-in, call-in or be screened SHALL constitute a violation of this Fifth Amended Agreed Order;
 - k. The licensee SHALL execute any and all necessary waivers to ensure that the Board shall receive any and all evaluations and/or reports (including polygraph), within ten (10) days of their completion, directly from Pine Grove regarding the licensee's follow up evaluations and any and all other interactions between Pine Grove and the licensee during the duration of this Fifth Amended Agreed Order; and
 - 1. The licensee SHALL NOT violate any provision of KRS 311.595/.597.
3. The licensee expressly understands and agrees that he SHALL NOT request and the Board SHALL NOT consider any request to amend, modify or terminate this Fifth Amended Agreed Order or any of its terms or conditions, unless and until his public and private orders of February 2019, including as modified in May 2022, with the South Carolina Board of Medical Examiners are amended, modified or terminated.
4. The licensee expressly agrees that if he should violate any term or condition of this Fifth 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 Fifth 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 Fifth 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 Fifth Amended Agreed Order.

5. The licensee understands and agrees that any violation of the terms of this Fifth 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 for practicing medicine without a license

SO AGREED on this 28 day of July, 2023.

FOR THE LICENSEE:


TODD STEPHEN JAROSZ, M.D.

COUNSEL FOR LICENSEE
(IF APPLICABLE)

FOR THE BOARD:



WILLIAM C. THORNBURY, JR., M.D.
ACTING CHAIR, INQUIRY PANEL B



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