

FILED OF RECORD

JUN - 2 2023

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2107

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY ROBERT LEWE, M.D., LICENSE NO. 31245, 1724  
KENTON STREET, SUITE 1C, HOPKINSVILLE, KENTUCKY 42240

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through the Chair of its Inquiry Panel B, and Robert Lewe, M.D., (hereafter "the licensee"), and, based upon their mutual desire to resolve the pending investigation, the parties 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, Robert Lewe, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Urology.
3. On or about August 3, 2021, the Board received a report indicating that the licensee's clinical privileges had been limited by the Jennie Stuart Medical Center ("JSMC"). The report stated that there was concern with the licensee's nephrectomy complication rate. JSMC informed the licensee that "no elective nephrectomy procedures are to be performed until independent outside peer review has been completed with Medical Executive Committee [MEC] evaluation. Following outside independent review, the MEC recommended, that the next

fourteen nephrectomies be proctored with a report after each case from the proctor, back to the MEC.”

4. The MEC at JSMC took the following actions which ultimately led to the Report:

- On or about April 22, 2021: “In Executive Session, Dr. Velaga provided information on concerns brought by members of the surgical team, regarding Dr. Robert Lewe. The concerns included:
  - An increased complication rate seen in nephrectomy procedures
  - An increase in OR time
  - General surgeons providing intraoperative consults and participating in nephrectomy procedures.

[...]

Following discussion, recommendation was given to suggest that:

- Dr. Lewe take time away from his practice to address his health issues
- Limit nephrectomy procedures. If he desires to perform nephrectomy procedures he will receive additional training and be proctored for an amount set by MEC
- Focused Professional Practice Evaluation (FPPE) be conducted on all cases for 3 months.

[...]

The following motion was made by Dr. Robinson and seconded by Dr. Perkins:

- A letter will be sent to Dr. Lewe to inform him of the investigation of his surgical cases
- A meeting will be scheduled with Dr. Lewe to discuss the results of the review
- A temporary pause of partial and total nephrectomy procedures pending the completion of the investigation
- Retrospective random review of 20 general urological cases to be performed

- Focused Professional Practice Evaluation (FPPE) will be complete on 100 % of cases for 3 months"
- On or about May 10, 2021: Dr. Lewe "asked to be able to make presentation to the MEC" regarding his surgical cases under review. The Meeting notes indicate:
  - The additional review of 20 general urology cases have been completed with no issues found, as recommended during the April called meeting.
  - According to the OR schedule, Dr. Lewe does have a general urology case scheduled for May 18th and a nephrectomy May 20th.
  - If there is an additional review for his nephrectomy cases, it should be from a 3rd party as there is no other urologist on staff for this task. Peer to Peer.
  - Dr. Lewe will not be able to perform the nephrectomy scheduled for May 20th due to the initial concern. He will need to be sent an additional letter with more specifics and what the concerns are. [Concern with nephrectomy complication rate and until then, nephrectomies are to be put on hold]
  - Recommendation was given that Dr. Robinson as Chief of Surgery, reach out to Dr. Lewe at his return from surgical leave, for a face to face meeting, and explain the MEC has concerns moving forward with nephrectomies and he should postpone all nephrectomy cases until he has had the opportunity to meet with the MEC.
- On or about May 24, 2021: "In Executive Session, Dr. Velaga provided an overview of the increased complication rate seen in nephrectomy procedures.

Dr. Lewe presented an overview of the 7 cases. In his closing comments he requested an independent review of the cases.

[...]

The following motion was made by Dr. Velaga and seconded by Dr. Robinson:

1. The seven nephrectomy cases will be sent for independent review. The review is to be completed by three actively practicing urologists that perform nephrectomy procedures.
2. Elective nephrectomy procedures will not be performed by Dr. Lewe until the review has been completed.

3. A letter will be sent to Dr. Lewe summarizing the plan.

- On or about July 29, 2021: "The MEC has previously requested outside urology peer review for an expert opinion of nephrectomy procedures. Members present acknowledging patient safety is to be number one. When Dr. Lewe submitted initial application for privileges, recommendation with approval was given that his robotic cases be proctored due to previous concern documented within his file.

Handout was provided with report from each of the three [3] peer surveyors. Report conclusion ranging, from not meeting standard of care with known negative outcome, to standard of care with concerns. There was agreement the rate of bleeding was too high with his nephrectomy cases, leading to a much more serious complication and removal of a patient's rib is not always necessary. Documentation was lacking in one of the cases; surgical note did not document the thought process involving the procedure and change in how the procedure was done.

Suggestion was given that since there is only one full time urologist on staff, with no urology back up, if there should be a complication, that any nephrectomies be proctored by a Board Certified, KY Licensed, Proctoring Urologist, approved by the MEC and Governing Board and the proctor is to be in the room, with a report from the proctor, back to the MSOR after each case. Dr. Lewe is to present to the proctor in advance any scheduling, to ensure appropriateness of patient selection. The next fourteen [14] cases to be proctored.

5. On or about September 21, 2021, the licensee responded. He focused on the case files examined by the outside independent reviewers, stating, in part, that:

[T]he majority of reviews were # 4's, Standard of care met, with the second most common review being # 3 Standard of care met with some concerns. Some of the concerns dealt with the slightly higher blood loss than typically seen with these cases. One observation put forward by several reviewers regarding this mentioned that blood loss typically is a little lower with minimally invasive treatment of renal cell carcinoma, but also recognized that not all of the cases would have been amenable to that type of surgery. Another point brought up was the fact that I usually remove a rib when performing nephrectomy, or partial nephrectomy. Although that is how I was trained, I do realize that it is no longer routinely done, and I will modify my technique accordingly.

[...]

I have carefully read and considered all of the recommendations of the reviewers, and have taken them to heart. In addition, after reading the

reviews, I plan to modify my practice in the following ways: I plan to take an even more critical position when evaluating future patients in the pre-operative period, and will be more likely to err on the side of conservatism with respect to making the decision to operate on them here at our facility, or referring them out to a tertiary care center for their surgery. In addition, I have now made it my policy to always have a second surgeon scrub with me on all open renal cases. Having the assistance of a second set of skilled hands, as well as the benefit of the experience of another surgeon, has no down-side.

6. On or about January 21, 2022, the licensee entered into an Interim Agreed Order

(Diversion). The terms required that:

- a. Within twenty (20) days of the filing of this Interim Agreed Order, the licensee SHALL contact *either* the Center for Personalized Education for Professionals ("CPEP"), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232 Fax: (303) 577-3241 or LifeGuard, 777 East Park Drive, Harrisburg, Pennsylvania, 17111, Tel. (717) 909-2590; to schedule a clinical skills assessment in urology for the earliest dates available to both CPEP/LifeGuard and the licensee;
  - i. Both parties may provide relevant information to CPEP/LifeGuard for consideration as part of the clinical skills assessment. In order to permit the Board to provide such relevant information, the licensee SHALL immediately notify the Board's Legal Department of the assessment dates once the assessment is scheduled;
  - ii. The licensee SHALL travel to CPEP/LifeGuard and complete the assessment as scheduled, at his expense;
  - iii. The licensee expressly understands and agrees that CPEP/LifeGuard will issue its final assessment report, in accordance with its internal policies;
  - iv. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP/LifeGuard will provide a copy of the assessment report to the Board's Legal Department promptly after its completion;
  - v. If the assessment report recommends development of an educational plan or a remediation plan, the licensee SHALL take all necessary steps to arrange for CPEP/Lifeguard to immediately develop such a plan and enter into any necessary oversight monitoring agreement with CPEP/LifeGuard, at the licensee's expense, so that the proposed educational plan or remediation plan may be presented to the Panel for review along with the assessment report;

- vi. The licensee expressly understands and agrees that if the CPEP/LifeGuard assessment report recommends that the licensee retrain in a residency or residency-like setting, 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 – in the Commonwealth of Kentucky, unless and until approved to do so by the Panel; and
    - b. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
7. The licensee completed a CPEP assessment in April 2022. In sum, it found that “[b]ased on Dr. Lewe's performance during this Assessment and the extent of educational needs identified, CPEP opines that Dr. Lewe's performance is consistent with (b), safe to practice with recommendations including a recommendation for structured remedial education.”
8. During his assessment, the licensee informed CPEP personnel “that he was subject to a proctoring requirement for nephrectomy in 2021, which he has been unable to complete for financial reasons” and “that he had not performed robotic or laparoscopic cases for quite some time, but plans to resume these procedures. He readily acknowledged that at this point he feels that he would benefit from retraining.”
9. In March 2023, CPEP Developed an Education Plan for the licensee.
10. In order to initiate the Education Plan, the licensee was required to sign and return the Education Plan to CPEP and submit several documents. As of the May 18, 2023 Panel B meeting, the licensee had not initiated the Education Plan.

11. The licensee agreed to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Suspension.

### 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(21). 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 this pending matter 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 the pending investigation, the parties hereby ENTER INTO the following AGREED ORDER:

1. The license to practice medicine within the Commonwealth of Kentucky held by Robert Lewe, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. The licensee SHALL NOT perform any partial or full nephrectomies within any setting unless proctored by an ABMS-Board-Certified and KY-Licensed Urologist;
    - i. The Panel shall not consider a request to allow the licensee to resume the unrestricted performance of partial or full nephrectomies unless and until the licensee completes a minimum of fourteen (14) proctored nephrectomies, at his expense;
  - b. Within thirty (30) days of entry of this Agreed Order, the licensee SHALL complete all necessary steps to initiate the Education Plan developed for him by CPEP;
    - i. Once initiated, the licensee shall engage in, without delay, and successfully complete all requirements of that Education Plan, at his expense and as directed by CPEP;
    - ii. If deemed necessary and appropriate by CPEP, the licensee shall successfully complete a Post-Education Assessment, at his expense and as directed by CPEP;
    - iii. The licensee shall take all necessary steps, including the execution of waivers and/or releases, to ensure that CPEP provides timely written reports to the Board outlining his compliance with the Education Plan;
  - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. 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 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.

- 4. 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 2<sup>nd</sup> day of June, 2023.

FOR THE LICENSEE:



ROBERT LEWE, M.D.



STEPHEN BURCHETT  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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



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