

MAR 8 2023

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2096

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE OSTEOPATHY IN THE COMMONWEALTH OF KENTUCKY HELD BY TRUNG NAM NGUYEN, D.O., LICENSE NO. 04360, 120 E. SOUTH TOWN DRIVE, TYLER, TEXAS 75703

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Inquiry Panel A, and Trung Nam Nguyen, D.O., (hereafter “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, Trung Nam Nguyen, D.O., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee’s medical specialty is family medicine.
3. On or about July 22, 2022, the Board received an Office of Inspector General (“OIG”) Investigative Report alleging the licensee may have prescribed controlled substances improperly, sometimes overlapping, during telemedicine visits.
4. The OIG reported that a review of the licensee’s KASPER data for the period of August 27, 2021 through August 27, 2022 raised concerns that the licensee is only prescribing controlled substance medications for weight loss. Based on this, OIG identified eight (8) patient charts illustrative of this concern for further Board review.

5. On or about September 14, 2022, the licensee, through his counsel, responded to the OIG Investigative Report. The licensee reported that he believes he has been acting in conformance with telehealth standards and has prescribed medicine in accordance with the appropriate clinical standards that have developed over a number of years of experience treating obese patients. He concedes that he has not obtained and reviewed KASPER reports for patients but does obtain Virginia Department of Health Professions PMP reports to review patients' prescription history across multiple states, including Kentucky.
6. On or about November 30, 2022, a Board consultant completed a review of the eight charts identified by the OIG. Although the consultant discussed each chart individually, she explains that each patient chart reviewed was below the minimum standards and the majority of chart reviews say something to the following effect:

[...] Examples of violations of [201 KAR 9:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances] include: no carefully prescribed diet, counseling on exercise, behavior modification and other appropriate supportive and collateral therapies on initial visit. There is not an adequate patient record in accordance with subsection (4) of [201 KAR 9:016]. No eating habits, exercise habits, weight history, and weight loss history, are asked on new patient forms. They do no inquiry about other anorectic or other controlled substances used. They do not ask about patient's compliance to past programs. A menstruation history is not documented. There is no family history. There is no physical exam. There is no obtaining or evaluation of the seven required laboratory tests. There is no evaluation/documentation of the patient's compliance with the total treatment regimen. No KASPER reports are reviewed. There are multiple occurrences where BMI is below 27 without any co-morbidities documented yet anorectic medications are still prescribed. No sig is documented for medications prescribed. There is no justification of use of scheduled IV substances beyond three months, etc. [...] The licensee prescribed controlled substances across numerous state lines with multiple refills. There is no evidence of any obesity specialty knowledge. The patients simply pay for a virtual visit and obtain medication.

The consultant also found that the licensee's departures from acceptable and prevailing medical practices were so serious that she would consider them to exhibit gross ignorance, gross negligence, and gross incompetence.

7. On or about January 4, 2023, the licensee, through his counsel, responded to the consultant's report. The licensee reiterated that he believes he has been acting in conformance with telehealth standards and has prescribed medication in accordance with appropriate clinical standards that have developed over a number of years of experience treating obese patients. He again notes that he reviews PMP.

The licensee summarized his response as follows:

[T]he Consultant's Report contains numerous inaccurate statements regarding the standard of care governing Dr. Nguyen's practice, Dr. Nguyen's practice [sic], documentation, and the requirements of the relevant Kentucky regulations. In some cases, this was because the documentation that the Clinic produced was narrowly tailored to the Investigative Report, which we have sought to address with more comprehensive patient documentation, but in other cases due to what we believe to be inappropriately strict regulatory interpretation. In their report, the Consultant uses a "guideline" previously utilized by the ABBM that is inapplicable to Dr. Nguyen as a rigid step-by-step set of rules to govern Dr. Nguyen's standard of care. The Consultant repeatedly mischaracterizes a laundry list of factors to consider given in Kentucky 201 KAR 9:016 as "requirements" and how Dr. Nguyen failed to adhere to the "requirements." The Consultant takes an unrealistic approach to documenting conversations held with patients in the medical record. And the Consultant made numerous oversights in their chart review regarding how many visits Dr. Nguyen had with certain patients throughout the duration of their care.

8. The Board consultant considered the licensee's response and related attachments and stands by her original report.
9. On or about February 16, 2023, the licensee appeared before the Panel and stated that he is helping people, as evidenced by the fact that all but one of his patients whose records were reviewed had weight loss. He stated he is using medicine which recent studies show it is safe and nonaddictive. He does not perform urine testing

or an in-person physical and asked: "Where's the science that you need labs?" He admits he does not review KASPER but is happy to start. He has reviewed the Kentucky Regulations and Medical Practice Act and gets Kentucky's Board newsletter.

10. On March 2, 2023, the licensee, through his counsel, stated that he has already acted to implement a KAPSER PMP check for any forthcoming Kentucky patients and implemented a process by which patients are educated on disposal of medications. He further states that Express Weight Loss Clinic and Dr. Nguyen are re-visiting their lab testing protocol to ensure that lab tests conducted by the patient's primary care provider as part of their evaluation for weight loss treatment are incorporated into the patient's medical record and to implement a process by which the clinic shows its consideration of the need for lab testing if no lab tests are conducted on patients.
11. The licensee agreed to enter into this Agreed Order, in lieu of the issuance of a Complaint and Emergency Order of Restriction.

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 osteopathy license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee 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 Agreed Order.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this 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 resolve the pending matter without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice osteopathy within the Commonwealth of Kentucky held by Trung Nam Nguyen, D.O., 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 osteopathic license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT prescribe, dispense, administer, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
 - b. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board's costs of \$1,750.00 within six (6) months from entry of this Agreed Order; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee understands and agrees that the Panel SHALL NOT consider a request by the licensee to resume prescribing, dispensing, administering or the professional utilization of controlled substances unless and until the Board has received an assessment report, and educational or remediation plan (if recommended), following the licensee's completion of a clinical skills assessment(s) in the specialty of bariatric (weight loss and/or management) medicine, at his expense, from either:

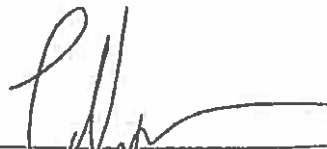
- a. Center for Personalized Education for Professionals (“CPEP”), 720 South Colorado Boulevard, Suite 1100-N, Denver, Colorado 80246, Tel. (303) 577-3232 Fax: (303) 577-3241; or
 - b. LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania, 17050, Tel. (717) 909-2590.
4. Further, the licensee understands and agrees that both the licensee and the Board may provide relevant information to either CPEP or 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 any scheduled assessment dates once an assessment is scheduled and the licensee shall complete any necessary waiver/release to facilitate communication between the Board and CPEP or LifeGuard.
5. 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 the licensee 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

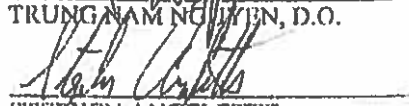
hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

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

SO AGREED on this 6th day of March, 2023.

FOR THE LICENSEE:




TRUNG NAM NGUYEN, D.O.


STEPHEN ANGELETTE
COUNCIL FOR THE LICENSEE

FOR THE BOARD:



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



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