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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2117

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY ROSENBERG A. REYES, M.D., LICENSE NO. 35249, 320 WEST WOODLAWN AVENUE, LOUISVILLE, KENTUCKY 40214-1924

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter “the Board”), acting by and through its Hearing Panel B, and Rosenberg A. Reyes, M.D. (hereafter “the licensee”), and, based upon their mutual desire to fully and finally resolve the pending Complaint, 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, Rosenberg A. Reyes, M.D., 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 November 8, 2019, a Social Service Clinician with the Kentucky Department of Corrections, Division of Addiction Services contacted the Board and expressed concern because the licensee was prescribing her client Hydrocodone 10mg, 120 qty; Amphetamine 5mg, 90qty; Gabapentin 600mg, 90 qty; Xanax 1mg, 90 qty; Ambien 10mg, 30 qty every 30 days for the last 5 years. This is despite the fact that her client was not testing positive for those substances. The clinician concluded that the licensee must not be doing patient follow ups. The clinician also added that her client is getting the prescriptions filled at the same pharmacy every month.

4. The Board's investigator obtained medical records by reviewing KASPER and selecting seventeen charts most closely resembling the unknown patient referenced in the grievance.

5. A Board consultant reviewed the charts. The consultant noted that the licensee uses controlled substance agreements, a pain and screening checklist, and urine drug screenings ("UDS") for his patients but the UDSs are not done consistently and there is poor follow-up. Many visits are done by nurse practitioners. There are copies of the refill prescriptions on the chart, however only a rare KASPER report was included in the records. While the licensee utilizes a Controlled Substance Evaluation Form, it is not consistently used to monitor patients. Ultimately, the standard of care is below par, and his system for ensuring compliance and safety is used inconsistently. Examples of these issues include,

- **Patient T.J.:** The licensee regularly prescribed the patient Hydrocodone or Percocet and Xanax between at least 2010 through 2021. The patient regularly tested positive for substances not prescribed and negative for substances the licensee did prescribe.
- **Patient D.B.:** The licensee regularly prescribed the patient Norco, Xanax and stimulants between at least 2013 through 2020. During this time, only one KASPER was in the chart. The patient regularly tested positive for marijuana, and in 2014, the licensee warned the patient about the positive test and noted "sketchy behavior." The patient's next UDS was negative for marijuana but then returned to positive results for marijuana or THC with no further warnings or discontinuation of services. The patient regularly had low creatine values with no repeat UDSs. The licensee did not address the abnormal UDSs, and the controlled substance evaluation forms stated no recreational drugs, despite the abnormal UDSs.
- **Patient F.W.:** The licensee regularly prescribed the patient various controlled substances, including Percocet, soma, gabapentin and Xanax, between at least 2014 through 2018. In 2014, the patient tested positive for unprescribed drugs and was given a "1st warning," with no further warnings noted. The patient regularly tested negative for prescribed medications. A 2017 H&P on hospital admission in the patient's chart noted past IV drug and cocaine use.

- **Patient J.B.:** The licensee regularly prescribed the patient various controlled substances, including Adderall, Norco, and Xanax, between at least 2009 through 2020. In 2013, the licensee had a sticky note in the chart about an arrest for controlled substances and stated, “no pain meds [Patient J.B.]” but continued prescribing medications to the patient despite positive drug screens. There was no UDS after August 2018, but visits continued until the end of 2020.
- **Patient D.E.:** The licensee regularly prescribed the patient various controlled substances, including Adderall, Norco, Ambien and Xanax, between at least 2016 through 2021. The patient tested positive for some but not all of the prescribed medications.
- **Patient K.C.:** The licensee regularly prescribed the patient various controlled substances, including Adderall, Ambien, and Xanax, between at least 2013 through 2021. Another provider prescribed the patient Oxycodone. Only one KASPER was in the chart.
- **Patient E.G.:** The licensee regularly prescribed the patient Oxymorphone, Percocet, and Ritalin. The first chart was not provided, and there was no UDS in the second chart.
- **Patient R.J.:** The licensee regularly prescribed the patient Ambien, Norco, and Xanax, between at least 2014 through 2021. There was no UDS after 2017.
- **Patient E.E.** The licensee regularly prescribed Adderall, hydrocodone, and Ambien, between at least 2012 through 2022. The patient regularly tested positive for THC. There are no recent UDSs.
- **Patient M.E.:** The licensee regularly prescribed the patient a buprenorphine patch, Norco, and Xanax. The first chart was not provided, and there was no controlled substance agreement or UDS in the second chart.
- **Patient L.A.:** The licensee prescribed several fills of Xanax in 2020, and there was no UDS in the chart.
- **Patient L.A.:** The licensee regularly prescribed the patient various controlled substances, including Adderall, Flexeril, and Xanax, between at least 2014 through 2021. The patient regularly tested positive for substances not prescribed and negative for substances the licensee did prescribe. There are no UDSs after 2017.
- **Patient F.A.:** The licensee regularly prescribed the patient various controlled substances, including Vyvanse and Percocet, between at least 2014 through 2021. The patient regularly tested positive for substances not prescribed and negative for substances the licensee did prescribe.

- **Patient A.J.:** The licensee regularly prescribed the patient various controlled substances, including Vyvanse, Ambien, Xanax and Vicodin, between at least 2012 through 2017. The patient regularly tested positive for substances not prescribed and negative for substances the licensee did prescribe. There is a note from 2014 that the patient was warned “not to have [marijuana] in [the patient’s] system or [the patient] will be sent out.” The patient continued to test positive for marijuana.

6. On or about June 5, 2023, the licensee responded by letter. He stated, in pertinent part,

There is no intent on being noncompliant with regards to regulating the use of controlled medications by the patients. [...] I have all the intention of improving the practice in how to care for these patients. We have tried to be consistent with regards to watching patients and the use of their medications.

[...]

Before starting patients on pain medication, we do diagnostic testing to find out the cause of their pain and do refer them to different specialist for further assessment. Most of the times, their condition is chronic. Patients are brought in on a monthly basis with urine drug screens and am surprised that they are not in the chart since urine is collected every time the patient comes in for their prescription. They are brought in monthly until they are stable then brought in every 4 months to assess on how they are doing with their pain and with the use of their medications.

With regards to the nurse practitioners, they take the history and write down what the patient says but I do go in with them afterwards and discuss with them along with the patient to see what is going on with the patient. I do teach them at our clinic with regards to chronic diseases which includes diabetes, hypertension, hyperlipidemia, anxiety and depression, chronic pain, thyroid disease, pulmonary disease, and acute care that includes sinus infection, abdominal disease, pulmonary disease, etc.

I do promise to use KASPER more and that it will be placed on the chart. We will continue to use the Controlled Substance Evaluation Form. We will have the patient sign/resign the drug agreement form. We will make sure that the UDS makes it to the chart. With regards to the patients that you mention, I will have a long discussion with them regarding the findings and most likely will refer them out.

7. The consultant reviewed the licensee’s response stating she agreed with his reflections on what he needed to improve.

8. On or about September 6, 2023, the Board issued a Complaint based upon the above facts.
9. The licensee now agrees to enter into this Agreed Order to resolve this pending case.

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 medical 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). 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 Complaint 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 this pending Complaint, the parties hereby **ENTER INTO** the following **AGREED ORDER**:

1. The license to practice medicine in the Commonwealth of Kentucky held by ROSENBERG A. REYES, M.D., is hereby PLACED ON PROBATION FOR A PERIOD OF FIVE (5) YEARS, with that period of probation to become 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. Within thirty (30) days of the entry of this Agreed Order, the licensee shall enroll in the next available Proper Prescribing Course (RX-21) administered by Professional Boundaries, Inc. (“PBI”) Education, <https://pbieducation.com/>, Tel. (904) 800-1237;
- i. The licensee SHALL successfully complete and pass all components of the course, including pre-course components, at his own expense and as directed by PBI; and
 - ii. Prior to commencing the course, the licensee shall execute all necessary waivers to allow PBI Education to release information of the licensee’s participation with PBI Education directly to the Board’s Legal Department, including a copy of the Certificate of Completion and an Accomplishments, Impressions and Recommendations (AIR) Letter. Said information provided directly from PBI Education to the Board’s Legal Department shall constitute the necessary proof of the licensee’s completion and passing of the course;
- b. Beginning immediately, the licensee SHALL maintain a “controlled substances log” for all controlled substances prescribed, dispensed or otherwise utilized. The controlled substances log SHALL include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets shall be consecutively numbered, legible i.e. printed or typed, and must reflect “call-in” and refill information. Prescriptions shall be maintained in the following manner: 1) patient; 2) chart; and 3) log;
- i. The licensee SHALL permit the Board’s agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board’s agents and/or consultants;
 - ii. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant’s identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board’s written notice. The licensee’s failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;
 - iii. The licensee understands and agrees that at least two (2) favorable consultant reviews must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order;

- c. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board's costs of \$2,187.50 within six (6) months from entry of this Agreed Order; and
 - d. 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 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.
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, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 26 day of September, 2023.

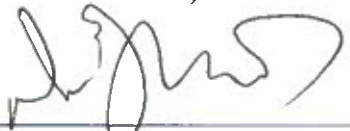
FOR THE LICENSEE:




ROSENBERG A. REYES, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:



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



NICOLE A. KING
Assistant General Counsel
Kentucky Board of Medical Licensure
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WAIVER OF RIGHTS

I, Rosenberg A. Reyes, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 2117. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530 et seq, and I will have the right to raise any objections normally available in such proceedings.

Executed this 26 day of September 2023.



ROSENBERG A. REYES, M.D.
RESPONDENT

COUNSEL FOR RESPONDENT
(IF APPLICABLE)