FILED OF RECORD
FEB 21 2011
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1260

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 12 WEST PIKE STREET, COVINGTON, KENTUCKY 41011

AGREED ORDER OF SURRENDER

Come now the Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Hearing Panel A, and Douglas H. Rank, M.D. (hereinafter "the licensee"), and, based upon their mutual desire to fully and finally resolve this pending Complaint without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF SURRENDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Douglas H. Rank, M.D. (hereinafter "the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is psychiatry.
3. On or about February 21, 2010, the licensee stabbed Patient A multiple times with a sword, causing Patient A to suffer serious or life-threatening injuries.
4. Prior to the time of the stabbing, the licensee prescribed controlled substances to Patient A.
5. Prior to the time of the stabbing and during the time he prescribed controlled substances to her, the licensee engaged in a sexual relationship with Patient A.
6. On or about February 22, 2010, the licensee was charged with felony 1st Degree Assault.

7. On or about March 18, 2010, the licensee was indicted by a grand jury in Kenton Circuit Court for Attempted Murder, having attempted to cause the death of Patient A and/or caused her serious physical injury by means of a weapon or dangerous instrument when he stabbed her with a sword on or about February 21, 2010.

8. The Board has disciplined the licensee twice before: for engaging in a sexual relationship with a patient, Case No. 707 (Administrative Action No. 99-KBML-0448), and inappropriately prescribing controlled substances to a female patient with whom he failed to maintain appropriate physician-patient boundaries, Case No. 771 (Administrative Action No. 00-KBML-0561 and 0569).

9. On April 15, 2010, the Board's Inquiry Panel B determined that the licensee's practices place his patients and the public at risk and in danger and issued an Emergency Order of Suspension.

10. The medical chart of Patient A was sent to a Board consultant specializing in psychiatry. Regarding the licensee's prescribing to Patient A (who had a "long history of severe psychiatric and substance abuse problems"), the Board consultant stated that the licensee "prescribed a variety of medications including Risperdal Consta (an atypical neuroleptic given in every other week IM injection) and Emsam (a transdermal monamine oxidase inhibitor). Controlled substances included suboxone (used for the treatment of opiate dependency), benzodiazepines (diazepam and few prescriptions for clonazepam) and amphetamines (Adderall). ... Although there is no evidence that [Patient A] had adverse outcomes from her prescribed medication, most references consider the co-administration of an amphetamine and a MAOI to be contraindicated because of the risk on hypertensive crisis."

11. The Board consultant described the relationship between the licensee and Patient A as "grossly inappropriate." The Board consultant concluded that the licensee's actions demonstrated "not only 'gross ignorance, gross negligence, gross incompetence or malpractice' but suggests an ongoing manipulation and exploitation of a severely disturbed woman who came to him as a patient."
12. On or about October 20, 2010, the licensee pleaded guilty to the felony 1st Degree Assault in Kenton Circuit Court and faces a prison sentence of a minimum of ten (10) years.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's 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(5) and (9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Surrender.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Surrender.

AGREED ORDER OF SURRENDER

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 Complaint without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF SURRENDER:**

1. The licensee shall SURRENDER his Kentucky medical license, in lieu of revocation, with that surrender to become effective immediately upon the filing of this Agreed Order of Surrender, and continuing until further Order of the Panel.
2. Following the effective date of the surrender of his license, the licensee may not engage in any act which would constitute the "practice of medicine" as that term is defined by 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, until approved to do so by the Panel.
3. The Panel will not consider a request by the licensee for approval to resume the active practice of medicine in the Commonwealth until the licensee is released from prison and for a minimum period of two years from the date of filing of this Agreed Order of Surrender. The provisions of KRS 311.607 shall apply to any request for reinstatement filed by the licensee. The burden shall be upon the licensee to satisfy the Panel that he is presently of good moral character and is qualified both physically and mentally to resume the practice of medicine, without undue risk or danger to his patients or the public.
4. If the Board should receive information that, after the date of filing of this Agreed Order of Surrender, the licensee has performed an act which would constitute the "practice of medicine" within the Commonwealth of Kentucky, it will refer the licensee to the Attorney General or appropriate Commonwealth Attorney for prosecution of such acts of practicing medicine without a license.

5. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order of Surrender, 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 of Surrender, 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 agrees that 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 of Surrender.

6. The licensee understands and agrees that any violation of the terms of this Agreed Order of Surrender 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 30th day of December 2010.

FOR THE LICENSEE:

Douglas Rank

DOUGLAS A. RANK, M.D.

Robert P. Gettys

ROBERT P. GETTYS
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

C. WILLIAM BRISCOE, M.D.
CHAIR, HEARING PANEL A

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

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COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1260

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 12 WEST PIKE STREET, COVINGTON, KENTUCKY 41011

AMENDED EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its April 15, 2010 meeting. At that meeting, Inquiry Panel B considered a memorandum by Eric Tout, Medical Investigator; a February 22, 2010 e-mail from Rob Sanders, Commonwealth Attorney – Kenton County; a March 24, 2010 faxed copy of a Uniform Citation; a March 18, 2010 Indictment for Attempted Murder, Kenton Circuit Court.

At its April 15th meeting, Inquiry Panel B also considered that the Board's investigation into the relationship between the licensee and Patient A and the licensee's medical practices were ongoing. Panel B granted the Panel Chair authority to review new information as it becomes available and to amend to the Emergency Order of Suspension and Complaint with said new information. In August 2010, the Panel Chair reviewed additional information in the form of a Board consultant report, dated July 18, 2010.

Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following AMENDED EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1).

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Amended Emergency Order of Suspension:

1. At all relevant times, Douglas H. Rank, M.D. (hereinafter "the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is psychiatry.
3. On or about February 21, 2010, the licensee stabbed Patient A multiple times with a sword, causing Patient A to suffer serious or life-threatening injuries.
4. Prior to the time of the stabbing, the licensee prescribed controlled substances to Patient A.
5. Prior to the time of the stabbing and during the time he prescribed controlled substances to her, the licensee engaged in a sexual relationship with Patient A.
6. On or about February 22, 2010, the licensee was charged with 1st Degree Assault.
7. On or about March 18, 2010, the licensee was indicted by a grand jury in Kenton Circuit Court for Attempted Murder, having attempted to cause the death of Patient A and/or caused her serious physical injury by means of a weapon or dangerous instrument when he stabbed her with a sword on or about February 21, 2010.
8. The Board has disciplined the licensee twice before: for engaging in a sexual relationship with a patient, Case No. 707 (Administrative Action No. 99-KBML-0448), and inappropriately prescribing controlled substances to a female patient with whom he failed to maintain appropriate physician-patient boundaries, Case No. 771 (Administrative Action No. 00-KBML-0561 and 0569).

9. On April 15, 2010, the Board's Inquiry Panel B determined that the licensee's practices place his patients and the public at risk and in danger.

10. The medical chart of Patient A was sent to a Board consultant specializing in psychiatry. Regarding the licensee's prescribing to Patient A (who had a "long history of severe psychiatric and substance abuse problems"), the Board consultant stated that the licensee "prescribed a variety of medications including Risperdal Consta (an atypical neuroleptic given in every other week IM injection) and Emsam (a transdermal monamine oxidase inhibitor). Controlled substances included suboxone (used for the treatment of opiate dependency), benzodiazepines (diazepam and few prescriptions for clonazepam) and amphetamines (Adderall). ... Although there is no evidence that [Patient A] had adverse outcomes from her prescribed medication, most references consider the co-administration of an amphetamine and a MAOI to be contraindicated because of the risk on hypertensive crisis."

11. The Board consultant described the relationship between the licensee and Patient A as "grossly inappropriate." The Board consultant concluded that the licensee's actions demonstrated "not only 'gross ignorance, gross negligence, gross incompetence or malpractice' but suggests an ongoing manipulation and exploitation of a severely disturbed woman who came to him as a patient."

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Amended Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.

2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated KRS 311.595(5) and (9), as illustrated by KRS 311.597(3) and (4).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-

deprivation hearing. *Barry v. Barchi*, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); *FDIC v. Mallen*, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and *Gilbert v. Homar*, 117 S.Ct. 1807 (1997). *Cf.* KRS 13B.125(1).

7. KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

AMENDED EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is SUSPENDED and Dr. Rank is prohibited from performing any act which constitutes the "practice of medicine," as that term is defined by 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 - until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 18th day of August, 2010.

Randel C. Gibson D.O.

RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Amended Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to Douglas H. Rank, M.D., c/o Kenton County Detention Center, 303 Court Street, Covington, Kentucky 41011 and his counsel, Robert P. Gettys, Esq., 1345 Maryland Avenue, Covington, Kentucky 41011 on this 18th day of August, 2010.

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

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1260

FILED OF RECORD
AUG 18 2010
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 12 WEST PIKE STREET, COVINGTON, KENTUCKY 41011

AMENDED COMPLAINT

Comes now the Complainant Randel C. Gibson, D.O., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on April 15, 2010, states for its Complaint against the licensee, DOUGLAS H. RANK, M.D, as follows:

1. At all relevant times, Douglas H. Rank, M.D. (hereinafter "the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is psychiatry.
3. On or about February 21, 2010, the licensee stabbed Patient A multiple times with a sword, causing Patient A to suffer serious or life-threatening injuries.
4. Prior to the time of the stabbing, the licensee prescribed controlled substances to Patient A.
5. Prior to the time of the stabbing and during the time he prescribed controlled substances to her, the licensee engaged in a sexual relationship with Patient A.
6. On or about February 22, 2010, the licensee was charged with 1st Degree Assault.
7. On or about March 18, 2010, the licensee was indicted by a grand jury in Kenton Circuit Court for Attempted Murder, having attempted to cause the death of Patient A and/or caused her serious physical injury by means of a weapon or dangerous instrument when he stabbed her with a sword on or about February 21, 2010.

8. The Board has disciplined the licensee twice before: for engaging in a sexual relationship with a patient, Case No. 707 (Administrative Action No. 99-KBML-0448), and inappropriately prescribing controlled substances to a female patient with whom he failed to maintain appropriate physician-patient boundaries, Case No. 771 (Administrative Action No. 00-KBML-0561 and 0569).

9. On April 15, 2010, the Board's Inquiry Panel B determined that the licensee's practices place his patients and the public at risk and in danger. As a result, the licensee was suspended from the practice medicine in the Commonwealth of Kentucky.

10. The medical chart of Patient A was sent to a Board consultant specializing in psychiatry. Regarding the licensee's prescribing to Patient A (who had a "long history of severe psychiatric and substance abuse problems"), the Board consultant stated that the licensee "prescribed a variety of medications including Risperdal Consta (an atypical neuroleptic given in every other week IM injection) and Emsam (a transdermal monamine oxidase inhibitor). Controlled substances included suboxone (used for the treatment of opiate dependency), benzodiazepines (diazepam and few prescriptions for clonazepam) and amphetamines (Adderall). ... Although there is no evidence that [Patient A] had adverse outcomes from her prescribed medication, most references consider the co-administration of an amphetamine and a MAOI to be contraindicated because of the risk on hypertensive crisis."

11. The Board consultant described the relationship between the licensee and Patient A as "grossly inappropriate." The Board consultant concluded that the licensee's actions demonstrated "not only 'gross ignorance, gross negligence, gross incompetence or

malpractice' but suggests an ongoing manipulation and exploitation of a severely disturbed woman who came to him as a patient."

12. By his conduct, the licensee has violated KRS 311.595(5) and (9), as illustrated by KRS 311.597(3) and (4). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.

13. The licensee is directed to respond to the allegations delineated in paragraphs 10 through 12 of this Amended Complaint within thirty (30) days of service thereof and is further given notice that:

    (a) His failure to respond may be taken as an admission of the charges;

    (b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

14. The parties have agreed to schedule the administrative hearing in this proceeding at some time in the future, following resolution of a pending criminal action by the Commonwealth of Kentucky, Kenton Circuit Court.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine held by DOUGLAS H. RANK, M.D.

This 18th day of August, 2010.

Randel C Gibson DO

RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Amended Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed, fist-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and via certified mail return-receipt requested to Douglas H. Rank, M.D., c/o Kenton County Detention Center, 303 Court Street, Covington, Kentucky 41011 and his counsel, Robert P. Gettys, Esq., 1345 Maryland Avenue, Covington, Kentucky 41011 on this 18th day of August, 2010.

Leanne K. Diakov
Assistant General Counsel
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IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 12 WEST PIKE STREET, COVINGTON, KENTUCKY 41011

EMERGENCY ORDER OF SUSPENSION

The Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its April 15, 2010 meeting. At that meeting, Inquiry Panel B considered a memorandum by Eric Tout, Medical Investigator; a February 22, 2010 e-mail from Rob Sanders, Commonwealth Attorney – Kenton County; a March 24, 2010 faxed copy of a Uniform Citation; a March 18, 2010 Indictment for Attempted Murder, Kenton Circuit Court.

Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following EMERGENCY ORDER OF SUSPENSION, in accordance with KRS 311.592(1) and 13B.125(1).

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Suspension:

1. At all relevant times, Douglas H. Rank, M.D. (hereinafter "the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is psychiatry.

3. On or about February 21, 2010, the licensee stabbed Patient A multiple times with a sword, causing Patient A to suffer serious or life-threatening injuries.
4. Prior to the time of the stabbing, the licensee prescribed controlled substances to Patient A.
5. Prior to the time of the stabbing and during the time he prescribed controlled substances to her, the licensee engaged in a sexual relationship with Patient A.
6. On or about February 22, 2010, the licensee was charged with 1st Degree Assault.
7. On or about March 18, 2010, the licensee was indicted by a grand jury in Kenton Circuit Court for Attempted Murder, having attempted to cause the death of Patient A and/or caused her serious physical injury by means of a weapon or dangerous instrument when he stabbed her with a sword on or about February 21, 2010.
8. The Board has disciplined the licensee twice before: for engaging in a sexual relationship with a patient, Case No. 707 (Administrative Action No. 99-KBML-0448), and inappropriately prescribing controlled substances to a female patient with whom he failed to maintain appropriate physician-patient boundaries, Case No. 771 (Administrative Action No. 00-KBML-0561 and 0569).
9. On April 15, 2010, the Board's Inquiry Panel B determined that the licensee's practices place his patients and the public at risk and in danger.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Suspension:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.

2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated KRS 311.595(5) and (9), as illustrated by KRS 311.597 (4).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-

deprivation hearing. *Barry v. Barchi*, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); *FDIC v. Mallen*, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and *Gilbert v. Homar*, 117 S.Ct. 1807 (1997). *Cf.* KRS 13B.125(1).

7. KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

EMERGENCY ORDER OF SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is SUSPENDED and Dr. Rank is prohibited from performing any act which constitutes the "practice of medicine," as that term is defined by 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 - until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 21st day of April, 2010.

Randel C. Gibson DO

RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to Douglas H. Rank, M.D., c/o Kenton County Detention Center, 303 Court Street, Covington, Kentucky 41011 and his counsel, Robert P. Gettys, Esq., 1345 Maryland Avenue, Covington, Kentucky 41011 on this 21st day of April, 2010.

Leanne K. Diakov
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
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COMPLAINT

Comes now the Complainant Randel C. Gibson, D.O., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on April 15, 2010, states for its Complaint against the licensee, DOUGLAS H. RANK, M.D, as follows:

1. At all relevant times, Douglas H. Rank, M.D. (hereinafter "the licensee"), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is psychiatry.
3. On or about February 21, 2010, the licensee stabbed Patient A multiple times with a sword, causing Patient A to suffer serious or life-threatening injuries.
4. Prior to the time of the stabbing, the licensee prescribed controlled substances to Patient A.
5. Prior to the time of the stabbing and during the time he prescribed controlled substances to her, the licensee engaged in a sexual relationship with Patient A.
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8. The Board has disciplined the licensee twice before: for engaging in a sexual relationship with a patient, Case No. 707 (Administrative Action No. 99-KBML-0448), and inappropriately prescribing controlled substances to a female patient with whom he failed to maintain appropriate physician-patient boundaries, Case No. 771 (Administrative Action No. 00-KBML-0561 and 0569).

9. On April 15, 2010, the Board's Inquiry Panel B determined that the licensee's practices place his patients and the public at risk and in danger. As a result, the licensee was suspended from the practice medicine in the Commonwealth of Kentucky.

10. By his conduct, the licensee has violated KRS 311.595(5) and (9), as illustrated by KRS 311.597(4). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.

11. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

    (a) His failure to respond may be taken as an admission of the charges;

    (b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

12. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for October 5 & 6, 2010 at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine held by DOUGLAS H. RANK, M.D.

This 21st day of April, 2010.

RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed, fist-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and via certified mail return-receipt requested to Douglas H. Rank, M.D., c/o Kenton County Detention Center, 303 Court Street, Covington, Kentucky 41011 and his counsel, Robert P. Gettys, Esq., 1345 Maryland Avenue, Covington, Kentucky 41011 on this 21st day of April, 2010.

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

FILED OF RECORD
SEP 17 2001
K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 771
ADMINISTRATIVE ACTION NO. 00-KBML-0561 AND 0569

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517-4001

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and Douglas H. Rank, M.D., and, based upon their mutual desire to fully and finally resolve a pending grievance without further evidentiary proceedings, hereby ENTER INTO the following AGREED ORDER OF INDEFINITE RESTRICTION:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Indefinite Restriction:

1. At all relevant times, Douglas H. Rank, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is Psychiatry; the licensee is also board-certified in internal medicine.

3. In 1998, the Board conducted an investigation of the licensee's medical treatment for Angela Brown, after receiving a grievance concerning it. Based upon the information that was revealed during the investigation, the Board's Inquiry Panel voted that there was no evidence that the licensee's medical treatment for Ms.

Brown constituted a violation of the Medical Practice Act. The matter was, therefore, closed with no further action.

4. On January 25, 2000, the Board received a letter, dated January 24, 2000, from Detective Lynne Thompson of the Lexington Police Department's Narcotics Unit, reporting the "high dosages of narcotic prescriptions" that the licensee was writing for Angela Brown. As a result of this grievance, the Board conducted an investigation of the licensee's medical treatment for Ms. Brown, which revealed fifty-seven (57) prescriptions for controlled substances that the licensee had prescribed for Ms. Brown between January 1, 1999 and April 12, 2000. The licensee maintains that he appropriately prescribed same for Ms. Brown.

5. During the Board's investigation of the matter concerning the January 2000 grievance, a Board investigator obtained information and records that were submitted to a Board consultant specializing in pain management for review. Based upon his review, the consultant opined:

> ...I believe that Dr. Rank did engage in conduct which departs from or fails to conform to the acceptable standards and prevailing medical practice within the Commonwealth of Kentucky. He lost control of the doctor patient relationship...I think that Dr. Rank was negligent in not taking the steps necessary to make a firm diagnosis and an appropriate treatment plan. He instead chose to follow conflicting diagnoses made by other physicians and follow a treatment plan prescribed [by] the patient.
> ...
>
> I cannot say on the basis of a single patient review that this physician's overall practice is dangerous. In fact, the KASPER report, which is the only document reviewed that contains any indication of how he treats his other patients, indicates exactly the opposite. It indicates that this physician's practice is probably appropriate. For some unexplained reason, this physician has allowed one patient to deceive him into prescribing inappropriate medications to her, but there is no indication that this has spilled over to his treatment of other patients....

6. On October 28, 2000, the licensee voluntarily participated in and successfully completed the 12.25 hours of the University of Kentucky's "Use of Controlled Substances" course. The Board is in receipt of a copy of a Certificate of Completion, certifying his participation in same.

7. On November 30, 2000, an *Emergency Order of Restriction*, was filed in this proceeding, prohibiting the licensee from prescribing, dispensing or otherwise utilizing Schedule II controlled substances until final resolution of this matter or until further order of the Board's Panel.

8. On December 12 and 14, 2000, an emergency hearing was held in this matter.

9. On December 27, 2000, the Board received the December 21, 2000 *Final Order Modifying Emergency Order of Suspension* that was submitted by the hearing officer who was assigned to preside over the emergency hearing. In said Order, the hearing officer modified the Board's *Emergency Order of Restriction* "to restrict Dr. Rank's license solely from the prescription of Schedule II controlled substances in the course of his treatment of [Angela Brown]."

10. On March 27 and 28, 2001, a hearing was held on the Complaint that was filed in this case on November 30, 2000.

11. During the administrative hearings in this matter, the licensee introduced evidence to refute the allegations against him. Said evidence included the licensee's testimony, testimony of Angela Brown, testimony of the Board's consultant, and the following medical journal articles: (1) *Double-Blind, Multicenter Trial to Compare the Efficiency of Intramuscular Dihydroergotamine Plus Hydroxyzine Versus Intramuscular Meperidine Plus Hydroxyzine for the Emergency*

Department Treatment of Acute Migraine Headaches, appearing in the Annals of Emergency Medicine, Vol. 32, No. 2 (August 1998); (2) *Acute Treatment of Periodic Severe Headaches; Comparison of Three Outpatient Care Facilities,* appearing in Headache (February 1998); (3) *Headache Associated with Medication and Substance Withdrawal,* appearing in a publication entitled Headache: Diagnosis and Treatment, Chapter 28 (1993); (4) *Meperidine-Induced Generalized Seizures with Normal Renal Function,* appearing in the Southern Medical Journal, Vol. 90, No. 5 (May 1997); (5) *Meperidine; Therapeutic Use and Toxicity,* appearing in the Journal of Emergency Medicine, Vol. 13, No.6 (Nov.-Dec. 1995); (6) *Psychodynamics and Psychiatric Diagnosis of Pseudoseizure Subjects,* appearing in the American Journal of Psychiatry, Vol. 153, No. 1 (January 1996); (7) *Pseudoseizure Status,* appearing in the Journal of Psychosomatic Research, Vol. 42, No. 5 (May 1997); and, (8) *Amnesia Possibly Associated with Zopidem Administration,* appearing in the Journal of Pharmacotherapy, Vol.16 (July-Aug. 1996).

12. In April 2001, the licensee enrolled in and completed a 3-day intensive course entitled "Maintaining Proper Boundaries", given by The Center for Professional Health at Vanderbilt University Medical Center, located in Nashville, Tennessee. The Board is in receipt of a copy of a Certificate of Attendance, certifying his attendance and completion of said course.

13. The licensee voluntarily enrolled in and completed, at his own expense, a 3-day intensive course, also given by The Center for Professional Health at Vanderbilt University Medical Center, entitled "Prescribing Controlled Drugs: Critical Issues

and Common Pitfalls." The Board is in receipt of a copy of a Certificate of Attendance, certifying his attendance and completion of said course, which began on June 20, 2001 and ended on June 22, 2001.

14. The licensee states that he has voluntarily dismissed Angela Brown from his medical practice and he voluntarily agrees that he will no longer provide medical treatment to Ms. Brown.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. The licensee's conduct, as described in the Stipulations of Fact, would, if proven, constitute violations of KRS 311.595(9), as illustrated by KRS 311.597(1)(d) and (4); KRS 311.595(12) and 201 KAR 9:005(1)(a); and KRS 311.595(10). Accordingly, there would be a legal basis for the Board to impose disciplinary sanctions upon the licensee's Kentucky medical license pursuant to KRS 311.595, upon proof that the licensee has violated said provisions.
3. While the licensee refutes an ultimate conclusion that he has violated the Act by engaging in the conduct described in the Stipulations of Fact, he agrees that there is a legal basis for resolving this case pursuant to the terms of an Agreed Order of Indefinite Restriction such as this.

4. Pursuant to KRS 311.595(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending grievance without further formal proceedings by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.
5. The Board recognizes and accepts the licensee's voluntary participation in and successful completion of the aforementioned courses as remedial actions.
6. KRS 311.595 provides that the Board may limit or restrict a license for an indefinite period upon proof that the licensee has engaged in conduct described in KRS 311.595.

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the Board's investigation without further evidentiary proceedings, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION**:

1. The license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is LIMITED/RESTRICTED for an INDEFINITE PERIOD OF TIME by the following terms and conditions:
   a. The licensee shall not resume, enter into, or continue a physician-patient relationship with Angela Brown.
   b. The licensee, as a practicing physician, is required to fully comply with all provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*
2. The licensee expressly agrees that, if he should violate the specific term or condition of this Agreed Order of Indefinite Restriction, regarding the treatment of Angela Brown or any provision of the Kentucky Medical Practice Act, 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 reliable information that he has violated the term or condition of this Agreed Order of Indefinite Restriction, regarding the treatment of Angela Brown, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that the 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 proven violation of the specific condition of this Agreed Order of Indefinite Restriction 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 the specific condition or term of this Agreed Order of Indefinite Restriction. At any such emergency hearing, the licensee may establish that the suspension should not continue because, in spite of the licensee's best efforts to comply, it was impossible for the licensee to comply with the term(s) or condition(s) in question.

3. The licensee understands and agrees that any violation of this Agreed Order of Indefinite Restriction would also constitute separate grounds for disciplinary action against his Kentucky medical license, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 17th day of September, 2001.

FOR DR. RANK:

Douglas H. Rank

DOUGLAS H. RANK, M.D.

David A. Weinberg

DAVID A. WEINBERG, ESQ.
COUNSEL FOR DR. RANK

FOR THE BOARD:

Kathie E. Grisham

KATHIE E. GRISHAM, ESQ.
CHAIR, HEARING PANEL A

Y. Payne Wade

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ENTERED: 09/17/01

FILED OF RECORD
JUL 11 2001
K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 707
ADMINISTRATIVE ACTION NO. 99-KBM L-0448

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, and Douglas Rank, M.D., and, based upon their mutual desire to fully and appropriately address an issue raised by this case during the period of time this case is under review by the Kentucky Court of Appeals, hereby ENTER INTO the following AGREED ORDER:

Factual and Procedural Background

On May 17, 2000, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, issued an Order of Revocation, Probated; Order of Suspension/Probation. The factual findings and legal conclusions relied upon by the Board for that Order were recited in the Order and in the Findings of Fact, Conclusions of Law, and Recommended Order which were adopted and incorporated in part into the Order. Pursuant to KRS 311.593(1), that Order was to become effective thirty (30) days after notice was given to the licensee.

The licensee received notice of the Order on May 18, 2000. Prior to the effective date of the Order, the licensee filed a Petition for Judicial Review in Jefferson Circuit Court and sought a Temporary Restraining Order to prevent the Order becoming effective pending resolution of the Petition. Prior to the Order becoming effective, the Jefferson

Circuit Court issued a Temporary Restraining Order, restraining the Board from enforcing the terms of the Order during the pendency of the review process. On March 2, 2001, the Jefferson Circuit Court issued an Opinion and Order affirming the Board's Order. The licensee filed an appeal to Court of Appeals. As part of that action, he filed Motions for Emergency and Intermediate Relief. On March 29, 2001, Court of Appeals Judge William McAnulty, Jr., issued an Order Denying Motion for Emergency Relief, concluding that the licensee "...has not made sufficient showing either of injury or of possible success on the merits so as to justify the issuance of an emergency stay."

Having considered all of this information, Hearing Panel B issued an Amended Order of Revocation; Probated; Amended Order of Suspension/Probation on March 29, 2001, directing that the terms and conditions of the original Order become effective immediately upon receipt by the licensee or his agent. The licensee received this Amended Order on April 2, 2001; the terms and conditions of the Amended Order became effective on that date. Pursuant to the terms and conditions of the Amended Order, the licensee stopped practicing medicine on April 3, 2001.

On April 30, 2001, a three-judge panel of the Court of Appeals issued an Order Granting Motion for Intermediate Relief, ruling in part,

> ...Having considered the motion for intermediate relief and the response thereto, the Court orders that the motion be GRANTED under the conditions set out in this order.
>
> ...
>
> ...the Court ORDERS that the suspension of the appellant's medical license be STAYED pending appeal. However, the stay is hereby made contingent upon the appellant immediately commencing compliance with all of the conditions which the Board imposed for the period of the probation which was to follow the suspension. These conditions include continuing the appellant's own course of counseling and the use of a chaperon when treating female patients.

AGREED ORDER

Having considered the factual and procedural background of this case and wishing to appropriately address the issue presented, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The licensee agrees not to perform any act which would constitute the "practice of medicine," 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 – for a full six-month period ending on October 3, 2001. Full compliance with this term will fully satisfy Condition 3 of the Amended Order of Revocation, Probated; Amended Order of Suspension/Probation.
2. If the licensee should choose to practice medicine in the Commonwealth of Kentucky after October 3, 2001, he shall fully comply with all terms and conditions of probation set out in the Amended Order of Revocation, Probated; Amended Order of Suspension/Probation and the Court of Appeals' Order Granting Motion for Intermediate Relief, dated April 30, 2001. The licensee's counsel shall promptly notify the Board of the licensee's return to practice within the Commonwealth. The licensee will be given credit toward the total of 54 months of probation for any period of time after October 3, 2001 during which he is in compliance with the terms and conditions of probation.
3. The parties agree that the licensee does not waive any of his appellate rights regarding this case or concede any issue in the appeal presently pending before the Kentucky

Court of Appeals by entering into or complying with the terms of this Agreed Order.

SO AGREED on this 11th day of ~~May~~ July, 2001.

FOR THE LICENSEE:

DOUGLAS RANK, M.D.

DAVID A. WEINBERG, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

PRESTON P. NUNNELLEY, M.D.
CHAIR, HEARING PANEL B

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ENTERED: 07/11/01

Lic# 27590

FILED OF RECORD
DEC 21 2000
K.B.M.L.

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 771
ADMINISTRATIVE ACTION NO. 00-KBML-0569

DOUGLAS H. RANK, M.D. PETITIONER
License No. 27590 (Emergency Order)

v.

FINAL ORDER MODIFYING EMERGENCY ORDER OF SUSPENSION

KENTUCKY BOARD OF MEDICAL LICENSURE RESPONDENT

* * * * *

An Emergency Hearing was held in this matter on December 12 and 14, 2000 pursuant to KRS 13B.125(3) and 201 KAR 9:081, Section 9. The Hearing was held to determine the propriety of an Emergency Order dated November 30, 2000, issued by the Board's Inquiry Panel B which restricted the license to practice medicine held by Douglas H. Rank, M.D. in a manner which prohibited him from prescribing, dispensing, or otherwise utilizing Schedule II controlled substances. Dr. Rank appeared personally and with counsel, David A. Weinberg, Esq. The Kentucky Medical Licensure Board ("the Board") appeared through its Assistant General Counsel, Y. Denise Payne Wade, Esq. Robert S. Jones, Assistant Attorney General, Division of Administrative Hearings, served as Hearing Officer.

The Board presented the testimony of Dr. [redacted], M.D., a board certified anesthesiologist and specialist in pain management, and Mr. Doug Wilson, an Investigator for the Kentucky Board of Medical Licensure. The Petitioner testified in his own behalf, and was the only witness introduced on his behalf. Dr. Rank is board certified in psychiatry and internal medicine.

Additionally, 30 exhibits were introduced into the record and consisted of the following:

Exhibit 1: May 17, 2000 Letter from Doug Wilson to [redacted] M.D.;

Exhibit 2: K.A.S.P.E.R. Report on Patient A from January 1, 1999 to April 12, 2000;

Exhibit 3: January 21, 2000 Letter issued by Douglas H. Rank, M.D., to "Whom It May Concern";

Exhibit 4: Medical Records of Patient A maintained by Douglas H. Rank, M.D.;

Exhibit 5: Consultant Report prepared by [redacted] M.D., J.D., F.C.L.M., issued to the Board September 15, 2000;

Exhibit 6: Article entitled *Double-Blind, Multicenter Trial to Compare the Efficiency of Intramuscular Dihydroergotamine Plus Hydroxyzine Versus Intramuscular Meperidine Plus Hydroxyzine for the Emergency Department Treatment of Acute Migraine Headaches* appearing in the Anals of Emergency Medicine, Vol. 32, No. 2 (August 1998);

Exhibit 7: Article entitled *Acute Treatment of Periodic Severe Headache; Comparison of Three Outpatient Care Facilities* appearing in HEADACHE, February 1998;

Exhibit 8: Article entitled *Headache Associated with Medication and Substance Withdrawal* appearing in a publication entitled HEADACHE; Diagnosis and Treatment, Chapter 28, published 1993;

Exhibit 9: Article entitled *Meperidine–Induced Generalized Seizures with Normal Renal Function* appearing in the Southern Medical Journal, Vol. 90, No. 5, May 1997;

Exhibit 10: Article entitled *Meperidine; Therapeutic Use and Toxicity* appearing in the Journal of Emergency Medicine, Vol. 13, No. 6, Nov.-Dec. 1995;

Exhibit 11: K.A.S.P.E.R. Report on Douglas Rank from January 1, 1999 to February 29, 2000;

Exhibit 12: Letter dated January 24, 2000 from Detective Lynne Thompson to Mr. Lloyd Vest;

Exhibit 13: "Betty Prater Report";

Exhibit 14: Patient A Medical Records from the University of Kentucky Hospital, Kentucky Clinic, and Chandler Medical Center;

Exhibit 15: Patient A Medical Records from Urgent Treatment Centers;

Exhibit 16: Patient A Medical Records from Timothy L. Coleman, M.D.;

Exhibit 17: Patient A Medical Records from William G. Bacon, M.D.;

Exhibit 18: Patient A Medical Records from John W. Richard, M.D.;

Exhibit 19: Patient A Auxiliary Medical Records from Douglas H. Rank, M.D.;

Exhibit 20: Response by Douglas H. Rank, M.D. dated May 2, 2000, to the Board's Inquiry;

Exhibit 21: Investigative Report of Doug Wilson;

Exhibit 22: Letter dated July 21, 2000 from Doug Wilson to [redacted] M.D.;

Exhibit 23: Fax Cover Sheet and attached letter dated September 13, 2000 sent by Doug Wilson to [redacted] M.D.;

Exhibit 24: Official records of the Executive Director for Case # 771.

Exhibit 25: Exhibit was introduced for avowal purposes only; exhibit was not admitted into evidence;

Exhibit 26: Article entitled *Psychodynamics and Psychiatric Diagnosis of Pseudoseizure Subjects* appearing in the American Journal of Psychiatry, Vol. 153, No. 1, January 1996;

Exhibit 27: Article entitled *Pseudoseizure Status*, appearing in the Journal of Psychosomatic Research, Vol. 42, No. 5, May 1997;

Exhibit 28: Certificate of Completion by Douglas Rank, M.D. of continuing education entitled *Use of Controlled Substances*, October 28, 2000;

Exhibit 29: Articles from the Lexington Herald-Leader dated Wednesday, March 10, 1999, April 22, 2000, and May 22, 2000;

Exhibit 30: Article entitled *Amnesia Possibly Associated with Zolpidem Administration*, appearing in the Journal Pharmacotherapy, Vol. 16, No. 6, July-Aug. 1996;

Exhibit 31: Letter dated December 8, 2000 from Elizabeth Neumann, M.D. to Douglas Rank, M.D.

Following consideration of the entire record, and for the reasons as stated below, the Emergency Order restricting Dr. Rank's license to practice medicine in the Commonwealth of Kentucky is MODIFIED.

FINDINGS OF FACT

Based on a review of the entire record, the undersigned issues the following findings of fact:

1. Patient A is a 28 year old woman whose relevant medical history dates to December, 1994, at which time she suffered a stroke. She was initially treated for this condition at Central Baptist Hospital and came under the care of Timothy L. Coleman, M.D., Specialist in Neurology. Thereafter she was placed in the Stroke Rehabilitation Program at Cardinal Hill Hospital. In January of 1995 she began to develop migraine headaches. The discharge summary from Cardinal Hill Rehabilitation Hospital dated January 12, 1995 reveals that the attending physician, Dr. Robert Nickerson, in combination with a consulting physician, Dr. Timothy Coleman, found that the only agent helpful in improving the

headache condition was Demerol.

2. Thereafter, Dr. Coleman began to treat Patient A for a condition which he identified as a stroke related to migraine headache, leaving her with a left hemiparesis. Dr. Coleman's treatment of Patient A for these conditions consisted primarily of the prescription of Depakote and injectable Demerol, 200 mg as needed, with a maximum of 600 mg per day.

3. During Dr. Coleman's treatment, a pattern for Patient A's headaches began to develop. Normally, she developed a migraine headache on Mondays, which would continue until treated with injectable Demerol. This headache would then recur the next week on approximately the same schedule. This pattern continued during Dr. Rank's treatment as well.

4. Due to difficulties encountered by Dr. Coleman in diagnosing and treating the cause of this disorder, Dr. Coleman sought assistance from other specialists in the area. This included a referral to Chandler Medical Center for a neurologic work-up as well as referrals to Dr. Rank and Dr. Craig A. Banta, an Assistant Professor of Neurology at the University of Kentucky Chandler Medical Center.

5. During 1995 and early 1996, Dr. Coleman treated Patient A with increasing amounts of Depakote for her seizure disorder, as well as numerous non-narcotic pain medications due to his concern about Patient A's narcotic use. He discussed with Patient A her "problem" with the use of narcotic medications.

6. Dr. Coleman's treatment of Patient A has continued through at least February, 2000. However, beginning in 1996, he coordinated with numerous other physicians, inclusive of Dr. Rank, who, in 1996, took over primary care for Patient A. Dr. Coleman

continued to treat Patient A's seizure or pseudoseizure disorder with the prescription of Depakote. He has also continued to cooperate with the treatment of the migraine headaches through the prescription of injectable Demerol, although he sought to substitute other medications. It was under Dr. Coleman's care that it was noted that higher doses of Depakote were beneficial to Patient A, because she was a quick metabolizer.

7. Dr. Rank first evaluated Patient A in February of 1996 at which time he diagnosed a neurologically complicated migraine headache. Prior treatments for this condition included the following medications: Amitriptyline, Compazine, Thorazine, Depakote, Verapamil, Propranolol, Phenergan, Nimotop, Neurontin, Zofran, Lamictal, and Imipramine. By September of 1997, Dr. Rank considered himself the primary caregiver for treatment of Patient A's migraines, while Dr. Coleman remained the primary caregiver for treatment of her seizure disorder. Dr. Coleman was prescribing Depakote, 10,000 mg per day, while Dr. Rank prescribed Demerol for use by Patient A one day per week. By October of 1997 Dr. Rank had reached the opinion that Demerol was the only effective prophylactic medication for this condition.

8. Over the next 30 months, Dr. Rank consistently prescribed injectable Demerol, 600 mg, to be used one day per week, for the treatment of Patient A's recurrent migraine headache. During this period of time, Dr. Rank prescribed other medications on a less consistent basis. These included periodic prescriptions for Depakote, Neurontin, Topamax, Soma, Zofran, and Carisoprodol.

9. During Dr. Rank's treatment of Patient A, other physicians were involved in treatment of various physical injuries resulting from her seizure disorder. A shoulder injury

was treated by an orthopedist, Dr. Wheeler. Patient A also sustained an injury to her face and mouth during a seizure. Moreover, several physicians were engaged to assist with the diagnosis of Patient A's complicated migraine and seizure disorder.

10. Consequently, Patient A commonly filled prescriptions from different physicians. Nevertheless, Dr. Rank was the physician primarily responsible for the prescription of injectable Demerol.

11. In the spring of 1999, Dr. Rank began to coordinate with Dr. John Richard in the prescription of injectable Demerol for Patient A. Yet, the frequency and amount of the medication prescribed remained roughly constant until October of 1999. In late October, 1999, Patient A began also receiving prescriptions for injectable Demerol from Dr. William Bacon, and to a lesser extent, from Dr. Larry Burns. Over the next five months, the prescription of injectable Demerol received from all sources accelerated. Between January 10, 2000, Patient A filled nine prescriptions for injectable Demerol, roughly twice the amount Dr. Rank prescribed. It was also during this period of time that Patient A began filling her prescriptions from the various physicians at different pharmacies, located in different towns. A reasonable inference which can be drawn from this action was that Patient A was attempting to hide from her physicians and her pharmacist the total amount of injectable Demerol she was receiving.

12. During 1999, an action was initiated against Dr. Rank's license to practice medicine in the Commonwealth of Kentucky due to a serious boundary violation which was alleged to have occurred between Dr. Rank and a former patient. Dr. Rank testified that as a result of that action he anticipated that his license would be either suspended or revoked.

It was for this reason he began to coordinate his treatment and prescription of injectable Demerol to Patient A with Dr. John W. Richard, to ensure that a continuity of care for Patient A. This motivation was also provided by Dr. Rank for drafting a letter dated January 21, 2000 to "Whom It May Concern, Re: Angela Brown." Within that correspondence, Dr. Rank related that Ms. Brown had been under his treatment and was currently receiving medication which consisted of Depakote 12,000 mg/d (level-250), Topomax 75 mg/bid, Neurontin 400 mg, and injectable Demerol 200 mg/im up to three doses limited to one day per week. Also within that letter, he stated he was no longer able to prescribe medications to Patient A because of trouble with the Medical Board over another issue, but remained involved in Patient A's care for limited psychiatric recommendations.

13. Dr. Rank testified that he provided the letter of January 21, 2000 directly to Patient A to assist her in obtaining continued care while his license was suspended. Ultimately, Dr. Rank's license was suspended by the Board as a result of the boundary violation charges. However, that suspension was stayed by the Jefferson Circuit Court two days thereafter. The action appealing and staying the decision of the Board to suspend Dr. Rank's license remains pending before the Jefferson Circuit Court, and as of the date of the hearing, Dr. Rank's suspension had yet to be served. Consequently, contrary to the assertions contained in the January 21, 2000 letter, Dr. Rank continued to treat Patient A and continued to prescribe her medication as outlined within that correspondence. Unfortunately, Dr. Rank took no action to compel Patient A to return the letter or otherwise attempt to identify and contact with other physicians to whom she disseminated the letter.

14. Dr. Rank did not believe he was being manipulated by Patient A for the

purpose of obtaining narcotic pain medication during his course of treatment of Patient A. Even after receiving the Investigator's report in April, 2000, he chose to believe Patient A and her family, and continued to prescribe her injectable Demerol. He made no investigation into the treatments being provided by Dr. Burns and Dr. Bacon even though the report recounts that both physicians were prescribing Patient A injectable Demerol during the same time periods as Dr. Rank. Only after reviewing the K.A.S.P.E.R. Report at the hearing did Dr. Rank concede that Patient A may have been abusing her medications.

15. It was the opinion of Dr. Rank that his prescription of injectable Demerol in combination with anti-convulsive medication, primary among which was Depakote, which was prescribed in high levels due to Patient A's ability to rapidly metabolize medication, constituted the appropriate treatment for the conditions he diagnosed. His working diagnosis during his treatment of Patient A was three-fold:

A. Stroke;

B. Hemiplegic Migraine;

C. Seizure and Pseudoseizures potentially emanating from a somatoform disorder.

He describes the hemiplegic migraine headaches as chronic, recurrent, acute headaches for which treatment through the use of prophylactic medication was necessary. His prescription of Demerol as this prophylactic medication was related directly to his prior findings that other medications were not effective in treating the condition.

16. An extensive records review of Dr. Rank's treatment of Patient A was performed by Dr. [redacted] at the request of the Board. In his review, Dr. [redacted] had an opportunity to inspect the medical records from the University of Kentucky, Dr.

Timothy Coleman, Dr. John Richard, Urgent Treatment Center, Dr. Larry Burns, Dr. William Bacon, and Dr. Rank, as well as a K.A.S.P.E.R. Report on Dr. Rank, Investigative Reports related to Dr. Rank's treatment of Patient A, and Dr. Rank's response to the Board dated May 2, 2000. Based upon this review, Dr. [redacted] opined that Dr. Rank did not intend to prescribe medication to Patient A which would be used for reasons other than medical care. However, he believes Dr. Rank should have known of the possibility that Patient A sought Demerol for other purposes. Dr. [redacted] believes that during his care for Patient A, Dr. Rank should have required an in-patient evaluation and observation of Patient A to evaluate her condition, and the effectiveness of other medications based upon information other than Patient A's self-reporting. Further, it is Dr. [redacted] opinion that the prescription of injectable Demerol was not appropriate for the condition Dr. Rank was treating. Dr. [redacted] disagreed with the use of Demerol for treatment of chronic headaches because the medication can cause rebound headaches and a perpetuation of the headache syndrome. Additionally, Demerol lowers the patients' threshold for seizures, the other diagnosis for which Patient A was being treated.

17. Dr. [redacted] found that Dr. Rank allowed Patient A to frustrate his attempts to find treatments other than that desired by Patient A, i.e., Demerol, and therefore lost control of the doctor-patient relationship. Thus, he engaged in conduct which failed to conform to acceptable standards and prevailing medical practice within the Commonwealth of Kentucky. Dr. [redacted] opined that this loss of control maneuvered Dr. Rank into a position where he was treating outside his area of expertise, and was receiving guidance and advice on continued therapy from the patient. While this was incompetent on the part of Dr. Rank, Dr.

[redacted] did not believe it rose to the level of gross incompetence based on a single patient.

18. Indeed, Dr. [redacted] describes Dr. Rank as an instrument used by Patient A for the purpose of obtaining narcotic pain medication. For this reason, he does not believe Dr. Rank conducted himself in a manner which rose to the level of gross incompetence or malpractice. He also found that Dr. Rank's practice did not constitute a danger to the health, welfare, and safety of Dr. Rank's patients or the general public. This is based heavily upon his review of the K.A.S.P.E.R. Report which revealed that, aside from Patient A, Dr. Rank's prescribing practices were appropriate.

19. On cross-examination, Dr. [redacted] admitted that his finding that Dr. Rank was maneuvered into acting outside his area of speciality was based upon his belief that Dr. Rank was a specialist in psychiatry only. Upon finding that Dr. Rank was board certified in internal medicine, Dr. [redacted] withdrew this portion of his opinion. Nevertheless, he stood by his opinion that Dr. Rank's prescription of injectable Demerol was inappropriate for the purpose intended, i.e., treatment of chronic migraines, and that Dr. Rank had lost control of the doctor-patient relationship by allowing his treatment to be manipulated by Patient A.

20. In addition to Dr. Rank's testimony that the prescription of injectable Demerol in the amounts and frequency he prescribed was appropriate, Dr. Rank introduced a number of articles from authoritative medical journals into the record. Most instructive of these journal articles were Exhibits 6, 7, 8, and 9 which related to the use of injectable Demerol for the treatment of acute and recurrent migraine headaches, as well as the nature of rebound headaches and the relationship of injectable Demerol to generalized seizures. The articles support Dr. Rank's testimony to the extent he testified that Demerol was appropriate for the

treatment of acute migraine headaches, and that such a use did not necessarily produce an accompanying danger of a lowered seizure threshold or rebound headaches. Nevertheless, this rebuttal is not persuasive as to the issue raised by Dr. [redacted] that Dr. Rank allowed this continued course of treatment over several years for a chronic condition without adequately pursuing an alternative, and further, that on those occasions where alternatives were investigated, Dr. Rank allowed Patient A to thwart his attempts through non-cooperation or non-compliance to ensure she would be able to continue the use of her narcotic medication of choice, injectable Demerol.

21. Dr. Rank testified that following the first day of the emergency hearing in this action he had an opportunity to review the K.A.S.P.E.R. Report which revealed that during the past year Patient A obtained injectable Demerol in amounts in excess of those prescribed.

22. There was no substantial testimony presented during the emergency hearing which indicates that Dr. Rank was involved in an improper relationship with Patient A. Reasonable inferences can be drawn from Dr. Rank's testimony and his medical records which establish that during his course of treatment he developed a rapport with Patient A as part of his physician-patient relationship, and this led to a level of trust which was ultimately betrayed by Patient A.

23. There was no substantial testimony presented during the emergency hearing which establishes that Dr. Rank knew that Patient A was seeking out and obtaining Demerol in excess of the amounts that he had prescribed. Again, however, reasonable inferences can be drawn from the medical records in evidence that Patient A would deceive and manipulate others as necessary to continue receiving Demerol, including a specific instance in 1996

wherein Patient A forged a prescription in Dr. Rank's name. This should have placed Dr. Rank on notice that Patient A would take advantage of an opportunity to obtain additional Demerol, were one presented. Therefore, he should have taken precautions to ensure that no such opportunity was available, even prior to receiving direct notification from the Board's Investigator of Patient A's actions.

24. Dr. Rank provided Patient A with a letter dated January 21, 2000, which, although intended for the purpose of allowing Patient A to continue the treatment prescribed by Dr. Rank, in actuality provided Patient A the opportunity to seek out other medical care providers who, in combination with the care being provided by Dr. Rank, and outside of Dr. Rank's knowledge, prescribed Demerol which exceeded appropriate medical use by Dr. Rank's own assessment.

25. There was no substantial testimony presented during the hearing which suggests, much less indicates, that Dr. Rank's present practice aside from his treatment of Patient A, constitutes an immediate danger to the public health, safety, or welfare.

26. On November 30, 2000, the Board's Inquiry Panel B issued an *Emergency Order of Restriction, In Re: The License to Practice Medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., License No. 27590, 3133 Custer Dr., Lexington, Kentucky 40517-4001* ("the Emergency Order").

27. On December 1, 2000, Dr. Rank, through counsel, requested that an emergency hearing be scheduled to determine the propriety of the Emergency Order.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Hearing Officer makes the following

conclusions of law:

28. An Inquiry Panel of the Board has the authority to issue an Emergency Order pursuant to KRS 311.592, 201 KAR 9:081, Section 9, and KRS 13B.125. When the Board issues an Emergency Order, the licensee can request a hearing pursuant to KRS 13B.125(3).

29. The Hearing Officer is authorized to conduct the hearing, hear the evidence, and render a final order. KRS 311.592 and KRS 13B.125(3).

30. The issues raised by the Emergency Order are as follows:

(A) Whether there is substantial evidence that Dr. Rank violated KRS 311.595(9) by engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, or any member thereof; as illustrated by:

(1) KRS 311.597(1)(d). Prescribes or dispenses any medication in such amounts that the licensee knows or had reason to know, under the attendant circumstances, that said amounts so prescribed and dispensed are excessive under accepted and prevailing medical practice standards;

(2) KRS 311.597(3). A serious act, or a pattern of acts, committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice;

(3) KRS 311.597(4). Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including, but

not limited to, any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the Code of Ethics of the American Osteopathic Association. For the purposes of this section, actual injury to the patient need not be established;

(4) KRS 311.595(12). Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including, but not limited to, the code of conduct promulgated by the Board under KRS 311.601 or any other valid regulation of the Board;

(5) KRS 311.595(10). Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in the connection with the practice of his profession; and

(6) 201 KAR 9:005(1)(a). Violation of Principles I, II, IV and V of the Principles of Medical Ethics and current Opinion 6.04 and 9.04, all of which have been adopted by the American Medical Association and the Board.

(B) Whether there is substantial evidence that any violation found

constitutes an immediate danger to the public health, safety, or welfare.

31. Prior to issuing the Emergency Order, Panel B did not conduct an evidentiary hearing at which the Petitioner was afforded an opportunity to confront and cross-examine witnesses against him, or to offer evidence on his own behalf. None is required by KRS 13B.125(2), which permits the Board to "summarily act in emergency situations. . . to stop, prevent or avoid an immediate danger to the public." A pre-suspension hearing is not required by constitutional principles either, so long as a prompt post-suspension hearing is provided. *See, e.g., Berry v. Varchi*, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed. 2d 365 (1979).

32. When the Board issues an emergency order, the licensee can ask for a hearing pursuant to KRS 13B.125(3). If the licensee does so, the emergency hearing is not an appeal of the Inquiry Panel's decision. The hearing is an evidentiary one. It is a full post-deprivation hearing that fundamental principles of constitutional procedural due process require the Board to conduct if it summarily and without hearing suspends a doctor's license to practice medicine.

33. The hearing under KRS 13B.125 is a full and independent hearing into the "propriety of the (emergency) order" at issue. Its purpose is to determine whether there "is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare" such that the emergency order should continue in effect as issued. KRS 13B.125(3).

34. The emergency hearing held pursuant to KRS 13B.125(3) is not an appeal merely because the "substantial evidence" test is a standard which ordinarily applies in the review of cases on appeal. The emergency hearing is an evidentiary hearing. Some of the

evidence presented at the emergency hearing, either by the Board or the licensee, may be new evidence which was not considered by the issuing Panel. The emergency hearing is the only hearing which the licensee is guaranteed the right to question the propriety of the Panel's emergency order — it is the only hearing in which he is entitled to cross-examine the Board's witnesses, and to offer evidence in support of his position.

35. The fact that KRS 13B.125(2) requires the Panel to include findings of fact and conclusions of law in the emergency order it issues does not imply that the hearing officer merely reviews the Panel's decision. The emergency order's findings and conclusions provide the licensee with notice of the issues which will be present at the emergency hearing. In fact, the hearing officer must use the Panel's findings and conclusions to rule on the relevance of evidence offered at the hearing, and to rule on what laws the licensee is charged with violating. Without such notice, the licensee would not know the wrongful acts he is alleged to have committed nor the standard of conduct to which he is being held. The Panel's emergency order satisfies the notice requirements of KRS 13B.050(3)(d) and (e).

36. This is not a hearing on the issue of whether the Panel had probable cause to believe that the Petitioner constituted a danger. This is the standard which applied to the Board's emergency hearings prior to the passage of KRS Chapter 13B. At that time, the Board's old version of KRS 311.592(3) read, "The original order shall be affirmed if substantial evidence is produced that supports the panel's findings that . . . the inquiry panel *had probable cause* to believe that a physician's practice constitutes a danger." This is a different standard and procedure than KRS 13B.125 contemplates. (Emphasis added).

37. This is not a hearing to determine whether there *was* substantial evidence

presented to the Panel of a violation of law which constitutes an immediate danger to the public health, safety, or welfare. It is a hearing to determine whether there *is* substantial evidence presented at the hearing to support the Panel's decision.

38. The emergency hearing is to determine whether there is an immediate danger to the public *at the time of the hearing*. The language of KRS 13B.125(3) reads: "The emergency order shall be affirmed if there is substantial evidence of a violation of law which *constitutes* an immediate danger to the public health, safety or welfare." (Emphasis added). This language does not say the determination is based on whether there is substantial evidence of a violation of law which *constituted* an immediate danger to the public health, safety or welfare.

39. It is fair to both parties to consider whether the licensee is an immediate danger to the public at the time of the emergency hearing: If there is any substantial evidence that the licensee is an immediate danger to the public, the emergency order should continue. Conversely, even if the licensee has committed some offense to the Board's orders or to the Commonwealth's medical licensing law, where there is no substantial evidence that the licensee remains an immediate danger to the public, the licensee should be able to practice medicine. If the latter is the finding made after the emergency hearing, the Board can still sanction the licensee for a violation of its orders or laws in the substantive complaint proceeding which must be filed before the date of the emergency hearing. *See* KRS 311.592(2).

40. This proceeding is an emergency hearing to determine the "propriety of the order" issued by the Inquiry Panel according to the standard in KRS 13B.125(3). The standard

is whether there "is *substantial evidence* of a violation of law which constitutes an immediate danger to the public health, safety, or welfare." KRS 13B.125(3) (Emphasis added). "Substantial evidence" is "evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men." *Kentucky State Racing Commission v. Fuller*, Ky., 481 S.W.2d 298, 308 (1972). (Quoting *O'Nan v. Ecklar Moore Express, Inc.*, Ky., 339 S.W.2d 466 (1960). "The test of substantiality of evidence is whether when taken alone or in light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men." *Fuller*, 481 S.W.2d at 308.

41. It is concluded as a matter of law that substantial evidence exists that Dr. Rank violated KRS 311.595(9), 311.595(12), 311.597(4) and 201 KAR 9:005(1)(a) by engaging in unprofessional conduct of a character likely to harm Patient A. The testimony of Dr [redacted] established that long-term prescription of injectable Demerol for the conditions diagnosed was inappropriate under accepted and prevailing medical practice standards. Although this evidence was countered by Dr. Rank's testimony and submission of isolated medical journal articles, there is no evidence in the record to otherwise suggest that the administration of Demerol in a consistent and repeated fashion over a course of years constituted an accepted or prevailing medical practice. *Caldwell v. Dept. of Professional Responsibility*, 684 N.E.2d 913 (Ill.App., 1 Dist. 1997). (Testimony from Board expert that the prescription for a period of six years of narcotic painkillers which were inappropriate for the ailments diagnosed constituted substantial evidence the treatment did not conform to accepted medical standards).

42. It is also concluded as a matter of law that substantial evidence exists that Dr.

Rank violated KRS 311.595(9), 311.595(10), and 311.597(1)(d) by failing to maintain control over the doctor-patient relationship. The record was replete with facts which, had they been recognized by Dr. Rank, should have been warning signs that Patient A was a high risk candidate for the abuse of narcotic pain medication. This was recognized by Dr. Coleman as early as 1995. Moreover, in 1996, Patient A forged a prescription from Dr. Rank in an effort to obtain such medication. Although Dr. Rank ascribed a plausible, non-criminal, explanation for this conduct, the incident should have placed him on notice of the potential for abuse. Moreover, during Dr. Rank's entire course of treatment, Patient A consistently manipulated her treatment by Dr. Rank to ensure a continuing stream of narcotic medication. It is reasonable to expect that at some point Dr. Rank should have made a concerted effort to determine whether other non-narcotic and less addictive alternatives were feasible. Nevertheless, he issued a letter to Patient A dated January 21, 2000 which enabled Patient A to obtain additional prescriptions for Demerol by inaccurately stating his license was suspended and he was not prescribing medications to Patient A. Regardless of the purpose or intent of the letter, Dr. Rank should have recognized that the letter created a potential for abuse. Finally, even after being confronted by the Board Investigator with evidence suggesting that Patient A was abusing injectable Demerol by obtaining such medication from multiple sources, Dr. Rank continued to prescribe injectable Demerol without contacting the other physicians who were reported to him as prescribing additional Demerol to Patient A. Failure to ensure, prior to prescribing narcotics, that they are not being diverted or improperly used by the patient, where the physician has reason to know improper use is likely, constitutes unprofessional conduct which is likely to harm the patient. *Holliday* v. *La. State*

Board of Medical Licensure, 689 So.2d 718 (La.App., 4th Cir. 1997).

43. The Board's Emergency Order of Restriction, entered November 30, 2000, prohibits Dr. Rank from "prescribing, dispensing or otherwise utilizing Schedule II controlled substances, and said licensee's medical license will remain restricted until final resolution of this administrative proceeding or until further order of the Board's Panel."

44. Full consideration must be given to the prospect of modification of the Board's Emergency Order, to more narrowly tailor limitations upon Dr. Rank's practice based upon the type of violation of law proven. *See Cunningham v. Agency for Health Care Administration*, 677 So.2d 61 (Fla.App., 1st Dist. 1996). (Where the proof involved excessive prescription of controlled substances to only three patients, the agency exceeded its authority in suspending the psychiatrist's license by emergency order rather than merely barring treatment of the three patients). Where the Board's own expert witness ascribes no danger to Dr. Rank's prescribing practices with patients other than Patient A, or to his practice of prescribing medication to the public at large, an emergency order which restricts all prescribing authority is too broad to address the danger identified.

45. While the Board presented substantial evidence that Dr. Rank committed violations of KRS 311.595, there is no substantial evidence in the record to support a determination of these violations of law constitute an immediate danger to the public health, safety, or welfare. The Board has set forth no evidence of a continuing pattern of conduct that must be stopped in order to prevent future harm to the public.

46. The Board has suggested that the evidence of danger to the public health, safety, or welfare, can be inferred from Dr. Rank's past conduct. The argument is two-

pronged. First, it is argued that Dr. Rank's loss of control of the physician-patient relationship is tantamount to a boundary violation similar to that of which Dr. Rank was previously found to have committed, and that it is this propensity toward boundary violations which leads Dr. Rank to practice in a manner which does not conform to accepted medical standards. The second half of this argument is that there was an inappropriate relationship between Dr. Rank and Patient A, albeit not a sexual relationship, that was the causative factor in Dr. Rank's decision to treat Patient A in the manner in which he did. However, no substantial evidence was introduced at the hearing to support either of these contentions. All the evidence which the Board relies upon to make this argument is hearsay testimony introduced through the Board Investigator. Moreover, hearsay testimony of the Investigator fits none of the exceptions for the admission to hearsay under the rules of evidence accepted in the Commonwealth of Kentucky. Hearsay evidence, although admissible at hearing, shall not be sufficient in itself to support an agency's findings of fact unless it would be admissible over objections in civil actions, KRS 13B.090(1). Furthermore, had the evidence established that a boundary violation occurred between Dr. Rank and Patient A, a questionable assumption even if the undersigned could have considered the hearsay evidence on this topic, there was no proof to suggest that it was this relationship which prompted Dr. Rank to embark upon the long-term course of prescribing injectable Demerol. Indeed, Dr. Rank's records reveal that he arrived at this course of treatment very early in his care for Patient A, based in part on her prior care from Dr. Coleman. Once Dr. Rank embarked upon a treatment for Patient A's hemiplegic migraines consisting of a prescription of 600 mg of injectable Demerol per week, that treatment remained consistent throughout his medical care for Patient A. Additionally,

Dr. Rank's later missteps are much more plausibly attributed to a combination of gullibility and negligence rather than a desire to intentionally assist Patient A's drug seeking due to an improper relationship.

47. Certainly, there is no evidence which would equate the loss of control of the doctor-patient relationship cited by Dr. [redacted] to a boundary violation. The evidence establishes that Patient A is adept at manipulation of physicians for the purpose of obtaining Demerol. She was able to obtain similar prescriptions from a number of physicians. The difference between Dr. Rank's prescribing pattern and those of the other physicians is that Dr. Rank allowed the course of treatment to continue for a much longer duration, and to continue after warning signs for potential abuse became, or should have become, apparent to him.

48. In certain instances, past acts may be sufficient to allege a danger of future misconduct if the conduct alleged is sufficiently serious and is likely to be repeated. However, the Board's characterization of Dr. Rank's willingness to allow a single patient to manipulate his prescribing practices constitutes nothing more than an allegation of a propensity to act in that manner. Such a propensity, does not constitute substantial evidence upon which to base a finding that Dr. Rank's entire practice constitutes a danger to the public health, safety, or welfare. *See Whitmer v. Dept. of Business & Professional Regulation*, 631 So.2d 338 (Fla.App., 4th Dist. 1994).

49. The Board's Inquiry Panel has the authority to make a determination of immediate danger to the public in deciding whether to issue an emergency order, but once it does, and an emergency hearing is requested by the licensee, the hearing officer must decide if substantial evidence of an immediate danger to the public is adduced at the

emergency hearing. The Inquiry Panel is not the only decision maker involved in the emergency order process with the authority to decide whether an immediate danger to the public exists. It does not usurp the Panel's authority to decide this question when it issues the emergency order for the hearing officer to decide this question when the final order is issued.

50. The undersigned, therefore, having concluded that the Board presented substantial evidence that Dr. Rank committed violations of KRS 311.595 which constitute a danger to Patient A, but do not constitute an immediate danger to the public health, safety, or welfare, finds it is appropriate to modify the Emergency Order to restrict the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., so that the licensee is prohibited from prescribing, dispensing, or otherwise utilizing Schedule II controlled substances in the course of his treatment of Patient A, solely, and said licensee's medical license will remain so restricted until final resolution of this administrative proceeding.

FINAL ORDER

Based upon the foregoing findings of fact and conclusions of law, the Emergency Order of Restriction, In Re: The License to Practice Medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., License No. 27590, 3133 Custer Drive, Lexington, Kentucky 40517-4001, dated November 30, 2000, is hereby MODIFIED to restrict Dr. Rank's license solely from the prescription of Schedule II controlled substances in the course of his treatment of Patient A.

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 13B.140:

> All final orders of an agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served when filing an appeal petition in the Circuit Court.

SO ORDERED this 21st day of December, 2000.

ROBERT S. JONES
HEARING OFFICER
DIV. OF ADMINISTRATIVE HEARINGS
OFFICE OF THE ATTORNEY GENERAL
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CERTIFICATE OF SERVICE

I hereby certify that the original of this FINAL ORDER was mailed this 21st day of December, 2000, by first class mail, postage prepaid, to:

JILL LUN
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

for filing; and a true copy was mailed, postage prepaid, to:

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COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 771

FILED OF RECORD
NOV 30 2000
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517-4001

EMERGENCY ORDER OF RESTRICTION

The Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Inquiry Panel B, considered the grievance filed in this proceeding at its October 19, 2000 meeting. At that meeting, Inquiry Panel B considered a letter, dated January 24, 2000, from Detective Lynne Thompson, a detective in the Narcotics Unit of the Lexington Police Department; the licensee's 4-page letter to the Board, dated May 2, 2000; the licensee's 2-page To-Whom-It-May-Concern letter, dated January 21, 2000; the April 12, 2000 KASPER report printout of the controlled substances the licensee prescribed to Patient A between January 1, 1999 and April 12, 2000; the September 15, 2000 report of a Board consultant; and, the October 2, 2000 Panel Memorandum by Doug Wilson, Medical Investigator. Having considered all of this information and being sufficiently advised, Inquiry Panel B ENTERS the following EMERGENCY ORDER OF RESTRICTION, in accordance with KRS 311.592(1) and KRS 13B.125(1):

FINDINGS OF FACT

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B FINDS there is probable cause to believe the following Findings of Fact, which support its Emergency Order of Restriction:

1. At all relevant times, Douglas H. Rank, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is Psychiatry.

3. In or around January 1998, a grievance from the Cabinet for Health Service's Drug Control Division (hereafter "CHS") was filed with the Board, alleging that the license was prescribing high doses of injectible Demerol to one of his female patients (hereafter "Patient A").

4. In April 1998, the Board closed the matter involving the January 1998 grievance without taking disciplinary action against the licensee's medical license because the licensee told the Board that he had taken corrective action and referred Patient A to the University of Kentucky Pain Center to be treated by another physician, who subsequently provided the Board with the follow-up information it requested about Patient A's medical treatment.

5. Approximately one year after the January 1998 grievance was filed with the Board, the Board received, in May 1999, two more grievances against the licensee; one alleging that the licensee had committed boundary violations by having sexual intercourse with one of his female patients while that patient was under the licensee's professional care (hereafter "Patient B") and the other alleging that the licensee had prescribed controlled substances to another female patient who the licensee knew was not only addicted to the medications but was also selling them (hereafter "Patient C").

6. Consequently, the Board initiated formal disciplinary proceedings against the licensee's medical license in Case No. 707. In that case, the Board dealt only with the licensee's admission that he had had sexual intercourse with Patient B.

On May 17, 2000, the Board entered its Final Order in Case No. 707, an *Order of Revocation; Probated Order of Suspension and Probation.*

7. On January 25, 2000, the Board received a letter, dated January 24, 2000, from Detective Lynne Thompson of the Lexington Police Department's Narcotics Unit, reporting the licensee's boundary violation with Patient A and the "high dosages of narcotic prescriptions" that the licensee was writing for Patient A.

8. The Board's investigation revealed the following information:

   a. The licensee inappropriately prescribes high doses of Schedule II controlled substances to Patient A at her request for same because he has permitted his relationship with Patient A to develop outside the context of a psychiatrist-patient relationship and/or a physician-patient relationship.

   b. During the course of his "treatment" of Patient A, the licensee told Patient A lots of personal and intimate things about himself.

   c. As a result of the licensee's provision of inaccurate and incomplete medical information to other physicians and pharmacists, Patient A received excessive amounts of controlled substances.

   d. On or around January 20, 2000, the licensee called the Kroger Pharmacy on Nicholasville Road in Lexington, Kentucky (hereafter "Kroger Pharmacy") to get a prescription filled for Patient A for 270 Soma tablets, with instructions that Patient A take three tablets three times per day. The licensee did so because Patient A told him that she was not sleeping well and that an orthopedic surgeon had given Soma to her in the past and it had helped with her shoulder and also with her sleep. When the

pharmacist at the Kroger Pharmacy questioned him about the high dosage of Soma and when the pharmacist told the licensee that Patient A was leaving the Neurontin that he was prescribing for her and not getting those prescriptions, the licensee gave the pharmacist inaccurate and incomplete information in an attempt to get the Soma prescription filled for Patient A. He was unsuccessful in this first attempt to do so. The licensee made a second attempt to get them by contacting a Walgreen Pharmacy, where the prescription was filled.

e. During the approximate 15-month period beginning on January 1, 1999 and ending on April 12, 2000, the licensee wrote at least fifty-seven (57) prescriptions for controlled substances for Patient A. The 57 prescriptions consisted of 29 prescriptions for Meperidine HCL 100 mg/ml (Demerol), 23 prescriptions for Carisoprodol 350 mg (Soma), 2 prescriptions for APAP/Hydrocodone 650 mg-7.5 mg, 1 prescription for APAP/Hydrocodone 500 mg-10mg, 1 prescription for Diazepam 5 mg, Hydromorphone HCL 4 mg, and 1 prescription for Sonata 10 mg.

9. The licensee has failed to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky.

CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel B finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation, or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. Inquiry Panel B CONCLUDES there is probable cause to believe that the licensee has engaged in conduct which violates Principles I, II, IV, and V of the Principles of Medical Ethics and Current Opinions 6.04 and 9.04, all of which have been adopted by the American Medical Association and this Board. The Panel further CONCLUDES there is probable cause to believe that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by 311.597(1)(d), (3) and (4); KRS 311.595(12) and 201 KAR 9:005 (1)(a); and KRS 311.595(10).
4. Inquiry Panel B CONCLUDES that, if the licensee were permitted to continue prescribing, dispensing or otherwise utilizing Schedule II controlled substances in the manner described in the FINDINGS OF FACT, there is probable cause to believe that his practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. Inquiry Panel B CONCLUDES that restriction of the licensee's medical license is necessary to protect the health, welfare and safety of the licensee's patients and the general public.

6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

7. In Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); the United States Supreme Court held that a state's licensing agency may impose an interim suspension whenever it has satisfactorily established probable cause to believe that the statutory ground for suspension exists, where the statutory scheme provides for a prompt administrative hearing to determine the issues. In such instances, the United States Supreme Court has ruled that a pre-deprivation adversary hearing is not required by the Due Process Clause. In FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988), the United States Supreme Court approved a statutory scheme which provided for a post-deprivation administrative hearing within 30 days of the request for hearing, where the licensee would receive a ruling upon his request for review within 60

days of the hearing and within 90 days of the initial request. Cf. KRS 13B.125(1).

8. KRS 13B.125(3) provides:

> Any person required to comply with an emergency order issued under subsection (2) of this section may request an emergency hearing to determine the propriety of the order. The agency shall conduct an emergency hearing within ten (10) working days of the request for hearing. The agency shall give all affected parties reasonable notice of the hearing and to the extent practicable shall conduct the hearing in conformity with this chapter. A hearing officer qualified in accordance with KRS 13B.040 may conduct the hearing on the emergency order. Within five (5) working days of completion of the hearing, the agency or hearing officer shall render a written decision affirming, modifying or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law which constitutes an immediate danger to the public health, safety, or welfare.

9. KRS 13B.125(4) provides: "The decision rendered under subsection (3) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to Circuit Court in the same manner as provided in KRS 13B.140.

10. Inquiry Panel B CONCLUDES that it is necessary to prohibit the licensee from prescribing, dispensing, or otherwise utilizing Schedule II controlled substances, pending resolution of the underlying Complaint, in order to protect the health, welfare and safety of his patients or the general public.

11. Inquiry Panel B CONCLUDES, as a matter of law, that there is a legal basis under KRS 311.592(1) to enter an Emergency Order of Restriction against the licensee's Kentucky medical license.

EMERGENCY ORDER OF RESTRICTION

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to KRS 13B.125 and 311.592, Inquiry Panel B hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is RESTRICTED, effective immediately, so that the licensee is prohibited from prescribing, dispensing or otherwise utilizing Schedule II controlled substances, and said licensee's medical license will remain restricted until final resolution of this administrative proceeding or until further order of the Board's Panels.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED on this 30th day of November, 2000.

PRESTON P. NUNNELLEY, M.D.
CHAIRPERSON, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Restriction was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222 and copies were mailed, postage prepaid, to David A. Weinberg, Esq., 301 East Main Street, Suite 800, Lexington, Kentucky 40507 and to to Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001, via certified mail return-receipt requested on this the 30th day of November, 2000.

Y. DENISE PAYNE WADE
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

FILED OF RECORD
NOV 30 2000
K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 771

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517-4001

COMPLAINT

Comes now the Complainant Preston P. Nunnelley, M.D., Chairperson of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on October 19, 2000, states for its Complaint against the licensee, Douglas H. Rank, M.D., as follows:

1. At all relevant times, Douglas H. Rank, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.

2. The licensee's medical specialty is Psychiatry.

3. In or around January 1998, a grievance from the Cabinet for Health Service's Drug Control Division (hereafter "CHS") was filed with the Board, alleging that the license was prescribing high doses of injectible Demerol to one of his female patients (hereafter "Patient A").

4. In April 1998, the Board closed the matter involving the January 1998 grievance without taking disciplinary action against the licensee's medical license because the licensee told the Board that he had taken corrective action and referred Patient A to the University of Kentucky Pain Center to be treated by another physician, who subsequently provided the Board with the follow-up information it requested about Patient A's medical treatment.

5. Approximately one year after the January 1998 grievance was filed with the Board, the Board received, in May 1999, two more grievances against the licensee; one alleging that the licensee had committed boundary violations by having sexual intercourse with one of his female patients while that patient was under the licensee's professional care (hereafter "Patient B") and the other alleging that the licensee had prescribed controlled substances to another female patient who the licensee knew was not only addicted to the medications but was also selling them (hereafter "Patient C").

6. Consequently, the Board initiated formal disciplinary proceedings against the licensee's medical license in Case No. 707. In that case, the Board dealt only with the licensee's admission that he had had sexual intercourse with Patient B. On May 17, 2000, the Board entered its Final Order in Case No. 707, an *Order of Revocation; Probated Order of Suspension and Probation.*

7. On January 25, 2000, the Board received a letter, dated January 24, 2000, from Detective Lynne Thompson of the Lexington Police Department's Narcotics Unit, reporting the licensee's boundary violation with Patient A and the "high dosages of narcotic prescriptions" that the licensee was writing for Patient A.

8. The Board's investigation revealed the following information:

   a. The licensee inappropriately prescribes high doses of Schedule II controlled substances to Patient A at her request for same because he has permitted his relationship with Patient A to develop outside the context of a psychiatrist-patient relationship and/or a physician-patient relationship.

b. During the course of his "treatment" of Patient A, the licensee told Patient A lots of personal and intimate things about himself.

c. As a result of the licensee's provision of inaccurate and incomplete medical information to other physicians and pharmacists, Patient A received excessive amounts of controlled substances.

d. On or around January 20, 2000, the licensee called the Kroger Pharmacy on Nicholasville Road in Lexington, Kentucky (hereafter "Kroger Pharmacy") to get a prescription filled for Patient A for 270 Soma tablets, with instructions that Patient A take three tablets three times per day. The licensee did so because Patient A told him that she was not sleeping well and that an orthopedic surgeon had given Soma to her in the past and it had helped with her shoulder and also with her sleep. When the pharmacist at the Kroger Pharmacy questioned him about the high dosage of Soma and when the pharmacist told the licensee that Patient A was leaving the Neurontin that he was prescribing for her and not getting those prescriptions, the licensee gave the pharmacist inaccurate and incomplete information in an attempt to get the Soma prescription filled for Patient A. He was unsuccessful in this first attempt to do so. The licensee made a second attempt to get them by contacting a Walgreen Pharmacy, where the prescription was filled.

e. During the approximate 15-month period beginning on January 1, 1999 and ending on April 12, 2000, the licensee wrote at least fifty-seven (57) prescriptions for controlled substances for Patient A. The 57 prescriptions

consisted of 29 prescriptions for Meperidine HCL 100 mg/ml (Demerol), 23 prescriptions for Carisoprodol 350 mg (Soma), 2 prescriptions for APAP/Hydrocodone 650 mg-7.5 mg, 1 prescription for APAP/Hydrocodone 500 mg-10mg, 1 prescription for Diazepam 5 mg, Hydromorphone HCL 4 mg, and 1 prescription for Sonata 10 mg.

9. The licensee has failed to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky.

10. The licensee has engaged in and/or continues to engage in reprehensible conduct, as that term is defined in Current Opinion 9.04 of the American Medical Association's (hereafter "AMA") and the Board's Code of Medical Ethics/Conduct.

11. The licensee, in violation of Current Opinion 6.04 of the AMA's and the Board's Code of Medical Ethics/Conduct, prescribed injectible Demerol to Patient A based upon the licensee's unreasonable expectations of the effectiveness of that drug for Patient A.

12. The licensee has engaged in conduct that violates Principles I, II, IV, and V of the Principles of Medical Ethics, which have been adopted by the AMA and this Board.

13. By his conduct, as discussed herein, the licensee has violated KRS 311.595(9), as illustrated by 311.597(1)(d), (3) and (4); KRS 311.595(12) and 201 KAR 9:005 (1)(a); and KRS 311.595(10).

14. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

(a) His failure to respond may be taken as an admission of the charges;

(b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

15. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for March 27 & 28, 2001, at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine held by Douglas H. Rank, M.D..

This 30th day of November, 2000.

PRESTON P. NUNNELLEY, M.D.
CHAIRPERSON, INQUIRY PANEL B

CERTIFICATE OF SERVICE

I certify that the original of this Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222 and a copy was mailed, postage prepaid, to Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; David A. Weinberg, Esq., 301 East Main Street, Suite 800, Lexington,

Kentucky 40507; and a copy was mailed via certified mail to Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001 on this the 30th day of November, 2000.

Y. DENISE PAYNE WADE
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 707
ADMINISTRATIVE ACTION NO. 99-KBM L-0448

FILED OF RECORD
MAR 29 2001
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

AMENDED ORDER OF REVOCATION, PROBATED; AMENDED ORDER OF SUSPENSION/PROBATION

On May 17, 2000, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, issued an Order of Revocation, Probated; Order of Suspension/Probation. The factual findings and legal conclusions providing the bases for that Order were set out in the Order and in the Findings of Fact, Conclusions of Law, and Recommended Order which were adopted and incorporated in part into the Order. Pursuant to KRS 311.593(1), that Order was to become effective thirty (30) days after notice was given to the licensee.

The licensee received notice of the Order on May 18, 2000. Prior to the effective date of the Order, the licensee filed a Petition for Judicial Review in Jefferson Circuit Court and sought a Temporary Restraining Order to prevent the Order becoming effective pending resolution of the Petition. Prior to the Order becoming effective, the Jefferson Circuit Court issued a Temporary Restraining Order, restraining the Board from enforcing the terms of the Order during the pendency of the review process. On March 2, 2001, the Jefferson Circuit Court issued an Opinion and Order affirming the Board's Order. The licensee filed an appeal to Court of Appeals. As part of that action, he filed Motions for Emergency and Intermediate Relief. On March 29, 2001, Court of Appeals

Judge William McAnulty, Jr., issued an Order Denying Motion for Intermediate Relief, concluding that the licensee "...has not made sufficient showing either of injury or of possible success on the merits so as to justify the issuance of an emergency stay."

Having considered all of this information and finding that there are no longer reasons for delaying the effective date of the Panel's Order, Hearing Panel B hereby ORDERS that the following terms and conditions SHALL BECOME EFFECTIVE IMMEDIATELY UPON RECEIPT BY THE LICENSEE AND/OR HIS AGENT AND SHALL REMAIN IN EFFECT FOR A PERIOD OF FIVE (5) YEARS FROM THAT DATE, OR AS SPECIFICALLY SPECIFIED IN THE TERM OR CONDITION:

1. The license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is REVOKED; however, such revocation is STAYED on the sole condition that the licensee fully comply with the terms/conditions of probation that he not engage in sexual contact with a patient while that patient is under the licensee's care. If one of the Board's Panels should conclude by stipulation of the parties or after an evidentiary hearing that the licensee has violated Condition 4a and/or 4b of his probation, as set out below, the sanction for such violation(s) shall be imposition of this sanction of Revocation;
2. The licensee to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is SUSPENDED for a PERIOD OF TWO (2) YEARS; however, Hearing Panel B ORDERS that the last eighteen months of that twenty-four month suspension is STAYED on the condition that the licensee fully comply with all remaining terms and conditions of probation. If the licensee should be found to have violated any term or condition of probation, as set out below, other than Condition 4a

and/or 4b, upon stipulation of the parties or pursuant to evidentiary hearing, the assigned Panel will impose the remaining eighteen months of suspension as an appropriate sanction for such violation(s);

3. Given that the Hearing Panel has only stayed the final eighteen months of the 24-month suspension, the initial 6-month suspension shall commence on the calendar day following receipt of this Order by the licensee or his agent and shall continue in force for 6 calendar months from that date. During that period of actual suspension, the licensee shall not perform any act which would constitute the "practice of medicine," 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;
4. Immediately after the conclusion of the actual suspension period of six months, the licensee's medical license is PLACED ON PROBATION for a PERIOD OF FIFTY-FOUR (54) MONTHS. During that period of probation, the licensee's Kentucky medical license shall be subject to the following terms and conditions:
   a. The licensee shall not engage in sexual contact with any patient while that patient is under the licensee's care;
   b. The licensee shall fully comply with the provisions of Current Opinion 8.14 of the American Medical Association's Code of Ethics:

      > Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician patient-relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.
      >
      > If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to the sexual contact, then he or she should

avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

5. The licensee shall continue with bi-weekly individual treatment with Dr. Oscherwitz and with his participation in the Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP). The licensee shall arrange for Dr. Oscherwitz and with the Medical Director, IPP, to file written reports with the Board, on a quarterly basis, detailing his compliance with this condition and with the parameters of his respective treatment program(s). Failure to arrange for the filing of such quarterly written reports shall constitute a violation of this condition.
6. The licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any other clinical setting.
7. 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 payment of the costs of such chaperon(s).

8. Upon request, the licensee shall immediately make available any requested patient charts for female patients and/or any documentation about patient contacts outside of the office. The licensee shall also make available, upon request, the chaperon(s) for interview by Board agents regarding his compliance with that condition.

9. The licensee shall pay a fine in the amount of $3,037.50. The licensee shall pay this fine within twenty-four (24) months of the filing of this Order.

10. The licensee shall fully comply with the provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*

SO ORDER this 29th day of March, 2001.

PRESTON P. NUNNELLEY, M.D.
CHAIR, HEARING PANEL B

Certificate of Service

I hereby certify that the original of this Amended Order of Revocation, Probated; Amended Order of Suspension/Probation was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; via certified mail return-receipt requested to David A. Weinberg, Esq., Weinberg & Capello, 301 East Main Street, Suite 800, Lexington, Kentucky 40507 and Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001 on this 29th day of March, 2001.

C. LLOYD VEST, II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

FILED OF RECORD
MAY 17 2000
K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 707
ADMNISTRATIVE ACTION NO. 99-KBM L-0448

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

ORDER OF REVOCATION; PROBATED ORDER OF SUSPENSION AND PROBATION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, took up this case for final action at its April 20, 2000 meeting. Hearing Panel B reviewed the Complaint; the recommended Findings of Fact, Conclusion of Law and Recommended Order issued by the hearing officer; the Board's Exceptions to the Recommended Order; the Respondent's Exceptions to Recommended Order; a March 20, 2000 memorandum by the Board's General Counsel; and letters from the licensee's counsel dated April 7 and 11, 2000. The licensee's counsel of record was present during the Panel meeting; however, he advised the Panel that he was not authorized to represent the licensee regarding the Panel's final action, but was only authorized to present the licensee's request to continue the matter to the next scheduled Panel meeting. The Board's General Counsel addressed the Panel regarding the motion for continuance and the matters relating to final resolution of the case.

As an initial matter, the Panel considered the licensee's request to postpone its final action to a later meeting, due to his inability to attend the meeting for religious observance of the Passover Holiday, and his written waiver of the requirement of KRS 13B.120(4)(b) that the final order be issued within 90 days of submission of the hearing

officer's report. The Board's General Counsel advised the Panel that, based upon the waiver, it had the legal authority to postpone final action in this case, but that the Panel was not required to postpone its action. The General Counsel also noted that the licensee had had a full opportunity to testify before the hearing officer and was subjected to cross-examination and that the hearing officer had considered all testimony in his report. Having considered all of the information available to it and being sufficiently advised, Hearing Panel B ORDERS that the request to postpone final resolution of this case to a later date is DENIED.

Having considered all of the information available to it and being sufficiently advised, Hearing Panel B ACCEPTS the recommended Findings of Fact 1-33 reported by the hearing officer and INCORPORATES those Findings of Fact in their entirety into this Order. Hearing Panel B ACCEPTS the recommended Conclusions of Law 34-46 reported by the hearing officer and INCORPORATES those Conclusions of Law in their entirety into this Order.

Hearing Panel ACCEPTS recommended Conclusion of Law 47 IN PART, to the extent there is a conclusion that the requirement that an approved chaperon be present during the licensee's treatment of female patients would provide sufficient protection to patients so that it would not be necessary to impose an absolute prohibition preventing the licensee from providing medical treatment to female patients. However, the Hearing Panel REJECTS recommended Conclusion of Law 47 IN PART, to the extent that it suggests that such a chaperon requirement be limited to the licensee's treatment of female psychiatric patients. From its review of the information available to it, the Panel CONCLUDES as a MATTER OF LAW that, in order to properly protect the public in a

manner that does not require an absolute prohibition preventing the licensee from treating female patients, such a chaperon requirement must apply to the licensee's medical treatment of all female patients. There is no logical reason to conclude from the information available to it that the licensee would knowingly limit his unlawful sexual conduct with patients to psychiatric patients, if unchaperoned. Based upon the information presented in the hearing officer's report, particularly Findings of Fact 11-22, and the Board's Exceptions to that report, the Panel CONCLUDES that it is equally likely that the licensee would engage in unlawful sexual conduct with non-psychiatric patients he encountered in his medical practice.

Hearing Panel B ACCEPTS Recommended Order 1 IN WHOLE and incorporates it into this Order. Based upon the seriousness of the violations, the nature of the physician-patient relationship in this case, and the licensee's specific actions regarding Patient A, Hearing Panel B CONCLUDES that the licensee's Kentucky medical license should be suspended for a full 6-month period as part of the Board's final action in this case. For those reasons, the Panel REJECTS Recommended Order 2 IN WHOLE. Although the assigned hearing officer ultimately disagreed that such action was necessary to protect the public, the Emergency Order of Suspension issued by Inquiry Panel A on July 22, 1999 was an interim protective measure authorized by KRS 311.592 for the protection of the public during the period of time between the issuance of the Complaint and final resolution of that Complaint; it was not designed for or utilized as a sanction of the licensee's Kentucky medical license. The sanction for the licensee's unlawful actions is determined and issued by this Order and Hearing Panel B CONCLUDES that the licensee's violations and specific conduct warrant a suspension of his medical license for

a full 6-month period. For those reasons, the Panel will not shorten the period of suspension in this case by the period of time the licensee's license was suspended pursuant to the Emergency Order of Suspension.

Hearing Panel B ACCEPTS Recommended Orders 4 and 5 IN WHOLE and incorporates those Recommended Orders into this Order.

Hearing Panel B ACCEPTS Recommended Order 3 IN PART and REJECTS it IN PART. For the reasons previously stated, Panel B CONCLUDES that the chaperon requirement should apply to all female patients who receive medical treatment from the licensee. The Board has also developed standard orders to be used for the approval, supervision and implementation of such a chaperon requirement and believes that the Recommended Order should be MODIFIED so that the chaperon requirements are consistent with those standard orders. In order to prevent a recurrence of the violations found in this case and to fully implement Recommended Order 5, Hearing Panel B CONCLUDES that any Order issued in this case must include a prohibition against the licensee engaging in sexual contact with a patient while that is under the licensee's care. Accordingly, Panel B MODIFIES the Recommended Order to include a term/condition of probation that prohibits the licensee from engaging in sexual contact with patients under such circumstances. Based upon Board policy and based upon the circumstances of this case, in which a hearing was required in the face of the licensee's admission of the violation and his rejection of the Inquiry Panel's initial offer to informally resolve the case by an Agreed Order of Suspension, with a suspension for a period less than that imposed under this Order, Hearing Panel B CONCLUDES that the licensee should pay a fine in an amount equal to the costs of the administrative hearing. Accordingly, Hearing

Panel B MODIFIES the Recommended Order to include the requirement of a fine in the amount of $3,037.50. Finally, Panel B CONCLUDES that it is legally appropriate and advisable under KRS 311.595 to fix the period of probation for a specific number of years. Accordingly, Panel B CONCLUDES that the Recommended Order should be MODIFIED so that the period of probation imposed is fixed at a specific number of years.

Based upon the information available to it and being sufficiently advised, and based upon the foregoing discussion, Hearing Panel B ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is REVOKED; however, such revocation is STAYED on the sole condition that the licensee fully comply with the term/condition of probation that he not engage in sexual contact with a patient while that patient is under the licensee's care. If a Hearing Panel of the Board should conclude by stipulation of the parties or after an evidentiary hearing that the licensee has violated that Conditions 1 and/or 2 of his probation, the sanction for such violation shall be imposition of this sanction of Revocation.

Hearing Panel B further ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D. is SUSPENDED for a PERIOD OF TWO (2) YEARS; however, Hearing Panel B ORDERS that the last eighteen months of that twenty-four month suspension is STAYED on the condition that the licensee fully comply with all remaining terms and conditions of probation. If the licensee should be found to have violated any term or condition of probation other than Conditions 1 and/or 2, upon stipulation of the parties or pursuant to evidentiary hearing,

the assigned Hearing Panel will impose that remaining eighteen months of suspension as the appropriate sanction for such violation(s).

Hearing Panel B further ORDERS that the license to practice medicine in the Commonwealth is PLACED ON PROBATION for a period of FIVE (5) YEARS. During that period of probation, the licensee's Kentucky medical license shall be subject to the following terms and conditions:

1. The licensee shall not engage in sexual contact with any patient while that patient is under the licensee's care;

2. The licensee shall fully comply with the provisions of Current Opinion 8.14 of the American Medical Association's Code of Ethics:

> Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.
>
> If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.
>
> Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

3. The licensee shall continue with his bi-weekly individual treatment with Dr. Oscherwitz and with his participation in the Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP). The licensee shall arrange for Dr. Oscherwitz and with the Medical Director, IPP, to file written reports with the Board, on a quarterly basis, detailing his compliance with this condition and with the parameters

of his respective treatment program(s). Failure to arrange for the filing of such quarterly written reports shall constitute a violation of this condition.

4. The licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any other clinical setting.
5. 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 payment of the costs of such chaperon(s).
6. Upon request, the licensee shall immediately make available any requested patient charts for female patients and/or any documentation about patient contacts outside of the office. The licensee shall also make available, upon request, the chaperon(s) for interview by Board agents regarding his compliance with that condition.
7. The licensee shall pay a fine in the amount of $3,037.50. The licensee shall pay this fine within twenty-four (24) months of the filing of this Order.
8. The licensee shall fully comply with the provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*

SO ORDERED this 17th day of May, 2000.

PRESTON P. NUNNELLEY, M.D.
CHAIR, HEARING PANEL B

Certificate of Service

I certify that the original of this Order of Suspension/Indefinite Restriction was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; via certified mail return-receipt requested to David A. Weinberg, Esq., Weinberg & Capello, 301 East Main Street, Suite 800, Lexington, Kentucky 40507 and Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001 on this 15th day of May, 2000.

C. LLOYD VEST, II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-8046

EFFECTIVE DATE AND APPEAL RIGHTS

Pursuant to KRS 311.593(1), the effective date of this Order will be thirty (30) days after the licensee and/or the licensee's counsel has received notice of the Order.

The licensee may appeal from this Order, pursuant to KRS 311.593 and 13B.140-.150, by filing a Petition for Judicial Review in Jefferson Circuit Court within thirty (30) days after this Order is mailed or delivered by personal service. Copies of the petition shall be served by the licensee upon the Board and its General Counsel. The Petition shall include the names and addresses of all parties to the proceeding and the agency

involved, and a statement of the grounds on which the review is requested, along with a copy of this Order.

FILED OF RECORD
FEB - 7 2000
K.B.M.L.

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 707
ADMINISTRATIVE ACTION NO. 99-KBML-0448

KENTUCKY BOARD OF MEDICAL LICENSURE — COMPLAINANT

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW and RECOMMENDED ORDER

DOUGLAS RANK (License No. 27590) — RESPONDENT

* * * * *

An emergency hearing was held in this matter on August 3 and 9, 1999, pursuant to KRS 13B.125(3) and 201 KAR 9:081 Section 9. The hearing was held to determine the propriety of an emergency order, dated July 22, 1999, issued by the Board's Inquiry Panel A which suspended the license to practice medicine held by Douglas H. Rank, M.D. On August 16, 1999, a final order was entered revoking the emergency order suspending Dr. Rank's license to practice medicine. Although Dr. Rank was found to have engaged in both sexual contact with a patient and in unprofessional conduct of a character likely to harm this patient, in violation of statute, it was concluded that these violations did not constitute an immediate danger to the public health, safety, or welfare which justified an immediate order of suspension.

A hearing was held on the administrative complaint on December 6, 1999. Dr. Rank appeared personally and with counsel, David A. Weinberg, Esq. The Kentucky Board of Medical Licensure ("the Board") appeared through its general counsel, C. Lloyd Vest II, Esq. Scott D. Majors, Assistant Attorney General, Division of Administrative Hearings, served as Hearing Officer. The parties jointly admitted into this record all of the evidence admitted into evidence at the emergency hearing, Administrative Action No. 99-KBML-0452. Additionally, the Board presented the testimony of Dr. Rank. Dr. Rank presented the testimony of Dr. Morris G. Oscherwitz, a Diplomate with the

American Board of Psychiatry and Neurology from Cincinnati, Ohio; Ms. Diana Loh, a masters-level clinical psychologist and psychiatric nurse; Dr. Burns Brady, medical director, Kentucky Physician's Health Foundation; Mr. Doug Wilson, Board investigator, and the Petitioner himself, Dr. Douglas H. Rank.

Following consideration of the entire record, and for the reasons as stated below, it is recommended that the Kentucky Board of Medical Licensure enter a final order which finds Dr. Rank guilty of the charges raised in the administrative complaint, and orders Dr. Rank's medical license suspended for a period of 2 years, the final 18 months of which is to be probated, with certain terms to be satisfied during the probationary period.

I. Findings of Fact

Based on a review of the entire record, the undersigned issues the following findings of fact:

1. Patient A is a 47 year-old Caucasian woman who has been married since 1987. She is bright, articulate, highly communicative, and she presents a professional image. Her responses to questions posed to her during the hearing were thought-filled, deliberate, and carefully phrased.[1]

2. Patient A has made her career in the medical health field. Over the past several years, she has held high-ranking administrative positions with many hospitals and medical clinics in the Lexington, Kentucky area.

3. Patient A was raised in the Catholic faith and she has been a practicing member of that faith for most of her adult life.

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[1] Pursuant to KRS 311.591(9), the undersigned determined that the public disclosure of Patient A's identity would constitute a clear invasion of her personal privacy. As such, her identity is found within Joint Exhibit 1, introduced into the record, but that record has been ordered sealed pursuant to this statute.

4. Dr. Rank is a 41 year-old Caucasian male who is twice married and divorced. He received an undergraduate degree from Rice University and was graduated from Baylor College of Medicine in 1984. He completed two residencies at Beth Israel Medical Center in New York, one in internal medicine and one in psychiatry, and he is Board-certified in both specialties. He has been licensed to practice medicine in Kentucky since 1990.

5. Dr. Rank has been engaged in the private practice of psychiatry in Lexington, Kentucky, since 1990. He has a sub-specialty of headache and pain management.

6. For the period of time relevant to this administrative action, Dr. Rank has received infrequent treatments for bouts of depression with Dr. Morris G. Oscherwitz, a psychiatrist in Cincinnati, Ohio. Dr. Rank has benefitted from Prozac in his treatments.

7. There is no evidence in the record to indicate that these periods of depression have presented debilitating anxiety or psychological turmoil to Dr. Rank in his personal or professional life.

8. In April of 1993, Patient A was involved in a motor vehicle accident from which she sustained head and neck injuries. Following cervical disk surgery in October of 1993, she continued to suffer severe bouts of pain. She consulted with several physicians ans was prescribed multiple medications. She realized no dramatic improvement. In November of 1993, she was referred to Dr. Rank for the treatment of her pain symptoms and for resultant depression.

9. Dr. Rank treated Patient A on at least a weekly basis from November of 1993 to September of 1994. During this time frame, Dr. Rank prescribed many medications to Patient A for her severe migraine headaches, including Lorcet, Lortab, Levo-Dromoran, Valium, Xanax, Toradol, DHL-45 and Imitrex.

10. On or about September 4, 1994, Dr. Rank terminated his treatment of Patient A due to physical advances she made to him during the course of treatment. Dr. Rank identified Patient A's conduct to be indicative of "transference," in this instance, a primarily unconscious tendency of Patient A to assign to her psychiatrist those feelings and attitudes originally connected with significant figures during the course of early development. Dr. Rank also determined that Patient A was not willing to relate to him as his patient due to her status as Assistant Administrator at Central Baptist Hospital in Lexington.

11. In March of 1995, Dr. Rank, whose specialty in headache and pain management apparently is well known in the Lexington, Kentucky medical community, was requested by a Lexington surgeon to see Patient A again to determine whether he could help relieve her severe migraine headaches. Dr. Rank met with Patient A in a hospital and, following discussion, Dr. Rank agreed to take Patient A back as a patient under the belief that the problems which lead to the termination of treatment in September 1994 would not be repeated.

12. From March of 1995 until the end of the professional relationship with Patient A, the billing codes used by Dr. Rank were for medical care, not for psychotherapy.

13. From April of 1994 through early 1995, Dr. Rank permitted his relationship with Patient A to develop outside the psychiatrist-patient context. Indeed, several different types of relationships began to form between them. Dr. Rank and Patient A began to engage in frequent evening telephone conversations in which personal matters were discussed as a matter of course. They began to meet socially outside the office, including restaurant lunches. Dr. Rank also began to develop a spiritual relationship with Patient A, which resulted in regular meetings at a Jewish synagogue. Dr. Rank and Patient A also met on occasions at a local bookstore to discuss religion, mysticism, health care and literature.

14. Patient A's medical providers were never billed by Dr. Rank for services which were not medically related (i.e., bookstore meetings, conversations during restaurant lunches, etc.)

15. During this same time period, Patient A had taken new employment as provider relocation specialist with Comprehensive Rehabilitation Associates, a managed care agency. Apparently vested with the authority to solicit applications for the agency's medical director position, Patient A encouraged Dr. Rank to consider taking the position, which he did. Dr. Rank was scheduled to be compensated in this position at a rate of $100.00 to $125.00 per hour, but before any service was provided, his position was eliminated.

16. Shortly after Dr. Rank's position with this agency was terminated, Patient A's position was also terminated. In "protest," Dr. Rank wrote a letter to the commissioner of the Department of Insurance "on her behalf." Dr. Rank also met with Patient A's attorney, Fred Hensinger, to offer his assistance.

17. In or about June of 1995, Patient A made statements to Dr. Rank which lead him to believe that Patient A and her husband had decided to divorce.

18. In or about late October of 1995, Patient A met Dr. Rank at his apartment. They engaged in unprotected sexual intercourse. This was repeated on at least one occasion during each of the following three weeks.

19. During this time frame, Patient A and Dr. Rank shared several dinners together. Patient A's husband worked second shift during this period.

20. During this time frame, by his own admission, Dr. Rank fell in love with Patient A. During this time frame, without admission but found to be fact, Patient A fell in love with Dr. Rank.

21. In or about November of 1995, Dr. Rank gave a video deposition relating to problems Patient A was experiencing arising from the motor vehicle accident in 1993.

22. In late 1995 or early 1996, Dr. Rank decided to terminate the sexual relationship with Patient A. He realized that his behavior with Patient A had violated his religious convictions and his medical ethics. Regardless of the impact this decision had upon Patient A (Patient A claimed she felt "abandoned," while Dr. Rank claimed she "was not in distress over it"), the record is clear that Dr. Rank continued to treat Patient A with regular (but less frequent) appointments and prescriptive medications through December of 1997.

23. In October of 1998, Dr. Rank was asked by a colleague about the possibility that he had transgressed appropriate boundaries with Patient A, as her attorneys had asked him to review the record as a potential expert witness. This was the first Dr. Rank had learned of potential litigation.

24. About this same time frame, Patient A retained two attorneys in Lexington to handle a lawsuit against Dr. Rank. These attorneys contacted Dr. Rank about the matters shared with them by Patient A, and Dr. Rank agreed to discuss it. During a meeting with the attorneys, Dr. Rank acknowledged the impropriety of his conduct.

25. In October of 1998, Patient A began to see Dr. Martha Lee Walden, a psychiatrist in Lexington, Kentucky.

26. By letter dated December 10, 1998, Dr. Walden reported to the Board that Dr. Rank apparently had committed "sexual boundary violations" with Patient A.

27. On March 3, 1999, Patient A and her husband filed a lawsuit against Dr. Rank in the Fayette Circuit Court.

28. Shortly thereafter, an article was published in the Lexington Herald Leader newspaper which listed details of the allegations raised in the lawsuit. Dr. Rank's name was prominently mentioned in this news article.

29. Dr. Rank accepted a referral to Dr. Burns Brady, medical director of the Kentucky Physician's Health Alliance, to inform him of the offense. At Dr. Burns' suggestion, Dr. Rank underwent psychological and neuropsychological testing with Dr Edleson and Associates in Louisville, Kentucky. The results of these tests were released to Dr. Brady and to Dr. Oscherwitz, and were admitted into the record at the emergency hearing as Board Exhibit #1. From the testimony of Dr. Brady, it is clear that Dr. Rank has been fully cooperative with the Impaired Physicians Program and has agreed to comply with all suggestions made to him.

30. In April of 1999, Dr. Rank enlisted the part-time assistance of a psychiatric nurse during his therapy sessions with female patients to serve as a "chaperon." From the testimony of both this nurse, Ms. Diana Loh, and Dr. Rank, it is clear to the undersigned that the use of Ms. Loh in this capacity has had a beneficial effect upon the quality of service Dr. Rank offers to his patients.

31. Dr. Rank continues to be treated on a regular basis by Dr. Oscherwitz, whose opinion offered to the undersigned (as supported by correspondence dated March 10, 1999) is that Dr. Rank has remained stable during the situation, although he is "shamed, guilty and repentant about his actions." Dr. Oscherwitz strongly recommended that Dr. Rank continue with bi-weekly individual treatment, notwithstanding Dr. Rank's limited financial resources to pay for such treatment. It was also recommended that Dr. Rank continue with group therapy "as an option, not a requirement."

32. On July 22, 1999, the Board filed its administrative complaint in this action against Dr. Rank. It was alleged in this complaint that Dr. Rank's sexual relationship with Patient A constituted

a violation of KRS 311.595(5) and KRS 311.595(9), as illustrated by KRS 311.597(4). (See paragraph 10, Board's Complaint). On or about August 19, 1999, Dr Rank, through counsel, filed an answer to the Board's complaint in which the allegations contained in paragraph 10 were admitted, but offered that "there are extenuating and mitigating factors to be taken into consideration when deciding what appropriate disciplinary action should be taken against the Respondent." (See paragraph 5, Rank's Answer).

33. No evidence was presented at the administrative hearing which indicates that the Board has received substantial evidence, distinguished from rumor, that Dr. Rank has committed other boundary violations or improper relationships with female patients. In over nine years of practicing psychiatry in the Commonwealth of Kentucky, Dr. Rank has treated thousands of female patients.

II. Conclusions of Law

Based on the foregoing findings of fact, the Hearing Officer makes the following conclusions of law:

34. The Kentucky Board of Medical Licensure is authorized by KRS Chapter 311 to initiate disciplinary proceedings against physicians' licenses to practice medicine in the Commonwealth of Kentucky.

35. An Inquiry Panel of the Board has the authority to issue an administrative complaint pursuant to KRS 311.591 and 201 KAR 9:081 Section 10.

36. The administrative hearing in this action is covered by the Kentucky Medical Practice Act, KRS 311.530 *et seq.*, and KRS Chapter 13B.

37. Dr. Rank is licensed to practice medicine in the Commonwealth of Kentucky, and is thus subject to discipline by the Kentucky Board of Medical Licensure, pursuant to KRS 311.530 *et seq.*

38. The Hearing Officer is authorized to conduct the hearing, hear the evidence, and render a recommended order. KRS 311.591 and KRS 13B.110.

39. Pursuant to KRS 13B.090(7), the Board has the burden to prove the allegations against Dr. Rank, and the penalty it seeks to impose, by a preponderance of the evidence.

40. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Rank violated KRS 311.595(5) by having sexual contact with Patient A while she was a patient under Dr. Rank's care. As noted in paragraph 32, above, Dr. Rank has admitted that he engaged in an improper sexual relationship with Patient A while Patient A was under Dr. Rank's professional care.

41. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Rank violated KRS 311.595(9) by engaging in unprofessional conduct of a character likely to harm Patient A.

42. In addition to Dr. Rank's sexual misconduct, it is concluded as a matter of law that the Board has met its burden of proving that Dr. Rank violated KRS 311.595(9) by engaging in unprofessional conduct of a character likely to harm Patient A by his failure to recognize established psychiatrist-patient boundaries for the professional relationship.

43. Although reference was made during the hearing to pre-hearing negotiations between the parties which would have required the imposition of safeguards narrowly designed to address Dr. Rank's treatment of female patients, Board's counsel urged the undersigned Hearing Officer to recommend to the Board's Hearing Panel that a summary suspension of Dr. Rank's entire practice of medicine, both psychiatry and internal medicine, be imposed for three months. Dr. Rank's counsel argued that there was no evidence presented suggesting that Dr. Rank should undertake some

remedial act (i.e., counseling, treatment, etc) or apply some restrictive condition on his practice (i.e., supervised treatment of female patients) which was not already in place. Therefore, he asserted, a suspension for any length of time would be "beyond punitive" and would impose a hardship on his current patients.

44. The undersigned rejects the recommendations of both parties regarding an appropriate length of suspension. First, it is concluded that suspension of Dr. Rank's practice is appropriate. A psychiatrist who engages in sexual relations with a patient before terminating the psychiatrist-patient relationship engages in unprofessional conduct warranting professional discipline. *Solloway vs. Department of Professional Regulation*, 421 So.2d 573 (Fla. App. 3 Dist. 1982)(a fundamental ethical teaching in the psychiatrist profession precludes sexual activity between a psychiatrist and his patient; discipline imposed for engaging in exploitative sexual relationship with 22 year old female before terminating the psychiatrist-patient relationship); *Andreski v. Commissioner of Education of the State*, 552 N.Y.S.2d 701 (A.D. 3 Dept. 1990)(psychiatrist's license suspended for six months, probated for five years, upon finding of inappropriate sexual conduct with a patient from whom he also solicited and purchased marijuana); *Daniels v. Board of Regents in Medicine*, 636 N.E.2d 258 (Mass. 1994)(psychiatrist's license revoked for engaging in sexual contact with four of his patients); *Pundi vs. Department of Professional Regulation*, 570 N.E.2d 458 (Ill. App. 1 Dist. 1991)(unprofessional conduct of a character likely to harm the public, justifying a six month suspension, followed by a two year probationary period, for psychiatrist who engaged in sexual relations with patient); *PET vs. Department of Health Services*, 638 A.2d 6 (Conn. 1994)(psychiatrist disciplined for engaging in sexual relations with four patients, the court rejecting claim that his management of transference was not inappropriate under behavior school of therapy). Furthermore,

although Dr. Rank appropriately acknowledged that his encounters with Patient A outside the office setting were not arranged as a part of formal "therapy," his failure to maintain acceptable boundaries by acting strictly as Patient A's psychiatrist was improper under any acceptable medical model for therapy of Patient A's depression or management of her pain and headaches; thus, Dr. Rank abrogated his responsibility to Patient A as her physician. Finally, despite some evidence presented to the contrary, it was found as fact that Dr. Rank's professional transgressions and boundary violations with Patient A occurred during the course of the psychiatrist-patient relationship. The undersigned adopts the conclusions reached in the following decisions which hold that a violation is committed, for which a sanction should be imposed, even if the professional relationship is terminated prior to the initiation of the sexual relationship with the patient: *Leon v. Ohio Board of Psychology*, 590 N.E.2d 1223 (Ohio 1992)(psychologist disciplined even though sexual relationship with patient began seven months after therapy had been terminated); *Gilmore v. Board of Psychologist Examiners*, 725 P.2d 400 (Or. App. 1986)(immaterial whether therapy had ended before the sexual relationships took place); *Haley v. Medical Disciplinary Board*, 818 P.2d 1062 (Wash. 1991)(surgeon's sexual relationship with sixteen year old patient justified revocation, despite finding that the sexual relationship began after professional relationship had terminated).

45. From a review of the cases outlined above, as applied to the facts at hand, it is concluded that a suspension of only three months would unnecessarily deprecate the seriousness of the ethical transgressions presented. The undersigned has given full consideration to the fact that the boundary violation was limited to one patient; that Dr. Rank has admitted the wrongfulness of his misconduct; that Dr. Rank assumed a pro-active role in pursuing remedial and corrective action; that any additional suspension will require his present clients be referred to other psychiatrists; and that

Dr. Rank's practice has already suffered enormous damage resulting from the proceedings relating to the emergency order of suspension. These factors have been given due regard as mitigating against a more serious sanction than that set out in the undersigned's recommended order, below. Notwithstanding these facts in mitigation, the violations committed in this case are quite serious. Regardless whether Patient A's willingness to participate in this relationship was truly voluntary, or whether Patient A was a victim of transference, the fact remains that Dr. Rank breached one of the most fundamental tenets of medical care by allowing his personal feelings to pollute the physician - patient relationship. Ultimately, it was Dr. Rank's responsibility, not Patient A's, to ensure that their relationship did not run afoul of the professional boundary lines. The fact that Dr. Rank had repeated unprotected intercourse with Patient A, knowing she was a married woman, demonstrated an amazing lack of true concern for his patient's best interests, and it serves to undermine his claims of acting without selfish motive. It is readily apparent from Patient A's testimony that her ability to extend her trust to another male in a professional setting has been seriously (perhaps irreparably) damaged, the corrective efforts for which shall be long in the unfolding. In short, this is not the type of misconduct which should be permitted to escape commensurate punishment.

46. Dr. Rank asserts that any sanction imposed by the Board not be punitive, but reflect the extenuating factors intertwined in his relationship with Patient A. The Board asserts that any disciplinary sanction imposed is necessarily punitive in nature. The undersigned concludes that a regulatory agency, in determining the propriety of a disciplinary sanction, must consider whether the sanction to be imposed will: 1) serve to adequately protect the public; 2) encourage corrective efforts to prevent future misconduct; **and** 3) mete out an appropriate punishment for the violation committed. The recommended order set out below, it is urged, reflects an appropriate consideration of these factors.

47. The preponderance of the evidence does not support a conclusion that Dr. Rank's violations of law through his sexual contact with Patient A and his boundary violations during the course of his treatment with Patient A are symptomatic of a present deficiency in his professional practice such that an absolute prohibition against the treatment of female patients is warranted. From the evidence presented, the undersigned is persuaded that the presence of a female chaperon during Dr. Rank's psychiatric treatment sessions with female patients presents a sufficient safeguard, if not an absolute safeguard, which is designed to address the type of violation presented during the period of Dr. Rank's probation, as recommended below.

III. Recommended Order

Based on the foregoing findings of fact and conclusions of law, it is recommended that the Board enter a final order as follows:

1. The license to practice medicine in the Commonwealth held by Douglas H. Rank, M.D., license number 27590, 3133 Custer Drive, Lexington, Kentucky 40517-4001, be suspended for a period of two years, the last eighteen months of which shall be probated, with actual suspension of six months;

2. Dr. Rank be credited twenty-five days toward his six month actual suspension for the time between July 22, 1999, and August 16, 1999, during which his license was under emergency suspension;

3. During the probationary period, Dr. Rank be permitted to treat female patients only in an office setting in the presence of a Board-approved chaperon, such as Ms. Diana Loh, who shall file quarterly reports with the Board demonstrating Dr. Rank's compliance with this requirement. There being no evidence that Dr. Rank's boundary violations have extended beyond his psychiatric

practice, this restriction is limited to that specialty and shall not apply to Dr. Rank's internal medicine practice;

4. Until the probationary period is completed, Dr. Rank be required to continue with his bi-weekly individual treatment with Dr. Oscherwitz and with his participation in the Kentucky Impaired Physicians Program. Dr. Rank shall file quarterly reports with the Board from Drs. Oscherwitz and Burns which detail Dr. Rank's compliance with the parameters of his respective treatment programs; and

5. Any subsequent statutory violation committed by Dr. Rank which involves a boundary violation through improper sexual contact with a patient, as determined by the Board following a KRS Chapter 13B hearing, shall result in revocation of licensure.

IV. Notice of Exception and Appeal Rights

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

> A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

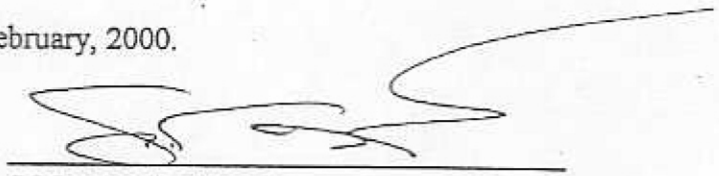
A party also has a right to appeal the Final Order of the agency pursuant to KRS 13B.140(1) which states:

> All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the

> petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO RECOMMENDED this 4th day of February, 2000.



SCOTT D. MAJORS
HEARING OFFICER
DIV. OF ADMINISTRATIVE HEARINGS
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE
FRANKFORT, KY 40601-8204
(502) 696-5442
(502) 573-8315 - FAX

CERTIFICATE OF SERVICE

I hereby certify that the original of these Findings of Fact, Conclusions of Law and Recommended Order were mailed this 4th day of February, 2000, by first class mail, postage prepaid, to:

JILL LUN
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

for filing; and a true copy was mailed, postage prepaid, to:

DAVID A WEINBERG
WEINBERG & CAPELLO
301 E MAIN ST STE 800
LEXINGTON KY 40507

C LLOYD VEST II
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KY BOARD OF MEDICAL LICENSURE
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Peggy Noble, by SDM
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Danny M. Clark, M.D.
President

Telephone (502) 429-8046
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KENTUCKY BOARD OF MEDICAL LICENSURE

Hurstbourne Office Park
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
www.kbml.org

May 22, 2003

Douglas H. Rank, M.D.
6462 Stover Avenue
Cincinnati, OH 45237

Dear Dr. Rank:

Our office is in receipt of the check you submitted for payment of the $200 fine previously imposed against your medical license. The Board has also completed their review of the documentation you submitted regarding the CME requirement. After reviewing this information, it has been determined that you are now in compliance with Board regulation 201 KAR 9:310.

Should you have any questions regarding the above, please contact our office at (502) 429-8046.

Sincerely,

Sandy K. Brooks
CME Coordinator

/skb

cc: C. Lloyd Vest, General Counsel

EDUCATION PAYS

FILED OF RECORD
MAY 09 2003
K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. CME134

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 958 BROADWAY PLAZA, PAINTSVILLE, KENTUCKY 41240

ORDER OF FINE; GRANTING SIX MONTHS TO COMPLY WITH 201 KAR 9:310

Based upon a review of the records of the Kentucky Board of Medical Licensure (hereafter "the Board"), the Board FINDS that the licensee has failed to 1) timely complete the continuing medical education requirements of 201 KAR 9:310; and, 2) obtain an extension of time for completion of the continuing medical education requirements. Accordingly, the Board ORDERS that a FINE of TWO HUNDRED DOLLARS ($200.00) is imposed against the licensee, with the fine being due and payable immediately.

Pursuant to 201 KAR 9:310, Section 7(2)(a), the licensee is GRANTED a period of six (6) months, until November 8, 2003, to come into compliance, by paying the fine imposed and by completing the continuing medical education requirements. NOTICE is hereby given that, if the licensee should fail to come into compliance within that six (6) month period, the license to practice medicine in the Commonwealth of Kentucky held by the licensee shall be immediately suspended and shall remain suspended until the licensee has submitted verifiable evidence that the licensee has completed the continuing medical education requirements.

SO ORDERED this 8th day of May, 2003.

DANNY M. CLARK, M.D.
PRESIDENT

Certificate of Service

I certify that the original of this Order was delivered to C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed, by certified mail return-receipt requested, to Douglas H. Rank, M.D., 958 Broadway Plaza, Paintsville, Kentucky 41240 on this 9th day of May, 2003.

C. Lloyd Vest II
General Counsel
310 Whittington Parkway, Suite 1B
Kentucky Board of Medical Licensure
Louisville, Kentucky 40222
(502) 429-8046