

MAY 10 2024

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2159

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY MICHAEL G. MCINTOSH, M.D., LICENSE NO. 19408,
34 WEST MAPLE AVENUE, FORT MITCHELL, KENTUCKY 41011

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel A, and Michael G. McIntosh, M.D. (hereafter "the licensee"), and, based upon their mutual desire to fully and finally resolve the pending investigation without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER**:

STIPULATIONS OF FACT

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

1. At all relevant times, Michael G. McIntosh, M.D. ("the licensee"), was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is child and adolescent psychiatry.
3. On or about March 30, 2022, the Board's General Counsel, Leanne K. Diakov, received a call from another licensee expressing concerns about the prescribing practices of Dr. McIntosh. According to the caller, the licensee is prescribing high doses of benzodiazepines with classes of gabapentinoids, including Lyrica and Neurontin (sometimes 400mg 4x/day), to patients in their 20's and 30's - who are also receiving addiction medicine treatment (including methadone).

4. The Board's investigator requested that the Cabinet for Health and Family Services, Office of Inspector General ("OIG") review the KASPER records for the licensee from January 1, 2020, through March 25, 2022.

5. On or around June 24, 2022, OIG Investigator, Duncan McCracken, R.Ph., issued a report on the licensee's KASPER records he reviewed and analyzed. Mr. McCracken found, in pertinent part,

[...] The report card lists Dr. McIntosh's specialty as Child and Adult Psychiatry. The prescriber report indicated 45 patients had three days or more of overlapping opioid prescriptions from all prescribers. The above also indicates 197 of Dr. McIntosh's patients had overlapping opioid and benzodiazepine prescriptions from all prescribers. Additionally, 53 patients filled controlled substances from five or more different prescribers.

The 2021 prescriber report card also indicated Dr. McIntosh issued 5769 Benzodiazepine/other sedatives prescriptions. The specialty average for the same time-period was 567 and the state average was 247. Dr. McIntosh issued 7133 prescriptions for stimulants while the specialty average was 567 and the state average was 247.

6. Mr. McCracken identified fifteen (15) patients based on the licensee's high number of prescriptions issued during the reporting period for the Board's review. The patient charts were subpoenaed from the licensee and provided to a Board Consultant for review. The licensee could not locate the file for one name on the OIG report and had no explanation for it.

7. A Board Consultant conducted a detailed review of each available patient chart selected by the OIG. In sum, the Board Consultant came to the following conclusions,

[...] I have come to a consistent concern based on the reviewed material that the care provided was below minimum standards for most cases. Dr. McIntosh, in my opinion, did not meet the minimum standard of care as it comes to providing adequate and minimal documentation for these patients he was treating. He asserts that the patients in review are quite complex with multiple diagnoses who, for some, required use of multiple abusable substances over years of treatment, but in my assessment the documentation was not able to support the assertion.

I found that most notes lacked the detail needed to support the diagnoses put forward and he did not regularly have documented safety assessments. He did seem to adhere to not using excessive dosing of any one agent but regularly used two medications (with risk of abuse) from the same class. While I understand that there are cases that force a practitioner beyond the norm of care, it should be clear in the documentation why this norm of care was breached. This latter matter is of grave concern to me. His consistent sparsity of documentation did not allow me to understand the rationale for the complex treatments. Thus, I have to raise concern regarding several areas: 1. Simultaneously using multiple medications with potential misuse (specifically two benzodiazepines at same time chronically), 2. Making multiple medication changes simultaneously, 3. Re-instituting medications with potential misuse after the charting indicates repeated concerns of medication abuse (i.e., repeated reports of medications being stolen), 4. The lack of adequate Mental Status Exam data in the notes, and 5. A sparsity of documentation for the need to pursue therapy for these complex patients. There were rarely discussions of therapy documented, or even whether therapy was happening, and if not, then why not. For Example, "doing fine" is not an adequate notation for an appointment's documentation. The lack of documentation unfortunately leads to an inability to understand the thinking behind his formulations and polypharmacy interventions.

[...]

My worksheets **do raise the alarm of possible gross negligence**, in order that these matters can be addressed. I do believe that his standard of care as indicated in the reviewed charts is below the acceptable minimum.

8. The Board Consultant's report, including review worksheets, is adopted and incorporated herewith in its entirety by reference.
9. On or about August 1, 2022, the licensee responded to the Board Consultant's report by letter explaining his prescribing practices. He also noted that "the time frame for this investigation has been almost completely COVID/telehealth dominated. I have maintained my patient load throughout the epidemic, but treatment and monitoring of patients has obviously been more difficult, even precarious at times." He also conceded that "[d]ocumentation of clinical thinking and rationale is definitely lacking[.]"
10. The Board Consultant reviewed and considered the licensee's response of August 1, 2022 and stated that the information provided did not change his findings about the licensee's practices and that his "assessment is giving Dr. McIntosh the benefit of any doubt."

11. On or about November 13, 2023, the licensee entered into an Interim Agreed Order (Diversion). This Order, in pertinent part, required him to obtain a clinical skills assessment from LifeGuard.

12. LifeGuard assessed the licensee on February 22-23, 2024 and issued a report. The licensee informed LifeGuard that he does not have a family doctor and that he writes his own prescriptions. He also acknowledged that "his notes were 'not thorough,' and he realized the need to conduct routine drug screening, but he did not have an electronic medical record-keeping system in his office, and writing prescriptions for drug testing was a long, drawn-out process." The report listed several areas of concern including,

- Dr. McIntosh is a psychiatrist who treats children and adults. He does not use an electronic health record or note templates that would standardize his documentation, such as prompting him to document issues related to informed consent, reliably include diagnoses, document vital signs, etc.
- Dr. McIntosh appears to treat a significant number of patients with stimulants for perceived ADHD. Although ADHD can be diagnosed in children based on parent reports and exams, the standard of care is to gather collateral information in the form of standardized ratings from a third party or obtain objective psychological testing.
- Dr. McIntosh demonstrated a significant need for improvement in his approach to medical decision-making. His lack of documentation of items such as vital signs, diagnoses, and any diagnostics used (such as labs and other screening tools) further emphasizes this issue.
 - Of particular note is Dr. McIntosh's lack of information concerning polypharmacy, such as his reasoning for prescribing a specific medication/dose or his frequent combining of controlled substances. Of increased concern is the combination of opioids and benzodiazepines, which is generally a contraindicated combination.
 - There was a lack of mention of co-morbidity of conditions, or any other medications being taken by patients. It was therefore unclear if Dr. McIntosh considered these items in his treatment plans.
 - Medication changes were often noted with something as simple as an arrow with no note about rationale for the decision or if the patient consented.

- Dr. McIntosh does not monitor weight or vital signs at appointments. He does not perform AIMS exams and denies regularly ordering labs for metabolic monitoring. [...]
- Dr. McIntosh does not appear to be current with standards of diagnosis, treatments, and prescribing of controlled substances. He appears to have a cavalier approach to polypharmacy which has been identified in general as a major source of adverse medical events.

13. LifeGuard's report then provided the following recommendations for the licensee to complete:

Physical and Neurocognitive Examination

- Dr. McIntosh should start seeing a PCP for regular medical follow-ups for monitoring and control of BPH, HTN, and his vascular health in general.
- His primary care or other provider should screen Dr. McIntosh for any indication of cognitive deficit. If cognitive concerns come to light, a full neurocognitive assessment¹ should be completed.

Educational Remediation: CME Courses

Dr. McIntosh should complete CME focusing on the following areas:

- CME of a minimum of 8-10 credits should be completed in the area of child & adolescent psychiatry and/or AD/ID [...]
- Dr. McIntosh should complete a medical record documentation course. Among other topics, this training should address the fact that the education of patients and/or their caregivers regarding the risks of combined use and drug test results should be documented.

[...]

- Dr. McIntosh should complete an intensive course in Controlled Substance Prescribing. Among other topics, this training should address the fact that the education of patients and/or their caregivers regarding the risks of combined use and drug test results should be documented.

[...]

¹ LifeGuard stated "It was determined that due to the level of remediation that is recommended for Dr. McIntosh a neurocognitive screening might not be the immediate concern."

- Dr. McIntosh should also complete focused continuing medical education (CME) on controlled substance prescribing as required by DEA.

[...]

Medical Record Documentation and Standards of Care

Standardization of documentation with attention to documenting informed consent should be implemented. Dr. McIntosh should ensure that he routinely documents weight, blood pressure, and pulse monitoring at baseline, and then at least quarterly.

If using telehealth, he should also confirm policies and procedures for the ongoing use of telehealth to ensure alignment with state and federal requirements for controlled substance prescribing.

Dr. McIntosh should review FDA prescribing alerts and document the rationale, attempts to reduce use, or at least consideration for non-CNS depressants. These interventions could include lower-toxicity antidepressants, atypical anti psychotics, or buspirone instead of benzodiazepines; and the use of nonpharmacologic therapies for the treatment of anxiety, such as cognitive behavioral therapy (CBT).

A review of dosing and recommended monitoring for common classes of medications, particularly benzodiazepines and atypical antipsychotics, is suggested.

[...]

Re-Testing

Once Dr. McIntosh has completed the recommended remedial education plan he should be retested in selected assessment components, including the Oral Case Presentations. This would provide a measure of the effectiveness of the education to influence Dr. McIntosh's ability to adapt to new standards of care and correct prescribing on controlled substances.

Practice Monitoring

Following the completion of the Remediation Plan and implementation of recommended policies and procedures, as well as improvement of medical record documentation, LifeGuard recommends a period of practice monitoring to determine compliance with adherence to established policies and procedures as well as to receive additional guidance for improvement and change management related to the complex care treatment of patients in the realm of child and adolescent psychiatry as well as adult psychiatry. Monitoring should take place at least quarterly for no less than one year.

14. On April 25, 2024, the licensee appeared before Inquiry Panel A and explained his prescribing practices. He admitted that he hasn't done regular urine drug screens,

particularly since the pandemic. He also informed the panel that he conducts most of his visits telephonically. He also confirmed that he does prescribe his own medications, but none are controlled substances. He explained that they are medications initially prescribed to him after his stroke while in the hospital. He did not schedule his follow-up appointment after the stroke and instead confers with his physician brother about his medical conditions.

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

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and (12). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this matter without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and based upon their mutual desire to resolve the pending matter without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice medicine in the Commonwealth of Kentucky held by MICHAEL G. MCINTOSH, M.D., is hereby RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT prescribe, dispense, administer, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
 - b. The licensee SHALL NOT practice telehealth, as defined in KRS 311.550(17);
 - c. The licensee SHALL NOT prescribe, dispense, or administer any prescription medications, controlled or otherwise, to himself or any member of his immediate family;
 - d. Within sixty (60) days of the filing of this Agreed Order, the licensee SHALL submit, at his expense, to a neuropsychological evaluation to be conducted by Raskin & Associates, 7400 New LaGrange Road, Suite #312, Louisville, Kentucky 40222, Tel. (502) 394-9990;
 - i. The licensee SHALL provide the Board's staff with written verification that he has successfully completed the evaluation promptly after completion;
 - ii. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that evaluator may provide a copy of any evaluation reports directly to the Board's Legal Department; and
 - e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee understands and agrees that the Board SHALL NOT consider a request by the licensee to modify or terminate this Agreed Order, unless and until:
 - a. The licensee has successfully completed a minimum of ten (10) Category I continuing medical education credit hours specific to pharmacology in the specialty of child and adolescent psychiatry and/or ADHD from the American Academy of Child & Adolescent Psychiatry, www.aacap.org, 3615 Wisconsin Avenue, N.W., Washington, DC 20016-3007, Tel. (202) 966-7300;
 - b. The licensee has successfully completed one (1) of the following medical record documentation courses:

- i. "Intensive Course in Medical Documentation," offered through Case Western Reserve University School of Medicine, 10900 Euclid Avenue, Cleveland, Ohio 44106, Tel. (216) 368-2000; or
 - ii. "Medical Record Keeping (MR-17)" offered through PBI Education, pbieducation.com, Tel. (904) 822-5448;
 - c. The licensee has successfully completed "Intensive Course in Controlled Substance Prescribing," offered through Case Western Reserve University School of Medicine, 10900 Euclid Avenue, Cleveland, Ohio 44106, Tel. (216) 368-2000;
 - d. The licensee has successfully completed the "Controlled Substance Prescribing: Comprehensive Education to Improve Quality of Care," offered by the Drug Enforcement Administration (DEA) through Clinical Care Options, LLC, <https://clinicaloptions.com/>, 12001 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191;
 - e. The licensee has obtained and reviewed dosing and monitoring recommendations for common classes of medication, particularly benzodiazepines and atypical antipsychotics, in *Prescriber's Guide: Stahl's Essential Psychopharmacology* (6th or 7th Edition), authored by Stephen M. Stahl; and
 - f. After completing the evaluations and education set forth in ¶¶3(a-e) immediately above, the licensee has completed a clinical skills re-assessment at LifeGuard, 400 Winding Creek Blvd., Mechanicsburg, Pennsylvania 17050, Tel. (717) 909-2590 or (800) 228-7823.
4. The licensee understands and agrees that if the Board should modify this Agreed Order in the future, to allow the licensee to resume the prescribing of controlled substances, it shall do so contingent upon the licensee entering into an Amended Agreed Order which shall require that the licensee engage with a Board-approved practice monitor, at least quarterly for no less than one year, and any other terms/conditions deemed appropriate by the Board at that time.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that the licensee has violated any term or condition

of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

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

SO AGREED on this 8th day of May, 2024.

FOR THE LICENSEE:


MICHAEL G. MCINTOSH, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:


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



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