

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1860

DEC 19 2018

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SURESH B. KODALI, M.D., LICENSE NO. 24553, 708 WESTPORT ROAD, SUITE 103, ELIZABETHTOWN, KENTUCKY 42701

ORDER OF INDEFINITE RESTRICTION

At its December 13, 2018, meeting, the Kentucky Board of Medical Licensure (hereinafter "the Board"), acting by and through its Hearing Panel A, took up this case for final action. The members of Panel A reviewed the Complaint, filed of record June 5, 2018; the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, dated October 5, 2018; the licensee's exceptions, filed of record October 22, 2018; and an October 23, 2018, memorandum from the Board's counsel.

Having considered all the information available and being sufficiently advised, Hearing Panel A ACCEPTS the hearing officer's Findings of Fact and Conclusions of Law and ADOPTS those Findings of Fact and Conclusions of Law and INCORPORATES them BY REFERENCE into this Order. (Attachment) Hearing Panel A FURTHER ACCEPTS AND ADOPTS the hearing officer's recommended order and in accordance with that recommended order, Hearing Panel A ORDERS:

1. The license to practice medicine held by Suresh B. Kodali, M.D., SHALL BE RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME to begin immediately upon the date of filing of this Order of Indefinite Restriction;
2. During the effective period of this Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION:
 - a. The licensee is prohibited from consulting, evaluating, diagnosing or otherwise providing treatment for any female patients;

- b. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE to the Board the costs of the proceedings in the amount of \$6,260.03 within one (1) year from entry of this Order; and
- c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

SO ORDERED on this 19th day of December, 2018.



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

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Order of Indefinite Restriction was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed, first-class postage prepaid, to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601; and copies were mailed via certified-mail to the licensee, Suresh B. Kodali, M.D., License No. 24553, 708 Westport Road, Suite 103, Elizabethtown, Kentucky 42701, and to his counsel, C. Mike Moulton, Moulton & Long, PLLC, 58 Public Square, Elizabethtown, Kentucky 42701 on this 19th day of December, 2018.



Sara Farmer
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-7150

EFFECTIVE DATE AND APPEAL RIGHTS

Pursuant to KRS 311.593(1) and 13B.120, the effective date of this Order will be thirty (30) days after this Order is received by the licensee or the licensee's attorney, whichever shall occur first.

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 or Assistant 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.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1860

FILED OF RECORD
OCT 09 2018
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY SURESH B. KODALI, M.D., LICENSE NO. 24553, 708 WESTPORT ROAD, SUITE 103, ELIZABETHTOWN, KENTUCKY 42701

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER**

The Kentucky Board of Medical Licensure brought this action against the license of Suresh B. Kodali, M.D., charging him with violating KRS 311.595(9) by inappropriately touching a female patient. The administrative hearing on the Board's allegations was held on August 8, 2018. Hon. Sara Farmer represented the Board, and Hon. C. Mike Moulton represented Dr. Kodali, who also attended the hearing.

After considering the testimony of the witnesses, the exhibits admitted into evidence, and the arguments of counsel, the hearing officer finds Dr. Kodali guilty of violating KRS 311.595(9) and recommends the Board take any appropriate action against his license for that violation. In support of his recommendation the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. On June 5, 2018, the Board issued the *Complaint* charging Dr. Kodali with violating KRS 311.595(9). Exhibit 1, Tab E.
2. Under that statute, a physician is subject to discipline if he has "engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof."

3. The substance of the Board's allegations of misconduct against Dr. Kodali in the *Complaint* are based upon a grievance filed with the Board on June 26, 2017, by the person identified in the *Complaint* as Patient A. *Complaint*, Paragraphs 3 and 4, page 2; Exhibit 1, Tab A, marked page 21-23.

4. Patient A alleged that she had been treated by Dr. Kodali for one and a half to two years for Attention-Deficit/Hyperactivity Disorder (ADHD) without any issues or concerns. *Complaint*, Paragraph 4, page 2; Exhibit 1, Tab A, marked page 22.

5. On her second to last patient visit on April 25, 2017, however, she alleged Dr. Kodali "seemed a little more friendlier (sic)" and gave her a hug, which she thought was "weird." Exhibit 1, Tab A, marked page 22.

6. On her last patient visit on May 23, 2017, Patient A asserted that after writing the prescription for her ADHD medication, Dr. Kodali:

"stood up from his desk where he has & always sits & hugged me. Then he tried to stick his hand up my shirt to touch my breasts. I felt so uncomfortable & pulled away and told him I have to go. Then he said he was sorry."

Exhibit 1, Tab A, marked pages 22- 23; *Complaint*, Paragraph 4, pages 1-2.

7. Patient A stated that she didn't return for her next scheduled visit on June 20, 2017, and she hasn't sought any additional treatment from Dr. Kodali. Exhibit 1, Tab A, marked page 23; *Complaint*, Paragraph 4, pages 1-2.

8. Upon issuance of the *Complaint*, the Board also issued an emergency order of restriction against Dr. Kodali's license that sets forth the same substantive factual allegations of misconduct toward Patient A, and the order "prohibited him from consulting, evaluating,

diagnosing, or otherwise providing treatment for any female patients until resolution of the Complaint” Exhibit 1, Tab D, *Emergency Order of Restriction*, page 6.

9. Dr. Kodali has vehemently denied all allegations of misconduct by Patient A at both the hearing on the *Emergency Order* and at the hearing on the *Complaint*.

10. Dr. Kodali asserts the misconduct alleged by Patient A never happened, and he denies ever hugging or touching her.

11. Furthermore, he asserts that he could not have engaged in the misconduct that allegedly took place in his office due to the fact that he provides care to patients while sitting behind a large desk, which would make it very difficult for him to reach across it to have any physical contact with a patient, much less the type of misconduct alleged by Patient A.

12. He also questions Patient A’s credibility on several grounds, including the assertion that Patient A may have fabricated the allegations against him due to her dissatisfaction with him as a result of his refusal to provide her with an excuse to miss training required by her employer.

13. After conducting the administrative hearing on the *Emergency Order*, the hearing officer issued a Final Order on June 20, 2018, affirming the emergency order based upon his determination that “there is substantial evidence in the record to support the Board’s determination that Dr. Kodali engaged in conduct in violation of KRS 311.595(9) that constitutes an immediate danger to the public health, safety or welfare.” *Final Order Affirming the Emergency Order of Restriction*, page 11.

14. Although disagreeing about the substantive allegations of misconduct, both Dr. Kodali and Patient A agree that during the two office visits at issue in this action, no one else was

present in the office while she was being treated by Dr. Kodali and the door to the office was closed.

15. Therefore, the central issue in this action is the credibility of Dr. Kodali and Patient A regarding her allegations and his denials of inappropriate physical contact.

16. Patient A did not testify at the hearing on the *Emergency Order*, but the hearing officer considered her written grievance filed with the Board in making his determination that there was substantial evidence in the record in support of the Board's allegations.

17. With her testimony at the administrative hearing on the *Complaint*, the hearing officer had the opportunity to make a full assessment of her and Dr. Kodali's credibility in making the determination whether the preponderance of the evidence supports her allegations of misconduct.

18. After considering the testimony from Patient A, Dr. Kodali, and the other witnesses, and after considering the additional evidence admitted at the administrative hearing, the hearing officer finds that Patient A's allegations are believable and that Dr. Kodali's denial of her allegations are not.

19. Dr. Kodali has been licensed to practice medicine since 1978, and he has been licensed to practice medicine in Kentucky since 1986. Exhibit 1, Tab A, page 18.

20. His medical specialty is psychiatry. Id.

21. Dr. Kodali does not dispute Patient A's assertion that he had been treating her for one and a half to two years for ADHD. Exhibit 1, Tab A, page 22.

22. Dr. Kodali has described Patient A as being "pleasant and friendly," and he informed the Board's investigator that he "does not remember any issues with the patient nor

does he remember ever hugging her or having any physical contact” with her. Exhibit 1, Tab A, marked pages 19.

23. Kodali testified that he had also treated Patient A’s son, and she had told Dr. Kodali she was “extremely happy” with his treatment. DVD of Administrative Hearing on Emergency Order (hereinafter “DVD I”), 9:20 a.m.

24. After the Board’s investigation of Patient A’s grievance and prior to the issuance of the *Complaint*, Dr. Kodali entered into the *Interim Agreed Order (Diversion)* [hereinafter, *Agreed Order*] dated December 5, 2017, which required him to be assessed through the *Vanderbilt Comprehensive Assessment Program for Professionals* [hereinafter, “VCAP”]. Exhibit 1, Tab A, marked pages 3-6.

25. Under the terms of the *Agreed Order*, Dr. Kodali was required to “participate in and complete the [VCAP] assessment as scheduled and as directed by Vanderbilt, at the licensee’s expense.” Exhibit 1, Tab A, marked page 3.

26. He also agreed that “the licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.” Exhibit 1, Tab A, marked page 4 [emphasis in original].

27. Dr. Kodali further agreed that if he “has failed to comply with any condition of this Interim Agreed Order . . . the Panel or its Chair may immediately terminate this Interim Agreed Order and issue a Complaint and, if appropriate, an Emergency Order. Exhibit 1, Tab A, marked pages 4-5.

28. Dr. Kodali attended the VCAP evaluation on March 5-6, 2018, but he declined on the advice of counsel to participate in the polygraph examination that would have been part of the VCAP evaluation. Exhibit 1, Tab A, marked pages 7 and 17; Exhibits 3 and 4.

29. In its report issued after the evaluation VCAP noted that “Dr. Kodali’s extreme defensiveness on all testing suggests the need to rely more heavily on collateral information to obtain an accurate assessment of his functioning,” which included use of a polygraph examination. Exhibit 1, Tab A, marked page 17.

30. Because Dr. Kodali refused to participate in the polygraph examination, VCAP stated it was “not prepared to make a statement on Dr. Kodali’s fitness to practice.” Exhibit 1, Tab A, marked page 17.

31. VCAP concluded that even though Dr. Kodali had participated in the other portions of the evaluation, “this evaluation is incomplete and indeterminate,” due to VCAP’s inability to “resolve the discrepancy between the statement of the alleged victim and Dr. Kodali’s denial in the context of his marked and pervasive defensiveness.” Exhibit 1, Tab A, page 17.

32. After receipt of VCAP’s report, the Board issued the *Complaint* charging Dr. Kodali with violating KRS 311.595(9).

33. Dr. Kodali asserts that he declined to participate in the polygraph examination due to the unreliability of such tests, due to questions about the need for the test in light of the scheduled evaluation, and due to concerns about the use of the examination results in Board proceedings. Exhibits 3 and 4.

34. Consistent with his testimony during the hearings before the Board, Dr. Kodali asserted during the VCAP evaluation that the alleged misconduct “didn’t happen” and that it would have been physically impossible for him to hug Patient A due to his office layout and where he and the patient sat. Exhibit 1, Tab A, marked page 9.

35. He informed VCAP that there had been one instance in which he had a disagreement with Patient A over his refusal to provide her with a letter excusing her from responsibilities related to a training program in which she was enrolled. Exhibit 1, Tab A, marked page 9.

36. That disagreement had allegedly occurred a few months before she filed her grievance against him. DVD I, 11:10 a.m.

37. Dr. Kodali, however, also discounted the significance of that dispute by describing her as having been only a “little upset” and as having continued with her treatment. Id.; Exhibit 1, Tab A, marked page 9.

38. At the administrative hearing on the *Complaint* Dr. Kodali offered no further testimony or other evidence regarding Patient A having been upset with him about his failure to write a medical excuse.

39. Patient A’s last appointment with Dr. Kodali took place on May 23, 2017, but she had scheduled a later appointment scheduled for June 20, 2017, which she did not keep. Exhibit 1, Tab A, marked pages 19 and 23; DVD of hearing on the *Complaint* (hereinafter DVD II), 9:20 a.m.

40. Other than his failure to provide her with a medical excuse, Dr. Kodali offered no opinion based upon Patient A’s treatment history or upon his interactions with her why she may have missed her last scheduled appointment, terminated their professional relationship, or fabricated the allegations against him. DVD II, 9:21 a.m.

41. At the administrative hearing Dr. Kodali agreed that if a physician hugged a patient or placed his hand up a patient's shirt in the same manner as alleged by Patient A, that would constitute unethical and unprofessional conduct. DVD II, 9:21 a.m.

42. Patient A started seeing Dr. Kodali in 2014 after her son's pediatrician referred him to Dr. Kodali for treatment of ADHD. DVD II, 10:03-10:04 a.m.

43. Since Patient A had been satisfied with her son's treatment, Patient A began seeing Dr. Kodali herself a year or two later for the treatment of her own ADHD. DVD II, 10:04 a.m.

44. Patient A had an appointment with Dr. Kodali every month at which he'd briefly review her condition, occasionally take her weight, and at the end of the appointment provide her with a written prescription for her ADHD medication. DVD II, 10:04-10:06 a.m.

45. Dr. Kodali sat behind his office desk during the appointment, and Patient A sat on the couch in front of the desk. DVD II, 10:06 a.m.; Exhibit 2.

46. The office door was closed, and no one else was present during an appointment, although Ms. Candice Walters, the office manager, may have entered the office on occasion if Dr. Kodali had requested a KASPER report or if he had a question about something she had written in a patient chart. DVD II, 12:57-12:58 p.m.

47. At the end of her appointment in April 2017, Dr. Kodali wrote Patient A's prescription while he was seated at his desk, had Patient A weigh herself on the scale that is located next to the desk, and stood up from his chair to hand her the prescription for her ADHD medication. DVD II, 10:07-10:08 a.m.; Exhibit 2-4.

48. After handing her the prescription, Dr. Kodali gave her a hug, which she thought was "awkward" and "weird." DVD II, 10:07 a.m.

49. There was no discussion or comment about giving or receiving a hug before Dr. Kodali hugged her. DVD II, 10:08 a.m.

50. Thereafter, Patient A left the office. DVD II, 10:10 a.m.

51. Finding Dr. Kodali's conduct to be awkward and weird is not surprising in light of Ms. Walters's testimony that she herself would have been surprised and shocked to see Dr. Kodali touch or hug a patient since that would have been unusual and not in his nature. DVD II, 12:58-12:59 p.m., 1:03-1:04 p.m.

52. Seth M. Carter, Patient A's husband and fiancé at the time of the misconduct by Dr. Kodali, testified at the administrative hearing. DVD II, 9:49 a.m.

53. He is a member of the Elizabethtown, Kentucky, fire department and the Kentucky Army National Guard. DVD II, 9:48 a.m.

54. Soon after her appointment with Dr. Kodali in April 2017 Patient A told her husband that Dr. Kodali had given her a hug that had "an embrace to it, kind of a squeeze," which Mr. Carter told her seemed "kind of inappropriate." DVD II, 9:50 a.m.

55. Therefore, he told Patient A that based upon his experience as a member of the military and in order to prevent sexual assault and harassment, she should have confronted him by stating, "Look, that's not OK with me." DVD II, 9:50 a.m.

56. Since he didn't know Dr. Kodali, however, Mr. Carter believed his conduct may have been an accident, but she needed to clarify with him what had happened. DVD II, 9:54-9:55 a.m.

57. There was no evidence presented that Patient A attempted to discuss her concerns with Dr. Kodali.

58. Her next appointment with Dr. Kodali was on May 23, 2017, and it proceeded in the usual manner for other appointments. DVD II, 10:11 a.m.

59. At the conclusion of the five to ten minute appointment, Dr. Kodali wrote the prescription while Patient A weighed herself on the scale beside his desk. DVD II, 10:12 a.m.

60. Dr. Kodali stood up and looked at her weight, gave her the prescription, and again gave Patient A a hug. DVD II, 10:12-10:13 a.m.

61. This time, however, he also moved his hand underneath her shirt and up to a breast and touched it under her bra. DVD II, 10:13-10:15 a.m.

62. Patient A was shocked by Dr. Kodali's conduct and pulled herself away, stating she had to go, and left the office. DVD II, 10:15 a.m.

63. As Patient A left the office she remembers Dr. Kodali saying, "I'm sorry." DVD II, 10:15 a.m.

64. Patient A felt uncomfortable and embarrassed, thinking that she had done something to provoke Dr. Kodali's conduct since he had never done anything like that before. DVD II, 10:15 a.m.

65. The usual procedure for a patient after an appointment with Dr. Kodali is to stop at the receptionist's desk to make the next appointment. DVD II, 12:56 p.m.

66. Because she was shocked by what had happened, Patient A didn't know what to say about it by the time she reached the receptionist's desk and in light of the fact the waiting room was filled with patients. DVD II, 10:17 a.m.

67. Patient A's son was thirteen years old at the time and often had his appointment immediately before her own, but she couldn't recall whether he was waiting for her in the reception area on that date. DVD II, 10:17 a.m.

68. Because she didn't know how she should respond to Dr. Kodali's actions, Patient A simply followed the usual procedure by scheduling her next appointment, but she had no intention of ever going back. DVD II, 10:16-10:17 a.m.

69. The May 23, 2017, appointment was the last time Patient A sought treatment from Dr. Kodali. DVD II, 10:16 a.m.

70. After she returned home, Mr. Carter asked Patient A about the appointment because she "seemed very reserved" and not her typical self. DVD II, 9:51 a.m.

71. After some prodding, Patient A told him that Dr. Kodali had hugged her again, but this time, he also put his hand up her shirt and touched her inappropriately. DVD II, 9:51-9:52 a.m.

72. At the hearing Mr. Carter recalled that Patient A had not told him that Dr. Kodali touched her breast but only that he had put his hand up her shirt and tried to touch her "inappropriately." DVD II, 9:57 a.m.

73. She told Mr. Carter that she would respond to Dr. Kodali's conduct by just not seeing him anymore, but Mr. Carter told her that she should file some kind of report because it could happen to someone else. DVD II, 9:52-9:53 a.m.

74. Patient A did not act on Mr. Carter's request immediately, but three days after skipping her last scheduled appointment with the intent to terminate their doctor/patient relationship, Patient A drafted the grievance to alert the Board, stating in her grievance that Dr.

Kodali's conduct was "not right" and "wrong in so many different ways." Exhibit 1, Tab A, marked page 21.

75. Patient A suggested in her grievance a direct connection between her decisions to skip the last scheduled appointment and to file the grievance. She stated that she "didn't go" to her last appointment and "wasn't going to say anything nor report [his misconduct]," but her fiancé convinced her that she should report Dr. Kodali because he could be engaging in the same misconduct with other patients. Exhibit 1, Tab A, marked page 23.

76. Dr. Kodali asserts several reasons why he believes the Board should find Patient A's allegations not credible.

77. Dr. Kodali asserts Patient A would have been expected to shout, scream, or protest to Dr. Kodali himself at the time of the misconduct or to his staff upon exiting the office.

78. Certainly, a person could react in the manner Dr. Kodali suggests, but the manner in which Patient A did react is also believable. She was shocked by his conduct because it was completely unexpected and inconsistent with their previous relationship and with his customary demeanor. DVD II, 12:47 p.m.

79. Patient A's allegations of Dr. Kodali engaging in misconduct are also believable in light of her statement that she immediately began to wonder what she may have done to cause his actions. DVD II, 10:15 a.m.

80. The hearing officer also finds that Patient A's statement that Dr. Kodali apologized for his conduct is consistent with her having appeared profoundly shocked by his conduct and with his otherwise professional and courteous demeanor.

81. Dr. Kodali asserts that Patient A's allegations are not believable because she initially alleged he attempted to touch her breast, but she later alleged that he actually touched a breast. DVD II, 9:57 a.m., 10:15 a.m., 10:45-10:47 a.m., and 11:03 a.m.; Exhibit 1, Tab A, marked page 21.

82. Patient A was consistent in alleging that Dr. Kodali reached up her shirt and attempted to touch her breast, irrespective of whether she stated he was actually successful. Since she asserted at the administrative hearing, when she was subject to specific questioning by both parties about what had actually occurred, the hearing officer finds her assertion that Dr. Kodali physically touched her breast underneath her bra is believable. DVD II, 10:15 a.m.

83. Furthermore, in light of the fact that Patient A was shocked and embarrassed by his conduct, it's not surprising that she would be more comfortable telling her fiancé, the Board investigator, and the Board itself through her grievance that he attempted to engage in sexual misconduct rather than acknowledging his attempt had been successful.

84. Dr. Kodali asserts that he could not have engaged in the misconduct as alleged by Patient A because it would have been physically impossible for him to reach across his desk to hug and touch her.

85. Patient A, however, has never asserted the misconduct occurred as he reached across the desk. In her grievance, Patient A asserted simply that "he stood up from his desk where he has & always sits & hugged me" without clarifying his exact position in relationship to her own. Exhibit 1, Tab A, marked page 23.

86. At the administrative hearing, Patient A clarified that the misconduct occurred as she stood near the scale at the side of his desk. DVD II, 10:13-10:14 a.m.

87. Dr. Kodali also asserts that the small size and tight configuration of his office would have prevented him from engaging in the misconduct at the location and in the manner alleged by Patient A. Exhibit 2-1 through 2-5.

88. The pictures of his office do not support Dr. Kodali's assertion, and there sufficient space near the office scale for him to have touched Patient A in the manner she described.

89. There is no dispute that Patient A had been very satisfied with Dr. Kodali's treatment of her son and had a cordial relationship with him prior to her bringing the allegations of misconduct against him. DVD II, 9:19 a.m.

90. Shortly before the administrative hearing, Patient A file a report with the Elizabethtown police department after she realized the Board would not automatically forward her grievance to the police. DVD II, 9:58-10:00 a.m.

91. Patient A has not filed a lawsuit against Dr. Kodali, has not hired an attorney, and has no intention to do either regarding her allegations against him. DVD II, 10:20 a.m.

92. The only credible explanation offered at the hearing why Patient A terminated her professional relationship with Dr. Kodali is that her allegations against him are true.

93. Furthermore, her explanation for not immediately protesting to Dr. Kodali or his staff and for her reluctance to file a grievance with the Board are also believable considering her shock at his conduct, the presence of other patients in the waiting room, and her initial preference for addressing the situation by not seeing him again instead of filing a grievance with the Board.

94. Although the hearing officer has found Patient A's allegations to be credible based upon his review and consideration of her and Dr. Kodali's testimony, the hearing officer notes

that Dr. Kodali refused to participate in the polygraph examination as requested by VCAP in its effort to resolve the discrepancies between his and Patient A's assertions.

95. While asserting that such examinations are unreliable and often inconclusive, Dr. Kodali offered to submit to the exam in exchange for the Board's agreement to dismiss any charges of misconduct "if a polygraph examination results in a conclusion that Dr. Kodali is telling the truth." Exhibit 4, page 1.

96. In its report to the Board VCAP set out its reasons for requesting a polygraph examination for Dr. Kodali. In light of his "extreme defensiveness on all testing" VCAP sought to rely on collateral information to accurately assess his fitness to practice medicine. Exhibit 1, Tab A, marked page 17.

97. VCAP noted in its evaluation report that "the Federation of State Medical Boards Guidelines for evaluation of sexual boundary complaints recommends the use of polygraph examination in assessing physician boundary violations," and that "it is [VCAP's] practice to utilize polygraph testing to clarify discrepancies between the account of the physician and the alleged victim." *Id.*

98. Thus, the polygraph exam was just one tool that may be used by VCAP in the evaluation process, and VCAP determined that a polygraph examination would offer assistance in evaluating Dr. Kodali's denial of Patient A's allegations specifically because "of his marked and pervasive defensiveness." *Id.*

99. Dr. Kodali, however, refused to participate in the polygraph examination even though he knew it could have been used by VCAP to support his defense to Patient A's allegations.

100. Under the terms of the *Agreed Order* between Dr. Kodali and the Board, his refusal to take the polygraph examination would serve as grounds for the Board terminating the *Agreed Order* and issuing the *Complaint* and the *Emergency Order*. Exhibit 1, Tab A, marked pages 3-5.

101. The Board acted in accordance with the *Agreed Order* in bringing the present charges against him, but the Board did not charge in this action a violation of the Board's statutes based upon Dr. Kodali's failure to comply with the terms of the agreed order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.
2. The administrative hearing was conducted in accordance with the provisions of KRS Chapter 13B and KRS 311.591.
3. Under KRS 13B.090(7), the Board had the burden to prove by a preponderance of the evidence the allegations against Dr. Kodali.
4. The Board has met its burden to prove a violation of KRS 311.595(9), which subjects a licensee to discipline if he has "engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof."
5. Based upon the fact that Dr. Kodali hugged Patient A on two occasions and on the second occasion also placed his hand up her shirt and attempted to touch her breast, the hearing officer finds that on each occasion Dr. Kodali engaged in physical contact with Patient A that was unwelcome and uninvited and was for his own emotional and sexual gratification.
6. Such conduct, by Dr. Kodali's own admission, is dishonorable, unethical, and unprofessional conduct in violation of KRS 311.595(9).

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. Kodali guilty of violating KRS 311.595(9) and impose any appropriate sanction for that misconduct.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

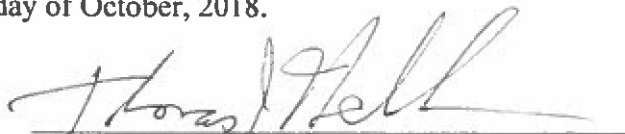
A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

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 5th day of October, 2018.



THOMAS J. HELLMANN
HEARING OFFICER
810 HICKMAN HILL RD
FRANKFORT KY 40601
(502) 330-7338
thellmann@mac.com

CERTIFICATE OF SERVICE

5th I hereby certify that the original of this RECOMMENDED ORDER was mailed this day of October, 2018, 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 sent by first-class mail, postage prepaid, to:

SARA FARMER
ASSISTANT GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
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THOMAS J. HELLMANN

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