

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1907  
ADMINISTRATIVE ACTION NO. 19-KBML-0078

FILED OF RECORD  
OCT 17 2019  
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY HENRY D. BABENCO, M.D., LICENSE NO. 37712, P.O. BOX 427, 88 CEDAR STREET, KUTTAWA, KENTUCKY 42055

**AGREED ORDER OF PERMANENT SURRENDER**

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Hearing Panel A, and Henry D. Babenco, M.D., (“the licensee”), and, based upon their mutual desire to fully and finally resolve the complaint, hereby ENTER INTO the following **AGREED ORDER OF PERMANENT SURRENDER**:

**STIPULATIONS OF FACT**

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

1. At all relevant times, Henry D. Babenco, M.D. (“the licensee”), was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is addiction psychiatry.
3. On or about April 16, 2019, the licensee was indicted on one (1) count of conspiracy to distribute and dispense controlled substances, in violation of 21 U.S.C. §§ 841(a)(1) and (a)(1)(C) and 846; seven (7) counts of distributing and dispensing Schedule II controlled substances (including morphine, oxycodone and oxymorphone) outside the usual course of professional practice and not for a legitimate medical purpose, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2; and one (1) count of money laundering, in violation of 18 U.S.C. §§ 2 and 1957.

4. On or about April 22, 2019, an Emergency Order of Suspension was issued against the licensee's license to practice medicine.
5. On or about July 26, 2019, during a prehearing conference, the licensee indicated that it was his desire and intent to permanently surrender his medical license, without possibility of reinstatement.
6. The licensee had an opportunity to seek counsel prior to entry of this Agreed Order of Permanent Surrender and acknowledges that he knowingly and voluntarily enters into this Agreed Order of Permanent Surrender.

#### STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. While the licensee denies any wrongdoing or violation, he acknowledges and agrees that, based upon the Stipulations of Fact the Hearing Panel could find that the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(4), and KRS 311.595(12). In addition, if he is convicted or enters a plea of guilty to the charges in the pending indictment, he would be guilty of a violation of KRS 311.595(4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Permanent 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 Permanent Surrender.

**AGREED ORDER OF PERMANENT SURRENDER**

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

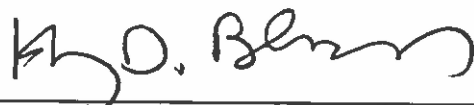
1. The licensee, Henry D. Babenco, M.D., hereby SURRENDERS his Kentucky medical license forever and PERMANENTLY, effective immediately upon the filing of this Agreed Order of Permanent Surrender.
  - a. From the date of filing of this Agreed Order of Permanent Surrender forward, the licensee SHALL never 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 – within the Commonwealth of Kentucky.
  - b. The licensee understands and agrees that any violation of the terms of this Agreed Order of Permanent Surrender may provide a legal basis for additional disciplinary action and a legal basis for criminal prosecution for practicing medicine without a license. If the Board should receive information that, after the date of filing of this Agreed Order of Permanent Surrender, the licensee has performed an act which would constitute the “practice of medicine” within the Commonwealth of Kentucky, it will aggressively pursue the criminal prosecution of the licensee for such acts, to the full extent of the law.
  - c. As an express condition for the entry of this Agreed Order of Permanent Surrender, each party understands and agrees that neither the Board nor its Panels will ever consider any petition for reinstatement of license, any motion or request for modification or change of the terms of this Agreed Order of Permanent Surrender or special request for consideration for relief filed by the licensee. This Agreed Order of Permanent Surrender is expressly designed to serve as the complete and final termination of the legal relationship between this Board and this licensee. Any communication by the licensee and/or his agents to the Board attempting to revive that legal relationship will be returned without being provided or forwarded to any Board member.
2. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Permanent Surrender, the licensee’s practice shall 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 Permanent 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 agree and stipulate that a violation of any term or condition of this 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 of Permanent Surrender.

3. The licensee understands and agrees that any violation of the terms of this Agreed Order of Permanent Surrender 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 6<sup>th</sup> day of AUG, 2019.

FOR THE LICENSEE:

  
\_\_\_\_\_  
HENRY D. BABENCO, M.D.

N/A  
\_\_\_\_\_  
COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

  
\_\_\_\_\_  
CHAIR, HEARING PANEL A



LEANNE K. DIAKOV  
General Counsel  
Kentucky Board of Medical Licensure  
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Louisville, Kentucky 40222  
(502) 429-7150

**WAIVER OF RIGHTS**

I, Henry D. Babenco, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 1907, Administrative Action No. 19-KBML-0078. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

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

Executed this 6<sup>th</sup> day of AUG, 2019.



HENRY D. BABENCO, M.D.  
RESPONDENT

N/A

COUNSEL FOR THE RESPONDENT  
(IF APPLICABLE)