

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NOS. 687 AND 764

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435, 2320 VILLAGE DRIVE, LOUISVILLE, KENTUCKY 40205

AMENDED 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 Warren M. Cox, IV, M.D., and, based upon the Panel Chair's approval of the licensee's practice location, hereby ENTER INTO the following **AMENDED AGREED ORDER OF INDEFINITE RESTRICTION**:

AMENDED STIPULATIONS OF FACT

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

1. At all relevant times, Warren M. Cox, IV, M.D., was either licensed by the Board to practice medicine within the Commonwealth of Kentucky or had previously been licensed to do so;
2. The licensee's medical specialty is Psychiatry;
3. At its August 17, 2000 meeting, this Panel took up Board Case No. 687 for final action, following an evidentiary hearing. After considering all of the information available to it, Panel A adopted and fully incorporated the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Order. The Panel voted to revoke the licensee's Kentucky medical license. Due to an Order of the Jefferson Circuit Court, the Order of Revocation did not become effective at that time. Following a ruling by the Kentucky Court of Appeals, reversing the Order

of the Jefferson Circuit Court and affirming the Panel's Order of Revocation, an Amended Order of Revocation was issued on August 7, 2003, with the revocation becoming effective on August 9, 2003. The factual findings and legal conclusions supporting that Amended Order of Revocation may be found in that Order. The licensee has not practiced medicine in the Commonwealth of Kentucky since August 9, 2003;

4. At its August 22, 2002 meeting, this Panel took up Case No. 764 for final action, following an evidentiary hearing. After considering all of the information available to it, Panel A adopted and fully incorporated the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Order. The Panel voted to suspend the licensee's medical license for three (3) calendar months and then placing his medical license on probation for the remainder of a five-year term, with various terms and conditions. While the Jefferson Circuit Court temporarily stayed the suspension, the licensee was ordered to begin compliance with various terms of probation pending judicial review. Following a subsequent ruling by the Jefferson Circuit Court affirming the Panel's Order, an Amended Order of Suspension/Probation was issued on June 13, 2003. Under the terms of that Order, the 3-month suspension became effective on June 30, 2003, with the remainder of his probation to follow. As noted, the licensee's medical license was revoked a little over a month into his 3-month suspension period. He did not fully complete the terms of his probation. The factual findings and legal conclusions supporting the Amended Order of Suspension/Probation are found in that Order;

5. The licensee has provided verification that he fully reimbursed the victim and paid the fine, as required by the Amended Order of Revocation in Board Case No. 687. As further required by that Order, the licensee completed neuropsychological and psychiatric evaluations prior to petitioning the Panel for reinstatement of his medical license;
6. The Axis I diagnosis of his neuropsychological evaluation was Attention-Deficit/Hyperactivity Disorder, predominantly inattentive Type, by history. The summary and discussion conclude with the following summary,

In summary, this evaluation finds essentially no change in Dr. Cox's neurocognitive or psychological status since 2001 when two neuropsychological evaluations were conducted. Conclusions drawn then remain valid and relevant at the present time. Dr. Cox's resistance and continued defensiveness regarding the sanctions handed down by his professional board reflects his personality style, however such "benign arrogance" does not reflect either overt psychiatric pathology or a neurologically based lack of insight or behavioral disinhibition. It is expected that Dr. Cox may continue to have problems in professional areas in which he does not have primary authority. However, there is no overt compromise this individual's capacity to handle the intellectual demands of his profession, or the capacity to maintain behavioral control, or result in his being at risk of any specific incompetent, inculpable, or unethical decisions and behaviors about which the medical licensure board might be concerned....
7. The Axis I diagnoses of his psychiatric evaluation were History of ADHD by patient report and History of depression by patient report.
8. Pursuant to his petition for reinstatement, the licensee entered into the original Agreed Order of Indefinite Restriction on June 8, 2006.
9. The licensee completed the "Maintaining Proper Boundaries" course at Vanderbilt University Medical Center during the period October 11-13, 2006.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. The Panel has previously determined, through adequate legal process pursuant to KRS Chapters 311 and 13B, that the licensee's medical license is subject to regulation and discipline based upon his violations of KRS 311.595(5), (9) and (21). Furthermore, the parties are acting at this time pursuant to the licensee's petition for reinstatement filed under KRS 311.607. Accordingly, the parties agree there are legal bases for this Amended Agreed Order of Indefinite Restriction.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully address the issues presented by the licensee's petition for reinstatement in a manner that fully protects the public by entering into an informal resolution such as this Amended Agreed Order of Indefinite Restriction.

AMENDED AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Amended Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the Panel Chair' decision to approve the licensee's practice location, the parties hereby ENTER INTO the following **AMENDED AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine held by Warren M. Cox, IV, M.D.,
CONTINUES TO BE RESTRICTED/LIMITED FOR AN INDEFINITE

PERIOD OF TIME, effective immediately upon the filing of this Amended Agreed Order of Indefinite Restriction and continuing until further Order of the Panel.

2. During the effective period of this Amended Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT to the following TERMS AND CONDITIONS:

- a. 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 – unless and until the Panel or its Chair has approved, in writing, the practice location at which he will practice medicine. The decision whether to approve a particular practice location lies in the sole discretion of the Panel or its Chair. In determining whether to approve a particular practice location, the Panel or its Chair will particularly consider whether there will be appropriate supervision of the licensee, and may also consider the nature of the practice, including the licensee's proposed duties and hours to be worked. In approving such practice location, the Panel or its Chair may include specific conditions/restrictions to ensure patient safety.
- b. The licensee shall not change practice locations without first obtaining written approval by the Panel or its Chair for such change. The parties agree that the Panel or its Chair may require additional conditions and/or

restrictions as a condition of it granting approval for a new practice location.

- c. The Panel Chair has approved the licensee to practice as an employee of Parkview Psychiatric Services, under the following terms and conditions:
 - i. The licensee's practice SHALL be directly supervised by Steven R. Shelton, M.D.. In addition to being available at all times for consultation, Dr. Shelton has agreed to fully and directly supervise the licensee's practice, with ongoing supervision, review of medical records and direct observation of the licensee's interactions with select patients. Dr. Shelton has further agreed to provide the Board with written reports, on a quarterly basis beginning on January 1, 2008 and continuing throughout the licensee's employment;
 - ii. The licensee SHALL practice no more than 40 hours a week;
 - iii. As a member of teams consisting of long-term care liaisons and/or nurse practitioners, the licensee will complete initial and follow-up psychiatric evaluations of adult male residents of long-term care facilities under contract with Parkview Psychiatric Services, and will provide on-call telephone coverage for the practice for those facilities;
 - iv. The licensee will perform initial evaluations and follow-up medication management for adult male outpatients at Parkview Psychiatric Services' office at 4010 Dupont

Circle, Louisville, Kentucky, on the condition that support staff is present during his hours of practice at the office.

- d. The licensee SHALL NOT practice medicine outside of the approved practice setting;
- e. The licensee SHALL NOT practice medicine in a solo setting;
- f. The licensee SHALL NOT practice medicine in a *locum tenens* setting;
- g. The licensee's ability to practice medicine SHALL be limited exclusively to adult male patients;
- h. The licensee SHALL provide a copy of this Amended Agreed Order of Indefinite Restriction to the Clinic Director or to the physician responsible for supervising the licensee's practice;
- i. The licensee SHALL NOT prescribe any medication to himself;
- j. The licensee SHALL FULLY COMPLY with the terms of any corrective action plan or other directives issued by any hospital at which he has privileges;
- k. Within twenty (20) days of the filing of the Amended Agreed Order of Indefinite Restriction, the licensee SHALL meet with the Medical Director, Kentucky Physicians Health Foundation ("the Foundation"), to arrange for and schedule all evaluation(s)/assessment(s) determined by the Medical Director as necessary to determine whether the licensee requires treatment for any condition which may impair or adversely affect his ability to practice medicine appropriately. The licensee SHALL successfully complete each evaluation arranged by the Foundation's

Medical Director and/or staff at the time(s) scheduled and SHALL take all necessary steps to permit and to arrange for the Foundation's Medical Director to receive written reports of each assessment/evaluation conducted;

1. If the Foundation's Medical Director concludes, after reviewing the assessment/evaluation report(s), that the licensee requires treatment, the Medical Director shall advise the licensee of such fact, in writing, at the earliest time possible. If the licensee receives such written notification that treatment is necessary, he SHALL ENTER INTO a contractual relationship with the Foundation, within twenty (20) days of the date of the written notification. If the licensee is required to enter into such a contractual relationship with the Foundation after written notification, he SHALL fully comply with all terms and conditions of that contractual relationship;
- m. The licensee SHALL continue to obtain psychotherapy and medication treatment from his current treating psychotherapist and/or his current treating physician, until such time as the Foundation's Medical Director and the licensee's treating physician(s) and/or treating psychotherapist determine that treatment is no longer necessary. The licensee SHALL fully comply with all treatment directives, including medication instructions, by his treating psychotherapist and/or treating physician. Within twenty (20) days of the effective date of the Amended Agreed Order of Indefinite Restriction, the licensee SHALL provide written

notification to the Board's staff and to the Foundation's Medical Director of the name(s) and practice location(s) for his current treating psychotherapist(s) and/or his current treating physician, if any, or a certification that he is not currently receiving medical treatment from any provider. The licensee SHALL take all necessary steps to permit and SHALL arrange for his treating physician(s) and his treating psychotherapist(s) to provide written reports to the Board and to the Foundation's Medical Director at six (6) month intervals following the effective date of this Order, with the reports to detail: his current diagnosis, his current treatment plan; his current prognosis, the expected length of continued treatment; and, the licensee's compliance with all treatment directives;

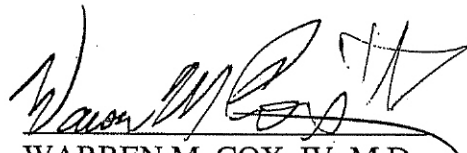
- n. The licensee SHALL pay the previously imposed fine of \$3,412.50, at the rate of \$200 per month, commencing on the first day of December 2007 and payable and continuing on the first day of each succeeding month until such time as the fine is paid in full;
3. The Panel will not consider any request to modify of the terms of this Amended Agreed Order of Indefinite Restriction prior to its May 2008 meeting; and,
4. The licensee SHALL NOT violate any provisions of KRS 311.595 and/or 311.597.
5. The licensee expressly agrees that if he should violate any term or condition of this Amended Agreed Order of Indefinite Restriction, 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 Amended Agreed Order of Indefinite Restriction, 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 Amended 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 a term or condition of this Amended Agreed Order of Indefinite Restriction.

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

SO AGREED on this 18th day of September, 2007.

FOR THE LICENSEE:


WARREN M. COX, IV, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:

Donald Swikert

DONALD SWIKERT, M.D.
CHAIR, HEARING PANEL A

C Lloyd Vest II

C. LLOYD VEST II
General Counsel
Kentucky Board of Medical Licensure
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(502) 429-7150

JUN 08 2006

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NOS. 687 AND 764

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435,
2320 VILLAGE DRIVE, LOUISVILLE, KENTUCKY 40205

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 Warren M. Cox, IV, M.D., and, based upon the Panel's determination that the licensee should be permitted to resume the active practice of medicine in a staged manner, 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, Warren M. Cox, IV, M.D., was either licensed by the Board to practice medicine within the Commonwealth of Kentucky or had previously been licensed to do so;
2. The licensee's medical specialty is Psychiatry;
3. At its August 17, 2000 meeting, this Panel took up Board Case No. 687 for final action, following an evidentiary hearing. After considering all of the information available to it, Panel A adopted and fully incorporated the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Order. The Panel voted to revoke the licensee's Kentucky medical license. Due to an Order of the Jefferson Circuit Court, the Order of Revocation did not become effective at that

time. Following a ruling by the Kentucky Court of Appeals, reversing the Order of the Jefferson Circuit Court and affirming the Panel's Order of Revocation, an Amended Order of Revocation was issued on August 7, 2003, with the revocation becoming effective on August 9, 2003. The factual findings and legal conclusions supporting that Amended Order of Revocation may be found in that Order. The licensee has not practiced medicine in the Commonwealth of Kentucky since August 9, 2003;

4. At its August 22, 2002 meeting, this Panel took up Case No. 764 for final action, following an evidentiary hearing. After considering all of the information available to it, Panel A adopted and fully incorporated the Hearing Officer's recommended Findings of Fact, Conclusions of Law and Order. The Panel voted to suspend the licensee's medical license for three (3) calendar months and then placing his medical license on probation for the remainder of a five-year term, with various terms and conditions. While the Jefferson Circuit Court temporarily stayed the suspension, the licensee was ordered to begin compliance with various terms of probation pending judicial review. Following a subsequent ruling by the Jefferson Circuit Court affirming the Panel's Order, an Amended Order of Suspension/Probation was issued on June 13, 2003. Under the terms of that Order, the 3-month suspension became effective on June 30, 2003, with the remainder of his probation to follow. As noted, the licensee's medical license was revoked a little over a month into his 3-month suspension period. He did not fully complete the terms of his probation. The factual findings and legal

conclusions supporting the Amended Order of Suspension/Probation are found in that Order;

5. The licensee has provided verification that he fully reimbursed the victim and paid the fine, as required by the Amended Order of Revocation in Board Case No. 687. As further required by that Order, the licensee completed neuropsychological and psychiatric evaluations prior to petitioning the Panel for reinstatement of his medical license;

6. The Axis I diagnosis of his neuropsychological evaluation was Attention-Deficit/Hyperactivity Disorder, predominantly inattentive Type, by history. The summary and discussion conclude with the following summary,

In summary, this evaluation finds essentially no change in Dr. Cox's neurocognitive or psychological status since 2001 when two neuropsychological evaluations were conducted. Conclusions drawn then remain valid and relevant at the present time. Dr. Cox's resistance and continued defensiveness regarding the sanctions handed down by his professional board reflects his personality style, however such "benign arrogance" does not reflect either overt psychiatric pathology or a neurologically based lack of insight or behavioral disinhibition. It is expected that Dr. Cox may continue to have problems in professional areas in which he does not have primary authority. However, there is no overt compromise this individual's capacity to handle the intellectual demands of his profession, or the capacity to maintain behavioral control, or result in his being at risk of any specific incompetent, inculpable, or unethical decisions and behaviors about which the medical licensure board might be concerned....

7. The Axis I diagnoses of his psychiatric evaluation were History of ADHD by patient report and History of depression by patient report.

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 medical license is subject to regulation and discipline by the Board.
2. The Panel has previously determined, through adequate legal process pursuant to KRS Chapters 311 and 13B, that the licensee's medical license is subject to regulation and discipline based upon his violations of KRS 311.595(5), (9) and (21). Furthermore, the parties are acting at this time pursuant to the licensee's petition for reinstatement filed under KRS 311.607. Accordingly, the parties agree there are legal bases for this Agreed Order of Indefinite Restriction.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully address the issues presented by the licensee's petition for reinstatement in a manner that fully protects the public by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon the Panel's decision to permit the licensee to resume the active practice of medicine in a staged manner in a way that fully protects the public, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine held by Warren M. Cox, IV, M.D., is hereby RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, with that period of restriction/limitation becoming effective immediately upon the filing of this Agreed Order of Indefinite Restriction and continuing until further Order of the Panel.

2. During the effective period of this Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT to the following

TERMS AND CONDITIONS:

- a. 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 – unless and until approved to do so by the Panel;
- b. The Panel or its Chair will not consider a request by the licensee to resume the active practice of medicine until he has successfully completed the "Maintaining Proper Boundaries" course at The Center for Professional Health at Vanderbilt University Medical Center, 1107 Oxford House, Nashville, Tennessee 37232-4300 (615) 936-0678, at his expense, and has provided the Board with a detailed description of his proposed medical practice, to include at a minimum: name and location of the practice, nature of the practice; proposed hours of practice per week; names of other physicians practicing at that location; name of medical director or supervising physician; and, measures designed to ensure patient safety, if appropriate;
- c. If the Panel or its Chair approves the licensee's request to practice at that location, that decision will be implemented through the entry of an Amended Agreed Order of Indefinite Restriction, which will set out the

specific and necessary details regarding the approved practice location and scope of practice, along with these conditions, at a minimum:

- i. The licensee SHALL NOT practice medicine outside of the approved practice setting;
- ii. The licensee SHALL NOT practice medicine in a solo setting;
- iii. The licensee SHALL NOT practice medicine in a *locum tenens* setting;
- iv. The licensee's ability to practice medicine SHALL be limited exclusively to adult male patients;
- v. The licensee SHALL provide a copy of this Agreed Order of Indefinite Restriction and a copy of any Amended Agreed Order of Indefinite Restriction to the Clinic Director or to the physician responsible for supervising the licensee's practice;
- vi. The licensee SHALL NOT prescribe any medication to himself;
- vii. The licensee SHALL FULLY COMPLY with the terms of any corrective action plan or other directives issued by any hospital at which he has privileges;
- viii. Within twenty (20) days of the filing of the Amended Agreed Order of Indefinite Restriction, the licensee SHALL meet with the Medical Director, Kentucky Physicians Health Foundation ("the Foundation"), to arrange for and schedule all evaluation(s)/assessment(s) determined by the Medical Director as necessary to determine whether the licensee requires treatment for

any condition which may impair or adversely affect his ability to practice medicine appropriately. The licensee SHALL successfully complete each evaluation arranged by the Foundation's Medical Director and/or staff at the time(s) scheduled and SHALL take all necessary steps to permit and to arrange for the Foundation's Medical Director to receive written reports of each assessment/evaluation conducted;

- ix. If the Foundation's Medical Director concludes, after reviewing the assessment/evaluation report(s), that the licensee requires treatment, the Medical Director shall advise the licensee of such fact, in writing, at the earliest time possible. If the licensee receives such written notification that treatment is necessary, he SHALL ENTER INTO a contractual relationship with the Foundation, within twenty (20) days of the date of the written notification. If the licensee is required to enter into such a contractual relationship with the Foundation after written notification, he SHALL fully comply with all terms and conditions of that contractual relationship;
- x. The licensee SHALL continue to obtain psychotherapy and medication treatment from his current treating psychotherapist and/or his current treating physician, until such time as the Foundation's Medical Director and the licensee's treating physician(s) and/or treating psychotherapist determine that

treatment is no longer necessary. The licensee SHALL fully comply with all treatment directives, including medication instructions, by his treating psychotherapist and/or treating physician. Within twenty (20) days of the effective date of the Amended Agreed Order of Indefinite Restriction, the licensee SHALL provide written notification to the Board's staff and to the Foundation's Medical Director of the name(s) and practice location(s) for his current treating psychotherapist(s) and/or his current treating physician, if any, or a certification that he is not currently receiving medical treatment from any provider. The licensee SHALL take all necessary steps to permit and SHALL arrange for his treating physician(s) and his treating psychotherapist(s) to provide written reports to the Board and to the Foundation's Medical Director at six (6) month intervals following the effective date of this Order, with the reports to detail: his current diagnosis, his current treatment plan; his current prognosis, the expected length of continued treatment; and, the licensee's compliance with all treatment directives;

- xi. The licensee SHALL pay the previously imposed fine of \$3,412.50, at the rate of \$200 per month, commencing on the first day of the second full month of the Amended Agreed Order of Indefinite Restriction, and continuing until such time as the fine is paid in full;

- xii. The licensee MAY request a modification(s) of the terms of the Amended Agreed Order of Indefinite Restriction, to be considered at the first regularly scheduled meeting of Panel A after six (6) months have elapsed from the filing of the Amended Agreed Order of Indefinite Restriction; and,
 - xiii. The licensee SHALL NOT violate any provisions of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Indefinite Restriction, 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 Indefinite Restriction, 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 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 a term or condition of this Agreed Order of Indefinite Restriction.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Indefinite Restriction would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 8th day of June, 2006.

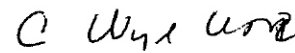
FOR THE LICENSEE:


WARREN M. COX, IV, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:


DONALD J. SWIKERT, M.D.
CHAIR, HEARING PANEL A



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FILED OF RECORD

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K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 687
ADMINISTRATIVE ACTION NO. 98-KBML-0635

IN RE: THE LICENSE TO PRACTIC EMEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435,
1300 GARDINER LANE, #3, LOUISVILLE, KY 40213

AMENDED ORDER OF REVOCATION

At its August 17, 2000 meeting, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, considered the Findings of Fact, Conclusions of Law and Recommended Order, recommended by the hearing officer in this case after an evidentiary hearing and mailed to the Board on June 30, 2000. In addition to that report, the Hearing Panel reviewed the Complaint filed in this case; a July 10, 2000 Memorandum by the Board's General Counsel; and, Exceptions by Respondent Warren M. Cox, IV, M.D., with various portions of the evidentiary transcript attached. The Hearing Panel also considered comments by the Board's General Counsel and by the licensee and his counsel.

Having considered all of the available information and being sufficiently advised, Hearing Panel A hereby ACCEPTS and ADOPTS the Recommended Order of the hearing officer IN WHOLE and INCORPORATES the Findings of Fact, Conclusions of Law and Recommended Order in whole into this Order. Based upon the Findings of Fact, Hearing Panel A CONCLUDES that the licensee has violated KRS 311.595(5) and (9).

Having considered the Findings of Fact and Conclusions of Law, along with all of the information available to it, Hearing Panel A hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Warren M. Cox, IV, M.D.,

is hereby REVOKED, with that Revocation taking effect at 00:01 a.m. on Saturday, August 9, 2003. The licensee is being granted this twenty-four (24) hour grace period for the sole purpose of contacting patients and arranging for necessary medication orders during their transition to the care of other physicians. In accordance with KRS 311.591(7)(c) and as part of the Recommended Order, Hearing Panel A ORDERS that the licensee shall pay the specific amount of \$15,485 to Patient A, for mental health services for her which are needed as a result of his sexual contact with her; the licensee shall pay that amount to Patient A at the rate of \$1,935.63 every three months, beginning on November 9, 2003, until the full amount is paid.

KRS 311.607 permits a licensee whose Kentucky license has been revoked to petition for reinstatement of that license after two (2) years from the effective date of the revocation order. Based upon the Board's policy and in accordance with previous cases, Hearing Panel A further ORDERS that the licensee SHALL PAY a FINE in the amount of \$4,137.50, the cost of the evidentiary hearing, before he may petition for reinstatement of his Kentucky medical license pursuant to KRS 311.607. Based upon the nature of the violations and the evidence described in the Findings of Fact, Hearing Panel A FURTHER ORDERS that, before it will consider any petition for reinstatement filed by the licensee, he shall successfully complete neuropsychological and psychiatric evaluations by evaluators previously approved by the Board and provide the reports of those evaluations to the Panel for its review as part of the petition for reinstatement.

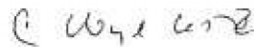
SO ORDERED on this 7th August, 2003.



DONALD J. SWIKERT, M.D.
CHAIR, HEARING PANEL A

Certificate of Service

I hereby certify that the original of this Amended Order of Revocation 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 to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Suite 300, Frankfort, Kentucky 40601-8204; and copies were sent via facsimile and certified-mail, return receipt requested, to John E. Spainhour, Esq., Suite One, 200 South Buckman Street, Shepherdsville, Kentucky 40165 and Warren M. Cox, IV, M.D., 1300 Gardiner Lane, #3, Louisville, Kentucky 40213 on this 7th day of August, 2003.



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

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 687
ADMINISTRATIVE ACTION NO. 98-KBML-0635

FILED OF RECORD
JUL - 3 2000
K.B.M.L.

KENTUCKY BOARD OF MEDICAL LICENSURE

COMPLAINANT

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW
and RECOMMENDED ORDER

WARREN 'CHIP' M. COX, IV
(License #24435)

RESPONDENT

* * * * *

An administrative hearing was held in the above-referenced matter over the course of four days, September 21 - 22, 1999 and May 1-2, 2000. The Kentucky Board of Medical Licensure (sometimes "the Board") appeared through its general counsel, C. Lloyd Vest, Esq. The Respondent, Warren M. Cox, IV, M.D., appeared personally and through counsel. David Carby, Esq., represented Dr. Cox from the commencement of this action until a potential conflict of interest arose which prompted his withdrawal on November 5, 1999. Mr. Carby was succeeded by W. Gregory King, Esq. Scott D. Majors, Assistant Attorney General with the Division of Administrative Hearings, served as hearing officer.

The Board presented testimony from "Patient A;" Linda Roosevelt; Robin Goodman; and Jose Aponte. Dr. Cox presented his own testimony and that from Linda McCoy; Sandy Costanza; and Shirley Snyder. The Board presented rebuttal testimony from Denise Baytree. Five exhibits were admitted into evidence by the Board, six for Dr. Cox, and one exhibit was admitted jointly by the parties.

Following consideration of the entire record, and for the reasons as stated below, it is recommended that the Hearing Panel of the Kentucky Board of Medical Licensure enter a final order which adjudges Dr. Cox to be guilty of the charges filed against him. For this misconduct, the license to practice medicine in the Commonwealth of Kentucky held by Dr. Cox should be revoked and Dr. Cox should be ordered to pay a specific amount for mental health services for Patient A which are needed as a result of the inappropriate sexual contact.

I. Findings of Fact

Based on a review of the entire record, and based upon a preponderance of the evidence, the undersigned issues the following Findings of Fact:

Dr. Warren Cox

1. Warren "Chip" M. Cox, IV, M.D. ("Dr. Cox") earned his undergraduate degree in Electrical Engineering from Memphis State University. He completed medical school at the University of Louisville in 1985. He served an internship in internal medicine and a 3 year residency in psychiatry. He is married and has two sons, ages 15 and 12. He also served 10 years in the Navy.
2. In April of 1989, Dr. Cox began the private practice of psychiatry in Jefferson County, Kentucky. He joined his father's psychiatry practice at Physicians Therapy Group, an association which continued until his father's death in 1996.
3. Throughout the course of the hearing, the undersigned found Dr. Cox to be highly intelligent, articulate, communicative, confident in presence, and unflappable in demeanor. Although his denial of any misconduct never wavered, the manner in which this denial was presented through testimony was uniquely void of emotion. Relative to other physicians who have testified in hearings before this Board, Dr. Cox was straightforward and non-evasive with his testimony, although he continuously displayed an attitude of unsuitability toward the charges filed against him.

Patient A

4. Patient A is a 47 year-old Caucasian woman and former patient of Dr. Cox.¹ Patient A was first married at age 20 in 1972. Following several unsuccessful attempts at in-vitro fertilization, she and her husband adopted a child in 1984, now age 15. Shortly after the adoption was completed, she and her husband divorced. She remarried three years later and has remained married through the present.

5. Although Patient A was on disability retirement status during the hearing, she has made her career in the field of education for the past 24 years. She received her undergraduate degree at Hollins College in Virginia, and obtained her Masters Degree in Elementary Education at the University of Louisville. She has taught kindergarten and elementary education at various schools in Virginia, South Carolina, and most recently Jefferson County, Kentucky, where she has lived continuously since 1987.

6. Throughout the course of the hearing, the undersigned found Patient A to be intelligent, responsive, sensitive, and candid. She testified during the first two days of the hearing, and her testimony touched on many intimate details of her life. While she did not appear comfortable during her testimony, the undersigned was never given reason to suspect Patient A withheld information in order to cast herself in a more favorable light. Patient A did not act inappropriately, unpredictably or impulsively at the hearing. There were moments during her testimony when the hearing had to be recessed temporarily to permit her to regain her mental

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 the video-taped record which, coupled with the parties' exhibits, has been ordered sealed pursuant to this statute.

concentration and emotional control. However, the undersigned was consistently impressed with her ability to recall particular details, events and circumstances spanning a period of several years in a consistent manner, the specifics of which were frequently corroborated by other evidence. The spontaneous manner in which she responded to questions served to bolster the undersigned's impression that her recollection of events was genuine and not attributable to professional coaching. Patient A's husband of 13 years was present throughout her testimony and he offered his wife emotional and moral support.

Patient A's Prior Medical Treatment

7. Patient A received her first psychiatric treatment in 1977 after she attempted suicide by ingesting vodka and pain killers. She received bi-weekly treatment, including anti-depressant medication, for approximately 8 months.

8. Following her relocation to Louisville, Kentucky, in 1987, Patient A received a brief episode of counseling from Steve Simon.

Patient A's Treatment with Dr. Cox

9. In or about April of 1990, Patient A had her initial office visit with Dr. Cox and Ms. Gwynne Goldberg, LCSW. They discussed Patient A's anger and guilt harbored over her first marriage and issues relating to child custody. Dr. Cox determined that Patient A could be treated appropriately through counseling at this juncture. Ms. Goldberg's assessment report for this visit reveals that Patient A had "received treatment for depression periodically (since 1975)." Ms. Goldberg's impressions were that:

[Patient A] is an attractive 37 year old, married woman who comes to the session neatly dressed and well groomed. In addition to complaints listed in the opening paragraph she states that she is experiencing a loss of energy as she is unable to get

herself motivated to do much of anything other than daily routine things. She describes herself as being overwhelmed and living in a fog.

[Patient A] states that she teaches first grade . . . and states that this is very difficult for her as she and the principal do not get along. She has tried unsuccessfully to get transferred from there and will try again this fall.

[Patient A] related in an open and friendly manner, presenting information in a fairly concise and well thought out way. Her affect was appropriate to mood. She denied any homicidal or suicidal thoughts. Motivation for treatment good.

Diagnosis: 296.35 Major Depression recurrent in partial remission.

Treatment Recommendation: Referral for to PTG for a psychiatric evaluation and short term therapy with an eye toward group placement on a private pay basis.

(See Board Exhibit #4).

10. In response to a referral for treatment from Dr. James G. Baker, Patient A's primary care physician, Dr. Cox prepared correspondence dated April 25, 1990, in which he noted:

To my assessment [Patient A] is an attractive somewhat thin woman appearing her stated age who notes that she currently is having a remission of her depressive symptomatology. She is alert and oriented times three. Her emotions are labile but her eye contact is good. Her affect shows some elements of being less constricted than what was noted in Ms. Goldberg's write up but continues to have some constriction to it. Her affect is described as sad and angry. She denies any current suicidal ideation but notes that in the very recent past she has felt that way. Her suicidal tends to be as a response to an agitated situation. She denies any homicidal ideation although she does show frustration toward her ex-husband. Her memory is intact in all three spheres. Her intellectual judgement is judged to be high average to superior. She is noted for having appropriate judgment to testing and for the most part adequate judgment to situation. Insight into her problems is somewhat marginal but appears to be adequate towards therapy and also adequate enough for her circumstances.

My impression at this point is that [Patient A] suffers from both a major depression recurrent and also from a dysthymic disorder which is to some extent masked but becoming unmasked as her depression abates. At this point because of the abatement, we have decided to not try medication if at all possible. Instead, I have referred her to Jack Teeple, a therapist in my office to start to do some work on the interactions that she currently feels somewhat 'self righteously' towards her ex-

husband. I do suspect that in agreement with Ms. Goldberg that eventually [Patient A] will need to get into group therapy because of the issues at hand.

(See Board Exhibit #4).

11. From April 30, 1990, through June 7, 1990, Patient A received treatment from Dr. Jack Teeple, a Psy.D. therapist employed by Dr. Cox's group. Dr. Teeple's diagnosis of Patient A mirrored that of Dr. Cox: "major depression, recurrent, dysthymia." Patient A's treatment goals were defined to include "better control residual anger over ex-husband; enhance relationship with adopted son; control frustration and anxiety carried over from work situation."

12. Patient A participated in group therapy sessions for approximately two weeks in September of that year, and then discontinued treatment until November 18, 1994, when her primary care physician, Dr. Baker, prescribed her Paxil at 20 mg once daily and referred her back to Dr. Cox.

13. Patient A renewed her medical treatment with Dr. Cox on November 21, 1994, for problems with anxiety, depression, sleep difficulties, decreased concentration and memory problems. Correspondence in Dr. Cox's record for Patient A for this office visit reveals the following assessment:

... [S]he is alert, oriented times three. Her emotions are extremely labile. Her mood is described as depressed. Her affect is blunted. She denies suicidal ideation and homicidal ideation. Her memory is intact in three spheres. Her intelligence is judged to be high-average. There is no evidence of psychotic thought processes. Her judgment is intact to testing and seems to be appropriate to circumstances. Her insight into her problems, however, does show some limitations.

(Board Exhibit #4). Dr. Cox's planned treatment for Patient A at this time was for medication management. In addition to the Paxil prescribed for Patient A by Dr. Baker three days earlier, Dr. Cox prescribed Desyrel 50 mg.

14. Dr. Cox's "Continuing Treatment Summary" prepared after Patient A's visit on November 21, 1994, estimated four additional "med check" visits were needed every three months "to terminate." By correspondence dated January 4, 1995, addressed to Dr. Cox from Patient A's insurance carrier, MCC Behavioral Care, Inc. ("MCC"), Patient A was approved for 4 outpatient 15 minute med checks through November 29, 1995. This estimated period of treatment required by Patient A proved to be too optimistic, however. From a review of Dr. Cox's patient records and the testimony from witnesses by both parties, it is found that Patient A's treatment with Dr. Cox over the ensuing months was broadened both in scope and frequency, and revised treatment summaries had to be submitted to MCC.

15. Based on testimony from both Patient A and Dr. Cox, coupled with entries from Dr. Cox's records for Patient A (*see* Board Exhibit #4), the following is a chronological summary of Patient A's professional treatment, which is not in dispute. Unless otherwise noted, the entry was prepared by Dr. Cox:

11/29/94 - 1 week follow-up.

2/23/95 - emergency med check follow-up. Desyrel increased to 100 mg. Luvox 100 mg called in 2/17/95.

3/8/95 - treatment authorization request submitted to MCC, noting frequency of sessions now "monthly." Focus of treatment listed as "[h]aving difficulty with sleep & eating. Tearful & having problems w/concentration - Depression has reoccurred." Expected treatment outcomes listed: ". . . increased Desyrel to help w/the sleeplessness & have started pt. on new medication to decrease depression."

5/30/95 - med check follow-up. Patient A started on Trazadone 100 mg. Discussion b/t Dr. Cox and Patient A regarding her personal relationships and career as a teacher.

6/29/95 - med check follow-up. Luvox dosage halved. Three month follow-up scheduled.

6/30/95 - Patient A's Desyrel dosage increased to 100 mg.

6/7/96 - med check follow-up. Patient A taking b/t 200-300 mgs of Luvox and 100-200 mgs of Desyrel. Medications unchanged. Discussion about parenting issues. Six month follow-up scheduled.

11/21/96 - Patient A experienced severe chest pains while teaching class at her elementary school. She was taken to the office of her primary care physician, Dr. Baker, who admitted her to Baptist Hospital East for further tests. No serious heart problems were detected, and Patient A was released the following day. Dr. Baker released her "under the care of (Dr. Cox) to be treated for the biological symptoms brought on by stress and depression."

11/25/96 - Patient A begins Xanax .5 mg, per Dr. Cox.

11/26/96 - phone conversation, Patient A inquiring about possible contraindications b/t Xanax, Trazadone, and Luvox.

12/3/96 - med check follow-up. Complaints of lethargy associated w/Xanax. Recommended that daily dosage be redistributed. One week follow-up scheduled.

1/8/97 - phone conversation, Patient A needs Dr. Cox to sign a release from partial progress as of January 8, 1997.

2/12/97 - phone conversation, Patient A inquiring about use of Benadryl to treat arm rash.

10/6/97 - Dr. Cox prepared an "Outpatient Treatment Report" for Patient A's insurance carrier. Historical data listed "[h]istory of recurrent depression and anger tendencies." Current level of functioning listed "[d]epression has re-occurred due to a job change that she did not want - Her anger tendencies have lessened - but is also having some difficulties w/teenage step-son." The treatment goals listed "enhance relationship w/adopted son - control frustrations and anxiety that are carried over from her work situation." Listed medications included: Xanax .5 mg; Luvox 100 mg; and Trazadone 100 mg.

1/27/98 - Dr. W. Cooper Buschemeyer, Jr., treated Patient A for E coli bacterial infection and blood in urination. Normal cystourethroscopy, pelvic exam, and ureteral orifices. Cipro 500 mg prescribed. One month follow-up scheduled.

2/5/98 - follow-up w/Dr. Buschemeyer. Urine C & S done to rule out occult infection. Patient A complaining of chronic fatigue, sleeping 8 hours nightly plus 2 - 3 hour afternoon nap. "It is very interesting to note that while she was taking Cipro

she had a marked improvement of the fatigue problem. I wonder if the enzyme pathways in the liver interfered with absorption of some of her other medications which may have a role in the fatigue problem. I asked her to see (Dr. Cox) again about possible alteration of the medication for her anxiety disorder." (See Board Exhibit #4). An updated GYN evaluation w/Dr. Molly Cartwright was recommended.

2/5/98 - emergency 30 minute visit. Patient A complains of painful urination and lethargy. Medications decreased: "[w]e're going to drop her Luvox down to 100 mg, drop her Trazadone down to 200 mg and drop her Xanax on an as needed basis and then deal with the consequences next week in follow-up."

(On or about) 2/11/98 - Patient A felt suicidal. She decided to change psychiatrists. She conferred with Dr. Debra Zukof, who properly advised her that her relationship with Dr. Cox would have to be terminated before she (Dr. Zukof) could assume treatment. Patient A admitted herself into Baptist Hospital East for 23 hour observation. Dr. Cox visited Patient A at this hospital the following day, February 12, 1998.

2/12/98 - Dr. Cox dictated a "History & Physical/Discharge" on Patient A for Baptist Hospital East, quoted as follows:

Date of Admission: 02/11/98

Date of Discharge: 02/12/98

DISCHARGE DIAGNOSIS:

Axis I: *Bipolar disorder, manic, moderate.*
Panic disorder with agoraphobia.
Dysthymic mood disorder.
Axis II: *Borderline personality traits.*
Axis III: None noted.
Axis IV: psychosocial stressor of 5 severe.
Axis V: Current GAF of 21, best in past year; 81.

LABORATORY DATA: Labs obtained during hospitalization are pending.

HISTORY OF THE PRESENT ILLNESS: The patient was admitted for 23 hour observation after having come unglued at school. The patient notes that she became frustrated by being stopped by a train at a crossing on her way to school, having to call them and let them know that she was going to be late. After her arrival at school she noted herself to become more and manic with the thoughts racing and basically pacing up and down the halls to where her fellow teachers felt she was not in any condition to be in school. Her work mates called the office and were directed to bring her here to the Access Center for assessment. In the assessment she was totally

disheveled and claiming suicidal ideation, indicating that while she was sitting there waiting for the train to pass that she thought very sincerely about just driving into the river which is where the train was. She then also acknowledged recent past history of wanting to overdose on her medications.

PAST PSYCHIATRY HISTORY: The patient has been a patient of mine for several years with both inpatient and outpatient treatment who for the most part has done quite well on her medications. However, in the last two weeks she has noticed increased lethargy and we have attempted to modify her medications. This medication was unfortunately ill advised as the patient become increasingly manic as we discontinued her Luvox which is a rather paradoxical situation.

MENTAL STATUS EXAMINATION: The patient is alert, oriented x 3. Affect is haunted. Emotions are labile. Mood is described as anxious and depression. She denies any current suicidal ideation or homicidal ideation. Her memory is intact in three spheres. Her speech is slightly pressured. There is no evidence of psychotic thought processes and her intelligence is superior.

PAST MEDICAL HISTORY: The patient denies allergies and is currently on Luvox 100 mg q. a.m., Trazadone 100 mg q. hs and Xanax .5 mg q 3-4 hours as needed. Medical history is only significant for a recent bladder infection.

PHYSICAL EXAMINATION:

* * * *

COURSE IN THE HOSPITAL: The patient was admitted overnight with the 23 hour observation and with the safety and security of the unit the patient was able to settle her emotions down, to where, by the following morning, although she is not ready for return to work, she is available to return home where she does feel, especially with her agoraphobia, that she would be more comfortable. At this point, we have agreed to start her on Neurontin and I will see her tomorrow in the office.

INSTRUCTIONS TO PATIENT: Start on Neurontin initially at 300 mg today and then 300 b.i.d. tomorrow and then 300 t.i.d. after that. To remain off work until further notice and that she follow-up in my office tomorrow.

CONDITION ON DISCHARGE: Improved.

PROGNOSIS: Very guarded.

Warren M. Cox IV, M.D.
WMC:bb
D: 02/12/98
T: 02/12/98
cc: 3-BHR 3300-3311

(Board Exhibit #4)(emphasis added).

16. Although Dr. Cox testified that he diagnosed Patient A with a personality disorder "early on," significant to the undersigned the diagnosis of "bipolar disorder, manic, moderate" with "borderline personality traits" listed in the 2/11/98 discharge summary is the first occasion where this diagnosis is listed in Dr. Cox's treatment records for Patient A. These treatment records were initiated in 1990, and reflect updates for a period of approximately 3 ½ years immediately preceding the preparation of the subject discharge summary.

17. The chronological summary of Patient A's care continues as follows:

2/13/98 - med check follow-up. "[Patient A] is a little intoxicated without drinking at this point which I think may be do in part to the Xanax as we allowed the Neurontin time to work."

2/13/98 - Dr. Cox prepared an "Outpatient Treatment Report" for Patient A's insurance carrier. Historical data listed "[r]ecurrent depression and anger tendencies." Current level of functioning listed "[h]aving a lot of difficulty w/energy and motivation. medications were decreased and Xanax put on a PRN basis." The treatment goals listed "[c]ont. to control her frustrations and anxiety that are carried over from her work situation. Being able to return to ADL on less medication and being able to control the anxiety." Listed medications included: Neurontin 300 mg; Luvox 100 mg; Trazadone 100 mg; and Xanax PRN.

2/16/98 - 30 minute visit. "We've been following her very closely after being in the hospital. She thinks she's ready to go back to work tomorrow. There still is some unsteadiness on her feet. I'm asking her to cut back even farther on the Xanax to ½ mg 4 times a day with the intentions of seeing her this Friday. She notes that she had done some of good things recently as far as her potential for principalship inside the school system and it sounds like she's much on task at this juncture."

2/17/98 - entry: "Phone call from [Patient A]. Would like to up Xanax again. Not doing well.

2/20/98 - med check follow-up. Patient A "pretty lethargic. . . ." Medication regimen adjusted.

2/25/98 - Patient A's care transferred to Dr. Zukof.

2/25/98 - entry: Office visit canceled "due to [Patient A] terminating the relationship. It is noted that she is currently in the hospital under Debbie Zukof."

18. On March 9, 1998, Dr. Zukov filed a grievance with the Board, stating:

[Patient A] has been under my care since February 25, 1998. She transferred to my care after terminating with Warren M. Cox IV, M.D. [Patient A] has accused Dr. Cox of having breached a professional boundary by having a sexual relationship with her.

ss/ Debra Zukof, M.D.

(Board Exhibit #5).

19. Dr. Cox's records reflect an entry on April 19, 1998, memorializing a phone message left by Patient A on the office answering machine questioning a private-pay bill for hospital observation on 2/11/98.

20. On April 20, 1998, Dr. Cox sent correspondence to Patient A clarifying the bill.

The Board's Charges

21. On November 17, 1998, the Board's Inquiry Panel B filed an administrative complaint in this action against Dr. Cox. It was alleged in this complaint that Dr. Cox engaged in an impermissible sexual relationship with Patient A in violation of Current Opinion 81.4 of the American Medical Association's Code of Ethics, as well as KRS 311.595(5) and KRS 311.595(9), as illustrated by KRS 311.597(4). (See paragraphs 6 and 7, Board's Complaint). On or about December 2, 1998, Dr. Cox, through counsel, filed a response to the Board's Complaint in which the allegations relating to improper contact, "sexual or otherwise," were specifically denied. (See paragraph 2, Dr. Cox's Response).

Evidence of Sexual Contact

22. Patient A claims that her relationship with Dr. Cox involved sexual contact on fifteen office visits between March of 1997 and December of 1997. In early 1997 she felt a "sexual energy" or "chemistry" between them, which caused her to feel distress, confusion, and excitement. At her next visit, she confronted him with these feelings, and he "admitted he felt it, too." Patient A asked, "what are we going to do about it?" Dr. Cox, who is married and was aware that Patient A is married, explained that monogamy is not a biological occurrence, but a sociological one. Dr. Cox's practice of psychiatry is biological, although he testified at hearing he believes in sociological monogamy. It is found that Dr. Cox told Patient A, "[i]f our spouses do not find out about it, no-one will get hurt."

23. The first sexual contact between Dr. Cox and Patient A involved a kiss. Over the period of time between March and December of 1997, the touching became more passionate. Dr. Cox stated, "I have always been attracted to you." Eventually, he told Patient A, "I love you." As the touching became more intense, Dr. Cox promised Patient A they would not have intercourse.

24. Patient A claims that initially she resisted his advances, but by the Summer of 1997 she "decided not to push away." During one visit Dr. Cox massaged her breasts, and afterwards stated, "[c]ongratulations, you've just had a free breast exam, and they're fine." At another point, he stated, "[t]hank you for letting the twins come visit today (referring to Patient A's breasts).

25. Dr. Cox had a vibrator on a coffee table in his office for many (if not all) of the years of Patient A's treatment. This vibrator had the word "Paxil" printed on it, and had been distributed to Dr. Cox by a drug manufacturer. During one office visit in August of 1997, Patient A took her dress off and laid on Dr. Cox's couch. He laid on top of her and they kissed passionately. Dr. Cox

then applied the vibrator between Patient A's legs, causing her to reach orgasm three times. The use of the vibrator was repeated on other visits, with each occasion preceded by Dr. Cox telling Patient A that he loved her. On one of these occasions she "reached for him, and he did not have an erection." Later when she asked him about this, he responded, "[i]t's just a mind game I play to make sure it doesn't go any further."

26. Patient A became "obsessed with seeing him outside the office," and they discussed meeting without hurting their spouses. Patient A "believed (she) loved him."

27. During an office visit well into the Summer of 1997, Patient A advised Dr. Cox that she did not want to see him as frequently. She stated, "I need a doctor, not a lover. You need to sit back in your chair," which he did. Several visits later she asked him why he was sitting in the chair, and he said, "because you told me to." She responded, "well, I've changed my mind." Dr. Cox then came over to the couch and held and kissed her.

28. At some point during this period of time Patient A suspected that Dr. Cox was having similar sexual relationships with other patients. She asked him, "[a]m I the only one?" He responded, "no." Although there was a modicum of evidence presented by the Board suggesting that Dr. Cox may have been involved in sexual relationships with at least one other patient during this time period, that evidence was much too speculative and unsubstantiated, and the undersigned makes no such finding.

29. Patient A described these intimate encounters with Dr. Cox as, "when in the middle, it feels good, but after it's over it feels disgraceful." She explained that her experiences triggered a lot of "self-hate" and depression.

30. Patient A's admission for observation at Baptist Hospital East in February of 1998 was prompted by suicidal feelings. She "wanted to make the pain stop."

Dr. Cox's Defense

31. Dr. Cox denies in all respects Patient A's claim that their relationship ever involved sexual contact, or that he crossed a professional boundary. He freely admits that he shakes hands with his patients and is "pretty free" with embraces and hugs. It's his opinion that these gestures are not boundary line violations, although he recognized there is "not really a therapeutic advantage."

32. Dr. Cox maintains that Patient A fabricated these charges. As possible motivation, Dr. Cox points to the fact that Patient A was upset with him when he did not appear early in her stay at Baptist Hospital East in February of 1998. Patient A was also upset with Dr. Cox's bill for services on February 11, 1998, which, according to Dr. Cox, contributed to her decision to make these allegations. Dr. Cox also asserts that Patient A has suffered from borderline personality disorder throughout the course of his treatment, and that people with this disorder "have their reality altered, and they come to believe the altered reality as the truth." Finally, Dr. Cox asserts in effect that Patient A has concocted this story in an attempt to extort money from him. In support of this claim, he emphasized the fact that on February 1, 1999, Patient A, through counsel, filed a civil action against Dr. Cox in the Jefferson Circuit Court in which she seeks monetary damages for his alleged malpractice. That case has not yet gone to trial.

33. At the conclusion of the administrative hearing the undersigned Hearing Officer noted his opinion that this was a close case. Following a thorough review of the entire record, it remains so. If the standard of review to be applied to the evidence in this record were that of a criminal proceeding, the undersigned would find there to be insufficient evidence to support Patient A's claim. Simply stated, there is evidence to support reasonable doubt of Dr. Cox's guilt. The only two people who know for a fact whether these allegations are true are Patient A and Dr. Cox. There were no other eyewitnesses.

34. The undersigned is quite sensitive to the fact that any patient can falsely claim their doctor has abused them in a private office setting, and there is little recourse available for the professional who is wrongly charged, short of winding up in a swearing contest at a disciplinary proceeding. The risk of having fabricated allegations raised by a patient with emotional problems is present in any private-office psychiatric practice. In this case there is a distinct possibility that Patient A's allegations raised against Dr. Cox are untrue, and the undersigned has *some* doubt regarding their truthfulness. Nevertheless, by the preponderance of the evidence, and for the reasons as set out in this decision, the undersigned finds that the allegations are true.

Borderline Personality / Bipolar Disorder

35. The undersigned rejects Dr. Cox's attempt to undermine Patient A's testimony as being unworthy of belief due to borderline personality traits or bipolar disorder diagnosis. As noted in paragraph 16, above, Dr. Cox did not reference this diagnosis for Patient A in any of his patient records until he prepared the discharge summary for Baptist Hospital East in February of 1998, approximately two months after the sexual relationship was terminated. The undersigned finds unsupported in the record and completely self-serving Dr. Cox's present claim that he assigned Patient A this diagnosis "early on."

Lapse in Patient Records

36. Dr. Cox's records for Patient A contain an entry for an office visit on 2/12/97. The next entry for an office visit is for 2/5/98, nearly one year later. There are no entries in these records for any of the fifteen visits which Patient A claims involved sexual contact between March 27, 1997, and December 17, 1997. Dr. Cox addressed this apparent attempt to omit any reference to these visits. He maintains that following his father's death in 1996, his charting practices suffered, not just

for this patient but for all of his patients. There is ample evidence to support Dr. Cox's claim that his father's passing had a serious negative impact upon his life, both personally and professionally. This position was supported by the testimony from Sandy C. Costanza, a part-time therapist and part-time office manager for Dr. Cox's business. However, and significant to the undersigned, Ms. Costanza also stated that when Dr. Cox fell behind in his charting during this time period, "he would catch up within a couple of weeks." Thus, even accepting Dr. Cox's explanation that the deficiency in his charting for Patient A was attributed to his troubled emotional state, it does not explain why this deficiency spanned a period of approximately nine months, as opposed to only "a couple of weeks" according to his office manager. It also does not address the question of why the deficiency of charting began on the first office visit Patient A claims the sexual contact began, and why the deficiency was corrected on the first office visit after Patient A claims the sexual relationship was terminated. As noted in detail throughout these findings of fact, Dr. Cox's treatment records for Patient A were otherwise quite comprehensive, both before March of 1997 and after December of 1997.

37. There was no evidence presented to indicate Patient A gained access to Dr. Cox's patient records before Dr. Zukof filed the grievance with the Board and the disciplinary process was initiated. Without these records, Patient A had no way of determining the completeness or accuracy of Dr. Cox's charting for the visits between March and December of 1997, and thus had no way to use them to tailor false allegations to coincide with the nine month lapse in these records. Thus, the undersigned finds from this evidence that Dr. Cox's failure to chart Patient A's fifteen office visits between March 27, 1997, and December 17, 1997, supports Patient A's claim that they consisted of inappropriate sexual contact which Dr. Cox understood followed no therapeutic model and offered

no therapeutic benefit worthy of being recorded. No other credible or reasonable explanation was presented.

Corroborating Evidence of an Inappropriate Relationship

38. Equally influential upon the undersigned in his determination that Patient A's charges against Dr. Cox are true was personal testimony evidence offered in corroboration. The Board presented the testimony from Linda Roosevelt, a nurse with the Psychiatric Nurse Unit at Baptist Hospital East. Ms. Roosevelt was so employed in February and March of 1998. Ms. Roosevelt was on duty on March 2 and March 4, 1998, when Patient A was participating in a two day program. According to Ms. Roosevelt, near the completion of this two day program, as Patient A "struggled with regret and guilt," she revealed her "sexual affair" with Dr. Cox.

39. Even more significant to the undersigned was the rebuttal testimony offered by Denise Baytree, as it focused upon statements Patient A made to her prior to any "falling out" between Patient A and Dr. Cox. Ms. Baytree is an elementary school teacher for the Jefferson County School System, and she became good friends with Patient A while teaching with her in 1990. They taught together for several years, and transferred together to another elementary school in the mid-90s. On occasions they drove to work together during which they spoke freely about intimate feelings and offered each other emotional support. According to Ms. Baytree, in "early 1997" Patient A mentioned there was "a lot of sexual tension between me and Dr. Cox," that it was "so strong" she couldn't talk or concentrate. Shortly thereafter, Patient A stated, "I was right. He was feeling it, too. We kissed." Ms Baytree strongly admonished Patient A for becoming involved in this manner with her therapist, and Patient A responded by refusing to share any subsequent details with her friend for several months, for fear of further rebuke. Later in the year Patient A appeared

"drugged up" to Ms. Baytree, such that she "was confused, slurring words. . . . She would start a sentence, and not finish the thought."

40. Prior to a Christmas party in 1997, Ms. Baytree and Patient A went to Barnes & Noble Bookstore in Lexington, Kentucky to search for a magazine which contained an advertisement for the sale of a vibrator. According to Ms. Baytree, Patient A stated that Dr. Cox had suggested she obtain a vibrator.

41. Ms. Baytree's testimony was creditable and straightforward without appearing profusely enthusiastic. The undersigned found her to be unwilling to state something she was unsure about, especially dates. The fact that she recalled Patient A's statements to her in early 1997 regarding "sexual energy" and "kissing" with Dr. Cox qualifies as prior consistent statements, bolstering Patient A's credibility in the eyes of the undersigned. Furthermore, Ms. Baytree's account serves to corroborate Patient A's account of the events. In the undersigned's opinion, Ms. Baytree's account effectively undermines Dr. Cox's attempt to mischaracterize Patient A as a former, disgruntled patient who only fabricated these charges after she became upset with Dr. Cox's bill for the 2/11/98 observation; or because she seeks a large monetary settlement; or because her sense of reality has been altered and she believes her altered reality is the truth.

Ability of Office Staff to Interrupt Treatment Sessions

42. Three members of Dr. Cox's office staff for 1997 testified that Dr. Cox saw about twenty patients a day and that on most occasions during his therapy sessions or med checks Dr. Cox kept his office door closed. It is not disputed that the office door was always kept closed when Patient A was in this office. About once or twice a month a member of his staff had occasion to interrupt Dr. Cox in his office while he was with a patient. Sometimes this interruption was by

telephone, other times it was by beeper, other times it was by a quick knock on the door with immediate entry. Dr. Cox offered this testimony for the proposition that any member of his staff could have entered his office at any time, and thus it was implausible that he would have risked participating in a sexual relationship with Patient A.

43. While this is *some* evidence to cast doubt upon the allegations, this evidence, especially when measured against the entire record, is not particularly convincing. Ms. Shirley Snyder, an eleven year employee of Dr. Cox, testified that interruptions were made only for emergencies, i.e., "when hospitals called." Furthermore, while Ms. Costanza testified that Dr. Cox did not give special instructions to staff regarding such interruptions, Ms. Linda McCoy, the office receptionist, testified that the "policy was not to interrupt, but (we) could if hospitals called."

44. Regardless of the existence of a policy, it is not disputed that during the period of March through December of 1997, Patient A was never hospitalized. Thus, one inference to be drawn is that Dr. Cox could be reasonably confident that no-one would interrupt his encounters with Patient A. Furthermore, none of the three staff members who testified could ever recall interrupting Dr. Cox when Patient A was with him in his office. Finally, the Board entered into evidence a photograph of the inside of Dr. Cox's office door which shows a lock on the door handle, which easily could have been activated without notice as a precautionary measure. Accordingly, the undersigned is not convinced that the evidence regarding this issue is particularly significant.

Claim of Restitution

45. The Board maintained throughout the hearing that Dr. Cox should be ordered to pay restitution to Patient A for the cost of mental health services which are needed for treatment as a product of Dr. Cox's sexual contact with her. In support of this claim, the Board introduced

evidence through Robin Goodman, L.C.S.W., who has treated Patient A since Dr. Cox was discharged. Ms. Goodman submitted a statement dated September 15, 1999, projecting Patient A's therapy expenses for the estimated period of time needed to complete her treatment. This statement reads as follows:

The following dates of service were provided in 1998 by Robin Goodman, LCSW at Dr. Debra Zukof's office at a charge of \$95.00 per session.

3/3, 3/11, 3/24, 4/21, 5/12, 5/19, 5/27, 6/8, 6/15, 6/22, 7/13, 7/29, 8/25.

13 sessions @ \$95.00 = \$1235.00

The following sessions were provided by the same provider in her practice at \$75.00 per session.

In 1998 - 9/14, 9/28, 10/2, 10/14, 10/21, 10/26, 11/2, 11/6, 11/9, 11/24, 11/30, 12/7, 12/7, 12/14, and 12/28.

In 1999 -

1/4, 1/14, 1/21, 1/28, 2/8, 2/15, 2/22, 3/1, 3/8, 3/15, 3/22, 3/29, 4/5, 4/12, 4/19, 4/27, 5/3, 5/10, 5/17, 5/24, 6/8, 6/29, 7/12, 7/19, 8/2, 8/10, 8/16, 8/23, 8/31, 9/3, 9/8, and 9/14.

46 sessions @ \$75.00 = \$3450.00

I estimate that [Patient A] will be in treatment with me for at least 3 more years on a weekly basis.

48 weeks at \$75.00 per session = \$3600.00

\$3600.00 x 3 = \$10,800

\$1230.00 + \$3450.00 + \$10,800 = \$15,485 - total

(Board Exhibit #3).

II. Conclusions of Law

46. 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.

47. 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.

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

49. Dr. Cox is licensed to practice medicine in the Commonwealth of Kentucky, license #24435, and is thus subject to discipline by the Board pursuant to KRS 311.530 *et. seq.*

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

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

52. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Cox violated KRS 311.595(5) by having sexual contact as defined by KRS 510.010(7) with Patient A while she was a patient under Dr. Cox's care.

53. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Cox 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.

54. In the process of deciding upon and recommending to the Board an appropriate sanction, the undersigned has given due regard to various factors. These factors include the statutes violated; Dr. Cox's mental state at the time of the transgression; the injury to Patient A caused by the misconduct; and the presence or absence of mitigating and aggravating factors.

Statutes Violated

55. KRS 510.010(7) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party." This definition has been interpreted to mean that sexual contact is not limited to the sex organ, and that sexual abuse may occur when the contact with the victim's body and privacy is made with the intent to obtain sexual gratification. The proper test to determine whether a part of the body is "intimate" revolves around an examination of three factors: (1) what area of the body was touched; (2) what is the manner of the touching; and (3) under what circumstances did the touching occur. *Bills vs. Commonwealth, Ky.*, 851 S.W.2d 466 (1993).

Patient A was kissed on her lips, her breasts were massaged, and she was aroused between her legs in a semi-clothed state with an electronic vibrator. The manner of this touching was for Dr. Cox's sexual gratification, directly or indirectly, either by the abuse of his superior power as her therapist or by the giving of pleasure to his patient. The touching was introduced by Dr. Cox as a part of the office visitations, despite the fact that no evidence was presented that such touching served a legitimate, professionally recognized purpose.

56. A psychiatrist who engages in sexual relations with a patient before terminating the psychiatrist-patient relationship engages in unprofessional conduct warranting professional discipline. *E.g., 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). Dr. Cox's 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 recurrent depression, anxiety, and anger tendencies; thus, Dr. Cox abrogated his responsibility to Patient A as her physician.

Dr. Cox's Mental State

57. From the facts as found, Dr. Cox's misconduct was neither negligent nor inadvertent. His sexual contact with Patient A covered a period of approximately nine months, and thus can only be construed as a series of intentional acts committed.

Injury to Patient A

58. The fact that a psychiatrist enters into a sexual relationship with a patient is very destructive to the treatment. The patient finds it harder to trust any subsequent therapist. That Dr. Cox told Patient A he was "in love" with her is especially troubling, not so much for its declaration if true, but by the fact that through his repeated misconduct it must not have been true. True love is not evidenced by leading the subject of your love into further pain, despair and confusion. Nor is it evidenced by statements such as "[i]t's just a mind game I play to make sure it doesn't go any further." No reasonable inference can be drawn from their relationship other than Dr. Cox permitted his desire for sexual gratification to obfuscate his duty to his patient, to the public, and to this Board -- the duty to ensure that he place the best interests of Patient A before his own. From the testimony of Robin Goodman, it is clear that patients often confuse warm, caring feelings for their therapist

with sexual attraction, and the patient may not have the strength of ego to "stand up and say no." This phenomena makes it particularly important that the therapist not surrender to temptation. Ultimately, it was Dr. Cox's responsibility, and not Patient A's, to ensure that their relationship did not run afoul of the professional boundaries, and Dr. Cox's failure to abide by these boundaries created further emotional damage to Patient A, the corrective efforts for which shall be long in the unfolding.

Mitigating and Aggravating Factors

59. Mitigating factors present which warrant a less serious sanction include: (a) there was no evidence presented that Dr. Cox previously has been disciplined by this Board; and (b) as noted in paragraphs #2 and #36, above, Dr. Cox's father passed away in 1996 after a lengthy battle with cancer, and the evidence suggests this tragic loss deeply affected Dr. Cox during this time frame. Although not technically deemed a mitigating factor, the undersigned also has given full consideration to the fact that the revocation of his license will require Dr. Cox to refer his current patients to other psychiatrists, and it is expected that this transition in care will present some disruption in treatment and personal inconvenience.

60. Aggravating factors present which warrant a more serious sanction include: (a) Dr. Cox's actions were intentional, and they imposed significant psychological injury upon his patient; (b) Dr. Cox's sexual contacts with Patient A were taken in spite of, or perhaps because of, his familiarity with Patient A's history of sexual vulnerability; (c) the violation committed in this case uniquely involved the abuse of Dr. Cox's position as Patient A's therapist; (d) Dr. Cox's repeated sworn denials that he engaged in the conduct complained of were misrepresentations of fact presented to this Board under oath which would have served to re-victimize Patient A had these representations been relied upon to exonerate him of the charges; and (e) the absence of any remorse.

61. The analysis of the above factors must be measured against the fundamental purposes for imposing professional discipline, which include (a) the protection of the public; (b) maintaining the integrity of, and the confidence in, the medical profession; (c) deterring further improper conduct, both by Dr. Cox and by physicians throughout the Commonwealth; (d) the rehabilitation of Dr. Cox; and (e) educating the public.

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 of Kentucky held by Warren "Chip" M. Cox, IV, license number 24435, 1930 Bishop Lane, #603, Louisville, Kentucky 40218, be revoked, effective 30 days from the entry of the Board's final order. KRS 311.565(1)(c); 311.591(7)(c); and 311.595.

2. Dr. Cox be ordered to pay restitution to Patient A for the mental health services which are needed as a result of the sexual contact determined to have occurred. The specific amount of this payment is to be determined by the Board and shall only be required for services which are legitimate and necessary. KRS 311.591(8)(c).

3. Dr. Cox shall be permitted to petition the Board to regain his license after two years following the effective date of the Board's final order. The Board may or may not grant the petition. If the petition is granted, the new license shall be under probation for two to five years, and any subsequent violation during that probation period shall result in automatic revocation. A new license will be issued only if Dr. Cox satisfies the Board that, as of the time the petition is considered, he is of good moral character and qualifies both physically and mentally to resume the practice of medicine without undue risk or danger to his patients or the public. KRS 311.607.

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 30th day of June, 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

CERTIFICATE OF SERVICE

I hereby certify that the original of these Findings of Fact, Conclusions of Law and Recommended Order were mailed this 30th day of June, 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:

W GREGORY KING
OGDEN NEWELL & WELCH
1700 CITIZENS PLAZA
500 W JEFFERSON ST
LOUISVILLE KY 40202

C LLOYD VEST II
GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

Pessy A. Quigg, by sdm
DOCKET COORDINATOR

980635FC.sdm.wpd

NO. 02-CI-07434

RECEIVED

JUN 16 2003

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)

WARREN M. COX, IV, M.D.

K.B.M.L.

PETITIONER

V.

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

* * * * *

This matter comes before the Court on the Petitioner's, Dr. William Cox (Dr. Cox), motion to stay this Court's order, entered on May 19, 2003, which affirmed the Kentucky Board of Medical Licensure's (Board) decision to suspend Dr. Cox's license to practice medicine. The Court GRANTS in part and DENIES in part the motion and further clarifies its previous order for appeal purposes.

BACKGROUND SUMMARY

Prior to June 1999, Dr. Cox was practicing as a licensed physician in Louisville, Kentucky. Dr. Cox began having trouble at his treating and admission hospitals, Baptist Hospital East (Baptist), Louisville, Kentucky, and Caritas Peace Center, Louisville, Kentucky (Caritas). As stated by the Petitioner, the trouble revolved around contentions by the hospitals that Dr. Cox had failed to timely complete records of patient interviews, progress notes and admission and discharge summaries. (Petitioner Motion, p. 3). On June 15, 1999, the Medical Executive Committee of Caritas voted to suspend Dr. Cox's privileges. On June 29, 1999, Baptist indefinitely suspended Dr. Cox's privileges at that hospital. On December 11, 2000, the Board's Inquiry Panel B issued administrative complaint No. 764 against Dr. Cox's medical license, alleging that he engaged in conduct in violation of KRS 355.595(21). The hearing on the Complaint began on September 12, 2001, and ended on or

about February 19, 2002. On July 24, 2002, the Hearing Officer issued an order stating that the suspensions by each of the named hospitals constituted a violation of KRS 311.595(21).

The Officer then recommended the following sanctions:

1. Suspend Cox's medical license for a period of time determined by the Board to be appropriate for his violation of KRS 311.595(21). His license should be suspended due to the continuing nature of the conduct that resulted in the suspension of his hospital privileges and due to his failure to acknowledge or appreciate the impact that his conduct could have had on the health and well-being of his patients.
2. Place Cox's license on probation for an additional period of time determined by the Board. During the period of probation Cox should be subject to the further sanctions that include, but are not limited to, suspension of his medical license if he repeats the same type of misconduct

Both parties filed exceptions to the report, and on September 3, 2002, Hearing Panel A of the Board issued an Order of Suspension and Probation against Dr. Cox adopting the Hearing Officer's Recommended Findings of Fact and Conclusions, suspending Dr. Cox from the practice of medicine for three months during which time he was required to comply with corrective action plans from Baptist and Caritas. Once corrective action plans are satisfied, the Board further placed Dr. Cox on probation for the balance of the then sixty month period; requiring no self medication, compliance with and monitoring under the corrective actions plans, evaluation, and assessment.

Dr. Cox filed his judicial review of the order on October 2, 2002. The Board filed its Response on October 21, 2002, and a Reply was filed. On October 30, 2002, the Court granted Dr. Cox's motion for injunctive relief, enjoining only the enforcement of the suspension and/or the fine, pending the Court's adjudication of the matter.

OPINION

Dr. Cox sets forth several arguments for this Court's consideration. KRS 13B.150 provides the following guidelines for judicial review of an administrative proceeding:

- 1) Review of a final order shall be conducted by the court without a jury and shall be confined to the record, unless there is fraud or misconduct involving a party engaged in administration of this chapter. The court, upon request, may hear oral argument and receive written briefs.
- (2) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the final order or it may reverse the final order, in whole or in part, and remand the case for further proceedings if it finds the agency's final order is:
 - (a) In violation of constitutional or statutory provisions;
 - (b) In excess of the statutory authority of the agency;
 - (c) Without support of substantial evidence on the whole record;
 - (d) Arbitrary, capricious, or characterized by abuse of discretion;
 - (e) Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing;
 - (f) Prejudiced by a failure of the person conducting a proceeding to be disqualified pursuant to KRS 13B.040(2); or
 - (g) Deficient as otherwise provided by law.

"The position of the circuit court in administrative matters is one of review, not of reinterpretation." Department of Educ. v. Kentucky Unemployment Ins. Comm'n, Ky. App., 798 S.W.2d 464, 467 (1990). The appellate court is not free to consider new or additional evidence, or substitute its judgment as to the credibility of the witnesses and/or the weight of the evidence concerning questions of fact. Mill Street Church of Christ v. Hogan, Ky. App., 785 S.W.2d 263 (1990). Thus, if administrative findings of fact are based upon substantial evidence, then those findings are binding upon the appellate court. Department of Educ. v. Commonwealth, Ky.App., 798 S.W.2d at 467.

KRS 311.595(21) provides that the Board may probate, suspend, restrict or limit a license issued by the Board upon proof that the physician has:

- (21) been disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, . . . if the actions was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any of the provisions of KRS 311.595.

Dr. Cox's first assignment of error is that the suspensions, issued temporarily and without a final due process hearing, did not constitute grounds under KRS 311.595(21) to institute suspension proceedings before the Board. Pursuant to KRS 311.606(1), Dr. Cox contends that no action can be undertaken for suspension under KRS 311.595(21) unless final actions have been taken by the reporting hospital. Dr. Cox claims that no final action has been taken at either hospital.

As stated in this Court's previous order, the Court rejects Dr. Cox's argument regarding the finality of those suspensions. The Court agrees with the Board that Dr. Cox has failed to establish his contention that the Board had no legal authority to take disciplinary/corrective action of his license. The evidence shows that Dr. Cox's suspension of privileges were suspended and remained suspended at the time the Board found him in violation of KRS 311.595(21). Moreover, as argued by the Board, there is no legal basis for Dr. Cox's argument that the possibility of future action, either a successful appeal of his suspension at Baptist or Caritas or reinstatement of his privileges at one of the hospitals, defeats the Board's ability to enforce the provisions of KRS 311.595(21). The Court finds

that the Board properly considered the complaint against Dr. Cox and properly disciplined him pursuant to KRS 311.595(21).

Dr. Cox's next assignment of error is that the order was improperly considered and entered and is procedurally defective because the Board applied a constitutionally defective statute, KRS 311.595(21), as a basis of suspension. Since KRS 311.595(21) permits disciplinary action on pending suspensions, Dr. Cox argues that the statute is unconstitutional because it deprives the physician to properly defend both actions against him. As stated in its previous Order, the Court respectfully disagrees. KRS 311.595(21) clearly sets out how the Board may impose disciplinary action against a physician's license. The Court agrees with the Board that the any physician licensed by the Board can understand what conduct is prohibited by the statute. Thus, the Court hold that KRS 311.595(21) is not void for vagueness.

The Court further reject's Dr. Cox's contention that the penalty is arbitrary, capricious, an abuse of discretion, and not based on substantial evidence. As indicated in the order, the Panel considered the nature of the violations and the hearing officer's recommendations. The Findings of Fact are replete with examples of Dr. Cox's violations which Dr. Cox has not disputed. KRS 311.555 provides that the Board is best qualified to discipline a physician and based on the evidence detailed in the Board's order, the Court does not find that the penalty, including the three month suspension, was extremely punitive or an abuse of the Board's discretion.

ORDER

IT IS HEREBY ORDERED that the Petitioner's, Dr. Warren Cox, Motion to Stay the Court's order affirming the Kentucky Medical Board of Licensure's is GRANTED as to the extent of Dr. Cox's suspension and fine. The Motion to Stay is DENIED as to the portion of this Court's order affirming Dr. Cox's probation. Dr. Cox's probation is to remain in effect pending his appeal.

ENTERED IN COURT

JUN 13 2003

TONY MILLER, CLERK

By OB
Deputy Clerk


JUDGE STEPHEN RYAN
Division Six (6)

cc: C. Lloyd Vest, II
John E. Spainhour

FILED OF RECORD

JUN 13 2003

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 764
ADMINISTRATIVE ACTION NO. 00-KBML-0596

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WARREN M. COX, M.D., LICENSE NO. 24435, 1300
GARDINER LANE, #7, LOUISVILLE, KENTUCKY 40213

AMENDED ORDER OF SUSPENSION/PROBATION

At its August 22, 2002 meeting, the Kentucky Board of Medical Licensure (hereafter "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; the hearing officer's recommended Findings of Fact, Conclusions of Law and Recommended Order; the Board's Exception to Hearing Officer Report; the licensee's Exceptions to Hearing Officer Report; Baptist Hospital Medical Executive Committee Requirements and Corrective Action Plan for the licensee; and, an August 6, 2002 memorandum from the Board's General Counsel. The Panel members also heard and considered oral remarks by counsel for the parties and by the licensee.

Having considered all the information available and being sufficiently advised, Hearing Panel A ACCEPTS the hearing officer's recommended 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) Panel A specifically REJECTS the licensee's arguments that the disciplinary actions by the hospitals are not ripe for action by this Board pursuant to KRS 311.595(21). Hearing Panel A FURTHER ACCEPTS AND ADOPTS the hearing officer's Recommended Order. In accordance with that Recommended Order, Hearing Panel A ORDERS:

1. The license to practice medicine in the Commonwealth of Kentucky held by Warren M. Cox, IV, is SUSPENDED for a period of THREE (3) CALENDAR MONTHS, with this suspension to become effective at 12:01 a.m. on June 30, 2003;
2. Prior to the expiration of that three month suspension period, the licensee SHALL provide the Board's staff with written confirmation from Baptist Hospital East and from Caritas Peace Center that the licensee is in full compliance with the Corrective Action Plans instituted by each facility;
3. The licensee's medical license is hereby PLACED ON PROBATION FOR A PERIOD OF FIFTY-SEVEN (57) MONTHS, commencing on October 3, 2003, being held in abeyance during the three month suspension period, and ending on October 3, 2007;
4. During that period of probation, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT prescribe any medication for himself;
 - b. The licensee SHALL FULLY COMPLY with the terms of any corrective action plan or other directives issued by any hospital at which he has privileges;
 - a. Within twenty (20) days of October 3, 2003, the licensee shall meet with the Medical Director, Kentucky Physicians Health Foundation ("the Foundation"), to arrange for and schedule all necessary evaluations/assessments to determine whether the licensee requires treatment for any condition which may impair or adversely affect his

ability to practice medicine appropriately. The licensee shall successfully complete each evaluation arranged by the Foundation's Medical Director and/or staff at the time(s) scheduled and shall take all necessary steps to permit and to arrange for the Foundation to receive written reports of each assessment/evaluation conducted;

- b. If the Foundation's Medical Director concludes, after reviewing the assessment/evaluation report(s), that the licensee requires treatment, the Medical Director shall advise the licensee of such fact, in writing, at the earliest time possible. If the licensee receives such written notification that treatment is necessary, he SHALL ENTER INTO a contractual relationship with the Foundation, within twenty (20) days of the date of the written notification. If the licensee is required to enter into such a contractual relationship with the Foundation after written notification, he shall fully comply with all terms and conditions of that contractual relationship;
- c. The licensee SHALL continue to obtain psychotherapy and medication treatment from his current psychotherapist and/or his current treating physician, until such time as the Foundation's Medical Director and the licensee's treating physician(s) and/or treating psychotherapist determine that treatment is no longer necessary. The licensee SHALL fully comply with all treatment directives, including medication instructions, by his treating psychotherapist and/or treating physician. Within twenty (20) days of the effective date of this Order, the licensee SHALL provide

written notification to the Board's staff and to the Foundation's Medical Director of the name(s) and practice location(s) for his current treating psychotherapist(s) and/or his current treating physician(s). The licensee SHALL take all necessary steps to permit and SHALL arrange for his treating physician(s) and his treating psychotherapist(s) to provide written reports to the Board and to the Foundation's Medical Director at six (6) month intervals following the effective date of this Order, with the reports to detail: his current diagnosis, his current treatment plan; his current prognosis; the expected length of continued treatment: and, the licensee's compliance with all treatment directives;

- d. The licensee SHALL pay a FINE in the amount of \$3,412.50, at the rate of \$200 per month, commencing on November 1, 2003 and continuing until such time as the fine is paid in full; and,
- e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

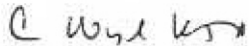
SO ORDERED on this 13th day of June, 2003.



DONALD J. SWIKERT, M.D.
CHAIR, HEARING PANEL A

Certificate of Service

I certify that the original of the foregoing 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 Thomas J. Hellmann, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204 and via certified-mail return receipt requested to: John E. Spainhour, Esq., Givhan, Spainhour & Stuart, Professional Building, 200 South Buckman Street, Suite One, Shepherdsville, Kentucky 40165-0065 and Warren M. Cox, IV, M.D., 1300 Gardiner Lane, #7, Louisville, Kentucky 40213 this 13th day of June, 2003.



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

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
JEFFERSON CIRCUIT COURT
DIVISION SIX
NO: 02-01-07434

WARREN M. COX, MD

PETITIONER

VS.

TEMPORARY RESTRAINING ORDER

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

On Motion of the Petitioner, by counsel, supported by Verified Petition and the Court having found that sufficient notice was given to the Respondent and further finding that the Petitioner will be immediately and irreparably harmed and suffer immediate and irreparable loss of rights before a formal hearing on the merits can be held; and being otherwise sufficiently advised.

IT IS HEREBY ORDERED AND ADJUDGED that the Respondent, Kentucky Board of Medical Licensure is temporarily restrained from enforcing, ~~disseminating, or distributing~~ its order of Suspension and Probation ^{FINE} against Petitioner, issued September 3, 2002, all pending further order of this Court.

BOND: \$1.00 WITHOUT SURETY



JUDGE

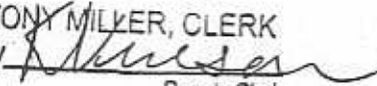
DATE: _____

Distribution to:

- () Hon. John E. Spainhour
Attorney at Law
Professional Building, Suite One
200 South Buckman Street
Shepherdsville, KY 40165

ENTERED IN COURT

OCT 03 2002

TONY MILKER, CLERK
By 
Deputy Clerk

() C. Lloyd Vest, II
General Counsel
Kentucky Board of Medical Licensure
Hurstbourne Office Park, Suite 1B
310 Whittington Parkway
Louisville, KY 40222

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COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
JEFFERSON CIRCUIT COURT
DIVISION _____
NO: _____

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)

WARREN M. COX, MD

PETITIONER

VS.

PETITION FOR JUDICIAL REVIEW
AND DECLARATION OF RIGHTS

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

Serve: William Schmidt, Executive Director
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, KY 40222

C. Lloyd Vest, II, Esq., General Counsel
Kentucky Board of Medical Licensure
Hurstbourne Office Park, Suite 1B
310 Whittington Parkway
Louisville, KY 40222

A.B. Chandler III
Attorney General
Commonwealth of Kentucky
Capitol Building
Frankfort, KY 40601

PARTIES AND JURISDICTION

1. Petitioner, Warren M. Cox, MD is a physician licensed to practice in the Commonwealth of Kentucky, and a resident of Jefferson County, Kentucky and is engaged in the practice of medicine here.

2. Respondent, Kentucky Board of Medical Licensure, is a state agency authorized by Kentucky statute, whose responsibility includes regulation of the practice of medicine in the

Commonwealth of Kentucky.

3. Pursuant to KRS 13B.140(1) and KRS 311.543, this Court has jurisdiction of Petitioner's appeal from the Kentucky Board of Medical Licensure's Order of Suspension and Probation herein described, and Respondent has exhausted all administrative remedies available to him, as required by KRS 13B.140(2).

4. Pursuant to KRS 418.020, et seq., this Court has jurisdiction to adjudicate actual controversies between these parties and order relief pursuant to such adjudication.

STATEMENT OF FACTS

5. On December 11, 2000, Respondent issued a Complaint against Petitioner, alleging that Petitioner had violated certain sections of the Kentucky Medical Practice Act, KRS Chapter 311. The Complaint sought to discipline Petitioner for his alleged suspensions of hospital privileges at Baptist Hospital East on June 29, 1999, and by Caritas Peace Center on June 15, 1999. Respondent denied the charges against him.

6. A hearing was held on Respondent's Complaint over several days beginning on September 5, 2001, and concluding on February 19, 2002, at which evidence was introduced and witnesses called on behalf of both Petitioner and Respondent. Following this hearing the Hearing Officer recommended certain Findings of Fact and Conclusions of Law.

7. On September 3, 2002, the Respondent issued an Order of Suspension and Probation, copy attached hereto as Exhibit A, in which the Respondent accepted and adopted the Hearing Officer's Recommended Findings of Fact and Conclusions of Law, but modified the Hearing Officer's recommendations regarding discipline of Respondent.

8. The action of Respondent against Petitioner are based on claims pursuant to KRS 311.595 (21) that Petitioner's hospital practice at Caritas and Baptist East Hospitals have been

temporarily suspended even though no final decisions or dispositions have been undertaken at either hospital and certain internal appeals and due process hearing had not been held at either hospital. The lack of finality of action at each hospital was argued to the hearing officer and to the Respondent as a reason not to proceed or administer discipline or action against Petitioner's license. Action by Respondent against Petitioner's license unconstitutionally deprives Petitioner of due process of law and makes the underlying enabling statute KRS 311.595 (21) for such action unconstitutional as applied to Petitioner and this Court should so adjudge.

CAUSE OF ACTION

9. Respondent's Order of Suspension and Probation is arbitrary, capricious, or otherwise constituted an abuse of discretion on the part of the Kentucky Board of Medical Licensure, and is not supported by substantial evidence based upon the record as a whole.

10. Respondent's Order of Suspension and Probation as entered was improperly considered and entered by the Kentucky Board of Medical Licensure, and is procedurally defective, applying an unconstitutionally defective statute as a basis of the suspension and probation and should be declared null and void and set aside by this Court.

11. Respondent has or will improperly and prematurely publish and otherwise disseminate and enforce its Order of Suspension and Probation against Petitioner and to third parties in a manner that will cause irreparable harm to Respondent by requiring him to close his ongoing practice and loose his patients and profession pending appeal. Absent stay in the enforcement of this board order, Petitioner will be placed in a position to which he can not be restored should this Court ultimately set aside the Respondent's Order.

WHEREFORE: Petitioner demands:

1. That Respondent's Order of Probation be set aside and held for naught as procedurally

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 764
ADMINISTRATIVE ACTION NO. 00-KBML-0596

FILED OF RECORD
SEP - 3 2002
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WARREN M. COX, M.D., LICENSE NO. 24435, 1300
GARDINER LANE, #7, LOUISVILLE, KENTUCKY 40213

ORDER OF SUSPENSION/PROBATION

At its August 22, 2002 meeting, the Kentucky Board of Medical Licensure (hereafter "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; the hearing officer's recommended Findings of Fact, Conclusions of Law and Recommended Order; the Board's Exception to Hearing Officer Report; the licensee's Exceptions to Hearing Officer Report; Baptist Hospital Medical Executive Committee Requirements and Corrective Action Plan for the licensee; and, an August 6, 2002 memorandum from the Board's General Counsel. The Panel members also heard and considered oral remarks by counsel for the parties and by the licensee.

Having considered all the information available and being sufficiently advised, Hearing Panel A ACCEPTS the hearing officer's recommended 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) Panel A specifically REJECTS the licensee's arguments that the disciplinary actions by the hospitals are not ripe for action by this Board pursuant to KRS 311.595(21). Hearing Panel A FURTHER ACCEPTS AND ADOPTS the hearing officer's Recommended Order. In accordance with that Recommended Order, Hearing Panel A ORDERS:

1. The license to practice medicine in the Commonwealth of Kentucky held by Warren M. Cox, IV, is SUSPENDED for a period of THREE (3) CALENDAR MONTHS, with this suspension to become effective upon the effective date of this Order;
2. Prior to the expiration of that three month suspension period, the licensee SHALL provide the Board's staff with written confirmation from Baptist Hospital East and from Caritas Peace Center that the licensee is in full compliance with the Corrective Action Plans instituted by each facility;
3. Immediately following the completion of that suspension period, the licensee's medical license is hereby PLACED ON PROBATION FOR A PERIOD OF FIFTY-SEVEN (57) MONTHS;
4. During that period of probation, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT prescribe any medication for himself;
 - b. The licensee SHALL FULLY COMPLY with the terms of any corrective action plan or other directives issued by any hospital at which he has privileges;
 - a. Within twenty (20) days of the date of filing of this Order of Suspension/Probation, the licensee shall meet with the Medical Director, Kentucky Physicians Health Foundation ("the Foundation"), to arrange for and schedule all necessary evaluations/assessments to determine whether the licensee requires treatment for any condition which may impair or adversely affect his ability to practice medicine appropriately. The

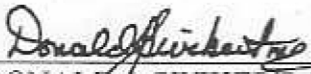
licensee shall successfully complete each evaluation arranged by the Foundation's Medical Director and/or staff at the time(s) scheduled and shall take all necessary steps to permit and to arrange for the Foundation to receive written reports of each assessment/evaluation conducted;

- b. If the Foundation's Medical Director concludes, after reviewing the assessment/evaluation report(s), that the licensee requires treatment, the Medical Director shall advise the licensee of such fact, in writing, at the earliest time possible. If the licensee receives such written notification that treatment is necessary, he SHALL ENTER INTO a contractual relationship with the Foundation, within twenty (20) days of the date of the written notification. If the licensee is required to enter into such a contractual relationship with the Foundation after written notification, he shall fully comply with all terms and conditions of that contractual relationship;
- c. The licensee SHALL continue to obtain psychotherapy and medication treatment from his current psychotherapist and/or his current treating physician, until such time as the Foundation's Medical Director and the licensee's treating physician(s) and/or treating psychotherapist determine that treatment is no longer necessary. The licensee SHALL fully comply with all treatment directives, including medication instructions, by his treating psychotherapist and/or treating physician. Within twenty (20) days of the effective date of this Order, the licensee SHALL provide written notification to the Board's staff and to the Foundation's Medical

Director of the name(s) and practice location(s) for his current treating psychotherapist(s) and/or his current treating physician(s). The licensee SHALL take all necessary steps to permit and SHALL arrange for his treating physician(s) and his treating psychotherapist(s) to provide written reports to the Board and to the Foundation's Medical Director at six (6) month intervals following the effective date of this Order, with the reports to detail: his current diagnosis, his current treatment plan; his current prognosis; the expected length of continued treatment; and, the licensee's compliance with all treatment directives;

- d. The licensee SHALL pay a FINE in the amount of \$3,412.50, at the rate of \$200 per month, until such time as the fine is paid in full; and,
- e. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.

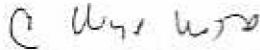
SO ORDERED on this 3rd day of September, 2002.


DONALD J. SWIKERT, M.D.
CHAIR, HEARING PANEL A

Certificate of Service

I certify that the original of the foregoing 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 Thomas J. Hellmann, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204 and via certified-mail return receipt requested to: John E. Spainhour, Esq., Givhan, Spainhour & Stuart, Professional Building, 200 South Buckman Street, Suite One, Shepherdsville, Kentucky

40165-0065 and Warren M. Cox, IV, M.D., 1300 Gardiner Lane, #7, Louisville,
Kentucky 40213 this 3rd day of September, 2002.



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) and 13B.120, the effective date of this Order will be thirty (30) days after this Order of Suspension/Probation 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. 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
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 764
ADMINISTRATIVE ACTION NO. 00-KBML-0596

FILED OF RECORD
JUN 25 2002
K.B.M.L.

KENTUCKY BOARD OF MEDICAL LICENSURE

COMPLAINANT

vs.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED ORDER

WARREN M. COX, IV, M.D.
License No. 24435

RESPONDENT

* * * * *

On February 19, 2002, the hearing officer concluded the administrative hearing on the *Complaint* issued by the Kentucky Board of Medical Licensure against the license of Warren M. Cox, IV. The Board was represented by Hon. C. Lloyd Vest, II, and Dr. Cox was represented by Hon. John E. Spainhour. After considering the evidence admitted at the hearing and the arguments of counsel, the hearing officer recommends that the Board find Cox guilty of violating KRS 311.595(21) as alleged in the *Complaint*. The hearing officer recommends that the Board suspend Cox's license to practice medicine for a period determined by the Board to be appropriate for the misconduct and place his license on probation for an additional period of time. In support of that recommendation, the hearing officer submits the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

1. On December 11, 2000, the Kentucky Board of Medical Licensure [hereinafter "the Board"] issued the *Complaint* against Warren M. Cox, IV, alleging that he had violated the Board's statutes governing the practice of medicine in Kentucky.
2. In the *Complaint* the Board alleged specifically that on June 29, 1999, Baptist Hospital East in Louisville, Kentucky, imposed an indefinite suspension of Cox's hospital privileges based, in part, on deficiencies in his medical records. The Board alleged that the suspension was imposed after Cox failed to comply with the hospital's corrective action plan that was established to address the deficiencies. The Board alleged Cox's privileges at the hospital remain suspended.
3. The *Complaint* also alleged that Caritas Peace Center conducted its own review of Cox's patient charts based upon a variety of complaints lodged against him, and the hospital found that his charts lacked initial history and physical documentation and also lacked progress notes and/or discharge summaries. For the charts that did contain progress notes, the hospital found that they were vaguely documented. Thus, on June 15, 1999, Caritas's Medical Executive Committee suspended Cox's hospital privileges, and the Board alleged that those privileges also remain suspended.
4. Based upon those allegations, the Board asserted that Cox violated KRS 311.595(21) and therefore, he is subject to discipline by the Board for having his hospital privileges suspended.

5. In his defense Cox acknowledges that there have been deficiencies in his record keeping practices, but he asserts the deficiencies were related to and caused by several medical conditions that existed at the time of the deficiencies. Cox asserts that those conditions have been successfully treated and are now under control. Hence, he asserts that he wants to return to his hospital practice and is willing to be subject to supervision and monitoring to ensure that the record keeping deficiencies do not recur.

6. Dr. Warren M. Cox, IV, is approximately fifty-one years old, and he was licensed to practice medicine in 1985. He completed a residency in psychiatry in 1989 and has been in private practice since that time. Initially, Cox shared a medical practice with his father, but he fell ill in November 1995 and died a few months later. Thereafter, Cox maintained the practice by himself, but the practice had a substantial amount of debt. In addition, many of his father's patients left the practice to seek treatment from other psychiatrists. Hence, during the time period at issue in this action, Cox had financial difficulties in addition to his medical problems.

7. There had been ongoing conflicts between Baptist Hospital East and Cox regarding his failure to comply with the hospital's requirements for maintaining updated medical records. Over the course of a nine month period between December 1997 and August 1998 Cox faced suspension four times for his failure to complete medical records. Prior to the effective date of two of the suspension, however, Cox completed the delinquent records. On the other two occasions, he completed the records shortly after the date of the suspensions. Exhibit 6, page 4-5.

8. When Cox's pattern of conduct continued, the hospital's Patient Care Committee issued a report to the Medical Executive Committee detailing the problems with Cox's practice. The Patient Care Committee noted numerous instances where Cox's medical records were incomplete, inadequate, or simply nonexistent. The deficiencies had become so pronounced that the committee was concerned about the quality of care that Cox was providing to his patients at the hospital. Exhibit 6, page 5.

9. The committee also found that the quality of care that Cox was providing to his patients was also affected by his lack of cooperation with the hospital staff, including Cox's failure or refusal to return phone calls. Exhibit 6, page 5.

10. The Patient Care Committee recommended a corrective action plan that required Cox to comply with the Medical Staff bylaws, rules, policies. The plan also required timely responses to hospital staff inquiries regarding Cox's patients, timely response to inquiries from the Patient Care and Medical Executive Committees, and full cooperation with the staff in the appropriate disposition of his patients.

11. After reviewing the report of the Patient Care Committee, the Medical Executive Committee of Baptist Hospital East on October 16, 1998, issued a report styled *Requirements & Corrective Action Plan* which adopted the recommendation of the Patient Care Committee. Exhibit 6. Cox was required to comply with the specific terms of the corrective action plan, and he was required to contact Dr. Burns Brady within ten days of receipt of the report in order to be evaluated by the Kentucky Physicians' Health Foundation/Impaired Physicians Program. The evaluation itself had to be

completed within forty-five days of Cox's receipt of the report. In addition, within ten days Cox was required to meet with the Hospital President, the Chair of the Medical Executive Committee, and the Hospital Board Chair to discuss the committees' concerns and the importance of him complying with the all applicable bylaws, rules, and plans.

12. Although Cox signed the document signifying his agreement to comply with the terms of the *Requirements and Corrective Action Plan*, he failed to contact or meet with Dr. Brady within the ten day time period.

13. Shortly thereafter, Dr. Charles E. Hornaday, Chair of the Medical Executive Committee, wrote to Cox requesting that he meet with Dr. Brady immediately. Exhibit 6, letter from Dr. Hornaday to Cox dated October 30, 1998.

14. Cox did meet with Dr. Brady on November 12, 1998, but stated that he did not agree with the terms set forth in the agreement.

15. Cox also failed to meet the original forty-five day deadline for completing the examinations and evaluations required by the agreement, but Dr. Hornaday granted Cox an extension until December 19, 1998, to meet that requirement. Exhibit 6, letter from Dr. Hornaday to Cox dated December 9, 1998.

16. Cox responded to Dr. Hornaday with a letter in which he asserted that he was confused as to how he was required to proceed, that he would not be able to comply with the new deadline, but that he would contact Dr. Brady immediately. Exhibit 6, letter from Cox to Dr. Hornaday dated December 15, 1998.

17. In response to Cox's assertions, Dr. Hornaday granted him an extension of time, until January 18, 1999, to complete all of the evaluations and examinations. Exhibit 6, letter Dr. Hornaday to Cox dated December 17, 1998.

18. Cox, however, failed to meet the January deadline, and consequently, his medical staff privileges at Baptist Hospital East were suspended. Exhibit 6, letter from Drs. Renda, Tamme, and Link to Cox dated January 18, 1999.

19. Cox and Baptist Hospital East later agreed that his staff membership and clinical privileges would remain suspended pending resolution of this action. Defendant's Exhibit 1.

20. Cox experienced similar difficulties at Caritas Peace Center regarding completion of his medical records. In a letter dated November 24, 1999, Dr. John Sullivan, Chair of the Medical Executive Committee of Caritas, notified Cox that he had been delinquent in completing medical records of patient treatment and that his delinquency had been ongoing since August 28, 1998. He was told that his clinical privileges and medical staff membership would be voluntarily relinquished if he did not complete the delinquent records by December 24, 1999. Exhibit 9, letter from Dr. John Sullivan to Cox dated November 24, 1999.

21. Cox complied with the request to complete the documentation, but the issue arose again in March 1999.

22. On June 29, 1999, the Medical Executive Committee for Caritas suspended Cox's hospital privileges due to his failure to document patient treatment. The

suspension was to continue until he provided summaries of medical and neuropsychological examinations to the committee in order for the members to evaluate whether he was fit to practice medicine. Exhibit 9, letter to Cox from Dr. Sullivan dated June 29, 1999.

23. There were significant deficiencies in Cox's medical records at Caritas, and by implication deficiencies in the patient care provided by him. Defendant's Exhibit 3. In a meeting with Dr. Sullivan Cox admitted that he had slacked off in his documentation and that he procrastinated. Cox believed, however, that no one had been monitoring his work, and thus, he could delay the completion of his medical records until the hospital itself forced him to perform the work.

24. Cox's hospital privileges at Caritas also remain suspended.

25. Both hospitals suspended Cox's hospital privileges based upon his unprofessional conduct that included his failure to complete his medical records in a timely manner.

26. In 1999 Cox was diagnosed with diabetes, and since that time, he has had two toes amputated due to complications from the condition. He continues to be actively treated for diabetes.

27. Cox has also been diagnosed as suffering from dysthymia and attention deficit/hyperactivity disorder. He takes medications for both disorders, and the dysthymia can be controlled but not cured by medication.

28. In the weeks following his suspension by Baptist Hospital East, Cox finally attempted to comply with that hospital's corrective action plan.

29. As a result of his suspensions Cox has been evaluated by several psychiatrists and psychologists. Although he has been diagnosed as suffering from several medical conditions, they have not been identified as contributing to a significant degree to his suspensions and are not considered to be a major impairment to Cox's ability to practice medicine. Instead, the evaluations have identified several personality disorders that are unrelated to any of his medical conditions and which account for many of the problems that resulted in the suspension of his hospital privileges.

30. Dr. [REDACTED] met with Cox on February 3, 1999, and performed a psychiatric evaluation. Dr. [REDACTED] found that Cox suffered from a depressive illness, but it was being managed to a sufficient degree by Prozac. Dr. [REDACTED] also found that Cox had "chronic difficulties with interpersonal relationships," but those problems "are probably not amenable to a psychotherapeutic approach." Consequently, Dr. [REDACTED] recommended that Cox "be placed under some type of supervision at the hospital to insure that he is following the rules and regulations of the medical staff. Only a structured approach to this is likely to yield improvements in these areas. Failure to adhere to the structure laid out should have definite consequences outlined." Exhibit 4.

31. [REDACTED], a licensed clinical psychologist, performed a psychological evaluation of Cox in conjunction with Dr. [REDACTED]'s evaluation. [REDACTED] found that Cox had "significant personality difficulties that could interfere with work

and personal relationships." [REDACTED] found that persons with Cox's psychological profile are impulsive, immature, aggressive, and dominant which results in their being socially alienated and easily frustrated, and likely to have problems with authority.

[REDACTED] stated that Cox was "unlikely to profit from therapy as he does not see the nature of his role in his difficulties and has little interest in expression or discussion leading to self-awareness. Because he blames others for his problems, he has little motivation to change and will likely only enter treatment via external pressure." Exhibit 5, page 3.

32. Dr. [REDACTED] the Board's consulting psychiatrist in this action, evaluated Cox on January 25, 2001, and his findings were consistent with those of the previous evaluations. Dr. [REDACTED] found that Cox has some mild psychiatric impairment, but Dr. [REDACTED] found Cox did not experience a depressive illness, a psychotic illness, an incapacitating personality disorder, or a significant cognitive disorder that would interfere with his duties and responsibilities as a practicing physician. Exhibit 7, page 2.

33. Dr. [REDACTED] did find that Cox has the personality traits for "verbal aggressiveness and an argumentative approach to most of his problem solving needs. It seems to be part of his personality makeup and is not egodystonic." Exhibit 7, page 11.

34. Dr. [REDACTED] stated that such personality traits create risk to patients and are particularly troublesome in a psychiatric practice where the physician must be sensitive to the needs of the patients.

35. Cox, however, does not see those traits identified by Dr. [REDACTED] as character flaws. Thus, Dr. [REDACTED] stated that "Dr. Cox's personality style is unlikely to be amenable to therapeutic change with outpatient psychotherapy." Exhibit 7, page 12.

36. Based upon his evaluation of Cox, Dr. [REDACTED] recommended that "those responsible for monitoring the quality of care [Cox] provides to patients and his behavior as a physician, hold him accountable for his actions and behaviors. He deserves clear expectations and knowledge of the consequences if he fails to meet those expectations." Exhibit 7, page 12.

37. The corrective action plan established for Cox by Baptist Hospital East set the type of clear expectations and consequences for the failure to meet the expectation as recommended by Dr. [REDACTED]. See Exhibit 6.

38. [REDACTED] a clinical neuropsychologist, also performed a more recent evaluation of Cox at the request of the Board. In her evaluation of Cox, she stated that he would continue to have conflicts with the hospitals' guidelines and expectations for him:

"Dr. Cox is not open to considering opinions or concerns that differ from his own. Therefore, he will probably continue to have problems in the professional arena, where he does not have primary control in defining what is necessary and acceptable behavior to meet professional guidelines and standards. Even when given specific, well-defined expectations for professional competence and conduct in compliance with a hospital's requirements for clinical privileges, Dr. Cox's attitude of viewing his behavior as justifiable through intellectual arguments will likely continue."

Exhibit 8, page 3.

39. Dr. William Kraft, who performed a neuropsychological examination of Cox for Caritas and who was called by Cox to testify at the hearing, stated that he found nothing in his evaluation "that would grossly limit [Cox's] capacity to fulfill his professional responsibilities if he so chooses." Dr. Kraft also stated that "it would be advantageous [for Cox] to have a structured, mutual agreement for expectations to minimize conflict" in a hospital environment. Finally, Kraft agreed "with a previous opinion that failure to meet reasonable expectations of an organization, such as record keeping, should result in natural consequences of that violation as there are no deficits or disability that would preclude his meeting reasonable standards of care or record keeping." Defendant's Exhibit 11, page 17.

40. The problems that led to the suspension of Cox's clinical privileges at Baptist East and Caritas serve to verify the assessments of his personality traits and the conclusions regarding those traits as noted by the professionals whose reports have been made part of the record in this action.

41. Because of his delinquency in completing his medical records Cox found himself in conflict with the administration of both hospitals, and instead of complying with the hospitals' repeated requests of him to complete those records, Cox became more determined in his opposition.

42. Even when Cox was presented with a deadline for complying with Baptist Hospital East's corrective action plan, Cox was able to obtain an extension of the deadline and then failed to meet it resulting in the suspension of his hospital privileges.

43. The evidence in the record does not support the conclusion that Cox suffered from any medical condition disability that would have prevented him from completing his medical records in a timely manner or from complying with the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky.

44. In fact, Cox's response to the hospitals' repeated requests to complete those records is consistent with his response to the requests to comply with the corrective action plan. Cox appeared more interested in delaying, opposing, or simply missing deadlines than complying with them. In addition, those same medical conditions that allegedly prevented Cox from completing progress notes or returning phone calls from hospital staff apparently did not prevent him from otherwise providing care to those same patients. Although there was an issue raised regarding whether Cox saw some patients on a timely basis, that was not the basis for the hospitals' action against him. In addition, at the same time that he alleges that he was unable to complete his medical records, Cox was able to write Dr. Hornaday a three page letter detailing the reasons why he was unable to comply with the terms of the hospital's corrective action plan. Exhibit 6, letter from Cox to Dr. Hornaday dated December 15, 1998.

45. Cox asserted to the administration at Caritas that he was unable to complete his medical records due to the fact that he was "phobic" about the new computerized record system. He also asserted that he was dissatisfied with a system that was so rudimentary and error prone.

46. Cox did not explain how having no records for a patient was more satisfactory than rudimentary records. In addition, Cox was known as a sophisticated computer user and was on the hospital's computer committee because of his expertise in the area. Thus, Cox's explanation for his failure to complete his medical records on a timely basis is not believable.

47. The only reasonable explanation for Cox's failure to complete those records is his determination to oppose the efforts of Baptist Hospital East and Caritas to change how he conducted his medical practice without any regard on his part as to whether there was merit to the hospitals' concerns.

48. In spite of the fact that both hospitals suspended his privileges based upon his unprofessional conduct, at no time has Cox acknowledged the degree to which his conduct may have had a negative impact on the health or well-being of his patients or on the quality of care that he was providing for them.

49. At the hearing Cox asserted that he is willing to comply fully with the hospitals' requirements for record keeping, will accept the hospitals' supervision of his record keeping practice in order to reestablish his hospital privileges, and will comply with the hospitals' recommendations regarding that aspect of his practice.

50. Similarly, in a letter sent to Dr. Sullivan at Caritas on August 11, 1999, Cox stated that he agreed with the proposal for "24 hour chart audits for the purpose of structure which is going to be a major plus as far as my Attention Deficit Hyperactivity Disorder is concerned and I welcome that structure." Defendant's Exhibit 10.

51. On cross-examination by the Board's counsel at the hearing, however, Cox refused to acknowledge that there had been a problem with his patient records and refused to acknowledge that the hospitals were justified in taking action to force him to complete those records. He asserted that the hospitals had singled him out for scrutiny, and no action had been taken against other physicians who had the same deficiencies.

52. Thus, Cox's assertion that he will now voluntarily comply with the hospital's rules, regulations, and bylaws is not credible.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.

2. The administrative hearing in this action was conducted pursuant to 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 contained in the *Complaint*.

4. The Board has met its burden in this case.

5. Pursuant to KRS 311.595(21), the Board may discipline the license of a physician who has "been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension . . . if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311." Both Baptist Hospital East and Caritas suspended Cox's hospital privileges based upon his

unprofessional conduct in failing to complete his medical records for patients in a timely manner. Consequently, Cox's privileges were suspended for the grounds set forth in KRS 311.595(21), and Cox is subject to discipline by the Board for those suspensions.

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends that the Board of Medical Licensure impose the following sanctions:

1. Suspend Cox's medical for a period of time determined by the Board to be appropriate for his violation of KRS 311.595(21). His license should be suspended due to the continuing nature of the conduct that resulted in the suspension of his hospital privileges and due to his failure to acknowledge or appreciate the impact that his conduct could have had on the health and well-being of his patients.
2. Place Cox's license on probation for an additional period of time determined by the Board. During the period of probation Cox should be subject to the further sanctions that include, but are not be limited to, suspension of his medical license if he repeats the same type of misconduct that resulted in the sanctions imposed in this action, if he fails to comply with all terms of a hospital's corrective action plan in a timely manner upon reestablishment of his hospital privileges, or if he is found to be in violations of any other

provision of the Board's statutes or regulations during the period of suspension or probation.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

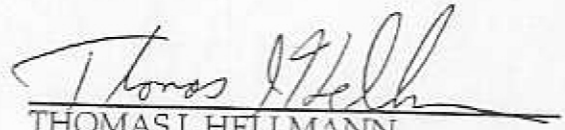
A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

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 24th day of June, 2002.



THOMAS J. HELLMANN
HEARING OFFICER
DIV. OF ADMINISTRATIVE HEARINGS
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DR., STE. 200
FRANKFORT, KY 40601-8204
(502) 696-5442

CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDATION was mailed this 24th day of July, 2002, 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:

JOHN E SPAINHOUR
GIVHAN SPAINHOUR & STUART PSC
PROFESSIONAL BLDG
200 S BUCKMAN ST STE ONE
SHEPHERDSVILLE KY 40165-0065

C LLOYD VEST II
GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

Peggy Riddle
DOCKET COORDINATOR

000596FC

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 764

FILED OF RECORD
DEC 11 2000
K.B.M.L.

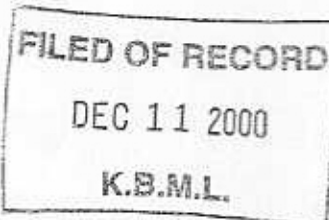
IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435, 1300 GARDINER LANE, #7, LOUISVILLE, KENTUCKY 40213

COMPLAINT

Comes now the Complainant Preston P. Nunnolley, M.D., Chair 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, Warren M. Cox, IV, M.D., as follows:

1. At all relevant times, Warren M. Cox IV was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. On October 14, 1998, the Medical Executive Committee (MCE) of Baptist Hospital East (BHE), Louisville, Kentucky issued a letter to the licensee requesting his strict compliance with the Requirements and Corrective Action Plan attached to the letter. The Requirements included the requirement that, within 45 days of the licensee's receipt of the letter, the licensee was required to successfully complete a physical examination, a urine screen, a neuropsychological evaluation, a psychiatric evaluation and any other evaluation deemed appropriate by Burns M. Brady, M.D., Medical Director, Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP), by evaluators selected/approved by Dr. Brady and at times and places selected by Dr. Brady. The Corrective Action Plan required strict compliance with Medical Staff Bylaws and General Rules, Policies and Methods; timely response to hospital

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 764



IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435, 1300 GARDINER LANE, #7, LOUISVILLE, KENTUCKY 40213

COMPLAINT

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staff regarding his patients; timely response to Patient Care Committee and/or MEC; and, full cooperation with the Comprehensive Care Staff in the appropriate disposition of his patients.

3. On June 29, 1999, the BHE MEC imposed an indefinite suspension of the licensee's privileges, pending his compliance with terms of the corrective action plan made, in part, because of medical record deficiencies, but which also required the licensee to undergo, and to report on, evaluation for existence of physical or mental impairment, which could adversely affect patient health or welfare. The licensee's privileges at BHE remain suspended.
4. Caritas Peace Center (Caritas) conducted a review of the licensee's patient charts, based upon a variety of complaints regarding the licensee. This review disclosed that charts lacked initial history/physical documentation, progress notes and/or discharge summaries. The review also disclosed that charts that did contain progress notes were vaguely documented. After the review, there was a determination that the lacking and/or poor documentation failed to support the licensee's treatment of the patients reviewed. In response to the review, the licensee acknowledged the deficiencies, but noted that he had experienced low energy due to health problems; he had forgotten to do documentation on occasion; and, he had a "phobia" regarding the computer system for charting orders. The licensee also commented that he was unaware anyone was monitoring or cared whether the notes were being done.
5. At its June 15, 1999 meeting, Caritas' MEC voted to suspend the licensee's privileges until his evaluations were completed and reviewed by the MEC. The licensee's privileges at Caritas remain suspended.

6. On September 15, 2000, the Board's Hearing Panel finally resolved Complaint 687, involving an allegation that the licensee had inappropriate sexual contact with a female patient, by issuing an Order of Revocation.
7. By his conduct, the licensee has violated KRS 311.595(21). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.
8. The Panel considered all of this information at its October 19, 2000 meeting. Upon the vote of the Panel, an Agreed Order of Surrender was provided to Dr. Cox for his review and signature. Dr. Cox has declined to accept said offer of informal disposition.
9. Respondent 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.
10. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for April 25 & 26, 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 Warren M. Cox, IV., M.D.

This 11th day of December, 2000.



PRESTON P. NUNNELLEY, M.D.
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, postage prepaid to, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; W. Gregory King, Esq., Ogden, Newell & Welch, 1700 Citizens Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2874 and a copy was mailed via certified mail to Warren M. Cox, IV, M.D., 1300 Gardiner Lane, #7, Louisville, Kentucky 40213 on this the 12th day of December, 2000.

C Lloyd Vest II

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

FILE NO. 00-CI-06369

JEFFERSON CIRCUIT COURT

DIVISION ELEVEN (11)

WARREN M. COX, IV, M.D.

PETITIONER

VS.

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

NOTICE OF APPEAL

Comes now the Kentucky Board of Medical Licensure, by counsel and pursuant to CR 73.03, and respectfully gives notice that it appeals from the Opinion and Order signed by the Court on February 5, 2001 and filed on February 6, 2001. The Appellant is the Kentucky Board of Medical Licensure. The Appellee is Warren M. Cox, IV, M.D..

Respectfully submitted,

C. Lloyd Vest II

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

Certificate of Service

I certify that a copy of this Notice of Appeal was mailed to W. Gregory King, Esq., and to J. Gregory Cornett, Esq., 1700 Citizens Plaza, Louisville, Kentucky 40202 on this 7th day of February, 2001.

C. Lloyd Vest II

C. Lloyd Vest II

JEFFERSON CIRCUIT COURT

DIVISION ELEVEN

JUDGE JUDITH E. McDONALD-BURKMAN

NO. 00-CI-06369

WARREN M. COX, IV, M.D.

PETITIONER

v.

OPINION AND ORDER

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

* * * *

This matter is before the Court on Petitioner, Warren M. Cox, IV, M.D.'s ("Dr. Cox"), Petition for Judicial Review of a September 14, 2000, Order of the Respondent, Kentucky Board of Medical Licensure ("Board"), revoking the license to practice medicine held by Dr. Cox. Dr. Cox is a physician licensed to practice medicine in the Commonwealth of Kentucky and specializes in psychiatry. In 1990, Dr. Cox began treating a female patient the parties have referred to as "Patient A" for confidentiality purposes. The Court will continue to refer to this individual as "Patient A". According to the record, Dr. Cox began treating Patient A sporadically in the beginning, and then on a regular basis starting in 1994 through the beginning of 1998. Apparently, Patient A has suffered from and been treated for a variety of psychiatric problems all of her adult life.

On February 11, 1998, Patient A was admitted to Baptist Hospital East for observation of suicidal ideation. (See Brief for Petitioner, p.2). It was at this time that Patient A terminated her patient/psychiatrist relationship with Dr. Cox for reasons which are in dispute. Nevertheless, the relationship was terminated and Patient A began seeing Dr. Debra Zukof. Id. While under the care of Dr. Zukof, Patient A informed Dr. Zukof that she and Dr. Cox had allegedly entered into a

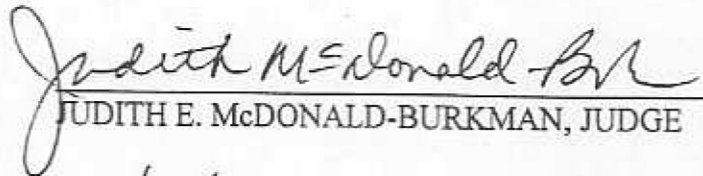
relationship involving intimate physical contact during several of their visits. Id. Subsequently, Dr. Zukof reported this to the Board. Id.

The Board issued a written complaint against Dr. Cox, an administrative hearing on the Complaint was held and the Hearing Officer found, by a preponderance of the evidence, that Patient A's allegations were true, and recommended revocation of Dr. Cox's license to practice medicine. Id. at 3-4. On August 17, 2000, Board Hearing Panel A met and voted to adopt the Hearing Officer's Recommendation and entered an Order revoking Dr. Cox's license to practice medicine. Id. at 5. Dr. Cox has appealed the Board's Order, arguing there was insufficient evidence for the Board to find that Dr. Cox engaged in an inappropriate physical relationship with Patient A.

In an appeal from an administrative body, it is the Court's position to determine if the findings of fact by the administrative body are supported by substantial evidence and the correct rule of law has been applied to the facts. Brown Hotel Company v. Edwards, Ky., 365 S.W.2d 302 (1963)(citing Alabama v. United States, D.C., 56 F.Supp 478). Substantial evidence is defined as "evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable persons." Gallatin Co. Bd. of Educ. v. Mann, Ky.App., 971 S.W.2d 295 (1998). The Court has thoroughly reviewed the record including the parties' Memoranda, and is of the opinion that the Board's Order was not supported by substantial evidence. The Court, in considering all of the evidence presented to the Board, disagrees that the proof offered against Dr. Cox is of such "substance and relevant consequence" that it has "the fitness to induce conviction in the minds of reasonable persons." Id.

Additionally, Dr. Cox asserts the Board did not have subject matter jurisdiction to hear the case since it failed to comply with KRS 311.591(1), and KRS 311.565(3). For the above stated reasons, it is not necessary for the Court to address this issue. Accordingly, it is hereby **ORDERED**

and **ADJUDGED** the Board's Order of September 14, 2000, is **VACATED** and **REMANDED** to the Board for proceedings consistent with this Opinion. Further, it is hereby **ORDERED** and **ADJUDGED** that each party be responsible for their own costs and attorney fees.


JUDITH E. McDONALD-BURKMAN, JUDGE

2/5/01
DATE

ENTERED IN COURT

c: W. Gregory King
J. Gregory Cornett
OGDEN, NEWELL & WELCH, PLLC
1700 Citizens Plaza
Louisville, Kentucky 40202

C. Lloyd Vest, II
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222

FEB 06 2001

TC
By 
Deputy Clerk

CASE NO. 00-CI-06369



JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)

WARREN M. COX, IV, M.D.

PETITIONER

v.

TEMPORARY INJUNCTION

KENTUCKY BOARD OF MEDICAL LICENSURE

RESPONDENT

Motion having been made, hearing held, evidence considered, and the Court being otherwise sufficiently advised,

It is the finding of the Court that:

1. The Petitioner, Warren M. Cox, IV., M.D. ("Dr. Cox"), is a physician licensed to practice medicine in, and is engaged in the practice of medicine in, the Commonwealth of Kentucky.
2. On or about September 14, 2000, the Kentucky Board of Medical Licensure issued and Order of Revocation, revoking the medical license of Dr. Cox, to take effect thirty (30) days following receipt by Dr. Cox.
3. On or about September 28, 2000, Dr. Cox filed a Petition for Judicial Review of the Order of Revocation, with the Jefferson Circuit Court, pursuant to KRS 311.593(2), and indicated his desire that this Court review and rule upon issues concerning claimed factual and procedural deficiencies in the Kentucky Board of Medical Licensure's procedure and ruling.
4. If the Kentucky Board of Medical Licensure is not temporarily enjoined from enforcing its Order of Revocation, Dr. Cox will suffer immediate and irreparable harm, including

but not limited to the inability to earn a living as a physician, his resultant inability to avoid default upon business and personal loans, as well as the loss of professional good will by transfer of existing patients to other professionals.

This Court therefore concludes, as a matter of law, that Dr. Cox is entitled to a Temporary Injunction, pursuant to CR 65.04

IT IS HEREBY ORDERED that the Respondent, Kentucky Board of Medical Licensure, is restrained, until further Order of this Court to the contrary, from enforcing its Order of Revocation entered on September 14, 2000 (attached as Exhibit 1 to Dr. Cox's Petition for Judicial Review). Dr. Cox's license to practice medicine within Kentucky shall remain in full force and effect during the pendency of this action, or until further Order of this Court.

A sufficient Injunction Bond in the amount of \$ 2500.00 will be tendered and accepted by this Court to indemnify the Respondent against damages which it may suffer by being wrongfully enjoined herein.

Judith McDonald-Bry
JUDGE, Jefferson Circuit Court

ENTERED IN COURT

OCT - 9 2000

TONY MILLER, CLERK
By *[Signature]*
Deputy Clerk

10/9/00
Date/Entered

Signed at 4:00 (p.m.)

TENDERED BY:



W. Gregory King
J. Gregory Cornett
OGDEN NEWELL & WELCH PLLC
1700 Citizens Plaza
500 W. Jefferson Street
Louisville, KY 40202
(502) 582-1601
Counsel for Petitioner

202088.1

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 687
ADMINISTRATIVE ACTION NO. 98-KBM L-0635

FILED OF RECORD
SEP 15 2000
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY WARREN M. COX, IV, M.D., LICENSE NO. 24435, 1300 GARDINER LANE, #3, LOUISVILLE, KENTUCKY 40213

ORDER OF REVOCATION

At its August 17, 2000 meeting, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, considered the Findings of Fact, Conclusions of Law and Recommended Order, recommended by the hearing officer in this case after an evidentiary hearing and mailed to the Board on June 30, 2000. In addition to that report, the Hearing Panel reviewed the Complaint filed in this case; a July 10, 2000 Memorandum by the Board's General Counsel; and, Exceptions by Respondent Warren M. Cox, IV, M.D., with various portions of the evidentiary transcript attached. The Hearing Panel also considered comments by the Board's General Counsel and by the licensee and his counsel.

Having considered all of the available information and being sufficiently advised, Hearing Panel A hereby ACCEPTS and ADOPTS the Recommended Order of the hearing officer IN WHOLE and INCORPORATES the Findings of Fact, Conclusions of Law and Recommended Order in whole into this Order. Based upon the Findings of Fact, Hearing Panel A CONCLUDES that the licensee has violated KRS 311.595(5) and (9).

Having considered the Findings of Fact and the Conclusions of Law, along with all of the information available to it, Hearing Panel A hereby ORDERS that the license to

practice medicine in the Commonwealth of Kentucky held by Warren M. Cox, IV, M.D., is hereby REVOKED. In accordance with KRS 311.591(7)(c) and as part of the Recommended Order, Hearing Panel A ORDERS that the licensee shall pay the specific amount of \$15,485 to Patient A, for mental health services for her which are needed as a result of his sexual contact with her; the licensee shall pay that amount to Patient A at the rate of \$1,935.63 every three months until the full amount is paid.

KRS 311.607 permits a licensee whose Kentucky license has been revoked to petition for reinstatement of that license after two (2) years from the effective date of the revocation order. Based upon the Board's policy and in accordance with previous cases, Hearing Panel A further ORDERS that the licensee SHALL PAY a FINE in the amount of \$4,137.50, the cost of the evidentiary hearing, before he may petition for reinstatement of his Kentucky medical license pursuant to KRS 311.607. Based upon the nature of the violations and the evidence described in the Findings of Fact, Hearing Panel FURTHER ORDERS that, before it will consider any petition for reinstatement filed by the licensee, he shall successfully complete neuropsychological and psychiatric evaluations by evaluators previously approved by the Board and provide the reports of those evaluations to the Panel for its review as part of the petition for reinstatement.

SO ORDERED on this 14th day of September, 2000.


DANNY M. CLARK, M.D.
Acting Chair, Hearing Panel A

Certificate of Service

I hereby certify that the original of this Order of Revocation 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 W. Gregory King, Esq., Ogden, Newell & Welch, 1700 Citizens Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202 and Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204 and mailed via certified mail return receipt requested to Warren M. Cox, IV, M.D., 1300 Gardiner Lane, #3, Louisville, Kentucky 40213 on this 15th day of September, 2000.

C Lloyd Vest II

C. Lloyd Vest, II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Ste 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 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.

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF MEDICAL LICENSURE
AGENCY CASE NO. 687
ADMINISTRATIVE ACTION NO. 98-KBML-0635

FILED OF RECORD
JUL - 3 2000
K.B.M.L.

KENTUCKY BOARD OF MEDICAL LICENSURE

COMPLAINANT

vs.

FINDINGS OF FACT, CONCLUSIONS OF LAW
and RECOMMENDED ORDER

WARREN 'CHIP' M. COX, IV
(License #24435)

RESPONDENT

* * * * *

An administrative hearing was held in the above-referenced matter over the course of four days, September 21 - 22, 1999 and May 1-2, 2000. The Kentucky Board of Medical Licensure (sometimes "the Board") appeared through its general counsel, C. Lloyd Vest, Esq. The Respondent, Warren M. Cox, IV, M.D., appeared personally and through counsel. David Carby, Esq., represented Dr. Cox from the commencement of this action until a potential conflict of interest arose which prompted his withdrawal on November 5, 1999. Mr. Carby was succeeded by W. Gregory King, Esq. Scott D. Majors, Assistant Attorney General with the Division of Administrative Hearings, served as hearing officer.

The Board presented testimony from "Patient A;" Linda Roosevelt; Robin Goodman; and Jose Aponte. Dr. Cox presented his own testimony and that from Linda McCoy; Sandy Costanza; and Shirley Snyder. The Board presented rebuttal testimony from Denise Baytree. Five exhibits were admitted into evidence by the Board, six for Dr. Cox, and one exhibit was admitted jointly by the parties.

Following consideration of the entire record, and for the reasons as stated below, it is recommended that the Hearing Panel of the Kentucky Board of Medical Licensure enter a final order which adjudges Dr. Cox to be guilty of the charges filed against him. For this misconduct, the license to practice medicine in the Commonwealth of Kentucky held by Dr. Cox should be revoked and Dr. Cox should be ordered to pay a specific amount for mental health services for Patient A which are needed as a result of the inappropriate sexual contact.

I. Findings of Fact

Based on a review of the entire record, and based upon a preponderance of the evidence, the undersigned issues the following Findings of Fact:

Dr. Warren Cox

1. Warren "Chip" M. Cox, IV, M.D. ("Dr. Cox") earned his undergraduate degree in Electrical Engineering from Memphis State University. He completed medical school at the University of Louisville in 1985. He served an internship in internal medicine and a 3 year residency in psychiatry. He is married and has two sons, ages 15 and 12. He also served 10 years in the Navy.

2. In April of 1989, Dr. Cox began the private practice of psychiatry in Jefferson County, Kentucky. He joined his father's psychiatry practice at Physicians Therapy Group, an association which continued until his father's death in 1996.

3. Throughout the course of the hearing, the undersigned found Dr. Cox to be highly intelligent, articulate, communicative, confident in presence, and unflappable in demeanor. Although his denial of any misconduct never wavered, the manner in which this denial was presented through testimony was uniquely void of emotion. Relative to other physicians who have testified in hearings before this Board, Dr. Cox was straightforward and non-evasive with his testimony, although he continuously displayed an attitude of unsuitability toward the charges filed against him.

Patient A

4. Patient A is a 47 year-old Caucasian woman and former patient of Dr. Cox.¹ Patient A was first married at age 20 in 1972. Following several unsuccessful attempts at in-vitro fertilization, she and her husband adopted a child in 1984, now age 15. Shortly after the adoption was completed, she and her husband divorced. She remarried three years later and has remained married through the present.

5. Although Patient A was on disability retirement status during the hearing, she has made her career in the field of education for the past 24 years. She received her undergraduate degree at Hollins College in Virginia, and obtained her Masters Degree in Elementary Education at the University of Louisville. She has taught kindergarten and elementary education at various schools in Virginia, South Carolina, and most recently Jefferson County, Kentucky, where she has lived continuously since 1987.

6. Throughout the course of the hearing, the undersigned found Patient A to be intelligent, responsive, sensitive, and candid. She testified during the first two days of the hearing, and her testimony touched on many intimate details of her life. While she did not appear comfortable during her testimony, the undersigned was never given reason to suspect Patient A withheld information in order to cast herself in a more favorable light. Patient A did not act inappropriately, unpredictably or impulsively at the hearing. There were moments during her testimony when the hearing had to be recessed temporarily to permit her to regain her mental

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 the video-taped record which, coupled with the parties' exhibits, has been ordered sealed pursuant to this statute.

concentration and emotional control. However, the undersigned was consistently impressed with her ability to recall particular details, events and circumstances spanning a period of several years in a consistent manner, the specifics of which were frequently corroborated by other evidence. The spontaneous manner in which she responded to questions served to bolster the undersigned's impression that her recollection of events was genuine and not attributable to professional coaching. Patient A's husband of 13 years was present throughout her testimony and he offered his wife emotional and moral support.

Patient A's Prior Medical Treatment

7. Patient A received her first psychiatric treatment in 1977 after she attempted suicide by ingesting vodka and pain killers. She received bi-weekly treatment, including anti-depressant medication, for approximately 8 months.

8. Following her relocation to Louisville, Kentucky, in 1987, Patient A received a brief episode of counseling from Steve Simon.

Patient A's Treatment with Dr. Cox

9. In or about April of 1990, Patient A had her initial office visit with Dr. Cox and Ms. Gwynne Goldberg, LCSW. They discussed Patient A's anger and guilt harbored over her first marriage and issues relating to child custody. Dr. Cox determined that Patient A could be treated appropriately through counseling at this juncture. Ms. Goldberg's assessment report for this visit reveals that Patient A had "received treatment for depression periodically (since 1975)." Ms. Goldberg's impressions were that:

[Patient A] is an attractive 37 year old, married woman who comes to the session neatly dressed and well groomed. In addition to complaints listed in the opening paragraph she states that she is experiencing a loss of energy as she is unable to get

herself motivated to do much of anything other than daily routine things. She describes herself as being overwhelmed and living in a fog.

[Patient A] states that she teaches first grade . . . and states that this is very difficult for her as she and the principal do not get along. She has tried unsuccessfully to get transferred from there and will try again this fall.

[Patient A] related in an open and friendly manner, presenting information in a fairly concise and well thought out way. Her affect was appropriate to mood. She denied any homicidal or suicidal thoughts. Motivation for treatment good.

Diagnosis: 296.35 Major Depression recurrent in partial remission.

Treatment Recommendation: Referral for to PTG for a psychiatric evaluation and short term therapy with an eye toward group placement on a private pay basis.

(See Board Exhibit #4).

10. In response to a referral for treatment from Dr. James G. Baker, Patient A's primary care physician, Dr. Cox prepared correspondence dated April 25, 1990, in which he noted:

To my assessment [Patient A] is an attractive somewhat thin woman appearing her stated age who notes that she currently is having a remission of her depressive symptomatology. She is alert and oriented times three. Her emotions are labile but her eye contact is good. Her affect shows some elements of being less constricted than what was noted in Ms. Goldberg's write up but continues to have some constriction to it. Her affect is described as sad and angry. She denies any current suicidal ideation but notes that in the very recent past she has felt that way. Her suicidal tends to be as a response to an agitated situation. She denies any homicidal ideation although she does show frustration toward her ex-husband. Her memory is intact in all three spheres. Her intellectual judgement is judged to be high average to superior. She is noted for having appropriate judgment to testing and for the most part adequate judgment to situation. Insight into her problems is somewhat marginal but appears to be adequate towards therapy and also adequate enough for her circumstances.

My impression at this point is that [Patient A] suffers from both a major depression recurrent and also from a dysthymic disorder which is to some extent masked but becoming unmasked as her depression abates. At this point because of the abatement, we have decided to not try medication if at all possible. Instead, I have referred her to Jack Teeple, a therapist in my office to start to do some work on the interactions that she currently feels somewhat 'self righteously' towards her ex-

husband. I do suspect that in agreement with Ms. Goldberg that eventually [Patient A] will need to get into group therapy because of the issues at hand.

(See Board Exhibit #4).

11. From April 30, 1990, through June 7, 1990, Patient A received treatment from Dr. Jack Teeple, a Psy.D. therapist employed by Dr. Cox's group. Dr. Teeple's diagnosis of Patient A mirrored that of Dr. Cox: "major depression, recurrent, dysthymia." Patient A's treatment goals were defined to include "better control residual anger over ex-husband; enhance relationship with adopted son; control frustration and anxiety carried over from work situation."

12. Patient A participated in group therapy sessions for approximately two weeks in September of that year, and then discontinued treatment until November 18, 1994, when her primary care physician, Dr. Baker, prescribed her Paxil at 20 mg once daily and referred her back to Dr. Cox.

13. Patient A renewed her medical treatment with Dr. Cox on November 21, 1994, for problems with anxiety, depression, sleep difficulties, decreased concentration and memory problems. Correspondence in Dr. Cox's record for Patient A for this office visit reveals the following assessment:

... [S]he is alert, oriented times three. Her emotions are extremely labile. Her mood is described as depressed. Her affect is blunted. She denies suicidal ideation and homicidal ideation. Her memory is intact in three spheres. Her intelligence is judged to be high-average. There is no evidence of psychotic thought processes. Her judgment is intact to testing and seems to be appropriate to circumstances. Her insight into her problems, however, does show some limitations.

(Board Exhibit #4). Dr. Cox's planned treatment for Patient A at this time was for medication management. In addition to the Paxil prescribed for Patient A by Dr. Baker three days earlier, Dr. Cox prescribed Desyrel 50 mg.

14. Dr. Cox's "Continuing Treatment Summary" prepared after Patient A's visit on November 21, 1994, estimated four additional "med check" visits were needed every three months "to terminate." By correspondence dated January 4, 1995, addressed to Dr. Cox from Patient A's insurance carrier, MCC Behavioral Care, Inc. ("MCC"), Patient A was approved for 4 outpatient 15 minute med checks through November 29, 1995. This estimated period of treatment required by Patient A proved to be too optimistic, however. From a review of Dr. Cox's patient records and the testimony from witnesses by both parties, it is found that Patient A's treatment with Dr. Cox over the ensuing months was broadened both in scope and frequency, and revised treatment summaries had to be submitted to MCC.

15. Based on testimony from both Patient A and Dr. Cox, coupled with entries from Dr. Cox's records for Patient A (*see* Board Exhibit #4), the following is a chronological summary of Patient A's professional treatment, which is not in dispute. Unless otherwise noted, the entry was prepared by Dr. Cox:

11/29/94 - 1 week follow-up.

2/23/95 - emergency med check follow-up. Desyrel increased to 100 mg. Luvox 100 mg called in 2/17/95.

3/8/95 - treatment authorization request submitted to MCC, noting frequency of sessions now "monthly." Focus of treatment listed as "[h]aving difficulty with sleep & eating. Tearful & having problems w/concentration - Depression has reoccurred." Expected treatment outcomes listed: ". . . increased Desyrel to help w/the sleeplessness & have started pt. on new medication to decrease depression."

5/30/95 - med check follow-up. Patient A started on Trazadone 100 mg. Discussion b/t Dr. Cox and Patient A regarding her personal relationships and career as a teacher.

6/29/95 - med check follow-up. Luvox dosage halved. Three month follow-up scheduled.

6/30/95 - Patient A's Desyrel dosage increased to 100 mg.

6/7/96 - med check follow-up. Patient A taking b/t 200-300 mgs of Luvox and 100-200 mgs of Desyrel. Medications unchanged. Discussion about parenting issues. Six month follow-up scheduled.

11/21/96 - Patient A experienced severe chest pains while teaching class at her elementary school. She was taken to the office of her primary care physician, Dr. Baker, who admitted her to Baptist Hospital East for further tests. No serious heart problems were detected, and Patient A was released the following day. Dr. Baker released her "under the care of (Dr. Cox) to be treated for the biological symptoms brought on by stress and depression."

11/25/96 - Patient A begins Xanax .5 mg, per Dr. Cox.

11/26/96 - phone conversation, Patient A inquiring about possible contraindications b/t Xanax, Trazadone, and Luvox.

12/3/96 - med check follow-up. Complaints of lethargy associated w/Xanax. Recommended that daily dosage be redistributed. One week follow-up scheduled.

1/8/97 - phone conversation, Patient A needs Dr. Cox to sign a release from partial progress as of January 8, 1997.

2/12/97 - phone conversation, Patient A inquiring about use of Benadryl to treat arm rash.

10/6/97 - Dr. Cox prepared an "Outpatient Treatment Report" for Patient A's insurance carrier. Historical data listed "[h]istory of recurrent depression and anger tendencies." Current level of functioning listed "[d]epression has re-occurred due to a job change that she did not want - Her anger tendencies have lessened - but is also having some difficulties w/teenage step-son." The treatment goals listed "enhance relationship w/adopted son - control frustrations and anxiety that are carried over from her work situation." Listed medications included: Xanax .5 mg; Luvox 100 mg; and Trazadone 100 mg.

1/27/98 - Dr. W. Cooper Buschemeyer, Jr., treated Patient A for E coli bacterial infection and blood in urination. Normal cystourethrosopy, pelvic exam, and ureteral orifices. Cipro 500 mg prescribed. One month follow-up scheduled.

2/5/98 - follow-up w/Dr. Buschemeyer. Urine C & S done to rule out occult infection. Patient A complaining of chronic fatigue, sleeping 8 hours nightly plus 2 - 3 hour afternoon nap. "It is very interesting to note that while she was taking Cipro

she had a marked improvement of the fatigue problem. I wonder if the enzyme pathways in the liver interfered with absorption of some of her other medications which may have a role in the fatigue problem. I asked her to see (Dr. Cox) again about possible alteration of the medication for her anxiety disorder." (See Board Exhibit #4). An updated GYN evaluation w/Dr. Molly Cartwright was recommended.

2/5/98 - emergency 30 minute visit. Patient A complains of painful urination and lethargy. Medications decreased: "[w]e're going to drop her Luvox down to 100 mg, drop her Trazadone down to 200 mg and drop her Xanax on an as needed basis and then deal with the consequences next week in follow-up."

(On or about) 2/11/98 - Patient A felt suicidal. She decided to change psychiatrists. She conferred with Dr. Debra Zukof, who properly advised her that her relationship with Dr. Cox would have to be terminated before she (Dr. Zukof) could assume treatment. Patient A admitted herself into Baptist Hospital East for 23 hour observation. Dr. Cox visited Patient A at this hospital the following day, February 12, 1998.

2/12/98 - Dr. Cox dictated a "History & Physical/Discharge" on Patient A for Baptist Hospital East, quoted as follows:

Date of Admission: 02/11/98

Date of Discharge: 02/12/98

DISCHARGE DIAGNOSIS:

Axis I: *Bipolar disorder, manic, moderate.*
Panic disorder with agoraphobia.
Dysthymic mood disorder.
Axis II: *Borderline personality traits.*
Axis III: None noted.
Axis IV: psychosocial stressor of 5 severe.
Axis V: Current GAF of 21, best in past year; 81.

LABORATORY DATA: Labs obtained during hospitalization are pending.

HISTORY OF THE PRESENT ILLNESS: The patient was admitted for 23 hour observation after having come unglued at school. The patient notes that she became frustrated by being stopped by a train at a crossing on her way to school, having to call them and let them know that she was going to be late. After her arrival at school she noted herself to become more and manic with the thoughts racing and basically pacing up and down the halls to where her fellow teachers felt she was not in any condition to be in school. Her work mates called the office and were directed to bring her here to the Access Center for assessment. In the assessment she was totally

disheveled and claiming suicidal ideation, indicating that while she was sitting there waiting for the train to pass that she thought very sincerely about just driving into the river which is where the train was. She then also acknowledged recent past history of wanting to overdose on her medications.

PAST PSYCHIATRY HISTORY: The patient has been a patient of mine for several years with both inpatient and outpatient treatment who for the most part has done quite well on her medications. However, in the last two weeks she has noticed increased lethargy and we have attempted to modify her medications. This medication was unfortunately ill advised as the patient become increasingly manic as we discontinued her Luvox which is a rather paradoxical situation.

MENTAL STATUS EXAMINATION: The patient is alert, oriented x 3. Affect is haunted. Emotions are labile. Mood is described as anxious and depression. She denies any current suicidal ideation or homicidal ideation. Her memory is intact in three spheres. Her speech is slightly pressured. There is no evidence of psychotic thought processes and her intelligence is superior.

PAST MEDICAL HISTORY: The patient denies allergies and is currently on Luvox 100 mg q. a.m., Trazadone 100 mg q. hs and Xanax .5 mg q 3-4 hours as needed. Medical history is only significant for a recent bladder infection.

PHYSICAL EXAMINATION:

* * * *

COURSE IN THE HOSPITAL: The patient was admitted overnight with the 23 hour observation and with the safety and security of the unit the patient was able to settle her emotions down, to where, by the following morning, although she is not ready for return to work, she is available to return home where she does feel, especially with her agoraphobia, that she would be more comfortable. At this point, we have agreed to start her on Neurontin and I will see her tomorrow in the office.

INSTRUCTIONS TO PATIENT: Start on Neurontin initially at 300 mg today and then 300 b.i.d. tomorrow and then 300 t.i.d. after that. To remain off work until further notice and that she follow-up in my office tomorrow.

CONDITION ON DISCHARGE: Improved.

PROGNOSIS: Very guarded.

Warren M. Cox IV, M.D.
WMC:bb
D: 02/12/98
T: 02/12/98
cc: 3-BHR 3300-3311

(Board Exhibit #4)(emphasis added).

16. Although Dr. Cox testified that he diagnosed Patient A with a personality disorder "early on," significant to the undersigned the diagnosis of "bipolar disorder, manic, moderate" with "borderline personality traits" listed in the 2/11/98 discharge summary is the first occasion where this diagnosis is listed in Dr. Cox's treatment records for Patient A. These treatment records were initiated in 1990, and reflect updates for a period of approximately 3 ½ years immediately preceding the preparation of the subject discharge summary.

17. The chronological summary of Patient A's care continues as follows:

2/13/98 - med check follow-up. "[Patient A] is a little intoxicated without drinking at this point which I think may be do in part to the Xanax as we allowed the Neurontin time to work."

2/13/98 - Dr. Cox prepared an "Outpatient Treatment Report" for Patient A's insurance carrier. Historical data listed "[r]ecurrent depression and anger tendencies." Current level of functioning listed "[h]aving a lot of difficulty w/energy and motivation. medications were decreased and Xanax put on a PRN basis." The treatment goals listed "[c]ont. to control her frustrations and anxiety that are carried over from her work situation. Being able to return to ADL on less medication and being able to control the anxiety." Listed medications included: Neurontin 300 mg; Luvox 100 mg; Trazadone 100 mg; and Xanax PRN.

2/16/98 - 30 minute visit. "We've been following her very closely after being in the hospital. She thinks she's ready to go back to work tomorrow. There still is some unsteadiness on her feet. I'm asking her to cut back even farther on the Xanax to ½ mg 4 times a day with the intentions of seeing her this Friday. She notes that she had done some of good things recently as far as her potential for principalship inside the school system and it sounds like she's much on task at this juncture."

2/17/98 - entry: "Phone call from [Patient A]. Would like to up Xanax again. Not doing well.

2/20/98 - med check follow-up. Patient A "pretty lethargic. . . ." Medication regimen adjusted.

2/25/98 - Patient A's care transferred to Dr. Zukof.

2/25/98 - entry: Office visit canceled "due to [Patient A] terminating the relationship. It is noted that she is currently in the hospital under Debbie Zukof."

18. On March 9, 1998, Dr. Zukov filed a grievance with the Board, stating:

[Patient A] has been under my care since February 25, 1998. She transferred to my care after terminating with Warren M. Cox IV, M.D. [Patient A] has accused Dr. Cox of having breached a professional boundary by having a sexual relationship with her.

ss/ Debra Zukof, M.D.

(Board Exhibit #5).

19. Dr. Cox's records reflect an entry on April 19, 1998, memorializing a phone message left by Patient A on the office answering machine questioning a private-pay bill for hospital observation on 2/11/98.

20. On April 20, 1998, Dr. Cox sent correspondence to Patient A clarifying the bill.

The Board's Charges

21. On November 17, 1998, the Board's Inquiry Panel B filed an administrative complaint in this action against Dr. Cox. It was alleged in this complaint that Dr. Cox engaged in an impermissible sexual relationship with Patient A in violation of Current Opinion 81.4 of the American Medical Association's Code of Ethics, as well as KRS 311.595(5) and KRS 311.595(9), as illustrated by KRS 311.597(4). (See paragraphs 6 and 7, Board's Complaint). On or about December 2, 1998, Dr. Cox, through counsel, filed a response to the Board's Complaint in which the allegations relating to improper contact, "sexual or otherwise," were specifically denied. (See paragraph 2, Dr. Cox's Response).

Evidence of Sexual Contact

22. Patient A claims that her relationship with Dr. Cox involved sexual contact on fifteen office visits between March of 1997 and December of 1997. In early 1997 she felt a "sexual energy" or "chemistry" between them, which caused her to feel distress, confusion, and excitement. At her next visit, she confronted him with these feelings, and he "admitted he felt it, too." Patient A asked, "what are we going to do about it?" Dr. Cox, who is married and was aware that Patient A is married, explained that monogamy is not a biological occurrence, but a sociological one. Dr. Cox's practice of psychiatry is biological, although he testified at hearing he believes in sociological monogamy. It is found that Dr. Cox told Patient A, "[i]f our spouses do not find out about it, no-one will get hurt."

23. The first sexual contact between Dr. Cox and Patient A involved a kiss. Over the period of time between March and December of 1997, the touching became more passionate. Dr. Cox stated, "I have always been attracted to you." Eventually, he told Patient A, "I love you." As the touching became more intense, Dr. Cox promised Patient A they would not have intercourse.

24. Patient A claims that initially she resisted his advances, but by the Summer of 1997 she "decided not to push away." During one visit Dr. Cox massaged her breasts, and afterwards stated, "[c]ongratulations, you've just had a free breast exam, and they're fine." At another point, he stated, "[t]hank you for letting the twins come visit today (referring to Patient A's breasts).

25. Dr. Cox had a vibrator on a coffee table in his office for many (if not all) of the years of Patient A's treatment. This vibrator had the word "Paxil" printed on it, and had been distributed to Dr. Cox by a drug manufacturer. During one office visit in August of 1997, Patient A took her dress off and laid on Dr. Cox's couch. He laid on top of her and they kissed passionately. Dr. Cox

then applied the vibrator between Patient A's legs, causing her to reach orgasm three times. The use of the vibrator was repeated on other visits, with each occasion preceded by Dr. Cox telling Patient A that he loved her. On one of these occasions she "reached for him, and he did not have an erection." Later when she asked him about this, he responded, "[i]t's just a mind game I play to make sure it doesn't go any further."

26. Patient A became "obsessed with seeing him outside the office," and they discussed meeting without hurting their spouses. Patient A "believed (she) loved him."

27. During an office visit well into the Summer of 1997, Patient A advised Dr. Cox that she did not want to see him as frequently. She stated, "I need a doctor, not a lover. You need to sit back in your chair," which he did. Several visits later she asked him why he was sitting in the chair, and he said, "because you told me to." She responded, "well, I've changed my mind." Dr. Cox then came over to the couch and held and kissed her.

28. At some point during this period of time Patient A suspected that Dr. Cox was having similar sexual relationships with other patients. She asked him, "[a]m I the only one?" He responded, "no." Although there was a modicum of evidence presented by the Board suggesting that Dr. Cox may have been involved in sexual relationships with at least one other patient during this time period, that evidence was much too speculative and unsubstantiated, and the undersigned makes no such finding.

29. Patient A described these intimate encounters with Dr. Cox as, "when in the middle, it feels good, but after it's over it feels disgraceful." She explained that her experiences triggered a lot of "self-hate" and depression.

30. Patient A's admission for observation at Baptist Hospital East in February of 1998 was prompted by suicidal feelings. She "wanted to make the pain stop."

Dr. Cox's Defense

31. Dr. Cox denies in all respects Patient A's claim that their relationship ever involved sexual contact, or that he crossed a professional boundary. He freely admits that he shakes hands with his patients and is "pretty free" with embraces and hugs. It's his opinion that these gestures are not boundary line violations, although he recognized there is "not really a therapeutic advantage."

32. Dr. Cox maintains that Patient A fabricated these charges. As possible motivation, Dr. Cox points to the fact that Patient A was upset with him when he did not appear early in her stay at Baptist Hospital East in February of 1998. Patient A was also upset with Dr. Cox's bill for services on February 11, 1998, which, according to Dr. Cox, contributed to her decision to make these allegations. Dr. Cox also asserts that Patient A has suffered from borderline personality disorder throughout the course of his treatment, and that people with this disorder "have their reality altered, and they come to believe the altered reality as the truth." Finally, Dr. Cox asserts in effect that Patient A has concocted this story in an attempt to extort money from him. In support of this claim, he emphasized the fact that on February 1, 1999, Patient A, through counsel, filed a civil action against Dr. Cox in the Jefferson Circuit Court in which she seeks monetary damages for his alleged malpractice. That case has not yet gone to trial.

33. At the conclusion of the administrative hearing the undersigned Hearing Officer noted his opinion that this was a close case. Following a thorough review of the entire record, it remains so. If the standard of review to be applied to the evidence in this record were that of a criminal proceeding, the undersigned would find there to be insufficient evidence to support Patient A's claim. Simply stated, there is evidence to support reasonable doubt of Dr. Cox's guilt. The only two people who know for a fact whether these allegations are true are Patient A and Dr. Cox. There were no other eyewitnesses.

34. The undersigned is quite sensitive to the fact that any patient can falsely claim their doctor has abused them in a private office setting, and there is little recourse available for the professional who is wrongly charged, short of winding up in a swearing contest at a disciplinary proceeding. The risk of having fabricated allegations raised by a patient with emotional problems is present in any private-office psychiatric practice. In this case there is a distinct possibility that Patient A's allegations raised against Dr. Cox are untrue, and the undersigned has *some* doubt regarding their truthfulness. Nevertheless, by the preponderance of the evidence, and for the reasons as set out in this decision, the undersigned finds that the allegations are true.

Borderline Personality / Bipolar Disorder

35. The undersigned rejects Dr. Cox's attempt to undermine Patient A's testimony as being unworthy of belief due to borderline personality traits or bipolar disorder diagnosis. As noted in paragraph 16, above, Dr. Cox did not reference this diagnosis for Patient A in any of his patient records until he prepared the discharge summary for Baptist Hospital East in February of 1998, approximately two months after the sexual relationship was terminated. The undersigned finds unsupported in the record and completely self-serving Dr. Cox's present claim that he assigned Patient A this diagnosis "early on."

Lapse in Patient Records

36. Dr. Cox's records for Patient A contain an entry for an office visit on 2/12/97. The next entry for an office visit is for 2/5/98, nearly one year later. There are no entries in these records for any of the fifteen visits which Patient A claims involved sexual contact between March 27, 1997, and December 17, 1997. Dr. Cox addressed this apparent attempt to omit any reference to these visits. He maintains that following his father's death in 1996, his charting practices suffered, not just

for this patient but for all of his patients. There is ample evidence to support Dr. Cox's claim that his father's passing had a serious negative impact upon his life, both personally and professionally. This position was supported by the testimony from Sandy C. Costanza, a part-time therapist and part-time office manager for Dr. Cox's business. However, and significant to the undersigned, Ms. Costanza also stated that when Dr. Cox fell behind in his charting during this time period, "he would catch up within a couple of weeks." Thus, even accepting Dr. Cox's explanation that the deficiency in his charting for Patient A was attributed to his troubled emotional state, it does not explain why this deficiency spanned a period of approximately nine months, as opposed to only "a couple of weeks" according to his office manager. It also does not address the question of why the deficiency of charting began on the first office visit Patient A claims the sexual contact began, and why the deficiency was corrected on the first office visit after Patient A claims the sexual relationship was terminated. As noted in detail throughout these findings of fact, Dr. Cox's treatment records for Patient A were otherwise quite comprehensive, both before March of 1997 and after December of 1997.

37. There was no evidence presented to indicate Patient A gained access to Dr. Cox's patient records before Dr. Zukof filed the grievance with the Board and the disciplinary process was initiated. Without these records, Patient A had no way of determining the completeness or accuracy of Dr. Cox's charting for the visits between March and December of 1997, and thus had no way to use them to tailor false allegations to coincide with the nine month lapse in these records. Thus, the undersigned finds from this evidence that Dr. Cox's failure to chart Patient A's fifteen office visits between March 27, 1997, and December 17, 1997, supports Patient A's claim that they consisted of inappropriate sexual contact which Dr. Cox understood followed no therapeutic model and offered

no therapeutic benefit worthy of being recorded. No other credible or reasonable explanation was presented.

Corroborating Evidence of an Inappropriate Relationship

38. Equally influential upon the undersigned in his determination that Patient A's charges against Dr. Cox are true was personal testimony evidence offered in corroboration. The Board presented the testimony from Linda Roosevelt, a nurse with the Psychiatric Nurse Unit at Baptist Hospital East. Ms. Roosevelt was so employed in February and March of 1998. Ms. Roosevelt was on duty on March 2 and March 4, 1998, when Patient A was participating in a two day program. According to Ms. Roosevelt, near the completion of this two day program, as Patient A "struggled with regret and guilt," she revealed her "sexual affair" with Dr. Cox.

39. Even more significant to the undersigned was the rebuttal testimony offered by Denise Baytree, as it focused upon statements Patient A made to her prior to any "falling out" between Patient A and Dr. Cox. Ms. Baytree is an elementary school teacher for the Jefferson County School System, and she became good friends with Patient A while teaching with her in 1990. They taught together for several years, and transferred together to another elementary school in the mid-90s. On occasions they drove to work together during which they spoke freely about intimate feelings and offered each other emotional support. According to Ms. Baytree, in "early 1997" Patient A mentioned there was "a lot of sexual tension between me and Dr. Cox," that it was "so strong" she couldn't talk or concentrate. Shortly thereafter, Patient A stated, "I was right. He was feeling it, too. We kissed." Ms Baytree strongly admonished Patient A for becoming involved in this manner with her therapist, and Patient A responded by refusing to share any subsequent details with her friend for several months, for fear of further rebuke. Later in the year Patient A appeared

“drugged up” to Ms. Baytree, such that she “was confused, slurring words. . . . She would start a sentence, and not finish the thought.”

40. Prior to a Christmas party in 1997, Ms. Baytree and Patient A went to Barnes & Noble Bookstore in Lexington, Kentucky to search for a magazine which contained an advertisement for the sale of a vibrator. According to Ms. Baytree, Patient A stated that Dr. Cox had suggested she obtain a vibrator.

41. Ms. Baytree’s testimony was creditable and straightforward without appearing profusely enthusiastic. The undersigned found her to be unwilling to state something she was unsure about, especially dates. The fact that she recalled Patient A’s statements to her in early 1997 regarding “sexual energy” and “kissing” with Dr. Cox qualifies as prior consistent statements, bolstering Patient A’s credibility in the eyes of the undersigned. Furthermore, Ms. Baytree’s account serves to corroborate Patient A’s account of the events. In the undersigned’s opinion, Ms. Baytree’s account effectively undermines Dr. Cox’s attempt to mischaracterize Patient A as a former, disgruntled patient who only fabricated these charges after she became upset with Dr. Cox’s bill for the 2/11/98 observation; or because she seeks a large monetary settlement; or because her sense of reality has been altered and she believes her altered reality is the truth.

Ability of Office Staff to Interrupt Treatment Sessions

42. Three members of Dr. Cox’s office staff for 1997 testified that Dr. Cox saw about twenty patients a day and that on most occasions during his therapy sessions or med checks Dr. Cox kept his office door closed. It is not disputed that the office door was always kept closed when Patient A was in this office. About once or twice a month a member of his staff had occasion to interrupt Dr. Cox in his office while he was with a patient. Sometimes this interruption was by

telephone, other times it was by beeper, other times it was by a quick knock on the door with immediate entry. Dr. Cox offered this testimony for the proposition that any member of his staff could have entered his office at any time, and thus it was implausible that he would have risked participating in a sexual relationship with Patient A.

43. While this is *some* evidence to cast doubt upon the allegations, this evidence, especially when measured against the entire record, is not particularly convincing. Ms. Shirley Snyder, an eleven year employee of Dr. Cox, testified that interruptions were made only for emergencies, i.e., "when hospitals called." Furthermore, while Ms. Costanza testified that Dr. Cox did not give special instructions to staff regarding such interruptions, Ms. Linda McCoy, the office receptionist, testified that the "policy was not to interrupt, but (we) could if hospitals called."

44. Regardless of the existence of a policy, it is not disputed that during the period of March through December of 1997, Patient A was never hospitalized. Thus, one inference to be drawn is that Dr. Cox could be reasonably confident that no-one would interrupt his encounters with Patient A. Furthermore, none of the three staff members who testified could ever recall interrupting Dr. Cox when Patient A was with him in his office. Finally, the Board entered into evidence a photograph of the inside of Dr. Cox's office door which shows a lock on the door handle, which easily could have been activated without notice as a precautionary measure. Accordingly, the undersigned is not convinced that the evidence regarding this issue is particularly significant.

Claim of Restitution

45. The Board maintained throughout the hearing that Dr. Cox should be ordered to pay restitution to Patient A for the cost of mental health services which are needed for treatment as a product of Dr. Cox's sexual contact with her. In support of this claim, the Board introduced

evidence through Robin Goodman, L.C.S.W., who has treated Patient A since Dr. Cox was discharged. Ms. Goodman submitted a statement dated September 15, 1999, projecting Patient A's therapy expenses for the estimated period of time needed to complete her treatment. This statement reads as follows:

The following dates of service were provided in 1998 by Robin Goodman, LCSW at Dr. Debra Zukof's office at a charge of \$95.00 per session.

3/3, 3/11, 3/24, 4/21, 5/12, 5/19, 5/27, 6/8, 6/15, 6/22, 7/13, 7/29, 8/25.

13 sessions @ \$95.00 = \$1235.00

The following sessions were provided by the same provider in her practice at \$75.00 per session.

In 1998 - 9/14, 9/28, 10/2, 10/14, 10/21, 10/26, 11/2, 11/6, 11/9, 11/24, 11/30, 12/7, 12/7, 12/14, and 12/28.

In 1999 -

1/4, 1/14, 1/21, 1/28, 2/8, 2/15, 2/22, 3/1, 3/8, 3/15, 3/22, 3/29, 4/5, 4/12, 4/19, 4/27, 5/3, 5/10, 5/17, 5/24, 6/8, 6/29, 7/12, 7/19, 8/2, 8/10, 8/16, 8/23, 8/31, 9/3, 9/8, and 9/14.

46 sessions @ \$75.00 = \$3450.00

I estimate that [Patient A] will be in treatment with me for at least 3 more years on a weekly basis.

48 weeks at \$75.00 per session = \$3600.00

\$3600.00 x 3 = \$10,800

\$1230.00 + \$3450.00 + \$10,800 = \$15,485 - total

(Board Exhibit #3).

II. Conclusions of Law

46. 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.

47. 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.

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

49. Dr. Cox is licensed to practice medicine in the Commonwealth of Kentucky, license #24435, and is thus subject to discipline by the Board pursuant to KRS 311.530 *et. seq.*

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

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

52. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Cox violated KRS 311.595(5) by having sexual contact as defined by KRS 510.010(7) with Patient A while she was a patient under Dr. Cox's care.

53. It is concluded as a matter of law that the Board has met its burden of proving that Dr. Cox 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.

54. In the process of deciding upon and recommending to the Board an appropriate sanction, the undersigned has given due regard to various factors. These factors include the statutes violated; Dr. Cox's mental state at the time of the transgression; the injury to Patient A caused by the misconduct; and the presence or absence of mitigating and aggravating factors.

Statutes Violated

55. KRS 510.010(7) defines "sexual contact" as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party." This definition has been interpreted to mean that sexual contact is not limited to the sex organ, and that sexual abuse may occur when the contact with the victim's body and privacy is made with the intent to obtain sexual gratification. The proper test to determine whether a part of the body is "intimate" revolves around an examination of three factors: (1) what area of the body was touched; (2) what is the manner of the touching; and (3) under what circumstances did the touching occur. *Bills vs. Commonwealth, Ky.*, 851 S.W.2d 466 (1993).

Patient A was kissed on her lips, her breasts were massaged, and she was aroused between her legs in a semi-clothed state with an electronic vibrator. The manner of this touching was for Dr. Cox's sexual gratification, directly or indirectly, either by the abuse of his superior power as her therapist or by the giving of pleasure to his patient. The touching was introduced by Dr. Cox as a part of the office visitations, despite the fact that no evidence was presented that such touching served a legitimate, professionally recognized purpose.

56. A psychiatrist who engages in sexual relations with a patient before terminating the psychiatrist-patient relationship engages in unprofessional conduct warranting professional discipline. *E.g., 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). Dr. Cox's 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 recurrent depression, anxiety, and anger tendencies; thus, Dr. Cox abrogated his responsibility to Patient A as her physician.

Dr. Cox's Mental State

57. From the facts as found, Dr. Cox's misconduct was neither negligent nor inadvertent. His sexual contact with Patient A covered a period of approximately nine months, and thus can only be construed as a series of intentional acts committed.

Injury to Patient A

58. The fact that a psychiatrist enters into a sexual relationship with a patient is very destructive to the treatment. The patient finds it harder to trust any subsequent therapist. That Dr. Cox told Patient A he was "in love" with her is especially troubling, not so much for its declaration if true, but by the fact that through his repeated misconduct it must not have been true. True love is not evidenced by leading the subject of your love into further pain, despair and confusion. Nor is it evidenced by statements such as "[i]t's just a mind game I play to make sure it doesn't go any further." No reasonable inference can be drawn from their relationship other than Dr. Cox permitted his desire for sexual gratification to obfuscate his duty to his patient, to the public, and to this Board -- the duty to ensure that he place the best interests of Patient A before his own. From the testimony of Robin Goodman, it is clear that patients often confuse warm, caring feelings for their therapist

with sexual attraction, and the patient may not have the strength of ego to "stand up and say no." This phenomena makes it particularly important that the therapist not surrender to temptation. Ultimately, it was Dr. Cox's responsibility, and not Patient A's, to ensure that their relationship did not run afoul of the professional boundaries, and Dr. Cox's failure to abide by these boundaries created further emotional damage to Patient A, the corrective efforts for which shall be long in the unfolding.

Mitigating and Aggravating Factors

59. Mitigating factors present which warrant a less serious sanction include: (a) there was no evidence presented that Dr. Cox previously has been disciplined by this Board; and (b) as noted in paragraphs #2 and #36, above, Dr. Cox's father passed away in 1996 after a lengthy battle with cancer, and the evidence suggests this tragic loss deeply affected Dr. Cox during this time frame. Although not technically deemed a mitigating factor, the undersigned also has given full consideration to the fact that the revocation of his license will require Dr. Cox to refer his current patients to other psychiatrists, and it is expected that this transition in care will present some disruption in treatment and personal inconvenience.

60. Aggravating factors present which warrant a more serious sanction include: (a) Dr. Cox's actions were intentional, and they imposed significant psychological injury upon his patient; (b) Dr. Cox's sexual contacts with Patient A were taken in spite of, or perhaps because of, his familiarity with Patient A's history of sexual vulnerability; (c) the violation committed in this case uniquely involved the abuse of Dr. Cox's position as Patient A's therapist; (d) Dr. Cox's repeated sworn denials that he engaged in the conduct complained of were misrepresentations of fact presented to this Board under oath which would have served to re-victimize Patient A had these representations been relied upon to exonerate him of the charges; and (e) the absence of any remorse.

61. The analysis of the above factors must be measured against the fundamental purposes for imposing professional discipline, which include (a) the protection of the public; (b) maintaining the integrity of, and the confidence in, the medical profession; (c) deterring further improper conduct, both by Dr. Cox and by physicians throughout the Commonwealth; (d) the rehabilitation of Dr. Cox; and (e) educating the public.

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 of Kentucky held by Warren "Chip" M. Cox, IV, license number 24435, 1930 Bishop Lane, #603, Louisville, Kentucky 40218, be revoked, effective 30 days from the entry of the Board's final order. KRS 311.565(1)(c); 311.591(7)(c); and 311.595.

2. Dr. Cox be ordered to pay restitution to Patient A for the mental health services which are needed as a result of the sexual contact determined to have occurred. The specific amount of this payment is to be determined by the Board and shall only be required for services which are legitimate and necessary. KRS 311.591(8)(c).

3. Dr. Cox shall be permitted to petition the Board to regain his license after two years following the effective date of the Board's final order. The Board may or may not grant the petition. If the petition is granted, the new license shall be under probation for two to five years, and any subsequent violation during that probation period shall result in automatic revocation. A new license will be issued only if Dr. Cox satisfies the Board that, as of the time the petition is considered, he is of good moral character and qualifies both physically and mentally to resume the practice of medicine without undue risk or danger to his patients or the public. KRS 311.607.

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 30th day of June, 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

CERTIFICATE OF SERVICE

I hereby certify that the original of these Findings of Fact, Conclusions of Law and Recommended Order were mailed this 30th day of June, 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:

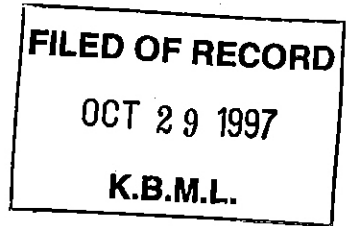
W GREGORY KING
OGDEN NEWELL & WELCH
1700 CITIZENS PLAZA
500 W JEFFERSON ST
LOUISVILLE KY 40202

C LLOYD VEST II
GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

Pessy A. Rieck, by sdm
DOCKET COORDINATOR

980635FC.sdm.wpd

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 590
ADMINISTRATIVE ACTION NO. 96-KBML-0260



IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY WARREN M. COX IV, M.D., LICENSE NO. 24435, 1930 BISHOP LANE #603, LOUISVILLE, KENTUCKY 40218

ORDER DISMISSING COMPLAINT

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered this matter at its October 16, 1997 meeting. Inquiry Panel B reviewed a request by the Board's General Counsel to dismiss the pending Complaint in this action; an evaluation report by Catherine A. Martin, M.D. dated March 12, 1996; an assessment report by Paul Andrews, Ph.D. dated March 7, 1996; a copy of the Administrative Complaint issued by the Panel on August 6, 1996; and, an evaluation report by Robert B. Greenberg, M.D. dated April 24, 1997.

The Panel noted that both of the mental health professionals appointed by the Board to evaluate the licensee in 1996 recommended that the licensee obtain independent psychotherapy to address difficulties in his interpersonal relationships and temper control. Dr. Martin noted that the licensee's differential should include Major Depression and ADHD, with little insight into his interpersonal difficulties, which had never been addressed in a medical setting. Dr. Andrews noted that the licensee had engaged in angry interactions with his patients, which would be problematic given the patients' deference to the licensee's position of authority. Dr. Andrews suggested that the licensee consider at least an informal arrangement with a therapist, if not a formal one, to monitor the effects that his angry interactions have on others and to monitor the licensee's use of

psychotropic medications. The Panel further noted that Dr. Greenberg, who evaluated the licensee's condition most recently, reported,

Dr. Cox ...has benefited from psychotherapy and has taken advantage of peer support groups. As a result, he has experienced growth in his interpersonal style and his patient management has become more effective. Peer support and/or psychotherapy is recommended on a voluntary basis.


Under KRS 311.595(8), the statute forming the basis of the Complaint, the Board may only impose the rehabilitative sanctions it deems appropriate to successfully resolve patient grievances against a licensee upon proof that the licensee has "developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public." The Board's General Counsel has advised the Panel that he does not believe he cannot establish such proof at this time for two reasons: 1) he could not establish that the licensee is currently suffering from a mental or physical disability; and, 2) Patient A, who filed a grievance against the licensee in 1992 and who is the subject of the Complaint, has moved from the address she provided in 1992 and the Board is not aware of her present location.

Having considered all of the information available to it, and being sufficiently advised, Inquiry Panel B hereby ORDERS that the administrative Complaint in this case is DISMISSED.

While the Panel has taken this action based upon evidentiary problems, it still believes the suggestions made by each of the evaluators are valid and are designed to ensure that the licensee may provide quality health care in a safe and healthy manner, with his patients' well-being being of primary importance. For that reason, the Panel has attempted on several occasions to resolve this matter informally by asking the licensee to obtain the treatment outlined in these reports. While it appears that the Board may not

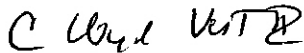
require formal psychotherapy and monitoring under the statute, the Inquiry Panel voted to informally suggest to the licensee that he follow the suggestions outlined by the three mental health professionals in their assessment reports. The licensee is urged to follow those recommendations.

SO ORDERED this 29th day of October, 1997.


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

Certificate of Service

I certify that the original of this Order Dismissing Complaint 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 David W. Carby, Esq., 610 South Fourth Avenue, Louisville, Kentucky 40202; Warren M. Cox, IV, M.D., 1930 Bishop Lane, #603, Louisville, Kentucky 40218; and Michael J. Head, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; this 29th day of October, 1997.



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
AUG 6 1996
K.B.M.L.

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 590
ADMINISTRATIVE ACTION NO. _____

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WARREN M. COX IV, M.D., LICENSE NO.
24435, 1930 BISHOP LANE #603, LOUISVILLE, KENTUCKY 40218

COMPLAINT

Comes now the Complainant, Royce E. Dawson, M.D.,
Acting Chairman of the Kentucky Board of Medical Licensure's
Inquiry Panel B, and on behalf of the Panel which met on July 18,
1996, states for its Complaint against Respondent, Warren M. Cox,
IV, M.D., as follows:

1. At all relevant times, Warren M. Cox IV, M.D., was licensed to practice medicine in the Commonwealth of Kentucky and, so, is subject to review and discipline by the Kentucky Board of Medical Licensure (hereinafter "the Board").
2. The licensee's medical specialty is psychiatry.
3. Between 1989 and 1994, the Jefferson County Medical Society received various complaints from the licensee's patients that he had acted inappropriately and aggressively toward them in their professional relationship.
4. That in one of these complaints, Patient "A" complained that the licensee became angry with her during an interview on or about February 26, 1992, because Patient "A" had canceled a previous appointment. When Patient "A" began discussing a recent suicide attempt, the licensee told her, "If you want to kill

yourself, go right ahead. I can't work with anyone who cancels appointments and then comes running to me for help when they get in trouble."

5. After reviewing these various complaints, the Jefferson County Medical Society asked the licensee to voluntarily undergo professional counseling. Although the licensee initially agreed to undergo such counseling, he did not obtain the counseling.

6. On May 19, 1995, the Jefferson County Medical Society referred this matter to the Board.

7. On February 6, 1996, after reviewing the information available to it, the Board ordered the licensee to submit to neuropsychological and psychiatric examinations pursuant to KRS 311.599. The licensee complied with this order.

8. Neuropsychological evaluation resulted in an Axis I diagnosis of Features of Dysthymia and an Axis II diagnosis of Features of Narcissistic and Obsessive-Compulsive Personality Disorders. The Board's consulting psychologist noted,

A dysthymic condition, a variety of life stressors, and personality traits may combine to make him both irritable and not attuned to how he affects others. The significance of his role and position of authority as physician means that any interactions with patients and family members will be taken very seriously by them, and any perceived negative exchanges with him will be problematic.

The consulting psychologist recommended that the licensee enter into an informal, if not a formal, arrangement with another psychiatrist for monitoring of his psychotropic medication and response to life stressors.

9. The Board's consulting psychiatrist provided the following assessment:

I do not think there are any major diagnostic criteria that are clearly evident at this time. However, the differential should include: Major depression and ADHD. He seems to have little insight into his interpersonal difficulties and has not ever addressed those in any kind of medical setting. I would recommend that he be followed for major depression and ADHD. In addition, I think he would benefit from interpersonal psychotherapy to help him address his difficulties in interpersonal relationships and temper control.

10. On April 27, 1996, after reviewing these materials, Inquiry Panel B recommended to the licensee that he immediately establish a relationship with a therapist and establish a contract with the Impaired Physicians Committee. The Panel further advised the licensee that his case would be reconsidered at the July 18, 1996 meeting and that he should provide verification of his compliance prior to that meeting.

11. The licensee chose not to comply with the Panel's recommendations.

12. By letter dated July 10, 1996, the Panel Chairman requested the licensee's attendance at its July 18, 1996 meeting. The letter was hand-delivered to the licensee's office on July 11, 1996.

13. The licensee failed to appear before the Inquiry Panel on

July 18, 1996 and has not provided good cause for his failure to appear.

14. Pursuant to 201 KAR 9:081, Section 2, paragraph (2), the licensee's failure to appear before the Inquiry Panel, without good cause, is considered unprofessional conduct.

15. Through his repeated conduct, the licensee has demonstrated that he has developed a physical or mental disability, or other condition, that continued practice is dangerous to patients or to the public.

16. Accordingly, the license to practice medicine in the Commonwealth of Kentucky held by Warren M. Cox IV, M.D., is subject to disciplinary action pursuant to KRS 311.595(8).

17. By his failure to appear before the Inquiry Panel, without good cause, the licensee has engaged in unprofessional conduct.

18. Accordingly, the license to practice medicine in the Commonwealth of Kentucky held by Warren M. Cox IV, M.D., is subject to disciplinary action pursuant to KRS 311.595(9).

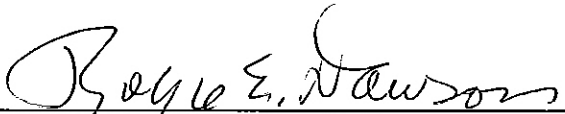
19. Respondent is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

- (a) His failure to respond may be taken as an admission of charges; and
- (b) He may appear alone or with counsel may cross-examine all prosecution witnesses and offer evidence in his defense.

20. NOTICE IS HEREBY GIVEN that a hearing on the Complaint is hereby scheduled for January 7 and 8, 1997 at 9:00 A.M., Eastern 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 Warren M. Cox, IV, M.D.

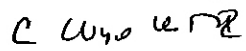
This 6th day of August, 1996.



ROYCE E. DAWSON, M.D.
Acting Chairman
Inquiry Panel B

CERTIFICATE OF SERVICE

This is to certify that the original of the foregoing Complaint was hand-delivered to Mr. C. William Schmidt, Executive Director for the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed, postage prepaid to, Division of Administrative Hearing, Office of the Attorney General, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000; and a copy was mailed via certified mail to Warren M. Cox, IV, M.D., 1930 Bishop Lane, #603, Louisville, Kentucky 40218 on this 6th day of August, 1996.



C. LLOYD VEST, II
General Counsel