

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 880

FILED OF RECORD

FEB 13 2006

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, ALPHA COUNSELING MANAGEMENT SERVICES, 4750 HARTLAND PARKWAY #209, LEXINGTON, KENTUCKY 40515

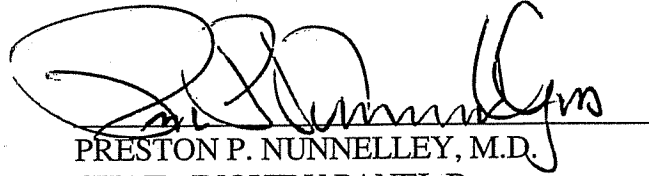
**ORDER TERMINATING SECOND ORDER AMENDING
AGREED ORDER OF INDEFINITE RESTRICTION**

At its January 19, 2006 meeting, the Kentucky Board of Medical Licensure, acting by and through its Inquiry Panel B considered a request by the licensee to terminate the Second Order Amending Agreed Order of Indefinite Restriction imposed upon his Kentucky medical license on July 29, 2004.

In addition to the licensee's request, the Panel has considered a memorandum by the Board's Assistant General Counsel dated December 20, 2005; the Second Order Amending Agreed Order of Indefinite Restriction filed of record July 29, 2004; letters from Burns Brady, M.D., Medical Director, Kentucky Physicians Health Foundation, dated December 13, 2005 and June 9, 2004; correspondence prepared by Fred G. Hampton, LCSW, dated January 15, 2004; correspondence prepared by Sallie Egli, Alpha Counseling Management Services dated November 6, 2005; and a compliance inspection report prepared by Eric Tout, Medical Investigator, dated March 24, 2005.

Having considered all of these materials and being sufficiently convinced that the licensee will continue to abide by the terms and conditions previously fixed, without a formal order, the Panel hereby ORDERS that the terms and conditions imposed upon the licensee's Kentucky medical license by the Second Order Amending Agreed Order of Indefinite Restriction filed of record on July 29, 2004 are hereby TERMINATED.

SO ORDERED this 13th day of February, 2006.



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

CERTIFICATE OF SERVICE

I hereby certify that the original of this Order Terminating Second Order Amending Agreed Order of Indefinite Restriction was delivered to C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed to Patrick Burba, M.D., 733 Freeman Lake Road, Elizabethtown, Kentucky 42701 on this 13th day of February, 2006.



L. CHAD ELDER
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
502/429-7150

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 880

FILED OF RECORD
JUL 29 2004
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, ALPHA COUNSELING MANAGEMENT SERVICES, 4750 HARTLAND PARKWAY #209, LEXINGTON, KENTUCKY 40515

SECOND ORDER AMENDING AGREED ORDER OF INDEFINITE RESTRICTION

At its July 15, 2004 meeting, the Kentucky Board of Medical Licensure (hereafter "the Board") acting by and through its Hearing Panel B considered the May 3, 2004 and May 24, 2004 requests by Patrick L. Burba, M.D. (hereafter "the licensee") to modify the Order Amending Agreed Order of Indefinite Restriction filed of record on February 8, 2002 to permit him to treat female patients without the presence of a chaperone.

The Panel considered a memorandum by the Board's Assistant General Counsel dated June 22, 2004; the Order Amending Agreed Order of Indefinite Restriction filed February 8, 2002; a letter from Dr. Burns M. Brady, Medical Director of the Kentucky Physicians Health Foundation (hereafter "the Foundation") dated June 9, 2004; a letter from the Dr. Charles F. Francke, III dated February 20, 2004; a letter from Fred G. Hampton, LCSW dated January 15, 2004; a psychological evaluation by Dennis E. Wagner, Ed.D. performed March 5 and 10, 2004; and a compliance inspection report from Eric V. Tout, Board Investigator, dated May 10, 2004. Additionally, the licensee was present and addressed the Panel.

Having considered all available information and being sufficiently advised, the Panel hereby DENIES the licensee's request to treat female patients without the presence of a chaperone. The Panel voted to modify the licensee's chaperone requirement to allow

him to utilize nursing home staff as chaperones as set forth in this Second Order Amending Agreed Order of Indefinite Restriction. All other terms and conditions shall remain in effect and are incorporated in this Second Order Amending Agreed Order of Indefinite Restriction. Accordingly, the Panel ORDERS that, effective with the filing of this Order, the licensee's Kentucky Medical license shall be subject to the terms and conditions of the following **SECOND ORDER AMENDING AGREED ORDER OF INDEFINITE RESTRICTION**:

**SECOND ORDER AMENDING AGREED ORDER OF
INDEFINITE RESTRICTION**

1. The license to practice medicine in the Commonwealth of Kentucky held by Patrick L. Burba, M.D., is hereby RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME;
2. During the effective period of this Second Order Amending Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION:
 - a. The licensee SHALL maintain his contractual relationship with the Foundation and shall fully comply with all terms of that contractual relationship, until released from such requirement by the Panel;
 - b. The licensee shall continue to engage in therapeutic treatment as directed by the Medical Director, the Foundation, and shall fully comply with all directives, including medication directives, until released from such requirement by the Panel. As part of this restriction, the licensee shall arrange for each psychotherapist to provide quarterly written reports to the Medical Director of the Foundation, detailing his compliance with treatment directives, his current diagnoses, his current plan of treatment and his current prognosis;
 - c. The licensee shall only work in a practice setting approved in writing, in advance by the Panel. By its vote, the Panel has approved the licensee's employment by Alpha Counseling and Management Services, 4750 Hartland Parkway, #209, Lexington, Kentucky 40515. Any change in

professional employment must be approved in writing, in advance of employment, by the Panel;

- d. The licensee's practice of medicine is expressly RESTRICTED to nursing home consultations in geriatric psychiatry. Furthermore, the licensee shall only work as a team member in a nursing home setting to provide medical, environmental and supportive therapy and he shall not have primary responsibility for any patient;
 - e. The licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any other clinical setting. As the licensee's practice is expressly limited to nursing home consultations in geriatric psychiatry, the licensee may use nursing home staff as his chaperone when seeing a patient. When the licensee sees a female patient at the nursing home, he may treat that patient so long as a female member of the nursing home's staff is present and is able to hear and see all interactions between the licensee and the patient, throughout the physician's entire interaction with the patient during the treatment. In such circumstances, the licensee will have the staff member note their presence in the patient's chart and he shall maintain a "log" for all such circumstances, which shall contain: the patient's name, date of treatment, and name of staff member attending. The licensee may utilize a computer generated report from the nursing home as the required "log", so long as all necessary information is contained within the computer printout. Upon request of the Board's agent(s), the licensee shall make this log and any patient record(s) available for review. The licensee shall also take any step(s) necessary to permit/arrange for the Board's agent(s) to be able to interview the applicable hospital staff member(s), upon request.
 - f. The licensee shall not see female patients socially or outside of the nursing home setting;
 - g. The licensee shall not have sexual contact with any patient and shall not engage in any romantic relationship with any patient;
 - h. The licensee may only seek approval for a change in any of the foregoing terms and conditions of restriction if such a request is accompanied by a favorable recommendation of the Medical Director of the Foundation;
 - i. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. Violation of any of these terms and conditions shall provide a legal basis for immediate suspension of the licensee's Kentucky Medical license and may result in further disciplinary action, including revocation.
 4. If the licensee should violate any term or condition of this Order, the licensee's practice will constitute an immediate danger to the public health, safety, or

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

5. After being on restriction for a reasonable period of time, the licensee may request termination of the restriction period; however, the Hearing Panel will not consider such a request unless it is accompanied by a favorable recommendation by the Medical Director, the Foundation. On any request for termination of the restriction, the burden of persuasion shall be upon the licensee to satisfy the Panel that the terms and conditions of restriction are no longer necessary to ensure patient safety. The decision whether to grant such a request is solely within the discretion of the Hearing Panel.

SO ORDERED this 29th day of July, 2004.



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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed via certified mail, return-receipt requested to Patrick L. Burba, M.D., Alpha Counseling Management Services, 4750 Hartland Parkway #209, Lexington, Kentucky 40515 on this 29th day of July, 2004.



L. CHAD ELDER

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FILED OF RECORD

JAN 27 2003

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 880

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, ALPHA COUNSELING MANAGEMENT SERVICES, 4750 HARTLAND PARKWAY #209, LEXINGTON, KENTUCKY 40515


ORDER TERMINATING THE EMERGENCY ORDER OF RESTRICTION

At its January 16, 2003 meeting, the Kentucky Board of Medical Licensure acting by and through its Hearing Panel B considered a report of the licensee's non-compliance and the pending Emergency Order of Restriction entered December 17, 2002.

The Panel considered a memorandum by the Board's Assistant General Counsel dated November 21, 2002; the report of the investigator regarding the non-compliance; the Order Amending Agreed Order of Indefinite Restriction filed February 8, 2002; a letter from Dr. Brady, Medical Director of the Kentucky Physicians Health Foundation-Impaired Physicians Program, dated November 18, 2002; a letter from the licensee dated November 15, 2002; a letter from Minnie Dabney, MSW, of Pine Meadows Nursing Home dated December 16, 2002; and a letter from Ruth Clark, Social Services Director, Federal Hill Manor Nursing Center. Additionally, the licensee was present and addressed the Panel.

Having considered all available information and being sufficiently convinced that the licensee will continue to abide by the terms and conditions previously fixed, the Panel hereby RESCINDS the Emergency Order of Restriction. Furthermore, the ORDER AMENDING AGREED ORDER OF INDEFINITE RESTRICTION entered February 8, 2002 shall remain in effect.

SO ORDERED this 27th day of January, 2003.


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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and copies were mailed via certified mail, return-receipt requested to Patrick L. Burba, M.D., Alpha Counseling Management Services, 4750 Hartland Parkway #209, Lexington, Kentucky 40515 on this 27th day of January, 2003.



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DEC 17 2002

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 869

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, ALPHA COUNSELING MANAGEMENT SERVICES, 4750 HARTLAND PARKWAY #209, LEXINGTON, KENTUCKY 40515

EMERGENCY ORDER OF RESTRICTION

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, considered a report of the licensee's non-compliance.

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

FINDINGS OF FACT

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

1. At all relevant times, Patrick L. Burba, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Psychiatry.
3. The licensee's practice of medicine is subject to an Order Amending Agreed Order of Indefinite Restriction entered February 8, 2002.
4. The licensee had previously entered an Agreed Order of Restriction in August 2001. At its January 17, 2002 meeting the Board considered the licensee's request to modify the Agreed Order of Indefinite Restriction to permit him to

resume the medical treatment of female patients with a chaperon requirement. The licensee's request was granted and the Order Amending Agreed Order of Indefinite Restriction was entered.

5. Since the entry of the Order Amending Agreed Order of Indefinite Restriction, the licensee has been employed with Alpha Counseling Management Services (ACMS).
6. On November 6, 2002, the Board was advised that the licensee had violated sections 1(e) and (f) of the Order Amending Agreed Order of Indefinite Restriction.
7. Section 1(e) of the Order Amending Agreed Order of Indefinite Restriction states that the "licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any clinical setting."
8. Section 1(f) of the Order Amending Agreed Order of Indefinite Restriction states that "any chaperon utilized by the licensee must be approved, in advance, by the Board or its staff and must agree in writing to: 1) remain present and within direct eyesight and within clear hearing distance of the licensee and the patient throughout the entire period the licensee is with a female patient; 2) accurately record the chaperon's presence, or absence, for the entire duration of such patient interaction in the patient's chart, or the patient record maintained by the clinical setting; 3) immediately notify the designated contact person at the Board's offices to report any violation of the chaperon requirement by the licensee. The licensee may submit and the

Board or its agents may approve more than one chaperon to fulfill this requirement. The licensee shall be solely responsible for the payment of the costs of such chaperon(s)."

9. The licensee admitted in an interview and in a written statement to the Board's investigator that he had violated the Order Amending Agreed Order of Indefinite Restriction. The licensee admitted to non-compliance as to the above-referenced sections regarding the use of a chaperon. The licensee admitted that he saw ten (10) patients in early November 2002 without a chaperon. In his written response, the licensee states,

"I admit that I have, on occasions, seen patients in nursing homes without a Board-approved chaperone. These were occasions when the chaperon was not available to accompany me. On these occasions I would try to compensate by asking a nursing home staff member to observe my interaction with the patients, or I would meet with the patient in a very public area where many staff members would be in plain sight.

Please understand that the nursing homes have a great demand for psychiatric consultation services for their residents. Sometimes they demand that their residents be seen by a psychiatrist ASAP.

I realize that on those occasions when I compromised my compliance, I was putting the needs of my employer and the nursing homes ahead of my need to stay in compliance. My judgment was wrong, but my motivation was only to provide good care for the patients."

10. Mary Brown, the only Board approved chaperon for the licensee, states that her employment with Alpha Counseling Management Services (ACMS) ended September 13, 2002. Consequently, she has not been present when the licensee has seen female patients since September 13, 2002. Ms. Brown reports that while employed with ACMS she was not present during every female visit. Other ACMS staff would accompany the licensee. Ms Brown

states that she did not contact the Board as she thought her employer, Ms. Sally Egli, would handle the reporting.

11. Ms. Egli, Director of ACMS, reports that other ACMS employees, Steffan Stambaugh, Sonya Gross and Erin S. McCoart, were Board approved chaperons. Ms. Egli reports that she herself approved these employees as chaperons. Ms. Egli states that she faxed copies of the Chaperon Agreements to the Kentucky Physicians Health Foundation (the "Foundation"). Patient charts reveal that Ms. Egli also served as a chaperon.
12. Steffan Stambaugh, an ACMS employee, reports that Ms. Egli approved him as a chaperon the date his employment began on September 26, 2002. Mr. Stambaugh reports that he accompanied the licensee 10-12 times.
13. Sonya Gross, an ACMS employee, reports that Ms. Egli approved her as a chaperon in May 2002. Ms. Gross reports that she accompanied the licensee 4-5 times.
14. Erin McCoart, an ACMS employee, reports that she began her employment with ACMS on November 10, 2002. Ms. McCoart states that the licensee gave her a copy of the Board's Chaperon Agreement and his Order Amending Agreed Order of Indefinite Restriction. Ms. McCoart has accompanied the licensee twice.
15. The Kentucky Physicians Health Foundation reports that Ms. Egli faxed Chaperon Agreements on Ms. Gross, Mr. Stambaugh and Ms. Ingrid Harshman-Benke to the Foundation on November 8, 2002 at 3:58 p.m. These

individuals were never approved by the Board or its agents as Chaperons for the licensee.

CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
3. There is probable cause to believe that the licensee has violated the Order Amending Agreed Order of Indefinite Restriction and KRS 311.595(13).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
6. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with

a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.

7. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265, 108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1). KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

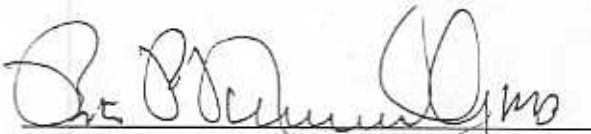
EMERGENCY ORDER OF RESTRICTION

1. Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel B hereby ORDERS that the license to practice medicine in the

Commonwealth of Kentucky held by PATRICK L. BURBA, M.D., is RESTRICTED until further Order of the Board

2. During the period of restriction, the licensee may only practice lawfully so long as he is in full compliance with the following terms and conditions of restriction:
 - a. The licensee SHALL comply with all terms and conditions of the Order Amending Agreed Order of Indefinite Restriction;
 - b. The licensee SHALL NOT treat or enter into a physician-patient relationship with any female, until approved to do so by the Panel.
 - c. The licensee shall not violate any provision of KRS 311.595 or 311.597.
3. Any violation of this Emergency Order of Restriction may serve as the basis for disciplinary action pursuant to KRS 311.595(13), including revocation of his Kentucky medical license.
4. The entire Panel shall review the licensee's non-compliance at its January 16, 2003 meeting and decide the appropriate action to be taken. The Panel shall decide among all available statutory options.
5. Inquiry Panel B further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

SO ORDERED this 16th day of December, 2002.


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

CERTIFICATE OF SERVICE

I certify that the original of this Emergency Order of Suspension was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and copies were mailed via certified mail, return-receipt requested to Patrick L. Burba, M.D., Alpha Counseling Management Services, 4750 Hartland Parkway #209, Lexington, Kentucky 40515 on this 16th day of December, 2002.

L Chad Elder by e U.S. 10/20

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COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 880

FILED OF RECORD
AUG 24 2001
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, LINCOLN TRAIL HOSPITAL, RADCLIFF, KENTUCKY 40160

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and Patrick L. Burba, M.D., and, based upon their mutual desire to fully and finally resolve a pending grievance without an evidentiary hearing, 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, Patrick L. Burba, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Psychiatry.
3. The licensee treated Patient A as a patient Fort Knox, Kentucky for some period of time.
4. Approximately two years after Patient A had received medical treatment from the licensee, she was a patient at Lincoln Trail Hospital. While she was a patient in that hospital, she encountered the licensee. The licensee was not her treating physician on

this admission. The licensee and Patient A engaged in several social discussions while she was a patient at Lincoln Trail Hospital.

5. After her discharge from the hospital, Patient A checked into the Gold Vault Inn, a local motel. When she became restless and couldn't sleep, she telephoned the licensee and asked him if he could prescribe something to help her sleep. The licensee came to the motel and drove Patient A to the Radcliff Pharmacy so that she could fill the prescription(s) he had written for 2 Ambien and 2 Trazadone. After they returned to the hotel, Patient A asked the licensee to stay for a while. After they re-entered the hotel room, they began kissing and Patient A performed oral sex upon the licensee. They agreed to meet again at a later time.
6. A few weeks later, the licensee met Patient A at Gold Vault Inn. During this encounter, there was mutual touching and Patient A again performed oral sex upon the licensee.
7. At the Panel's request, the licensee submitted to neuropsychological, psychosexual and psychiatric evaluations.
8. The recommendations made in the neuropsychological evaluation were:
 - a. That licensee be restricted to practicing general psychiatry only under supervision for a period of time, and that particularly close monitoring be given in cases where he is involved with female clients extending beyond pharmacological review and maintenance;
 - b. That, if he is allowed to practice, no contact with a patient and the licensee be allowed outside of the typical medical context and doctor-patient relationship; and,
 - c. That the licensee continue to participate in all appropriate forms of treatment outlined by the Kentucky Impaired Physicians Program, including ongoing treatment with Dr. Francke, as without the mediating effects of such therapy the licensee would be at risk to relapse, given his personality structure.
9. The treatment considerations from the psychosexual evaluation were:

- a. Psychological testing suggests that prognosis for psychological intervention is guarded to good. His chronic problems preclude long-term treatment goals. His difficulty in opening up to others make the establishment of a therapeutic alliance a slow process.
 - b. The need to positively cope with his characterological shyness will be foci in treatment. Assertiveness or social skill training may be beneficial if he can be engaged in the therapeutic process. Individual, group, and marital therapy seem potentially beneficial to him, as does pharmacology.
10. The recommendations of the psychiatric evaluation were:
- a. In my opinion, at this point in time, it is best that the licensee not treat female patients. This can be reevaluated in the future and then resubmitted to the KBM L for their review and direction.
 - b. Individual therapy is clearly indicated at this time. Marital therapy, as well as group therapy, can be implemented as necessary.
 - c. Currently the licensee is on antidepressant medication. He should continue on this under the care of a psychiatrist.
 - d. The above recommendations should be implemented and monitored through a contractual relationship with the Kentucky Physicians Health Foundation.
11. The licensee entered into a contractual relationship with the Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP) on July 24, 2001.

STIPULATED CONCLUSIONS OF LAW

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

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Current Opinion 8.14 of the American Medical Association's Code of Ethics provides,

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

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

3. Based upon the Stipulations of Fact, there is proof that the licensee has violated the provisions of KRS 311.595(5) and 311.595(9), as illustrated by KRS 311.597(4). Accordingly, there are legal grounds for disciplinary action against his Kentucky medical license.
4. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending grievance without an evidentiary hearing 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 their mutual desire to fully and finally resolve the pending grievance without an evidentiary hearing, the parties hereby ENTER INTO the following

AGREED ORDER OF INDEFINITE RESTRICTION:

1. The license to practice medicine in the Commonwealth of Kentucky held by Patrick L. Burba, M.D., is hereby RESTRICTED FOR AN INDEFINITE PERIOD.
2. During that period of restriction, the licensee may only practice lawfully so long as he is in full compliance with the following terms and conditions of restriction:
 - a. He shall maintain his contractual relationship with IPP and shall fully comply with all terms and conditions of that contractual relationship, until released from such requirement by the Panel;
 - b. He shall continue to engage in therapeutic treatment as directed by the Medical Director, IPP and shall fully comply with all treatment directives, including medication directives, until released from such requirement by the Panel. As part of this restriction, the licensee shall arrange for each psychotherapist to provide quarterly written reports to the Medical Director, IPP, detailing his compliance

- with treatment directives, his current diagnoses, his current plan of treatment and his current prognosis;
- c. He shall not treat or enter into a physician-patient relationship with any female, until approved to do so by the Panel;
 - d. He shall only practice medicine at a practice location approved in advance by the Panel Chair, or the Panel, under approved terms and conditions;
 - e. He may only seek approval for a change in any of the foregoing terms and conditions of restriction if such request is accompanied by: a favorable recommendation by the Medical Director, IPP;
 - f. He shall fully comply with all provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*
3. The Panel Chair shall have the authority to immediately suspend the licensee's Kentucky medical license, after an *ex parte* presentation by Board's counsel, if the Chair concludes there is probable cause to believe the licensee has violated any condition of restriction/limitation set out in this Agreed Order of Indefinite Restriction. If the Panel Chair should issue such an Emergency Order, the Panel concludes 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 this Agreed Order of Indefinite Restriction would also constitute separate grounds for disciplinary action against his Kentucky medical license, including revocation, pursuant to KRS

311.595(13).

SO AGREED on this 20 day of August, 2001.

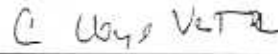
FOR THE LICENSEE:


PATRICK L. BURBA, M.D.

COUNSEL FOR DR. BURBA
(IF APPLICABLE)

FOR THE BOARD:


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


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

ENTERED: 08/24/01

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 880

FILED OF RECORD
APR 30 2001
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY PATRICK L. BURBA, M.D., LICENSE NO. 29358, LINCOLN TRAIL HOSPITAL, RADCLIFF, KENTUCKY 40160

INTERIM AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), by and through its Inquiry Panel B, and Patrick L. Burba, M.D., and, based upon their mutual desire to ensure that the public is fully protected while the Board obtains the necessary information to assess Dr. Burba's ability to practice medicine in a safe and competent manner, hereby ENTER INTO the following INTERIM AGREED ORDER:

1. The licensee shall not engage in 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" – from the date of filing of this Interim Agreed Order until permitted to do so by Inquiry Panel B or its Panel Chair;
2. Within ten (10) days of the filing of this Interim Agreed Order, the licensee shall contact Burns M. Brady, M.D., Medical Director, Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP), 9000 Wessex Place, Suite 305, Louisville, Kentucky 40222, 502-425-7761, to arrange for the scheduling and completion of neuropsychologic and psychiatric evaluations.

3. On this initial contact, the licensee shall provide Dr. Brady with all necessary release(s)/authorization(s) to provide information about those evaluations and the licensee's interactions with the evaluators and IPP to the Board.
4. The licensee shall appear at the time and place designated by IPP for each of these evaluations and shall successfully complete each evaluation. If required by the evaluator/assessor, the licensee shall execute any release and/or authorization to provide information about the assessment and the licensee's conduct to IPP and/or to the Board directly.
5. Once the Board's staff has received the reports for each of these evaluations and each report confirms that the licensee successfully completed the evaluation, the staff shall place this case on the agenda for the next regularly scheduled meeting of Inquiry Panel B. The staff shall provide each evaluation report and the original Panel memorandum to the Panel for its review at that meeting. At that time, Panel B may exercise its statutory options under KRS 311.591 and, if applicable, KRS 311.592.
6. If the licensee should fail to appear for or to complete either evaluation scheduled by IPP, the staff shall place this case on the agenda for the next regularly scheduled meeting of Inquiry Panel B. The staff shall inform the Panel of the licensee's failure and provide the Panel with the original Panel memorandum for its review. At that time, Panel B may exercise its statutory options under KRS 311.591 and, if applicable, KRS 311.592.
7. If the Board's staff receives the evaluations and determine that they report that the licensee may resume the active practice of medicine without undue risk of harm to patients and/or the public, the staff shall provide the evaluation reports to the Panel

Chair. The Panel Chair is authorized to act on behalf of the Panel in this regard and/or to convene a special meeting of the Panel, to be conducted in person or by telephone. If either the Panel Chair or the Panel determine that the licensee may safely resume the practice of medicine, the Panel Chair or the Panel making such decision shall determine if supervisory conditions are necessary for the protection of the public on the licensee's return to the practice of medicine. If so, the Panel Chair or the Panel, as appropriate, shall determine the nature of the supervisory arrangement and the terms and conditions of such supervisory arrangement. If the Panel Chair should act on behalf of the Panel on an interim basis, all relevant materials shall be presented to the full Panel at its next regularly scheduled meeting so that the Panel may exercise its options under KRS 311.591 and, if applicable, KRS 311.592.

8. The parties agree that, based upon the interim nature of this Agreed Order, the Board is not required to report the fact or the terms of the Interim Agreed Order to the National Practitioner Data Bank. However, the parties also agree that this Interim Agreed Order is a public document subject to review and release under the Kentucky Open Records Act and subject to the Board's policies regarding public reporting of Board actions.


The licensee expressly agrees that if the licensee should violate any term or condition of the Interim Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Interim Agreed Order, the Panel Chairperson 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 Interim Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Interim Agreed Order.

The licensee understands and agrees that any violation of this Interim Agreed Order may serve as the basis for disciplinary action pursuant to KRS 311.595(13), including revocation of his Kentucky medical license.

SO AGREED on this 30th day of April, 2001.


FOR THE LICENSEE:



PATRICK L. BURBA, M.D.

COUNSEL FOR DR. BURBA
(IF APPLICABLE)

FOR THE BOARD:



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

C. Lloyd Vest II

C. LLOYD VEST II
General Counsel
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Louisville, Kentucky 40222
(502) 429-8046

ENTERED: 04/30/01