

COMMONWEALTH OF KENTUCKY
STATE BOARD OF MEDICAL LICENSURE
CASE NO. 611
ADMINISTRATIVE ACTION NO. 97-KBML-0142

FILED OF RECORD
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K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH
OF KENTUCKY HELD BY EDWARD K. ATKINSON, M.D., LICENSE
NO. 28736, P.O. BOX 3148, BEREA, KENTUCKY 40403

AGREED ORDER OF PROBATION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board") and Edward K. Atkinson, M.D., (hereafter "the licensee") and based upon their mutual desire to fully resolve these proceedings, without the necessity of an evidentiary hearing, hereby ENTER INTO the following AGREED ORDER OF PROBATION:

STIPULATIONS OF FACT

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

1. Edward K. Atkinson, M.D., was formerly licensed to practice medicine in Pennsylvania. He retired from the practice of Anesthesiology in Pennsylvania in 1992.
2. On June 29, 1992, Dr. Atkinson was licensed by the Board to practice medicine in the Commonwealth of Kentucky. He noted his status as Retired/semi-retired.
3. During the period February-March 1996, a member of the Cabinet for Human Services (CHS) and an agent of the Drug Enforcement Agency (DEA) conducted an investigation into the licensee's Kentucky medical practice.
4. The investigation revealed that the licensee was treating persons out of his home at 448 Calico Road, on the Madison-Garrard County line.

5. As a result of this joint investigation and a review of his patient care, the licensee was asked to surrender his DEA prescribing privileges. He did so on or about March 4, 1996.

6. After this information was initially presented to Inquiry Panel B at its April 18, 1996 meeting, the licensee was asked to voluntarily surrender his Kentucky medical license. He declined and the Panel ordered further investigation by its staff.

7. Subsequent to that time, the Panel had certain of the licensee's patient records reviewed by a Board consultant.

8. The consultant reviewed controlled substance prescriptions written by the licensee for Patients "A" through "F" and found that the licensee's care of these patients did not conform to the standard of accepted and prevailing medical practice within the Commonwealth. The consultant further found, "The amounts prescribed were excessive without adequate documentation in cases reviewed for adequate history, diagnosis, physical findings, pain levels, or other medications."

9. In his written response to the Panel, the licensee admitted that he had prescribed large amounts of controlled substances to Patients "A" and "B," based upon their subjective requests. The licensee advised that he had written new prescriptions for Patient "A" on several occasions based solely upon the patient's claim that the previous prescription had been lost or stolen. The licensee acknowledged that he had suspected this patient of badly abusing drugs.

10. In his written response, the licensee acknowledged that Patient "A" had brought in four other persons who claimed they needed controlled substances for pain. The licensee wrote controlled substance prescriptions for these four individuals without any examination. Two weeks later, Patient "A" asked for refills for all four individuals. The licensee provided the prescriptions "against [his] better judgment," when Patient "A" complained that he had come a long way for the prescriptions.

11. The consultant reviewed the licensee's administration of thyroid treatments to Patients "G" and "H." The consultant noted, "He gave many patients thyroid on the basis of low axillary temperatures. This treatment is based on a theory of subclinical hypothyroidism, which has been widely debated and not scientifically documented, and not accepted in traditional medical circles."

12. The consultant also reviewed the licensee's treatment of Patients "A," "B," and "G" through "P." The consultant concluded, "I do not believe that Dr. Atkinson's practice meets current medical practice standards with regard to appropriate history taking, physical examination or biomonitoring, objective documentation of pathology nor of reported symptomatic improvement is not provided. It was unclear when or if he had assumed the role of primary provider for many of these patients. There was no indication he provided information to other physicians concerning his treatments. There is a clear risk that patients were not getting comprehensive and continuous diagnosis, treatment, and follow-up for their multiple medical problems. This, I propose, is evidence of gross negligence on the part of Dr. Atkinson."

13. On February 3, 1997, the Board's Inquiry Panel B entered an Emergency Order of Restriction against the licensee's Kentucky medical license, prohibiting the licensee from prescribing, dispensing or maintaining controlled substances in the Commonwealth of Kentucky. That Order has remained in effect throughout these proceedings.

STIPULATED CONCLUSIONS OF LAW

Based upon the foregoing Stipulations of Fact, the parties stipulate the following Conclusions of Law, which serve as the legal basis for this Agreed Order of Probation:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.

2. The licensee has engaged in conduct which is prohibited by KRS 311.595(9), as illustrated by KRS 311.597(1)(a) and (d).

3. Based upon the information presented in the Stipulations of Fact, there would be sufficient evidence presented at an evidentiary hearing to support a finding that the licensee had engaged in conduct prohibited by KRS 311.595(9), as illustrated by KRS 311.597(4).

4. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may informally resolve the pending proceedings fully and finally by an Agreed Order of Probation.

AGREED ORDER OF PROBATION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and based upon their mutual desire to fully and finally resolve this proceeding, without further formal administrative proceedings, the parties ENTER INTO the following AGREED ORDER OF PROBATION:

1. The license to practice medicine in the Commonwealth of Kentucky held by Edward K. Atkinson, M.D., License No. 28736, is hereby PLACED ON PROBATION for a period of five (5) years, with the probationary period to become effective upon the filing of this Agreed Order of Probation.

2. During that probationary period, the licensee's Kentucky medical license shall be subject to the following terms and conditions:

a. The licensee shall not prescribe, dispense or otherwise utilize controlled substances in the Commonwealth of Kentucky,

b. Before the licensee may petition this Hearing Panel to reinstate his ability to prescribe, dispense or otherwise utilize controlled substances in the Commonwealth of Kentucky, the licensee must successfully complete the University of Kentucky mini-residency on "The Use and Prescribing of Controlled Substances," offered during April of each year.

c. Before the Hearing Panel should grant a request by the licensee to reinstate his ability to prescribe, dispense or otherwise utilize controlled substances in the Commonwealth of Kentucky, the licensee would have to agree to the amendment of this Agreed Order of Probation to incorporate any conditions deemed necessary by the Panel to ensure that he utilized controlled substances in a safe and competent manner.

d. The licensee shall maintain concise and legible patient charts which reflect "Subjective, Objective, Assessment, Plan" format;

e. Each of the licensee's patient charts shall contain medical record number(s);

f. Each of the licensee's patient charts shall consist of dated and numbered pages;

g. The licensee shall obtain an informed consent for treatment for each patient, for each procedure performed, which shall follow an explanation of the various procedures available and the relative length, costs and potential adverse effects of each procedure.

h. Each of the licensee's patient charts shall include an accurate and current history of the problem being treated;

i. Each of the licensee's diagnoses must be validated by objective means, either by medical record, letter from another physician, lab results, physical findings, etc.;

j. The licensee shall coordinate his medical treatment of each patient with that patient's primary care physician. When the licensee provides medical treatment to a patient, the licensee shall notify the patient's primary care physician that such treatment has been provided.

k. Each of the licensee's patient charts must indicate whether the patient has allergies and, if so, must clearly identify those allergies;

l. The licensee or his staff shall take and record each patient's vital signs on each visit. At a minimum, these would include the patient's blood pressure and pulse;

m. The licensee must include some notation of physical examination(s) for each patient, at least upon the initial visit and as needed thereafter;

n. The licensee must formulate and include a plan of treatment for each patient. This plan shall be formulated upon the initial visit and be updated in the progress notes for each visit;

o. There must be a follow-up of the medical status for each patient upon each visit;

p. The licensee shall not utilize thyroid preparations without first obtaining a laboratory confirmed TSH level. If the licensee should utilize thyroid preparations with a patient, the licensee shall monitor the patient's TSH levels at regular intervals so long as the thyroid preparations are being utilized.

q. The licensee shall maintain a log of those patients for whom he utilizes thyroid preparation(s).

r. The licensee shall make that log and any/all patient charts available to the Board's agents, upon request, for review and/or submission to a Board consultant for review;


3. The licensee shall not violate any provision of the Kentucky Medical Practice Act, KRS 311.530 et seq;

4. Any violation(s) of the terms and conditions of this Agreed Order of Probation shall constitute grounds for immediate suspension of the licensee's Kentucky medical license, under KRS 311.592, and may result in revocation of that license.

SO AGREED this 20th day of November, 1997.

FOR DR. ATKINSON:


EDWARD K. ATKINSON, M.D.


HENRY J. NOVAK, ESQ.
Attorney for Dr. Atkinson

FOR THE BOARD:


KATHIE E. GRISHAM, ESQ.
Chairperson, Hearing Panel A

C. Lloyd Vest II

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ENTERED: November 20, 1997

WAIVER OF RIGHTS

I, EDWARD K. ATKINSON M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 611. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel.

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

Executed this _____ day of October, 1997.


EDWARD K. ATKINSON, M.D.
Respondent


HENRY J. NOVAK, ESQ.
Attorney for Dr. Atkinson