

IN THE MATTER  
OF  
PABLO MERCED, M.D.

COMMISSIONER'S  
ORDER OF  
SUMMARY  
ACTION

TO: PABLO MERCED, M.D.

The undersigned, James McDonald M.D., M.P.H., Acting Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of Kentucky has made a finding substantially equivalent to a finding that the practice of medicine by **PABLO MERCED, M.D.** (the Respondent) in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the Emergency Order of Suspension, dated January 20, 2023 attached hereto as Appendix "A" and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty days after the final conclusion of the disciplinary proceeding in the predicate action. The hearing will be held pursuant to the provisions of N.Y. Pub.


Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the proceeding in the predicate action. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719 via Certified Mail, Return Receipt Requested, of the final conclusion of the proceeding in the predicate action, immediately upon such conclusion.

THE NEW YORK PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
March , 2023

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James McDonald M.D., M.P.H.  
Acting Commissioner of Health  
New York State Department of Health

Inquiries should be directed to:

Ian H. Silverman  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

## **APPENDIX A**

FILED OF RECORD

JAN 20 2023

K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2084

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY PABLO A. MERCED, M.D., LICENSE NO. 24420, [REDACTED]  
[REDACTED]

**EMERGENCY ORDER OF SUSPENSION**

On January 19, 2023, the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel B, considered Panel Memoranda from Billy Madden, Medical Investigator, dated December 29, 2022; an Investigative Report, Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services, dated July 28, 2022; DEA Form-6 Report of Investigation, dated September 9, 2022; typed correspondence from the licensee, undated; a November 2022 Board consultant report with expert review worksheets; and the licensee's Investigative Physician Profile/Background. In addition, the licensee was given notice of the Panel meeting and an opportunity to be heard; he did not appear. Having considered this information and being sufficiently advised, the Board enters the following EMERGENCY ORDER OF SUSPENSION, 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, Inquiry Panel B concludes there is probable cause to make the following Findings of Fact, which support this Emergency Order of Suspension:

1. At all relevant times, Pablo A. Merced, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.

3. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services ("OIG"), reviewed the licensee's prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

Date "Written"	Number of Unique Patients for Whom Dr. Merced Prescribed Controlled Substance Prescription(s)
05/19/2019	0
05/20/2019	10
05/21/2019	46
05/22/2019	40
05/23/2019	40
05/24/2019	19
07/01/2019	12
07/02/2019	34
07/03/2019	39
07/04/2019	1
07/05/2019	43

For six of the eleven days reviewed, OIG found that the licensee submitted coded claims for and received payment for Medicaid patient encounters that, based upon the minimum amount of time per encounter, would have consumed 13 or more hours/day. Based on the allegation that the licensee was out of the country for the date ranges evaluated, OIG recommended that a portion of the patient names for whom he appeared to prescribe during those dates be provided to the Board for review.

4. On or about November 5, 2022, a Board consultant completed a review of fourteen (14) of the licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices. The consultant noted a pattern of cut-and-paste notes with no meaningful SOAP information and that the licensee prescribed (primarily suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, prescribing to patients positive for

methadone, no efforts to taper, and providing early refills. The consultant opined that the licensee "poses a threat to the health, safety, and wellbeing of patients." The consultant's narrative report and review worksheets in their entirety are incorporated herein by reference.

5. On or about November 16, 2022, the Board mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
6. On or about December 1, 2022, the Board e-mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
7. On or about December 19, 2022, the Board's medical investigator called the licensee and a receptionist stated to the investigator that the licensee was on vacation, and it was unknown when he would return.

#### 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 bases for this Emergency Order of Suspension:

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 KRS 311.595(9) [as illustrated by KRS 311.597(4)], (10) and (12).
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.
5. 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.
6. The United States Supreme Court has ruled that it is not a 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 SUSPENSION**

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 Pablo A. Merced, M.D., is SUSPENDED and Dr. Merced is prohibited from performing any act which constitutes the "practice of medicine or osteopathy," as that term is defined by 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 – until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel B further declares that this is an EMERGENCY ORDER, immediately effective upon service.

SO ORDERED this 20<sup>th</sup> day of January, 2023.

  
DALE E. TONEY, M.D.  
CHAIR, INQUIRY PANEL B

**CERTIFICATE OF SERVICE**

I certify that the original of this Emergency Order of Suspension was delivered to Mr. Michael S. Rodman, 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 the licensee at his last address of which the board has record, Pablo A. Merced, M.D., License No. 24420, [REDACTED] on this 7<sup>th</sup> day of January, 2023.

[REDACTED]  
\_\_\_\_\_  
Leanne K. Diakov  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 2084

JAN 20 2023

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY PABLO A. MERCED, M.D., LICENSE NO. 24420, [REDACTED]  
[REDACTED]

COMPLAINT

Comes now the Complainant, Chair of the Kentucky Board of Medical Licensure's Inquiry Panel B, and on behalf of the Panel which met on January 19, 2023, states for its Complaint against the licensee, Pablo A. Merced, M.D., as follows:

1. At all relevant times, Pablo A. Merced, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Family Medicine.
3. Between September 2021 and July 2022, the Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services ("OIG"), reviewed the licensee's prescribing patterns during periods when the licensee may have been out of the country (5/19-24/2019 and 7/1-5/2019) and found the following:

Date "Written"	Number of Unique Patients for Whom Dr. Merced Prescribed Controlled Substance Prescription(s)
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4. On or about November 5, 2022, a Board consultant completed a review of fourteen (14) of the licensee's patient charts and found that the licensee departed from or failed to conform to acceptable and prevailing medical practices. The consultant noted a pattern of cut-and-paste notes with no meaningful SOAP information and that the licensee prescribed (primarily suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, prescribing to patients positive for methadone, no efforts to taper, and providing early refills. The consultant opined that the licensee "poses a threat to the health, safety, and wellbeing of patients." The consultant's narrative report and review worksheets in their entirety are incorporated herein by reference.
5. On or about November 16, 2022, the Board mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.
6. On or about December 1, 2022, the Board e-mailed a copy of the Board consultant's report to the licensee and offered him an opportunity to provide a response. The licensee did not respond.


7. On or about December 19, 2022, the Board's medical investigator called the licensee and a receptionist stated to the investigator that the licensee was on vacation, and it was unknown when he would return.
8. On or about January 20, 2023, an Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
9. By his conduct, the licensee has violated KRS 311.595(9) [as illustrated by KRS 311.597(4)], (10) and (12). Accordingly, legal grounds exist for disciplinary action against his license to practice medicine in the Commonwealth of Kentucky.
10. The licensee 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.
11. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for **June 27 & 28, 2023**, 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 and pursuant to KRS Chapter 13B. 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 in the Commonwealth of Kentucky held by Pablo A. Merced, M.D.

This 20<sup>th</sup> day of January, 2023.

  
DALE E. TONEY, M.D.  
CHAIR, INQUIRY PANEL B

**CERTIFICATE OF SERVICE**

I certify that the original of this Complaint was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed to Thomas J. Hellmann, Esq., Hearing Officer, 810 Hickman Hill Road, Frankfort, Kentucky 40601 and a copy was mailed via certified mail return-receipt requested to the licensee at his last address of which the board has record, Pablo A. Merced, M.D., License No. 24420,  on this 20<sup>th</sup> day of January, 2023.

  
Leanne K. Diakov  
General Counsel  
Kentucky Board of Medical Licensure  
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Louisville, Kentucky 40222  
Tel. (502) 429-7150