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**BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE**

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IN THE MATTER OF THE APPLICATION FOR THE LICENSURE OF:

JAMES BENJAMIN BURKE, M.D.

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**DETERMINATION AND ORDER**

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The above-titled matter came before the Mississippi State Board of Medical Licensure in Jackson, Hinds County, Mississippi, on November 18, 2020, pursuant a petition filed by James Benjamin Burke, M.D. (hereinafter referred to as "Licensee") seeking removal of certain restrictions on his license, thereby prohibiting him from treating female patients. A quorum of Board members was present throughout the hearing and deliberation in the matter.

Licensee, being fully informed of his rights to a formal hearing before the Board, was represented by Doug Mercier, Esq. Board Counsel, Stan Ingram, Esq., was present to respond the petition. The matter was called to hearing without objection from either party.

Alexis Morris, Special Assistant Attorney General, who served as Administrative Hearing Officer, presided at the hearing and was directed to prepare the Board's written decision in accordance with its deliberations.

And now, upon consideration of all the material produced in the record before the Board, along with the testimony presented at the hearing, the Board renders the following Order based on clear and convincing evidence:

1. The Board is established pursuant to the Mississippi State Board Medical Licensure Act, Title 73, Chapter 43 of the Mississippi Code of 1972 as amended, and is charged with the duty of licensing and regulating the practice of medicine in the State of Mississippi.

2. Section 73-25-29, and 73-25-83, 73-25-87 of the Mississippi Code Annotated (1972) as amended, provide that the Board may revoke, suspend or restrict a license previously issued or may deny removal of a restriction if the licensee has violated any provisions therein.
3. Counsel for the Board submitted two (2) exhibits, one being a chronology of the extensive history which Licensee has had with the Board and the second being a composite exhibit of documentation in support of the extensive history. Counsel for Licensee also introduced seven (7) exhibits in support of his request for authorization to treat female patients.
4. The Board sees no reason to repeat the extensive history of Licensee. In lieu thereof, reference is made to that certain Order Denying Removal of Restrictions rendered January 17, 2019, introduced as Tab 19 to the Board's composite Exhibit No. 2. This Order sets forth a comprehensive discussion of Licensee's history beginning with the surrender of his license to practice medicine in the state of Alabama, issuance of a restricted license in Mississippi, multiple evaluations and treatments for professional sexual misconduct and multiple failures to comply with monitoring requirements imposed by Licensee's monitoring agreement with the Mississippi Physician Health Program. In the January 17, 2019 Order, the Board declined to authorize Licensee to treat female patients and continued the requirement that he treat only male patients in a structured-supervised environment such as a correctional institution. The Order went on to state that in order for Licensee to be eligible for reconsideration he must undergo a further multidisciplinary evaluation at a facility approved by the Board and found to be capable of practicing medicine with reasonable skill and safety to both male and female patients. The evaluation report would then make "recommendations" to the Board.
5. On October 28-30, 2019, Licensee again submitted to a multidisciplinary evaluation by Acumen Assessments LLC, Lawrence Kansas. Acumen rendered its report and recommendations on December 5, 2019. The evaluation report was introduced by both counsels of record.
6. In summary, Acumen found that Licensee was rehabilitated based on significant changes in his personal life to help prevent against vulnerabilities that made him susceptible to the gross sexual misconduct approximately 18 years ago. Acumen further stated that the risk of Licensee engaging in future sexual misconduct is very low, provided he practices in a structured environment, preferably a group practice and that any contact with female patients will be monitored. While the risk of Licensee committing future acts of professional sexual misconduct is low, the Board recognizes there are no guarantees. As noted by Acumen, Licensees fitness to return to an

unrestricted practice is challenged by his history of failure to comply with conditions imposed by his monitoring agreement with the Mississippi Physician Health Program, and his tendency to make statements (referred to as “verbal hiccups”) to females (patients or staff), which may be misinterpreted as being inappropriate. Furthermore, the Board notes several inconsistencies in Licensee’s testimony regarding the past acts of sexual misconduct. In particular, Licensees stated that he engaged in sexual activity with seven (7) patients, while records from the state of Alabama indicates that this number may be as much as ten (10). More troubling, license reported to Acumen that all sexual encounters were consensual, when in fact a review of the Alabama documentation clearly indicates otherwise.

7. Rather than a total removal of all restrictions pertaining to treatment of female patients, the Board believes the best course of action would be a gradual return of such privileges. The means by which to accomplish this goal would be to permit Licensee to supervise and direct treatment of female patients by other healthcare practitioners.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to Sections 73-25-29 and 73-25-83(a), Mississippi Code of 1972, as amended. Venue is likewise properly placed before the Board to hear this matter in Hinds County, Mississippi.
2. These proceedings were duly and properly convened, and all substantive and procedural requirements under law have been satisfied. This matter is, therefore, properly before the Board.
3. The Board is authorized to license and regulate persons who apply for or hold medical licenses and prescribe conditions under which persons may practice in order to protect the public health, safety and welfare.
4. The Licensee bears the burden of establishing that he satisfies the requirements for licensure as a medical doctor.
5. According to Section 73-25-29, the Board may deny an application for a Mississippi license to practice medicine.

Based upon the findings and conclusions, the Board finds the following order to be appropriate under the circumstances.

**ORDER**

**IT IS THEREFORE ORDERED THAT** based upon the above, it is the decision of the Board to deny Licensee's request for authorization to directly treat female patients. Licensee's practice of medicine shall remain in a structured-supervised setting such as a correctional institution, treating male patients only. Notwithstanding, Licensee is hereby authorized to supervise other healthcare practitioners (physicians, nurse practitioners or physician assistance) who directly treat female patients.

**IT IS FURTHER ORDERED** that Licensee be required to cooperate with the Board, its attorneys, investigators, and other representatives in the investigation and monitoring of Respondent's practice and compliance with the provisions of this Determination and Order.

**IT IS FURTHER ORDERED** that if Licensee violates the terms of this Determination and Order or further violates the laws, rules and regulations governing the practice of medicine, the Board may take further disciplinary action against Licensee, up to and including revocation of his license.

**IT IS FURTHER ORDERED** that this action and order of the Board shall be public record. It may be shared with other licensing Boards (in and out of state), and the public, and may be reported to the appropriate entities as required or authorized by state and/or federal law or guidelines. This action shall be spread upon the Minutes of the Board as its official act and deed.

**SO ORDERED** this, the 18<sup>th</sup> day of November 2020.

**MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE**

BY: *William D. McCleendon*  
**WILLIAM D. MCCLENDON, M.D., VICE PRESIDENT**