

**COMMONWEALTH OF KENTUCKY
BOARD OF DURABLE MEDICAL EQUIPMENT SUPPLIERS
AGENCY CASE NO. 2018DME00001**

**COMMONWEALTH OF KENTUCKY
BOARD OF DURABLE MEDICAL EQUIPMENT SUPPLIERS**

COMPLAINANT

V.

**CLOUD MEDICAL SUPPLY
(LICENSE NO. 170041)**

RESPONDENT

AGREED ORDER

Pursuant to KRS 309.406(1)(d), the Commonwealth of Kentucky, Board of Durable Medical Equipment Suppliers, ("Board") may investigate persons engaging in practices which violate the provisions of this chapter.

The Board received Complaint No.2018DME00001 ("Complaint") against Cloud Medical Supply, License No. 170041 ("Respondent") alleging violations of KRS 309.418(2)(a), (3)(a), and (3)(b). The Parties acknowledge that they are mutually entering into this Agreed Order to settle the Complaint in an expeditious manner, without the need for a formal hearing. The Parties acknowledge that entrance into this Agreed Order is not an admission of wrongdoing by the Respondent.

IT IS HEREBY STIPULATED AND AGREED between the undersigned Parties this matter shall be settled and resolved upon the following terms:

Findings

For the purposes of this Agreed Order, the Respondent acknowledges that the Board could find, by a preponderance of the evidence, that Respondent engaged in conduct that violates the provisions of KRS 309.418(2)(a), (3)(a), and (3)(b).

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice and has retained competent counsel for their representation in this matter. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Agreed Order. The Respondent has freely and voluntarily entered into this Agreed Order, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Agreed Order only after a careful reading of it and a full understanding of all of its terms. The Respondent waives the right to challenge any agreed-upon term or condition of this Agreed Order notwithstanding any other statutory provision of KRS Chapter 319A, as it pertains to the Complaint, and the administrative regulations promulgated thereto. The Respondent expressly agrees those agreed-upon terms and conditions contained therein are exclusively a matter of private right.

The Respondent is fully aware of the rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges contained in the Formal Complaint, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the Formal

Complaint, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Franklin Circuit Court as otherwise allowed by KRS 319A.200. All of these rights as related to the Complaint are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Agreed Order.

Jurisdiction

The Respondent acknowledges the Board has jurisdiction over the Respondent with regard to the Complaint filed against Respondent's license that has precipitated this Agreed Order. The Respondent also acknowledges the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's license to distribute durable medical equipment in Kentucky if it is found that Respondent is in violation of Kentucky state statutes or regulations that regulate durable medical equipment supplier licensure.

The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Agreed Order have been met to the satisfaction of the Board.

Publication of Agreed Order

The Respondent acknowledges that, once adopted by the Board, this Agreed Order is considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands the Board may use the contents of this Agreed Order as allowed by federal and Kentucky statute or regulations, which shall include the Board's ability to share the content of this Agreed Order with any governmental or professional board or organization, publication of a summary in the Board's newsletter, reporting under federal law, and availability via the Board's web site.

Terms of Agreement

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. By entering into this Agreed Order, the Respondent recognizes that if this matter was to go to an administrative hearing, the Board may have sufficient evidence to sustain a disciplinary action against Respondent. Nevertheless, Respondent desires to settle the matter in an expeditious manner without resorting to a disciplinary hearing, and in doing so, she does not admit to, and expressly denies, any wrongdoing or liability.

2. The Respondent agrees to a probationary period from the entry of this Agreed Order until September 30, 2022;

3. During this probationary period, the Respondent agrees to the following:

- (a) Have no further substantiated complaints for non-minor violations;
- (b) Ensure that if they cannot provide services to a client, the client will be promptly notified, and if requested, transferred to a new provider within 30 days;
- (c) Ensure that when a client requests a new provider, the client is transferred to a new provider within 30 days;
- (d) Be subject to no more than two (2) unannounced inspections; and
- (e) Be responsible for paying for the cost of up to two (2) inspections at the rate of \$500 for each inspection.

4. The Respondent expressly understands the failure to comply with and complete all terms of this Agreed Order shall constitute failure to comply with an Order of the Board under KRS 309.418(2)(h) for which the Board may impose additional penalties available

under law after notice and opportunity to be heard.

5. The Board agrees to not seek any additional disciplinary action against the Respondent based on the factual allegations set forth in the Complaint and this Agreed Order.

6. This matter shall constitute disciplinary action, which may be reportable under state or federal law.

7. The Parties agree to take all actions necessary that would cause the conditions and obligations under this Agreed Order to become effective upon the date this Agreed Order is accepted by the Board.

8. The Parties agree to execute all documents necessary to settle this matter. The Order may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In the event that additional documents may need to be executed after said date, the Parties agree to cooperate with each other and execute such additional documents to effectuate the purposes as stated herein.

9. Each of the Parties represents and warrants to the other that it has taken all requisite action to authorize the execution, delivery and performance of its obligations hereunder, and that each party has all requisite power and authority to enter into this Agreed Order and to effectuate the purposes herein and that the Agreed Order will in fact be legally binding and will constitute the valid and legally binding obligation of each Party and will be enforceable against each Party in accordance with the respective terms hereof.

10. This Agreed Order shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, in accordance with the laws of the Commonwealth of Kentucky without reference to its choice of law rules. Any dispute arising hereunder shall be settled by a state court of appropriate jurisdiction in Franklin County,

Kentucky. The Parties irrevocably consent to the personal jurisdiction and venue of such court.

11. This Agreed Order may not be modified except by a written agreement signed by all Parties.

12. The Parties represent, agree, and acknowledge that they have read this Agreed Order in its entirety and fully understand and agree to its terms.

Release of Liability

In consideration of execution of this Agreed Order, the Respondent, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Board of Durable Medical Equipment Suppliers, and the Public Protection Cabinet and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this Agreed Order, or its administration.

Acceptance by the Board

It is hereby agreed between the Parties that this Agreed Order shall be presented to the Board of Durable Medical Equipment Suppliers at the next regularly scheduled meeting of the Board.

The Respondent understands the Board is free to accept or reject this Agreed Order, and if rejected by the Board, a formal disciplinary hearing against the Respondent may be scheduled. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Agreed

Order, to hear the disciplinary charges if, after review by the Board, this Agreed Order is rejected.

If the Agreed Order is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the Agreed Order will not be regarded as evidence against the Respondent at the subsequent disciplinary hearing. The Respondent will be free to put forth a defense and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Agreed Order. The Agreed Order will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent.

Effective Date

The effective date of this Agreed Order means the date of acceptance by the Board as reflected in its Meeting Minutes.

Complete Agreed Order

This Agreed Order consists of numbered pages and embodies the entire agreement between the Board and the Respondent. This Agreed Order shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, withdraw, or seek to modify this Agreed Order prior to or during its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended, or modified without the express written consent of both parties.

Cooperation with the Board

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees, and its Impairment Committee and representatives, to monitor the Respondent's compliance with the terms and conditions of this Agreed Order. The Respondent

shall sign and file any appropriate authorizations and/or releases for information that may be requested by the Board or its representative member.

Order

Upon consideration of this Agreed Order, it is hereby **ORDERED** that the terms of this Agreed Order are approved and adopted.

IT IS HEREBY FOUND THAT the Board has sufficient evidence to find, by a preponderance of the evidence, that Respondent engaged in conduct that violates the provisions of KRS 309.418(2)(a), (3)(a), and (3)(b) pursuant to the Complaint.

IT IS HEREBY ORDERED THAT the Respondent shall:

- (a) Serve a probationary period from the entry of this Agreed Order until September 30, 2022;
- (b) During this probationary period, the Respondent shall:
 - i. Have no further substantiated complaints for non-minor violations;
 - ii. Ensure that if they cannot provide services to a client, the client will be promptly notified, and if requested, transferred to a new provider within 30 days;
 - iii. Ensure that when a client requests a new provider, the client is transferred to a new provider within 30 days;
 - iv. Be subject to no more than two (2) unannounced inspections; and
 - v. Be responsible for paying for the cost of up to two (2) inspections at the rate of \$500 for each inspection.

SO ORDERED this 18 day of May, 2021.

Carolyn Basford

Carolyn Basford, President
Board of Durable Medical Equipment Suppliers

Have Seen, Understood, and Agreed:

Mark J. Hinkle

Mark J. Hinkle, Organizer
Cloud Medical Supply, Respondent

5-27-21

Date

Andrew Williams

Andrew Williams, Counsel for Respondent

5/27/21

Date