

FILED CAP

JUN 22 2017

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
Joseph Clark, P.A.)
)
Kansas License No. 15-00990)

Docket No. 14-HA00103

FINAL ORDER TERMINATING PRACTICE AND PRESCRIPTION LIMITATIONS AND IMPOSING MONITORING

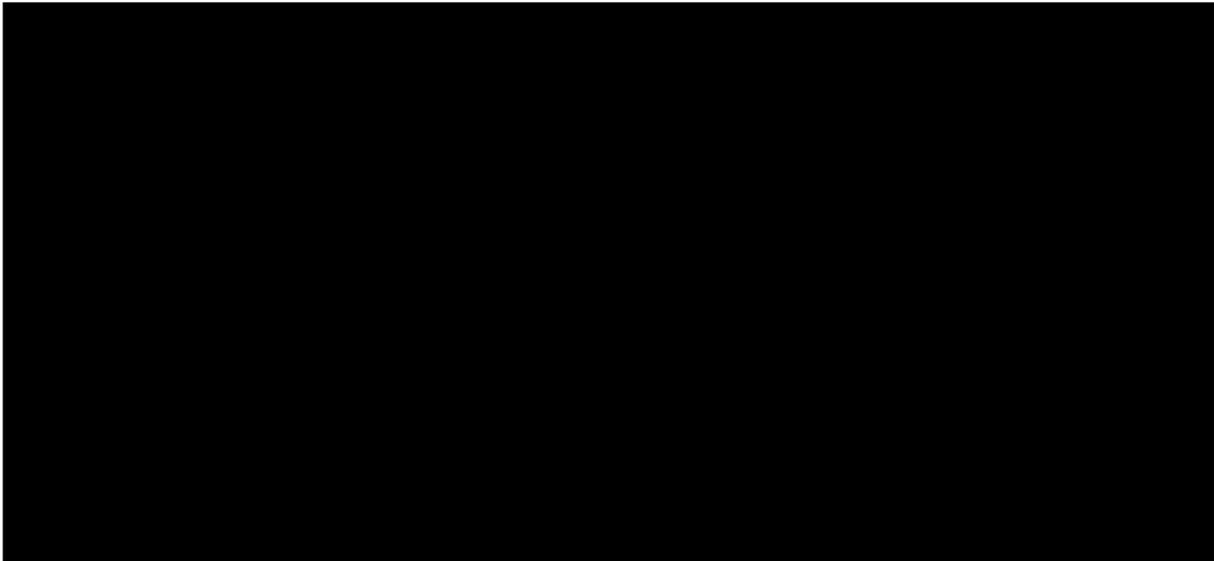
NOW this 9th day of June, 2017, comes on for conference hearing before the Kansas State Board of Healing Arts ("Board"), the Motion of Joseph P. Clark, P.A. ("Licensee") to Lift the Practice and Prescribing Restrictions imposed by the November 9, 2015 Final Order of the Board and by the August 15, 2014 Consent Order. Licensee appears in person, and through his counsel, Mark Lynch of Simpson, Logback, Lynch, Norris, P.A. Jane Weiler, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, et seq., and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, et seq., the Board hereby enters this Final Order following a conference hearing in the above-captioned matter. After reviewing the agency record, hearing the arguments of the parties, hearing the testimony of Licensee, considering the admitted exhibits, and otherwise being duly advised in the premises, the Board makes the following findings, conclusions and order:

Procedural History

- 1. Licensee was granted a license to practice as a physician assistant in the State of Kansas and issued License No. 15-00990 on December 12, 2004.

2. On August 15, 2014, Licensee entered into a Consent Order with the Board to resolve allegations in a pending disciplinary petition and a response in opposition to Licensee's application for change of his license designation from inactive to active status.
3. Under the terms of the Consent Order, Licensee agreed to a suspension on his license to practice as a physician assistant, a limitation on his ability to prescribe controlled substances, [REDACTED] and a Center for Personalized Education for Physicians' ("CPEP") clinical skills assessment and compliance with CPEP's recommendations.
4. In June of 2014, prior to the entry of the Consent Order, Licensee obtained a clinical skills assessment at CPEP. [REDACTED]
5. In March of 2015, Licensee filed a petition to stay the suspension of his license and reinstate his license to a designation of active status. In April of 2015, the Board denied the petition on the basis that Licensee did not demonstrate current clinical competence to return to practice. Additionally, the Board found that Licensee still did not have an adequate appreciation for the effects his past conduct had on patients and the integrity of the profession.
6. On August 28, 2015, Licensee filed a Motion to Stay Suspension and for Reinstatement Pursuant to Consent Order. In support of the Motion, Licensee offered a report from a second, abbreviated re-assessment by CPEP, which was completed in July of 2015, to demonstrate his current clinical competence. [REDACTED]



7. In November of 2015, the Board entered a Final Order that found that [REDACTED] [REDACTED] Licensee did possess a degree of clinical competence which would allow Licensee to safely work in a limited scope of outpatient family practice as long as Licensee concurrently completed the recommendations of CPEP [REDACTED] [REDACTED] Additionally, the Board found Licensee had shown a satisfactory level of appreciation for the wrongfulness of his prior conduct, and its effect on patients and the physician assistant profession.
8. The 2015 Final Order granted Licensee's request to stay his suspension and for reinstatement of an active license. The Final Order also limited his scope of practice to outpatient family medicine, and incorporated the remaining 2014 Consent Order restrictions, including the prohibition on prescribing controlled substances, the requirement of a cosignatory on prescriptions for controlled substances upon reinstatement of his prescribing privileges, [REDACTED] [REDACTED] Additionally, the 2015 Final Order imposed additional educational requirements including a CPEP educational intervention

program, and required Licensee to identify a peer mentor who would provide support to Licensee during his transition into active practice.

9. The terms of the 2014 Consent Order and 2015 Final Order allow Licensee to request termination of the limitation on prescribing controlled substances after a period of at least one year from the lifting or stay of his suspension. Licensee is required to show by clear and convincing evidence that he is sufficiently rehabilitated to justify lifting the prescribing restrictions on his license.
10. The terms of the 2015 Final Order also allow Licensee to request modification or termination of the scope of practice limitation and upon a showing by clear and convincing evidence that he is clinically competent to practice in other specialty areas with reasonable skill and safety to patients.

Licencee's Motion to Terminate the Scope of Practice and Prescribing Limitations

11. On February 28, 2017, Licensee filed a motion to terminate the scope of practice and prescribing limitations of the 2014 Consent Order and 2015 Final Order.

12. As evidence that he is sufficiently rehabilitated to justify lifting the prescribing limitations on his license, Licensee offered evidence that he has been in perfect compliance [REDACTED]

[REDACTED]

[REDACTED] and letters in support of lifting the prescribing restrictions from his employer, his CPEP preceptor, [REDACTED] a former supervisor, and the American Academy of Physician Assistants. Additionally, Licensee

offered evidence of completion of his CPEP educational program and CME certificates of completion related to prescribing opioids.

13. As evidence of Licensee's clinical competence to practice in other specialty areas with reasonable skill and safety to patients, Licensee offered a CPEP summary report demonstrating his completion of the CPEP educational program. [REDACTED]

[REDACTED]

[REDACTED] Licensee also provided evidence of recent re-certification by the National Commission of Certification of Physician Assistants. Additionally, letters from Licensee's employer, CPEP preceptor, [REDACTED] [REDACTED] a former supervisor, and the American Academy of Physician Assistants support termination of the scope of practice limitation.

14. Licensee acknowledged he has not demonstrated specific competence in areas outside the specialty he is currently employed, but argued that he cannot do so because of the nature of a physician assistant's education, training, and practice. Physician assistants do not specialize in particular areas of practice during their education or training. Instead, they are trained in a specialty under the supervision of a supervising physician once they begin actual practice. Licensee argued that he has demonstrated he is as competent as any other physician assistant who has not practiced in a particular specialty, and that he should be allowed to

train in new specialties while in practice in the same manner as any other physician assistant is allowed.

Associate Litigation Counsel's Response in Opposition

15. On March 15, 2017, Associate Litigation Counsel filed a Response in Opposition to Licensee's Motion in which she argued Licensee's prescription limitation should not be lifted because Licensee has not shown clear and convincing evidence of rehabilitation. Associate Litigation Counsel noted that Licensee's prior misconduct of diverting medications, not his prescribing practices, necessitated the 2014 Consent Order's limitation on prescribing. She argued that Licensee's completion of education related to Opioid prescribing does not demonstrate rehabilitation of Licensee's misconduct of diverting medication. Additionally, Associate Litigation Counsel urged the Board to not lift the prescription limitation because of the serious nature of the original misconduct and its relation to prescribing controlled substances.
16. Associate Litigation Counsel argued that Licensee's scope of practice restriction should not be removed because Licensee has not demonstrated clinical competence in other specialty areas. Associate Litigation Counsel argued that Licensee's 2016 NCCPA re-certification is not evidence of competency because Licensee achieved this same certification prior to 2015. Additionally, she argued that Licensee did not shown specifically how a CPEP program designed to address his outpatient primary care medicine learning goals demonstrated clinical competence in other specialty areas.

Findings by the Board

17. In the 2014 Consent Order and 2015 Final Order, the Board weighed the seriousness of Licensee's conduct, imposed discipline, and provided Licensee a path for removal of the limitations. As such, the nature of Licensee's prior misconduct cannot be an absolute bar to removal of the limitations since the Board previously considered the egregiousness of the conduct when it provided a path for removal of the limitations. The 2015 Final Order made this path clear. To justify lifting the prescribing restrictions on his license, Licensee is required to show by clear and convincing evidence that he is sufficiently rehabilitated. To justify lifting the scope of practice limitation, Licensee is required to show by clear and convincing evidence that he is clinically competent to practice in other specialty areas with reasonable skill and safety to patients.
18. The Board agrees that the prescribing limitation was imposed for Licensee's conduct of diverting medications, and not for inappropriate prescribing in general. The Board notes that the 2015 Final Order found Licensee had shown a satisfactory level of appreciation for the wrongfulness of his conduct, and its effect on patients and the physician assistant profession. The Board finds Licensee has now demonstrated rehabilitation of the conduct of diverting medications through his compliance [REDACTED] [REDACTED] and numerous letters of support from his peers, supervisors, and mentors. Licensee's additional education related to opioid prescribing is supplemental to Licensee's primary rehabilitation efforts.
19. The Board agrees that Licensee's current practice and outpatient primary care CPEP learning program do not demonstrate Licensee is specifically competent to practice in other

specialties. However, the Board is persuaded by Licensee's argument that he cannot demonstrate competence in a different specialty until he actually trains under a supervising physician in that specialty. The Board does not require physician assistants to demonstrate competence in a particular specialty beforehand. Requiring Licensee to do so would be an overly onerous condition. The Board finds that Licensee has demonstrated his competency as a physician assistant to commence practice in other specialties through completion of his CPEP educational program required by the Board. Whereas the initial CPEP assessment identified some concerns, Licensee excelled during his participation in the CPEP educational program. Additionally, numerous letters from Licensee's peers, supervisors, and mentors note Licensee's clinical competence and specifically support removal of the practice limitation.

Conclusions

20. The Board concludes that Licensee has satisfactorily demonstrated that he is sufficiently rehabilitated to justify lifting the prescribing limitations on his license such that the limitation on prescribing controlled substances should be terminated. [REDACTED]

[REDACTED]

[REDACTED] Licensee's co-signatory requirement in the 2014 Consent Order and 2015 Final Order on prescriptions for controlled substances will further protect against the diversion of controlled substances. To ensure the effectiveness of the co-signatory requirement, Licensee's controlled substance prescriptions shall be co-signed by a supervising physician prior to being issued. Additionally, Licensee's co-signed prescriptions shall be monitored in the form of a monthly report from Licensee's

supervising physician for a period of six months that attests to the pre-issuance of the co-signature on all of Licensee's controlled substance prescriptions.

21. The Board concludes that Licensee has satisfactorily demonstrated he is clinically competent to practice in other specialty areas with reasonable skill and safety to patients. The process in which Physician Assistants are legally and customarily supervised and trained by their supervising physicians will provide the oversight necessary to protect the public during the time Licensee develops his clinical skills in any new specialty.

IT IS THEREFORE ORDERED that Licensee's Request to Terminate the Prescribing and Practice Limitations of the 2014 Consent Order and 2015 Final Order is hereby GRANTED.

IT IS FURTHER ORDERED that Licensee shall obtain co-signatories on controlled substance prescriptions by his supervising or substitute supervising physician prior to issuance of each prescription, and the Licensee shall be MONITORED for a period of six months during which his supervising physician shall submit a report on the 15th day of each month, commencing July 15, 2017, attesting to the pre-issuance co-signature on all of Licensee's controlled substance prescriptions for the previous month. Such reports shall be submitted to:

Kansas State Board of Healing Arts
Attention: Compliance Coordinator
800 SW Jackson Street, Lower Level-Suite A
Topeka, Kansas 66612

The Board further appoints Board member, Myron Leinwetter, D.O., as a presiding officer to review the supervising physician's monthly reports and issue a Final Order when the terms of this Order are satisfied.

IT IS FURTHER ORDERED that the remaining provisions of the 2014 Consent Order and 2015 Final Order are incorporated herein by reference and shall remain effective until they are satisfied in accordance with their terms.

IT IS SO ORDERED this 21 day of June, 2017.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert
Executive Director

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

Certificate of Service

I certify that a true copy of the foregoing **FINAL ORDER TERMINATING PRACTICE AND PRESCRIPTION LIMITATIONS AND IMPOSING MONITORING** was served this 22nd day of June, 2017, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Joseph Clark, P.A.

[REDACTED]
Lawrence, KS 66049

Mark A. Lynch
Simpson, Logback, Lynch, Norris, P.A.
7400 West 110th Street, Suite 600
Overland Park, KS 66210

and a copy was delivered to:

Jane Weiler, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612

and the original filed with the office of the Executive Director



Cathy A. Brown
Executive Assistant