

FILED
APR 13 2016

KS State Board of Healing Arts

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

In the Matter of)
)
Kimberly Davies, M.D.)
Kansas License No. 04-25902)

Docket No.: 16-HA 00084

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Anne Barker Hall, Associate Litigation Counsel, (“Petitioner”), and Kimberly Davies, M.D. (“Licensee”), and move the Board for approval of a Consent Order affecting Licensee’s license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: **Confidential** Lenexa, Kansas 66216.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued license number 04-25902 on approximately October 14, 1995. Licensee last renewed her license on June 22, 2015. Licensee’s license is currently active.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*, and K.S.A. 65-2869.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-505 and 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

Consent Order
Kimberly Davies, M.D.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

7. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

8. The Board has received information and investigated the same, and has reason to believe that there may be grounds to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

9. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

10. The facts underlying this Consent Order are:

- a. Patient 1 was a fifty-nine (59) year old male with a history of alcohol abuse, chronic pain, COPD, insulin dependent diabetes, liver disease, liver failure, chronic pancreatitis, narcolepsy, and multiple other comorbidities, at the time of his death on December 26, 2012;
- b. On or about January 24, 2012, Licensee saw Patient 1. Licensee prescribed Methadone, Morphine, Hydromorphone, Methylin, and Morphine Sulfate to Patient 1 at that time;
- c. On or about February 16, 2012, Patient 1 was hospitalized with chest pain and bradycardia. On February 22, neurology was consulted for seizures of unknown etiology;
- d. Licensee saw Patient 1 in her office on or about February 27, 2012. Licensee documented fifty two (52) medications in the "Current Meds" section of Patient 1 chart. The listed medications included Methadone, Lorazepam, Xanax (alprazolam), Temazepam, Clonazepam, hydromorphone, Methylin, Morphine Sulfate ER 100mg, and Morphine Sulfate ER 60mg;
- e. Documentation regarding Patient 1's prescriptions at this appointment is extremely confusing. In part, Licensee documented she prescribed Morphine Sulfate ER 100mg tablets "Take 1 tab daily (6 tabs/day)"; Morphine Sulfate ER 100mg "Take 2 by mouth three times a day"; Morphine Sulfate ER 60mg "Take 1 tab [four times per day]"; Morphine Sulfate ER 60mg "Take 1 three times a day"; Hydromorphone 8mg "Take 2 tabs [three times per day]"; Hydromorphone 8mg "Take 1 tablets(s) by mouth every 4 hours prn pain"; Methadone 10mg "SIG: Take 20 tablet(s) every 6 hours and 10-13 tablet(s) every 2 hours(s) in between and prn QTY: 5100.00 wrong # and sig entered";

f. On or about March 13, 2012, Licensee increased Patient 1's Methylin and Trazodone with any explanation. Licensee failed to document the increase in Methylin in the "changed" medications section of Patient 1's chart. Further, Licensee failed to document the prescribed quantities of Methadone 10mg and Morphine Sulfate ER 60mg;

g. Licensee saw Patient 1 again on or about April 10, 2012. At that appointment, Licensee again failed to document the quantity of Methadone prescribed;

h. Licensee saw Patient 1 again on or about May 8, 2012. At that appointment Licensee increased Patient 1's Methadone to 5500 tablets. Licensee's documented reason for the increase was Patient 1's reported increasing breakthrough pain. Licensee's instructions for taking Methadone remained unchanged. Licensee also documented at that appointment that she decreased Patient 1's clonazepam. Per Licensee's medication list it appears that Patient 1 had been taking 2mg of clonazepam daily. However, other documentation in the file indicates Patient 1 was taking clonazepam 2mg four times daily. Licensee decreased the dosage to 0.5mg with no limitation regarding the total daily amount Patient 1 could take, and ordered a quantity of 45 tablets with 5 additional refills. Licensee failed to order a taper of the medication;

i. Approximately 10 days later, on May 17, 2012, Patient 1 saw Licensee again. Licensee documented that Patient 1 had disequilibrium, unsteadiness and had experienced multiple falls resulting in increased pain. Licensee failed to document consideration of the increased dosage of Methadone, or the PRN clonazepam as possible contributing factors for the increased falls. Licensee did not document prescribing any medications at that visit;

j. Patient 1 saw Licensee again on or about June 1, 2012. At that appointment, Licensee documented both "continue the current drug regimen" and also documented an increased dosage of Methylin;

k. On or about June 19, 2012, Licensee saw Patient 1. Licensee documented a neurology consult referral at the beginning of her note. Licensee did not document any neurological issues or changes. At the end of Licensee's note is a referral to a gastroenterologist at KU Medical Center. Although Licensee previously provided prescriptions on June 1, Licensee again provided prescriptions at this June 19 appointment. Licensee also increased Patient 1's Methylin again;

l. Licensee continued to see Patient 1 for routine office visits and continued to make referrals. On or about July 19, 2012, Dr. Hagan saw Patient 1 and recommended minimizing several of Patient 1's medications as they would cause Patient 1's encephalopathy problems to be worse;

m. Licensee saw Patient 1 again on or about October 2, 2012. At that time, Licensee increased Patient 1's Methylin prescription again and also increased Patient 1's clonazepam prescription by adding clonazepam 2mg tablets four times per day to the 0.5 mg tablets PRN;

n. On or about November 1, 2012, Patient 1 was hospitalized for hepatic encephalopathy and polypharmacy. During the hospitalization, Patient 1's opioids and narcotics were stopped. No withdrawal symptoms were noted. Licensee reports that the lack of withdrawal symptoms was due to the patient's caregiver bringing Patient's 1's medications from home. Patient 1 was discharged from the hospital on reduced dosages

of medications and left the hospital with prescriptions for Methadone and Hydromorphone at the reduced dosages;

o. When Patient 1 was discharged from the hospital he returned to see Licensee who provided him with prescriptions for almost every medication Patient 1 had discontinued while he was hospitalized;

p. Patient 1 was in hospice care shortly after his discharge from the hospital. Patient 2 was seen in Licensee's office on or about November 16, 2012. At that time, no prescriptions were documented. On or about November 27, 2012, Licensee documented sending a prescription for 1300 tabs of Methadone to Garden Pharmacy for Patient 1;

q. On or about December 10, 2012, and December 11, 2012, the hospice staff notified Licensee in writing that Patient 1 was experiencing several problems with his care and treatment including that they were having difficulty obtaining an accurate report of the amount of medications being administered to Patient 1. On or about December 14, 2012, Patient 1 was seen by Licensee and his care at home was discussed. Patient 1 stated to Licensee he wanted to spend the end of his life with his only living relative;

r. On or about December 14, 2012, there is a note in the file following a list of 31 prescription medications stating schedule 2 medications were printed and given to Patient 1 and other medication were approved by Licensee and e-faxed and e-filed to the pharmacy;

s. Patient 1 died unattended on or about December 26, 2012, after the hospice nurse was refused admission to the house;

t. There are no urine drug screens in Patient 1's patient medical record;

u. There are no pain management contracts in Patient 1's medical record.

11. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836.

12. Specifically, Licensee's care and treatment of Patient's 1 violated:

- a. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(1), in that Licensee committed one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;
- b. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(2), in that Licensee committed repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board;
- c. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(3), in that Licensee engaged in a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts;
- d. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12), in that Licensee engaged in conduct likely to harm the public;
- e. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24), in that Licensee engaged in repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;
- f. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately describe services rendered to the patient;
- g. K.S.A. 65-2836(f), in that Licensee has willfully and/or repeatedly violated the Kansas Healing Arts Act;

h. K.S.A. 65-2836(k), in that Licensee violated a lawful regulation promulgated by the board, specifically, K.A.R. 100-24-1, by failing to meet the minimum requirements for an adequate patient record.

13. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

14. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

15. All pending investigation materials in KSBHA Investigation Number 13-00285 were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No.

29. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

16. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on her own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

17. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Healing Arts Act.

18. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

19. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.

20. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

21. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present.

Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

22. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

23. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

24. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

25. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

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

26. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

27. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent

Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

28. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or any conviction for any traffic or criminal offense excluding speeding and/or parking violations.

29. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

30. Licensee shall at all times keep Board staff informed of her current practice locations addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

31. This Consent Order constitutes non-disciplinary action.

32. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

33. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against her license to engage in the practice of medicine and surgery:

EDUCATION

34. Licensee shall attend and successfully complete the continuing education course entitled "Medical Record Keeping Seminar" put on by Center for Personalized Education for Physicians (CPEP) on June 3, 2016 in Denver, CO.

35. Licensee shall attend and successfully complete the continuing education course entitled "Prescribing Controlled Drugs" put on by CPEP on June 8-10, 2016 in Denver, CO.

36. CPEP can be contacted at:

CPEP
720 S. Colorado Blvd. Suite 1100-N
Denver, CO 80246
(303) 577-3232
www.cpepdoc.org

37. On or before May 1, 2016 Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend the CPEP seminars.

38. Licensee shall provide proof of successful completion for both of the CPEP seminars to the Compliance Coordinator by August 1, 2016.

39. These hours shall be in addition to those hours required for renewal of licensure.

40. All foreseen and unforeseen costs associated with the aforementioned seminar shall be at Licensee's own expense to include, but not be limited to, the cost of the course(s)/seminar travel, lodging, program fee, meals, etc.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 13 day of April, 2016.

**FOR THE KANSAS STATE BOARD OF
HEALING ARTS:**

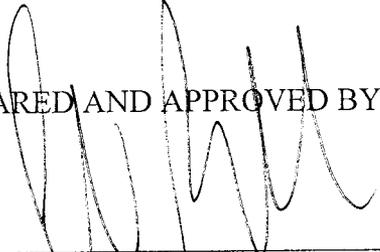

Kathleen Selzler Lippert
Executive Director

4/13/16
Date


Kimberly Davies, M.D.
Licensee

2/22/16
Date

PREPARED AND APPROVED BY:



Anne Barker Hall #23672
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Phone: 785-296-3268
Fax: 785-368-8210
ahall@ksbha.ks.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 13th day of April, 2016, to the following:

Kimberly Davies, M.D.
Licensee
Confidential
Lenexa, KS 66216

And the original was hand-filed with:

Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Anne Barker Hall
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Cathy A. Brown