

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

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| In the Matter of |) | |
| |) | Docket No. 09-HA-00180 |
| Margaret L. Eubank, P.A. |) | |
| Kansas License No. 15-00476 |) | |

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Kathleen Selzler Lippert, Associate Counsel (“Petitioner”), and Margaret L. Eubank, P.A. (“Licensee”), *pro se*, 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: 605 W. 2nd Street, Junction City, Kansas 66441.
2. Licensee is or has been entitled to engage in the practice as a physician assistant in the State of Kansas, having been issued License No. 15-00476 on approximately February 17, 1996. Licensee’s license is 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 as a physician assistant. K.S.A. 65-28a01 et seq. and K.S.A. 65-28a02.
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

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constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Physician Assistant Licensure 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 Licensee has violated the Physician Assistant Practice Act.
9. Patient 1, a twelve year old child, presented to the emergency room with an injury to his right great toe on or about June 12, 2005.
 - a. Patient 1's medical records indicate that Licensee ordered an x-ray, irrigated the wound with saline and closed the injury with sutures through

the nail bed. Medical records for Patient 1 failed to indicate whether the wound was vigorously cleaned. Licensee did not initially prescribe antibiotics.

- b. Medical records for Patient 1 reflect that Licensee did not review the films before Patient 1 was dismissed. A physician reviewed the x-ray several days later and noted the toe was fractured.
- c. Licensee failed to create and maintain adequate medical records for Patient 1 and did not adhere to the standard of care.

10. Patient 2, a 65 year old female, presented to the emergency department on August 29, 2005, complaining of a red, draining area under her right buttocks for approximately one week.

- a. Licensee diagnosed Patient 2 with a pilonidal abscess and performed an irrigation and drainage.
- b. Patient 2 returned the following day for a follow up pursuant to Licensee's instructions. Licensee noted a large amount of odorous material and referred Patient 2 to a surgeon. Patient 2 was later diagnosed with a perirectal abscess with gangrene, rather than a pilonidal abscess. Patient 2 subsequently underwent four surgeries for debridement of necrotic tissue.
- c. Licensee's medical records for Patient 2 failed to adequately describe the lesion and failed to provide for a culture.
- d. Licensee failed to create and maintain adequate medical records for Patient 2 and did not adhere to the standard of care.

11. Patient 3, a 63 year old male, presented to the emergency department on June 29, 2006, complaining that he had awakened the previous night with a fever of 102 degrees, sweats, malaise, nausea and one episode of vomiting.
 - a. Licensee diagnosed Patient 3 with food poisoning.
 - b. Licensee treatment plan for Patient 3 included admitting him to the hospital; however, Patient 3 did not want to be admitted.
 - c. Licensee failed to document in the medical record for Patient 3 the degree and effort to which she attempted to admit Patient 3. Licensee failed to document specific instructions to Patient 3. Licensee only provided this information in response to the Board investigation.
 - d. Licensee failed to create and maintain adequate medical records for Patient 3.
12. Licensee has enrolled in a medical records course scheduled for June 19, 2009, with the Center for Personalized Education for Physicians (CPEP).
13. Licensee will provide documentation outlining protocols with her supervising physician(s) that provide for increased overview of her medical records and treatment of patients.
14. 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 Physician Assistant Licensure 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.

15. Licensee's acts, if proven, constitute violations of the Physician Assistant Practice Act as set forth in K.S.A. 65-28a05. Specifically, Licensee violated:
- a. K.S.A. 65-28a05(f) as further defined by K.A.R. 100-28a-8(u), in that Licensee failed to keep written medical records that accurately describe the services rendered to the patient.
 - b. K.S.A. 65-28a05 as further defined by K.A.R. 100-28a-7(b), in that Licensee has repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence.
16. Pursuant to K.S.A. 65-28a05, the Board may revoke, suspend, limit, or censure, Licensee's license.
17. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
18. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 22 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
19. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on her license to engage in the practice of as a physician assistant:

EDUCATION

- a. Licensee shall attend and successful complete a continuing education course for medical record keeping, by the Center for Personalized

Education for Physicians (CPEP), at her own expense. Licensee shall provide proof of successful completion by June 30, 2009.

- b. Licensee will furnish a copy of this Consent Order to each and every supervising physician. Licensee shall provide a copy of protocols with her supervising physician(s) that provide for increased overview of her medical records and treatment of patients to the Board.
- c. Licensee shall at all times keep Board staff informed of all 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.

20. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Physician Assistant Licensure Act.

21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Physician Assistant Licensure Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 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 Physician Assistant Licensure Act.

22. 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.

23. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
24. 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.
25. 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.
26. 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.

27. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
28. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
29. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
30. Licensee shall obey all federal, state and local laws and rules governing the practice of as a physician assistant 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.
31. 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.
32. This Consent Order constitutes disciplinary action.

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

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

IT IS FURTHER ORDERED that:

EDUCATION

- a. Licensee shall attend and successful complete a continuing education course for medical record keeping, by the Center for Personalized Education for Physicians (CPEP), at her own expense. Licensee shall provide proof of successful completion by June 30, 2009.
- b. Licensee will furnish a copy of this Consent Order to each and every supervising physician. Licensee shall provide a copy of protocols with her supervising physician(s) that provide for increased overview of her medical records and treatment of patients to the Board.
- c. Licensee shall at all times keep Board staff informed of all 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.

IT IS SO ORDERED on this 23rd day of April, 2009.

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

Jack Confer, Executive Director

Consent Order
Margaret L. Eubank, P.A.

2/6/09

Date

Margaret L. Eubank, P.A.

Margaret L. Eubank, P.A.

Licensee

2/6/09

Date

PREPARED AND APPROVED BY:

Kathleen Selzler Lippert

Kathleen Selzler Lippert #17957

Litigation Counsel

Kansas Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3068

785-296-0961

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 24th day of ~~February~~ ^{April}, 2009, to the following:

Margaret L. Eubank, P.A.
Licensee
605 W. 2nd Street
Junction City, Kansas 66441

And the original was hand-filed with:

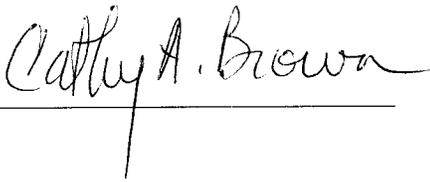
Jack Confer
Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

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And a copy was hand-delivered to:

Kathleen Selzler Lippert
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Melissa Massey
Compliance Coordinator
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



Cathy A. Brown