

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
JUN 19 2014 *CAB*
KS State Board of Healing Arts

In the Matter of)
)
Joe D. Foust, P.A.) Docket No. 14-HA 00154
)
Kansas License No. 15-00263)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Susan R. Gering, Associate Litigation Counsel (“Petitioner”), and Joe D. Foust, P.A. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice as a physician assistant in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: P.O. Box 24, Coldwater, Kansas 67029.
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. 15-00263 on approximately January 28, 1988. 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 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. Upon approval, these stipulations shall constitute the

Consent Order
Joe D. Foust, P.A.

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 his right to a hearing. Licensee voluntarily and knowingly waives his 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 pursuant to K.S.A. 65-28a05 to take action with respect to Licensee's license under the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01, *et seq.*
9. The violations of the Kansas Physician Assistant Licensee Act arose from the care and treatment of two patients.

10. Patient #1, an eighty-six (86) year old male, presented on or about February 4, 2005, to the Southwest Kansas Urology Center for a consultation regarding Patient #1's enlarged prostate and chief complaint of urinary frequency. Patient #1 was diagnosed with Benign Prostatic Hyperplasia.
11. Initial management of Patient #1's treatment was with 0.4 mg Flomax daily. Patient #1 reported responding to Flomax regimen, but complained of adverse-effects. He was then prescribed a trial of Uroxatral. Eventually, a transurethral microwave therapy (TUMT) procedure was scheduled for on or about December 5, 2005. No consent form for the procedure appears in Patient #1's medical record that was provided to the Board. Licensee also failed to create a post-procedure note for Patient #1's procedure.
12. On or about December 5, 2005, Licensee performed a TUMT procedure on Patient #1. Patient #1 complained of pain during and after the TUMT. Licensee failed to document Patient #1's procedure and pre-procedure medications. Three days post-operative, Patient #1 developed an open sore on his penis and complained of a hard rope-like lump extending from his penis to the back of his anus.
13. On or about January 9, 2006, Patient #1 presented with complaints of continued post-operative pain and penile/scrotal sores. Patient #1 discovered Licensee performed the procedure without Patient #1's informed consent instead of being performed by Licensee's supervisor, a Kansas-licensed medical doctor.
14. Patient #1's records provided to the Board show two different Progress Notes Narrative authored by Licensee. Licensee's notes contain different information.

Licensee also failed to sign or date both notes. No explanation for the differences in these two notes or why Licensee failed to sign the records was provided by Licensee.

15. A complaint against Licensee was filed by Patient #1 on or about April 12, 2006.
16. Licensee's responded to the complaint on or about May 2, 2006. In his response, Licensee stated that he supervised the procedure as well as placed the rectal probe and urethral catheter. Licensee also indicated that his supervising physician was aware of the scheduled procedure and was aware that Licensee was performing it.
17. Licensee's response further stated:

I have been involved in urology since 1976. I was trained in the military, and I have been involved in urology since 1975. I was trained in the military, and I was an Instructor at the Naval School of Health sciences for urology technicians, in San Diego, CA. I have also received specific training on TUMT by [Licensee's supervising physician], and through a training program sponsored by Urologix, which uses the Targis system for TUMT. In conclusion having preformed[sic] between 100 and 150 of these procedures, I feel I am more than adequately qualified to perform these without hesitation and that all requirements for supervision were met.

18. Patient #2, an eight-five (85) year old male, presented on or about April 17, 2008, for a consultation to the Southwest Kansas Urology Center with chief complaints of urinary frequency, urinary incontinence, urinary urgency, urinary dribbling, and small stream.
19. Patient #2 was diagnosed redundant prepuce and phimosis. A circumcision was scheduled for April 24, 2008.

20. On or about April 24, 2008, Patient #2 presented for circumcision procedure. Patient #2 was medicated pre-operatively with 15 mg of Valium orally and two (2) pills of 7.5/500 mg Lortab orally. Also, Patient #2 was administered 18cc 1% Lidocaine without Epinephrine. Circumcision procedure was performed successfully.
21. While awaiting follow-up instructions from Licensee, Patient #2 became unresponsive, and EMS were notified. Licensee also initiated cardiopulmonary resuscitation and attempted to ventilate Patient #2 with a non-oxygenated bag valve mask. An endotracheal tube (ET Tube) was also placed in attempts to provide emergency care.
22. Upon arrival, EMS removed and replaced the improperly placed ET Tube. EMS documented that Licensee stated EMS needed to insert another airway as the one that was in place Licensee did not think was placed properly. Patient was then transported to Southwest Medical Center where he expired that same day.
23. The post-procedure note for Patient #2's outpatient circumcision was prepared and signed by Licensee. Licensee failed to document that anyone else performed Patient #2's surgery and failed to document an attempt to intubate Patient #2 prior to EMS arrival.
24. 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 Physician Assistant Licensure Act with respect to the above allegations. Licensee

further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

25. Licensee's acts in his treatment and care of Patient #1 and Patient #2, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-28a05(a).
26. Licensee's acts in his treatment and care of Patient #1 and Patient #2, if proven, constitute professional incompetency as set forth in K.S.A. 65-28a05(c).
27. Licensee, in his treatment and care of Patient #2, has violated K.S.A. 65-28a05(a) as further defined in K.A.R. 100-28a-8(j), in that Licensee has prescribed, dispensed, administered, or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper, or inappropriate manner or quantity, or not in the course of Licensee's professional practice.
28. Licensee, in his treatment and care of Patient #1, has violated K.S.A. 65-28a05(a), as further defined in K.A.R. 100-28a-8(p), in that Licensee's assisted in the care or treatment of a patient without the consent of the patient, the attending physician, or the patient's legal representative.
29. Licensee, in his treatment and care of Patient #1 and Patient #2, violated K.S.A. 65-28a05(a), as further defined in K.A.R. 100-28a-8(r), in that Licensee's conduct is likely to deceive, defraud or harm the public.
30. Licensee, in his treatment and care of Patient #1 and Patient #2, violated K.S.A. 65-28a05(a) as further defined in K.A.R. 100-28a-8(u), in that Licensee has failed to keep written medical records that accurately describe the services rendered to the patients.

31. Pursuant to K.S.A. 65-28a05, the Board may revoke, suspend, censure, fine, or otherwise limit Licensee's license fines for violations of the Kansas Physician Assistant Licensure Act.
32. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
33. All pending investigation materials in KSBHA Investigation numbers 06-00346 and 09-00069 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
34. 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 as a physician assistant 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 his 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 Physician Assistant Licensure Act, K.S.A. 65-28a01 *et seq.*

35. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Physician Assistant Licensure 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 Physician Assistant Licensure Act.
36. 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.
37. 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 this Consent Order.
38. 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.

39. 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.
40. 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.
41. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
42. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
43. 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, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
44. Licensee shall obey all federal, state and local laws and rules governing the practice of 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.

45. 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. 77-526. 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.
46. This Consent Order constitutes disciplinary action.
47. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
48. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and limitations on his license to engage in the practice as a physician assistant:

EDUCATION

49. Licensee shall attend and successfully complete the in-person Medical Record Keeping Seminar put on by the Center for Personalized Education for Physicians (CPEP), on one of the following dates listed, unless otherwise approved by the Board: September 27, 2014 or December 5, 2014.
50. All costs associated with such seminar shall be at Licensee's own expense to include, but not be limited to, the cost of the seminar, the cost of travel to and from the seminar, and the cost of accommodations while attending the seminar.
51. These hours shall be in addition to those hours required for renewal of licensure.

52. On or before August 1, 2014, Licensee shall notify the Compliance Coordinator in writing of which course date Licensee has registered to attend.
53. Licensee shall provide proof of successful completion of the seminar to the Compliance Coordinator within thirty (30) days of the completion of the seminar.
54. All documentation required pursuant to this Consent Order shall be submitted to:

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

LIMITATIONS/MONITORING

55. Licensee's State of Kansas Physician Assistant License shall be limited in that he shall not practice under the Kansas Physician Assistant Licensure Act unless he complies with each of the following:
- a. Licensee shall not perform any type of urological surgical procedure.
 - b. Licensee shall submit a letter regarding his current practices and confirming Licensee has not performed any type of urological surgical procedure as agreed to by this Consent Order. Such letter shall be submitted to the Compliance Coordinator on or before June 30th of each year and December 31st of each year.
 - c. This provision is not self-terminating. Licensee will be required to modify or terminate this provision.
56. Licensee is prohibited from ordering, prescribing, dispensing, or administering medications to any employee, family members, significant others or any person with whom Licensee has a personal relationship.

- a. Licensee shall only prescribe, order, dispense, or administer prescriptions for persons with whom he has a physician-patient relationship and for whom he maintains a medical record.
- b. Licensee is prohibited from prescribing, ordering, dispensing, or administering medications to himself, including sample medications.
Licensee shall arrange to have a personal physician who oversees his care.

57. Licensee is prohibited from ordering, prescribing, distributing, and/or administering schedule II narcotics unless signed off by his monitoring physician.

- a. Licensee agrees to the monitoring of 100% of his prescribing practices for schedule II narcotics by a Kansas-licensed physician for a period of at least one (1) year. The monitor must be pre-approved by the Board. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the practice monitor. Such monitoring shall be conducted at Licensee's own expense.
- b. On or before July 1, 2014, Licensee shall submit the curriculum vitae of a proposed monitor for approval to the Board.
- c. For each prescription for schedule II narcotics written or authorized, Licensee shall document the prescription in a separate log. Such log shall be on a form provided by Board staff to Licensee. The log shall serve as a reference to determine all patients who were prescribed schedule II narcotics each month.
- d. At the end of each quarter, the monitoring physician shall review the Monthly Medication Log for which Licensee wrote or authorized

prescriptions for all schedule II narcotics during that quarter. The monitor shall then submit the Quarterly Report and each of the Monthly Medication Logs to the Board which are due on the following dates: October 15, 2014; January 15, 2015; April 15, 2015, and July 15, 2015. The report shall be on a form provided by Board staff and shall include the number of schedule II prescriptions prescribed, a brief summary of Licensee's prescribing activity for schedule II narcotics, and an opinion as to whether Licensee is prescribing schedule II narcotics within the standard of care.

- e. Licensee is responsible for ensuring the monitor's timely submission to the Board of each quarterly report.

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

59. Licensee shall immediately, within ten (10) calendar days, 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.

TIMEFRAME

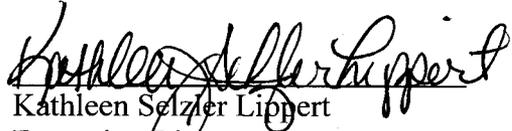
60. The above prescribing provisions and monitoring provisions are not self-terminating. After a period of one (1) year, Licensee may request modification or

termination of the provisions. For any period of time that Licensee is not actively practicing under the Physician Assistant Licensure Act in Kansas, the monitoring provisions and limitations will remain in effect, but will be tolled and not counted towards reducing the one (1) year timeframe.

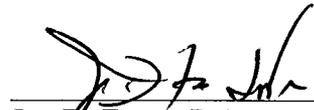
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 18 day of June, 2014.

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

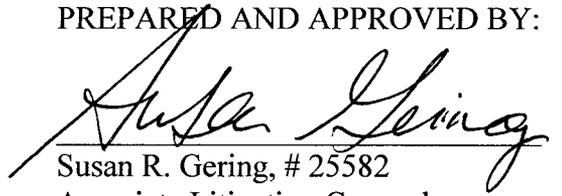

Kathleen Selzier Lippert
Executive Director

6/18/14
Date


Joe D. Foust, P.A.
Licensee

15 May 2014
Date

PREPARED AND APPROVED BY:


Susan R. Gering, # 25582
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A

Consent Order
Joe D. Foust, P.A.

Topeka, Kansas 66612
785-368-8212

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 19th day of June, 2014, to the following:

Joe D. Foust, P.A.
Licensee
P.O. Box 24
Coldwater, Kansas 67029

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:

Susan R. Gering
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

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Cathy A. Brown