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BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
JOE FOUST, P.A.)
)
Kansas License No. 15-00263)
)
_____)

KSBHA Docket No. 17-HA00038

FINAL ORDER REVOKING LICENSE

NOW on this 10th day of February, 2017, comes before the Kansas State Board of Healing Arts (“Board”) Licensee’s Request to Terminate the Consent Order previously entered in this matter and Associate Litigation Counsel’s Petition for Discipline. Joe Foust, P.A. (“Licensee”) appears in person, and *pro se*. Jane Weiler, Associate Litigation Counsel, appears on behalf of the Respondent Agency.

Pursuant to the authority granted to Board by K.S.A. 65-28a01 *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 in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving exhibits into evidence, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee was licensed to practice as a physician assistant in the State of Kansas, having been issued License No. 15-00263 in January 1988. Licensee’s license was cancelled for failure to renew on February 1, 2017.

2. On or about June 19, 2014, Licensee entered into a Consent Order with the Board in Docket No. 14-HA00154 to resolve complaints of incompetency, improper prescribing, assisting in the care of a patient without consent, and failure to maintain adequate medical records.

3. The Consent Order required, in part, that:
 - a. Licensee attend and successfully complete the in-person Medical Record Keeping Seminar offered by the Center for Personalized Education (“CPEP”) on either September 27, 2014 or December 5, 2014, with written proof of course registration to be submitted to the Board by August 31, 2014;
 - b. Licensee have an approved prescription monitor sign off on all orders, prescriptions, distribution, and/or administering of Schedule II narcotics for at least 1 year. Licensee was required to submit the CV for a potential monitor for review and approval by the Board by July 1, 2014. Every Schedule II narcotic approved by the monitor was to be listed in a separate prescription log and the monitor was to submit a quarterly report which were due on the 15th of October 2014, January 2015, April 2015, and July 2015;
 - c. Licensee’s license be indefinitely limited by a prohibition from performing any type of urological surgery;
 - d. Licensee submit a letter to the Board on June 30th and December 31st of each year attesting that he had not performed any urologic surgery during the previous 6 months; and
 - e. Licensee keep Board staff informed of his current practice locations, addresses, and telephone numbers within 10 calendar days of any changes.

4. On August 24, 2015, a Summary Order was filed in Docket No. 16-HA000017 against Licensee’s license based on Licensee’s non-compliance with the Consent Order. Licensee was assessed a fine of \$1,000, which he paid on September 2, 2015.

5. On or about December 21, 2015, Licensee filed a Request to Review his Consent Order in Docket No. 14-HA00154. On January 12, 2016, Associate Litigation Counsel filed a Response to Licensee's request to review his Consent Order.

6. A conference hearing on Licensee's request was held before the full Board on February 12, 2016. Associate Litigation Counsel presented evidence regarding Licensee's lack of consistent compliance with the Consent Order which included the following:

a. Licensee completed the required medical record-keeping seminar on December 5, 2014, but he had failed to notify the Board of the date he planned to attend even after four attempts at contact by Board staff. Licensee was also late in notifying the Board of his completion of the seminar.

b. Licensee submitted the CV of his proposed prescription monitor over a month late. All of the quarterly reports were also submitted later than their due date.

c. Licensee submitted two of the three letters attesting that he had not performed urological surgeries after the submission deadline. The third letter was received on time.

7. Based on the above deficits in Licensee's compliance, Associate Litigation Counsel requested that the requirement for Licensee to have a prescription monitor remain in effect for at least one more year. Licensee did not oppose the request. The Board concluded that, based on Licensee's inconsistent compliance, the requirement for a prescription monitor would remain in effect for at least one additional year so that, on or after February 12, 2017, Licensee could request modification or termination of the provision.

8. Licensee requested and Board approved termination of the requirement for Licensee to submit a letter attesting that Licensee had not performed any urological surgery. However, the limitation on Licensee from performing urological surgery remained in effect.

9. At the February 12, 2016 conference hearing, Licensee testified that he was not currently practicing as a physician assistant.

10. On March 8, 2016, the Board issued a Final Order terminating the attestation letter requirement, extending the prescription monitor requirement for at least one additional year, and ordering that all other provisions remain in effect.

11. On November 8, 2016, Licensee submitted a request to terminate the Consent Order in Docket No. 14-HA00154.

12. On December 22, 2016, Associate Litigation Counsel filed a Petition for Discipline (“Petition”) against Licensee’s license in Docket No. 17-HA00038, alleging that there were grounds for discipline under the Physician Assistant Licensure Act based on new violations by Licensee of the 2014 Consent Order and 2016 Final Order. Generally summarized, the Petition alleged that:

- a. Licensee resumed active practice in May 2016, and failed to notify Board staff of his current practice location, address, and phone number;
- b. Licensee failed to propose a new prescription monitor for Board approval when resumed practice; and
- c. From May 25, 2016 to October 20, 2016, Licensee prescribed approximately 351 Schedule II narcotics to approximately 209 patients without a Board-approved prescription monitor and without a monthly medication log or quarterly reports from a prescription monitor.

13. The Petition alleged the following violations of the Physician Assistant Licensure Act:

- a. K.S.A. 65-28a05(a), the licensee has committed an act of unprofessional conduct as defined by rules and regulations adopted by the board. Specifically, K.A.R. 100-28a-8(e), for willfully or repeatedly violating the physician assistant licensure act, the pharmacy act of the state of Kansas, or the uniform controlled substances act, or any regulations adopted pursuant to these acts, and K.A.R. 100-28a-8(r), for committing conduct likely to deceive, defraud or harm the public;
- b. K.S.A. 65-28a05(e), the licensee has violated any provision of this act, and amendments thereto; and
- c. K.S.A. 65-28a05(f), the licensee has violated any lawful order or rule and regulation of the board.

14. On December 22, 2016, Associate Litigation Counsel also filed a Response in Opposition to Licensee's Request to Terminate his Consent Order in Docket No. 14-HA00154, asserting the same grounds as set forth in the Petition.

15. Additionally, Associate Litigation Counsel filed a Request to Consolidate the administrative proceedings for both the Petition and the Request to Terminate Monitoring. Consolidation was granted by the Board on December 28, 2016, such that both matters were combined into Docket No. 17-HA00038.

16. A conference hearing was held before the Board on February 10, 2017. During the hearing, Licensee admitted that he was aware he was prohibited from prescribing Schedule II drugs without a prescription monitor. Licensee further admitted that he was aware he did not have a Board-approved prescription monitor as requires by the Consent Order and the Final

Order. Licensee testified that he did not have a physician review the prescriptions for Schedule II narcotics that he wrote after resuming practice.

17. The prescription monitoring provisions on Licensee's license were imposed by the 2014 Consent Order to ensure public safety while Licensee was allowed to continue practicing.

18. The evidence presented demonstrates by a preponderance of the evidence that Licensee knowingly and repeatedly failed to adhere to the requirements of both the 2014 Consent Order and the 2016 Final Order.

19. Licensee has violated K.S.A. 65-28a05(a), by committing unprofessional conduct as further defined by K.A.R. 100-28a-8(e), in that his failure to have a prescription monitor for his Schedule II narcotic prescriptions is conduct likely to harm the public because it interferes with the Board's ability to ensure Licensee is practicing in a safe manner.

20. Licensee has violated K.S.A. 65-28a05(f), by failing to comply with lawful orders of the Board, specifically the 2014 Consent Order and the 2016 Final Order's continuation of the requirements.

21. If the Board cannot ensure that a licensee will comply with monitoring requirements, then the public's safety is placed at risk. The Board concludes that, by knowingly and repeatedly failing to adhere to the monitoring requirements of the Consent Order and the Final Order, Licensee seriously impeded the Board's ability to protect the public.

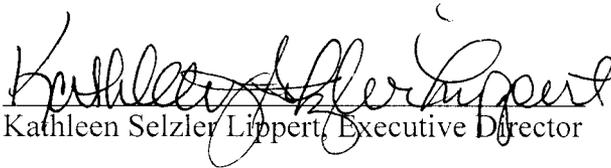
22. In light of the conduct underlying the 2014 Consent Order, the compliance deficits found in the 2016 Final Order, and Licensee's current practice with total disregard for the prescription monitoring requirements which he knew were in place, the Board concludes that revocation of Licensee's license is warranted under the circumstances.

23. Licensee's request to terminate the 2014 Consent Order is rendered moot by the revocation of his physician assistant license.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that the Licensee's license as a physician assistant is hereby REVOKED.

IT IS SO ORDERED THIS 6 DAY OF MARCH, 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

FOR THE 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, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER REVOKING LICENSE** was served this 6th day of March, 2017, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Joe Foust, P.A.
PO Box 24
Coldwater, KS 67029

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, Kansas 66612

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

And the original was filed with the office of the Executive Director.



Cathy Brown, Executive Assistant