

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)	
)	Docket No. ¹⁴ 13-HA 00016
Stephen G. Grillot, D.O.)	
Kansas License No. 05-25303)	
)	

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (Board), by and through Reese Hays, Litigation Counsel, and Stephen G. Grillot, D.O. (Licensee), by and through his counsel, N. Larry Bork and Mary E. Christopher of Goodell, Stratton, Edmonds & Palmer, L.L.P., and move the Board for approval of a Consent Order concerning Licensee's license to practice medicine and surgery in the State of Kansas.

The parties stipulate and agree to the following:

1. Licensee's current mailing address as provided to the Board is: Kingman County Family Med LLC, Attn: Stephen G. Grillot, D.O., 132 West A Street, Kingman, Kansas 67068.
2. Licensee is or has been entitled to actively engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-25303 on or about August 13, 1994. Licensee last renewed his license on or about October 1, 2012.
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 osteopathic medicine and surgery. K.S.A. 65-2801 *et seq.* and K.S.A. 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. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this non-disciplinary Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not beyond its jurisdiction as provided by law.

7. For purposes of this Consent Order, licensee voluntarily and knowingly waives his right to a hearing in this matter, in that 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. Further, 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.

8. 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.

9. At all relevant times hereto, Licensee has been actively practicing medicine and surgery in Kingman and Garden City, Kansas. Licensee specializes in family practice medicine.

10. The Board has received information and conducted an investigation with respect to Licensee's treatment of one (1) patient during the time period of January 2009 through November 2009.

11. On or about January 1, 2009, the patient presented to the emergency room where he was seen by another physician for complaints of cough and congestion. Licensee did not see the patient at that time. The ER physician who saw the patient ordered a chest x-ray which was read as "unremarkable."

12. On January 2, 2009, a radiologist over read the x-ray. The radiologist's report was transcribed on January 2, 2009. The report consisted of an introduction followed by two narrative paragraphs. The first paragraph stated: "No acute lung pathology is once again seen with no pneumonia, failure, effusions, pneumothorax or pneumomediastinum are present." The second paragraph of the report noted the presence of "a 7mm left mid lung field soft tissue density. This was not seen before. This may be artifactual related to chest wall soft tissues. However, an early neoplasm of the left lung is to be excluded. Follow up repeat PA, AP as well as left oblique films are requested." The radiologist did not call Licensee.

13. A copy of the radiologist's report was received at Dr. Grillot's office via electronic fax on January 11, 2009.

14. Prior to January 2009, Dr. Grillot's clinic had begun the first stage of the transition from paper records to an electronic medical records system at the clinic. Electronic faxes were directed from the server into the patient's EMR. The patient's paper file was still used to keep track of medications, record patient complaints, vitals, etc.

15. The patient was scheduled to be seen by Licensee in the office on January 14, 2009. The patient failed to keep the January 14, 2009 appointment with Licensee.

16. The patient was seen by a mid-level practitioner at Licensee's office on February 23, 2009 and March 19, 2009. The patient subsequently was seen in the office by Licensee on June 24, 2009 and September 9, 2009 for unrelated complaints. There is no mention of the January 2, 2009 x-ray report in the records pertaining to these visits.

17. On October 7, 2009, the patient was again seen by the mid-level practitioner. A chest x-ray was ordered during this visit, but the patient canceled the chest x-ray.

18. On November 2, 2009, the patient returned to the emergency room. A chest x-ray was taken, followed by a CT scan with contrast of the chest. The radiologist identified a suspicious lesion in the left lung which, when compared to the January 1, 2009 x-ray, had increased in size and density.

19. On or about November 12, 2009, the patient underwent a needle biopsy of the lesion with the cytology report showing "non-small cell carcinoma."

20. Licensee believes that he initialed the copy of the report in the patient's chart on or about November 16, 2009.

21. Upon further investigation, Licensee's office manager, Mary Koch, noticed Licensee's electronic "initial" did not appear on the electronic fax in the patient's EMR.

22. Licensee did not intentionally or purposefully overlook the findings and recommendations in the radiology report. Licensee has cooperated with the Board's investigation. Licensee does not have any prior disciplinary action against his license.

23. The investigative information and status of the pending action in this matter were fully reviewed and considered by the Board members who served on Disciplinary Panel No. 27. Those Board members believe and Licensee denies 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.*, with

respect to Licensee's failure to note the radiologist's recommendation to order follow-up x-ray studies.

24. As set forth in K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without necessity of proceeding to a formal hearing.

25. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter in lieu of formal proceedings with the provisions contained in this Consent Order.

26. Licensee appeared before the Board at a hearing on April 12, 2013. At that time, the Board considered a proposed Consent Order which would have resulted in formal discipline of Dr. Grillot. The Board agreed with the educational requirement but found the proposed probationary term to be too harsh and, therefore, unanimously voted not to approve proposed Consent Order as written. The Board appointed Dr. David B. Laha, DPM as Presiding Officer to act on behalf of the Board to resolve this matter.

27. Licensee denies a violation of the Healing Arts Act; however, for the sole purpose of entering into this Consent Order, Licensee has agreed to the provisions contained herein.

28. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, and did not have an opportunity to challenge the Board's exhibits, witness testimony, or other evidence, the Board might have sufficient evidence to prove that Licensee engaged in conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute a violation of the Kansas Healing Arts Act with respect to the allegations set forth above.

29. Licensee waives his right to dispute or otherwise contest the allegations contained in paragraphs 10 through 22 above in any further proceeding before this Board.

30. If proven, Licensee's act of failing to take note of the second paragraph of the January 2, 2009 radiology report for the purpose of ordering follow-up studies constitutes an act of unprofessional conduct as set forth in K.S.A. 65-2836(b).

31. Pursuant to K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), by failing to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results, a provider can be subject to discipline.

32. 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 authority to impose administrative fines for violations of the Kansas Healing Arts Act.

33. 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.

34. Licensee further understands and agrees that if the Board finds, after due and written notice and opportunity for a hearing, that Licensee has failed to comply with the terms of this Consent Order, the Board may immediately impose any appropriate sanction provided for by law and the Board's Guidelines for the Imposition of Discipline, including but not limited to suspension or revocation of Licensee's license to practice osteopathic 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 terms of 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, 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.* The Board additionally acknowledges that it will utilize the Guidelines for the Imposition of Disciplinary Sanctions (“Guidelines”) dated August 2008, in the manner described by the Guidelines when determining the sanctions and/or remedial action to be imposed for a violation of this Consent Order.

35. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate other alleged violations of the 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 Healing Arts Act.

36. Licensee hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this non-disciplinary Consent Order.

37. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported by the Board to any reporting entities authorized to receive disclosure of this non-disciplinary 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 acknowledges that all information maintained by the Board pertaining to the nature and result of the 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. The parties acknowledge that this non-disciplinary Consent Order has been entered into freely and voluntarily.

41. The Board may consider all aspects of this non-disciplinary Consent Order in any future matter regarding Licensee.

42. Licensee acknowledges that he has read this non-disciplinary Consent Order and fully understands the contents.

43. All correspondence or communication between Licensee and the Board relating to the non-disciplinary educational terms contained in this Consent Order shall be by certified mail addressed to the Kansas 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 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.

45. This Consent Order does not constitute disciplinary action.

46. In lieu of proceeding to a formal hearing and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary measures regarding his license to engage in the practice of medicine and surgery, commencing upon the filing of this Consent Order with the Board and no further order is required. The terms of such non-disciplinary action shall be as follows:

NON-DISCIPLINARY EDUCATION

47. Licensee shall attend and successfully complete a Patient Care Documentation Seminar offered by the Center for Personalized Education for Physicians (“CPEP”) by January 1, 2014, at his own expense. Licensee shall provide proof of successful completion of this phase to the Compliance Coordinator by March 3, 2014.

48. In addition, Licensee shall participate in and successfully complete the Personalized Implementation Program follow-up component of the Patient Care Documentation Seminar offered by CPEP, at his own expense. Licensee shall provide proof of successful completion of this phase to the Compliance Coordinator by April 4, 2014.

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

50. Within two (2) weeks of the approval of the Consent Order, Licensee shall contact CPEP, 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230, (303) 577-3232, fax: (303) 577-3241, to enroll in the Patient Care Documentation Seminar course. Licensee shall forward proof of enrollment in the above-mentioned course to the Compliance Coordinator immediately thereafter.

51. Licensee shall complete the courses as scheduled; travel to CPEP shall be at his own expense.

52. If the CPEP programs mentioned above are unavailable or cannot be completed due to exceptional circumstances, Licensee may request modification for the purpose of seeking Board approval of participation in a substantially similar program.

IT IS THEREFORE ORDERED that the non-disciplinary 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 9th day of August, 2013.

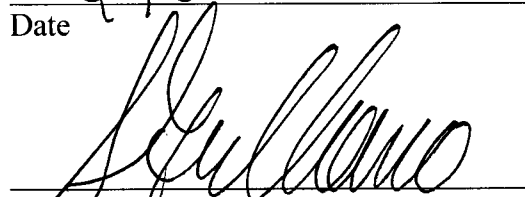
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**



Dr. David B. Laha, DPM.
Presiding Officer

8/5/13

Date



Stephen G. Grillot, D.O.
Licensee

07-31-13

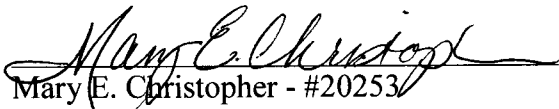
Date

APPROVED BY:



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PREPARED AND APPROVED BY:



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by the United States mail, postage prepaid, on this 12 day of August, 2013, to the following:

Stephen G. Grillot, D.O.
Kingman county Family Med, LLC
132 West A Avenue
Kingman, KS 67068

Mary E. Christopher
N. Larry Bork
GOODELL, STRATTON, EDMONDS
& PALMER, L.L.P.
515 S. Kansas Avenue
Topeka, KS 66603

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, KS 66612

And a copy hand-delivered to:

Reese Hays
Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612

Compliance Coordinator
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