

FILED *JHC*
JAN 14 2019
KS State Board of Healing Arts

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

In the Matter of)
Michael S. Hall P.A.)
)
Kansas License No.: 15-00992) **KSBHA Docket No. 17-HA00062**
) **OAH Docket No. 18HA0001**

**FINAL ORDER ON REVIEW OF INITIAL ORDER
AND STAY OF EFFECTIVENESS**

On December 14, 2018, the above-captioned matter came before the Kansas State Board of Healing Arts (“Board”) for review of the Initial Order filed with the Board on October 12, 2018. Respondent, Mr. Hall, appeared in person and through counsel, Diane Bellquist. The Petitioner appeared through Jared Langford, Litigation Counsel. Board members Dr. DeGrado, Dr. Durret, Dr. Laha, and Dr. Hutchins recused themselves from participating in the Board deliberations and decision in this matter, as these members served on the Disciplinary Panel.

Pursuant to the authority granted to Board by the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act (“KAPA”), K.S.A. 77-501 *et seq.*, specifically K.S.A. 77-527, the Board enters this Final Order.

BACKGROUND AND PROCEDURAL POSTURE

A Petition for discipline was filed against Respondent’s license on June 5, 2017. The Petition alleged Mr. Hall’s treatment of and romantic relationship with a patient constituted unprofessional conduct in violation of the Physician Assistant Practice Act. The Office of Administrative Hearings (“OAH”) was appointed to conduct a formal hearing and issue an Initial Order.

The Initial Order of the Administrative Law Judge (“ALJ”) found the Board proved, by a preponderance of the evidence, that Mr. Hall was engaged in an intimate, romantic, and/or sexual relationship with a patient in violation of K.S.A. 65-28a05(a), as defined by K.A.R. 100-28a-8(r) and (t), and that he provided false, fraudulent, or deceptive statements to the Board. The Initial Order assessed the costs of the proceeding against Mr. Hall and revoked his license.

Petitioner timely filed a Petition for Review of the ALJ’s Initial Order, the matter was fully briefed by both parties, and the Board held a hearing on review of the Initial Order on December 14, 2018 at which the parties were given an additional opportunity to be heard on the matter.¹

¹ In advance of the December 14, 2018 oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including the hearing transcript and all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Board in

FINDINGS OF FACT

The Board adopts, as having some material connection to the case and reasonable basis in the record, the Initial Order's findings of fact numbered 1-65 and their foot-notations by reference here.

The following are included in the Initial Order's Findings of Fact and are summarized here because of their particular importance to the Board:

- Patient 1 treated for [REDACTED] by Mr. Hall. These conditions included [REDACTED]
- Mr. Hall prescribed Patient 1 multiple [REDACTED] and controlled substances. These medications include [REDACTED]
- Patient 1 was seen by other medical professionals as vulnerable due to [REDACTED]
- Patient 1 [REDACTED] and during the same time she was being treated by Mr. Hall.
- On April 22, 2015, Patient 1 attempted suicide by ingesting 17 Klonopin 2 mg and Xanax, medications prescribed by Mr. Hall.
- On April 23, 2015, Patient 1 called MaryAnn Petersen, a therapist Patient 1 saw in addition to Mr. Hall and co-worker of Mr. Hall, with complaints of [REDACTED] MaryAnn Peterson arranged for a bed at [REDACTED]
- On April 23, 2015, Mr. Hall arrived at the [REDACTED] with Patient 1 and then followed the ambulance to the [REDACTED] where Patient 1 was [REDACTED] Mr. Hall returned to the [REDACTED] on one occasion.
- Five individuals who treated Patient 1 after the [REDACTED] 2015 [REDACTED] testified that Patient 1 told them directly that she was in an intimate relationship with Mr. Hall.
- Each of these individuals testified Patient 1 did not tell them she was in a relationship with anyone other than Mr. Hall.
- The medical records associated with the [REDACTED] 2015 [REDACTED] document throughout that Patient 1 was in a relationship with Mr. Hall with specificity, including direct quotes from Patient 1 and Mr. Hall.
- The medical records associated with the [REDACTED] 2015 [REDACTED] document throughout that Mr. Hall was also Patient 1's therapist and medication provider.
- The medical records associated with the [REDACTED] 2015 [REDACTED] do not indicate Patient 1 may be in a relationship with anyone but Mr. Hall or that there was any confusion as to who Patient 1 was referring to as her boyfriend.

rendering its decision. As required by K.S.A. 77-527(d), the Board gave due regard to the Presiding Officer's opportunity to observe the witnesses and determine their credibility during the formal hearing.

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Final Order

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- The medical records associated with follow-up visit at the [REDACTED] on [REDACTED] 2015, indicate Patient 1 stated Mr. Hall was her boyfriend at the time.
- On May 8, 2015, Mr. Hall was notified of the Board's investigation into the nature of his relationship with Patient 1. On May 22, 2015, Mr. Hall responded to the Board and denied the existence of an intimate relationship with Patient 1. On July 29, 2015, Mr. Hall responded again and denied the existence of an intimate relationship with Patient 1.
- Mr. Hall and Patient 1 testified they began dating sometime between June 2016 and September 2016 and their relationship was ongoing at the time of the formal hearing took place.

The Board notes the record includes testimony from Mr. Hall and Patient 1's sister denying the existence of a relationship between Mr. Hall and Patient 1 during the time she was Mr. Hall's patient. Mr. Hall testified he brought Patient 1 to the [REDACTED] because she did not have another way to get there, that he followed the ambulance because he had Patient 1's bag, and that he returned to the [REDACTED] to deliver another bag to Patient 1 that was left in the trunk of his vehicle. Patient 1's testimony denies she was in a relationship during the time she was Mr. Hall's patient and states she attempted to tell the individuals who treated her after the [REDACTED] 2015 [REDACTED] that another man, not Mr. Hall, was her boyfriend.

CONCLUSIONS OF LAW AND POLICY

I. Statutory and regulatory standards.

Based on the allegations and defenses appropriately raised in the parties' pleadings, the statutory and regulatory standards most relevant to this case include the following.

K.S.A. 65-28a05.

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

- (a) The licensee has committed an act of unprofessional conduct as defined by rules and regulations adopted by the board . . .
- (f) the licensee has violated any lawful order or rule and regulation of the board.

K.A.R. 100-28a-8.

- . . .
- (r) committing conduct likely to deceive, defraud, or harm the public . . .
- (t) committing any act of sexual abuse, misconduct, or exploitation related to the licensee's professional practice . . .

- (v) using any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient or medical care facility record . . .

Unprofessional conduct: defined. "Unprofessional conduct" means any of the following:

K.S.A. 65-2836:

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions . . . upon a finding of the existence of any of the following grounds:

...
(b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto. . . .

...
(k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.

II. Case law.

The case law most relevant to this case include the following:

The Kansas Supreme Court held, in reviewing the Kansas Healing Arts Act, that consideration must be given to the entire act and that the legislatures "enumerating certain acts and classifying them as unprofessional conduct" did not serve to "exclude all other acts or conduct in the practice of the healing arts which by common understanding render the holder of the license unfit to practice." *Kansas State Bd. of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968). The Court went on to identify the impracticality of listing "each and every specific act or course of conduct which might constitute such unprofessional conduct of a disqualifying nature." *Id.* Finally, the Court concluded that "The determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board." *Id.*, at 454.

The Kansas Healing Arts Act does not require a finding of actual harm to a patient for a licensee's acts and/or conduct to be grounds for disciplinary action under the provisions of the act. *Fieser v. Kansas State Bd. of Healing Arts*, 281 Kan. 268,130, P.3d 555 (2006). Due to the

similarity between the two acts and their application to those practicing the healing arts, the Physician Assistant Licensure Act should be held to the same standard.

III. Conclusions.

The Board has reviewed the entire agency record and considered the briefs, oral arguments, and comments of the parties at the December 14, 2018 hearing. The Board gave due regard to the ALJ's opportunity to observe the witnesses and determine their credibility during the formal hearing. The Board bases its conclusions, including all differences between this Final Order and the Initial Order identified by a comparison of the orders, on the facts, law, and policy described above and below.

Mr. Hall violated K.S.A. 65-28a05(a), as defined by K.A.R. 100-28a-8(r) and (t) when he entered into an intimate relationship with a vulnerable psychiatric patient, and violated K.S.A. 65-28a05(a), as defined by K.A.R. 100-28a-8(v), when he denied the existence of this relationship.

The Board adopts the Initial Order's Conclusions of Law and Discussion numbered 1-30 and their foot-notations by reference here, except as described below.

- The Board declines to adopt the references to Mr. Hall's marital status at the time of the relationship with Patient 1. The Board's concern is Mr. Hall's inappropriate relationship with Patient 1. His marital status is irrelevant to the determination.
- The Board declines to adopt Patient 1's implied or express consent as a mitigating factor in this case. Patient 1 was a [REDACTED] with a number of conditions making her particularly vulnerable in regard to a relationship with Mr. Hall. Any consent by Patient 1 is attributed, at least in part, to Mr. Hall's exploitation of the inherent power dynamics arising from his role as her treatment provider and her clinical vulnerabilities. Thus, the Board does not consider consent to be a mitigating factor under the facts of this case.
- The ALJ found Mr. Hall "provided false, fraudulent, or deceptive statements" to the Board, but, in what appears to be an oversight since it was discussed in the application of the Board's *Guidelines for the Imposition of Disciplinary Actions*, the ALJ did not specifically state Mr. Hall violated K.A.R. 100-28a-8(v). The Board finds Mr. Hall violated K.A.R. 100-28a-8(v) when he provided two responses to Board investigators denying the existence of an intimate relationship with Patient 1.
- The Board notes paragraph 17 of the Initial Order's Conclusions of Law and Discussion contains a number of statements that are somewhat speculative into the mindset of Mr. Hall and Patient 1 in the ALJ's attempt to elaborate as to why the relationship constitutes exploitation of Patient 1. These statements, while reasonable conclusions of the ALJ who heard the case first-hand and had the opportunity to observe the witnesses and their demeanor, is not strictly necessary to determine the relationship was exploitative of Patient 1. It is the inherent power dynamics arising from his role as her treatment

provider and the vulnerabilities of Patient 1 that make the relationship constitute exploitation.

- The Board amends to paragraph 17 of the Initial Order's Conclusions of Law and Discussion to include the following. Patient 1 was being seen by Mr. Hall for conditions including [REDACTED] [REDACTED] Mr. Hall entered into an intimate relationship with Patient 1 while treating her for these conditions. While in an intimate relationship with Patient 1, Mr. Hall prescribed Patient 1 medications including [REDACTED] [REDACTED] Patient 1 was seen by other medical professionals as vulnerable due to [REDACTED] [REDACTED] Patient 1 [REDACTED] in less than five months and during the same time she was being treated by Mr. Hall, at least one of these times occurring while they were engaged in an intimate relationship. The intimate relationship, in the context of these facts, constitutes exploitation.

The Board specifically reviewed Mr. Hall's responses to the investigators and the testimony of those witnesses that denied an intimate relationship existed between Mr. Hall and Patient 1. As required by law, the Board gave deference to the ALJ's credibility determinations since he had had the opportunity to observe the witnesses.

The Board finds the ALJ did not simply disregard all testimony supporting Mr. Hall's position. Rather, the Initial Order goes to great pains to identify throughout why the testimony supporting Mr. Hall should not be believed. There is perhaps some dispute as to whether Mr. Hall's intimate relationship began immediately after meeting Patient 1, whether Mr. Hall stayed with Patient 1 the night of [REDACTED] 2015 when she [REDACTED] or whether Patient 1 put on a gown in the emergency department, but the evidence clearly supports the finding that Mr. Hall and Patient 1 were and had been in a relationship the night Mr. Hall transported her to the emergency department and later followed her to the [REDACTED]

Five individuals testified to the intimate relationship between Mr. Hall and Patient 1. Despite testimony from Patient 1 that she tried to clarify this as a misunderstanding, not one of these individuals testified Patient 1 tried to correct their understanding. These five individuals documented these interactions with Patient 1 contemporaneously and did not document any confusion as to who Patient 1 was in a relationship as would be expected if Patient 1 had made the purported attempts to clarify a misunderstanding. Neither Patient 1's post hoc denials nor arguments of foggy memories or inaccurate record keeping cast doubt on the consistent testimony and contemporaneous documentation of these five individuals.

The Board also notes four of these five are licensed by the Board itself or the Board of Nursing and would be risking discipline themselves to perjure themselves in a disciplinary proceeding before the Board.

Further undermining the credibility of Mr. Hall's testimony (and not noted by the ALJ), the Board finds it very unlikely that Mr. Hall would make the decision to enter into a

relationship with Patient 1 only after being notified of an investigation into the nature of his relationship with the Patient 1.

Mr. Hall's relationship with Patient 1, under the facts of this case, is grounds for discipline for the reasons expressed herein. Mr. Hall's testimony that he knows physicians who occasionally prescribe for family members, spouses, and significant others, does not diminish the facts of this case or the determination that his relationship with Patient 1 violated the Physician Assistant Practice Act under the facts of this case.

Based on the agency record viewed in light of the whole record including evidence conflicting with that which supports the decision of the Initial Order, the Board finds by a preponderance of the evidence that Mr. Hall was engaged in an intimate relationship that exploited Patient 1 in violation of K.S.A. 65-28a05(a), as defined by K.A.R. 100-28a-8(r) and (t). Furthermore, the Board finds by a preponderance of the evidence that Mr. Hall violated K.S.A. 65-28a05(a), as defined by K.A.R. 100-28a-8(v), when he denied the existence of this relationship in his responses to Board investigators.

Application of Board Sanctioning Guidelines

Although the Board's *Guidelines for the Imposition of Disciplinary Actions (Guidelines)* is non-binding guidance that does not limit the Board's sanctioning discretion, the Board finds the ALJ appropriately applied the Board's *Guidelines* in determining revocation as the appropriate sanction for Mr. Hall's violations of the Physician Assistant Practice Act. Accounting for differences between this Final Order and the Initial Order, the Board finds no adjustment of the sanction necessary.

Costs

This Final Order, finding multiple violations of the Physician Assistant Practice Act, is adverse to Mr. Hall. Therefore, it is appropriate to assess costs against him pursuant to K.S.A. 65-2846. Based on consideration of the circumstances described in this order and review of the Petitioner's amended statement of costs, the costs of the proceedings are assessed against Mr. Hall in the amount of \$4,246.05. These costs shall be paid in full within 30 days of the effectiveness of this Final Order, or, in the alternative, Mr. Hall may submit a proposed payment schedule for the Board's consideration and approval within the same time frame.

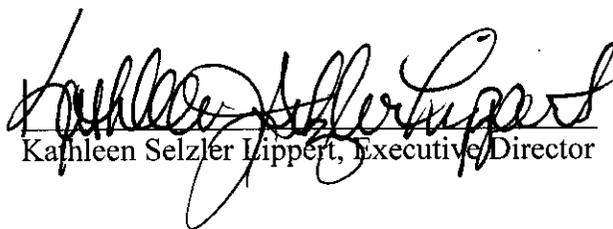
ORDERS

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS, that Respondent, Michael S. Hall., license No. 15-00992, is hereby **REVOKED**. The effectiveness of this Final Order is **STAYED** during the pendency of the period allowed to petition for review of this Final Order under the Kansas Judicial Review Act, and if such an appeal is made, during the pendency of judicial review.

IT IS FURTHER ORDERED that Respondent is hereby ordered to pay **COSTS** in the amount of \$4,246.05. These costs shall be paid in full within 30 days of the effectiveness of this Final Order, or, in the alternative, Respondent may submit a proposed payment schedule for the Board's consideration and approval within the same time frame. Payment shall be submitted to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson Street, Lower Level, Suite A, Topeka, Kansas 66612.

IT IS SO ORDERED THIS 14th DAY OF JANUARY, 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS



Kathleen Selzler Lippert, Executive Director

NOTICE OF APPEAL 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, Parties 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** was served this 14th day of January, 2019, by depositing the same in the United States Mail, first-class, postage prepaid, and an email courtesy copy, addressed to:

Michael S. Hall, P.A.



Wichita, KS 67220

Michael S. Hall, P.A.

1855 N. Webb Rd.

Wichita, KS 67206

Diane L. Bellquist

Joseph, Hollander & Craft, LLC

1508 SW Topeka Boulevard

Topeka, Kansas 66612

dbellquist@josephhollander.com

And a copy was delivered to:

Jared T. Langford, Associate Litigation Counsel

Courtney E. Manly, Associate Litigation Counsel

Kansas 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.

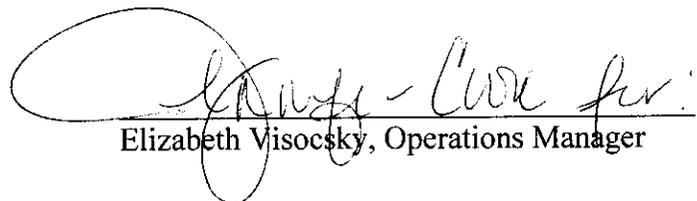
Kathleen Selzler Lippert

Executive Director

Kansas Board of Healing Arts

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Elizabeth Visocsky, Operations Manager