

FILED *CRB*

AUG 30 2010

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

KS State Board of Healing Arts

In the Matter of)
KIMBERLY L. HEBERT, P.A.)
Kansas License No. 15-00674)
_____)

Docket No. 11-HA-00023

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through Lori D. Dougherty, Associate Litigation Counsel (“Petitioner”), and Kimberly L. Hebert, P.A. (“Licensee”), by and through counsel, Brian C. Wright of the Law Office of Brian C. Wright, 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 address to the Board is 7570 West 21st Street, Suite 1006B, Wichita, Kansas 67205.
2. Licensee is or has been entitled to engage in the practice of physician assistant in the State of Kansas, having been issued License No. 15-00674 on approximately February 12, 2000. The current status of 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 and the practice of physician assistants. K.S.A. 65-28a01.
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 K.S.A. 65-2838. Upon approval, these stipulations shall 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 this case.
6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. 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.
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. Licensee practiced as a physician assistant at the Schneider Medical Clinic until approximately May 13, 2005. At all times when she was providing care to the patients referenced in paragraphs 10, 11, 12, and 14, Licensee was under the supervision of, and her prescriptions and treatments were approved by, Stephen Schneider, D.O., as her supervising physician.

10. The Board has received information and investigated the same, and has reason to believe that with respect to Licensee's care and treatment of Patient 1 during the time period of approximately July through November 2003:

- a. Licensee failed to make appropriate referrals for Patient 1's increased stress and for pain management.
- b. Licensee overlooked the breach of patient's pain management contract in the form of Patient 1's failed urine drug screens on three separate occasions.
- c. Licensee did not maintain adequate medical record documentation for the patient's visits.
- d. Licensee inappropriately prescribed controlled substances in an excessive, improper or inappropriate manner or quantity.

11. The Board has received information and investigated the same, and has reason to believe that with respect to Licensee's care and treatment of Patient 2 during the time period of approximately June 2004 through December 2004:

- a. Licensee failed to document in her examination of Patient 2 possible causes for a thirty-five (35) pound weight gain between June 5, 2004 and August 11, 2004. Patient 2 is a 62-year old male with a history of heart disease, high blood pressure, heart attack, stroke, and emphysema.
- b. Licensee failed to document an evaluation of Patient 2's feet for a complaint of "blisters on right foot" despite Patient 2 being a Type-II diabetic with multiple co-morbidities.
- c. Licensee failed to record a temperature, in the presence of possible infection, for Patient 2's complaint of "left arm swelling" on October 29, 2004.

- d. Licensee did not counsel Patient 2 after a failed urinary drug screen on September 14, 2004.
12. The Board has received information and investigated the same, and has reason to believe that with respect to Licensee's care and treatment of Patient 3 during the time period of approximately June 23, 2004 through November 17, 2004:
 - a. Licensee warned Patient 3 on June 23, 2004 that a second failed urinary drug screen would result in his being terminated as a patient.
 - b. Patient 3 failed a second urinary drug screen on August 9, 2004. Licensee continued to prescribe narcotics for Patient 3 after this second failure.
 - c. Licensee inappropriately prescribed controlled substances in an excessive, improper or inappropriate manner or quantity.
 - d. Licensee did not maintain adequate medical record documentation for the patient's visits.
13. Licensee has not been the subject of previous Board action.
14. Pursuant to K.S.A. 65-28a05, the Board has grounds to revoke, suspend, or limit Licensee's license for unprofessional conduct.
 - a. Licensee repeatedly failed to meet the standard of care to a degree constituting ordinary negligence in violation of K.A.R. 100-28a-7(b);
 - b. Licensee has failed to keep written medical records which accurately describe the services rendered to the patient in violation of K.A.R. 100-28a-8(u); and

- c. Licensee inappropriately prescribed controlled substances in an excessive, improper or inappropriate manner or quantity in violation of K.A.R. 100-28a-8(j)

15. 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.

16. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to her license to practice as a physician assistant:

- a. Licensee is hereby **PUBLICLY CENSURED** for violating the Kansas Physician Assistant Licensure Act.
- b. Licensee's license hereby placed on **PROBATION**. The terms and conditions of such **PROBATION** are as follows:

Continuing Education

- c. Licensee shall complete the New Jersey Mini-Residency in Appropriate Prescribing at her own expense. Licensee shall provide proof of completion to the Board on or before September 30, 2010.
- d. Licensee shall provide proof of completion by sending a certificate of completion to:

Compliance Coordinator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

- e. The **PROBATION** period is not self-terminating. After completing the above terms, Licensee may petition the Board for termination.

17. 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 in accordance with the Kansas Administrative Procedure Act.
18. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts 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 Healing Arts Act. Neither parties are aware of any pending investigations at this time.
19. 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.
20. 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 the Consent Order.

21. 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.
22. 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.
23. Licensee acknowledges that she has read this Consent Order and fully understands the contents and that this Consent Order has been entered into freely and voluntarily.
24. 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.
25. 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.
26. 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.

27. 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 Licensee's license is **PUBLICLY CENSURED** for violating the Kansas Physician Assistant Licensure Act.

IT IS FURTHER ORDERED that Licensee's license is subject to the following disciplinary action in that Licensee's license hereby placed on **PROBATION**. The terms and conditions of such **PROBATION** are as follows:

Continuing Education

- a. Licensee shall complete the New Jersey Mini-Residency in Appropriate Prescribing at her own expense. Licensee shall provide proof of completion to the Board on or before September 30, 2010.
- b. Licensee shall provide proof of completion by sending a certificate of completion to:

Compliance Coordinator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

- c. The **PROBATION** period is not self-terminating. After completing the above terms, Licensee may petition the Board for termination.

IT IS SO ORDERED on this 37th day of Aug., 2010.

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

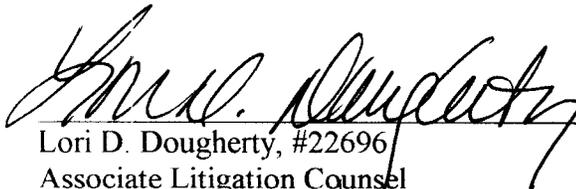

Kathleen Selzler Lippert
Executive Director

8/27/10
Date

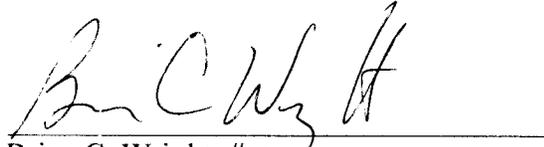

Kimberly L. Hebert, P.A.
Licensee

7/01/10
Date

PREPARED AND APPROVED BY:


Lori D. Dougherty, #22696
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 368-8212

APPROVED BY:


Brian C. Wright, #12874
Attorney for Licensee
Law Office of Brian C. Wright
4312 10th Street Place
Great Bend, KS 67530-3525
(620) 793-8900

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing **Consent Order** was served on the 30th day of August, 2010 by United States mail, first-class postage prepaid and addressed to:

Brian C. Wright, #
Attorney for Licensee
Law Office of Brian C. Wright
4312 10th Street Place
Great Bend, KS 67530-3525

and a copy was hand-delivered to:

Lori D. Dougherty, #22696
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

Melissa Massey
Compliance Coordinator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

and the original was filed with the office of:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

