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JUN 21 2017

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)
)
Diana K. Ketterman, M.D.) Docket No. 17-HA00070
Kansas License No. 04-21458)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Joseph S. Behzadi, Associate Litigation Counsel ("Petitioner"), and Diana K. Ketterman, M.D. ("Licensee"), *pro se*, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is: [REDACTED] [REDACTED] Wichita, Kansas 67215.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-21458 on or about July 1, 1986. Licensee's license status is currently exempt, having last changed her status on March 31, 2017.
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 medicine and surgery. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2869.
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

Consent Order
Diana Ketterman, M.D.

by K.S.A. 77-505 and 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 Healing Arts 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 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.

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. 65-2836(b), K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(23), K.S.A. 65-2837(b)(25), K.S.A. 65-2836(f), K.S.A. 65-2836(k), and K.A.R. 100-24-1 to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

9. The facts supporting the allegations in this Consent Order are as follows:

Consent Order
Diana Ketterman, M.D.

10. In December 2011, the Board received a complaint regarding Licensee prescribing controlled substances to a known drug addict which resulted in Investigation No. 12-00306.

11. [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. On or about October 23, 2014, the Board received a complaint regarding Licensee prescribing controlled substances to Patient 1 who had been detoxed and treated for her addictions at Good Shepard and Valley Hope.

15. On or about March 10, 2004, Patient 1, a forty-one (41) year-old female, obtained an MRI, which showed a broad based disc bulging at L3-L4 and L4-L5.

16. On or about March 23, 2004, through on or about October 27, 2004, Patient 1 attended physical therapy and was treated with epidural injections.

17. Thereafter, Licensee prescribed Percocet, Oxycodone, and other medications to manage Patient 1's pain.

18. On or about June 6, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6

Consent Order
Diana Ketterman, M.D.

hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

19. On or about June 26, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

20. On or about July 8, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

21. On or about July 30, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

22. On or about August 12, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

23. On or about September 3, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

Consent Order
Diana Ketterman, M.D.

24. On or about September 16, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

25. On or about September 26, 2013, Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

26. On or about October 7, 2013, Licensee wrote a refill to Patient 1, for one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablets, to be taken 1-2 tablets every 4-6 hours as needed. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

27. On or about October 18, 2013, Patient 1 presented to Licensee for a medication review. Licensee indicates Patient 1 was under a lot of stress and had continued to have a lot of back pain. Licensee prescribed to Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablet, to be taken 1-2 tablets every 4-6 hours. Licensee's plan is to continue with medications; however, Licensee does not indicate efficacy of treatment.

28. An undated patient note is located within Licensee's patient record for Patient 1. The patient record is signed by Licensee on or about January 30, 2014. The Patient record documents that Patient 1 presented to Licensee with an upper respiratory infection and chest congestion. Licensee prescribed Patient 1, one-hundred (100) tablets of Percocet 10/325: 325 mg – 10mg tablet, to be taken 1-2 tablets every 4-6 hours and

Consent Order
Diana Ketterman, M.D.

Ambien: 10mg tablet, to be taken once a day. Licensee's plan is to follow-up in three (3) months; however, Licensee does not indicate efficacy of treatment.

29. Another undated patient note is present in Licensee's patient record for Patient 1. It is signed by Licensee on or about April 10, 2014. That patient record documents that Patient 1 presented to Licensee for a medication review. Licensee indicated Patient 1 was under a lot of stress. Licensee also indicated in her plan to, "Continue with present medications;" however, Licensee does not indicate efficacy of treatment. Furthermore, Licensee indicates, "Is taking 8 a day." Licensee does not provide specificity regarding the aforementioned comment.

30. On or about May 20, 2014, Patient 1 requested medication for a urinary tract infection. Additionally, Patient 1 requested medication for her pain; however, she wanted to "see about getting just Oxycodone." Licensee prescribed to Patient 1, one-hundred (100) tablets of Oxycodone Hydrochloride 10mg, to be taken by 1-2 tablets every 4-6 hours. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

31. On or about May 30, 2014, only (10) days after the prior prescription for Oxycodone was written, Patient 1 called into Licensee for a refill. Licensee wrote a refill to Patient 1 for one-hundred (100) Oxycodone 10mg, to be taken by 1-2 tablets every 4-6 hours. Licensee failed to document the objective, assessment, plan and follow-up sections of the note.

32. On or about July 11, 2014, Patient 1 called, "wanting to pick up script for pain medication. State she just got back in town. Informed she could pick up script on Monday/jr". Licensee wrote a prescription for one-hundred (100) tablets of Oxycodone

Consent Order
Diana Ketterman, M.D.

Hydrochloride 10mg, to be taken 1-2 tablets every 4-6 hours. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

33. On or about July 15, 2014, Patient 1 presented to Licensee for a medication check. Licensee indicates that Patient 1, "Had been dry for 16 years and started drinking again after her dad died. Has been in good (sic) Shepard and also Valley Hope." Licensee prescribed thirty (30) tablets of Trazodone 100mg tablet, thirty (30) tablets of Ambien 10mg tablet, and one-hundred (100) tablets of Ultram (Tramadol) 50mg tablet. Licensee did not indicate the reasoning for the change in medication, whether Patient 1 had insomnia, the efficacy of treatment, or Patient 1's pain level.

34. On or about July 23, 2014, Licensee mailed a prescription to Patient 1 in North Carolina. Licensee prescribed to Patient 1 one-hundred (100) tablets of Oxycodone Hydrochloride 10mg. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

35. On or about September 4, 2014, Licensee wrote a prescription to Patient 1 for one-hundred (100) tablets of Oxycodone Hydrochloride 10mg, to be taken 1-2 tablets every 4-6 hours. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

36. On or about September 15, 2014, Licensee wrote a prescription to Patient 1 for one-hundred (100) tablets of Oxycodone Hydrochloride 10mg, to be taken 1-2 tablets every 4-6 hours. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

37. On or about September 25, 2014, Licensee wrote a prescription to Patient 1 for one-hundred (100) tablets of Oxycodone Hydrochloride 10mg, to be taken 1-2 tablets

Consent Order
Diana Ketterman, M.D.

every 4-6 hours. Licensee failed to document the objective, assessment, plan, and follow-up sections of the note.

38. On or about October 9, 2014, Patient 1 presented to Licensee for a medication review. Patient 1 indicated she would be going out of town and was continuing to have problems with her back and legs. Licensee prescribed one-hundred (100) tablets of Oxycodone Hydrochloride 10mg and Zithromax (Z-pak). Licensee failed to document the efficacy of treatment.

39. On or about August 3, 2015, the Board received a written response from Licensee regarding the allegations of the complaint pertaining to Patient 1.

40. In the response, Licensee acknowledged she knew of Patient 1's relapse resulting in treatment at Good Sheppard and Valley Hope.

41. Further, Licensee stated, "[Patient 1] presented to the office for refills of her medications and notified me she was moving and going to look for a job. Considering her 16 years of being treated for disc herniation[,] I felt for her to get back into the work force that it was appropriate to restart her on her medications."

42. During Licensee's care and treatment with Patient 1, Licensee failed to: enter into and/or document a controlled substance agreement with Patient 1, failed to perform and/or document random urinalysis tests, failed to document educating Patient 1 on usage and dangers of taking acetaminophen, failed to perform and/or document performing routine liver function tests, and failed to document and/or have Patient 1 complete a Pain Disability Index at any visit.

Consent Order
Diana Ketterman, M.D.

43. Moreover, there are multiple patient visits from on or about June 6, 2013, through on or about October 9, 2014, where Licensee's documentation lacked information in the objective, assessment, plan, and follow-up sections of the notes.

44. 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 Healing Arts Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

45. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.

46. Licensee violated K.S.A. 65-2836(b) in that Licensee committed acts of unprofessional or dishonorable conduct or professional incompetency.

47. Licensee violated K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(12) in that Licensee committed acts that are likely to harm the public.

48. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(23) in that Licensee inappropriately prescribed controlled substances to Patient 1.

49. Licensee violated K.S.A. 65-2836(f) in that Licensee willfully or repeatedly violated the Kansas Healing Arts Act or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of healing arts.

50. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(25) in that Licensee failed to keep written medical records which accurately

Consent Order
Diana Ketterman, M.D.

describe the services rendered to Patient 1, including patient histories, pertinent findings, examination results, and test results.

51. Licensee violated K.S.A. 65-2836(k), in that Licensee violated a lawful rule and regulation promulgated by the Board. Specifically, Licensee violated K.A.R. 100-24-1 by failing to “maintain an adequate record for each patient for whom the licensee performs a professional service.”

52. 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. 65-2863(a) the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

53. 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.

54. All pending investigation materials in KSBHA Investigation No. 15-00283 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board’s Disciplinary Panel. Disciplinary Panel No. 31 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

55. 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 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

Consent Order
Diana Ketterman, M.D.

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 her 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 Healing Arts Act, K.S.A. 65-2801 *et seq.*

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

57. 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.

Consent Order
Diana Ketterman, M.D.

58. 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.

59. 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.

60. 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.

61. 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.

62. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

63. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

Consent Order
Diana Ketterman, M.D.

64. 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.

65. 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.

66. This Consent Order constitutes **public disciplinary action**.

67. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

68. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on her license to engage in the practice of medicine and surgery:

EDUCATION: MEDICAL RECORD KEEPING SEMINAR

69. Licensee shall attend and successfully complete the Medical Record Keeping Seminar at Center for Personalized Education for Physicians ("CPEP") at Licensee's expense.

70. On or before ~~June 1, 2017~~ ^{July 1, 2017} Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend the CPEP Seminar on one of the following dates: ~~June 2, 2017~~ or September 23, 2017. ^{or Dec 8, 2017}

71. Licensee shall provide proof of successful completion of the Seminar within thirty (30) days of successfully completing the program.

Consent Order
Diana Ketterman, M.D.

72. All costs associated with the CPEP Medical Record Keeping Seminar shall be at Licensee's own expense to include, but not be limited to, the cost of the program, any cost of travel to and from the program, and the cost of accommodations while attending the program.

73. These hours shall be in addition to those continuing education hours required for renewal of licensure.

74. 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

**EDUCATION: CPEP/VANDERBILT COURSE: PRESCRIBING CONTROLLED
DRUGS: CRITICAL ISSUES AND COMMON PITFALLS**

75. Licensee shall attend and successfully complete the CPEP/Vanderbilt course of "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" at Licensee's expense.

76. On or before ~~May 15, 2017~~ ^{July 1, 2017} ~~OK~~ ^{JB}, Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend the CPEP/Vanderbilt course of "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" on one of the following dates: ~~May 16, 2017, or November 28, 2017.~~ ^{Nov 8-10 2017} ~~OK~~ ^{JB}

Consent Order
Diana Ketterman, M.D.

77. Licensee must provide proof of successful completion of "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" within thirty (30) days of successfully completing the course.

78. All costs associated with the CPEP/Vanderbilt course of "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" shall be at Licensee's own expense to include, but not be limited to, the cost of the program, any cost of travel to and from the program, and the cost of accommodations while attending the course.

79. These hours shall be in addition to those continuing education hours required for renewal of licensure.

83. 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, KS 66612

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 20th day of June, 2017.

Consent Order
Diana Ketterman, M.D.

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 23 day of June 2017, to the following:

Diana Ketterman, M.D.
Licensee
[Redacted]
Wichita, Kansas 67215

And the original was hand-filed with:

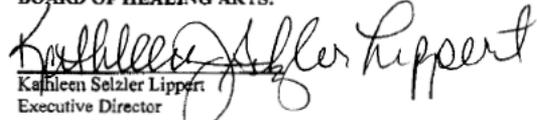
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Joseph S. Behzadi
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

FOR THE KANSAS STATE
BOARD OF HEALING ARTS:


Kathleen Selzler Lippert
Executive Director

6/23/17
Date


Diana Ketterman, M.D.
Licensee

6/23/2017
Date

PREPARED AND APPROVED BY:


Joseph S. Behzadi, #24065
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-8022

Consent Order
Diana Ketterman, M.D.

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 23 day of June, 2017, to the following:

Diana Ketterman, M.D.
Licensee


Wichita, Kansas 67215

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:

Joseph S. Behzadi
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

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