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KS State Board of Healing Arts

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

In the Matter of)	
)	Docket No. 10-HA 00050
Sharon Mitchell, M.D.)	
Kansas License No. 04-27259)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Kathleen Selzler Lippert, Litigation Counsel (“Petitioner”), and Sharon Mitchell, 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: 13 Village Plaza, Liberal, Kansas 67901.
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. 04-27259 on approximately October 18, 1997. 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, 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 by K.S.A. 77-505 and 65-2838. Upon approval, these stipulations shall

Consent Order
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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 there are grounds pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. The Kansas Board of Healing Arts received complaints alleging billing and coding irregularities from the Kansas Medical Assistance Program in September 2008 and the Kansas Insurance Department in March 2009.

10. The Kansas Medical Assistance Program (KMAP) Surveillance and Utilization Review (SURS) completed a review of Licensee.
11. Licensee was asked to provide all medical records for ten (10) beneficiaries for dates of service between January 2005 and May 2006. Licensee failed to produce any medical records to support the claims billed to KMAP. The KMAP report identified practice patterns of concern including:
 - a. Fulfillment of responsibilities or presence of HealthConnect referrals could not be determined due to lack of records presented for review.
 - b. Quality of care and medical necessity are questionable based on the referral rationale and the lack of records presented for review.
 - c. A letter identifying a proposed over payment based on the absent records was mailed to the Licensee. Further, Licensee was encouraged to review K.S.A. 21-3849 which requires licensees receiving payments under the Medicaid program not destroy or conceal any records for five years.
 - d. Licensee was assessed \$62,106.46 in overpayment.

12. (confidential)

Department. Upon investigation, the Insurance Department determined that:

- a. Licensee provided treatment to patient 1 in October 2008.
- b. A review of medical and billing records determined the CPT code 86677 was not medically appropriate and the records did not support the service billed.

c. A review of medical and billing records determined that the modality exceeded in scope that level of care needed and could have been omitted without adversely affecting the patient's condition.

d. (confidential)

13. 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 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.

14. Licensee's acts constitute unprofessional conduct as set forth in K.S.A. 65-2836, specifically:

- a. K.S.A. 65-2836(b), unprofessional or dishonorable conduct in that Licensee failed to adhere to K.S.A. 21-3849, destruction or concealment of records for the Medicaid program, a severity level 9, nonperson felony.
- b. K.S.A. 65-2836(aa), in that Licensee knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.
- c. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(18), in that Licensee obtained any fee by fraud, deceit or misrepresentation.
- d. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(21), in that Licensee performed unnecessary tests, examinations or services which have no legitimate medical purpose.

- e. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(25) and K.A.R. 100-24-2, in that Licensee failed to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results. Further, Licensee failed to maintain the patient records for a minimum of 10 years as required by law.
- 15. Pursuant to K.S.A. 65-2836, as amended by HB 2620 on July 1, 2008, 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 the authority to impose administrative fines for violations of the Healing Arts Act.
- 16. 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.
- 17. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
- 18. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against her license to engage in the practice of medicine and surgery:

PROBATION: EDUCATION

- a. (confidential)

(confidential)

b. Licensee shall attend and successfully complete a continuing educational course for billing and coding.

c. (confidential)

d. (confidential)

e. (confidential)

f. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.

PROBATION: MONITORING

g. Licensee agrees to chart monitoring to ensure billing and coding is accurate and appropriate.

h. Within ten (10) days of the approval of the Consent Order, Licensee shall contact Coding and Compliance Initiative, Inc and arrange for regular charting monitoring for twenty-four (24) months. Such monitoring shall be conducted at Licensee's own expense.

- i. Licensee agrees that her billing practices will be audited by an outside third party to ensure adherence to accepted standards in the medical profession. The audit will cover all aspects of Licensee's billing.
- j. Licensee agrees to provide the audit reviewer with all necessary documents at least once a week.
- k. The reviewer shall provide to the Board a report each month indicating whether any aspect of Licensee's billing falls outside of accepted standards in the medical profession. The reports are due on or before the 30th day of the following month. The reviewer shall also provide any recommendations for modifications to billing. Licensee agrees to implement any recommendations. The review shall begin thirty (30) days following approval of the Consent Order and shall continue for at least two years.
- l. The review shall include 10% of all patients or a maximum of fifteen (15) patient records, regardless of method of payment. After one year, Licensee may request that the Board modify or terminate the quantity of charts reviewed. Any modification or termination of the chart monitoring will be at the sole discretion of the Board. If the Board grants Licensee's request, Licensee agrees that for the next three (3) years she may be subject to random unannounced billing reviews by the same reviewer at her expense.
- m. The patient records will be selected at random by the monitor.
- n. All costs associated with monitoring will be at Licensee's expense.

- o. Licensee is responsible for ensuring the monitor's timely submission of the report each month. For any period(s) of time that Licensee is not actively practicing the healing arts in Kansas, the monitoring provisions of this Consent Order shall be tolled and not be counted in reducing the required timeframe for monitoring.
- p. Licensee will furnish a copy of this Consent Order to each and every state in which she holds licensure or applies for licensure.
- q. Licensee shall at all times keep Board staff informed of all her current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.
- r. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Complaint Coordinator, 235 S.W. Topeka Blvd., Topeka, Kansas 66603-3068.
- s. The Board designates Terry W. Webb, D.C. to review and approve/disapprove any proposed educational courses required under this Consent Order; to approve/disapprove a third party to audit the Licensee's billing practices; and approve/disapprove any proposed practice monitor or any other issue that may arise in the implementation of this Consent Order.

PROBATION TIMEFRAME

- t. The above monitoring provisions are not self-terminating. After a period of three (3) years, Licensee may request modification or termination of the

provisions. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the three (3) year timeframe.

19. 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 according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.
20. 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.
21. 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.

22. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
23. 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.
24. 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.
25. 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.

26. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. 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.
29. 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.
30. 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.
31. This Consent Order constitutes disciplinary action.
32. 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.

- h. Within ten (10) days of the approval of the Consent Order, Licensee shall contact Coding and Compliance Initiative, Inc and arrange for regular charting monitoring for twenty-four (24) months. Such monitoring shall be conducted at Licensee's own expense.
- i. Licensee agrees that her billing practices will be audited by an outside third party to ensure adherence to accepted standards in the medical profession. The audit will cover all aspects of Licensee's billing.
- j. Licensee agrees to provide the audit reviewer with all necessary documents at least once a week.
- k. The reviewer shall provide to the Board a report each month indicating whether any aspect of Licensee's billing falls outside of accepted standards in the medical profession. The reports are due on or before the 30th day of the following month. The reviewer shall also provide any recommendations for modifications to billing. Licensee agrees to implement any recommendations. The review shall begin thirty (30) days following approval of the Consent Order and shall continue for at least two years.
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 - r. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Complaint Coordinator, 235 S.W. Topeka Blvd., Topeka, Kansas 66603-3068.
 - s. The Board designates Ternyln Webb, D.C. to review and approve/disapprove any proposed educational courses required under this Consent Order; to approve/disapprove a third party to audit the Licensee's billing practices; and approve/disapprove any proposed practice monitor

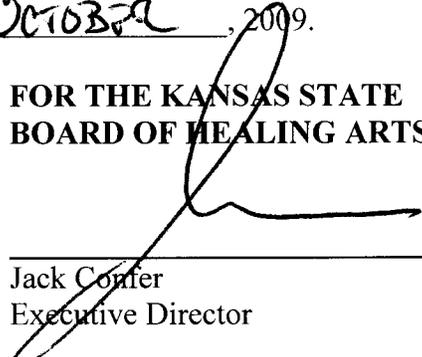
or any other issue that may arise in the implementation of this Consent Order.

PROBATION TIMEFRAME

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IT IS SO ORDERED on this 19th day of OCTOBER, 2009.

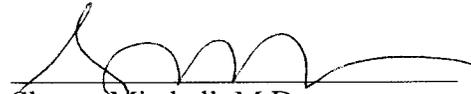
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**



Jack Confer
Executive Director

10-19-09

Date

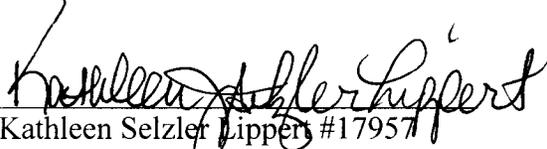


Sharon Mitchell, M.D.
Licensee

09/09/2009

Date

PREPARED AND APPROVED BY:



Kathleen Selzler Lippert #17957
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
785-296-0961

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 19th day of October, 2009, to the following:

Sharon Mitchell, M.D.
Licensee
13 Village Plaza
Liberal, Kansas 67901

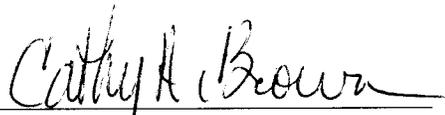
And the original was hand-filed with:

Jack Confer
Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Kathleen Selzler Lippert
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Melissa Massey
Compliance Coordinator
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068


Cathy Brown, Executive Assistant

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