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FEB 25 2002

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
DAVID E. MULLIES, P.A.)
Kansas License No. 15-00409)
_____)

Docket No. 02-HA-27

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and David E. Mullies, P.A. ("Licensee") by and through Richard P. Senecal, and move the Board for approval of a Consent Order affecting Licensee's license to practice as a Physician's Assistant ("P.A.") in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known address to the Board is 603 Fairlane Street, Lansing, Kansas 66043-1221.
2. Licensee is or has been entitled to engage in the practice as a P.A. in the State of Kansas, having been issued License No.15-00409 on February 4, 1994. At all times relevant to the allegations set forth below, Licensee has held a current license to engage in the practice as a P.A. in the State of Kansas, having last renewed his license on December 31, 2001.
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 physicians assistants. K.S.A. 65-2801 *et seq.*; K.S.A. (2000 Supp.) 65-28a01 *et seq.*

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. 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 his right to a hearing. 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. 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. In 1998, Licensee was employed by Labette County Medical Center, and was working in the hospital-owned clinic, Erie Medical Clinic.

10. Licensee was supervised by Sonya K. Culver, D.O.
11. The authorized form provided to the Board office by the responsible physician pursuant to K.S.A. 1991 Supp. 65-2896a did not authorize Licensee to transmit orders for narcotic pain medications.
12. From August 31, 1998, through December 14, 1998, Licensee prescribed/refilled Hydrocodone to Patient #1 on approximately eleven occasions.
13. Licensee did not inform his supervising physician that he was prescribing/refilling Hydrocodone to Patient #1.
14. Licensee kept the patient's file in his office and away from the files that were to be reviewed by his supervising physician.
15. Licensee did not create any notes of the visits or discussions regarding Patient #1 and did not document the prescriptions/refills from at least August 19, 1998, through December 29, 1998.
16. Licensee did not document the prescriptions and did not inform his supervising physician that he was prescribing this medication.
17. Licensee has previously been disciplined by the Board for his misconduct involving controlled substances.
18. Pursuant to K.S.A. 65-28a05(g), the Board may revoke, suspend, or otherwise limit Licensee's license due to the fact that Licensee has exceeded or has acted outside the scope of authority given to him by the responsible physician or by the Kansas Physician Assistant Licensure Act.

19. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

20. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures and limitations placed on his license to practice as a P.A.:

- a. Licensee is prohibited from practicing as a P.A. except in strict compliance with this order;
- b. Licensee is prohibited from prescribing, ordering, dispensing, administering, delivering, distributing, or in any way providing directly or indirectly, controlled substances to another person, including, but not limited to, transmitting physician orders for controlled substances, and phoning in prescription orders and refills. This limitation shall be in effect for at least five (5) years. Licensee must apply to the Board for termination of the limitation.
- c. On or before March 4, 2002, Licensee shall surrender his Drug Enforcement Administration authority to prescribe, order, dispense, administer, deliver, distribute or in any way directly or indirectly provide controlled substances to another person;
- d. Licensee shall provide his supervising physician(s) a copy of the Consent Order within ten (10) days after the Consent Order is filed. On or before March 28, 2002, Licensee shall ensure that his

supervising physician(s) send a letter to the Board verifying that they have received and read a copy of the Consent Order.

- e. Licensee shall ensure that on or before March 28, 2002, his supervising physician(s) provide a letter to the Board with an explanation of the protocol for prescribing controlled substances to patients seen by Licensee.
- f. Within one (1) year after the filing of the Consent Order, Licensee shall attend and successfully complete at his own expense the ProBE ethics course in New Jersey, and provide verification of his attendance to the Board.
- g. If Licensee violates any of the above limitations, Licensee agrees that his license shall be revoked.

21. This Consent Order constitutes disciplinary action and limitations on Licensee's license.

22. 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. 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.

23. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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.

24. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the Healthcare Integrity and Protection Data Bank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Consent Order.

25. 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.

26. 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.

27. Licensee, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

28. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

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

30. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

31. Licensee shall obey all federal, state and local laws and rules governing physicians assistants 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.

32. 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.

33. 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 THAT Licensee is prohibited from practicing as a physician's assistant except in strict compliance with this order.

- a. Licensee is prohibited from prescribing, ordering, dispensing, administering, delivering, distributing, or in any way providing directly or indirectly, controlled substances to another person, including, but not limited to, transmitting physician orders for controlled substances, and phoning in prescription orders and refills. This limitation shall be in effect for at least five (5) years. Licensee must apply to the Board for termination of the limitation.

- b. On or before March 4, 2002, Licensee shall surrender his Drug Enforcement Administration authority to prescribe, order, dispense, administer, deliver, distribute or in any way directly or indirectly provide controlled substances to another person;
- c. Licensee shall provide his supervising physician(s) a copy of the Consent Order within ten (10) days after the Consent Order is filed. On or before March 28, 2002, Licensee shall ensure that his supervising physician(s) send a letter to the Board verifying that they have received and read a copy of the Consent Order.
- d. Licensee shall ensure that on or before March 28, 2002, his supervising physician(s) provide a letter to the Board with an explanation of the protocol for prescribing controlled substances to patients seen by Licensee.
- e. Within one (1) year after the filing of the Consent Order, Licensee shall attend and successfully complete at his own expense the ProBE ethics course in New Jersey, and provide verification of his attendance to the Board.
- f. If Licensee violates any of the above limitations, Licensee's license shall be revoked.

IT IS SO ORDERED on this 25th day of February, 2002.

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the **CONSENT ORDER BY** United States mail, postage prepaid, on this 25th day of February, 2002 to the following:

Richard P. Senecal
Duncan-Senecal Law Offices, Chtd.
817 Santa Fe
P.O. Box 349
Atchison, Kansas 66002-0349

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



Stacy L. Cook