

FILED *CRB*
JUN 24 2013
KS State Board of Healing Arts

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

In the Matter of)
)
DANIEL L. MYERS, M.D.) **Docket No. 13-HA00050**
)
Kansas License No. 04-22246)

CONSENT ORDER FOR SURRENDER OF LICENSE

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Associate Litigation Counsel, Jane E. Weiler (“Petitioner”), and Daniel L. Myers, M.D. (“Licensee”), by and through his counsel, Trey Meyer, Law Office of Trey Meyer, LLC, 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 as provided to the Board is: Box 804, Iola, Kansas 66749.
2. Licensee’s last known residential address is: **Confidential** Iola, Kansas 66749.
3. Licensee has been entitled to engage in practice medicine and surgery in the State of Kansas, having been issued License No. 04-22246 on approximately June 17, 1988, and having last such license on approximately June 6, 2013.
4. 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.

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5. 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 constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case. 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. 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 and 65-2837 to take

action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. Licensee entered into a Consent Order on April 19, 2011, related to issues involving inappropriate behavior in regard to his ex-girlfriend.

11. The Consent Order required Licensee to:

- a. Confidential
- b.
- c. Require a Board-approved female chaperone when treating a female patient; and
- d. Notify the Board of any change of practice location within ten (10) days.

12. On or about March 1, 2013, Petitioner filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings alleging Licensee was not compliant with any of the terms of his Consent Order.

13. Confidential

14. On or about March 4, 2013, Presiding Officer Joel Hutchins, M. D. ordered that Licensee's license be emergently suspended, concluding:

- a. The evidence demonstrated that there was cause to believe that Licensee at that time had the inability to practice medicine and surgery with reasonable skill and safety Confidential

Confidential as contemplated by K.S.A. 65-2836(i).

b. There was cause to believe that Licensee had also violated K.S.A. 65-2836(b), (k), and (s), and those violations were grounds to discipline Licensee's license.

15. On or about March 14, 2013, an evidentiary hearing was held before Presiding Officer Hutchins on Petitioner's Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings.

16. Confidential

17. During his sworn testimony, Licensee testified that he understood the chaperoning obligation in the Consent Order required him to have a female chaperone in the room at all times when he was present with a female patient, otherwise he would not be able to practice medicine and surgery.

18. Further, during his sworn testimony, Licensee testified that he submitted all the chaperone logs to the Board for the female patients seen by him.

19. On March 19, 2013, the Presiding Officer vacated the emergency suspension of Licensee's license. In the Order Vacating *Ex Parte* Emergency Suspension of License, the Presiding Officer made the following Findings and Conclusions:

a. Paragraph 10. "The Presiding Officer finds that while many of the material facts are generally not disputed, there is disagreement between the parties regarding the degree of Licensee's deviation from the requirements of

his Consent Order and whether such deviations have created an immediate danger to patients.”

b. Paragraph 11. “Based on the evidence presented at the hearing, the Presiding Officer concludes that Licensee has not strictly complied with the requirements of his Consent Order, but that significant misunderstandings regarding compliance have occurred between Licensee and Board staff and **Confidential**

c. Paragraph 12. “Based on the allegations set forth in the Petition and Motion, one might believe that Licensee has not been utilizing adult, female chaperones when seeing female patients. **However, the evidence clearly demonstrates that Licensee has had such chaperones present and has submitted documentary evidence to the Board indicating their presence.** At the hearing, it became evidence that the actual contention of Petitioner is that the chaperones were never specifically “Board approved.” Licensee proposed the names of several individuals to be chaperones to the Board in April of 2011. Thereafter, the Board continually accepted the submissions of Licensee’s chaperone logs. Additionally, the evidence indicates that Board counsel’s correspondence to Licensee’s attorney on the subject of chaperone approval was not conveyed to Licensee by his attorney. Of note, evidence presented at the hearing concerning signatures for specific patient encounters in the chaperone logs was not considered by the Presiding Officer to be significant to the issue of whether an emergency suspension is warranted, but may related to Licensee’s overall compliance.” (emphasis added).

d. Paragraph 13. "The Presiding Officer concludes that while Licensee was not technically in full in compliance, Licensee substantially complied with the chaperone requirement in the Consent Order. Petitioner did not present any evidence demonstrating there was an immediate danger to patients based on the unapproved chaperones' presence during Licensee's treatment of female patients."

20. The Presiding Officer's finding that the evidence "clearly demonstrates that Licensee has had such chaperones present" appears to be based on Licensee's testimony that he believed that he was in compliance with the Consent Order in that he testified that he provided all of the monthly reports to the Board for the female patients seen by him, the date and time they were seen, and the signature of the chaperone. Licensee further testified that his purpose in submitting these reports related to compliance with his Consent Order.

21. Confidential

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24. On or about June 10, 2013, Licensee's attorney submitted a status letter to the Board identifying further instances when Licensee was not compliant with his

Consent Order. Licensee reported he saw four (4) to five (5) female patients at their home without an approved chaperone present, but with a spouse present.

25. Confidential

26.

27. In addition, Licensee reported that from 2005 to 2008 he was involved with a respiratory therapist whom he treated on the side, and he reported refilling a prescription for her.

28. Confidential

29. Confidential

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Licensee reported that he operated on this patient approximately October 1, 2012, and started a relationship with this patient in January 2013.

30. In April 2010, the Board received a complaint involving Licensee's inappropriate behavior towards his ex-girlfriend, who was also a nurse at the same hospital where Licensee had privileges at that time. The inappropriate behavior included:

a. Following the end of the relationship, Licensee would show up to the ex-girlfriend's house uninvited, and after being told not to come by the house.

b. Neighbors reported seeing Licensee walking down the alley behind the ex-girlfriend's house, and Licensee being parked down the street from her house.

c. Licensee admitted to being at her home at night while she slept, and shoveling snow from her driveway on occasions.

d. Licensee was found leaning a ladder up against the side of the ex-girlfriend's house in an attempt to look into her windows.

31. Confidential

32. On or about July 15, 2010, Licensee's ex-girlfriend submitted a complaint to the Board. The complainant reported that Licensee drove past her house on or about July 11, 2010.

33. Confidential

34. On or about September 8, 2010, Confidential the boyfriend of Licensee's ex-girlfriend, spoke with the Iola Police Department alleging an additional stalking incident involving Licensee.

35. On or about September 27, 2010, a Protection from Stalking Order was entered against Licensee for the protection of the ex-girlfriend. Licensee was ordered by the court to refrain from harassing, telephoning, contacting, or otherwise communicating with the ex-girlfriend directly or indirectly.

36. On or about September 27, 2010, an Allen County Sheriff's Deputy filed a report following a complaint from the ex-girlfriend that Licensee had driven past her house.

37. On or about November 2, 2010, the ex-girlfriend filed a Petition against Licensee in the District Court of Allen County, Kansas alleging invasion of privacy and intentional infliction of emotional distress.

38. On or about April 20, 2011, Licensee entered into a Consent Order with the Board regarding issues involving inappropriate behavior involving his ex-girlfriend.

39. On or about June 10, 2013, Licensee reported to the Board that he frequently looked at the Facebook account of this ex-girlfriend, until the beginning of May 2013. Further, Licensee reported that he drove by her house in early March 2013.

40. Licensee reported to the Board that he frequently looks at the Facebook account of **Confidential** the boyfriend of Licensee's ex-girlfriend.

41. **Confidential**

42.

43.

44. Licensee also reported to the Board that between late 2012 and early 2013, he looked at her home across an open field her house as he walked or drove by Wal-Mart, which is near her house. **Confidential**

Confidential

45.

46. 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 his right to

dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board. License's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.

47. Licensee violated 65-2836(k), in that Licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board; specifically, Licensee violated the Consent Order that was previously entered into on April 20, 2011 in KSBHA Docket No. 11-HA00082.
48. Licensee violated 65-2836(b), in that Licensee has committed acts of unprofessional or dishonorable conduct or professional incompetency.
49. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(16), in that Licensee committed acts of sexual abuse, misconduct, or other improper sexual contact with his former patient, which exploited the licensee-patient relationship.
50. Pursuant to K.S.A. 65-2836(b), licensee has committed acts of unprofessional or dishonorable conduct, as further defined in K.S.A. 65-2837(b)(12), by committing conduct likely to deceive or harm the public.
51. Pursuant to K.S.A. 65-2836(f), licensee has willfully or repeatedly violated this act in that Licensee has continued to stalk his ex-girlfriend while being aware of the consequences of his conduct.
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.

65-2863a 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 Investigative Case Number 13-00456 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 25 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

55. 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.

56. 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

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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.

57. 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.

58. 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.

59. 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.

60. 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.

61. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
62. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
63. 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.
64. 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.
65. This Consent Order constitutes disciplinary action.
66. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
67. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of medicine and surgery:

SURRENDER

68. Licensee hereby surrenders his license to practice medicine and surgery. Such surrender shall be treated as a revocation for all purposes including reporting. Licensee agrees that an application for reinstatement of the license will be

considered in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by *Vakas v. The Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement.

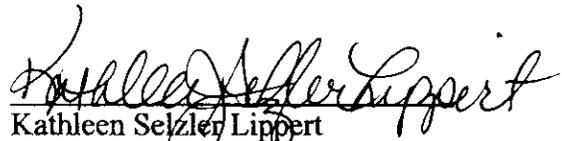
69. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in this Consent Order will be considered as findings of fact and conclusions of law.

70. Licensee shall place his patients' records in the custody of another licensed physician or records maintenance facility in compliance with K.A.R. 100-24-2 and 100-24-3. Licensee shall notify the Board on or before July 1, 2013, of the specific measure taken and the appropriate contact information so that the Board can respond to questions from patients about the location of their medical records and how they can obtain them.

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 24 day of June, 2013.

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


Kathleen Selzler Lippert
Executive Director

6/24/13
Date

Consent Order
Daniel L. Myers, M.D.

Daniel L. Myers
Daniel L. Myers, M.D.
Licensee

6/20/2013
Date

PREPARED AND APPROVED BY:

Jane E. Weiler, #25276
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-1479

AGREED TO BY:

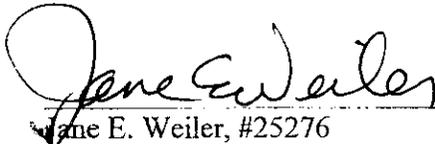
Trey Meyer # _____
Attorney for Licensee
Law Office of Trey Meyer, LLC
843 New Hampshire Street
P.O. Box 4512
Lawrence, KS 66044
785-371-4685

Consent Order
Daniel L. Myers, M.D.

Daniel L. Myers, M.D.
Licensee

Date

PREPARED AND APPROVED BY:



Jane E. Weiler, #25276
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-1479

AGREED TO BY:

 Trey Meyer

Trey Meyer # 19459
Attorney for Licensee
Law Office of Trey Meyer, LLC
843 New Hampshire Street
P.O. Box 4512
Lawrence, KS 66044
785-371-4685

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Daniel L. Myers, 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 24th day of June, 2013, to the following:

Daniel L. Myers, M.D.
Licensee
Box 804
Iola, KS 66749

Trey Meyer
Attorney for Licensee
Law Office of Trey Meyer, LLC
843 New Hampshire Street
P.O. Box 4512
Lawrence, KS 66044

And the original was hand-filed with:

Kathleen Seizler 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:

Jane E. Weiler
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-1479

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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



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