

FILED

AUG 24 2001

KANSAS STATE BOARD OF
HEALING ARTS

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

In the Matter of)
Ann K. Neuhaus, M.D.)
Kansas License No. 04-21596)
_____)

Docket No. 01-HA-14

FINAL ORDER

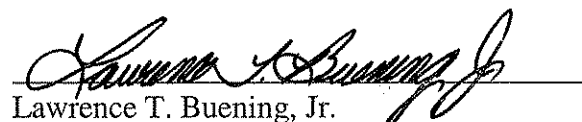
NOW ON THIS Eighteenth Day of August, 2001, this matter comes before the Board for review of the Initial Order dated June 15, 2001. Kelli J. Benintendi appears on behalf of Petitioner Board of Healing Arts. Respondent appears in person and through Steve A. Schwarm, Sally Kelsey and Donald Strole.

After hearing the arguments of counsel, the Board determines and it is ordered that the Agreed Initial Order dated June 15, 2001 should be adopted as the Final Order of the Board.

PLEASE TAKE NOTICE that this is a Final Order. A party may seek judicial review of a Final Order by filing a petition in the district court within 30 days following service of the order. Reconsideration is not a prerequisite to a petition for judicial review. A copy of any petition for judicial review must be served upon Lawrence T. Buening, Jr., Executive Director, 235 S. Topeka Blvd., Topeka, KS 66603.

DATED this 24th Day of August, 2001

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing Final Order was served this 27th day of August, 2001 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Steve A. Schwarm
515 South Kansas Avenue
Topeka, KS 66603

Donald Strole and Sally Kelsey
16 East 13th Street
Lawrence, KS 66044

and a copy was hand-delivered to the office of:

Stacy L. Cook
Litigation Counsel
235 S. Topeka Blvd.
Topeka, KS 66603

A handwritten signature in cursive script, appearing to read "Stacy L. Cook", is written over a horizontal line.

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

JUN 15 2001

In the Matter of)
)
ANN K. NEUHAUS, M.D.,)
Kansas License No. 04-21596)
_____)

Docket No. 01-HA-14
KANSAS STATE BOARD OF
HEALING ARTS

AGREED INITIAL ORDER

NOW ON THIS the ___ day of June, 2001, comes before the State Board of Healing Arts Petitioner's Amended Petition to Revoke, Suspend or Otherwise Limit License against Licensee Ann K. Neuhaus, M.D. Presiding Officers Donald B. Bletz, M.D., Emily Taylor and James Buchele have been appointed to render an Initial Order. Kelli J. Benintendi, Associate Counsel, appears on behalf of the Petitioner Board of Healing Arts. Sally Kelsey and Steve Schwarm appear on behalf of Licensee. There are no other appearances.

Whereupon, the Parties present this Agreed Initial Order, including Findings of Fact, Conclusions of Law and Orders for approval and issuance by the Presiding Officers. Having heard the statements of counsel regarding the Agreed Initial Order and having the agency record before them, the Presiding Officers adopt the following agreed upon Findings of Fact, Conclusions of Law and Orders:

I. FINDINGS OF FACT

A. BACKGROUND

1. Licensee is licensed by the Board to practice medicine and surgery in the State of Kansas, having been initially licensed on December 5, 1986, and issued license

number 4-21596. Licensee has been continually licensed by the Board and actively engaged in the practice of the healing arts in Kansas since that time.

2. This matter was initiated on December 4, 2000, when a Petition to Revoke, Suspend or Otherwise Limit License was filed. An Amended Petition was filed February 2, 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, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.
4. The parties agree that this Agreed Initial Order and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Agreed Initial Order.
5. The Presiding Officers have taken official notice of the official agency record of the Stipulation and prior emergency action against Licensee in Docket No. 00-HA-20.

B. STANDARD OF CARE

6. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Order Following Emergency Hearing issued August 29, 2000, as they relate to the allegations regarding patients A.B., S.D., C.L., and H.S. in Counts I through IV in the Amended Petition. The Order is attached hereto as Exhibit A.
7. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Order Following Emergency Hearing issued August 29, 2000,

as they relate to the allegations regarding unmarked pre-drawn syringes in Count VI of the Amended Petition. See Exhibit A.

8. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Termination of Emergency Order issued September 11, 2000. The Order is attached hereto as Exhibit B.

9. The parties agree and stipulate that:

a. Licensee has fully implemented the modifications to her practice to address the deficiencies found by Hearing Officer Tipton.

b. Licensee has completed Advanced Cardiac Life Support Training and her clinical staff has completed Advanced Cardiac Life Support or Basic Life Support Training.

c. Licensee utilizes a clinical staff member whose dedicated responsibility is monitoring of the patient during the administration of sedation and throughout the procedure. This staff member has no other primary duties during the procedure which would impede the ability to address any emergency situation which may arise.

d. Licensee has modified her practices regarding sedation and analgesia to comply with the 1996 American Society of Anesthesiologists (ASA) Guidelines for Sedation and Analgesia by Non-Anesthesiologists.

10. Licensee provided medical treatment to Patient A.G. on June 7, 2000 as follows:

- a. A.G. arrived at Licensee's office on June 7, 2000 for a scheduled appointment for an abortion.
- b. Based on the information provided by A.G., the gestational age was determined to be six (6) weeks.
- c. Licensee's medical record for A.G. reflects a sonogram was performed that day which showed the gestational age to be twelve (12) weeks.
- d. A.G. signed a consent form which listed options for analgesia and/or sedation.
- e. A.G. expressed that she did not want to be sedated with Diazepam for the procedure.
- f. A.G. agreed to have a local anesthetic and to the intravenous administration of Droperidol and Nubain for analgesia.
- g. In the procedure room, following the administration of Droperidol and Nubain, A.G. experienced a brief reaction to the medication.
- h. The medical record reflects Benadryl was administered to counter the reaction.
- i. The medical record reflects A.G. was sedated with Diazepam and the procedure was completed.
- j. At no time did A.G. express a change of heart about having an abortion.

11. Licensee would present testimony at trial as follows:
 - a. Licensee and Licensee's staff informed A.G. that she could not do the procedure using only a local anesthetic, and sedative medications, including Diazepam, would necessarily have to be used.
 - b. Licensee and Licensee's staff told A.G. she could cancel the procedure and reschedule later if she wished, but that A.G. chose to continue the procedure that day and did not withdraw consent for the procedure nor did A.G. at any time indicate she did not want to proceed.
12. The Board would present testimony at trial as follows:
 - a. A.G. limited her consent to having the procedure performed without being sedated.
 - b. Following her reaction to the medication, A.G. expressed that she did not wish to continue with the procedure.

C. WOMAN'S RIGHT TO KNOW ACT

13. Licensee's medical record for patients A.B., S.D., C.L. and A.G. do not reflect the patients were informed in writing at least 24 hours before the abortion of the probable gestational age of the fetus at the time the abortion was to be performed.
14. Licensee would offer testimony at trial that proper written notice of the gestational age was given to patients A.B., S.D. and C.L., but the notices which were copied for the medical records are duplicates of the ones the patients signed in the Licensee's office, having forgotten to bring the original notices to the office.

15. The Board would present testimony at trial that patient A.G. was not informed in writing at least 24 hours before the abortion of the probable gestational age of the fetus at the time the abortion was to be performed.

EXHIBITS

16. The parties agree and stipulate to the admission into evidence of Licensee's clinic's medical records for patients A.B., S.D., C.L., H.S. and A.G., and that such records are subject to the protective order previously entered.
17. The parties agree and stipulate to the admission into evidence of Licensee's sedation monitoring form presently in use in Licensee's practice.

CONCLUSIONS OF LAW

18. The parties agree that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.
19. The parties agree that, in considering this matter, the Presiding Officers and the Board are not acting beyond their jurisdiction as provided by law.
20. Licensee's sedation and pre-, intra- and post-procedure monitoring of patients A.B., S.D., C.L., H.S. and A.G. deviated from the applicable standard of care.
21. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24), the Board may limit a license to practice the healing arts upon a finding that Licensee committed unprofessional conduct by repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

22. The intentional, knowing or reckless failure to provide written notice of the gestational age of the fetus in compliance with the Woman's Right to Know Act constitutes unprofessional conduct pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b) and set forth in K.S.A. 65-6712.
23. The failure to provide adequate informed consent to sedation would also constitute unprofessional conduct pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24).
24. The lack of documentation regarding sedation and pre-, intra- and post-procedure monitoring for patients A.B., S.D., C.L., H.S. and A.G. constitutes a failure to maintain an adequate patient medical record as required by K.A.R. 100-24-1.
25. Pursuant to K.S.A. 65-2836(k), the Board may limit Licensee's license to practice the healing arts in the State of Kansas for violation of K.A.R. 100-24-1, a lawful regulation promulgated by the Board.
26. There is no evidence that Licensee acted with malice or lack of concern for patients' well being with regard to any of the allegations set forth in the Amended Petition.

III. ORDERS

27. In light of the foregoing Findings of Fact and Conclusions of Law, the Presiding Officer orders as follows:
28. Pursuant to the terms of a previous Stipulation and Agreement and Enforcement Order entered October 18, 1999, in Docket No. 00-HA-20, Licensee has been

subject to limitations on her license for a period of time from October 18, 1999, through the date this agreement is filed. The Stipulation entered October 18, 1999, remains in full force and effect and is not superceded by this Agreed Initial Order. The Stipulation is attached hereto as Exhibit C.

29. Licensee's license to practice medicine and surgery is hereby limited as follows:

SEDATION AND MONITORING

30. The Termination of Emergency Order entered September 11, 2000, in Docket No. 00-HA-20, found that Licensee had modified her practice to correct deficiencies regarding sedation and monitoring as previously determined by the Hearing Officer in the Emergency Order Following Hearing entered August 29, 2000. Monitoring of those items shall continue pursuant to the August 29, 2000 Order.

31. Licensee's staff member whose responsibility is monitoring during the administration of sedation and throughout the procedure shall have no other primary duties during the procedure that would impede the ability to address any emergency situation that may arise.

32. Licensee agrees to follow the 1996 American Society of Anesthesiologist's (ASA) Guidelines for Sedation and Analgesia by Non-Anesthesiologists and subsequent revisions and/or amendments.

DOCUMENTATION

33. Licensee shall comply with all provisions of K.A.R. 100-24-1, with respect to medical record-keeping.
34. Licensee shall ensure that all sonograms which are performed by Licensee or Licensee's staff are printed and are made part of the patient's medical record. This requirement includes sonograms, if any, performed to determine gestational age prior to the date of the appointment for an abortion. In the event of unforeseen circumstances, such as an equipment breakdown of a sonogram printer, Licensee agrees to notify Board staff immediately and expeditiously repair the problem.
35. All sonograms and entries in the patient's medical record regarding the performance of a sonogram shall be dated and timed.

INFORMED CONSENT

36. Licensee shall comply with the provisions of the Woman's-Right-to- Know Act ("WRTKA"), K.S.A. 65-6701, *et seq.*, including informing all abortion patients, in writing at least 24 hours in advance, of the probable gestational age of the fetus at the time the abortion is to be performed. If a patient does not know the date of her last menstrual period so the gestational age can be determined, Licensee shall ensure that the gestational age is determined by an appropriate dating method

whereby such notice of the gestational age can be provided to the patient in compliance with the WRTKA;

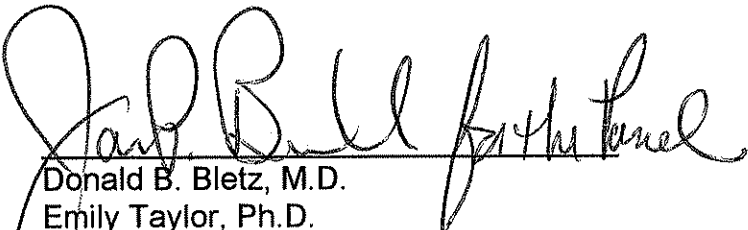
37. Licensee shall utilize an informed consent form which includes more detailed provisions relating to anesthesia and sedation. The form shall include the risks associated with each anesthesia and/or sedation choice, and shall include a description of any circumstances where certain anesthesia and/or sedation choices may not be an option. An example would be that a "local only" may not be an option for a patient who is over a certain number of weeks pregnant. An informed consent form which includes these provisions is attached hereto as Exhibit D.
38. Licensee shall ensure that the informed consent form is reviewed and signed by the patient during the appointment for the procedure and such signature is dated and timed. A witness signature which is dated and timed shall also be included in the informed consent form.
39. Licensee shall meet with all abortion patients outside of the procedure room before such patients are physically prepared for the procedure to review the informed consent form.

OTHER

40. Licensee's clinic medical records shall be randomly inspected by Board staff for

compliance with the provisions of this Agreed Initial Order, but such inspections shall not occur more than four (4) times per year, for a period of at least two (2) years.

IT IS SO ORDERED THIS 15th day of June, 2001.



Donald B. Bletz, M.D.
Emily Taylor, Ph.D.
Hon. James Buchele
Presiding Officers

Prepared by:



Kelli Benintendi, #16032
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413
Attorney for Petitioner

Approved as to form by:



Sally Kelsey, #15008
16 East 13th Street
Lawrence, Kansas 66044
(785) 842-5116
Attorney for Licensee



Steve A. Schwarm, #13232
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue
Topeka, Kansas 66603
Attorney for Licensee

Agreed Initial Order
In the Matter of Ann K. Neuhaus, M.D.
01-HA-14

NOTICE REGARDING REVIEW

Please take notice that this is an Initial Order. Pursuant to Board Policy Statement No. 00-03, The Board, as a matter of course following service of an Initial Order, will on its own motion conduct review. A party may also file a Petition for Review with the Executive Director, 235 S. Topeka Blvd., Topeka, Kansas 66603, within 15 days following service of this Order.

CERTIFICATE OF SERVICE

I, _____, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above AGREED INITIAL ORDER by depositing the same in the U.S. mail, postage prepaid, on this the ____ day of _____, 2001 addressed to:

Ann K. Neuhaus, M.D.
205 West 8th Street
Lawrence, Kansas 66044

Sally Kelsey
Attorney at Law
16 E. 13th Street
Lawrence, Kansas 66044

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue
Topeka, Kansas 66603

and a copy was hand-delivered to:

Kelli J. Benintendi
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

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

**Agreed Initial Order
In the Matter of Ann K. Neuhaus, M.D.
01-HA-14**