

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

FILED JUNE 22 2004 KANSAS STATE BOARD OF HEALING ARTS
--

In the Matter of)
AN THOAI PHAN, M.D.)
Kansas License No. 4-26574)
_____)

Docket No. 04-HA-55

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through Stacy L. Cook, Litigation Counsel (“Petitioner”), and An Thoai Phan, M.D. (“Licensee”), by and through Mark E. McFarland, 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 1524 Harvest Lane, Garden City, KS 67846.
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. 04-26574 on October 19, 1996. Licensee’s license status 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.
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. 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 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 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.

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 August 2003, Licensee moved from the State of Kansas.

10. Petitioner has alleged that Licensee failed to notify the Board, within thirty (30) days of her termination of the active practice of medicine and surgery in Kansas, of the location where her patient records are stored, the name, address, and telephone numbers of the agent designated to maintain the records and/or the date on which such records will be destroyed. The Board finds that although Licensee maintained a contact person at the office at 1811 East Mary, Garden City, Kansas continuously through March 31, 2004, and provided the Board with the statutorily required notice on April 14, 2004, Licensee terminated the active practice of medicine and surgery in Kansas in August 2003, when she moved from the State of Kansas and, therefore, Licensee's notice to Board on April 14, 2004 was not timely. The Board further finds that Licensee's posting a notice on her office door, advising former patients on the procedure to obtain copies of their medical records, does not satisfy the notice requirements of the Healing Arts Act.

11. Petitioner has alleged that Licensee failed to provide copies of records to two (2) patients within thirty (30) days of receipt of a valid request. The Board finds that Licensee provided copies of the requested records to one of the two patients, but not within the

statutory thirty (30) days. Licensee claims that the requested records of the other patient were destroyed in a catastrophic water loss at the storage facility where they were being maintained and Licensee could not comply with the patient's request, but admits that she failed to timely respond to the patient and advise of the destruction of the patient's records.

12. 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.

13. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- a. Licensee shall be fined in the amount of \$1,400.00 for violation of K.A.R. 100-24-3 and K.S.A. 65-4971. Such fine is due and payable to the Board in equal monthly installments of One Hundred and No/100 Dollars (\$100.00), commencing on August 20, 2004 and continuing on the same date each month thereafter until paid in full;
- b. Licensee shall pay costs in the amount of \$100.00. Such costs are due and payable to the Board on or before July 20, 2004;
- c. Licensee is hereby censured for violation of K.A.R. 100-24-3 and K.S.A. 65-4971;
- d. Licensee agrees that on or before July 20, 2004, she shall provide a sufficient written summary of medical treatment to the patient whose medical records were destroyed in the water loss. The summary shall be for the benefit of the patient's healthcare providers. Licensee shall provide proof of compliance to the Board on or before the deadline.
- e. Licensee shall respond to all requests for patient records in compliance with all relevant statutes.

14. 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.

15. 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.

16. 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.

17. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of the Consent Order.

18. 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.

19. 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.

20. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, 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.

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

22. Licensee acknowledges that this Consent Order has been Entered into freely and voluntarily.

23. 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.

24. 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.

25. 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.

26. 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 in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- a. Licensee shall be fined in the amount of \$1,400.00 for violation of K.A.R. 100-24-3 and K.S.A. 65-4971. Such fine is due and payable to the Board in equal monthly installments of One Hundred and No/100 Dollars (\$100.00), commencing on August 20, 2004 and continuing on the same date each month thereafter until paid in full;
- b. Licensee shall pay costs in the amount of \$100.00. Such costs are due and payable to the Board on or before July 20, 2004;
- e. Licensee is hereby censured for violation of K.A.R. 100-24-3 and K.S.A. 65-4971;
- f. Licensee agrees that on or before July 20, 2004, she shall provide a sufficient written summary of medical treatment to the patient whose medical records were destroyed in the water loss. The summary shall be for the benefit of the patient's healthcare providers. Licensee shall provide proof of compliance to the Board on or before the deadline.
- f. Licensee shall respond to all requests for patient records in compliance with all relevant statutes.

IT IS SO ORDERED on this 22ND day of June, 2004.

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

/s/ _____
Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:

_____/s/_____
Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

_____/s/_____
Mark E. McFarland #14138
Doering, Grisell & McFarland, P.A.
124 Grant Ave.
Garden City, Kansas 67846
(620) 275-2918

AGREED TO BY:

_____/s/_____
An Thoi Phan, M.D.
Licensee

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 22nd day of June,
2004 to the following:

Mark E. McFarland
Doering, Grisell & McFarland, P.A.
124 Grant Ave.
Garden City, Kansas 67846
(620) 275-2918

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

/s/ _____
Stacy L. Cook