

F I L E D

AUG 31 2000

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
GREGORY A. RICKE, M.D.)
Kansas License No. 4-23797)
_____)

Docket No. 00-HA-32

INITIAL ORDER

NOW ON THIS Twenty-second Day of June, 2000, this matter comes on for hearing. Stacy L. Cook, Litigation Counsel for the Board, appears for Petitioner. Respondent Gregory A. Ricke, M.D. appears in person and through D. Lee McMaster.

The Presiding Officer conducts the hearing over a two-day period, hearing the testimony of the witnesses and receiving exhibits. The parties are given the opportunity to submit proposed findings of fact and conclusions of law. The evidentiary record is now closed. Based upon that record, the Presiding Officer makes the following findings of fact, conclusions of law and orders:

1. Respondent is licensed by the Board to practice the healing arts, specifically in the branch of medicine and surgery. This license was in active status during the events described in the disciplinary petition.

2. The Board initiated a disciplinary matter in March 1998, alleging Respondent violated the healing arts act by engaging in improper sexual relations with two patients. That matter was resolved through a settlement agreement dated February 15, 1999. That agreement requires, among other things, that Respondent obey all state and federal laws governing the practice of medicine and surgery, (confidential)

(confidential)

3. The present case was filed February 1, 2000, alleging that Respondent engaged in

unprofessional conduct by abandoning patients and by improperly delegating the practice of medicine and surgery to an unqualified person, and alleging that by violating the federal controlled substances laws Respondent had violated the February 1999 settlement agreement. Petitioner orally amended the petition at hearing to allege additional instances of prescribing controlled substances in violation of federal controlled substances laws.

4. Much of the unprofessional conduct alleged in this case stems from the business relationship between Respondent and Daniel Kelley, D.C. In a case styled *In the Matter of Daniel H. Kelley, D.C.*, Case No. 00-HA-19, Dr. Kelly entered into a settlement agreement with the Board regarding his own conduct arising out of this relationship. Under that agreement, Dr. Kelley's license was suspended for 90 days, and he was to terminate his business relationships with Respondent. The Presiding Officer does not find that Dr. Kelley's admitted violations of the healing arts act impute responsibility for the same violations on the part of Respondent. Respondent's conduct was unprofessional, as described in greater detail below. But the disciplinary orders imposed against the two doctors should not be compared because the circumstances of the two doctors are different.

5. The business relationship between Respondent and Dr. Kelley began when Respondent answered an advertisement placed by Dr. Kelley in which he sought an association with a medical doctor. The business plan that ensued involved three corporations. One corporation was called D & M Management, Inc., a general corporation. Dr. Kelley was the president of D & M. Following bankruptcy, this corporation was replaced with Professional Medical Management Services, Inc., a general corporation. Dr. Kelley was also the president of this corporation. A second corporation was called Common Sense Chiropractic, P.A., a professional corporation with Dr. Kelley

as president. This corporation was organized to engage in the practice of chiropractic, and for that purpose employed Dr. Kelley. A third corporation was called Central Kansas Family and Sports Medicine, P.A., a professional corporation with Respondent as president. Dr. Kelley was not a shareholder, but was the secretary for this corporation. This corporation employed Respondent and Dr. Kelley to provide professional services. Both Common Sense Chiropractic and Central Kansas Family and Sports Medicine had a contract for services with D & M Management, and later with Professional Medical Management Services, Inc. under which D & M Management performed all management services. These three corporations were all located in the same office.

6. Respondent was present in the Central Kansas Family and Sports Medicine clinic office one or two days a week. Dr. Kelley worked in that office as an employee five days a week. He apparently was also present in the office in his capacity as an employee of Common Sense Chiropractic, though the boundary between these two roles was blurred. His employment duties with Central Kansas Family and Sports Medicine included seeing patients in Respondent's absence and administering injections. This included giving tetanus and flu shots upon request. This arrangement was established by a verbal agreement.

7. Dr. Kelley lacks authority to act as an extender of Respondent in Respondent's absence. He is not registered by the Board as a physician assistant, he will not be eligible for licensure under the new physician assistant licensure act, which will become effective in February 2001. Dr. Kelley is not licensed as a nurse in an advanced role and is not a registered professional nurse. His license to practice chiropractic does not allow him to execute a medical regimen. As provided at K.S.A. 65-2871, a Doctor of Chiropractic may not prescribe or administer medicine or drugs in materia medica. Dr. Kelly would therefore be in no greater position to provide professional

medical services than any other lay person. His only authority to administer the drugs as described would require Respondent's order and supervision. This order and supervision may not be so broad that it would purport to allow the exercise of medical judgment and discretion. Yet at least three days out of the week during which time Central Kansas Family and Sports Medicine provided professional medical services, Respondent was absent from the office leaving Dr. Kelly in charge. The testimony indicates that Dr. Kelley administered the injections during Respondent's absence. The Presiding Officer concludes that under the arrangement by which Dr. Kelley was allowed by Respondent to administer injections, some upon the patient's request, Respondent improperly delegated the practice of medicine and surgery to a person who is not qualified by licensure, and as provided by K.S.A. 1999 Supp. 65-2837(b)(26) has engaged in unprofessional conduct.

8. The testimony and exhibits demonstrate that while on paper there were distinct divisions between the structure and the function of each corporation, in reality the business and professional boundaries were faint between the entities as well as the involved individuals. The Presiding Officer finds that Dr. Kelley had and exerted a great amount of control over Respondent's professional practice, a matter which Respondent did not take necessary steps to prevent.

9. Approximately two weeks after Respondent had entered into the settlement agreement with the Board as discussed above he was involved in a single-vehicle motorcycle accident and (confidential) The date of the incident was February 25, 1999. (confidential)
(confidential)

10. (confidential)
(confidential) He was absent from the state between March 6, 1999 and May 25, 1999.

11. Prior to leaving (confidential) Respondent met with Dr. Kelley. This meeting occurred over lunch time on March 4, 1999. Though there is disagreement about what was expressed between Dr. Kelley and Respondent during the meeting, the Presiding Officer finds that Respondent did leave the impression that Dr. Kelley was to take some responsibility for Respondent's medical patients. During that meeting time, Respondent wrote prescription orders for drugs for specific patients and gave these written prescription orders to Dr. Kelley. Dr. Kelley was to see those patients when they came in, and if the patient needed the drug, Dr. Kelley was to give the prescription to the patient to be filled by a pharmacist. For other patients, Respondent expected the clinic staff merely to call in orders to maintain patients' drug regimen in the same amount as they had been receiving. In all, orders for prescription drugs were given for twenty-nine patients in Respondent's absence under this arrangement. The Presiding Officer concludes that some degree of medical discretion was delegated to a person who is not authorized to practice medicine and surgery.

12. Dr. Kelley did more than just hand out pre-written prescription orders. He actually forged Respondent's name on new prescription orders. These orders were provided not only to Respondent's existing patients, but also to at least twelve new patients. The Presiding Officer does not find that Respondent specifically authorized Dr. Kelley to forge prescription orders. Rather it appears that Dr. Kelley acted on his own when forging Respondent's name on the prescription orders, and for this he has been disciplined by the Board. This does not completely relieve Respondent of responsibility. Respondent discovered these forgeries upon his return to the clinic, though this discovery was not immediate. His own testimony reveals that he rebuked Dr. Kelley for this when discovered. Yet the record does not disclose that Respondent fulfilled his duty to report

this to the Board. Rather, the record discloses that Respondent continued the business relationship with Dr. Kelley for an additional five or six months.

13. Even though Respondent did not authorize the forgery of prescription orders, the Presiding Officer finds that at the time of the March 4, 1999 meeting, Respondent did leave Dr. Kelley with the expectation that he was to continue management of the medical patients until Respondent returned. At that time, Respondent expected to be away for only a couple of weeks. Respondent did not take necessary steps to find coverage of the patients' medical care. In that regard, Respondent abandoned his patients by leaving them in the care of a person whom Respondent knew was neither qualified nor authorized to provide medical treatment.

14. Respondent's DEA registration expired April 30, 1999. Respondent stipulated that he continued to write prescriptions for controlled substances after that date, but that he discontinued writing for controlled substances after October 1999. Respondent's actions of writing orders for controlled substances without authority was not inadvertent. Judi Watterson, an agent with the Drug Enforcement Administration, notified Respondent by telephone on May 20, 1999 that the DEA registration had expired. She also met with him personally on July 22, 1999 and notified him that he was not authorized to continue writing orders for controlled substances.

15. The Presiding Officer concludes that Respondent's actions constitute unprofessional conduct. As indicated above, Respondent abandoned his patients to the unqualified and unauthorized care of Dr. Kelly. Additionally, Respondent entered into a business arrangement in which he effectively lost control of the patients' medical management to a person who is not authorized to practice medicine. Respondent has thus delegated professional responsibilities to a person who is not qualified by licensure to perform those professional medical services. This is

unprofessional conduct as defined at K.S.A. 1999 Supp. 65-2837(b)(26) and (30).

16. The Presiding Officer also concludes that Respondent committed acts that constitute grounds for discipline by the Board when he willfully violated the February 1999 agreement and order. (confidential)
(confidential)

17. (confidential)
(confidential)

IT IS, THEREFORE, ORDERED that Respondent is censured for engaging in acts of unprofessional conduct, as described in this order.

IT IS FURTHER ORDERED that the prior limitations upon Respondent's license remain in effect, including having a female monitor present during his examination and treatment of female

patients; keeping a daily log of appointments with female patients; abstaining from social contact with female patients; (confidential)

(confidential)

all of which are more specifically

stated in the Stipulation and Agreement and Enforcement Order of February 15, 1999.

IT IS FURTHER ORDERED that (confidential)

(confidential)

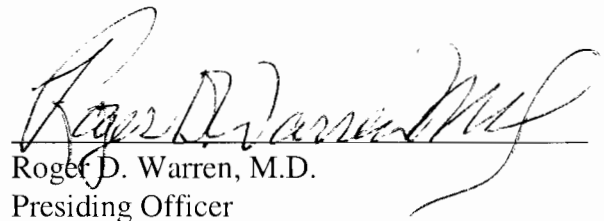
IT IS FURTHER ORDERED that the limitations upon Respondent's license stated above shall remain in effect for at least five years from the date of this order. At the end of the five year period, Respondent may request the termination of the limitation.

IT IS FURTHER ORDERED that the costs of this matter should be assessed against Respondent as allowed by statute. Petitioner may submit a motion itemizing allowable costs before the full Board.

PLEASE TAKE NOTICE that this is an Initial Order. A party may seek review of an Initial Order by filing a petition for review with the Executive Director of the Board within 15 days following service of the Initial Order. Service of a petition must be sent to the Executive Director at 235 S. Topeka Blvd., Topeka, Kansas 66603. If no petition for review is filed, and if the Board does not on its own motion give notice that it will conduct review, the Initial Order becomes effective as a Final Order without additional notice 30 days following service of the Initial Order.

Dated this 30th day of August, 2000.

Kansas State Board of Healing Arts


Roger D. Warren, M.D.
Presiding Officer

Certificate of Service

I certify that a true copy of the foregoing order was served this 31st day of June, 2000 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to the following:

D. Lee McMaster, Esq.
105 S. Broadway, Ste. 540
Wichita, Kansas 67202-4220

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

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