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JUN 25 2013

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)
Aleida Smith, P.A.)
Kansas License No. 15-00840)

Docket No. 13-HA 00115

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese Hays, Litigation Counsel ("Petitioner"), and Aleida Smith, P.A. ("Licensee"), *pro se*, and move the Board for approval of a Consent Order affecting Licensee's license to practice as a physician assistant in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is: **Confidential**
Derby, KS 67037.
2. Licensee is or has been entitled to engage in the practice as a physician assistant in the State of Kansas, having been issued License No. 15-00840 on approximately December 15, 2004. Licensee's license 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 as a physician assistant. K.S.A. 65-28a01 *et seq.* and K.S.A.65-28a02.
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 and 65-28a12. Upon approval, these stipulations shall

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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 the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. 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.
7. 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.
8. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-28a05, to take action with respect to Licensee's license under the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01, *et seq.*

9. Licensee provided medical care to at least four separate (4) patients on at least nine (9) separate occasions. These patient encounters include, but are not limited to, the following:
- a. On or about October 2, 2009, Licensee prescribed Patient 1 Phenergan 25 mg for complaints of watery diarrhea and vomiting.
 - b. On or about January 6, 2010, Licensee prescribed Patient 1 an inhaler due to the fact it was empty, it was after normal operating hours of his PCP's office, and he was experiencing shortness of air and wheezing.
 - c. On or about January 18, 2010, Licensee prescribed Patient 1 Zofran 4 mg oral for nausea/vomiting, gastroenteritis.
 - d. On or about July 13, 2010, Licensee prescribed Patient 1 Cipro for "frequent urination, dysuria, etc."
 - e. On or about July 26, 2010, Licensee prescribed Patient 1's son-in-law Bactrim DS after reviewing pictures sent via cellular phone of a large abscess/cellulitis.
 - f. On or about August 14, 2010, Licensee prescribed Patient 1's grandson Bactrim to treat cellulitis of the right knee.
 - g. On or about August 23, 2010, Licensee prescribed Cipro to Patient 1 for complaints of continued prostate problems, dysuria, and erectile dysfunction. Licensee advises that she provided the prescription because Patient 1 did not have time to go to his PCP. She also advised that she referred him to his urologist and his PCP for another repeat CT as recommended by CT and PCP several months prior.

- h. On or about September 3, 2010, Licensee prescribed Patient 1's son Bactrim to treat an upper respiratory infection and a skin infection that Patient 1's son told her about via a phone call and text.
 - i. On or about September 16, 2010, Licensee prescribed Patient 2, who is a grandson of Patient 1, Bactrim SS after Patient 2's mother called Licensee describing Patient 2's complaint of an abscess on the patient's calf.
10. Licensee had a personal dating relationship with Patient 1 from August 2008 to September 25, 2010. This personal dating relationship did not initiate from a preexisting patient/physician assistant relationship.
11. Licensee did not properly document her patient encounters with the above patients.
12. 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 Physician Assistant Licensure Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
13. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-28a05
14. Licensee violated K.S.A. 65-28a05(a), as set forth in K.A.R. 100-28a-8(u) by failing to keep written medical records that accurately describe the services rendered to the above patients.

15. Licensee violated K.S.A. 65-28a05(a), as set forth in K.A.R. 100-28a-8(r) by committing conduct likely to harm the public when she failed to keep proper written medical records.
16. Licensee violated K.S.A. 65-28a05(a), as set forth in K.A.R. 100-28a-8(e) by repeatedly violating the physician assistant licensure act when she failed to keep proper written medical records for numerous patient encounters.
17. Pursuant to K.S.A. 65-28a05, the Board may revoke, suspend, limit, or censure Licensee's license.
18. 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.
19. All pending investigation materials in KSBHA Investigation number 11-00210 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 27. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
20. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice as a physician assistant in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board

acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01 *et seq.*

21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Physician Assistant Licensure 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 Physician Assistant Licensure Act.
22. 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 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.

23. 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.
24. 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.
25. 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.
26. 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.
27. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
28. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

29. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
30. Licensee shall obey all federal, state and local laws and rules governing the practice of as a physician assistant 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.
31. 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. 65-28a12. 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.
32. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
33. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following remedial action on her license to engage as a physician assistant:

EDUCATION

34. Licensee shall attend and successfully complete the continuing education course for Effective and Efficient Methods of Documenting Patient Care, by The Center for Personalized Education for Physicians (CPEP), at her own expense. Licensee shall provide proof of successful completion by October 4, 2013.

35. These hours shall be in addition to those hours required for renewal of licensure.
36. Within ten (10) days of the approval of the Consent Order, Licensee shall contact CPEP, 7351 Lowry Blvd, Suite 100, Denver, Colorado 80230, (303) 577-3232, fax: (303) 577-3241, to schedule her attendance to the above course.
37. Licensee shall travel to course location and complete the course as scheduled at her own expense.

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 24th day of June, 2013.

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

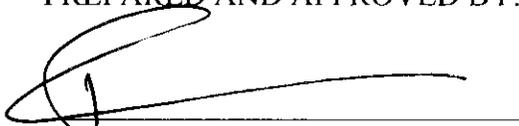

Kathleen Selzler Lippert
Executive Director


Date

4 Apr 2013
Aleida Smith, P.A.
Licensee

4 Apr 2013
Date

PREPARED AND APPROVED BY:



Reese Hays, #22700
Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-0961

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:

Aleida Smith, P.A.
Licensee
Confidential
Derby, KS 67037

And the original was hand-filed with:

Kathleen Selzler 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:

Reese Hays
Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Cathy A. Brown
~~*Aleida Smith*~~
~~3/04/13~~

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