FILED
MAY 21 2019
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
TARA S. ZELLER, D.C.	)	**Docket No. 19-HA00041**
	)	
Kansas License No. 01-05852	)	
	)	

CONSENT ORDER

COMES NOW, Petitioner, the Kansas State Board of Healing Arts ("Board"), by and through Jared T. Langford, Associate Litigation Counsel, and Susan R. Gering, Deputy Litigation Counsel, and Tara S. Zeller, D.C. ("Licensee"), by and through her attorneys, Brian J. Niceswanger and Stephanie A. Preut of Evans & Dixon, LLC (collectively, the "Parties"), and move the Board for approval of a Consent Order affecting Licensee's license to practice chiropractic in Kansas. The Parties stipulate and agree to the following:

RELEVANT FACTS

1. Licensee's last known mailing address to the Board is: [redacted] Overland Park, Kansas 66213.

2. Licensee is entitled to practice chiropractic in Kansas, having been issued License No. 01-05852 on approximately July 7, 2017. Licensee's license is currently active.

3. On February 6, 2017, Licensee and her business partner, Jason A. Fechter, D.C., formed IV Nutrition, LLC ("IV Nutrition"), a Kansas limited liability company whose purpose was to "provide intravenous and supplement nutrition treatments."

4. On or about January 5, 2018, Licensee entered into an agreement with Angela J. Garner, M.D. and Dr. Fechter, whereby Dr. Garner gained an ownership interest in IV Nutrition.

5. From as early as January 5, 2018, to the present date, IV Nutrition operated a medical clinic (the "Clinic") providing medical care and treatment in Overland Park, Kansas. Dr. Garner was the medical director and supervising physician for all the Clinic's staff. Licensee claimed to be working "under the oversight of Dr. Angela Garner in the role of Clinic Director."

6. On February 27, 2018, Dr. Garner signed a document entitled, "Clinical Procedures Protocol," wherein Dr. Garner ostensibly delegated medical care and treatment to the Clinic staff, including Dr. Zeller, as well as providing instructions and protocols for carrying out such care and treatment.

7. In [redacted] 2018, the Clinic provided care and treatment to Patient 1, [redacted] whose history included [redacted] She was taking [redacted]

8. On [redacted] 2018, Patient 1 received an infusion containing Magnesium, Calcium, Tryptophan, Taurine, Glycine, Inositol, Vitamins B5 and B6 and Vitamin C over a 50-minute period. Patient 1 was also given an intramuscular ("IM") injection containing Methionine, Inositol, Choline, L-Carnitine, and Vitamin B12.

9. On [redacted] 2018, Patient 1 received an infusion containing Magnesium, Glycine, Taurine, Tryptophan, Inositol, and Vitamins B5 and B6, over a 10-minute period. She was also given the IM injections, containing Inositol, Vitamins B5, B6, and B12.

10. In [redacted] 2018, the Clinic provided care and treatment to Patient 2, [redacted] whose history included [redacted] He was taking [redacted]

11. On [redacted] 2018, Patient 2 received an infusion containing Zinc, Vitamin C, Glycine, Proline, Lysine, Biotin, and Vitamins B1, B2, B3, B5, B6, and B12 over a 35-minute period. A handwritten notation of "Plus" is recorded, but the identity of any additional medication

is not specified. Patient 2 was also given an IM injection, which is recorded and scribbled over, and an illegible word is handwritten below it. Patient 2 does appear to have been given an IM injection, as the site was recorded as the left deltoid.

12. In [redacted] 2018, the Clinic provided care and treatment to Patient 3, [redacted] whose history included [redacted] The only medication Patient 3 listed as taking was [redacted]

13. On [redacted] 2018, Patient 3 received an IV infusion containing Zinc, Vitamin C, Magnesium, Glycine, Proline, Lysine, Biotin, and Vitamins B1, B2, B3, B6, and B12; it was given over a 20-minute period. A handwritten "+" is added after the name, but no addition to this infusion is specified. She was also given an IM injection containing Vitamin B12. Her pulse on this date was recorded as 132.

14. On [redacted] 2018, Patient 3 received an IV infusion containing Manganese, Selenium, Zinc, Chromium, Copper, Vitamin C, Magnesium, Calcium, and Vitamins B1, B2, B3, B5, B6, and B12. A handwritten "+" is added after the name, but no addition to this infusion is specified. She was also given the IV infusion containing Calcium, Magnesium, Manganese, Selenium, Zinc, Chromium, and Copper. An additional 10cc of Magnesium was added to the infusion. A notation of "no charge per Tara for Mag" was made. Both infusions were completed in a 40-minute period. Her pulse on this date was noted to be 115.

15. Licensee treated patients with IV fluids, and IV and IM medications, which constituted medical therapies under the supervision of Dr. Garner and following the policies and procedures as well as established orders provided by Dr. Garner. Licensee educated the Clinic's staff as to which infusions and injections to give and which additives could be mixed with the IV solutions under the established orders and policies and procedures. Licensee inserted IV catheters

and started IV infusions herself on rare occasion under the supervision of medical staff. Licensee consulted with patients and recommended, based on their reported symptoms and goals, which infusions to give.

16. The Board has evidence that on August 28, 2018, Dr. Garner informed Board staff that she did not delegate tasks to Licensee because Licensee was a chiropractor, and thus had a limited role. Dr. Garner denied any knowledge of Licensee mixing IV solutions or injectable solutions. Dr. Garner also denied any knowledge of Licensee starting IVs or performing intramuscular injections.

17. Dr. Garner stated in her November 15, 2018, affidavit: "I advised the Board staff that I did not delegate tasks to Dr. Zeller because she was a chiropractor, but she had only a staff function. While I did not have knowledge of Dr. Zeller mixing IV solutions or injectable solutions, or tasks which are delegated by me to the staff, it would have been acceptable for her to conduct these activities under my supervision."

18. Each of the IV infusions given to Patient 1 and Patient 3 contained magnesium, which is considered a "High Alert Medication" by the Institute of Safe Medical Practices because of its "heightened risk of significant patient harm." Even in documented magnesium deficiency, "oral replacement therapy should be given to asymptomatic patients whenever the oral route of administration is available and oral magnesium supplements can be tolerated". IV magnesium is indicated to replace magnesium in cases of severe deficiency, especially with signs of tetany. The rate of infusion should not exceed 150mg/minute, as fatal cardiac arrest and respiratory paralysis can occur, particularly when it is infused rapidly.

19. Excessive IV fluids can cause fluid overload and heart failure. The Clinic's own consent form lists heart disease as a contraindication to IV therapy. Despite her [redacted]

[redacted] Patient 1 was given IV infusions without prior in person consultation with Dr. Garner, the medical director and supervising physician. Dr. Garner reviewed Patient 1's chart retrospectively only.

20. On [redacted] 2018, Patient 3 was given 3.6 grams of magnesium in a total of 765cc over a 40-minute period.

21. The Clinic's medical records for Patients 1, 2, and 3 did not meet the standards for an adequate medical record.

VIOLATIONS OF THE HEALING ARTS ACT

22. The Board has received information and investigated the same, and has reason to believe there may be grounds under K.S.A. 65-2836(b), K.S.A. 65-2836(g), K.S.A. 65-2837(a)(2), K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(25), and K.A.R. 100-24-1, to take action on Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

23. The aforesaid acts, if proven, violated K.S.A. 65-2836(b) in that Licensee committed an act or acts of unprofessional and/or dishonorable conduct or professional incompetency, that if continued would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined by K.S.A. 65-2837, and amendments thereto.

24. The aforesaid acts, if proven, violated K.S.A. 65-2836(g), in that Licensee unlawfully invaded the field of practice of any branch of the healing arts in which she was not licensed to practice.

25. The aforesaid acts, if proven, violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(2), in that Licensee has committed repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.

26. The aforesaid acts, if proven, violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

27. The aforesaid acts, if proven, violated K.S.A. 65-2836(k), in that Licensee violated K.A.R. 100-24-1 by failing to maintain an adequate record.

28. Under K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license, and under K.S.A. 65-2863a, the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

29. 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.

DISCIPLINE: PUBLIC CENSURE

30. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to be publicly censured by the Board.

31. Licensee is hereby issued a public censure.

EDUCATION: ETHICS COURSE

32. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to attend and successfully complete the continuing education course entitled "PROBE: Ethics & Boundaries Program" ("PROBE"), put on by the Center for Personalized Education for Professionals ("CPEP") on or before October 13, 2019, unless otherwise approved.

33. CPEP can be contacted at 720 S. Colorado Blvd., Suite 1100-N, Denver, Colorado 80246 - Phone: 303-577-3232 - Fax: 303-577-3241 or at www.cpepdoc.org.

34. On or before July 15, 2019, unless otherwise approved, Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend PROBE.

35. Licensee shall provide proof of successful completion of PROBE to the Compliance Coordinator within thirty (30) calendar days of successfully completing PROBE.

36. All costs associated with PROBE shall be at Licensee's own expense to include, but not be limited to, the costs of the seminar, the cost of travel to and from the seminar, and the cost of accommodations while attending the seminar.

37. Any hours earned towards continuing education shall be in addition to those continuing education hours required for renewal of licensure.

38. Once completed, Licensee may request a Journal Entry be issued showing satisfaction of this provision of her Consent Order with the Board.

39. All documentation required pursuant to this Consent Order shall be submitted by sending the same to:

Kansas Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level Suite A
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

LIMITATION: IV ADMINISTRATION

40. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby agrees not to mix IV bags and/or administer IVs in Kansas, regardless whether these tasks are delegated to Licensee by a supervising physician. While Licensee agrees to this limitation, it remains Licensee's position that she is legally entitled to perform these tasks.

41. Any request for termination or modification of this provision shall require consideration by the full Board upon the filing of a proper motion by Licensee.

CORPORATE PRACTICE RESTRICTION AND COMPLIANCE WITH THE PROFESSIONAL CORPORATION LAW OF KANSAS

42. Recognizing that a general corporation cannot lawfully practice medicine in Kansas, and in lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees that within thirty (30) days of this Consent Order's effective date, either: (i) Licensee must cause IV Nutrition, or any substantially similar business entity Licensee owns or will own, entirely or partially, to be owned and organized in compliance with Kansas law (to include organization as a professional corporation under the professional corporation law of Kansas); or (ii) Licensee must divest herself entirely of any ownership interest in IV Nutrition.

43. Licensee shall provide proof of compliance with this provision within thirty (30) days of this Consent Order's effective date to the Board's Compliance Coordinator at the following address:

Kansas Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level Suite A
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

44. Upon successful completion of this provision, a Journal Entry of compliance shall be issued by the Board.

MISCELLANEOUS PROVISIONS

45. The Board is the sole and exclusive administrative agency of the State of Kansas authorized to regulate the practice of chiropractic in Kansas.

46. 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.

47. The Kansas Healing Arts 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. 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.

48. The terms and conditions of the Consent Order are entered into between the 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.

49. All pending investigation materials in KSBHA Investigations Nos. 18-00898 and 19-00156 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. The parties agree that this Consent Order fully and completely resolves all factual and legal allegations which may be raised based on these investigations, except any potential allegations reserved by this Consent Order's paragraph 62. Disciplinary Panel No. 33 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

50. 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 chiropractic Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether 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 Healing Arts Act, K.S.A. 65-2801 *et seq.*

51. 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.

52. 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 arising out of KSBHA Investigations Nos. 18-00898 and 19-00156, 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 investigations 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, arising out of KSBHA Investigations Nos. 18-00898 and 19-00156, 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.

53. 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.

54. 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.

55. 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. 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.

56. 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.

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

58. Licensee acknowledges this Consent Order has been entered into freely and voluntarily.

59. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

Kansas Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level Suite A
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

60. Licensee shall obey all federal, state and local laws and rules governing the practice of chiropractic in 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.

61. 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.

62. Recognizing that all IV infusions carry certain known risks, including phlebitis, extravasation, and infections, by entering into this Consent Order, the Board is explicitly making no finding regarding whether IV infusion generally meets the standard of care for hydration and nutrition.

63. This Consent Order constitutes **public disciplinary action.**

64. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

65. Board member Dr. Myron Leinwetter, DO, is recused from consideration of this Consent Order.

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 21st day of May, 2019.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

#23266

For **Robin Durrett, D.O.**
President
Presiding Officer

Date

Tara S. Zeller, D.C.
Licensee

5/15/19
Date

PREPARED AND APPROVED BY:

Jared T. Langford, #25639
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ATTORNEYS FOR LICENSEE

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 21st day of May, 2019, to the following:

Brian J. Niceswanger
Stephanie A. Preut
Evans & Dixon, LLC
82 Corporate Woods
10851 Mastin Boulevard, Ste. 900
Overland Park, KS 66210
ATTORNEYS FOR LICENSEE

Tara S. Zeller, D.C.
[redacted]
Overland Park, KS 66213
LICENSEE

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:

Susan R. Gering, Deputy Litigation Counsel
Jared T. Langford, Associate 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