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KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
Martha S. Byers, M.D.	)	
	)	**KSBHA Docket No. 12-HA00092**
Kansas License No. 04-18704	)	
	)	

FINAL ORDER TERMINATING MONITORING AND ORDER OF CONTINUANCE ON LICENSEE'S REQUEST TO TERMINATE LIMITATION

NOW, on this 12th day of August 2016, comes before the Kansas State Board of Healing Arts ("Board") the Request for Termination of Consent Order filed by Martha Byers, M.D. ("Licensee"). Licensee appears in person and though her counsel, Mark Stafford. Jane Weiler, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board hereby enters this Final Order following a conference hearing in the above-captioned matter. After reviewing the agency record, receiving evidence, hearing the testimony and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee is presently licensed to practice medicine and surgery in the State of Kansas, having been issued License No. 04-18704.

2. On August 20, 2001, Licensee entered into a Stipulation and Agreement and Enforcement Order ("2001 Stipulation") with the Board as a condition of obtaining an active license designation, due to Licensee's absence from active practice for over 10 years.

3. Under the terms of the 2001 Stipulation, Licensee's scope of practice was limited to the areas of well-woman care and cosmetic medicine including, but not limited to, well-patient checkups and routine pap smears, photo rejuvenation of the face and neck, laser hair removal, laser vein and telangiectasia therapy, microdermabrasion and administering Botox injections, and practicing under the general supervision and direction of Howard Ellis, M.D. and James Mirabile, M.D.

4. On February 14, 2013, Licensee entered into a Consent Order ("2013 Consent Order") with the Board to resolve allegations that Licensee had violated the 2001 Stipulation. The 2013 Consent Order replaced the 2001 Stipulation.

5. The 2013 Consent Order removed the requirement for Licensee's practice to be supervised, but limits Licensee's scope of practice to medical spa and cosmetic medicine, including laser procedures and injectable products.

6. The 2013 Consent Order further requires that:

a. Licensee have 25% of her medical charts reviewed once a quarter for at least one year by a Board-approved physician to determine whether Licensee's treatment of patients was within the practice limitation specified in the 2013 Consent Order, and whether Licensee's treatment met the standard of care. The reviewing physician is required to submit quarterly reports to the Board for 12 quarters.

b. Licensee shall submit on a yearly basis, a letter with her annual renewal application which describes her current practice, the types of services being provided, and the setting in which Licensee practices.

c. Licensee pay the Board's costs of the proceeding in the amount of $500.00.

d. The Board will ascertain Licensee's level of clinical skills and competency in its consideration of any request for a full and unrestricted license.

7. On June 24, 2016, Licensee filed a Request for Termination of Consent Order. In her Request, Licensee asserts that the continued limitation of her license negatively impacts her ability to obtain medical licensure in other states and obtain board certification. She points to her successful completion of two examinations toward board certification and her designation as a "Master Injector" by the drug company Allergan as evidence of her excellence in her specific area of practice. Lastly, Licensee asserts that she does not intend or desire to practice beyond her capabilities.

8. On June 29, 2016, Associate Litigation Counsel filed a "Response to Petition to Terminate Monitoring" with attached exhibits that include the quarterly reports from Licensee's chart reviewer and Licensee's annual letters to the Board that accompanied Licensee's renewal applications. The Response indicates that Licensee had fully complied with the 2013 Consent Order requirements.

9. The Board finds that Licensee has satisfactorily demonstrated compliance with the terms of the 2013 Consent Order and competence in her limited scope of practice to warrant termination of the monitoring requirement.

10. The Board finds that Licensee has not provided sufficient evidence of her current clinical competency to warrant an unrestricted license which would authorize an unlimited scope that includes areas in which Licensee has not practiced in excess of 20 years. Even though Licensee insists that she will not practice in areas in which she is not competent, the Board's responsibility to protect patients requires assurance that Licensee meets a minimum standard of clinical competency beyond her current restricted scope.

11. The Board considers a reentry evaluation performed by the Center for Personalized Education for Physicians ("CPEP") to be a reliable assessment tool to determine a licensee's current clinical competency.

12. During the conference hearing, Licensee's counsel suggested that Licensee might take the Special Purpose Examination ("SPEX") administered by the National Board of Medical Examiners.

13. The SPEX tests current knowledge for the general practice of medicine. Based on the specific facts of this matter, the Board considers the SPEX to be a satisfactory assessment tool to determine Licensee's current clinical competency.

14. The Board concludes that Licensee may demonstrate her present clinical competency through successful passage of the SPEX or through a re-entry evaluation performed by CPEP.

15. Should Licensee select a re-entry evaluation by CPEP, the subsequent evaluation report shall be presented to the full Board in conjunction with a request for hearing by Licensee.

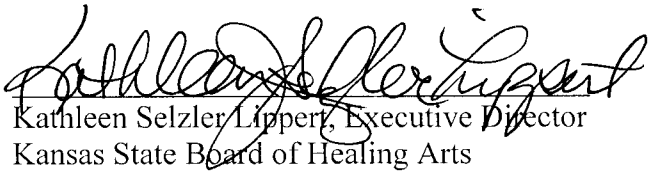
16. Should Licensee select the SPEX, the subsequent score report shall be presented to the full Board in conjunction with a request for hearing by Licensee.

17. The portion of the conference hearing on Licensee's Motion to Terminate Consent Order involving Licensee's request to terminate her scope of practice limitation shall be continued until such time as Licensee requests further proceedings, or until Friday, June 9, 2017, whichever occurs first.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS, that the MONITORING requirement in the 2013 Consent Order is hereby terminated.

IT IS FURTHER ORDERED that the portion of the conference hearing on Licensee's Motion to Terminate Consent Order involving Licensee's request to terminate her scope of practice LIMITATION shall be CONTINUED until such time as Licensee requests further proceedings before the Board or until June 9, 2017, whichever occurs first.

IT IS SO ORDERED THIS 9th DAY OF SEPTEMBER, 2016, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **Final Order Terminating Monitoring and Order of Continuance on Licensee's Request to Terminate Limitation** was served this 9th day of September, 2016, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Martha Byers, M.D.
Confidential

Overland Park, KS 66221

Mark Stafford
Simpson, Logback, Lynch, Norris, P.A.
107 SW 6th Ave., Suite 210
Topeka, KS 66603

And a copy was delivered to:

Jane Weiler, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.

Cathy A. Brown

Cathy Brown, Executive Assistant