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BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of JOSEPH P. CLARK, P.A. Kansas License No. 15-00990

KSBHA Docket Nos. 14-HA00103 14-HA00123

FINAL ORDER GRANTING STAY OF SUSPENSION UNDER THE TERMS OF CONSENT ORDER AND IMPOSING ADDITIONAL PROBATION REQUIREMENTS

NOW this 9th day of October, 2015, comes on for conference hearing before the Kansas State Board of Healing Arts (Board), the Motion of Joseph P. Clark, P.A. ("Licensee") to Stay Suspension and for Reinstatement Pursuant to Consent Order. Licensee appears in person, and by and through his counsel, Mark Lynch of Simpson, Logback, Lynch, Norris, P.A. Reese Hays, 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. 65-28a01, 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, hearing the arguments of the parties, hearing the testimony of Confidential Confidential and Licensee, considering the admitted exhibits, and otherwise being duly advised in the premises, the Board makes the following findings, conclusions and order:

- 1. On or about August 15, 2014, Licensee entered into a Consent Order with the Board to resolve allegations in a pending disciplinary petition as well as a response in

opposition to Licensee's application for change of his license designation from inactive to active status.

2. The disciplinary petition and response in opposition to application alleged multiple violations of the Physician Assistant Practice Act related to Licensee's diversion of morphine that was intended for patients and **Confidential**

**Confidential**

Additionally, Licensee's absence from active practice as a physician assistant since approximately February of 2012, raised concern about his current ability to competently practice medicine.

3. The Consent Order suspends Licensee's license to practice as a physician assistant for a period of no less than three (3) years, but allows Licensee to petition the Board for a stay of that suspension after a period of six (6) months. As part of the terms and conditions of the Consent Order, Licensee agreed that he will be required to show by clear and convincing evidence that he is sufficiently rehabilitated under the factors set forth in *Vakas v. Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), to justify staying the suspension of his license.

4. The Consent Order also provides that if the suspension is stayed, Licensee will be subject to probationary terms that include limitations on Licensee's controlled substance prescribing authority and a requirement to obtain a clinical competence assessment by the Center for Personalized Education for Physicians ("CPEP") and follow all resulting recommendations. **Confidential**

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Finally, the Consent Order assessed the costs of the agency's proceedings in this matter to Licensee.

5. In August of 2014, Licensee paid all the costs of the proceeding that were assessed to him in the Consent Order.

6. In June of 2014, prior to the entry of the Consent Order, Licensee obtained clinical skills assessment at CPEP. He was evaluated in the areas of family practice, urgent care and emergency medicine. Confidential

Confidential

7. In March of 2015, Licensee filed a petition to stay the suspension of his license and reinstate his license to a designation of active status. Licensee presented evidence of his rehabilitation under the *Vakas* factors. In April of 2015, the Board denied the petition on the basis that Licensee did not demonstrate his current clinical competence, even in light of the additional continuing medical education he had completed. Additionally, the Board found that Licensee still did not have an adequate appreciation for the effects his conduct had on patients and the integrity of the profession.

8. On August 28, 2015, Licensee filed a new Motion to Stay Suspension and for Reinstatement Pursuant to Consent Order. In support of the Motion, Licensee offered a report from a second, abbreviated reassessment by CPEP which was completed in July of 2015, to demonstrate his current clinical competence. The reassessment only evaluated Licensee's clinical competence in the area of outpatient primary care. Confidential

Confidential

9. As evidence in support of his appreciation of the effects his prior conduct had on patients and the integrity of the profession, Licensee offered Exhibit 2, which was a personal letter in which he described Confidential details of his diversion of medication, Confidential and remorse. In the letter, Licensee specifically stated,

My disgraceful actions of diverting morphine put the lives of those I cared for at risk and brought mistrust and shame to my colleagues, the hospital and to the PA profession. I alone am responsible for destroying the covenant of honesty and trust between my patients and those who relied on me to do my sworn duty as a healthcare professional.

10. Licensee requests that the Board terminate his suspension and permit him to practice under the restrictions and requirements contained in the Consent Order in the limited area of outpatient primary care under the condition that he follow all of CPEP's recommendations.

11. Litigation Counsel for the Board filed a Response to Licensee's Motion which stressed the findings of Licensee's previous CPEP assessment and questioned Licensee's true level of remorse expressed in the personal letter. The Response requested that if the Board was inclined to stay Licensee's suspension under the terms of the Consent Order, that his license be limited to outpatient primary care and that Licensee be

required to have further remedial requirements aimed at achieving full appreciation for the wrongfulness of his conduct.

12. Generally, the *Vakas* factors used by the Board to determine the extent of a licensee's rehabilitation are as follows:

- a. The present moral fitness of the petitioner;
- b. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- c. the extent of petitioner's rehabilitation;
- d. the nature and seriousness of the original conduct;
- e. the conduct subsequent to discipline;
- f. the time elapsed since the original discipline;
- g. the petitioner's character, maturity, and experience at the time of the original [discipline]; and
- h. Petitioner's present competence in medical skills.

13. The Board evaluates a licensee's rehabilitation under the *Vakas* factors based on the subjective facts and circumstances of each case.

14. The Board concludes that Licensee has shown a satisfactory level of appreciation for the wrongfulness of his conduct and its effect on patients and the physician assistant profession. Licensee's **Confidential**

**Confidential** should continue to provide him with further insight into past actions.

Additionally, though Licensee is still working to remediate his clinical competence, the Board has been shown that Licensee has made sufficient progress to ensure that the public is protected if he is permitted to practice in a limited scope and that the completion

of the remainder of his remedial requirements and CPEP's recommendations is achievable.

15. The Board concludes that the results of the CPEP reassessment in July of 2015 do not negate findings from Licensee's previous assessment by CPEP in June of 2014. Nevertheless, the CPEP reassessment demonstrates that Licensee does possess a degree of clinical competence which will allow Licensee to safely work in a limited scope of practice as long as Licensee concurrently completes the recommendations of CPEP for remedial education and transition back into active practice.

16. The Board concludes that Licensee's successful compliance with CPEP's recommendations will be best achieved through participation in an educational intervention program administered by CPEP. While Licensee suggests during the hearing that the Board could oversee and monitor his compliance with CPEP's recommendations, the Board concludes that it lacks the particular resources and expertise to measure Licensee's progress.

17. The Board further concludes that in order to assist and support Licensee in dealing with the day-to-day stresses of re-entering practice and complying with the requirements on his physician assistant license, Licensee should have a peer mentor who can serve as a resource and provide guidance to Licensee during his transition back into active practice.

**IT IS THEREFORE ORDERED** that Licensee's Request to Stay Suspension and for Reinstatement Pursuant to Consent Order is hereby GRANTED. Upon meeting all technical requirements for a change of license designation, Licensee's physician assistant license shall be changed to ACTIVE status.

**IT IS FURTHER ORDERED** that Licensee's license is hereby LIMITED in that Licensee's scope of practice is restricted to outpatient family medicine. Upon a request to modify or terminate this limitation, Licensee shall have the burden to prove by clear and convincing evidence that he is clinically competent to practice in other specialty areas with reasonable skill and safety to patients.

**IT IS FURTHER ORDERED** that the Consent Order's terms for PROBATION, LIMITATION AND MONITORING are incorporated herein by reference and are immediately effective upon the filing of this Final Order.

**IT IS FURTHER ORDERED** that Licensee shall be subject to additional terms of PROBATION as follows:

a. Prior to engaging in any patient care activities, Licensee shall enter into an educational intervention designed and overseen by CPEP to remediate identified areas of need for his return to practice in outpatient primary care that are set forth in CPEP's Abbreviated Assessment Report dated July 8, 2015. These include, but are not limited to, an educational preceptor, point-of care experience, continuing medical education and self-study, and a course or intensive coaching from a communication professional with immediate feedback.

b. Licensee shall not engage in practice outside of any point-of-care experience that is part of his educational intervention until CPEP concludes that the point-of-care experience has been successfully completed.

c. Licensee's failure to actively participate and complete the activities included in his CPEP educational intervention shall be grounds for the Board to consider lifting the stay on the suspension of Licensee's license.

d. Within twenty (20) days of resuming patient care activities, Licensee shall identify **Confidential** a professional, peer mentor who is not Licensee's supervisor. The peer mentor shall provide support to Licensee as he transitions into active practice. The peer mentor shall be subject to the approval **Confidential** and shall report to the **Confidential** on an as-needed basis that shall be determined by **Confidential**. Discontinuation of Licensee's mentoring relationship with the peer mentor shall be subject to the approval **Confidential**.

IT IS SO ORDERED THIS 9<sup>th</sup> DAY OF NOVEMBER, 2015, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

  
Kathleen Selzler Lippert, Executive Director

#### **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, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 9<sup>th</sup> day of November 2015, a true and correct copy of the above and foregoing **FINAL ORDER GRANTING STAY OF SUSPENSION UNDER THE TERMS OF CONSENT ORDER AND IMPOSING ADDITIONAL PROBATION REQUIREMENTS** was served by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Joseph P. Clark, PA  
**Confidential**  
Lawrence, KS 66049

Mark Lynch  
Simpson, Logback, Lynch, Norris, P.A.  
107 SW 6<sup>th</sup> Avenue, Suite 210  
Topeka, KS 66603

And a copy was delivered to:

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

Katy Lenahan, Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level – Suite A  
Topeka, KS 66612

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

  
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