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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)
JOE FOUST, P.A.)
) KSBHA Docket No. 14-HA00154
Kansas License No. 15-00263)
_____)

**FINAL ORDER GRANTING
MODIFICATION OF CONSENT ORDER**

NOW on this 12th day of February, 2016, comes before the Kansas State Board of Healing Arts (“Board”) Petitioner’s Request to Review the Consent Order previously entered in this matter. Joe Foust, P.A. (“Licensee”) appears in person, and *pro se*. Jane Weiler, Associate Litigation Counsel, appears on behalf of the Respondent Agency.

Pursuant to the authority granted to Board by 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 in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving exhibits into evidence, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee is licensed to practice as a physician assistant in the State of Kansas, having been issued License No. 15-00263 in January 1988.
2. On or about June 19, 2014, Licensee entered into a Consent Order with the Board to resolve complaints of incompetency, improper prescribing, assisting in the care of a patient without consent, and failure to maintain adequate medical records.
3. The Consent Order provides, in part, that:

a. Licensee is required attend and successfully complete the in-person Medical Record Keeping Seminar offered by the Center for Personalized Education (“CPEP”) on either September 27, 2014 or December 5, 2014. Licensee was required to submit written proof of course registration by August 31, 2014;

b. Licensee have an approved prescription monitor sign off on all orders, prescriptions, distribution, and/or administering of Schedule II narcotics for at least 1 year. Licensee was required to submit the CV for a potential monitor for review and approval by the Board by July 1, 2014. Every Schedule II narcotic approved by the monitor were to be in a separate prescription log and the monitor was to submit a quarterly report which were due on the 15th of October 2014, January 2015, April 2015, and July 2015;

c. Licensee’s license is limited, in that he shall not perform any type of urological surgery. There is no defined timeframe for the limitation and Licensee must request modification or termination.

d. Licensee is required to submit a letter to the Board on June 30th and December 31st of each year attesting that he had not performed any urologic surgery during the previous 6 months.

4. On or about December 21, 2015, Licensee filed a Request to Review his Consent Order.

5. Associate Litigation Counsel presented evidence regarding Licensee’s lack of compliance with the Consent Order which included the following:

a. Licensee completed the required seminar on December 5, 2014, but he had failed to notify the Board of the date he planned to attend even after four attempts of contact by Board staff. Licensee also was late in notifying the Board of his completion of the seminar.

b. Licensee submitted the CV of his proposed prescription monitor over a month late. All of the quarterly reports were also submitted later than their due date.

c. Licensee submitted two of the three attestation letters after the submission deadline. The third letter was received on time.

6. There have been no compliance concerns regarding the limitation on Licensee's license prohibiting him from performing urological surgery.

7. Based on these concerns, Associate Litigation Counsel requested that the requirement for Licensee to have a prescription monitor remain in effect for at least one more year. Licensee did not oppose the request.

8. At the conference hearing, Licensee requested termination of the provision requiring him to send a letter every six months attesting to his compliance with the urological surgery limitation. Licensee acknowledged and agreed that he will continue to be limited and prohibited from performing urological surgery.

9. The Board finds that Licensee has completed the education required by the Consent Order, but notes that Licensee failed to notify the Board in a timely manner as was required by the Consent Order.

10. The Board finds that Licensee has been compliant with the limitation on his license and has not performed urological surgery. The Board notes that Licensee has been late in submitting two of the three required attestation letters. However the Board concludes that the attestation letter requirement can be terminated due to Licensee's overall compliance with the limitation.

11. The Board concludes that the requirement for a prescription monitor shall remain in effect for at least one year. On or after February 12, 2017, Licensee may request modification or termination of the provision which the Board shall consider.

12. All other requirements of the Consent Order shall remain in full force and effect as written.

13. **IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that the Consent Order's requirement for a prescription monitor shall remain in effect for at least one year.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that the requirement for a letter attesting to Licensee's compliance with the limitation on his license shall be **TERMINATED**.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee has satisfactorily completed the required education and shall be **DISCHARGED** from this requirement.

IT IS SO ORDERED THIS 7 ^{March} ~~FEBRUARY~~, 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, 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 a true and correct copy of the above and foregoing **FINAL ORDER GRANTING MODIFICATION OF CONSENT ORDER** was served this 5th day of ~~February~~ ^{March}, 2016, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

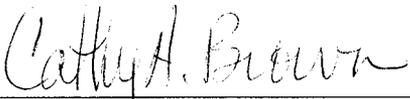
Joe Foust, P.A.
PO Box 24
Coldwater, KS 67029

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 Brown, Executive Assistant