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DEC 22 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA 00049
Gary McIntosh, P.A.	)	
Kansas License No. 15-00205	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel ("Petitioner"), and Gary McIntosh, 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 Horton, Kansas 66439.
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. 15-00205 on approximately February 2, 1984. Licensee's license is currently 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 his right to a hearing. Licensee voluntarily and knowingly waives his 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. The violations of the Kansas Physician Assistant Licensure Act arose from the care and treatment of two patients at the Riley County Jail.

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10. On or about August 10, 2010, Patient 1, a thirty-four (34) year old male, was incarcerated at the Riley County Jail. Patient 1 was incarcerated at the Riley County Jail until on or about December 23, 2010.

11. Patient 1's medical record for the time he spent incarcerated at the Riley County Jail documents a single "Medical Progress Note." That note indicates Licensee reviewed the patient's medical record on or about December 8, 2010. There is no documentation within the patient's medical record that indicates Licensee actually saw or evaluated Patient 1.

12. Licensee has alleged that he was called by an officer at the Riley County Jail during Patient 1's intake and that officer advised Licensee of Patient 1's history of depression or possibly bi-polar psychiatric history. Based upon that history, Licensee prescribed Patient 1 Risperdone 1mg daily and Citalopram 20mg daily. According to the Riley County Jail Inmate Medication Log, this prescription was first taken by Patient 1 on or about August 26, 2010.

13. The Riley County Jail Inmate Medication Log for Patient 1 has documentation indicating that Licensee changed the administration time of Patient 1's medication to being administered by jail personnel to after 1800.

14. The Riley County Jail Inmate Medication Log for Patient 1 has documentation indicating that Licensee changed the administration of Patient 1's medication to twice a day on September 28, 2010. It also has documentation indicating that Licensee decreased the medication dosages for Patient 1 back to once a day on October 30, 2010.

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15. Licensee's patient record for Patient 1 does not document Licensee performing an assessment of the patient, his reason for prescribing the medications, the medication effectiveness, or the reasons for increasing or decreasing the medications he prescribed to Patient 1.
16. Licensee failed to keep written medical records which accurately describe the care and treatment provided to Patient 1.
17. On or about August 11, 2010, Patient 2, a male inmate incarcerated at the Riley County Jail was experiencing an episode of high blood pressure. Patient 2 had a history of high blood pressure. Patient 2 was being prescribed Clonidine for his high blood pressure.
18. Riley County Jail kept a small amount of un-assigned Clonidine available for inmates in case the medication is needed for emergencies.
19. On or about August 11, 2010, Patient 3, a fifty-seven (57) year old male was currently incarcerated at the Riley County Jail. Patient 3 was being prescribed Clonidine for high blood pressure.
20. On or about August 11, 2010, Licensee was contacted by jail personnel regarding Patient 2's high blood pressure. Licensee was informed that Patient 2's Clonidine prescription was gone.
21. Licensee instructed jail personnel to take medication from Patient 3 and give it to Patient 2 since the un-assigned supply of Clonidine for the Riley County Jail was gone. The plan was to re-supply Patient 3's medication upon receipt of a new shipment of Clonidine.

22. On or about August 12, 2010, Patient 2 was again experiencing an episode of high blood pressure.
23. Licensee was contacted via telephone and asked what he wanted to do.
24. Licensee instructed jail staff to once again use Patient 3's Clonidine for Patient 2, and then to replace his pills upon receipt of a new shipment of Clonidine.
25. The Riley County Jail's un-assigned medication for Clonidine was replenished shortly after this and Patient 3's Clonidine was replaced.
26. Licensee's patient record for Patient 2 does not contain any documentation that can be attributed to Licensee. Licensee has not documented performing an assessment of the patient, his reason for prescribing the medications, the medication effectiveness, or any medical related documentation.
27. Licensee failed to keep written medical records which accurately describe the care and treatment he provided to Patient 2.
28. 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 Practice Act with respect to the allegations as stated in this Consent Order. Licensee further waives his right to dispute or otherwise contest the allegations contained in this Consent Order in any further proceeding before this Board.
29. Licensee admits that he committed the allegations stated within this Consent Order and agrees that his conduct constitutes unprofessional conduct in violation of K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28-8(u): failing to keep

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written medical records that accurately describe the services rendered to the patients in this matter.

30. Additionally, Licensee agrees that his conduct constitutes an act of professional incompetency in violation of K.S.A. 65-28a05(c) as further defined by:

    a. K.A.R. 100-28-7(b): repeated instances involving failure to adhere to the applicable standard of care to a degree that constitutes ordinary negligence, as determined by the board; and

    b. K.A.R. 100-28-7(c): a pattern of practice or other behavior that demonstrates a manifest incapacity or incompetence to perform professional services as a physician assistant.

31. All pending investigation materials in KSBHA Investigation number 11-00193 regardingLicensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 29. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

32. 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

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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.*

33. 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.

34. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releases", 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 Releases 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 Releases.

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35. 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.

36. 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.

37. 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.

38. 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.

39. Licensee Acknowledges that he has read this Consent Order and fully understands the contents.

40. Licensee Acknowledges that this Consent Order has been entered into freely and voluntarily.

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

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

42. Licensee shall obey all federal, state and local laws and rules governing the practice 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.

43. 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.

44. This Consent Order constitutes public disciplinary action.

45. The Board may consider all aspects of this Consent Order in any future matter regardingLicensee.

46. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in practice as a physician assistant:

PROBATION: EDUCATION

47. Licensee's State of Kansas License to practice as a Physician Assistant in the State of Kansas shall be placed upon Probation until such time he successfully completes each and every aspect of the continuing medical education course, to include the

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individual preceptorships, entitled "Intensive Course in Medical Record Keeping With Individual Preceptorships" put on by Case Western Reserve University.

48. More specifically, Licensee shall attend and successfully complete the "Intensive Course in Medical Record Keeping With Individual Preceptorships" at Case Western Reserve University on November 6-7, 2014. Such attendance shall be considered additional hours required above and beyond his statutory required continuing medical education hours and shall be at Licensee's own expense.

49. Licensee shall provide the course completion certificate(s) to the Compliance Coordinator, at the address provided above, no later than thirty (30) days after his receipt of said completion certificate(s).

TIMEFRAME

50. The above probationary term is automatically self-terminating upon proof of successful completion of the aforementioned continuing medical education course being served upon the compliance coordinator.

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 22 day of Dec, 2014.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

12/22/14
Date

Gary McIntosh, P.A. PA00205
Licensee

7-24-14
Date

PREPARED AND APPROVED BY:

Reese H. Hays, #22700
Litigation Counsel
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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 22nd day of December, 2014, to the following:

Gary McIntosh, P.A.
Licensee
Confidential

Horton, Kansas 66439

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 H. 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

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