

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)
)
Mark E. Wisner, P.A.)
Kansas License No. 15-00385)
_____)

KSBHA Docket No. 15-HA00065

CONSENT ORDER FOR SURRENDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Joshana L. Offenbach, Associate Disciplinary Counsel, (“Petitioner”), and Mark E. Wisner, 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 as provided to the Board is Confidential Horton, KS 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. 15-00385 on approximately February 13, 1993. Licensee’s license designation is currently federally active, having last been renewed on approximately December 19, 2014.
3. At all times relevant to the allegations set forth in this Consent Order, Licensee held a current federally active license to practice as a physician assistant in the United States government or any of its departments, bureaus or agencies.
4. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the physician assistant, specifically the practice

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

of medicine and surgery to the extent and in the manner authorized by the physician responsible for the physician assistant. K.S.A. 65-28a01 *et seq.*

5. 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.
6. The Kansas Healing Arts Act and the Kansas Physician Assistant Licensure Act are constitutional on their face and as applied in this case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. 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.
8. 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

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. The Board has received information and investigated the same, and has reason to believe there are grounds pursuant to K.S.A. 65-28a05 to take disciplinary action with respect to Licensee's license under the Physician Assistant Licensure Act, K.S.A. 65-28a01, *et seq.*

10. Confidential

11. Licensee used his position as a Physician Assistant at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas to commit sexual battery crimes against veteran patients.

12. Confidential

- 13.

14.

15.

16.

17. On or about January 27, 2015, the Board received the Complaint and Summons as filed in The District Court of Leavenworth County, Kansas.

18. The complaint contained the following allegations:

a. Count One: On or about January 8, 2014, Licensee unlawfully and without consent touched a patient with the intent to arouse or satisfy Licensee's sexual desires. A violation of K.S.A. 21-5505(a) Sexual Battery, a class A person misdemeanor.

b. Count Two: On or about January 22, 2014, Licensee unlawfully and without consent touched the same patient with the intent to arouse or satisfy the sexual

desires of Licensee. A violation of K.S.A. 21-5505(a) Sexual Battery, a class A person misdemeanor.

19. On or about January 28, 2015, Board Special Investigator II Sharon Schiesser received a letter from Licensee which stated “I am an impaired practitioner and not capable of patient care and I voluntarily surrender my current license 15-00385 permanently.” Licensee also stated, “I will not nor find myself capable of any patient contact from the date of this letter and my license should be revoked from this date forward.”
20. During the course of this investigation, the Board has received information regarding Patients One (1) through Seven (7) which included inappropriate sexual comments, inappropriate examinations, and the solicitation of sexual acts. Currently, the Board is in the process of obtaining additional information regarding Patients One (1) through Seven (7), as well as information regarding other patients. All of the patients were seen by Licensee at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas (“VAMC”).
21. **Confidential**

ε

Confidential

b.

c.

22.

a.

Confidential

23.

24.

Confidential

25.

26.

27. Confidential

28. Licensee consents to a finding that Licensee's acts, as set forth in the Complaint, Summons and this Consent Order constitute further violations of the Physician Assistant Licensure Act as set forth in K.S.A. 65-28a05.
29. Licensee violated K.S.A. 65-28a05(a) by committing repeated acts of unprofessional conduct with patients at the Dwight D. Eisenhower VA Medical Center in Leavenworth, Kansas.
30. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(e) when he willfully and repeatedly violated the physician assistant licensure act, the pharmacy act of the state of Kansas, or the uniform controlled substances act, or any regulations adopted pursuant to these acts by repeatedly sexually assaulting his patients, having inappropriate sexual contact with his patients, making inappropriate sexual comments to his patients, overprescribing to his patients and not meeting the appropriate standard of care.
31. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(g)(4) by practicing as a physician assistant without reasonable skill and safety to

patients because of Confidential as evidenced by his improper contact with his patients.

32. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(j) by prescribing controlled substances to Patient Two and Patient Four in an excessive, improper, and inappropriate manner or quantity.
33. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(r) by committing conduct likely to deceive, defraud, or harm the public when Licensee repeatedly sexually assaulted, had inappropriate sexual contact, made inappropriate sexual comments, overprescribed and did not meet the appropriate standard of care for his patients.
34. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(t) when he committed acts of sexual abuse, misconduct, and exploitation of Patients One through Seven during his practice at VAMC.
35. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(u) when he failed to keep written medical records that accurately described the services rendered to his patients, in particular Patient One.
36. Licensee violated K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(w) when he performed unnecessary testicular and genital exams and performed unnecessary contact of his patients person for no legitimate medical purpose on Patients One through Patient Seven.
37. Licensee violated K.S.A. 65-28a05(c) by committing repeated acts of professional incompetency on patients at VAMC.

38. Licensee violated K.S.A. 65-28a05(c) as further defined by K.A.R. 100-28a-7(b) by repeated instances involving Patients One through Seven in which he failed to adhere to the applicable standard of care to a degree that constitutes ordinary negligence when he repeatedly performed unnecessary genital and testicular examinations, overmedicated patients, failed to wear gloves and did not refer patients as needed.
39. Licensee violated K.S.A. 65-28a05(c) as further defined by K.A.R. 100-28a-7(c) by engaging in a pattern or practice or other behavior with Patients One through Seven that demonstrates a manifest incapacity or incompetence to perform professional services as a physician assistant when he repeatedly performed unnecessary genital and testicular examinations, overmedicated patients, failed to wear gloves and did not refer patients as needed.
40. According to K.S.A. 65-2838 and 65-28a05, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
41. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Physician Assistant Licensure Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 *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 Physician Assistant Licensure Act.
42. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

referred to as “Releasees”, 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 Releasees 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 Releasees.

43. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
44. 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.
45. 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.

46. Licensee, by signature to this document, waives any objection to the participation of the Board members 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.
47. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
48. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
49. 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.
50. This Consent Order constitutes public disciplinary action.
51. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
52. In lieu of concluding the formal proceeding currently pending, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of medicine and surgery:

SURRENDER

53. Licensee hereby **SURRENDERS** his license to practice as a physician assistant, effective upon filing of this Consent Order with the Board. Such surrender of licensure shall be treated as a revocation for all purposes, including reporting such action.
54. Licensee agrees that if he applies for reinstatement of his license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by Vakas v. The Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws and rules and regulations regarding the qualifications for licensure and reinstatement;
55. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement; and
56. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in this Consent Order will be considered as findings of fact and conclusions of law.
57. **Confidential**

Confidential

58

59

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

Confidential

60.

61. If, at the time of Licensee's request to reinstate his license, he has not been actively, clinically practicing as a Physician Assistant in another jurisdiction of the United States of America for at least the preceding two (2) years, he agrees to submit to a clinical skills assessment at his own expense at the Center for Personalized Education of Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230 80014, (303) 577-3232, fax: (303) 577-3241. The results of the clinical skills assessment shall be made available to the Board to review and consider at any and all hearings pertaining to the reinstatement of his license. The parties stipulate and agree that the Assessment Report will be admitted into evidence to be considered fully by the Board. Both parties may provide relevant information to CPEP for consideration as part of the clinical skills assessment. In order to permit the Board to provide such relevant information, Licensee shall immediately notify Board Counsel of the assessment dates once the assessment is scheduled. Licensee shall travel to CPEP and complete the assessment as scheduled, at his own expense. Licensee also agrees that any and all of CPEP's recommendations will be followed and become a part of the Board Order that reinstates his license.

62. Both parties will be provided a copy of the draft Assessment Report for their review. Licensee shall complete any necessary waiver/release so that the Board

may receive a copy of the draft Assessment Report for review. However, CPEP will issue its formal Assessment Report, in accordance with its internal policies.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Licensee's licenses is revoked effective upon the filing of this Consent Order.

IT IS SO ORDERED on this 9 day of Feb, 2015.

**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Kathleen Selzler Lippert
Executive Director

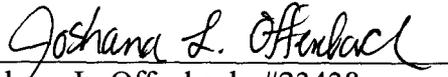
2/9/2015
Date


Mark E. Wisner, P.A.
Licensee

5 Feb. 2015
Date

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

PREPARED AND APPROVED BY:



Joshana L. Offenbach, #23438
Associate Disciplinary Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level-Suite A
Topeka, Kansas 66612
(785) 296-5940: telephone
(785) 368-7103: fax
joffenbach@ksbha.ks.gov

Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the above and foregoing **CONSENT ORDER FOR SURRENDER** on the 10th day of February, 2015, via United States mail, first-class, postage pre-paid and addressed to:

Mark E. Wisner, P.A.
Confidential
Horton, Kansas 66439

and a courtesy copy was hand-delivered to:

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

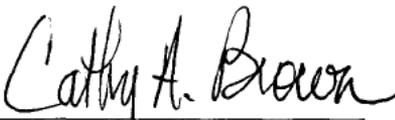
Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612

and a copy was hand-delivered to:

Joshana L. Offenbach, Associate Disciplinary Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612
785/296-5940
joffenbach@ksbha.ks.gov

and a copy was hand-delivered for filing to:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612



Consent Order for Surrender
In the Matter of Mark E. Wisner, P.A.
License No. 15-00385