

JAN 07 2021

KS State Board of Healing Arts

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

In the Matter of)	
BRIAN P. LAHEY, M.D.)	
)	Docket No.: 19-HA00005
Kansas License No. 04-33861)	
)	

**Final Order Denying Motion
to Modify the First Amended Consent Order**

On December 11, 2020, the Kansas State Board of Healing Arts (“Board”) held a video conference hearing on Dr. Lahey’s Motion to Modify the First Amended Consent Order (“Motion to Modify”). J. Todd Hiatt, Litigation Counsel, appeared by video conference to present the position of the disciplinary panel of the Board. Brian P. Lahey, M.D., appeared by video conference and counsel for Dr. Lahey, Diane L. Bellquist, appeared by video conference. This matter is conducted pursuant to the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

Procedural History

1. Brian P. Lahey, M.D. was originally issued License No. 04-33861 to practice medicine and surgery (“M.D.”) in Kansas on July 1, 2009. First Amended Consent Order, p. 1.
2. On or about April 16, 2019, the Board issued a Consent Order (“2019 Consent Order”) indefinitely suspending Dr. Lahey’s license. 2019 Consent Order, p. 5.
3. On or about April 29, 2020, Dr. Lahey filed a Motion to Terminate the Suspension of License requesting the Board to lift the suspension of his license. A conference hearing on the motion was scheduled for June 12, 2020.
4. At the June 12, 2020 conference hearing, counsel for Dr. Lahey and counsel for the disciplinary panel of the Board presented the First Amended Consent Order in lieu of Dr. Lahey’s Motion to Terminate the Suspension of License. The Board reviewed and

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approved the First Amended Consent Order that: (1) restored Dr. Lahey's Kansas M.D active license; and (2) imposed multiple limitations on his newly restored license. First Amended Consent Order – Filed June 19, 2020, pp. 1-15.

5. On or about October 27, 2020, counsel for Dr. Lahey filed his Motion to Modify. The Motion to Modify seeks to modify the type and nature of chaperoning procedures set forth in the First Amended Consent Order. Motion to Modify, p. 2.

6. Among other limitations on physician-patient professional boundaries, the First Amended Consent Order requires the following in Section 10:

- “(i) Licensee shall not treat any patients without having a chaperone present at all times. The chaperone shall be an adult and must be approved by the Board, or a designated Board staff member. Any proposed chaperone must speak with the Board or a designated board staff member and such approval shall not be unreasonably withheld.

- (i) For a period of five (5) years, the chaperone shall create and maintain a daily log identifying by a numbering system that can be correlated to the patient identity upon request by the Board or its staff all patients seen by Licensee that day and certifying the chaperone was present for all patients seen during that day. Such daily logs shall be submitted to the Board on a monthly basis and must be received by the Board on or before the 15th of the following month. Licensee is responsible for ensuring daily logs are submitted pursuant to this Consent Order” (hereafter referred to as “Section 10”). First Amended Consent Order, p. 6.

Findings of Fact

1. In support of his Motion to Modify, Dr. Lahey proposes to add new provisions to the Section 10 chaperoning requirements as follows:

- 1. Dr. Lahey will at all times be employed by either Osawatomie State Hospital or Larned State Hospital;

- 2. During the time remaining in the five-year period requiring a chaperone, Dr. Lahey's chaperone(s):

- a. Shall not be required to create and maintain daily logs;
- b. Shall not be required to be present when Dr. Lahey is engaging in the practice of medicine and surgery as part of a multidisciplinary treatment team and is doing so in the presence of fellow members of that team. At no time shall Dr. Lahey engage in direct contact with a patient or patients without being in the direct presence of a fellow team member or the chaperone;
- c. Shall create and cause to be delivered to the Board a letter setting forth Dr. Lahey's adherence to Section 10 as well as any other matters that the chaperone believes relevant or worthy of the Board's consideration. This letter shall be due by June 1 and November 1 of each calendar year for which Section 10 applies. Addendum to First Amended Consent Order, pp. 3-4.

2. The additional provisions proposed by the Addendum to First Amended Consent Order have been agreed upon by Dr. Lahey, his counsel, and counsel representing the disciplinary panel. Addendum to First Amended Consent Order, p. 1.

3. The Board finds that the additional provisions proposed by the Motion to Modify do not comply with the intent of the original chaperoning restrictions that Dr. Lahey engage in direct contact with patients only when in the direct presence of a chaperone. Proposing that Dr. Lahey will be in the "line of sight" of fellow team members when treating patients at a state hospital without the direct presence of a chaperone does not meet this requirement. Direct presence requires the chaperone to be present and have the ability to see and hear all parts of the physician/patient interaction and treatment. This does not occur when Dr. Lahey is merely in the line of sight of fellow team members with no chaperone directly present.

4. The Board finds that the modification of the chaperoning restrictions as proposed by the Motion to Modify would not adequately protect the patient population Dr. Lahey intends to serve, as there would be only line of sight observation of Dr. Lahey treating patients and no direct presence of a chaperone monitoring all interactions between Dr. Lahey and his patients.

Conclusions of Law

K.S.A. 65-2801 states the purpose of the Kansas Healing Arts act:

“Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that **the public shall be properly protected** against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.”

The First Amended Consent Order states that, except as otherwise provided, the monitoring provisions are not self-terminating and after a period of five years Dr. Lahey may request modification or termination of the provisions (p. 7). The First Amended Consent Order also provides that the consent order agreement may be modified or amended only by a subsequent document executed by both Dr. Lahey and the Board (p. 9).

The Motion to Modify does not support: (1) the license limitations on physician/patient interactions required by the First Amended Consent Order; and (2) the Board's statutory purpose and mission to properly protect the public.

Order

IT IS THEREFORE ORDERED that Dr. Lahey's Motion to Modify the First Amended Consent Order is **DENIED**.

KANSAS STATE BOARD OF HEALING ARTS



Tucker L. Poling, Acting Executive Director

NOTICE OF APPEAL 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, Parties 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 Tucker L. Poling, Acting Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Final Order Denying Motion to Modify the First Amended Consent Order was served this 7th day of January 2021 by depositing the same in the United States Mail, first-class postage prepaid, and via email, addressed to:

Brian P. Lahey, M.D.
CONFIDENTIAL

Licensee

Diane L. Bellquist
Joseph Hollander & Craft, LLC
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Attorney for Licensee

and a copy hand delivered to the office of:

J. Todd Hiatt
Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612
Todd.Hiatt@ks.gov

and the original filed with the office of the Executive Director.

Tucker Poling, Acting Executive Director
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Jennifer Cook, Legal Assistant