

BEFORE THE BOARD OF HEALING ARTS
STATE OF KANSAS

FILED
NOV 3 2004
KANSAS STATE BOARD
OF HEALING ARTS

IN THE MATTER OF)
Jackie Springer, M.D.,)
)
Respondent,)
)
v.)
)
Kansas Board of Healing Arts)
)
Petitioner,)
_____)

License No.: 4-23628
Docket No.: 04HA44

INITIAL ORDER

On the 23rd day of August 2004, this matter came on for hearing in formal proceedings upon the petition filed by the Board of Healing Arts on February 25, 2004. The first Amended Petition was filed on July 21, 2004. Stacy L. Cook, Litigation Counsel, appeared for the Board. The respondent appeared by and through Gregory W. Vleisides, Catherine A. Donnelly and in person.

The Board presented witnesses and exhibits.

Following the hearing, both parties submitted Proposed Findings of Fact and Conclusions of Law.

Background

The respondent is licensed to practice medicine by the Board. The respondent practices in Overland Park, Kansas.

Ruling on Motions

During the hearing of this matter, the respondent objected to medical records being admitted. The Presiding Officer is now ready to rule on the objections.

First, the respondent argues the board's actions should be dismissed based upon the doctrine of laches. The Presiding Officer does not have any authority to dismiss the board's action based upon the doctrine of laches. Administrative tribunals

are creatures of statute and have no common law equity powers. Unless expressly provided by statutes, this tribunal has no jurisdiction over equitable issues. See Sage v. Williams, 23 Kan. App. 2d 624 (1997) and Pork Motel. Corp. v. Kansas Department of Health and Environment, 234 Kan. 374 (1983).

With regard to patient records of Patient Number Six and Patient Number Nine, the petitioner obtained these records after serving a subpoena upon the respondent. The respondent now claims in her brief, “but the government did not seize the complete charts of those patients. At the time of the search and seizure, records of the patients who were part of the study being performed by a drug company were not in the medical office, the records seized were not full and complete on any patient.” First, there is no evidence in the record as to what other medical charts, records, or information dealing with these patients might have been. There is no evidence these records are incomplete, only an assertion. The respondent provides 3-4 pages that were not found in the exhibits. These 3-4 pages do not establish a reason to exclude the records. If these records were incomplete and that information would be exculpatory to the respondent, presumably counsel for the respondent would have obtained those records and offered them into evidence. Medical records for Patient Number Six and Number Nine are admitted.

The respondent also argues that the remaining patient records the petitioner obtained from the United States Attorney’s Office for the Western District of Missouri, should not be admitted. The respondent alleges these records were obtained illegally. First, this is again only an allegation. There is no evidence before the Presiding Officer that a federal judge for the Western District of Missouri has ruled that these records were obtained illegally. The Presiding Officer will not presume to rule on behalf of a federal court judge.

After reviewing the cases cited by both parties, the Presiding Officer concludes that even if the records were seized illegally by federal authorities, the records need not be excluded. The cases cited by the board support this position. The respondent’s argument that cases cited by the board deal with parole revocations and deportation hearings and are therefore completely different is not persuasive. Quoting from the respondent’s brief, “Parole hearings and deportation hearings do not involve rights of citizens, but rather privileges granted by the government which can be withdrawn unilaterally.” This argument overlooks the fact that there is no inherent right for any individual to practice medicine in the state of Kansas. This is a privilege that must be earned. K.S.A. 65-2801. The respondent’s objection to these records is overruled.

The objection by the respondent to the report of Dr. Richardson found in Patient Two’s chart is essentially a hearsay objection. As the parties are aware under K.S.A. 77-524, an item need not be excluded solely because of hearsay. The record concerning Dr. Richardson is admitted and the weight to be accorded that report is for the Presiding Officer to decide.

Finally, at various times, the respondent argued that under the Health Insurance Portability and Accountability Act of 1996 (HIPPA), the documents were not admissible. The Presiding Officer concludes that under federal law (45 C.F.R. 164.501), the petitioner is a health oversight agency and the Health Insurance Portability and Accountability Act does not prevent use of the records in this proceeding.

Applicable Law

1. **K.S.A. 65-2836. Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied.** A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:
 - (a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.
 - (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.
 - (c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.
 - (d) The licensee has used fraudulent or false advertisements.
 - (e) The licensee is addicted to or has distributed intoxicating liquors or drugs for any other than lawful purposes.
 - (f) The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.
 - (g) The licensee has unlawfully invaded the field of practice of any branch of the healing arts in which the licensee is not licensed to practice.
 - (h) The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The

provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.

- (i) The licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of physical or mental illness, or condition or use of alcohol, drugs or controlled substances. In determining whether or not such inability exists, the board, upon reasonable suspicion of such inability, shall have authority to compel a licensee to submit to mental or physical examination or drug screen, or any combination thereof, by such persons as the board may designate either in the course of an investigation or a disciplinary proceeding. To determine whether reasonable suspicion of such inability exists, the investigative information shall be presented to the board as a whole, to a review committee of professional peers of the licensee established pursuant to K.S.A. 65-2840c and amendments thereto or to a committee consisting of the officers of the board elected pursuant to K.S.A. 65-2818 and amendments thereto and the executive director appointed pursuant to K.S.A. 65-2878 and amendments thereto or to a presiding officer authorized pursuant to K.S.A. 77-514 and amendments thereto. The determination shall be made by a majority vote of the entity which reviewed the investigative information. Information submitted to the board as a whole or a review committee of peers or a committee of the officers and executive director of the board and all reports, findings and other records shall be confidential and not subject to discovery by or release to any person or entity. The licensee shall submit to the board a release of information authorizing the board to obtain a report of such examination or drug screen, or both. A person affected by this subsection shall be offered, at reasonable intervals, an opportunity to demonstrate that such person can resume the competent practice of the healing arts with reasonable skill and safety to patients. For the purpose of this subsection, every person licensed to practice the healing arts and who shall accept the privilege to practice the healing arts in this state by so practicing or by the making and filing of a renewal to practice the healing arts in this state shall be deemed to have consented to submit to a mental or physical examination or a drug screen, or any combination thereof, when directed in writing by the board and further to have waived all objections to the admissibility of the testimony, drug screen or examination report of the person conducting such examination or drug screen, or both, at any proceeding or hearing before the board on the ground that such testimony or examination or drug screen report constitutes a privileged communication. In any proceeding by the board pursuant to the provisions of this subsection, the record of such board proceedings involving the mental and physical examination or drug screen, or any combination thereof, shall not be used in any other administrative or judicial proceeding.

- (j) The licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.
- (k) The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.
- (l) The licensee has failed to report or reveal the knowledge required to be reported or revealed under K.S.A. 65-28,122 and amendments thereto.
- (m) The licensee, if licensed to practice medicine and surgery, has failed to inform in writing a patient suffering from any form of abnormality of the breast tissue for which surgery is a recommended form of treatment, of alternative methods of treatment recognized by licensees of the same profession in the same or similar communities as being acceptable under like conditions and circumstances.
- (n) The licensee has cheated on or attempted to subvert the validity of the examination for a license.
- (o) The licensee has been found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect or incompetent to stand trial by a court of competent jurisdiction.
- (p) The licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.
- (q) The licensee has violated a federal law or regulation relating to controlled substances.
- (r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.
- (s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional

staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

- (v) The licensee has failed to report to the board surrender of the licensee's license or authorization to practice the healing arts in another state or jurisdiction or surrender of the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (w) The licensee has an adverse judgment, award or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (x) The licensee has failed to report to the board any adverse judgment, settlement or award against the licensee resulting from a medical malpractice liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
- (y) The licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto.
- (z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 and amendments thereto.
- (aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.
- (bb) The licensee as the responsible physician for a physician assistant has failed to adequately direct and supervise the physician assistant in accordance with the physician assistant licensure act or rules and regulations adopted under such act.
- (cc) The licensee has assisted suicide in violation of K.S.A. 21-3406 as established by any of the following:
 - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.
 - (B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2002 Supp. 60-4404 and amendments thereto.
 - (C) A copy of the record of a judgment assessing damages under K.S.A. 2002 Supp. 60-4405 and amendments thereto.

2. **K.S.A. 65-2837. Professional incompetency, unprofessional conduct; definitions.** As used in K.S.A. 65-2836, and amendments thereto, and in this section:

- (a) "Professional incompetency" means:
 - (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

- (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.
- (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.
- (b) "Unprofessional conduct" means:
 - (1) Solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.
 - (2) Representing to a patient that a manifestly incurable disease, condition or injury can be permanently cured.
 - (3) Assisting in the care or treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.
 - (4) The use of any letters, words, or terms, as an affix, on stationery, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which such person is not licensed.
 - (5) Performing, procuring or aiding and abetting in the performance or procurement of a criminal abortion.
 - (6) Willful betrayal of confidential information.
 - (7) Advertising professional superiority or the performance of professional services in a superior manner.
 - (8) Advertising to guarantee any professional service or to perform any operation painlessly.
 - (9) Participating in any action as a staff member of a medical care facility which is designed to exclude or which results in the exclusion of any person licensed to practice medicine and surgery from the medical staff of a nonprofit medical care facility licensed in this state because of the branch of the healing arts practiced by such person or without just cause.
 - (10) Failure to effectuate the declaration of a qualified patient as provided in subsection (a) of K.S.A. 65-28,107, and amendments thereto.
 - (11) Prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines, except as authorized by K.S.A. 65-2837a, and amendments thereto.
 - (12) Conduct likely to deceive, defraud or harm the public.
 - (13) Making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition of the body or mind.
 - (14) Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.
 - (15) Allowing another person or organization to use the licensee's license to practice the healing arts.
 - (16) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice.

- (17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
- (18) Obtaining any fee by fraud, deceit or misrepresentation.
- (19) Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations or associations.
- (20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.
- (21) Performing unnecessary tests, examinations or services which have no legitimate medical purpose.
- (22) Charging an excessive fee for services rendered.
- (23) Prescribing, dispensing, administering, distributing a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity or not in the course of the licensee's professional practice.
- (24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
- (25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.
- (26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.
- (27) Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.
- (28) Prescribing, dispensing, administering or distributing an anabolic steroid or human growth hormone for other than a valid medical purpose. Bodybuilding, muscle enhancement or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.
- (29) Referring a patient to a health care entity for services if the licensee has a significant investment interest in the health care entity, unless the licensee informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.
- (30) Failing to properly supervise, direct or delegate acts which constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.
- (31) Violating K.S.A. 65-6703 and amendments thereto.

- (c) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.
- (d) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.
- (e) "Licensee" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean all persons issued a license, permit or special permit pursuant to article 28 of chapter 65 of the Kansas Statutes Annotated.
- (f) "License" for purposes of this section and K.S.A. 65-2836, and amendments thereto, shall mean any license, permit or special permit granted under article 28 of chapter 65 of the Kansas Statutes Annotated.
- (g) "Health care entity" means any corporation, firm, partnership or other business entity which provides services for diagnosis or treatment of human health conditions and which is owned separately from a referring licensee's principle practice.
- (h) "Significant investment interest" means ownership of at least 10% of the value of the firm, partnership or other business entity which owns or leases the health care entity, or ownership of at least 10% of the shares of stock of the corporation which owns or leases the health care entity.

3. **K.A.R. 100-23-1 Treatment of obesity.** A person shall not dispense or prescribe controlled substances to treat obesity, as defined by this regulation, except in conformity with the following minimal requirements.

- (a) Amphetamines shall not be dispensed or prescribed to treat obesity.
- (b) The treating physician shall personally examine the patient. The physical examination shall include checking the blood pressure and pulse, examining the heart and lungs, recording weight and height, and administering any other appropriate diagnostic tests. The examination and patient history shall determine if controlled substances are indicated and if any co-morbidity exists. The treating physician shall enter each of these findings in the patient's record.
- (c) The treating physician shall prescribe nutritional counseling, including behavior modification and appropriate exercise for weight loss, and record these parameters on the patient record.
- (d) The treating physician shall not dispense or prescribe more than a 30-day supply of controlled substances, at one time, to treat obesity.
- (e) Except as provided by subsection (f) of this regulation, the treating physician may continuously dispense or prescribe controlled substances to treat obesity when the physician observes and records that the patient significantly benefits from the controlled substances and has no serious

adverse effects related to the drug regimen. A patient significantly benefits from the controlled substances when weight is reduced, or when weight loss is maintained and any existing co-morbidity is reduced. At the time of each return patient visit, the treating physician shall monitor progress of the patient; the treating physician or a person acting at the treating physician's order shall check the patient's weight, blood pressure, pulse, heart, and lungs. The findings shall be entered in the patient's record.

- (f) The treating physician shall not dispense or prescribe additional controlled substances to treat obesity for a patient who has not achieved a weight loss of at least 5% of the patient's initial weight, during the initial 90 days of treatment using controlled substances to treat obesity.
- (g) As used in this regulation, the term "controlled substance" means any drug included in any schedule of the Kansas uniform controlled substances act.
- (h) As used in this regulation, the term "obesity" means a documented diagnosis of excess adipose tissue, resulting in body mass index of 30 or higher (BMI $\geq 30\text{kg/m}^2$), or a body mass index of 27 or higher in the presence of other risk factors (BMI $\geq 27\text{kg/m}^2$). Body mass index is calculated by dividing measured body weight in kilograms by body height in meters squared (kg/m^2); expected body mass index is 20-25 kg/m^2 . (Authorized by and implementing K.S.A. 1997 Supp. 65-2837a; effective, T-86-25, July 24, 1985; effective May 1, 1986; amended, T-100-12-16-96, Dec. 16, 1996; amended May 9, 1997; amended, T-100-7-1-97, July 1, 1997; amended, T-100-10-30-97, Oct. 30, 1997; amended March 20, 1998.)

Expert Testimony Regarding the Applicable Standard of Care

1. The petitioner presented the testimony of Dr. Lillian R. Harstein, M.D., regarding the standard of care of the patients included in counts one through ten and count twelve of the First Amended Petition.
2. Dr. Harstein is a Board Certified Endocrinologist with twenty-two years of practice after receiving a medical degree and graduating from the University of Kansas in 1976. Dr. Harstein completed two endocrinology fellowships.
3. Dr. Harstein is a Clinical Assistant Professor at the University of Kansas Medical School in Wichita, Kansas.
4. Dr. Harstein's practice has included pituitary and growth hormone disorders and the treatment of individuals with growth hormone disorders.
5. The Presiding Officer finds that Dr. Lillian Harstein is an expert in the medical practice of endocrinology.

6. In the diagnosis and treatment of adult growth hormone deficiency, a provocative test is required. The standard of care requires insulin induced hypoglycemia or insulin tolerance test. Arginine combined with growth hormone releasing hormone also meets the standard of care. Growth hormone releasing hormone used alone does not meet the standard of care.
7. In the diagnosis and treatment of Hypothyroidism, the standard of care is to prescribe a brand name of Levothyroxine. The use of Armour Thyroid does not meet the standard of care.
8. The respondent characterized Dr. Harstein as a “hired gun” and argues that the petitioner could not obtain an expert in the Topeka or Kansas City area to testify against the respondent and therefore, had to go to Wichita. First, there is no evidence Dr. Harstein’s testimony was “bought.” Further, if the Presiding Officer was to accept the respondent’s argument that the board could not obtain expert testimony in Kansas City or Topeka and therefore had to go to Wichita, the Presiding Officer would have to ask why the respondent was not able to obtain any expert testimony. The respondent’s attack on Dr. Harstein as being from the Wichita area and not from the Topeka or Kansas City area does not invalidate her medical opinions any more than the failure of Dr. Springer to present expert testimony indicts her medical treatment. The question of whether the respondent met the applicable standard of care is to be determined by evidence and not by innuendo.

Count One

Findings of Fact

Count One of the Board’s petition involves the respondent’s treatment of Patient Number One, a female with a history of migraine headaches and a hysterectomy.

1. Patient Number One, an adult female, did not receive an adequate physical examination, nor was an adequate history taken.
2. In the respondent’s course of treatment, she prescribed Phentermine under the name Adipex, Norditropin, Proviron, Effexor, and Xenical.
3. Patient Number One had a body mass of 25.3 and weight of 165.
4. In the course of Patient Number One’s, treatment, she did not lose five percent of her body weight within the first ninety days. Despite this, the respondent continued to prescribe Phentermine under the name Adipex to Patient Number One.

5. Patient Number One was treated by the respondent for adult growth hormone deficiency after the patient's IGF-1 level was tested.
6. The respondent did not do a further testing to evaluate the patient's adult growth hormone deficiency nor did she order any provocative tests.
7. The respondent deviated from the standard of care in the treatment of Patient Number One in the following ways:
 - (a) The respondent prescribed Adipex in excessive doses and continued to prescribe Adipex despite the patient's failure to lose five percent of her body weight within ninety days.
 - (b) The respondent failed to evaluate adult growth hormone deficiency and did not order any provocative tests. The respondent prescribed Norditropin for the patient and this drug is not indicated for adults.
 - (c) The respondent failed to monitor the patient's treatment with growth hormone.
 - (d) The respondent prescribed Proviron which is not approved by the Federal Drug Administration for use in the United States. There was no indication for prescription of this drug.
 - (e) The respondent performed unnecessary tests, dispensed prescription drugs and anabolic steroids as well as growth hormone when there was no valid medical purpose for these drugs.
 - (f) The respondent violated the board's regulation regarding treatment of obesity and in the continuing use of Phentermine in excess of ninety days.

Conclusions of Law

1. The action of the respondent concerning Patient Number One constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number One.

Count Two

Findings of Fact

Count Two of the Board's petition involves the respondent's treatment of Patient Number Two, who presented on February 9, 1999, with a body mass index of 24.1.

1. The respondent did not perform an adequate physical or history with this adult female patient.
2. During the course of treatment for Patient Number Two, the respondent diagnosed the patient with human growth hormone deficiencies. The respondent did not perform the proper test to evaluate this condition.
3. In the course of Patient Number Two's treatment the respondent prescribed Armour Thyroid, Proviron, testosterone, and Phentermine.
4. In the respondent's treatment of Patient Number Two, she deviated from the standard of care in the following ways:
 - (a) The respondent did not perform proper testing to determine human growth deficiency and prescribed human growth hormones when it was not indicated for the patient. The respondent increased the patient's growth hormone when the patient's IGF-1 level was elevated.
 - (b) The respondent prescribed Armour Thyroid to the patient which is a deviation from the standard of care.
 - (c) The respondent prescribed testosterone to the patient when the lab values contraindicated this prescription.
 - (d) The respondent provided Proviron to Patient Number Two. There was no medical indication for this.
 - (e) The respondent prescribed Phentermine to Patient Number Two when Patient Number Two's body mass index was 24. The patient did not meet the definition of obesity under K.A.R. 100-23-1.

Conclusions of Law

1. The action of the respondent concerning Patient Number Two constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.

3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Two.

Count Three

Findings of Fact

Count Three of the petition involves the respondent's treatment of Patient Number Three.

1. The respondent did not conduct an adequate physical or history with Patient Number Three, an adult female.
2. The respondent prescribed growth hormone Cytomel, and a Sympathomimetic Amine, for Patient Number Three.
3. The respondent's treatment of Patient Number Three was below the applicable standard of care in the following manner:
 - (a) The respondent did not perform acceptable tests to determine whether the diagnosis of human growth hormone was proper, and the respondent deviated from the standard of care prescribing human growth hormone to Patient Number Three.
 - (b) The patient had normal thyroid function, but the respondent prescribed Cytomel for the patient.
 - (c) Patient Number Three's body mass index was 26.7 and the respondent prescribed a Sympathomimetic Amine to the patient. The Sympathomimetic Amine was prescribed in excessive doses.
 - (d) The treatment of Patient Number Three's obesity with the patient having a body mass index of 26.7 with a controlled substance is in violation of Kansas Administrative Regulation (K.A.R.) 100-23-1.

Conclusions of Law

1. The action of the respondent concerning Patient Number Three constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.

3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Three.

Count Four

Findings of Fact

Count Four of the petition concerned the respondent's care of Patient Number Four.

1. The respondent did not complete a physical or history of this patient, an adult male.
2. In the course of treatment for Patient Number Four, the respondent prescribed human growth hormone in the form of Norditropin, Profasi, Clomid, Adderall, Valium, testosterone, Lonamin and Adipex.
3. The respondent did not do any lab tests prior to initiating hormone growth therapy.
4. The respondent prescribed testosterone to Patient Number Four in an amount that is three times the appropriate dose.
5. The respondent's treatment of Patient Number Four deviated from the standard of care in the following ways:
 - (a) The respondent prescribed human growth hormone without adequate testing with a proper provocative test.
 - (b) The respondent prescribed Norditropin for the patient when this is not approved for use in adults.
 - (c) The respondent treated the patient for testosterone deficiency without determining whether there was a primary or secondary testosterone deficiency and she prescribed testosterone to the patient in an excessive amount.
 - (d) The respondent prescribed both human growth hormone and Adderall, an amphetamine, Valium, Lonamin, Adipex, Profasi, and Clomid without any indication in the patient's record for the need of these drugs. Nothing in the patient's file addresses the need for these medications.

Conclusions of Law

1. The action of the respondent concerning Patient Number Four constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Four.

Count Five

Findings of Fact

Count Five of the petition concerns the respondent's care and treatment of Patient Number Five.

1. Patient Number Five was initially seen by the respondent for fibromyalgia and weight increase. Patient Number Five was an adult female.
2. The respondent did not perform a physical or history exam of the patient. However, on the first visit the respondent noted that she suspected human growth hormone deficiency.
3. The respondent diagnosed Patient Number Five with growth hormone deficiency after utilizing a provocative test using single stimulus. In the course of treatment, the respondent prescribed human growth hormone and Armour Thyroid.
4. The respondent failed to meet the adequate standard of care in the following:
 - (a) The respondent utilized a single stimulus for determining human growth hormone and thereafter prescribed human growth hormone for Patient Number Five. Human growth hormone was not indicated for Patient Number Five.
 - (b) The respondent did not take any further action to determine the cause of any human growth hormone deficiency that might be affecting Patient Number Five.

- (c) The respondent prescribed Armour Thyroid to Patient Number Five.
- (d) Thyroid medication should not have been prescribed without repeating the thyroid test.

Conclusions of Law

1. The action of the respondent concerning Patient Number Five constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Five.

Count Six

Findings of Fact

The petitioner's allegations in Count Six concern the respondent's care and treatment of Patient Number Six.

1. Patient Number Six was seen by the respondent on July 19, 2000. At the time the patient was seen, he was twenty years old, six foot tall, and weighed approximately 277 pounds. The respondent did not provide any physical exam to the patient.
2. At the time the respondent first saw Patient Number Six, the respondent determined to perform a provocative test for growth hormone deficiency.
3. The respondent did not perform any x-ray tests to determine whether the patient was still growing.
4. The history of Patient Number Six included migraines. No treatment was provided to the patient for the migraines.
5. The respondent's treatment of Patient Number Six deviated from the standard of care in the following ways:

- (a) There was no indication for testing for human growth hormone deficiency in the patient. There was nothing to suggest that growth hormone deficiency was an issue.
- (b) The respondent's use of Clonidine and growth hormone release hormone as a stimulus is not within the standard of care and the respondent did not determine whether the patient had stopped growing prior to performing any testing for growth hormone deficiency.
- (c) The respondent deviated from the standard of care by diagnosing and prescribing human growth hormone for the patient.
- (d) The respondent indicated she was going to start the patient on Armour Thyroid despite the fact the patient had normal lab values on thyroid tests.

Conclusions of Law

- 1. The action of the respondent concerning Patient Number Six constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
- 2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
- 3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
- 4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Six.

Count Seven

Findings of Fact

The petitioner's allegations involve the treatment of Patient Number Seven, an adult female.

- 1. The respondent did not conduct an adequate history or physical exam of the patient. Patient Number Seven was an adult female.
- 2. On November 3, 1997, the respondent had an IGF-1 test for the patient. The results were within normal limits and no provocative tests were performed.
- 3. The respondent prescribed growth hormone to the patient for Norditropin. Norditropin is not approved for use in adults.

4. The respondent prescribed Armour Thyroid to Patient Number Seven.
5. Patient Number Seven received a provocative test in August 2002, but the sole stimulus was growth releasing hormone.
6. The respondent's treatment of Patient Number Seven deviates from the applicable standard of care in the following ways:
 - (a) The respondent did not conduct an adequate history or physical of the patient and did not have the appropriate provocative test before prescribing growth hormone.
 - (b) The standard of care was violated by the respondent prescribing Norditropin which is not appropriate for use in adults. The provocative test ordered by the respondent in August 2000 using sole stimulus growth releasing hormone does not meet the applicable standard of care.
 - (c) The respondent did not obtain IGF-1 levels for Patient Number Seven until January 2000. IGF-1 levels should have been checked by the respondent more frequently.
 - (d) The respondent prescribed Armour Thyroid to the patient deviating from the standard of care in that the patient had normal studies and there is no indication for this medication and no exam that warranted this medication.

Conclusions of Law

1. The action of the respondent concerning Patient Number Seven constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Seven.

Count Eight

Findings of Fact

Count Eight of the petition concerns the respondent's treatment of Patient Number Eight.

1. Patient Number Eight was seen by the respondent on December 13, 1999, for weight and hormone issues. Patient Number Eight was an adult female.
2. Relevant history of the patient included thyroid, congenital hole in the pituitary gland, and a 1982 pregnancy.
3. The physical exam and history of Patient Number Eight was not done, except for height, weight, blood pressure, and pulse.
4. During the patient's first visit, the respondent planned to get a provocative test to begin hormone therapy.
5. Patient Number Eight's IGF-1 level was within normal limits. A provocative test was performed on the patient, but the respondent only used a single stimulus of growth hormone releasing hormone.
6. The respondent did not evaluate Patient Number Eight's condition of congenital hole in the pituitary gland.
7. The respondent's treatment of Patient Number Eight deviated from the applicable standard of care in the following ways:
 - (a) The respondent did not properly evaluate or test for Patient Number Eight's need for growth hormone therapy.
 - (b) The respondent did not evaluate the congenital hole in the pituitary gland.
 - (c) The respondent utilized single stimulus test for growth hormone provocative test.
 - (d) The respondent prescribed growth hormone when it was not medically indicated.

Conclusions of Law

1. The action of the respondent concerning Patient Number Eight constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.

2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Eight.

Count Nine

Findings of Fact

Count Nine involves the respondent's care and treatment of Patient Number Nine, a fifty-six year old man.

1. Patient Number Nine was first seen by the respondent on July 28, 1999. At this time, the patient was healthy and sought weight maintenance.
2. The respondent did not do a physical or history examination of Patient Number Nine, but during the initial visit advised the patient he would be a good candidate for growth hormone therapy.
3. The respondent advised Patient Number Nine growth hormone therapy would assist him with weight maintenance and increase muscle mass.
4. During the course of treatment, the respondent prescribed to Patient Number Nine testosterone injections, DHEA, Armour Thyroid, Melatonin, and Nutropin.
5. Prior to prescribing Armour Thyroid, the respondent did not obtain lab tests indicating a need for this medication. On August 8, 1999, the respondent performed an IGF-1 test which was normal and also performed a stimulation test utilizing growth hormone releasing hormone as the only stimulant.
6. The respondent deviated from the applicable standards of care in the following ways:
 - (a) The respondent prescribed hormone therapy for Patient Number Nine, but had only utilized one stimulus in the provocative test.
 - (b) The respondent failed to complete a physical exam or history of Patient Number Nine.
 - (c) Growth hormone therapy was not indicated for this patient and growth hormone therapy is not appropriate for weight maintenance.

- (d) The respondent prescribed growth hormone therapy for the patient for over a year without checking the IGF-1 level.
- (e) The respondent prescribed Armour Thyroid to the patient with no lab results showing current thyroid level.
- (f) The respondent prescribed Armour Thyroid for the patient, when she should have prescribed Levothyroxine.
- (g) Lab results showed that the patient had low testosterone and the respondent did not determine the etiology of this condition.

Conclusions of Law

1. The action of the respondent concerning Patient Number Nine constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Nine.

Count Ten

Findings of Fact

Count Ten of the Board's petition involves the respondent's care and treatment of Patient Number Ten.

1. Patient Number Ten was seen by the respondent on July 29, 1998. Patient Number Ten was an adult female.
2. The respondent did not do a complete physical exam, but only noted the height, weight, blood pressure, pulse, and body mass index of 35.1. No history of the patient was taken except the fact that the patient previously had blood work.
3. In November 1999, the respondent planned to test the patient for growth hormone deficiency, although nothing in the patient's chart supported this.

4. An IGF-1 level was performed and the results were low. The respondent then performed a provocative test using growth hormone releasing hormone as the sole stimulus. These results were within normal limits.
5. The respondent prescribed Armour Thyroid and Proviron to Patient Number Ten.
6. The respondent deviated from the applicable standard of care in the following ways:
 - (a) The testing of this patient for growth hormone therapy was not indicated. Prescribing growth hormones for this patient was not indicated.
 - (b) The respondent's prescribing Armour Thyroid for the patient deviated from the standard of care in that she should have prescribed Levothyroxine.
 - (c) The respondent's prescribing Proviron to the patient was not medically indicated.

Conclusions of Law

1. The action of the respondent concerning Patient Number Ten constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Ten.

Count Eleven

Findings of Fact

Count Eleven of the Board's petition involves the respondent's practicing medicine without a license and insurance.

1. The respondent's license expired June 30, 2002.
2. On July 10, 2002, the respondent was advised that unless renewed, her license would be cancelled July 31, 2002.

3. On August 1, 2002, the petitioner canceled the respondent's medical license.
4. Between August 1, 2002, and the time the respondent's medical license was renewed August 28, 2002, the respondent was seeing patients as exhibited on her office itinerary. It was acknowledged during the prehearing conference, with the respondent present, that she was seeing patients during this time.
5. The respondent did not have liability insurance August 1, 2002 through August 7, 2002.

Conclusions of Law

The respondent by practicing medicine without a license is in violation of K.S.A. 65-2837(b)(12). The respondent by practicing medicine without professional liability insurance is in violation of K.S.A. 65-2836(y).

Count Twelve

Findings of Fact

The petitioner's allegations concerning the respondent in count twelve involve the treatment and care in Patient Number Eleven.

1. Patient Number Eleven was an eighteen year old female who was seen by the respondent on September 24, 2003.
2. The respondent did not perform a physical exam or a complete history on Patient Number Eleven. The respondent was advised that Patient Number Eleven suffered from fibromyalgia.
3. During the first visit between the respondent and Patient Number Eleven, the respondent advised Patient Number Eleven, prior to any testing, that human growth hormone shots would help her and that she would feel a difference in pain after the first shot.
4. Patient Number Eleven was tested for IGF-1 level and these results were normal. The respondent directed the patient's primary care physician to perform a provocative test using L-Dopa. The instruction to the primary care physician was to give 250 milligrams of L-Dopa when the correct dosage was 500 milligrams.
5. The respondent deviated from the applicable standards of care in the following ways:
 - (a) The respondent did not perform an acceptable provocative test to make a diagnosis of human growth deficiency.

- (b) The respondent ordered an MRI for the patient which was not medically necessary.
- (c) The respondent prescribed T-3, a thyroid hormone, when the patient had normal thyroid functions.
- (d) The respondent diagnosed the patient with adrenal insufficiency and prescribed hydrocortisone without performing any stimulation test.
- (e) The respondent prescribed human growth hormone when there was no valid medical purpose.

Conclusions of Law

1. The action of the respondent concerning Patient Number Twelve constitutes a failure to adhere to the applicable standard of care. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the respondent's departure from the applicable standard of care constitutes ordinary negligence.
2. The expert testimony of Dr. Harstein presented by the petitioner clearly and convincingly establishes that the treatment provided by the respondent is below the applicable standard of care.
3. The Presiding Officer finds the testimony of Dr. Harstein is credible and persuasive.
4. There is no expert evidence on behalf of the respondent that the respondent met the applicable standard of care in the care and treatment of Patient Number Twelve.

Conclusions

1. The petitioner has established with clear and convincing evidence that in eleven instances the respondent's care and treatment of individuals fell below the applicable standards of care. The testimony of Dr. Harstein is credible and is persuasive. Further, the attempts by the respondent to discredit Dr. Harstein are ineffective. The respondent's characterization of Dr. Harstein as a "hired gun" is not supported by the evidence. The evidence is clear that Dr. Harstein has been an Endocrinologist for over twenty years and there is no evidence whatsoever the Board told her what to write in her reports or what her testimony should be. Further, there is the allegation Dr. Harstein obtains the bulk of her supporting literature from the internet is not supported by any evidence. The basis for Dr. Harstein's finding is set forth in Exhibit 43.
2. Regarding the respondent's Proposed Finding of Fact that Dr. Harstein was evasive, from the record there is only one instance where it appeared that she was being evasive and as the Presiding Officer said at the time it could have

been intentional or unintentional based upon the cross examination that Dr. Harstein underwent. The fact remains Dr. Harstein is an expert in Endocrinology. The fact remains she found the practice of Dr. Springer fell below the applicable standard of care.

3. No where is there evidence Dr. Springer's practice met the applicable standard of care. There is no explanation in the record for prescribing obesity drugs to patients in violation of the Board's regulations. The patient records do not contain physical exams of the patients, nor do they contain adequate histories of the patients. There is no evidence the prescription of anabolic steroids was warranted in any patients. Again, the medical expert testimony is clear the respondent has failed to meet the appropriate standard of care.
4. The respondent argues there is an "unholy alliance between the board and the United States Prosecutor for the Western District of Missouri." Again there is no evidence of this. It is mere supposition. The respondent alleges the Board's investigator, who the respondent identifies as Shelly Wakeman, (the actual investigator was Angela Crawford) worked against the respondent. Again, this is an interesting theory, but there is no evidence to support it. This theory also overlooks that Dr. Eric Baker complained to the Board. This theory overlooks that Pharmacist Marsha Zeithamel complained to the Board. This theory overlooks that Patient Number Eleven complained to the Board. As stated above, the "conspiracy theory" simply has no evidence to support it.
5. Under the Healing Arts Act, the mission of the Board is to protect the public health. Counts one through ten and count twelve establish by clear and convincing evidence the respondent failed to adhere to the applicable standard of care. This is in violation of the Healing Arts Act, K.S.A. 65-2837(a). Additionally, in Count Eleven of the petition, the respondent practiced medicine without a license and without liability insurance in violation of K.S.A. 65-2836(b), 65-2837(b)(12), and 65-2836(i).
6. The counts presented by the Board show the respondent has repeatedly failed to meet the applicable standard of care. The Board's purpose is broad and is for protection of the public from "unprofessional, improper, unauthorized, and unqualified practice of the healing arts." K.S.A. 65-2801. To that end, the Presiding Officer concludes the evidence submitted clearly and convincingly shows Dr. Jackie Springer's license to practice medicine should be and is hereby revoked.

PLEASE TAKE NOTICE this is an Initial Order. A party to an agency proceeding may seek review of the Initial Order by filing a petition for review within fifteen days following service of the Initial Order. Any such petition must be filed with Lawrence T. Buening, Jr., Executive Director, Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, Kansas 66603.

Dated this 3 day of November 2004 before the Kansas Board of Healing Arts.

 /s/
Edward J. Gaschler
Presiding Officer

CERTIFICATE OF SERVICE

On November 3 , 2004, I mailed a copy of this document to:

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 /s/
Edward J. Gaschler
Presiding Officer