

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

FILED **CAB**
SEP 14 2017

KS State Board of Healing Arts

**In the Matter of
Allen S. Palmer, D.O.**

Kansas License No. 05-33326

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Docket No. 17-HA00060

FINAL ORDER SUSPENDING LICENSE

NOW on this 11th day of August 2017, comes on for hearing before the Kansas State Board of Healing Arts ("Board") the Petition requesting discipline against the license to practice osteopathic medicine and surgery of Allen S. Palmer, D.O. ("Licensee"). Susan Gering, Deputy Litigation Counsel, appears on behalf of the Petitioner. Licensee appears in person and by and through counsel, Thomas L. Theis of Foulston Siefkin, L.L.P.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501, *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the testimony of Licensee and arguments of counsel, considering the evidence admitted, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee is presently licensed as a Doctor of Osteopathic Medicine in the State of Kansas.
2. Licensee has practiced in Kansas as an independent contractor for Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri ("Planned Parenthood").

3. On December 22, 2014, Licensee performed an in-clinic suction abortion on a 13-year old patient at Planned Parenthood.

4. K.S.A. 65-67a09 requires physicians to preserve fetal tissue extracted from abortions performed on patients under 14 years old and submit the tissue to the Kansas Bureau of Investigation (“KBI”) or a laboratory designated by the director of the KBI.

5. Licensee did not ascertain the patient’s age prior to, during, or immediately after performing the abortion procedure.

6. Licensee did not preserve the fetal tissue obtained from the abortion he performed on the patient.

7. Licensee’s failure to preserve the fetal tissue was reported to the Board by Planned Parenthood.

8. Licensee does not contest the facts or violations alleged in the Petition filed against his license on May 15, 2017.

9. K.S.A. 65-67a07(e) provides that, “[f]ailure of a physician to comply with any provision of this section or any rule or regulation adopted hereunder: (1) Shall constitute unprofessional conduct for the purposes of K.S.A. 65-2837, and amendments thereto . . .”

10. K.A.R. 16-10-2 is a regulation implementing K.S.A. 65-67a09. Subsection (a) of K.A.R. 16-10-2 states:

Each physician who performs an abortion on a minor who is younger than 14 years of age shall perform or shall ensure that the physician’s staff performs the following steps:

...

(2) Collect, preserve, and ship fetal tissue using one of these fetal tissue collection kits.

11. The Board concludes that a finding of knowledge or intent is not required for there to be a violation of K.S.A. 65-67a09 or K.A.R. 16-10-2.

12. The Board concludes that Licensee has violated K.S.A. 65-2836(b), by committing unprofessional conduct as further defined by K.S.A. 65-2837 and 65-67a09(e)(1), when he failed to preserve and submit the fetal tissue after performing an abortion on the 13-year old patient as required by law.

13. Further, the Board concludes that Licensee violated K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(12), in that Licensee committed conduct likely to harm the public because a failure to preserve and submit fetal tissue as required by K.S.A. 65-67a09 may hinder a criminal prosecution.

14. Lastly, the Board concludes that Licensee violated K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(30), in that Licensee failed 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.

15. In considering the Board's "Guidelines for the Imposition of Disciplinary Sanctions" ("Guidelines"), Licensee's conduct falls within Offense Category 1E, due to Licensee's failure to meet the technical regulatory requirements of K.S.A. 65-67a09. Category 1E presumes a sanction of a Censure and \$500-\$2499 fine, prior to considering any aggravating and mitigating factors. When the Presumed Sanction is modified by either aggravating or mitigating factors, the Guidelines permit the Board to consider a range of discipline between Suspension for greater than 90 days with a \$500 to \$2499 fine, or a Censure with a fine of less than \$500.

16. Licensee argues there are mitigating factors the Board should consider in imposing discipline, specifically that:

- (a) Licensee's failure to preserve the fetal tissue was inadvertent;
- (b) Licensee's violation was caused by a system failure on the part of Planned Parenthood in that Planned Parenthood failed to notify personnel involved in the procedure of the age of the patient. Licensee claims it was reasonable for him to rely on the facility's procedures.
- (c) Licensee was hired as a part-time independent contractor to provide services when Dr. Moore was not working, generally one weekend a month. Licensee had previously been informed that abortions on patients under 14 were only performed by Dr. Moore;
- (d) Licensee was not educated or trained on Planned Parenthood's policies and procedures regarding abortions on patients under 14;
- (e) Licensee was not informed by Planned Parenthood staff that the patient was under 14; and that
- (f) The staff of Planned Parenthood did not follow their own procedures, specifically that: 1) The patient was scheduled on a day where Dr. Moore was not working, and 2) The consent form authorizing Planned Parenthood to share the patient's tissue and medical records with law enforcement was signed on January 8, 2015, while the procedure was performed on December 22, 2014.

17. The Board does not find Licensee's arguments regarding mitigating factors persuasive. Licensee, as a physician licensed in Kansas, has an independent duty to abide by the law and ensure his own compliance and his staff's compliance with the Child Rape Protection Act, the language of which does not require either knowledge or intent to find that a failure to comply has occurred. Furthermore, the potential injury from this violation is severe in that a failure to preserve and submit fetal tissue may hinder a criminal prosecution.

18. The Board has defined “surgery” through regulation in subsection (l) of K.A.R.

100-25-1 as a:

“manual or operative method that involves the partial or complete excision or resection, destruction, incision, or other structural alteration of human tissue by any means, including the use of lasers, performed upon the human body for the purpose of preserving health, diagnosing or treating disease, repairing injury, correcting deformity or defects, prolonging life, terminating pregnancy, or relieving suffering, or for aesthetic, reconstructive, or cosmetic purposes.

19. The procedure Licensee performed on this 13-year old patient constituted surgery.

During his testimony, Licensee admitted that he had not reviewed the patient’s history in her medical records prior to the procedure. Licensee asserted he was bound by the procedures set by Planned Parenthood. However, the Board, using its own clinical expertise, concludes that it is the independent duty of a physician to review a patient’s medical history prior to performing surgery, regardless of a facility’s procedures. Had Licensee reviewed the patient’s medical history, her age would have been ascertained. While the inadequacies in Planned Parenthood’s procedures are apparent, they do not absolve Licensee from his independent duty to his patient and to comply with the law of the State of Kansas.

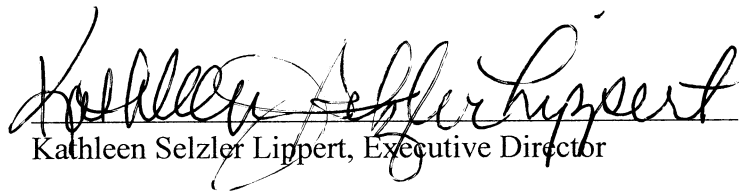
20. The Board concludes that Licensee has failed to present evidence sufficient to mitigate his conduct, and that Licensee’s failure to review his patient’s medical history prior to performing a surgery is an aggravating factor sufficient to warrant an upward modification in discipline.

21. The Board concludes that the appropriate sanction under the Guidelines for Licensee’s violations of the Healing Arts Act is a 90-day suspension.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that effective Monday, September 18, 2017, Licensee's license to practice osteopathic medicine and surgery in Kansas is hereby **SUSPENDED** for a period of 90 days, through Thursday, December 7, 2017.

IT IS SO ORDERED THIS 13 DAY OF SEPTEMBER, 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

FOR THE KANSAS BOARD OF HEALING ARTS:


Kathleen Selzler Lippert, Executive Director

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **Final Order Suspending License** was served on this 14th day of September, 2017, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Allen S. Palmer, D.O.

[REDACTED]

Clayton, MO 63105

Thomas L. Theis

Foulston Siefkin, L.L.P.

534 South Kansas Avenue, Suite 1400

Topeka, KS 66603

and a copy was delivered to the office of:

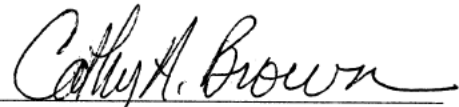
Susan Gering, Deputy Litigation Counsel

Kansas Board of Healing Arts

800 SW Jackson, Lower Level-Suite A

Topeka, KS 66612

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



Cathy Brown, Executive Assistant