IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE
AND SUPERVISION,

Plaintiff,

v.

HOWARD PETER KOENEN-MYERS,
JR., M.D.,
LICENSE NO. MD 23113,

Defendant.

Case No. 15-10-5215

ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION

1. The State of Oklahoma, ex rel. Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through its attorney, Jason T. Seay, Assistant Attorney General, for the State of Oklahoma ("State") and the staff of the Board, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, along with Defendant, Howard Peter Koenen-Myers, M.D., Oklahoma medical license no. 23113, who appears by skype, (collectively, the "Parties"), offer this Order Accepting Voluntary Submittal to Jurisdiction (herein, "Order" or "Agreement") effective January 12, 2017, for acceptance by the Board en banc pursuant to Okla. Admin. Code § 435:5-1-5.1.

2. By voluntarily submitting to jurisdiction and entering into this Order, Dr. Koenen-Myers admits to the allegations herein contained and further acknowledges that a hearing before the Board could result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. § 480, et seq. ("Act").

3. Doctor Koener-Myers, states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for an evidentiary hearing on the allegations made against him. Dr. Koenen-Myers hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Dr. Koenen-Myers acknowledges he has read and understands the terms and conditions stated herein, and that this Agreement has been reviewed by him.
4. If the Board does not accept this Order, the Parties stipulate that it shall be regarded as null and void. Admissions by Dr. Koenen-Myers herein, if any, shall not be regarded as evidence against him in a subsequent disciplinary hearing. Dr. Koenen-Myers will be free to defend himself, and no inferences will be made from his willingness to have this Order accepted by the Board. The Parties stipulate that neither the presentation of this Order nor the Board’s consideration of this Order shall be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, shall not be grounds for precluding the Board nor any individual Board member from further participation in proceedings related to the matters set forth herein.

FINDINGS OF FACT

5. The State, Dr. Koenen-Myers and the Board staff stipulate and agree as follows:

6. Dr. Koenen-Myers holds Oklahoma medical license no. 23113.

7. Dr. Koenen-Myers failed to renew to his Oklahoma medical license on 1 May 2015.

8. By operation of 59 O.S. 2011, § 495d, his license became suspended on 29 June 2015.

9. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to his medical license conferred upon him by the State of Oklahoma. Such acts and omissions occurred within the physical territory of the State of Oklahoma.

10. C.B. made a complaint on 30 September 2015 that her son, K.P., passed away from an overdose of controlled dangerous substances ("CDS") on 15 January 2014. The CDS was prescribed to K.P. by Dr. Koenen-Myers.

11. An investigation was conducted by Board Investigator J.L. who obtained K.P.'s medical records on 30 December 2015, consisting of 59 pages.

12. K.P.'s healthcare and prescribing records show he had only received a small quantity of opioids before being treated by Dr. Koenen-Myers, consisting exclusively of short term pain management by a dentist in July of 2013.

13. K.P.’s healthcare and prescribing records show Dr. Koenen-Myers first saw K.P. on 25 August 2013, when he prescribed K.P. with Norco 10 mg, #120, and Soma 350 mg, #120.

14. K.P.’s healthcare and prescribing records show Dr. Koenen-Myers prescribed these same two drugs to K.P. again and included a prescription for Xanax 2 mg, #30, on 23 September 2013.

15. K.P.’s healthcare and prescribing records show Dr. Koenen-Myers continued to prescribe only the above-mentioned quantities and amounts of Norco, Soma and Xanax to K.P. between 23 September and 20 December 2013.
16. K.P.'s healthcare and prescribing records show Dr. Koenen-Myers changed the CDS prescriptions to K.P. on 15 January 2014 to Oxycodone 30 mg (the highest available dosage in immediate release form), #120, Norco 10 mg, #120, and Valium 10 mg, #30.

17. Prior to the 15 January 2014 doctor's visit, K.P. was prescribed 40 mg/day morphine equivalent dosage of CDS ("MED") by Dr. Koenen-Myers.


19. K.P. filled these prescriptions on 15 January 2014 and died the same day.

20. The medical examiner's report for K.P. included full autopsy and toxicology reports ("M.E. Report").

21. The M.E. Report states K.P.'s cause of death as Oxycodone toxicity and reports femoral blood levels of Oxycodone of 1.0 mcg/ml – Oxycodone is lethal at 0.2 mcg/ml.

22. The M.E. Report shows blood samples taken from K.P.'s heart were positive for Valium and Soma was detected but not confirmed.

23. A qualified expert was retained to review the K.P.'s medical chart and Dr. Koenen-Myers' prescribing conduct for this patient in particular.

24. In summary, the qualified expert made in pertinent part the following observations and opinions regarding Dr. Koenen-Myers' care of K.P.:

   a. There was no written treatment plan;

   b. Only one urine drug screen was conducted on 24 November 2013, and no pill counts or other diversion or abuse oversight was conducted;

   c. The patient’s charting does not reflect the use of an opioid risk tool;

   d. The charting does not reflect attempts to use non-CDS therapies for the treatment of pain;

   e. The charting does not reflect an adequate history was taken, including a review of potential mood disorders or substance abuse history;

   f. The charting does not contain any previous physician records;

   g. The charting from the first doctor's visit on 25 August 2013 provides no adequate explanation or rationale for the ongoing use of hydrocodone and carisoprodol or continuing thereafter;

   h. On 30 September 2013, the charting notes the patient received Norco from another physician, but this was not addressed with the patient;
i. The charting provides no justification or rationale for the prescribing of alprazolam on 23 September 2013 or continuing thereafter;

j. Prior to 15 January 2014, the charting reflects the patient’s subjective pain while on Norco was 5 out of 10;

k. The charting provides no justification or rationale for the prescribing of Oxycodone on 15 January 2014;

l. The charting provides no justification or rationale for increasing the patient’s daily MED from 40 mg to 220 mg;

m. No assessment tools were used to gauge the effect of the drug treatments or the adverse effects of any potential behavioral issues of the patient;

n. Dr. Koenen-Myers’ care of K.P. fell below the minimal standard of care required of physicians treating patients with opioid CDS for pain and presents a safety risk to patients; and

CONCLUSIONS OF LAW

25. The Board has jurisdiction over the subject matter and is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 O.S. § 480 et seq. and Okla. Admin Code §§ 435:10-4-1, 435:10-4-2.

26. Notice was given as required by law and the rules of the Board. 59 O.S. 2011, § 504 and Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.

27. The Board is authorized to suspend, revoke or order any other appropriate sanctions against the license of any physician or surgeon holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. 59 O.S. 2011, § 503. 59 O.S. 2011, §§ 509.1(A)(2), (8), (C). This authority is quasi-judicial 59 O.S. 2011, § 513(A)(1).

28. The State, Dr. Koenen-Myers and the Board staff stipulate and agree as follows:

A. Dr. Koenen-Myers is guilty of unprofessional conduct by:

a. Violating any state or federal law or regulation relating to CDS, in violation of Okla. Admin. Code § 435:10-7-4(27);

b. Prescribing or administering a drug or treatment without sufficient examination, in violation of 59 O.S. 2011, § 509(12);

c. Excessively prescribing CDS in excess of the amount considered good medical practice, or without medical need, in violation of 59 O.S. 2011, § 509(16) and Okla. Admin. Code §§ 435:10-7-4(1), (2), (6), (24);
d. Failing to maintain office records accurately reflecting the evaluation, treatment and medical necessity of a treatment of a patient, in violation of 59 O.S. 2011, §§ 509(18), (20), and Okla. Admin. Code §§ 435:10-7-4(36), (41);

e. Failing to provide an adequate, initial patient examination, in violation of 59 O.S. 2011, § 509(20);

f. Failing to provide necessary on-going medical treatment when a doctor-patient relationship has been established, in violation of 59 O.S. 2011, § 509(19); and


**ORDERS**

Pursuant to the agreement of the parties, which have stipulated to the following, **IT IS ORDERED** by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The Board *en banc* hereby adopts the Agreement of the Parties in this Voluntary Submittal to Jurisdiction ("VSJ"), including the findings of fact and conclusions of law stated herein;

2. Effective with the filing of this VSJ, Dr. Koenen-Myers agrees to never reapply for an Oklahoma medical license;

3. Dr. Koenen-Myers is hereby **FINED** four thousand five hundred dollars ($4,500.00), payable in monthly installments of $100.00 each. The first payment shall be due upon the first day of the month following the filing of this VSJ, and continuing on the first day of every month thereafter until fine is paid in full.

4. Promptly upon receipt of an invoice, Dr. Koenen-Myers shall pay all costs of this action authorized by law, including without limitation, legal fees, investigation costs, staff time, salary and travel expenses, witness fees and attorney’s fees.

5. A copy of this Order shall be provided to Dr. Koenen-Myers as soon as it is processed.

6. **This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.**

STATE

HPK-M

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Order Accepting Voluntary Submittal to Jurisdiction; 15-10-5215
Howard Peter Koenen-Myers, Jr., MD 23113
Dated this ___ day of January, 2017.

Ann Warn, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION

Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION

Jason T. Seay, OBA No. 22007
Assistant Attorney General
OKLAHOMA STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
101 N.E. 51st Street
Oklahoma City, Oklahoma 73105
405/962.1400
405/962.1499 – Facsimile

Certificate of Service

This is to certify that on the ___ day of March, 2017, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail and E-mail
Howard Peter Koenen-Myers, Jr.
9002 186th Avenue East, Apt. A-204
Bonney Lake, WA 98391
hpkmyersmd@yahoo.com

Pro se

Nancy Thiemann, Legal Secretary
Billy Stout, M.D., Board Secretary  
State Board of Medical  
Licensure and Supervision  
101 N.E. 51st Street  
Oklahoma City, OK 73105-1821

Dear Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take pursuant to a consent agreement with respect to Medical Doctor Licensee 23113. The proposed action is to impose a fine of $4,500 and bar the licensee from ever reapplying for a medical license in Oklahoma. The licensee admitted to misconduct for falling below the minimum standard of care required of physicians treating patients with controlled dangerous substances containing opioids for pain. The licensee’s actions resulted in, at least in part, the death of a patient caused by the unprofessional prescribing conduct of the licensee.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2016, §§ 480–518.1, authorizes the Board to impose appropriate sanctions for unprofessional conduct, 59 O.S.Supp.2016, § 503. Unprofessional conduct includes the “[d]ishonorable or immoral conduct which is likely to deceive, defraud, or harm the public,” “[p]rescribing or administering a drug … without sufficient examination and the establishment of a valid physician-patient relationship,” “[p]rescribing, dispensing or administering of controlled substances…in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need…,” as well as failure to “maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient” and “provide necessary ongoing medical treatment when a doctor-patient relationship has been established.” 59 O.S.2011, § 509(8), (12), (16), (18), (19). Here, the licensee engaged in such unprofessional misconduct, and additionally, violated the Oklahoma Administrative Code by engaging in the gross negligence of the practice of medicine through the improper use of controlled substances for the management of pain. OAC § 435: 10-7-4(15) & 10-7-11. The licensee chose to enter into a consent agreement and admitted to professional misconduct and negligence. The Board’s acceptance of that decision thus accords with the Act.
It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to protect public health and ensure patient welfare and requiring that medical doctors observe standards of professionalism.

Mike Hunter
ATTORNEY GENERAL OF OKLAHOMA

Shelly Perkins
ASSISTANT ATTORNEY GENERAL