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KS State Board of Healing Arts

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

In the Matter of)
Joseph M. Baker, D.O.)
Kansas License No. 05-19455)

Docket No. 18-HA 00033

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through Phoenix Z.T. Anshutz, Associate Litigation Counsel (“Petitioner”), and Joseph M. Baker, D.O. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice osteopathic medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s last known address to the Board is: 10777 Nall Avenue, Suite 315, Overland, Park, Kansas 66211.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-19455 on approximately December 5, 1981. Licensee most recently renewed his license on October 18, 2017. Licensee’s license is active.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of osteopathic medicine and surgery. K.S.A. 65-2801 et seq. and K.S.A. 65-2870.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-505 and K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.
6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
8. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
9. The Board has received information and investigated the same, and has reason to believe there are grounds pursuant to K.S.A. 65-2836, K.S.A. 65-2836(b), K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(23), K.S.A. 65-2837(b)(24), K.S.A. 65-2837(b)(25)K.S.A, 65-2836(f), and K.S.A. 65-2836(p) to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*
10. On or about September 13, 2016, the Board received a complaint from a pharmacist concerned about Licensee's prescribing behavior regarding Patient 1.
11. The pharmacist was concerned that Licensee was overprescribing and lacked a patient/physician relationship with Patient 1.

12. A K-TRACS Report from the Kansas Board of Pharmacy regarding Licensee's prior two (2) years of prescribing history was obtained by the Board. [REDACTED]

13. The patient records obtained for the seven (7) patients revealed the following, including but not limited to:

- a. Licensee's documentation did not support the medication prescribed;
- b. Licensee failed to document an adequate pain examination;
- c. Licensee failed to obtain lab/other testing to support diagnoses;
- d. Licensee did not perform controlled substance monitoring, such as drug screens or pill counts;
- e. Licensee did not utilize controlled substance contracts;
- f. Refills of controlled substances were not documented in the patient records; and
- g. Licensee's use of controlled substances to manage "suspected" fibromyalgia was inappropriate.

14. On or about November 3, 2016, the Special Investigator contacted Licensee and inquired as to a written explanation as to each patient's prescribing history. Licensee responded by letter on or about December 1, 2016. In that response, Licensee advised that the seven (7) patients were pain management patients and that he had already decided to refer "a couple of them" to a pain management specialist. Licensee acknowledged that, "although the amount of opiates many of these people are taking is amazingly large, they tolerate it extremely well." Further, Licensee admitted, after review of the Board guidelines to pain management, as well as CDC guidelines, that he was outside the guidelines, such as prescribing benzodiazepines with opiates.

15. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-2836 the board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

16. Licensee's acts, if proven, constitute unprofessional conduct or dishonorable conduct or professional incompetency as set forth in K.S.A. 65-2836(b).

17. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(1) in that Licensee has been involved in one or more instances involving a failure to adhere to the applicable standard of care to a degree that constitutes gross negligence, as determined by the Board.

18. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(2) in that Licensee had repeated instances of failure to adhere to applicable standard of care to a degree which constitutes ordinary negligence, as determined by the Board.

19. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12) in that Licensee's conduct is likely to deceive, defraud or harm the public.

20. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(23) in that Licensee prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the Licensee's professional practice.

21. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24) in that Licensee has repeatedly failed to practice the 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.

22. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(23) in that Licensee prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the Licensee's professional practice.

23. Licensee has violated K.S.A. 65-2836(k), in that Licensee violated K.A.R. 100-24-1 when he failed to maintain adequate records for each patient for whom the Licensee performs a professional service.

24. Licensee violated K.S.A. 65-2836(f) in that Licensee willfully or repeatedly violated the Kansas Healing Arts Act, the Pharmacy Act of the State of Kansas or the Uniformed 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.

25. Licensee violated K.S.A. 65-2836(p), in that Licensee prescribed, sold, administered, distributed or gave controlled substance to patients for other than medically accepted or lawful purposes.

26. According to K.S.A. 65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

27. All pending investigation materials in KSBHA Investigation Number 17-00128 regarding Licensee, were fully reviewed and considered by Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 32 authorized and Directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

28. Licensee further understands and agrees that if the Board finds, after written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this

Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice osteopathic medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether Licensee has failed to comply with any of the terms and conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

29. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Healing Arts Act.

30. Licensee hereby releases the Board, its individual members (in their official and personal capacity, attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute,

cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

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

32. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

33. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

34. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

35. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

36. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

37. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

38. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

39. This Consent Order constitutes **public disciplinary action**.

40. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

41. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of osteopathic medicine and surgery:

CENSURE

42. Licensee is **publicly censured** for violating the Kansas Healing Arts Act.

FINE

43. Licensee shall pay a fine totaling **TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS** (\$2,500.00) to the Kansas Board of Healing Arts.

44. Licensee shall make all payments, which shall be in the form of a cashiers' check or money order, to the "Kansas State Board of Healing Arts" and send all payments via certified mail to the attention of:

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

45. Licensee shall pay the abovementioned fine on or before March 1, 2018.

PROBATION

46. Licensee's license to practice osteopathic medicine and surgery is hereby placed under probationary conditions until such time he successfully completes and provides proof of successful completion of the "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" course and the "Medical Record Keeping Seminar" course to the Compliance Coordinator, as further described below.

PROBATION EDUCATION: CPEP PRESCRIBING CONTROLLED DRUGS: CRITICAL ISSUES AND COMMON PITFALLS

47. As a condition of probation, Licensee shall attend and successfully complete the "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" course administered and assessed by the Center for Personalized Education for Physicians ("CPEP"). CPEP can be contacted at: 720 South Colorado Blvd., Suite 100, Denver, Colorado 80246, (303) 577-3232.

48. On or before January 1, 2018, Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend abovementioned course.

49. Licensee shall attend and successfully complete the aforementioned course by no later than July 1, 2018.

50. Licensee must provide proof of successful completion of the CPEP course within ten (10) days of successfully completing the course.

51. Licensee shall send proof of successful completion of the aforementioned course via certified mail to the attention of:

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

52. All costs associated with the CPEP course shall be borne by Licensee, and include, but are not limited to, the cost of the program, any cost of travel to and from the program, and the cost of accommodations while attending the course.

PROBATION EDUCATION: MEDICAL RECORD KEEPING SEMINAR

53. As a condition of probation, Licensee shall attend and successfully complete the “Medical Record Keeping Seminar” administered and assessed by the Center for Personalized Education for Physicians (“CPEP”). CPEP can be contacted at: 720 South Colorado Blvd., Suite 100, Denver, Colorado 80246, (303) 577-3232.

54. On or before January 1, 2018, Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend abovementioned course.

55. Licensee shall attend and successfully complete the course aforementioned course by no later than July 1, 2018.

56. Licensee must provide proof of successful completion of the aforementioned course within ten (10) days of successfully completing the course.

57. Licensee shall send proof of successful completion of the aforementioned course via certified mail to the attention of:

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

58. All costs associated with the CPEP course shall be borne by Licensee, and include, but are not limited to, the cost of the program, any cost of travel to and from the program, and the cost of accommodations while attending the course.

PROBATION TIMEFRAME

59. The above term of probation will self-terminate upon Licensee's presentation to the Compliance Coordinator of proof of the successful completion of the "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" and "Medical Record Keeping Seminar" courses.

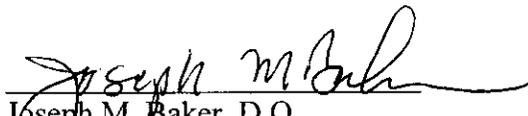
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS SO ORDERED on this 13 day of Feb 2018.

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


Kathleen Selzler Lippert
Executive Director

2/13/18
Date


Joseph M. Baker, D.O.
Licensee

12-10-17
Date

PREPARED AND APPROVED BY:


Phoenix Z.T. Anshutz, #27617
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level Suite A
Topeka, KS 66612
(785) 296-8022

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing **Consent Order** was served on the 13th day of Feb 2018 by United States mail, first-class postage prepaid and addressed to:

Joseph M. Baker, D.O.
10777 Nall Ave.
Suite 315
Overland Park, Kansas 66211

and a copy was hand-delivered to:

Phoenix Z.T. Anshutz
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level Suite A
Topeka, Kansas 66612

and the original was filed with the office of:

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

