

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

In the Matter of)
Marion H. Baker, M.D.)
Kansas License No. 4-28549)
_____) Docket No. 04-HA-27

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Marion H. Baker, M.D. (“Licensee”), who appears *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s mailing address as provided to the Board is 323 S. Buckeye, Iola, KS 66749. Notice may also be served on Licensee in care of Jenny Hobbs, 726 Shawn Drive, Jefferson City, Missouri 65109.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 4-28519 on February 12, 2000. Licensee’s current license status is active and Licensee last renewed his license on or about July 2, 2004.
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 medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869
4. Licensee admits that this Consent Order (“Consent Order”) and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the

Consent Order as provided by 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. Licensee agrees that the Healing Arts Act is constitutional on its face and as applied in this case, and that in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. This Consent Order and the filing of such document are in accordance with applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing.

7. Licensee voluntarily and knowingly waives his right to a hearing under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* 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. Petitioner has alleged that on December 13, 1999, Licensee entered into a Stipulation, Agreement and Order ("Stipulation") with the Board as a condition of granting Licensee a license. Pursuant to the Stipulation, Licensee agreed to abstain from alcohol, narcotics, and controlled substances. On or about March 20, 2001, Licensee tested positive for Tramadol

(Ultram) on his urine drug screen. On or about March 13, 2003, Licensee tested positive for opiates on his urine drug screen. During the period of at least 2001 to 2003, Licensee self-proscribed or obtained prescription-only drugs, including but not limited to, Demerol, Klonopin, Vicodin, Ultram, Stadol, Nubain, Fioricet and Phenergan for personal use, and in the course of Licensee's professional practice.

10. License waives his right to dispute or otherwise contest the allegations contained in the Petition as constituting grounds for this disciplinary action or in any future proceeding before this Board.

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

12. In lieu of conducting formal proceedings and/or the making of findings by the Board, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his license to engage in the practice of medicine and surgery in Kansas:

- a. Licensee hereby surrenders his license to practice medicine and surgery in Kansas. Such surrender shall be treated as a revocation for all purposes, including reporting. Licensee may not apply for reinstatement of his license until three (3) years after the date the Consent Order is filed with the Board;
- b. Licensee agrees that if he applies for reinstatement of his license, the Board in accordance with the provisions of K.S.A. 65-2844 will consider such application. Further, Licensee's application will be governed by Vakas v. the Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes,

laws and rules and regulations regarding qualification for licensure and reinstatement; and

- c. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in the Petition will be considered as findings of fact and conclusions of law.

13. Licensee's failure to comply with the provisions of this Consent Order will result in the Board taking immediate disciplinary action, as the Board deems appropriate, according to the Kansas Administrative Procedure Act.

14. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, K.S.A. 65-2801, *et seq.*, 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 Healing Arts Act, K.S.A. 65-2801, *et seq.*

15. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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 Releasees.

16. Licensee further understands and agrees that upon his signing the Consent Order, this document shall be deemed a public record, and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and any reporting entities requiring disclosure of this Consent Order.

17. 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.

18. 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.

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

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

21. Licensee acknowledges that he has read this Consent Order and fully understands the contents, and that this Consent Order has been entered into freely and voluntarily.

22. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, KS 66603-3068.

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

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

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

IT IS FURTHER ORDERED that in lieu of conducting formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his license to engage in the practice of medicine and surgery:

- a. Licensee hereby surrenders his license to practice medicine and surgery in Kansas. Such surrender shall be treated as a revocation for all purposes, including reporting. Licensee may not apply for reinstatement of his license until three (3) years after the date the Consent Order is filed with the Board;
- b. Licensee agrees that if he applies for reinstatement of his license, the Board in accordance with the provisions of K.S.A. 65-2844 will consider such application.

Prepared by:

_____/s/
Kelli J. Benintendi, #16032
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413
Attorney for the Board

ERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above **CONSENT ORDER** by depositing the same in the U.S. mail, postage prepaid, on this the 4th day of May, 2005, addressed to:

Marion H. Baker, M.D.
323 S. Buckeye
Iola, KS 66749

Marion H. Baker, M.D.
c/o Jenny Hobbs
726 Shawn Drive
Jefferson City, Missouri 65109

And the original was hand-delivered for filing to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068

_____/s/
Kelli J. Benintendi
Associate Counsel