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DEC 19 2006

KS State Board of Healing Arts

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

In the Matter of)
)
ROBERT BATTMER, M.D.)
Kansas License No. 4-16705)
_____)

Docket No. 06-HA-84

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Kelli J. Stevens, Litigation Counsel, Kathleen Selzler Lippert, Associate Counsel, and Robert Battmer, M.D. ("Licensee"), by and through counsel, Thomas E. Wright and Thomas E. Beall of Wright, Henson, Clark, Hutton, Mudrick & Gragson, LLP and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 3700 W. 83rd Street, Prairie Village, Kansas 66208.

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. 4-16705 on December 11, 1976. Licensee has held a current license to engage in the practice of medicine and surgery in the State of Kansas, having last renewed his license on May 17, 2006.

3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the medicine and surgery.

4. This Consent Order and the filing of such document are in accordance with the applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 65-2838, without the necessity of proceeding to a formal hearing.

5. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

7. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

8. Licensee voluntarily and knowingly waives his right to a hearing in this matter in that 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 in this matter were held.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that 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.

10. Petitioner has alleged that Licensee practiced medicine outside the standard of care and failed to keep adequate medical records with respect to hormone treatments Licensee provided to three (3) patients; and that Licensee inappropriately touched and inappropriately prescribed controlled substance medications with respect to one (1) of the patients. The specific allegations are set forth in the Petition filed April 7, 2006.

11. Licensee's acts, if proven, are grounds for discipline pursuant to K.S.A. 65-2836(b), as further set forth in K.S.A. 65-2837(a)(2), repeated instances involving failure to adhere to the applicable standard of care to a degree constituting ordinary negligence; K.S.A. 65-2837(b)(16), sexual misconduct related to Licensee's professional practice; K.S.A. 65-2837(b)(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 licensee's professional practice; K.S.A. 65-2837(b)(24), repeated failure 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 or circumstances; and K.S.A. 65-2837(b)(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.

12. Licensee does not admit the allegations as set forth in the Petition, but for the sole purpose of this Consent Order does not contest that his acts and conduct violated the healing arts act. Licensee further waives his right to dispute

or otherwise contest the allegations contained in the Petition in any future proceedings before the Board.

13. Licensee voluntarily completed the Vanderbilt University Medical Center course entitled, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" on May 18 to 20, 2005. Licensee voluntarily completed the Vanderbilt University Medical Center course entitled, "Maintaining Proper Boundaries" on April 27 to 29, 2005.

14. Licensee voluntarily relinquished his controlled substance prescribing authority for all narcotic medications to the United States Drug Enforcement Administration ("DEA").

15. (Confidential)

(Confidential)

16. Pursuant 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.

17. In lieu of concluding the pending formal hearing proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and monitoring provisions with respect to his license to engage in the practice of medicine and surgery in Kansas:

SUSPENSION

- a. Licensee's license is hereby SUSPENDED for a period of five (5) consecutive days, to commence February 5, 2007;

EDUCATION

- b. Licensee shall attend and successfully complete a Board-approved medical record-keeping course at his own expense. Licensee shall provide proof of successful completion of such course to the Board by July 30, 2007;

PRACTICE MONITORING

- c. Licensee shall have a Board-approved practice monitor, who is a Kansas-licensed physician and American Board of Medical Specialties ("ABMS") certified, monitor his medical practice for at least one (1) year in accordance with the terms of the Practice Monitoring Agreement executed by the parties and incorporated herein as if fully re-stated. Such monitor shall have no prior or current business or personal relationship with Licensee, shall be in Licensee's field of practice and must agree to serve as Licensee's practice monitor. Licensee shall bear all expenses associated with the practice monitor;
- d. The Board hereby designates Board Member, Mark McCune, M.D. to select and approve of the practice monitor;
- e. At the end of one (1) year of practice monitoring, Licensee may request that the Board modify or terminate the practice monitoring requirement;

CHAPERONE REQUIREMENT

- f. Licensee shall have a chaperone present in the room for all physical/intimate examinations of patients or any examination

which involves any form of disrobing. Injections in the hip area shall be permitted without a chaperone present. Licensee shall ensure the chaperone documents their attendance in the medical record for each patient visit by initialing and dating the same. The chaperone shall be an adult staff person and must be identified to Board staff by Licensee on or before December 30, 2006. The chaperone must be agreed upon between the parties, and such will not be unreasonably withheld;

- g. Licensee shall ensure the chaperone maintains a daily log identifying all patients seen in the office each day. The chaperone must certify their presence in the daily log for all patients as required by paragraph f above. The daily log form shall be provided to Licensee by Board staff. Licensee is responsible for ensuring the daily logs are submitted to the Board on a monthly basis and are received by the Board on or before the 15th day of the following month;
- h. Licensee shall not seek reinstatement of his DEA registration to prescribe narcotic medications without prior approval of the Board.

TREATMENT

- i. (Confidential)

j. (Confidential)

k. (Confidential)

l. (Confidential)

m. (Confidential)

- n. At the conclusion of the two-year (2) KMS-MAP monitoring period, Licensee may request that the Board terminate this requirement; and

COSTS

- o. Licensee agrees to pay the costs incurred by the Board in this matter, in the amount of \$1,379.00. Licensee shall pay such costs in full to the Board on or before February 1, 2007.
18. Licensee's failure to comply with this Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

19. 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.

20. 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 and 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.

21. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, the Federation of State Medical Boards and any other reporting entities authorized to receive disclosure of the Consent Order.

22. 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.

23. 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 or settlement.

24. 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 proceeding on the basis that the Board member or General Counsel

has received investigative information regarding the allegations contained in the Petition which otherwise may not be admissible or admitted as evidence.

25. 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.

26. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

27. 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 the Consent Order or may become effective subsequent to the execution of this document.

28. 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.

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

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 FURTHER ORDERED that in lieu of concluding the presently pending formal proceedings, Licensee, by his signature affixed to this Consent Order, voluntarily agrees to the following disciplinary measures and monitoring provisions regarding his license to practice medicine and surgery in Kansas:

SUSPENSION

- a. Licensee's license is hereby SUSPENDED for a period of five (5) consecutive days, to commence February 5, 2007;

EDUCATION

- b. Licensee shall attend and successfully complete a Board-approved medical record-keeping course at his own expense. Licensee shall provide proof of successful completion of such course to the Board by July 30, 2007;

PRACTICE MONITORING

- c. Licensee shall have a Board-approved practice monitor, who is a Kansas-licensed physician and American Board of Medical Specialties ("ABMS") certified, monitor his medical practice for at least one (1) year in accordance with the terms of the Practice Monitoring Agreement executed by the parties and incorporated herein as if fully re-stated. Such monitor shall have no prior or current business or personal relationship with Licensee, shall be in Licensee's field of practice and must agree to serve as Licensee's

practice monitor. Licensee shall bear all expenses associated with the practice monitor;

- d. The Board hereby designates Board Member, Mark McCune, M.D. to select and approve of the practice monitor;
- e. At the end of one (1) year of practice monitoring, Licensee may request that the Board modify or terminate the practice monitoring requirement;

CHAPERONE REQUIREMENT

- f. Licensee shall have a chaperone present in the room for all physical/intimate examinations of patients or any examination which involves any form of disrobing. Injections in the hip area shall be permitted without a chaperone present. Licensee shall ensure the chaperone documents their attendance in the medical record for each patient visit by initialing and dating the same. The chaperone shall be an adult staff person and must be identified to Board staff by Licensee on or before December 30, 2006. The chaperone must be agreed upon between the parties, and such will not be unreasonably withheld;
- g. Licensee shall ensure the chaperone maintains a daily log identifying all patients seen in the office each day. The chaperone must certify their presence in the daily log for all patients as required by paragraph f above. The daily log form shall be provided to Licensee by Board staff. Licensee is responsible for ensuring the daily logs are submitted to the Board on a monthly

basis and are received by the Board on or before the 15th day of the following month;

- h. Licensee shall not seek reinstatement of his DEA registration to prescribe narcotic medications without prior approval of the Board.

TREATMENT

- i. (Confidential)

- j. (Confidential)

- k. (Confidential)

l. (Confidential)

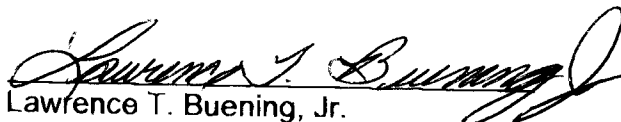
m. (Confidential)

n. (Confidential)

COSTS

o. Licensee agrees to pay the costs incurred by the Board in this matter, in the amount of \$1,379.00. Licensee shall pay such costs in full to the Board on or before February 1, 2007.

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


Lawrence T. Buening, Jr.
Executive Director

Date 12/19/06



Robert Battmer, M.D.
Licensee

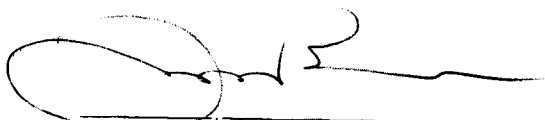
12/15/2006
Date

PREPARED AND APPROVED BY:



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P.O. Box 3555
Topeka, Kansas 66601-3555
(785) 232-2200
Attorneys for Licensee

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **Consent Order** was served on the 19th day of Dec., 2006 by United States mail, first-class postage pre-paid and addressed to:

Thomas E. Wright
Thomas E. Beall
Wright, Henson, Clark, Hutton,
Mudrick & Gragson, LLP
P.O. Box 3555
Topeka, Kansas 66601-3555

and a copy was hand-delivered to:

Kelli J. Stevens
Kathleen Selzler Lippert
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

and a courtesy copy was hand-delivered to:

Charlene Abbott
Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

and the original was hand-delivered for filing to:

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

