

SEP 13 2021

KS State Board of Healing Arts

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

In the Matter of)
Jose M. Bejar, M.D.)
) **KSBHA Docket No. 21-HA00081**
Application for Reinstatement)

FINAL ORDER

On August 13, 2021, this matter came before the Kansas State Board of Healing Arts (“Board”) for a Conference Hearing on Jose M. Bejar, M.D.’s (“Applicant”) application for reinstatement of an inactive license to practice medicine and surgery in Kansas. Applicant appeared in person, and through counsel, Vincent Cox of Cavanaugh, Biggs & Lemon, P.A.¹ J. Todd Hiatt, Litigation Counsel, appeared to present the position of the Disciplinary Panel of the Board. Dr. Gould, Dr. Black, Dr. Durrett, Mr. Kelly, and Steven Lehwald were recused.

Under 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, (“KAPA”), K.S.A. 77-501 *et seq.*, the Board enters this Final Order. After reviewing the agency record, hearing the arguments of the parties, and being duly advised in the premises, the Board makes the following findings, conclusions, and orders.

PROCEDURAL HISTORY

On or about October 23, 2020, Applicant submitted an Application for Reinstatement of an inactive license to practice medicine and surgery in Kansas (“Application”). That application was deemed complete and filed with the Board on May 3, 2021. The Board submitted a Response in Opposition to Applicant’s application on May 14, 2021, with Board’s Exhibits 1-12. Applicant submitted a response narrative along with Applicant’s Exhibits 1-23.² Applicant was originally representing himself, *pro se*, in this matter. On June 28, 2021, Vincent Cox, of Cavanaugh, Biggs & Lemon, P.A. formally entered his appearance. Through counsel, Applicant’s Exhibits 24-26 were filed on July 20, 2021.³

This matter was originally scheduled for a Conference Hearing on June 11, 2021. Applicant requested a continuance. The matter was continued without objection and set for a Conference Hearing at the next regularly scheduled Board meeting on August 13, 2021. A Notice of Hearing

¹ Mr. Cox withdrew his representation of Applicant on September 7, 2021.

² No objection was raised by Litigation Counsel to the admission of Applicant’s Exhibits 1-23.

³ No objection as raised by Litigation Counsel to the admission of Applicant’s Exhibits 24-26.

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was filed and served on July 19, 2021 and August 2, 2021 setting a Conference Hearing regarding Applicant's application. No objection to the Notice of Hearing was filed.⁴

The Conference Hearing in this matter was held before the Board on August 13, 2021. Through counsel, Applicant's Exhibit 27 was entered into the agency record, without objection, at the Conference Hearing. After oral argument from both parties and testimony from the Applicant, the Board verbally issued its order **DENYING** Applicant's application for reinstatement with a written Final Order to follow in 30 days.

FINDINGS OF FACT

1. On or about May 20, 2013, Applicant surrendered his license to practice medicine in Kansas via Consent Order for violations of the Kansas Healing Arts Act including: (1) conviction of a felony; and (2) committing several acts of sexual abuse, misconduct, and other improper sexual contact with a patient and exploiting the licensee-patient relationship.
2. Per the Consent Order, his surrender was treated as a revocation, and an application for reinstatement is governed by K.S.A. 65-2844 and *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991).
3. Additionally, the Consent Order explicitly stated: "Licensee acknowledges that he has read this Consent Order and fully understands the contents. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily."
4. When Applicant was practicing medicine, he was a neurologist at the Topeka Veterans Affairs Medical Center ("Topeka VA"), in Topeka, Kansas.

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⁴ In advance of the oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including all exhibits, briefs, and motions filed by the parties in advance of oral arguments. **The entire agency record was considered by the Board in rendering its decision.**

⁵ *State of Kansas v. Jose M. Bejar*, Case No. 2021-CR-1048; District Court of Shawnee County, Kansas.

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8. These five patients had never met or spoken with each other, and all had different reasons for which they were seeking medical care.
9. On October 21, 2011, Patient 1 filed a report with the Topeka Police Department (“TPD”) to report she was the victim of Applicant’s sexual battery while she was under his care at the Topeka VA.
10. Patient 1 had been seeing Applicant for her microadenoma, neuropathy, and back and leg pain.
11. At the preliminary hearing, Patient 1 testified at an appointment she had with Applicant to receive test results of her MRI, that Applicant placed both of his ungloved, bare hands down her shirt and began performing what she thought was a breast exam for approximately 10 minutes. She stated he cupped her breasts and pinched her nipples. She testified he then had her lay down on her stomach on the exam table, and his hands went up her shorts under her underwear – he would push on her butt and slowly drag his hands back down and was breathing and moaning. Patient 1 testified she was frozen in fear and did not know what to do; she could not get anything out of her mouth to speak. She stated at some point she rolled over and was on her back and he stuck his left hand down her pants and was under her underwear. She testified he was going back and forth on her vagina and patting her genitals. She also testified his fingers penetrated her.
12. Patient 2 reported Applicant to the TPD.
13. Patient 2 reported Applicant would cup her breasts with his bare hands in order to “check her heart,” stimulate her nipples, and that on her final visit in August 2011, he rubbed her vagina on the outside of her clothes for about a minute and a half.
14. Patient 3 reported Applicant to the TPD.
15. Patient 3 reported Applicant touched her inappropriately on at least three occasions.
16. Patient 3 reported he would check her for lumps on her breast, reach inside her bra and grabbed and squeezed her breast, and touched her nipples with his bare hands. She reported he also had her lay on the table and he proceeded to put a hand on each leg, push them up her legs, and under her pant leg until both hands touched the outside of her vagina, over her underwear. She also reported Applicant had her lay on her stomach, pushed his hands under her shorts, and manipulated her buttocks.
17. Patient 4 also reported Applicant to the TPD.
18. Patient 4 reported Applicant rubbed and cupped her breasts and pinched her nipples under her bra during an examination. On a follow-up examination, she reported Applicant put his ungloved hand down her pants and her underwear and touched her vagina.

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19. Patient 5 also reported Applicant to the TPD.
20. Patient 5 reported Applicant fondled and groped her breasts by reaching down the front of her shirt and under her bra. She believed he was doing it for his own sexual gratification.
21. At the preliminary hearing, Patient 1 and Dr. Desai (Applicant's supervisor) testified for the state and at Applicant's request the preliminary hearing was continued.
22. On March 4, 2013, Applicant pled no contest to a single count of felony aggravated sexual battery and misdemeanor sexual battery at the plea hearing.
23. On the same day, he signed the plea agreement in which he agreed to plead no contest to one count of Aggravated Sexual Battery-Victim Overcome by Fear or Force, a level 5 person felony, and no contest to one count of Sexual Battery, a Class A Person Misdemeanor.
24. In the plea, Patient 1 was listed as the victim for the aggravated sexual battery conviction, and all four other patient victims were listed under the sexual battery conviction.
25. On May 3, 2013, Applicant was sentenced to 32 months prison, which was suspended, and Applicant was placed on intensive supervised probation for 36 months.
26. Additionally, he was required to register as a sex offender.
27. On or about August 2, 2013, the Illinois Department of Financial and Professional Regulation ("Illinois Board") denied his license renewal, and then revoked his license to practice on September 9, 2013.
28. Applicant completed his intensive supervised probation in approximately May 2016.

Application for Reinstatement

29. On or about October 23, 2020, Applicant submitted an application for reinstatement seeking an Inactive license in Kansas.
30. Such application was deemed complete and filed with the Board on May 3, 2021.
31. On his application, he answered "yes" to the following attestation questions:
 - (a) Have you ever been dropped, suspended, expelled, fined, placed on probation, allowed to resign, requested to leave temporarily or permanently, or otherwise had

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action taken against you by any professional training program prior to completing the training?

- (d) Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, suspended, revoked or placed on probation, or have you ever involuntarily or voluntarily (to avoid disciplinary action or investigation) resigned or withdrawn from any licensed hospital, nursing home, clinic, or other healthcare facility in which you have trained, including but not limited to residency or postgraduate training programs, or otherwise been a staff member, been a partner or held privileges?

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- (g) Have you ever voluntarily surrendered any professional license?
- (h) Has any licensing authority ever limited, restricted, suspended, revoked, censured or placed on probation or had any other disciplinary action taken against any professional license you have held?
- (k) Has any professional association imposed any disciplinary action against you?
- (o) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?
- (p) Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.
- (q) Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued).
- (s) Have you ever been a defendant in a legal action involving professional liability (malpractice), or had a professional liability claim paid in your behalf, or paid such claim yourself?

32. Applicant generally stated he had to answer “yes” to most of the attestation questions:

“because I was wrongfully convicted as [a] sex offender, consequently, I was wrongfully registered as [a] sex offender, my medical license was wrongfully revoked, I was wrongfully terminated, I was wrongfully dismissed from professional associations, I live in continuous fear of being framed as a sex offender by the police and put in jail, etc.”

33. He also provided detailed explanations for each attestation question response. Summarized in order, they are as follows:

- (a) He stated he had some unsatisfactory evaluations and was delayed in moving from residency years; he claimed it was due to discrimination.

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- (d) Applicant stated in 1995 he was asked by the Medical Director of the Topeka VA CONFIDENTIAL In February 1996 he was put on probation for 90 days. He filed an EEO Complaint of Employment Discrimination in September 1996 and in December 1996 his clinical privileges were suspended. On March 13, 1998 he was terminated. He won his EEO complaint and was reinstated as a neurologist at the Topeka VA hospital on approximately May 17, 1999.
- (f) He stated he was wrongfully terminated from the Topeka VA on May 21, 2013, because he had surrendered his Kansas medical license involuntarily, against his will, by coercion and intimidation from his attorney. He stated he was framed as a sex offender with five female patients CONFIDENTIAL at the Topeka VA, was wrongfully convicted as a sex offender, and the KSBHA wrongfully revoked his medical license. He then provided “course of events” and within his explanation, he stated:

“Five female patients went to the Topeka Police Department to make false allegations of misconduct against myself. Four of the five were new, young female patients with CONFIDENTIAL CONFIDENTIAL, who were assigned to me after I filed the EEO complaint of Employment Discrimination against my supervisor, Dr. Hedge, on 10/19/2010 with amendment on 02/08/2011. This fact suggests that those FEMALE PATIENTS WERE USED AS WEAPONS TO FRAME ME AS [A] SEX OFFENDER AND GET ME FIRED, in retaliation to the filing of the EEO complaint of Employment Discrimination against my supervisor...” (emphasis in original).

He states in his criminal case, his attorneys advised him to not have a jury trial because:

“most probably, I would lose in the Trial because women have preferential treatment in a Court of Justice, women never lose in a Court of Justice regarding allegations of sexual crimes, moreover there is racial prejudice against Hispanics in Kansas, therefore I would not have a fair trial. Consequently, I had to plead ‘No Contest,’ and then, I was wrongfully convicted as a sex offender.”

- (g) He stated he did not voluntarily surrender his Kansas medical license. He claimed he signed the Consent Order against his will, he was coerced, intimidated by his attorney, and overwhelmed by fear.
- (h) He stated his Kansas license was “(wrongfully) revoked,” and his Illinois license was revoked because he had been “(wrongfully) convicted of a criminal act that requires registration under the Sex Offender Registration Act.”
- (k) He stated he was dismissed from American Clinical Neurophysiology Society, American Academy of Neurology and Medical & Dental Christian Association.

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- (o) Disclosed Illinois revocation.
 - (p) Stated he was charged with Aggravated Sexual Battery.
 - (q) Stated he was wrongfully convicted of Aggravated Sexual Battery and was on probation for 3 years.
 - (s) Disclosed malpractice claims and his explanation of patient care.
34. Applicant should have also answered “yes” to attestation question “u” asking if he had ever been terminated, sanction, penalized, or had to repay money to any state Medicaid or Federal Medicaid Programs or private insurance company.
35. His National Practitioner Data Bank Report (“NDPB”) report shows that on March 20, 2016, HHS Office of Inspector General excluded him from Medicare, Medicaid, and all other Healthcare Programs for a conviction related to patient abuse or neglect.
36. Applicant has not practiced medicine or been employed since May 21, 2013.
37. He does not hold any Active license to practice medicine and surgery in the United States.
38. Applicant completed continuing medical education (“CME”) as follows:
- 2021 – 5 hrs of Category I CME
 - 2020 – 48.25 hrs of Category I CME
 - 2019 – 52 hrs of Category I CME
 - 2018 – 37.25 hrs of Category I CME
 - 2017 – 24.5 hrs of Category I CME
 - 2015 – 19.5 hrs of Category I CME
39. Applicant is a member of the: American College of Physicians; KU Alumni Association; Catholic Medical Association; and the Sierra Club.

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APPLICABLE LAW

I. The Board’s Purpose

K.S.A. 65-2801 states the purpose of the healing arts act:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and

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provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

“The whole purpose and tenor of the healing arts act is the protection of the public against unprofessional, improper, unauthorized, and unqualified practice of the healing arts. The goal is to secure to the people the services of competent, trustworthy practitioners.” *Kansas State Bd. Of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968).

Zoeller v. State Bd. Of Healing Arts, Case No. 12-C-50, slip opinion at p. 12 (Shawnee County District Court July 2, 2012), provides:

When presented with a doctor who poses a possible threat to his patients, the Board must act in accordance with the interests of the public before the interests of the doctor. Therefore, the Board’s responsibility is not to weigh the benefit and harm of this agency action as it pertains to [Applicant/Petitioner] and his personal life, but to the benefit and harm to the public and the public’s perception of the Board as a regulatory agency. If the Board is to perform its regulatory function, the public must perceive the Board as acting in the public’s best interest, rather than catering its decision to the benefit of the doctors it is tasked with regulating.

II. Standard

A. Reinstatement

K.S.A. 65-2844: A person whose license...has been revoked may apply for reinstatement after the expiration of three years from the effective date of the revocation...The burden of proof by clear and convincing evidence shall be on the applicant to show sufficient rehabilitation to justify reinstatement.

In considering whether to grant reinstatement, the Board must look at the *Vakas* factors. *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 808 P.2d 1355 (1991). The factors include: (1) present moral fitness; (2) demonstrated consciousness of the wrongful conduct and disrepute which the conduct brought the profession; (3) extent of Applicant’s rehabilitation; (4) the seriousness of the original misconduct; (5) Conduct subsequent to discipline; (6) the time which has elapsed since the original discipline; (7) Applicant’s character, maturity, and experience at the time of revocation; and (8) Applicants present competence.

B. Felony Conviction

Under K.S.A. 65-2836(c): ...In the case of a person who has been convicted of a felony and applies for reinstatement, “the application shall be denied unless 2/3 majority of the board

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members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust."

C. Clear and Convincing Evidence

The Kansas Supreme Court has defined clear and convincing evidence as "evidence that shows that the truth of the asserted fact is highly probable." *Becker v. Knoll*, 301 Kan. 274, 276, 343 P.3d 69 (2015).

CONCLUSIONS OF LAW

I. Applicant's application for reinstatement is denied as Applicant has failed to establish by clear and convincing evidence he has been sufficiently rehabilitated to justify reinstatement under K.S.A. 65-2844 and the *Vakas* factors.

As Applicant's license to practice was previously revoked, Applicant bore the burden of establishing by clear and convincing evidence he has been sufficiently rehabilitated to warrant the public trust under K.S.A. 65-2844 and the *Vakas* factors. The Board determines he has failed to meet that burden.

Present moral fitness and demonstrated consciousness of the wrongful conduct and disrepute his conduct has brought the profession.

These two factors are somewhat intertwined for purposes of this case. Applicant has demonstrated zero consciousness of his wrongful conduct – sexually assaulting five patients, multiple times, in the guise of medical treatment, which also goes to his present moral fitness. He does not accept any form of responsibility. He is steadfast in his denial and simultaneously engages in victim shaming and blaming. But Applicant's wrongful conduct is serious in that not only does it harm the patients, but it also brings disrepute and damages the credibility of the profession – of which Applicant simply refuses to acknowledge.

Applicant purports his Letters of Support show his present moral fitness. The Board reviewed the Letters of Support in its determination; however, they do not turn the weight of this factor in Applicant's favor. The Letters of Support are from a retired physician, lawyer, and several members in Applicant's church community. While the letters attest to Applicants moral character and of his catholic faith, it is unclear from the face of the letters if these individuals are aware of his criminal conviction and reason for losing his medical license; and if so, if they would still attest to his moral character and would still support reinstatement.

These two factors weigh against the Applicant.

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Extent of Applicant's rehabilitation.

While the Board acknowledges Applicant completed his intensive supervised probation, Applicant has submitted little to no additional evidence of rehabilitation for sexually assaulting patients and asserts there is nothing to evaluate or rehabilitate as he denies the misconduct. This factor weighs against Applicant.

Seriousness of the original misconduct.

The seriousness of his original misconduct is severe. Applicant sexually assaulted five different patients at the Topeka VA by using his position as a physician to gain their trust. These five victims had never met or spoken with each other, and all had different reasons for which they were seeking medical care. What they had in common, was that they were all veterans, ^{CONFIDENTIAL} _{CONFIDENTIAL}, and they trusted Applicant as their neurologist.

This factor weighs against the Applicant.

Applicant's conduct subsequent to discipline.

While he did complete his intensive supervised probation, Applicant has not engaged in additional evaluations or rehabilitative measures. He stated he has spent the time subsequent to his discipline in an effort to clear his name. This factor weighs against the Applicant.

The time that has elapsed since original discipline.

It has been over eight years since the original discipline. Applicant has had ample time in which to engage in a process to attempt rehabilitation. This factor, as to the facts of this case, weighs against Applicant.

Applicant's character, maturity, and experience at the time of revocation.

At the time of revocation, Applicant had been a practicing physician for decades. His serious violations of the Kansas Healing Arts Act occurred when he was a seasoned medical professional. This factor weighs against Applicant.

Applicant's present competence.

This factor weights against Applicant as he has not demonstrated present competence to practice as a physician. He has not practiced medicine or even been employed anywhere in over eight years. Applicant has submitted Category I CMEs for the Board's consideration of his present competence. The Board recognizes that CME is required for all actively practicing physicians, however, CME alone for an individual who has not actively practiced for over eight years is not evidence of present competence; nor does the CME Applicant submitted meet the requirements of

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K.A.R. 100-15-4 and K.A.R. 100-15-5. Applicant also testified at the Conference hearing that he “feels” he is competent to have a medical license. Applicant’s feeling he is competent is insufficient. Regardless, even if Applicant had demonstrated present competence, this factor would bear less weight in this case considering the original misconduct was sexually assaulting five patients.

The Board does not find the Applicant credible. The Board had the opportunity to observe testimony from the Applicant at the Conference Hearing and considered the full agency record. The five patient-victims did not know one another and independently reported sexual assault by the Applicant to the police. Applicant’s *modus operandi* was similar for all five patients. Additionally, at the Conference Hearing, Applicant was asked by a Board Member for his explanation to his following statement:

“upon her consistent request, wearing gloves and over her clothes, brief exam was done looking for lumps, tender areas. Her breast had an unpleasant, disgusting consistency like lifeless bag of crumbs, or lifeless bag with sand. It was disgusting, unpleasant having to touch [the patient’s] breast...”

Applicant responded that this statement was to show he was not sexually aroused, but he was just doing his job. This explanation highlights his lack of credibility as it would be unnecessary if he was just doing his job; any proper response if he were doing his job would have been neutral and medical in nature.

The Board’s mission is to protect the public, the patients of Kansas. Reinstatement of Applicant’s license would run contrary to the Board’s statutory mission and the law as it applies to the facts of this case. Applicant has not proven by clear and convincing evidence that he has been sufficiently rehabilitated to justify reinstatement of license to practice medicine and surgery.

II. Additionally, Applicant’s application is denied under K.S.A. 65-2836(c) because the Board members present and voting determined unanimously Applicant has failed to establish by clear and convincing evidence that he will not pose a threat to the public in his capacity as a physician and that he has been sufficiently rehabilitated to warrant the public trust.

Applicant was convicted of a felony, specifically Aggravated Sexual Battery-Victim Overcome by Fear or Force, a level 5 person felony, and one count of Sexual Battery, a Class A Person Misdemeanor. Accordingly, under K.S.A. 65-2836(c) his application for reinstatement must be denied unless 2/3 of the Board members present and voting determine he has established by clear and convincing evidence that he will not pose a threat to the public as a physician and that he has been sufficiently rehabilitated to warrant the public trust.

For the reasons articulated above, and incorporated herein, Applicant’s application is denied under K.S.A. 65-2836(c) as on the record at the Conference Hearing, the Board members present and voting unanimously determined Applicant has failed to establish by clear and convincing

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evidence he will not pose a threat to the public as a physician and that he has been sufficiently rehabilitated to warrant the public trust.

ORDER

IT IS THEREFORE ORDERED, Applicant's application for reinstatement of an inactive license to practice medicine and surgery in Kansas, is **DENIED**.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS



Tucker L. Poling, Executive Director

NOTICE OF APPEAL 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. Under K.S.A. 77-529, parties 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 Tucker L. Poling, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **FINAL ORDER** by depositing the same in the United States mail, postage prepaid, on this 13th of September 2021, addressed and emailed to:

Jose M. Bejar, M.D.
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Applicant

Vincent Cox
Cavanaugh, Biggs & Lemon, P.A.
3200 SW Huntoon Street
Topeka, KS 66604
Vcox@cavlem.com
Attorney for Applicant

And a copy was hand delivered to:

J. Todd Hiatt
Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, KS 66612

and the original was filed with:

Tucker L. Poling, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612

Alexandria Diaz for
Jennifer Cook, Paralegal

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