

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

In the Matter of)
) Docket No. 10-HA00112
Ethan Bickelhaupt, M.D.)
Kansas License No. 04-18228)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Anne Barker Hall, Associate Litigation Counsel, (“Petitioner”), and Ethan Bickelhaupt, M.D. (“Licensee”), by and through his counsel Arthur Glassman, Sloan Eisenbarth, Glassman, McEntire, & Jarboe, L.L.C., 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 last known mailing address to the Board is: **Confidential**
Leavenworth, Kansas 66048
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. 04-18225 on approximately July 2, 1979. Licensee’s license was emergently suspended on February 23, 2010. The Board determined at a hearing on August 8, 2014 that Licensee’s license should not be revoked.
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.* and K.S.A. 65-2869.

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 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 it applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waive 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.
7. 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 the document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
8. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-2836(c); K.S.A. 65-2836(e); and K.S.A. 65-2836(s) to take action with respect to Licensee's license under the

Kansas Healing Arts Act, K.S.A. 65-2801 *et. seq.* Probative to the Board in reaching the terms of this Consent Order was the following:

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9. At a formal hearing before the Board on August 8, 2014, a 2/3 majority of the Board members present and voting determined by clear and convincing evidence that Licensee did not pose a threat to the public in his capacity as a licensee and that Licensee has been sufficiently rehabilitated to warrant the public trust. As a result, Licensee's license was not revoked. The Board, in reaching its decision noted the following:

a. On February 23, 2010 Licensee pleaded guilty to, and was therefore convicted of, one count of Distributing, Dispensing, or Possessing with Intent to Distribute or Dispense Controlled Substance by a Practitioner and one count of Acquiring or Obtaining a Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge, both felony offenses.

- b. The Board issued an Ex Parte Order of Suspension and Protective Order on February 23, 2010, emergently suspending Licensee's license as a result of Licensee's convictions.
- c. It was noted K.S.A. 65-2836(c) states in part: "The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000 unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee 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 public trust." Kan. Stat. Ann. 65-2836(c) (2011).
- d. As a result of the Board's action in 2010, the Illinois Department of Financial and Professional Regulation (Illinois Board) placed Licensee on three years probation, which he completed in May 2013. The Board, also in reaching this decision, was aware that the Illinois Board placed Licensee on three years probation which he successfully completed. On July 10, 2014, Licensee agreed to a one year suspension of his Illinois license pending further review on the reinstatement background of the Licensee under the Illinois Medical Practice Act, all of which has yet to be completed.

10. As a result of his conviction, Licensee has been excluded from participating in the Medicare and Medicaid programs. Licensee will be eligible to apply for participation in the Medicare and Medicaid program in September 2015.

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12. Licensee acknowledges that, if formal hearings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

13. Licensee was convicted of a felony in violation of K.S.A. 65-2836(c).

14. The Board determined by a 2/3 majority of the Board members present and voting determined by clear and convincing evidence that Licensee did not pose a threat to the public in his capacity as a licensee and that Licensee has been sufficiently rehabilitated to warrant the public trust.

15. The Board voted that Licensee's license shall not be revoked and he shall be able to apply for an active license Confidential

16. Licensee violated K.S.A. 65-2836(e) Confidential
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17. Licensee violated K.S.A. 65-2836(s) in that he has been excluded from participating, for a period of at least five years, in Medicare and Medicaid programs. Exclusion from participating in Medicare and Medicaid programs is considered sanctions or disciplinary action taken against Licensee by a governmental agency or department.

18. License also violated K.S.A. 65-2836(s) in that his Illinois license was suspended for a period of at least one year.
19. 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. 65-2863a, the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.
20. According to K.S.A. 65-2838(b) and K.S.A. 77-505, the Board has the authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
21. All pending investigation materials involved in KSBHA Docket No. 10-HA00112 regarding Licensee, were fully reviewed and considered by the Board Members who serve on the Board's Disciplinary Panel and/or their appointed member for this matter, Disciplinary Panel No. 21 authorized and direct Board counsel, through their appointed member for this matter, to seek settlement of this matter with the provisions contained in this Consent Order.
22. 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.

23. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosures of the Consent Order.
24. 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.
25. 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.
26. 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.
27. Licensee acknowledges that he has read this Consent Order and fully understands its contents.
28. Licensee acknowledges that this Consent Order was entered into freely and voluntarily.

29. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the following:

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

30. 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.
31. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final 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.
32. This Consent Order constitutes public non-disciplinary action.
33. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
34. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action against his license to engage in the practice of medicine and surgery:

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45. Licensee shall immediately notify the Board or its designee of any citation, arrest, or charge filed against him or any conviction for any traffic or criminal offense.

46. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory District of Columbia, or any other country, or by a peer review body, a health care facility, a profession association, or society, or by a governmental agency.

47. Licensee shall at all times keep the Board staff informed of all of his current practice locations, addresses, and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of such change.

PRACTICE MONITOR

48. For the period of at least one (1) year, Licensee agrees to have a Board-approved practice monitor, who is another Kansas-licensed physician, to review the practices and procedures of Licensee's practice to ensure compliance with the standard of care for Licensee's specialty and with the community and ethical standards. Licensee shall bear all expenses associated with the practice monitor.
49. Within ten (10) days of the approval of the Consent Order, Licensee shall submit the curriculum vitae (CV) of a proposed practice monitor for approval of the Board. Licensee shall propose a physician to serve as his practice monitor. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the monitoring physician.
50. The practice monitor shall submit quarterly reports (January 15th, April 15th, July 15th, and October 15th) to the Board in the form provided by Board staff. Such reports shall include a summary of whether Licensee is seeing patients, documenting in the medical record, treating patients appropriately, and prescribing medications in an appropriate and timely manner. Licensee is responsible for ensuring that the practice monitor's reports are submitted by the quarterly deadlines. Licensee shall ensure that the quarterly reports continue until the monitoring provision is lifted by the Board.
51. All reports required pursuant to this Consent Order shall be submitted to the following address:

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

TIMEFRAME

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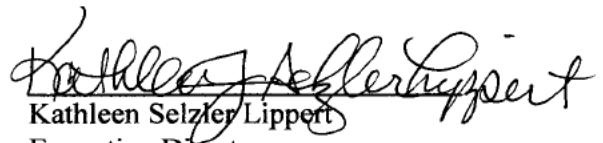
~~53.~~ The above monitoring provisions are not self-terminating. After a period of five (5) years, Licensee may request modification or termination Confidential After a period of one (1) year, Licensee may request termination of the practice monitor provision. For any period Licensee is not actively practicing medicine and surgery in the State of Kansas, the monitoring provisions will remain in effect but will be tolled and not count towards the required timeframes.

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 as a Final Order of the Board.

IT IS FURTHER ORDERD that upon meeting all the technical requirements for licensure, Licensee shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 22 day of Dec, 2014.

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

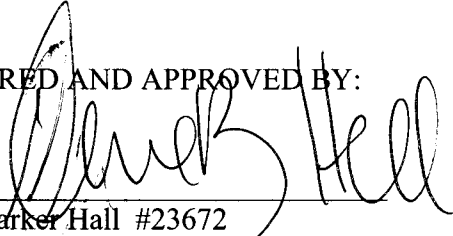

Kathleen Selzler Lippert
Executive Director

12/22/14
Date


Ethan Bickelhaupt, M.D. Licensee

9/5/14
Date

PREPARED AND APPROVED BY:



Anne Barker Hall #23672
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-3268



Arthur Glassman
Attorney for Licensee
Sloan, Eisenbarth, Glassman, McEntire, & Jarboe, L.L.C.
534 S. Kansas Avenue, Suite 1000
Topeka, KS 66603

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 23rd day of December, 2014, to the following:

Ethan Bickelhaupt
Licensee
Confidential
Chicago, IL, 60618

Arthur Glassman
Attorney for Licensee
Sloan, Eisenbarth, Glassman, McEntire, & Jarboe, L.L.C.
534 S. Kansas Avenue, Suite 1000
Topeka, KS 66603

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Anne Barker Hall
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

General Counsel's Office
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Cathy A. Brown