

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

**FILED** *CHD*

APR 23 2007

KS State Board of Healing Arts

In the Matter of	)	
	)	Docket No. 07-HA- 00084
James A. Black, D.O.	)	
Kansas License No. 5-24331	)	

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**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Kathleen Selzler Lippert, Associate Counsel (“Petitioner”), and James A. Black, D.O. (“Licensee”) by and through his counsel, Kenneth C. Havner, 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 mailing address to the Board is: 2517 Canterbury Dr., Hays, Kansas 67601.
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. 5-24331 on approximately October 31, 1992. 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

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Consent Order  
James A. Black, D.O.

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. The Kansas Healing Arts Act is constitutional on its face and as applied in the 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 that there may be grounds **(Confidential)** to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. The Board has received information and investigated the same, and has reason to believe that between August 2004 and September 2006; Licensee wrote numerous prescriptions for medications to Patient 1, which included controlled substances.
11. Patient 1 is Licensee's relative.
12. Such prescriptions included: Hydrocodone 7.5 -325 mg and Hydrocodone 7.5-500 mg; which are controlled substances. Additionally, Licensee prescribed Alprazolam, Ambien, Butalbital/Apap/Caffeine Tab, Cefuroxime, Cephalexin, Ciprofloxacin, Effexor, Fluoxetine, Hyzaar, Tebamide, Temazepam, and Tequin for Patient 1.
13. **(Confidential)**
  
14. **(Confidential)**
  
15. Licensee did not maintain complete and accurate medical records for Patient 1. Licensee's records for Patient 1 do not contain documentation relating to Licensee's prescribing of controlled substance medications or antibiotics.
16. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Licensee has violated the 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.

17. **(Confidential)**

18. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.

19. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(23), in that Licensee prescribed a prescription drug in an improper or inappropriate manner.

20. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), in that he failed to keep accurate written medical records.

21. Licensee violated K.S.A. 65-2836(f), as set forth in K.A.R. 68-20-18, in that Licensee failed to issue a prescription for a legitimate medical purpose or in the usual course of his professional practice.

22. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Healing Arts Act.

23. 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.

24. 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**

- a. Licensee is publicly censured for violating the Healing Arts Act.

**(Confidential)**

- b.

c. **(Confidential)**

d. **(Confidential)**

e. **(Confidential)**

f. **(Confidential)**

g. **(Confidential)**

### **LIMITATIONS**

- h. Licensee shall not practice the healing arts unless he complies with each of the following:
- i. Licensee is prohibited from ordering, prescribing, dispensing or administering medications to any employee, family members, significant others or any person with whom Licensee has a personal relationship.

- ii. Licensee shall only prescribe, order, dispense or administer prescriptions for persons with whom he has a physician-patient relationship and for whom he maintains a medical record.
- iii. Licensee is prohibited from prescribing, ordering, dispensing or administering medications to himself, including sample medications. Licensee shall arrange to have a personal physician who oversees his care.
- iv. Licensee's license and authority to prescribe is hereby LIMITED as described above for a period of at least three (3) years. After the expiration of three (3) years, Licensee may request that the prescribing limitation be modified or removed.
- i. Licensee will notify each and every state in which he holds licensure or applies for licensure and all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment of the limitations on his license.

#### **TOLLING OF MONITORING AND LIMITATION TIMEFRAMES**

- j. For any period of time that Licensee is not actively practicing osteopathic medicine and surgery in Kansas, the monitoring and limitations will remain in effect but will be tolled and not counted towards reducing the three (3) year timeframe.

#### **CURRENT PRACTICE LOCATIONS**

- k. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall

provide the above information in writing to the Board within ten (10) days of any such change.

25. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.
26. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 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.
27. 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 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 the Releasees.

28. 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, Federation of State Medical Boards, and any other reporting entities authorized to receive disclosure of the Consent Order.
29. 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.
30. 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.
31. 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.

32. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
33. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
34. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
35. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic 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.
36. 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.
37. This Consent Order constitutes disciplinary action.
38. 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:

**CENSURE**

a. Licensee is publicly censured for violating the Healing Arts Act.

(Confidential)

b.

c. (Confidential)

d. (Confidential)

e. (Confidential)

(Confidential)

f. (Confidential)

g. (Confidential)

### LIMITATIONS

h. Licensee shall not practice the healing arts unless he complies with each of the following:

i. Licensee is prohibited from ordering, prescribing, dispensing or administering medications to any employee, family members, significant others or any person with whom Licensee has a personal relationship.

- ii. Licensee shall only prescribe, order, dispense or administer prescriptions for persons with whom he has a physician-patient relationship and for whom he maintains a medical record.
- iii. Licensee is prohibited from prescribing, ordering, dispensing or administering medications to himself, including sample medications. Licensee shall arrange to have a personal physician who oversees his care.
- iv. Licensee's license and authority to prescribe is hereby LIMITED as described above for a period of at least three (3) years. After the expiration of three (3) years, Licensee may request that the prescribing limitation be modified or removed.
- i. Licensee will notify each and every state in which he holds licensure or applies for licensure and all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment of the limitations on his license.

**TOLLING OF MONITORING AND LIMITATION TIMEFRAMES**

- j. For any period of time that Licensee is not actively practicing osteopathic medicine and surgery in Kansas, the monitoring and limitations will remain in effect but will be tolled and not counted towards reducing the three (3) year timeframe.

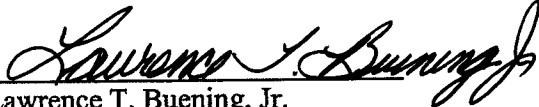
**CURRENT PRACTICE LOCATIONS**

- k. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall

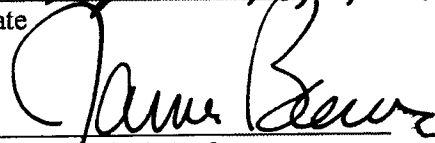
provide the above information in writing to the Board within ten (10) days  
of any such change.

IT IS SO ORDERED on this 23<sup>rd</sup> day of April, 2007.

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

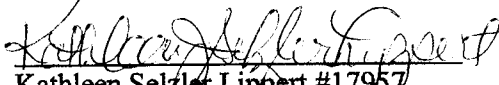
  
Lawrence T. Buening, Jr.  
Executive Director

April 23, 2007  
Date

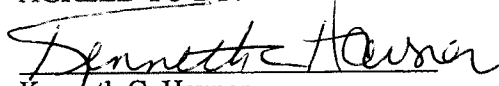
  
James A. Black, D.O.  
Licensee

4/5/7  
Date

PREPARED AND APPROVED BY:

  
Kathleen Selzler Lippert #17957  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

AGREED TO BY:

  
Kenneth C. Havner  
Attorney for Licensee  
P.O. Box 976  
111 W. 10<sup>th</sup> Street  
Hays, Kansas 67601

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Consent Order  
James A. Black, D.O.

**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 23<sup>rd</sup> April day of ~~February~~, 2007, to the following:

James A Black, D.O.  
Licensee  
2517 Canterbury Dr.  
Hays, Kansas 67601

Kenneth C. Havner  
Attorney for Licensee  
P.O. Box 976  
111 W. 10<sup>th</sup> Street  
Hays, Kansas 67601

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Kathleen Selzler Lippert #17957  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

