

**FILED** *CRB*

MAR 09 2009

KS State Board of Healing Arts

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

**In the Matter of** )  
**Henry Borra, M.D.** )  
 )  
**Kansas License No. 04-24115** )  
\_\_\_\_\_ )

**Docket No. 08-HA00155**

**FINAL ORDER**

NOW, on this 20<sup>th</sup> day of February, 2009, the above-entitled matter comes on before the Kansas State Board of Healing Arts (“Board”) for conference hearing concerning Licensee’s request to terminate a stipulation in the Consent Order filed on February 25, 2008. The licensee appears in person, *pro se*. Lori Dougherty, Associate Litigation Counsel, appears for the Board. There are no other appearances.

WHEREUPON, Dr. Minns discloses that Licensee is a former student whom he has not seen for three or four years and that Dr. Minns will not recuse himself as he believes he can be fair and impartial.

WHEREUPON, Licensee is duly sworn and presents testimony under oath.

WHEREUPON, having the agency record before it, hearing the testimony of the licensee, hearing the statements and arguments of counsel and being duly advised in the premises, the Board FINDS and ORDERS as follows:

1. On or about February 25, 2008, the Board and Licensee entered into a Consent Order.
2. Said Consent Order limited Licensee’s license such that, amongst other things not currently before the Board, Licensee stipulated to cancelling or surrendering his Drug Enforcement Administration (“DEA”) authority to prescribe controlled substances for a period of at least one (1) year.

3. Under the terms of said Consent Order, Licensee can move the Board to terminate the above-mentioned stipulation after one (1) year.

4. On or about January 20, 2009, Licensee sent a letter to Cathy Brown, Executive Assistant, requesting the Board consider removing said stipulation. The Board accepts this letter as a properly filed motion to terminate the stipulation.

5. **(Confidential)**

**(Confidential)**

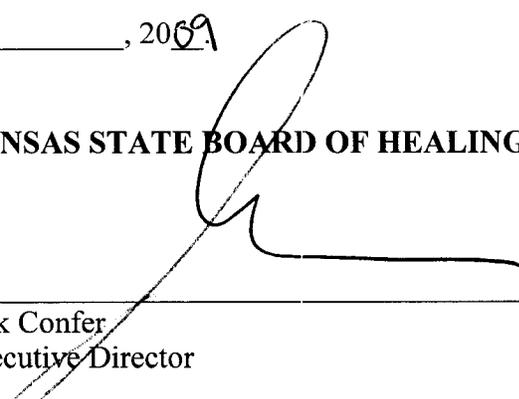
THEREFORE, The Board modifies the terms of the Consent Order filed on February 25, 2008, such that Licensee can henceforth seek a DEA license to prescribe controlled substances. All other terms of the Consent Order remain in full force and effect and are not hereby modified.

**PLEASE TAKE FURTHER NOTICE** that this is a final order. A final order is effective upon service. 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 the Board's Executive Director at 235 SW. Topeka Blvd., Topeka, KS 66603.

**IT IS SO ORDERED.**

DATED THIS 5<sup>th</sup> day of MARCH, 2009

**KANSAS STATE BOARD OF HEALING ARTS**



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Jack Confer  
Executive Director

**Certificate of Service**

I certify that the foregoing Journal Entry was served this 9<sup>th</sup> day of March, 2009, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Henry Borra, M.D.  
127 W 30<sup>th</sup> Ave.  
Hutchinson, KS 67502

and a copy was hand-delivered to:

Lori Dougherty  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, KS 66603

and the original deposited for filing with the Executive Director.

Cathy A. Brown

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED** *CAH*

FEB 25 2008

KS State Board of Healing Arts

In the Matter of )  
 )  
**Henry Borra, M.D.,** )  
Kansas License No. 4-24115 )  
\_\_\_\_\_ ) Docket No. 08-HA-00155

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts (“Board”) by and through Dan Riley, Associate Counsel (“Petitioner”), and Henry Borra, M.D., 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 127 West 30<sup>th</sup>, Hutchinson, Kansas, 67502.

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. 04-24115 in August, 1992, which was canceled for non-renewal in August of 1998. Licensee entered a Consent Agreement in February 2005 as a condition of obtaining reinstatement of his Kansas license. Licensee’s license status 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 medicine and surgery. K.S.A. 65-2801 *et seq.*; 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. 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 this case. Licensee agrees that, in considering this matter, the Board is not beyond its jurisdiction as provided by law.

6. 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.

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 this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

8. At all relevant times hereto, Licensee has held a license authorizing the active practice of medicine and surgery in Kansas.

9. On or about February 15, 2005, Licensee entered into a Consent Order with the Board (Confidential)  
(Confidential)

10. (Confidential)  
(Confidential)

11. (Confidential)  
(Confidential)

12. On or about March, 2007, Licensee was terminated from his employment at Russell Regional Hospital as a physician, (Confidential)  
(Confidential)

13. (Confidential)

14. (Confidential)

(Confidential)

15. The Board has grounds for discipline against Licensee's license pursuant to K.S.A. 65-2836(b), as further set forth in K.S.A. 65-2837(b)(23), for 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 the licensee's professional practice.

16. (Confidential)

(Confidential)

17. 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.

18. In lieu of the conclusion of 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 against his license to engage in the practice of medicine and surgery in Kansas:

#### **LIMITATION**

- a. Licensee's license is hereby LIMITED in that Licensee is prohibited from prescribing, dispensing or administering controlled substances for at least one (1) year from the date this Consent Order is filed, and shall immediately surrender or cancel his Drug Enforcement Administration ("DEA") authority to prescribe controlled substances. At the conclusion of one (1) year, Licensee may file a motion with the Board to request termination of this limitation;

(Confidential)

c. (Confidential)

d. (Confidential)

e. (Confidential)

f. (Confidential)

g. (Confidential)

19. 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 in accordance with the Kansas Administrative Procedure Act.

20. 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. 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.

21. Licensee hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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 Board, its

employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent order.

22. 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 this Consent Order.

23. 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.

24. 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.

25. Licensee by signature to this document, waives any objection to the participation of the Board members 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 from any source which otherwise may not be admissible or admitted as evidence.

26. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

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

28. 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.

29. 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.

30. 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, and is the Order of the Board.

**IT IS FUTHER ORDERED** that:

## LIMITATION

- a. Licensee's license is hereby LIMITED in that Licensee is prohibited from prescribing, dispensing or administering controlled substances for at least one (1) year from the date this Consent Order is filed, and shall immediately surrender or cancel his Drug Enforcement Administration ("DEA") authority to prescribe controlled substances. At the conclusion of one (1) year, Licensee may file a motion with the Board to request termination of this limitation;
- b. **(Confidential)**

b. **(Confidential)**

c. (Confidential)

d. (Confidential)

e. (Confidential)

IT IS SO ORDERED.

KANSAS BOARD OF HEALING ARTS:

  
Lawrence T. Buening, Jr.  
Executive Director

2/26/08  
Date

  
Henry Borra, M.D.

Licensee  
2/26/08  
Date

**PREPARED BY:**  
  
Dan Riley #15658  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
(785) 296-7413  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served this 26<sup>th</sup> day of February, 2006, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Henry Borra M.D.  
127 West 30<sup>th</sup>  
Hutchinson, Kansas 67502  
and a copy was hand-delivered to:

Dan Riley, Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603

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

