

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED



FEB 16 2006

In the Matter of)
)
DAVID E. BRAVERMAN, M.D.)
Kansas License No. 04-17188)
_____)

KS State Board of Healing Arts

Docket No. 06-HA-00006

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Kelli J. Stevens, Litigation Counsel, and Diane L. Bellquist, ("Petitioner"), and David E. Braverman, M.D. ("Licensee"), by and through counsel, Steve A. Schwarm, and move the Board for approval of a Consent Order affecting Licensee's license to practice the medicine and surgery in Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 4601W. 109th, Overland Park, Kansas 66211.
2. Licensee was issued License No. 04-17188 on approximately December 9, 1977. Licensee currently holds an active license to engage in the practice of medicine and surgery in the State of Kansas.
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.

David Braverman, M.D.
Consent 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 alleges that Licensee deviated from the standard of care to a degree constituting ordinary negligence in his care and treatment of three (3) patients and committed acts of unprofessional conduct. The specific allegations are set forth in the Petition filed July 21, 2005 against Licensee's license to practice medicine and surgery in Kansas.

11. Licensee denies any violation of the Kansas Healing Arts Act or deviation from the standard of care except as otherwise specifically admitted herein. For the sole purpose of this Consent Order, Licensee acknowledges that his acts and conduct with

respect to the patient named in Count 1 of the First Amended Petition violated the Healing Arts Act. Licensee admits that if this matter proceeded to a formal hearing the Board would present evidence that Licensee violated K.S.A. 65-2836(b), as further defined by 65-2837(a)(2), 65-2837(b)(12) and 65-2837(b)(17), of the healing arts act with respect to the allegations in Count I and II of the Petition as follows:

- a. Licensee performed surgery on Patient 1 on the wrong site as to the site listed on a preoperative informed consent form;
- b. Licensee performed surgery on Patient 1 without having first obtained adequate informed consent as to the site actually operated on;
- c. Subsequent to performing the wrong-site surgery, Licensee made false and/or misleading statements to the parents of Patient 1 in order to obtain consent for the surgical procedure he had performed on the wrong site;
- d. Licensee made misleading statements in his operative report for Patient 1;

12. Licensee admits that if this matter proceeded to a formal hearing the Board would have sufficient evidence to support finding that Licensee violated K.S.A. 65-2836(s) and 65-2836(j) of the healing arts act with respect to Count III of the Petition as follows:

- a. On or about September 11, 2003, Licensee surrendered his hospital privileges at Children's Mercy Hospital in lieu of a recommended sixty (60) day suspension (**Confidential**)

(**Confidential**)

- b. On or about November 12, 2004, the Missouri Division of Professional Registration issued Licensee a public reprimand based upon Licensee's unprofessional conduct with respect to his care and treatment of Patient 1; and
- c. In March of 2005, Licensee was denied reappointment of his hospital privileges at Shawnee Mission Medical Center in Shawnee Mission, Kansas (**Confidential**)
(Confidential)

13. Licensee admits that if this matter proceeded to a formal hearing the Board would present evidence that Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(2) of the healing arts act with respect to Count IV of the Petition in that Licensee failed to timely diagnose and treat Patient 2 for congenital glaucoma.

14. Licensee admits that if this matter proceeded to a formal hearing the Board would present evidence that Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(2), of the healing arts act with respect to Count V of the Petition in that Licensee failed to timely diagnose and treat Patient 3 for glaucoma secondary to aphakia:

15. Licensee admits that if this matter proceeded to a formal hearing the Board would present evidence that Licensee violated K.S.A. 65-2836(w), with respect to Count VI of the Petition in that Licensee admits he has had five (5) adverse judgment awards or settlements resulting from medical liability claims related to acts or conduct

similar to grounds for disciplinary action under the healing arts act, including settlements regarding his care and treatment of Patients 2 and 3.

16. Licensee waives his right to dispute or otherwise contest the allegations contained in the Petition in any future proceeding before this Board.

17. 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.

18. 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 regarding his Kansas license:

Limitation

- a. On February 24, 2006, Licensee's license shall immediately be changed from active to inactive status, and such change shall constitute a limitation. Licensee must petition the Board to return to active status;
- b. While Licensee's license is in inactive status, he must meet all continuing education requirements which would be required for an active license. Licensee must petition the Board prior to returning to active status;
- c. Licensee shall at all times keep the Board informed of any and all practice locations and all hospitals where Licensee holds privileges in any state. Licensee shall immediately notify the Board of any changes in practice locations or terminations of privileges.

(Confidential)

(Confidential)

e. (Confidential)

f. (Confidential)

(Confidential)

g. (Confidential)

h. (Confidential)

i. Licensee shall notify Board counsel of any changes or circumstances which may affect compliance with the requirements of this Order;

Public Censure

j. Licensee is publicly censured for the violations of the Healing Arts Act;

Costs

k. Licensee agrees to pay the Board's costs incurred to date in the

formal proceedings of this action in the amount of \$2,670.33, payable on or before March 15, 2006.

19. 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.

20. 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.

21. 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.

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, the Federation of State Medical Boards and any other reporting entities authorized to receive disclosure of the 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 or settlement.

25. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information regarding the allegations contained in the Petition 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 and that this Consent Order has been entered into freely and voluntarily.

27. 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: Diane L. Bellquist, Associate Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

28. 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.

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 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 regarding his license:

Limitation

- a. On February 24, 2006, Licensee's license shall immediately be changed from active to inactive status, and such change shall constitute a limitation. Licensee must petition the Board to return to active status;
- b. While Licensee's license is in inactive status, he must meet all continuing education requirements which would be required for an active license. Licensee must petition the Board prior to returning

to active status;

c. Licensee shall at all times keep the Board informed of any and all practice locations and all hospitals where Licensee holds privileges in any state. Licensee shall immediately notify the Board of any changes in practice locations or terminations of privileges.

(Confidential)

d.

e. **(Confidential)**

(Confidential)

f. (Confidential)

g. (Confidential)

h. (Confidential)

i. Licensee shall notify Board counsel of any changes or

circumstances which may affect compliance with the requirements of this Order;

Public Censure

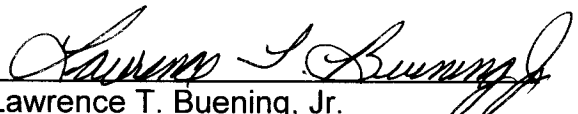
- j. Licensee is publicly censured for the violations of the Healing Arts Act;

Costs

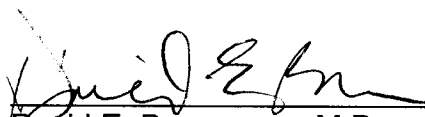
- k. Licensee agrees to pay the Board's costs incurred to date in the formal proceedings of this action in the amount of \$2,670.33, payable on or before March 15, 2006.

IT IS SO ORDERED on this 11th day of February, 2006.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

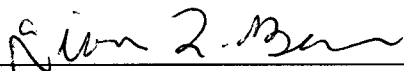

Lawrence T. Buening, Jr.
Executive Director

February 13, 2006
Date


David E. Braverman, M.D.
Licensee

2/13/06
Date

PREPARED AND APPROVED BY:



Kelli J. Stevens, #16032
Litigation Counsel
Diane L. Bellquist, #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

APPROVED BY:



Steve A. Schwarm, # 13232
POLSINELLI, SHALTON, WELTE
& SUELTHAUS, P.C.
555 Kansas Avenue, Suite 301
Topeka, Kansas 66603

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **Consent Order** was served on the 15 day of February, 2006 by hand-delivery and by United States mail, first-class postage pre-paid and addressed to:

Steve A. Schwarm
POL SINELLI, SHALTON, WELTE
& SUELTHAUS, P.C.
555 Kansas Avenue, Suite 301
Topeka, Kansas 66603

and a copy was hand-delivered to:

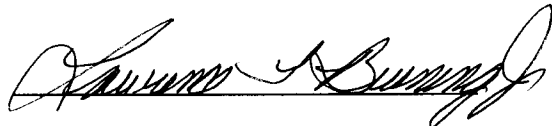
Diane L. Bellquist
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

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



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