

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

In The Matter Of )  
**Judith A. Butler, M.D.** )  
Kansas License No. 4-27372 )      Docket No. 03-HA-72  
\_\_\_\_\_ )

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Judith A. Butler, M.D., (“Licensee”), *pro se*, 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 mailing address as provided to the Board is: P.O. Box 1557, Blytheville, Arkansas 72315
2. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of respiratory. K.S.A 65- 5501 *et seq.*
3. This Consent Order and the filing of such document are in accordance with applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing
4. 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.
5. The Kansas healing arts act is constitutional on its face and as applied in this 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 her right to a hearing under the Kansas administrative procedure act, K.S.A. 77501 *et seq.* Licensee voluntarily and knowingly waives her 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. On or about February 14, 1998, Judith A. Butler, M.D., (“Licensee”), was issued license number 4-27372. Licensee’s current license status is active, and Licensee last renewed her license on or about July 15, 2002.

10. The Board alleges that Licensee committed misrepresentation in applying for renewal of her license by answering “no” to a renewal application question which asked if disciplinary action had been initiated against her by any other state licensing agency, when in fact she had such an action pending before the Arkansas State Medical Board (“Arkansas Board”). The Board further alleges that the Arkansas Board took disciplinary action against Licensee’s license in that state in the form of a limitation. The specific allegations are set forth in the Petition filed with the Board on May 20, 2003.

11. Pursuant to K.S.A. 65-2836(a) and 65-2836(j), the Board has authority to revoke, suspend, censure or otherwise limit Licensee's license.

12. 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.

13. In lieu of conducting formal proceedings and/or the making of findings by the Board, Licensee, by her signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures and limitations placed on her license to engage in the practice of the healing arts:

- (a) Licensee's license shall be suspended for a period of sixty (60) days. Such suspension shall commence immediately upon the filing of this Consent Order with the Board;
- (b) Licensee shall attend and successfully complete the Vanderbilt University continuing education course on prescribing scheduled medication, as set forth in the December 23, 2002 Order of the Arkansas Board, on or before December 31, 2003. Such course shall be at Licensee's own expense;
- (c) Licensee shall attend and successfully complete a continuing education course in medical record-keeping, as set forth in the December 23, 2002 Order of the Arkansas Board, on or before December 31, 2003. Such course shall be at Licensee's own expense;
- (d) For any and all practice by Licensee in Kansas, Licensee shall follow the Board's Guidelines for the Use of Controlled Substances for the Treatment of Pain, approved by the Board on October 17, 1998;

- (e) For any and all practice by Licensee in Kansas, Licensee shall have her controlled substance prescribing monitored by another Kansas licensed physician at Licensee's own expense. The monitor must be pre-approved by the Board or its designee. The monitor must review at least five (5) to ten (10) patient charts per quarter (every three months) which have been identified by Board staff and submit quarterly monitoring reports as set forth below;
- (f) At the end of each quarter, Licensee shall submit to Board staff a copy of all of the prescriptions from a triplicate prescription pad for any and all controlled substances prescribed during the prior three (3) months;
- (g) Board staff shall determine those five (5) to ten (10) patient charts to be reviewed by the monitor and notify Licensee of the charts requested. Licensee shall provide all requested patient charts to the monitor within fourteen (14) days of receiving such notification. The monitor must regularly submit a monitoring report to Board staff within forty-five (45) days after receiving a the quarterly set of charts from Licensee;
- (h) The monitor's monthly reports shall be on a form provided by Board staff and must include an assessment for each patient chart as to whether Licensee is prescribing medications in a manner which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances and whether Licensee is following the Guidelines for the Use of Controlled Substances for the Treatment of Pain;

- (i) The monitor must immediately notify Board staff if the monitor believes that Licensee is over-prescribing or inappropriately prescribing to any patients; and
- (j) Licensee is responsible for ensuring the timely submission of the monitor's quarterly report to Board staff. Board staff must receive at least eight (8) quarterly reports. After eight (8) reports have been submitted, Licensee may request termination of the controlled substance prescription monitoring.

14. This Consent Order constitutes disciplinary action against Licensee's license.

15. Licensee's failure to comply with the provisions of the Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act. For any period(s) of time that Licensee is not actively practicing the healing arts in Kansas, the controlled substance monitoring provisions of this Consent Order will be tolled and not be counted in reducing said timeframes. Any extension of time or grace period for reporting granted by Board staff shall not be a waiver or preclude the Board's right to take action at a later time. The Board shall not be required to grant future extensions of time or grace periods.

16. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the respiratory therapy 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.

17. 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 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.

18. 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 reporting entities requiring disclosure of this Consent Order.

19. 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.

20. 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.

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

22. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

23. Licensee acknowledges that she has read this Consent Order, fully understands the contents and that she has freely and voluntarily entered into this Consent Order.

24. Licensee shall at all times keep the Board informed of the mailing address and specific location of any and all practices in Kansas and notify the Board if she begins or discontinues any practice in Kansas.

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

26. 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.

27. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. 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.

**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 is the Order of the Board.

**IT IS FURTHER ORDERED** that Licensee's license to practice the healing arts is suspended for a period of sixty (60) days, to immediately commence upon the filing of this Consent Order with the Board.

**IT IS FURTHER ORDERED** that Licensee shall complete the Vanderbilt University continuing education course on prescribing scheduled medication, and a continuing education course on medical record-keeping on or before December 31, 2003.

**IT IS FURTHER ORDERED** that Licensee shall follow the Board's Guidelines for the Use of Controlled Substances for the Treatment of Pain, approved by the Board on October 17, 1998, and have her controlled substance prescribing in Kansas monitored as set forth in paragraph 13 above.

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

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/s/  
Lawrence T. Buening, Jr.  
Executive Director

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June 9, 2003  
Date

\_\_\_\_\_  
/s/  
Judith A. Butler  
Licensee

\_\_\_\_\_  
June 7, 2003  
Date

Prepared by:

\_\_\_\_\_/s/\_\_\_\_\_  
Kelli J. Benintendi, #16032  
Associate Counsel  
Kansas State Board of Healing Arts  
235 South Topeka Boulevard  
Topeka, Kansas 66603-3068  
(785) 296-7413

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I, Kelli J. Benintendi, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above CONSENT ORDER by depositing the same in the U.S. mail, postage prepaid, on this the 9<sup>th</sup> day of June, 2003, addressed to:

Judith A. Butler  
P.O. Box 1557  
Blytheville, Arkansas 72315

and a courtesy copy was mailed and faxed to:

P.J. Maddox  
Attorney at Law  
P.O. Box 1317  
Blytheville, Arkansas 72316  
(870)763-0160 fax

and a copy was hand-delivered to:

Charlene Abbott  
Licensing Administrator  
Kansas State Board of Healing Arts  
235 South Topeka Boulevard  
Topeka, Kansas 66603

and the original was hand-delivered to:

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

\_\_\_\_\_/s/\_\_\_\_\_  
Kelli J. Benintendi  
Associate Counsel

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