

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

KS State Board of Healing Arts

In the Matter of the Application of,)
) KSBHA Docket No. 12-HA0092
)
Martha S. Byers, M.D.)
Kansas License No. 04-18704)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Reese Hays, Litigation Counsel (“Petitioner”) and Martha S. Byers, M.D. (“Licensee”), by and through her counsel, Mark Stafford of Holbrook & Osborn, P.A., and stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is **Confidential** Overland Park, Kansas 66062.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued original and permanent license No. 04-18704 on approximately July 1, 1980, and having renewed such license on approximately May 31, 2012.
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 that the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-

505 and 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 acting beyond its jurisdiction as provided by law.
6. Licensee voluntarily and knowingly waives her right to a hearing. 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.
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. In consideration of this agreement, the Board hereby dismisses, with prejudice, Counts I and III of the Amended Petition dated August 6, 2012.
9. In regards to Count II, 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, paragraphs (a) and (r), to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. On or about February 10, 2011, a Petition was filed in the District Court of Johnson County, Kansas, Case No. 11CV01115, by James Crabtree, Esquire, on behalf of the Plaintiff, naming Licensee as a Defendant.
11. On or about March 10, 2011, an Answer was filed in the District Court of Johnson County, Kansas, Case No. 11CV01115, by Jana Richards, Esquire, on behalf of the Defendant, Licensee.
12. On or about May 30, 2011, Licensee submitted an online renewal through the Board's website for renewal of her medical license.
13. Licensee answered in the negative to Question A under the Disciplinary Questions section, which asks: "In the past 12 months have you been a defendant or has any judgment, award, or settlement been paid resulting from a professional liability claim."
14. Licensee answered "no" when the answer should have been "yes."
15. Licensee asserts that at the time Licensee completed the renewal application she erroneously believed that claim had been filed in the previous renewal period and had been reported to the Board.
16. Case No. 11CV01115 was reviewed by a medical malpractice screening panel, which found another person had departed from the standard of care, but there were no findings of fault with Licensee. That matter was then settled with payment on behalf of another person and with no payment made on behalf of Licensee.
17. Licensee's acts constitute a violation of K.S.A. 65-2836(r), in that Licensee failed to furnish the board any information legally requested by the board when Licensee failed to disclose she had been a named a defendant in a professional liability claim.

18. 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 Kansas Healing Arts Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
- 19 Pursuant to K.S.A. 65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
- 20 All pending investigation materials in KSBHA Investigation number 11-00460, 12-00269, and 12-00664 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, to investigate complaints received 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.
22. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may take further disciplinary action, as the Board deems appropriate, including, but not limited to, suspension or revocation of Licensee's license

to practice medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, as set forth in the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

23. 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.
24. 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 disclosure of this Consent Order.

25. 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.
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, 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.
28. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
29. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
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 an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Final Order when filed with the office of the Executive Director for the Board and no further Order is required.
32. This Consent Order constitutes disciplinary action and supersedes all previous orders of the Board.
33. The Board may consider all aspects of this Consent Order in any future matters regarding Licensee.
34. Pursuant to K.S.A. 65-2836, the Board has grounds to revoke, suspend, place on probation, censure, or otherwise limit the Licensee's license to practice medicine and surgery in the state of Kansas for her violations of the Kansas Healing Arts Act.
35. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following limitations to be placed on her license to engage in the practice of medicine and surgery in the State of Kansas:

LIMITATIONS

36. Licensee shall be limited in her scope of practice to practicing only in the areas of medical spa and cosmetic medicine, including laser procedures and injectables. Such practice may include, but not be limited to, Licensee performing laser and photo

rejuvenation of the face and neck, laser hair removal, laser vein and telangiectasia therapy, microdermabrasion and administering Botox injections and filler injections.

37. Licensee shall immediately notify the Board if she discontinues practicing in the above-setting.
38. Licensee and the Board acknowledge that Licensee has practiced under this limitation as authorized by the August 2001 Stipulation and Agreement and Enforcement Order, and that there is no allegation that Licensee has exceeded the scope of that limitation.

REVIEW OF 25% OF LICENSEE'S MEDICAL CHARTS

39. Licensee shall have 25% of her medical charts, with a minimum of ten (10) medical charts and a maximum of twenty-five (25) medical charts reviewed once a quarter for a twelve (12) month period by a Board-approved physician to evaluate and determine whether Licensee's professional services were within the scope of this order and otherwise met the standard of care. The reviewing physician shall submit her curriculum vitae to the Board ten (10) days prior to Licensee initiating the practice of medicine. The Board appoints Dr. Carla Brown Phipps, M.D. to perform the four (4) quarterly reviews. If a change needs to be made to the designated physician, the Board designates the appointed Disciplinary Panel member for this matter to review and approve the proposed replacement physician to review Licensee's medical charts.
40. Licensee shall ensure the reviewing physician submits four **quarterly reports** in which Licensee provides professional services to at least 10 patients during the quarter year, commencing upon which time Licensee initiates the practice of medicine. The reports

shall be due on the fifteenth (15th) of the month, beginning three (3) months after Licensee commences the practice of medicine.

41. If Licensee does not provide professional services to at least 10 persons in any quarter, Licensee shall notify the Board in writing.

YEARLY LETTER

42. Licensee shall submit a letter to the Board describing her current practice; to include, the types of services that she is providing and the setting in which she is practicing. This letter shall be provided with each annual renewal.

COSTS

43. Licensee hereby agrees to pay to the Board \$500.00 of the Board's incurred COSTS in conducting these proceedings under the Kansas Administrative Procedure Act.
44. The total amount of \$500.00 shall be made on or before March 31, 2012.
45. Licensee shall make any and all payments payable to the Kansas State Board of Healing Arts and send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

TIMEFRAME

46. The above provisions are not self-terminating. Licensee acknowledges and agrees that it is appropriate for her practice of medicine to continue to be limited in scope and setting until such time as her clinical skills and competency may be fully ascertained and determined by the Board. At such time Licensee believes she has obtained such necessary skills and competency for a full and unrestricted license, Licensee may petition

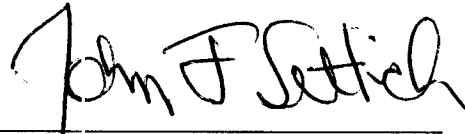
the Board to ascertain her level of clinical skills and competency in regards to issuing her a full and unrestricted license to practice medicine and surgery in the State of Kansas.

47. This Order constitutes limitation and restriction on Licensee's license to practice medicine and surgery in the State of Kansas. These limitations and restrictions shall remain in effect until modified or terminated by Order of the Board.

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 SO ORDERED on this 14th day of February 2013.

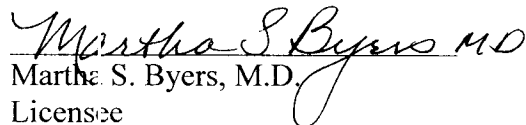
**FOR THE KANSAS STATE BOARD OF
HEALING ARTS:**



John F. Settich, Ph.D.
Presiding Officer

14 Feb 2013

Date



Martha S. Byers, M.D.
Licensee

2/14/2013

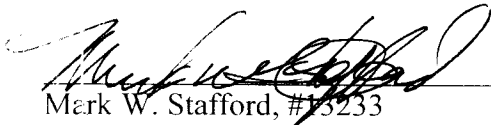
Date

PREPARED AND APPROVED BY:



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AGREED TO BY:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **CONSENT ORDER** was placed in the U.S. Mail, postage prepaid, on this 14 day of February, 2013, addressed to:

Martha S. Byers
Licensee
Confidential
Overland Park, KS 66062


Mark W. Stafford
Attorney for Licensee
Helbrook & Osborn, P.A.
107 S.W. 6th Avenue
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:

Reese Hays, Litigation Counsel
Melissa Massey, Compliance Coordinator
Katy Lenahan, Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Staff Member