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

KS State Board of Healing Arts

In the Matter of)
Donald C. Colyer, D.O.)
Kansas License No. 5-21234)
_____)

Docket No. ⁰⁷~~08~~-HA-00113

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Stevens, Litigation Counsel ("Petitioner"), and Donn C. Colyer, D.O. ("Licensee") by and through Steve A. Schwarm, of Polsinelli, Shalton, Flanigan & Suelthaus, P.C., and move the Board for approval of a Consent Order affecting Licensee's license to practice osteopathic medicine and surgery in Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 2901 Woodgate Terrace, Pittsburg, Kansas 66762.
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 a permanent License No. 05-21234 on approximately August 9, 2004. Licensee currently holds an active license.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of osteopathic 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.

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 has received information, investigated the same and has reasonable cause to believe that there are grounds for discipline against Licensee's license for violations of the Healing Arts Act in that Licensee has deviated from the standard of care and failed to adequately document in the medical record with respect to forty-four (44) obstetrical and/or gynecological patients.

11. Licensee denies that he has violated the Healing Arts Act, but for purposes of pursuing settlement of the matter, has agreed to the provisions contained herein.

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.

12. In lieu of proceeding to a formal hearing at this time, Licensee, by his signature affixed to this Consent Order, voluntarily agrees to the following disciplinary measures regarding his Kansas license:

Limitation

- a. Licensee's license status shall immediately be changed from "active" to "inactive" status. Such "inactive" status shall constitute a limitation on Licensee's license and Licensee must petition the Board to return to "active" status;
- b. While Licensee's license is limited to "inactive" status, Licensee must meet all continuing medical education requirements which are required for an "active" license;
- c. Should Licensee allow his license to lapse due to failure to renew, the lapse shall be deemed a surrender of licensure while under investigation and reported as such;

CPEP Clinical Skills Assessment

- d. Licensee shall complete a clinical skills assessment at the Center for Personalized Education for Physicians ("CPEP") in Colorado on or before November 15, 2007. Licensee shall bear all expenses associated with the clinical skills assessment;

- e. Both parties may provide relevant information to CPEP for consideration as part of the clinical skills assessment. Both parties will be provided with a copy of the Assessment Report from CPEP and Licensee shall execute any necessary authorization to CPEP to allow for the Board, Board counsel and other Board staff to receive a copy of the Assessment Report;
- f. Licensee agrees that in any future proceedings before the Board, the Assessment Report shall be admissible as evidence without requiring CPEP's Medical Director to appear as a witness to either provide an evidentiary foundation for the Assessment Report or to provide substantive testimony relating to the testing procedures, opinions and/or conclusions contained in the Assessment Report. The parties retain the right to raise all other objections to the introduction or content of the Assessment Report. However, if either party wishes to examine any person employed by CPEP regarding the contents of the Assessment Report, the party may call such person as a witness, but is fully responsible for arranging their attendance and for paying any necessary witness fees;
- g. If Licensee fails to timely complete the CPEP assessment, such failure shall be a violation of this Consent Order and Licensee shall surrender his license to the Board upon request and without challenge or recourse;

- h. The purpose of the clinical skills assessment is to aid the parties in reaching further settlement of the Board's concerns regarding Licensee's treatment of patients and medical record documentation.
- i. After receipt of the CPEP Assessment Report by the parties, and if no further settlement can be reached, the Board reserves the right to proceed to a hearing based upon all known and current matters and any new and additional matters that become known and are reflected in the CPEP Assessment Report or during the assessment process;

Costs

- j. Licensee agrees to pay \$10,000 of the Board's investigative costs incurred. Such costs shall either be paid in full by Licensee or a payment plan for the same must be agreed to by the parties and be in effect before the Board will consider a petition on behalf of Licensee to change his license status to "active."

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, or the Board's 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 has received investigative information which otherwise may not be admissible or admitted as evidence.

20. 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.

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

22. 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.

23. 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.

24. 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. Licensee's license status shall immediately be changed from "active" to "inactive" status. Such "inactive" status shall constitute a limitation on Licensee's license and Licensee must petition the Board to return to "active" status;
- b. While Licensee's license is limited to "inactive" status, Licensee must meet all continuing medical education requirements which are required for an "active" license;
- c. Should Licensee allow his license to lapse due to failure to renew, the lapse shall be deemed a surrender of licensure while under investigation and reported as such;

CPEP Clinical Skills Assessment

- d. Licensee shall complete a clinical skills assessment at the Center for Personalized Education for Physicians ("CPEP") in Colorado on or before November 15, 2007. Licensee shall bear all expenses associated with the clinical skills assessment;

- e. Both parties may provide relevant information to CPEP for consideration as part of the clinical skills assessment. Both parties will be provided with a copy of the Assessment Report from CPEP and Licensee shall execute any necessary authorization to CPEP to allow for the Board, Board counsel and other Board staff to receive a copy of the Assessment Report;
- f. Licensee agrees that in any future proceedings before the Board, the Assessment Report shall be admissible as evidence without requiring CPEP's Medical Director to appear as a witness to either provide an evidentiary foundation for the Assessment Report or to provide substantive testimony relating to the testing procedures, opinions and/or conclusions contained in the Assessment Report. The parties retain the right to raise all other objections to the introduction or content of the Assessment Report. However, if either party wishes to examine any person employed by CPEP regarding the contents of the Assessment Report, the party may call such person as a witness, but is fully responsible for arranging their attendance and for paying any necessary witness fees;
- g. If Licensee fails to timely complete the CPEP assessment, such failure shall be a violation of this Consent Order and Licensee shall surrender his license to the Board upon request and without challenge or recourse;

- h. The purpose of the clinical skills assessment is to aid the parties in reaching further settlement of the Board's concerns regarding Licensee's treatment of patients and medical record documentation.
- i. After receipt of the CPEP Assessment Report by the parties, and if no further settlement can be reached, the Board reserves the right to proceed to a hearing based upon all known and current matters and any new and additional matters that become known and are reflected in the CPEP Assessment Report or during the assessment process.

Costs

- j. Licensee agrees to pay \$10,000 of the Board's investigative costs incurred. Such costs shall either be paid in full by Licensee or a payment plan for the same must be agreed to by the parties and be in effect before the Board will consider a petition on behalf of Licensee to change his license status to "active."

IT IS SO ORDERED on this 11th day of October, 2007.

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


Carolina M. Lewis, D.O.
Presiding Officer

Lauren S. Burroughs
Oct 11, 2007
Date

Donn C. Colyer, D.O.

Donn C. Colyer, D.O.
Licensee

26 Sept. '01

Date

PREPARED AND APPROVED BY:

Kelli J. Stevens

Kelli J. Stevens, #16032
Litigation Counsel
Kansas State Board of Healing Arts
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Topeka, Kansas 66603-3065
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APPROVED BY:

Steve A. Schwarm

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POL SINELLI, SHALTON, FLANIGAN
& SUELTHAUS, P.C.
555 Kansas Avenue, Suite 101
Topeka, Kansas 66603
(785) 233-1446

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing **Consent Order** was served this 12th day of October, 2007, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Steve A. Schwarm
Polsinelli, Shalton, Flanigan
& Suelthaus, P.C.
555 Kansas Avenue, Suite 101
Topeka, Kansas 66603

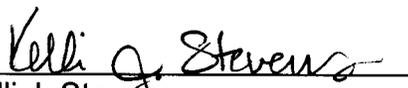
and a copy was hand-delivered to:

Kelli J. Stevens, Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

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


Kelli J. Stevens