

**FILED**

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FEB 23 2010

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

KS State Board of Healing Arts

**In the Matter of** )  
 )  
**Donald Ray Cook, M.D.** )  
**(a/k/a D. Ray Cook)** )  
**Kansas License No. 04-15113** )

**Docket No. 10-HA** 00110

**CONSENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Janith A. Lewis, Associate Litigation Counsel (“Petitioner”), and Donald Ray Cook, M.D. (“Licensee”), by and through his counsel, Amy S. Lemley, of Foulston Siefkin LLP, 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: 2600 N. Woodlawn, Wichita, Kansas 67220-2729.
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. 04-15113 on approximately December 8, 1972. Licensee’s license 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. and 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. 77-505 and 65-2838. Upon approval, these stipulations shall

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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 the 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 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. The Board has received information and investigated the same, and has reason to believe that there are grounds pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. During all relevant times periods, Licensee was a practitioner with Galichia Medical Group, PA.

10. Licensee treated an adult female patient for chest and abdominal pain.
- a. Licensee saw the patient on January 13, 2006. The patient complained of chest and abdominal pain and Licensee ordered blood work and a treadmill test. The results of the blood work and treadmill test were both normal.
  - b. The patient continued to complain of chest and abdominal pain and on January 20, 2006, Licensee ordered CT scans of her chest and abdomen and scheduled a three month follow-up appointment.
  - c. On January 24, 2006, Licensee received the results of the patient's CT scans. The results of the abdominal scan indicated a solid heterogeneously enhancing right renal mass suspicious for renal cell carcinoma measuring 3.6 cm maximally with no visualized regional or distant metastasis.
  - d. On January 24, 2006, Licensee's staff left a phone message for the patient indicating Licensee wanted to discuss the results of the CT scans and attempting to set an appointment for the next day, January 25, 2006. However, no appointment with the patient occurred on January 25, 2006, and no further attempts to reach the patient, either by phone or letter, are documented in her medical records.
  - e. The patient was seen by Licensee on April 24, 2006. However, Licensee failed to advise the patient of the result of the abdominal CT scan indicating renal cell carcinoma.

- f. The patient was seen by Licensee on June 22, 2006. However, Licensee again failed to advise the patient of the result of the abdominal CT scan indicating renal cell carcinoma.
- g. The patient was also seen by Licensee on August 15, 2006. Again, Licensee failed to advise the patient of the result of the abdominal CT scan indicating renal cell carcinoma.
- h. Thereafter, on August 16, 2006, Licensee gave the patient her medical records and sent her for further stress testing. The patient began looking at her records and found the results of the abdominal CT scan indicating renal cell carcinoma. This was the patient's first indication that she had cancer.
- i. The patient sought treatment from other physicians for renal cell carcinoma and on August 31, 2006, she underwent a radical nephrectomy.
- j. This surgery occurred seven months after Licensee first received the patient's abdominal CT scan results indicating she had cancer.
- k. The patient had a history of metastatic cervical carcinoma with prior radiation.
- l. Despite seeing the patient on three separate occasions, after receiving her abdominal CT scan results, Licensee failed to inform the patient of those results and that those results indicated she had cancer.
- m. Pursuant to K.S.A 65-2836(b), Licensee has committed an act of unprofessional conduct, as further defined by K.S.A 65-2837(b)(24), when Licensee engaged in the repeated failure to practice healing arts with that

level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances, by failing to advise the patient of her abdominal CT scan results on three separate occasions, April 24, 2006, June 22, 2006, and August 15, 2006.

11. Licensee waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
12. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836(b), and as further defined by K.S.A 65-2837(b)(24).
13. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Healing Arts Act.
14. 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.
15. All pending investigation materials, and specifically materials in investigation numbers 07-00473, 08-00341, 09-00123 and 09-00499, regarding Licensee were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 23 authorized and directed Board counsel to seek settlement of these matters with the provisions contained in this Consent Order.

16. In lieu of conducting a formal proceeding, 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:

#### **SUSPENSION**

- a. Licensee's license shall be suspended for a period of ten (10) days, from April 19, 2010 to April 29, 2010.

#### **PROBATION**

- b. Once the ten (10) day suspension period has ended, the suspension shall be terminated and Licensee license shall be placed on probation, subject to the following terms and conditions.

#### **PROBATION: EDUCATION**

- c. Licensee shall attend and successful complete the *Patient Care Documentation Seminar* continuing education course given through the Center for Personalized Education for Physicians (CPEP) on June 18, 2010, in Denver, Colorado at his own expense.
- d. Licensee shall provide proof of successful completion of the *Patient Care Documentation Seminar*, no later than August 1, 2010, by submitting the same to: Melissa Massey, Compliance Coordinator, Kansas State Board of Healing Arts, 235 S. Topeka Blvd, Topeka, Kansas 66603.

- e. These continuing education hours shall be in addition to the continuing education hours required for renewal of licensure.

**PROBATION TIMEFRAME**

- f. The above provisions and limitations are not self-terminating. After a period of one (1) year, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

17. 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 according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.

18. 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. 64-4921 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.

19. 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 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.

20. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
21. 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.
22. 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.

23. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
24. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
25. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by **certified mail** addressed to the Kansas State Board of Healing Arts, Attn: Janith A. Lewis, Associate Litigation Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
26. 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.
27. 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.
28. This Consent Order constitutes disciplinary action.
29. 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:

**SUSPENSION**

- a. Licensee's license shall be suspended for a period of ten (10) days, from April 19, 2010 to April 29, 2010.

**PROBATION**

- b. Once the ten (10) day suspension period has ended, the suspension shall be terminated and Licensee license shall be placed on probation, subject to the following terms and conditions.

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**PROBATION TIMEFRAME**

- f. The above provisions and limitations are not self-terminating. After a period of one (1) year, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

**IT IS SO ORDERED** on this 23<sup>rd</sup> day of February, 2010.

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

  
Kathleen Selzler Lippert  
Interim Executive Director

2-23-10  
Date

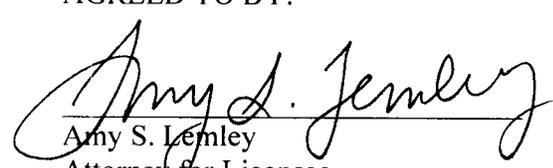
  
Donald Ray Cook, M.D.  
Licensee

1/18/10  
Date

PREPARED AND APPROVED BY:

  
Janith A. Lewis, #18115  
Associate Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
(785) 368-7257

AGREED TO BY:

  
Amy S. Lemley  
Attorney for Licensee  
Foulston Siefkin LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, Kansas 67206-4466  
(316) 267-6371

### CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 23<sup>rd</sup> day of February, 2010, to the following:

Donald Ray Cook, M.D.  
Licensee  
2600 N. Woodlawn  
Wichita, Kansas 67220-2729

Amy S. Lemley  
Foulston Siefkin LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, Kansas 67206-4466

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And the original was hand-filed with the Office of the Executive Director:

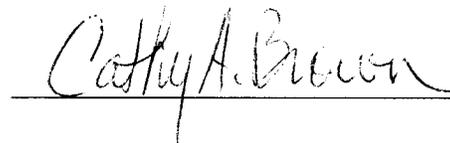
Kathleen Selzler Lippert  
Interim Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

And copies were hand-delivered to:

Janith A. Lewis  
Associate Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

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

Melissa Massey  
Compliance Coordinator  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

A handwritten signature in cursive script, reading "Cathy A. Brown", is written over a horizontal line.