

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

CAB

JUN 06 2011

KS State Board of Healing Arts

In the Matter of)
)
Darin J. Elo, M.D.) Docket No. 10-HA00141
)
Kansas License No. 04-28284)

CONSENT ORDER

COMES NOW, The Kansas State Board of Healing Arts, (“Board”), by and through Janith A. Lewis, Associate Litigation Counsel (“Petitioner”), and Darin J. Elo, M.D. (“Licensee”), by and through Mark W. Stafford of Holbrook and Osborn, P.A, and move the Board for approval of a Consent Order affecting Licensee 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 as provided to the Board is confidential
confidential Lawrence, Kansas 66049.

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. 04-28284 on approximately August 14, 1999. On or about January 21, 2010 Licensee contacted the Board and requested that his license be changed from active to inactive status. On or about March 31, 2010, Licensee requested that his license be returned to active status.

3. On or about May 3, 2010, a Temporary Consent Order was entered by Presiding Officer, Michael Beezley, M.D., granting Licensee’s request for active status on a temporary basis subject to further consideration by the full Board. Later, Board Member Merle J. Hodges, M.D. was appointed to review further agreements and to issue a Final Order thereupon.

4. 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.

5. 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 constitute the findings of the Board, and this Consent Order shall constitute a Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and is applied in the case. Licensee agrees that in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee and Petitioner voluntarily and knowingly waive the opportunity for a hearing in this matter. Licensee and Petitioner voluntarily and knowingly waive the opportunity to present oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee and Petitioner voluntarily and knowingly agree to waive the opportunity to offer all possible substantive and procedural motions and arguments that could be raised if an administrative hearing were held in this matter.

8. The terms and condition of the Consent Order are entered into and between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. The statements and agreements in this Consent Order shall not be binding upon the Board or upon Licensee 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. The investigative information and status of the pending action in this matter were fully reviewed and considered by the Board members who served on Disciplinary Panel No. 24. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

10. On or about January 19, 2010, Licensee voluntarily reported information to the Board, and the Board has investigated and has reason to believe that there may be grounds confidential to consider action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*

confidential

16. The Temporary Consent Order, entered into on May 3, 2010, granted Licensee's request to change his license from inactive to active status on a temporary basis under the following conditions:

TEMPORARY LIMITATION

- a. Licensee's practice is **LIMITED** to preclude solo practice or practice in an emergency room setting;

confidential

MENTORING

- i. Licensee shall notify the Board, prior to commencing professional practice, that he has established a mentoring arrangement with a supervisor or another Kansas-licensed physician practicing emergency medicine or in an urgent care setting for the purpose of providing feedback to Licensee regarding interactions with difficult patients and handling stress during practice. Notification should include the name, practice specialty and practice location of the mentor. Licensee shall personally meet with the mentor at least once a week for the first four weeks of practice, and thereafter as the mentor deems necessary, but no less than on a bi-monthly basis; and
- j. The mentor shall submit reports to the Board on a bi-monthly basis on the 15th day of each month in which a report is due. Such reports shall be sent to: Compliance Coordinator, Kansas Board of Healing Arts, 235 South Topeka Boulevard. Topeka, Kansas 66603.
confidential
confidential

17. To date, the Board has received consistent, positive reports regarding Licensee's compliance with the terms of the Temporary Consent Order. Licensee has requested modification to the terms of the Temporary Consent Order.

18. The **TEMPORARY LIMITATION** and **MENTORING** provisions imposed pursuant to the Temporary Consent Order are hereby terminated.

19. In lieu of conducting a formal proceeding, Licensee and Petitioner, by signature affixed hereto, agree to the following continued conditions on Licensee's license to practice medicine and surgery:

confidential

confidential

20. The above conditions and other provisions are not self-terminating. Licensee may request that the Board modify or terminate the conditions or other provisions confidential confidential or for other good cause.

21. Licensee agrees that upon approval of this Consent Order by the Board, he will, if necessary, execute release forms authorizing the Board to receive records and information confidential
confidential

22. Licensee agrees that his failure to comply with the provision of the Consent Order following its adoption 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.

23. Licensee and Petitioner agree that nothing in this Consent Order shall be construed to deny the Board authority to investigate allegations of misconduct proscribed by the Healing Arts Act, or to deny jurisdiction to initiate administrative proceedings alleging violations of the Healing Arts Act, regarding incidents that are known or unknown to the Board and are not covered under this Consent Order at the time it approves this Consent Order.

24. 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, 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 of permit to be prosecuted, any action or proceedings of any description against the Releasees.

25. Licensee further understands and agrees that upon signature by Licensee and upon approval by the Board, this document shall be deemed a public record and shall be reported to

any reporting entities authorized by law to receive disclosure of the Consent Order. Licensee acknowledges by his signature, and the Board agrees by its approval, that portions of this document that are confidential pursuant to any provision of applicable law will not be disclosed to the public in any manner except in compliance with applicable law.

26. 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.

27. 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 to conjunction with the presentation of this proposed Consent Order, 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.

28. Licensee, by signature to this document, waives any objection to the participation of the Board members 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.

29. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

30. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

31. Licensee agrees that all correspondence or communication between Licensee and the Board relating to notifications or reports required by this Consent Order may not be deemed received unless acknowledged as being received or delivered by certified mailed addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level- Suite A, Topeka, Kansas 66612.

32. 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.

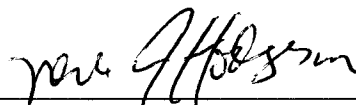
33. This Consent Order shall constitute the Board's Final Order as provided by K.S.A. 65-2838 upon approval by the Board and the signature of an authorized representative of the Board, and shall become effective when filed with the office of the Executive Director for the Board and served upon the parties in accordance with law.

34. 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 SO ORDERED on this 27th day of May, 2011.

FOR THE KANSAS STATE
BOARD OF HEALING ARTS:



Merle J. Hodges, M.D.
Designated Board Member

5/27/11

Date



Darin J. Elo, M.D.
Licensee

4/22/11

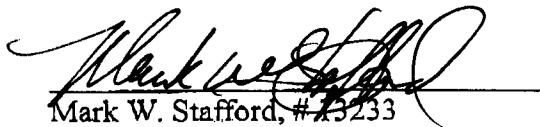
Date

PREPARED BY:



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APPROVED BY:



Mark W. Stafford, #23233
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107 SW 6th Avenue
Topeka, KS 66603
785-232-6200
Attorney for Licensee

CERTIFICATE OF SERVICE

I, hereby certify that I served a true and correct copy of the above and foregoing
CONSENT ORDER via United States mail, first-class, postage prepaid on the 6th day of
June, 2011 to the following:

Mark W. Stafford
Holbrook & Osborn, P.A.
107 SW 6th Avenue
Topeka, KS 66603

and a copy was hand-delivered to:

Melissa Massey
Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level- Suite A
Topeka, Kansas 66612

Janith A. Lewis
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level- Suite A
Topeka, Kansas 66612

Katy Lenahan
Licensing Coordinator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612

and the original was hand-delivered for filing with:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level- Suite A
Topeka, Kansas 66612

