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APR 16 2012

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 11-HA00117
Joel T. Erskin, P.A.	)	OAH No.: 12HA0003
Kansas License No. 15-00265	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Stacy R. Bond, Associate Litigation Counsel ("Petitioner"), and Joel T. Erskin, P.A. ("Licensee"), by and through his counsel Randall J. Forbes, and move the Board for approval of a Consent Order affecting Licensee's license to practice as a physician assistant in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is: Confidential Confidential Wichita, KS 67206.
2. Licensee is and has been entitled to engage in practice as a physician assistant in the State of Kansas, having been issued License No. 15-00265 on approximately January 29, 1988. 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 practice as a physician assistant. K.S.A. 65-28a01 *et seq*. and K.S.A. 65-28a02.
4. This Consent Order and the filing of such document is 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 K.S.A. 65-28a12. 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 Physician Assistant Licensure 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 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 may be grounds pursuant to K.S.A. 65-28a05, to take action with respect to Licensee's license under the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01, *et seq.*
9. On May 30, 2009, Licensee was arrested by the Wichita Police Department and charged with felony offenses.

10. On or about August 4, 2010, Licensee was convicted in case number 09CR1484, in the District Court of Sedgwick County, Kansas of one count of Criminal Threat, a level 9 person felony, due to events that took place on May 30, 2009.
11. On or about December 11, 2009, an application for renewal of Licensee's license to practice as a physician assistant was submitted. Disciplinary question "B" of the renewal application asks, "In the past 12 months have you been arrested, charged with or convicted of a felony or class A misdemeanor? This includes a diversion or a plea to a felony or class A misdemeanor." The question was answered "no."
12. The application renewal for December 11, 2009, indicates that Licensee himself filed out the renewal application. The question "the person filing this renewal is the person named upon the license: yes." Additionally, the perjury statement, which states, "I hereby certify that I am the licensee named in this renewal application, and I have personally submitted all data requested in the renewal application form. I declare under penalty of perjury that I have read the application form and my responses, and that the information I have provided is true, correct, and complete to the best of my knowledge. I understand that Kansas statutes allow the State Board of Healing Arts to revoke, suspend or limit a license, or censure the licensee, or impose fine in an amount up to $ 5,000 for any act of fraud or misrepresentation in applying for renewal of a license", was answered 'yes'. Licensee contends that the incorrect answers were submitted by an employee on his behalf and were mistakenly incorrect.

13. 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 Physician Assistant Licensure Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
14. Pursuant to K.S.A. 65-28a05(d), Licensee's license to practice as a physician assistant can by disciplined as a result of his being convicted of a level 9 person felony on or about August 4, 2010 in Sedgwick County District Court number 09CR1484.
15. It could be determined that Licensee violated K.S.A. 65-28a05(b), by failing to disclose his May 30, 2009 arrest on his December 11, 2009, renewal application.
16. Pursuant to K.S.A. 65-28a05, the Board may revoke, suspend, limit, a licensee's license or the licensee may be publicly or privately censured.
17. According to K.S.A.77-505 and K.S.A. 65-28a12, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
18. All pending investigation materials in KSBHA Investigation number 11-00323 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
19. 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 immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice as a physician assistant 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, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01 *et seq.*

20. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Physician Assistant Licensure 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 Physician Assistant Licensure Act.

21. 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.

22. 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.
23. 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.
24. 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.
25. 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.

26. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. 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: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
29. Licensee shall obey all federal, state and local laws and rules governing practice as a physician assistant 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.
30. 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. 77-505 and K.S.A. 65-28a12. 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.
31. This Consent Order constitutes disciplinary action.
32. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

33. 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 as a physician assistant:

SUSPENSION / SURRENDER

34. Licensee's license shall be suspended for a period of fifteen (15) days. Such suspension will be in effect from April 14, 2012, through and including April 28, 2012.

MONITORING

35. Within ten (10) days of the approval of the Consent Order, Licensee shall enter into and comply with all terms and conditions of a monitoring contract with the Confidential

36. Confidential

37. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any criminal or traffic misdemeanor or felony offenses.

38. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.
Confidential

39.

40.

FINES

41. Licensee is hereby ordered to pay a CIVIL FINE pursuant to K.S.A. 77-505 in the amount of $2,000. The total amount of $2,000 shall be due on or before June 15, 2012.

42. In the alternative, Licensee may make monthly payments of $166.66 for eleven (11) months with a twelfth (12th) and final monthly payment of $166.74 for a total of $2,000 to be paid over twelve (12) months. The initial payment is due on or before June 15, 2012, with the remainder of the monthly payments due on or before the fifteenth (15th) day of each month thereafter.

43. In the event that the Board does not receive a payment due and owing, the total amount of the levied FINE still due shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.

44. Licensee shall make 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

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 13 day of April, 2012.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

4/13/12
Date

Joel T. Erskin, P.A.
Licensee

28 MAR 2012
Date

PREPARED AND APPROVED BY:

Stacy R. Bond #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-3268

AGREED TO BY:

Randall J. Forbes #09089
Frieden, Unrein & Forbes, LLP
555 S. Kansas Avenue, Ste. 303
Topeka, Kansas 66601
785-354-1100
Attorney for Licensee

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 16th day of April, 2012, to the following:

Joel T. Erskin, P.A.
Licensee
Confidential

Valley Center, Kansas 67147

Joel T. Erskin, P.A.
Confidential

Wichita, KS 67206

Randall J. Forbes
Attorney for Licensee
Frieden, Unrein and Forbes, LLP
555 S. Kansas Avenue, Ste. 303
Topeka, Kansas 66601

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:

Stacy R. Bond
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Melissa Massey
Compliance Coordinator
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Cathy A. Brown