

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

In the Matter of)
)
MARK R. FANTAUZZI, D.O.)
Kansas License No. 05-24407)

13
Docket No. ~~12~~-HA 00006

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Mark R. Fantauzzi, D.O. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice osteopathic 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: CONFIDENTIAL
Portland, Maine 04103.
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 License No. 05-24407 on approximately December 12, 1992. Licensee’s license is inactive.
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 osteopathic medicine and surgery. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2870.
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

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 may be grounds pursuant to K.S.A.65-2836(u) to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. On September 28, 2011, Licensee submitted an online renewal application to renew his license to practice osteopathic medicine and surgery in inactive status.

10. In completing his online renewal application, Licensee answered “yes” to Disciplinary Questions C and F.
- a. Disciplinary Question C asks: “In the past 12 months has any disciplinary action been initiated or taken against you by any state or government agency, or have you been denied a license, had any adverse action taken on your license, surrendered or consented to limitation of your license to practice in any state or country?”
 - b. Disciplinary Question F asks: “In the past 12 months do you know of any investigation by or any allegations, complaints, or charges concerning you made to any licensing agency or state or government agency?”
11. On or about October 27, 2011, Licensee, through Wendy Lindquist at MedLicensure, provided an explanation regarding his “yes” answers on his renewal application. Licensee indicated that he had answered “yes” to the questions because his Federal DEA registration was under temporary suspension and that the temporary suspension resulted in a review by the Ohio Medical Board.
12. On or about January 9, 2012, Licensee, through his attorney in Ohio and Ms. Lindquist, submitted additional information regarding his “yes” answers and the proceedings in Ohio. The letter provided information regarding what had occurred with the Ohio State Board of Pharmacy (Ohio Pharmacy Board), the U.S. Drug Enforcement Agency (DEA), and the State Medical Board of Ohio (Ohio Medical Board).
- a. Ohio Pharmacy Board

- i. In January 2010, Licensee completed an Application for Registration As A Distributor of Dangerous Drugs for submission to the Ohio Pharmacy Board.
- ii. In May 2010, Licensee was noticed by the Ohio Pharmacy Board's Executive Director that his application had been "proposed to be denied, based partly upon allegations that [Licensee] had 'knowingly made a false or misleading statement with purpose to secure the license applied for,' to wit: 'that [Licensee is] a 'sole proprietor' when in fact the site to be licensed is owned by another unlicensed individual who employs [Licensee] by contract.'"
- iii. Licensee stated that, on the application, he indicated he would be doing business as a "sole proprietor/owner" at 1219 Findley Street, Portsmouth, Scioto County, Ohio 45662" and that, at that time to the present, he had been contracted through LocumTenens.com to provide medical and prescriptive services to Southern Ohio Complete Pain Management, doing business at 1219 Findley Street, Portsmouth, Scioto County, Ohio 45662.
- iv. Licensee asserted that he was an "independent contractor" and not an employee or agent of LocumTenens.com or Southern Ohio Complete Pain Management.
- v. Also in May 2010, Licensee determined that, "as an independent, unincorporated prescriber of drugs," the license from the Ohio

Pharmacy Board “was not necessary. . .” Licensee then attempted to withdraw his application.

- vi. The Ohio Pharmacy Board held a hearing in September 2010. It denied Licensee’s request to withdraw his application, and it denied his application, finding that Licensee “had ‘knowingly made a false or misleading statement with purpose to secure the license.’”
- vii. Licensee continues to assert that he did not knowingly provide any false or misleading information to the Ohio Pharmacy Board.

b. DEA

- i. On or about May 17, 2011, the DEA issued an Order to Show Cause and Immediate Suspension of Registrations as a practitioner in Schedules II-V under DEA registration number BF3719967 upon the allegations raised by the Ohio Pharmacy Board as well as allegations that Licensee was prescribing controlled substances for other than a legitimate medical purpose that resulted in one of Licensee’s patients dying from an overdose drugs prescribed by Licensee.
- ii. On September 14, 2011, Licensee, through a Joint Motion to Terminate Proceedings and execution of a Voluntary Surrender of Controlled Substances Privileges, surrendered his DEA Controlled Substances, and he indicated that it was being done in view of his “alleged failure to comply with the Federal requirements pertaining

to controlled substances, and as an indication of his good faith in desiring to remedy any incorrect or unlawful practices on his part.”

iii. It was also noted that Licensee “voluntarily surrendered his registration with the understanding that he could re-apply for registration at a future date.”

c. Ohio Medical Board

i. On June 8, 2011, the Ohio Medical Board initiated disciplinary action against Licensee on the basis of the allegations contained in the DEA’s May 17, 2011, Order to Show Cause and Immediate Suspension of Registration.

ii. On October 11, 2011, Licensee executed a Surrender of his license to practice osteopathic medicine and surgery in Ohio with consent to revocation.

iii. On November 9, 2011, the Ohio Medical Board permanently revoked Licensee’s license to practice osteopathic medicine and surgery.

d. The letter submitted on Licensee’s behalf included ten (10) attachments, and the facts included in those attachments are incorporated herein by reference. Those ten (10) attachments are as follows:

- i. Application for Registration As A Distributor of Dangerous Drugs;
- ii. Letter from William T. Winsley, M.S., R.Ph., Executive Director of the Ohio State Board of Pharmacy, dated May 6, 2010;

- iii. LocumTenens.com contracts between LocumTenens.com and SOCPM naming Licensee as the medical provider;
- iv. DEA Order to Show Cause and Immediate Suspension of Registration;
- v. Joint Motion to Terminate Proceedings;
- vi. Voluntary Surrender of Controlled Substances Privileges;
- vii. DEA Termination Order;
- viii. Letter of June 8, 2011, from Lance A. Talmage, M.D., Secretary, State Medical Board of Ohio;
- ix. Permanent Surrender of Certificate to Practice Osteopathic Medicine and Surgery Case No. 11 CRF-063; and
- x. State Medical Board of Ohio, Entry of Order, dated November 9, 2011.

13. On January 30, 2012, the Virginia Board of Medicine suspended Licensee's license to practice osteopathic medicine and surgery in Virginia based upon the action taken by the Ohio Medical Board.

14. 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 his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

15. Licensee violated K.S.A. 65-2836(u) by surrendering his license to practice osteopathic medicine and surgery in Ohio while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section; specifically, surrendering his license while under investigation for prescribing, selling, administering, distributing, or giving a controlled substance to any person for other than medically accepted or lawful purposes as defined in K.S.A. 65-2836(p) and/or violating a federal law or regulation relating to controlled substances as defined in K.S.A. 65-2836(q).
16. Licensee violated K.S.A. 65-2836(u) by surrendering his authority to utilize controlled substances issued by any state or federal agency while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action; specifically, while under investigation for prescribing, selling, administering, distributing, or giving a controlled substance to any person for other than medically accepted or lawful purposes as defined in K.S.A. 65-2836(p) and/or violating a federal law or regulation relating to controlled substances as defined in K.S.A. 65-2836(q).
17. Licensee violated K.S.A. 65-2836(j) by having a license to practice the healing arts suspended by the proper licensing authority of Virginia.
18. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license, and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

19. According 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 12-00255 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. 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 osteopathic 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, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*
22. 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.

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 the 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 he 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. 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.
31. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic 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.

32. 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.
33. This Consent Order constitutes disciplinary action.
34. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
35. 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 osteopathic medicine and surgery:

SURRENDER

36. Licensee hereby surrenders his license to practice osteopathic medicine and surgery. Such surrender shall be treated as a revocation for all purposes including reporting. Licensee agrees that an application for reinstatement of the license will be considered in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by *Vakas v. The Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement.
37. Licensee shall place his patients' records in the custody of another licensed physician or records maintenance facility in compliance with K.A.R. 100-24-2 and 100-24-3. Licensee shall notify the Board on or before July 31, 2012, of the

specific measure taken and the appropriate contact information so that the Board can respond to questions from patients about the location of their medical records and how they can obtain them.

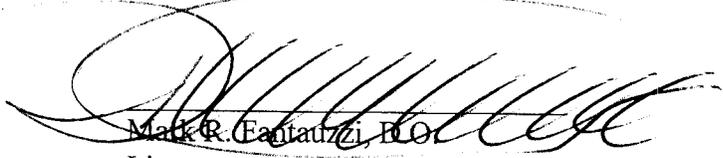
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 24 day of July, 2012.

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


Kathleen Selzler Lippert
Executive Director

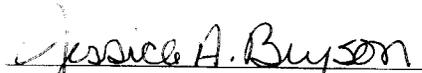
7/24/12
Date


Mark R. Fantauzzi, D.O.
Licensee

06/08/2012
Date

contacted on phone

PREPARED AND APPROVED BY:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-8022

Consent Order
Mark R. Fantauzzi, D.O.

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 24th day of July, 2012, to the following:

Mark R. Fantauzzi, D.O.
Licensee
CONFIDENTIAL
Portland, Maine 04103

And the original was hand-filed with:

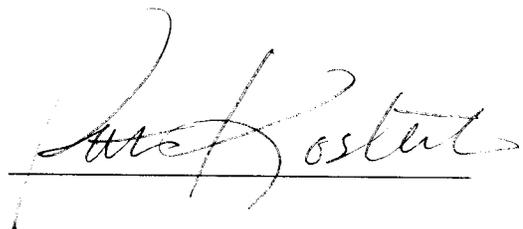
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

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

Melissa Massey
Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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Katy Lenahan
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800 SW Jackson, Lower Level-Suite A
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