

FILED
FEB 2 2004
KANSAS STATE BOARD OF
HEALING ARTS

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

In the Matter of)
) Docket No. 04-HA-34
SAMEER A. FINO, M.D.)
Application for License)
to Practice Medicine and Surgery)
_____)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”), by and through Shelly R. Wakeman, Disciplinary Counsel, (“Petitioner”) and Sameer A. Fino, M.D. (“Applicant”), and move the Board for approval of a Consent Order affecting Licensee’s application for license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Applicant’s mailing address as provided to the Board is: P.O. Box 7423, Shawnee Mission, Kansas 66207.
2. 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 pursuant to K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.
3. This Consent Order and the filing of such document are in accordance with applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing.

4. 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.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Applicant voluntarily and knowingly waives his right to a hearing under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* Applicant voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct a cross-examination of witnesses. Applicant voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. 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. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about September 18, 2003, Applicant submitted an application for a license to practice medicine and surgery in the State of Kansas ("Application"). Upon application, applicant was granted Temporary Permit No. 0425765 to practice medicine and surgery in the State of Kansas from October 31, 2003 to February 15, 2004.

10. On or about October 27, 2003, the Board received information from the Applicant's residency program in Texas and Mid-America Rehabilitation Hospital in Kansas that the Applicant was placed on temporary probation from April through June 1992 during his residency after a complaint of alleged sexual harassment was filed by a female hospital employee.

11. The Applicant answered "no" on his Application for Licensure to Question 5 under Section VI. Discipline asking whether the applicant had ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended, been put on probation, or ever been requested to withdraw from any licensed hospital, nursing home, clinic or other hospital care facility in which you have trained, been a staff member, been a partner or held hospital privileges.

12. The Board alleges that the Applicant failed to disclose his probation during residency on his Application for Licensure, and therefore, violated the Healing Arts Act, K.S.A. 65-2836, including but not limited to:

- a. K.S.A. 65-2836(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.
- b. K.S.A. 65-2836(t) The licensee has failed to report to the board any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, by a law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

13. Applicant admits that there are grounds for the Board to deny his Application pursuant to K.S.A. 65-2801 *et seq.*

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. In lieu of conducting formal proceedings and/or the making of findings by the Board, Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees to pay a fine in the amount of \$500.00 to the Board. Such fine is due and payable to the Board on or before March 1, 2004.

16. Applicant's failure to pay such fine shall constitute grounds for disciplinary action.

17. 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. 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 Healing Arts Act.

18. Applicant 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 or demands of every kind and nature that Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or

unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

19. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Consent Order.

20. 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.

21. Applicant 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 Applicant is not present. Applicant 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.

22. Applicant, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

23. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

24. Applicant acknowledges that he has read this Consent Order, fully understands the contents and that he has freely and voluntarily entered into this Consent Order.

25. All correspondence or communication between Applicant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn.: Shelly R. Wakeman, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

26. Applicant 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.

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 is the Order of the Board.

IT IS FURTHER ORDERED that in lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his application for license to engage in the practice of medicine and surgery:

- a. Applicant shall pay a fine of \$500.00. Such fine is due and payable to the Board on or before March 1, 2004.

- b. Upon execution of this Order, the Board shall grant Applicant a license to practice medicine and surgery in the State of Kansas, as long as Applicant meets all other requirements of licensure.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

_____/s/_____

Lawrence T. Buening, Jr.
Executive Director

__February 2, 2004_____

Date

_____/s/_____

Sameer A. Fino, M.D.
Applicant

____1/14/04_____

Date

Prepared by:

_____/s/_____

Shelly R. Wakeman #15057
Disciplinary Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413

CERTIFICATE OF SERVICE

I, Shelly R. Wakeman, Disciplinary Counsel, Kansas State Board of Healing Arts, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served on this 2nd day of February 2004, by depositing the same in the United States mail, postage prepaid and addressed to:

Sameer A. Fino, M.D.
P.O. Box 7423
Shawnee Mission, Kansas 66207

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

_____/s/_____
Shelly R. Wakeman
Disciplinary Counsel