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OCT 23 2006

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 06-HA-00086
Kenneth Fischer, M.D.)	
Kansas License No. 4-28013)	

AMENDED CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Kathleen Selzler Lippert, Associate Counsel (“Petitioner”), and Kenneth Fischer, M.D. and through his counsel, Eric Carter (“Licensee”), 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: 1133 College Ave, Bldg. A, Manhattan, Kansas 66502.
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. 4-28013 on approximately February 13, 1999. 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. 65-2838. Upon approval, these stipulations shall constitute

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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.
6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. 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.
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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
9. Licensee ordered and received multiple vials from Toxin Research International, Inc. ("TRI") a Botulinum Neurotoxin Type A drug marked "For research purposes only, not for human use"; that did not have a New Drug Application on file with the U.S. Food and Drug Administration. TRI's drug was a non-FDA

approved drug intended to imitate the Allergen drug sold under the brand “Botox”.

10. The Board has received information and investigated the same, and has reason to believe that on or about June 2004 through January 2005, Licensee administered / dispensed the above-referenced TRI drug to approximately five (5) patients, all of who were close friends and relatives.
11. Licensee failed to create or maintain medical records for his treatment of the patients with the above-referenced TRI drug. Licensee neither charged nor collected any fee or compensation for the medical services rendered to the above patients.
12. Licensee’s acts, if proven, constitute violations of K.S.A. 65-2836(b) and 65-2837(b).
13. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(23) by “dispensing [or] administering [a] drug or substance...in [an] improper ...manner”.
14. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(25) by “fail[ing] to keep written medical records which accurately describe the services rendered” to the above patients.
15. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee’s license.
16. 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.

17. In lieu of conducting 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:

CENSURE

- a. Licensee is publicly censured for violating the Healing Arts Act.

EDUCATION

- b. Licensee shall attend and successful complete a continuing education course for record keeping on or before November 30, 2006, at his own expense. The course must be approved by the Board or its designee. Licensee shall provide proof of successful completion to the Board by December 15, 2006.

FINE

- c. Licensee is hereby fined \$5,000.00. Such fine is payable in full to the "Kansas Board of Healing Arts" on or before December 15, 2006. Licensee may make monthly payments of \$555.56 for nine (9) months. The initial payment is due on or before the 15 day of April, 2006, with the remainder of the monthly payments due on or before the fifteenth day of each month thereafter. In the event that the Board does not receive a payment due and owing, the fine shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.

18. 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.

19. 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.

20. 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.

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

Practitioner Databank, Federation of State Medical Boards, and any other reporting entities authorized to receive disclosure of the Consent Order.

22. 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.
23. 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.
24. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceedings on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.
25. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
26. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
27. 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: Kathleen Selzler Lippert, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

28. 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.
29. 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.
30. This Consent Order constitutes disciplinary action.
31. 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:

CENSURE

- a. Licensee is publicly censured for violating the Healing Arts Act.

EDUCATION

- b. Licensee shall attend and successful complete a continuing education course for record keeping on or before November 30, 2006, at his own

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expense. The course must be approved by the Board or its designee.
Licensee shall provide proof of successful completion to the Board by
December 15, 2006.

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- c. Licensee is hereby fined \$5,000.00. Such fine is payable in full to the
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Licensee may make monthly payments of \$555.56 for nine (9) months.
The initial payment is due on or before the 15 day of April, 2006, with the
remainder of the monthly payments due on or before the fifteenth day of
each month thereafter. In the event that the Board does not receive a
payment due and owing, the fine shall become immediately due and
payable in full upon written notice by the Board to Licensee stating that
payment has not been received.

IT IS SO ORDERED on this 23^d day of October, 2006.

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


Lawrence T. Buening, Jr.
Executive Director

October 23, 2006
Date


Kenneth Fischer, M.D.
Licensee

10/15/06
Date

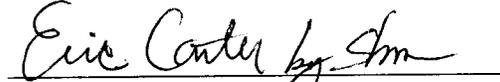
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PREPARED AND APPROVED-BY:


Kathleen Selzler Lippert #17957

Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
785-296-0961

APPROVED BY:



Eric Carter, KS Bar #18192
Attorney for the Licensee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Amended Consent Order by United States mail, postage prepaid, on this 23rd day of October, 2006, to the following:

Kenneth Fischer, M.D.
Licensee
1133 College Ave, Bldg. A
Manhattan, Kansas 66502

And a copy mailed to:

Eric Carter,
Attorney for Licensee
903 E. 104th St., Ste. 610
Kansas City, Missouri 64131

And the original was hand-filed with:

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

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And a copy was hand-delivered to:

Kathleen Selzler Lippert #17957
Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

A handwritten signature in black ink, appearing to read "Lawrence J. Lippert", written over a horizontal line.