

JAN 04 2019

KS State Board of Healing Arts

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

In the Matter of)

KENNETH A. FISCHER, M.D.)
Kansas License No. 04-28013)

Docket No. 19-HA00048

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Courtney E. Manly, Associate Litigation Counsel, and Kenneth A. Fischer, M.D. ("Licensee"), by and through his attorneys John Hicks of Norris & Keplinger, LLC, and Ted McDonald of McDonald Davidson, PA, 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: 1419 Westport Landing Place, Suite 101, 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. 04-28013 on or about February 13, 1999. Licensee most recently renewed his license on or about June 28, 2018. Licensee's license status is currently Active.
3. The Board is the sole and exclusive administrative agency of 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.

Consent Order
Kenneth A. Fischer, M.D.

77-505 and K.S.A. 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 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. 65-2836(b), K.S.A. 65-2836(k), K.S.A. 65-2837(b)(8), K.S.A. 65-2837(b)(14), K.S.A. 65-2837(b)(25), K.S.A. 65-2837(b)(26), K.S.A. 65-2837(b)(30), and K.A.R. 100-24-1 to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

9. KSBHA Investigation No. 16-00206 arose when there was concern that Customskin Medspa, LLC ("D.B.A. Customskin"), in Topeka, Kansas, was offering services that constituted the practice of the healing arts by unlicensed and unsupervised individuals.

10. On or about September 29, 2015, the "About Us" section of Customskin's website listed Trisha Williams, General Manager, and Kristi Roush, RVT, RT (R), as certified to perform, "Laser Hair Removal, Photo Therapy, and Legacy Skin and Body Tightening/contouring."

11. Additionally, Customskin's website stated Customskin offered "an extensive menu of services," including, the "[Venus] Legacy Skin/Body Contouring" as a "non-invasive and *pain free* solution" that uses "Radio Frequency, and Magnetic Pulse Therapy and VariPlus technology." (Emphasis added).

12. On or about October 2, 2015, the Board received an email, with a picture of a Facebook Event for "Customskin Botox and Fillers Party," on September 9, 2015, hosted by Trisha Williams.

13. The Facebook description for this event stated in part, "Join us with our medical director Dr Fischer, Plastic Surgen (sic), for a night of Botox and fillers! Come enjoy drinks, snacks, special, and Botox and fillers...\$100 deposit is required, and all attending will receive a free gift."

14. On or about October 8, 2015, a Board staff investigator and two (2) staff members from the Kansas State Board of Cosmetology ("KBOC") visited Customskin. During the visit, staff met with Trisha Williams and Kristi Roush. Licensee was not present.

15. The following is relevant from the investigative visit:

a. Trisha Williams advised there were two (2) separate entities within the facility: (1) Customskin, occupying the front room; and (2) Optimal Health, P.A., owned solely by the Licensee, occupying the back room(s).

b. Trisha Williams stated Optimal Health, P.A. was doing business as (“d/b/a”) Customskin.

c. Trisha Williams stated she worked for Optimal Health P.A., d/b/a Customskin, and performed treatments with “the medical equipment under Licensee’s supervision.”

d. At the site visit, the only signs on the window were for Customskin and Licensee was not at the facility.

e. During the visit, Trisha Williams stated Kristi Roush was a “nurse who provided back-up treatment with the medical equipment.” When asked who else worked at Customskin, Trisha Williams said she hired a part-time esthetician, Brittany Champagne, who Trisha Williams advised only performed facials.

f. Trisha Williams stated no one besides herself, Kristi Roush, Brittany Champagne, and Licensee worked at Customskin.

g. When asked about patient records, Trisha Williams stated Customskin did not have patient records, only Consent Forms for treatment, as those forms were all that were needed. Trisha Williams also claimed Licensee provided oversight of her medical files.

16. The KBOC verified the licenses of Trisha Williams and Kristi Roush. Trisha Williams had an Active Nail Technician license, and Kristi Roush was not licensed by KBOC.

17. Kristi Roush had an Active license with the Board, as a Licensed Radiology Technologist. Kristi Roush's license with the Board was originally granted on September 25, 2009, is currently Active and was last renewed on or about September 25, 2018.

18. Trisha Williams, the listed General Manager of the Customskin, does not hold a professional license that enables her to practice the healing arts.

19. On or about October 12, 2015, the corporation records of Optimal Health, P.A. were obtained from the Kansas Secretary of State's website. The corporation was formed on September 2, 2015, as Optimal Health, P.A. The Articles of Incorporation show Licensee as the Incorporator. The description of the business included, "to render only one type of professional service, the practice as physicians, surgeons, or doctors of medicine."

20. Prior to incorporation, on April 30, 2015, the Board approved the name Optimal Health, PA as a corporate name for a professional corporation in accordance with the provisions of the law.

21. On or about October 14, 2015, Board staff spoke with Brittany Champagne, who stated Trisha Williams had repeatedly told her that she worked in the "medical part of the spa" and she was covered under the Board of Healing Arts. Further, it was Brittany Champagne's understanding that she was an employee of Customskin, but was paid only through Optimal Health, P.A. Brittany Champagne confirmed she had only seen Licensee at Customskin on one (1) occasion, which was during the September 2015 Botox party. Brittany Champagne indicated she was surprised none of the patients at the Botox party had filled out medical paperwork.

22. On or about October 20, 2015, Board staff spoke with Kristi Roush. Kristi Roush stated she had performed laser, IPL, and radiofrequency services at Customskin on four (4) patients

during her three (3) months of employment, from May 8, 2015, to July 22, 2015. Kristi Roush stated she had been trained to perform IPL treatments with the Venus Versa machine by a Venus company representative and had been told that was all the training that was required for her to be able to provide that treatment. Further, Kristi Roush stated she was unaware Trisha Williams referred to her as her "nurse" and was indignant at the idea of being referred to as such. Kristi Roush confirmed she saw Licensee at Customskin several times, and that he performed treatments after hours, specifically mentioning the September 2015 Botox party.

23. On or about January 10, 2017, Customskin's website was updated to include a menu of services that included: Skin Enhancement, [Venus Versa] IPL Photo Facials, Hair Removal, Body Contouring, and Skin Tightening. The Legacy Treatments were advertised as a "noninvasive treatment using Multi-Polar Radio Frequency, VariPulse Technology, and Pulsed Electro Magnetic Fields to deeply penetrate the surface of the skin for softening wrinkles and fine lines and contouring stubborn fat pockets to reduce volume, tighten skin, and reduce cellulite." The website indicated Licensee was the Medical Director.

24. Per the Food and Drug Administration's ("FDA") website, medical devices, such as those advertised and used at Customskin, fall into one (1) of three (3) regulatory classes: Class I, Class II, or Class III. Information printed by the KBOC from the FDA's website on October 5, 2015, indicated each of the following were categorized as Class II medical devices: Legacy CX, Venus Legacy CX, Swan (MP)2, Legacy BX, Venus Legacy BX, Freeze (MP)2; Venus Legacy, and 510(k) Summary – Venus Concepts Venus Viva SR.

25. Manual instructions for the Venus medical devices, specifically the Venus Legacy and Venus Versa, were provided to Customskin employees and were reviewed by Board staff.

Both handbooks stated the devices were "intended to be used by professional practitioners in the medical aesthetic field," and "a patient history should be completed prior to treatment to ensure no complications could arise." Further, Venus Versa equipment identification label shows "Rx only."

26. Additionally, on or about March 19, 2018, George J. Mattamal, Ph.D., Senior Regulatory Review Scientist at the FDA, confirmed both the Venus Versa and Venus Legacy, are Class II devices, requiring a prescription.

27. Licensee resigned as Medical Director of Customskin.

28. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.

29. Licensee violated K.S.A. 65-2836(b), in that Licensee committed acts of unprofessional and/or dishonorable conduct and/or professional incompetency;

30. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(8), in that Licensee guaranteed to perform an operation painlessly when Licensee advertised on Customskin's website certain services as "non-invasive and *pain free*." (Emphasis added).

31. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(14), in that Licensee has aided or abetted the practice of the healing arts by an unlicensed person when he knowingly allowed medical services to be performed at Customskin by employees unsupervised, who were not licensed to perform those medical services, and who were not properly supervised by Licensee.

32. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately described the services

rendered to the patient, including patient histories, pertinent findings, examination results and test results.

33. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(26), in that Licensee delegated medical services to persons who he knows or has reason to know that such persons are not qualified by training, experience or licensure to perform them when Licensee delegated the management, supervision, and performance of medical procedures to Trisha Williams and Kristi Roush.

34. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(30), in that Licensee failed to properly supervise, direct, or delegate acts which constitute the healing arts to persons who perform professional services pursuant to Licensee's direction, supervision, order, referral, delegation, or practice protocols when Licensee failed to adequately supervise the use of medical devices and performance of medical procedures at Customskin.

35. Licensee violated K.S.A. 65-2836(k), in that Licensee violated a lawful rule and regulation promulgated by the Board. Specifically, Licensee violated K.A.R. 100-24-1, in that Licensee failed to keep records that met the minimal requirements for adequate medical records for the patients who received care and treatment at Customskin.

36. 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.

37. 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. 65-2863(a) the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

38. 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.

39. All pending investigation materials in KSBHA Investigation No. 16-00206 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 32 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

40. 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 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.*

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

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

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

49. 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.

50. 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.

51. This Consent Order constitutes public disciplinary action.

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

53. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of medicine and surgery:

FINE

54. Licensee is hereby ordered to pay a **FINE** in the amount of **TWO THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS, (\$2,500.00)** for violations of the Kansas Healing Arts Act.

55. Such fine shall be paid in full, to the Board on or before January 31, 2019, in the form of a Cashier's Check or Money Order to the "Kansas State Board of Healing Arts."

56. All monetary payments to the Board relating to this Consent Order shall be mailed to the Board by certified mail, addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level - Suite A
Topeka, KS 66612
KSBHA_compliancecoordinator@ks.gov

EDUCATION: PATIENT SAFETY

57. Licensee shall attend and successfully complete the John Hopkins Medicine's course, entitled "Online Patient Safety Certificate Program," for a total of 18.5 Category 1 continuing medical education credits, on or before February 28, 2019, unless otherwise approved by the Board.

58. Registration for this course can be found at:
https://www.hopkinsmedicine.org/armstrong_institute/training_services/eLearning/armstrong_institute_catalog/patient_safety_certificate.html#accreditation.

59. Licensee shall provide proof of successful completion of the course within thirty (30) days of completing the program.

60. All costs associated with such CME(s) shall be at Licensee's own expense and include, but are not limited to, the cost of the CME(s), the cost of travel to and from the course(s), and the cost of accommodations while attending the CME(s).

61. These hours shall be in addition to those continuing education hours required for renewal of licensure.

62. Proof of successful completion of the approved CME(s) requirements shall be submitted by sending the same to:

Kansas Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

ESSAY

63. Following completion of the John Hopkins Medicine Patient Safety course, Licensee shall write and submit a five-hundred (500) word essay to the Board.

64. The essay shall address, and discuss the topics covered in the course, what Licensee has learned, and how he will implement it into his practice.

65. The essay must be at least 500 words, type-written, 12-point font, and double spaced.

66. Licensee's essay will be subject to review by a Disciplinary Panel member appointed by the Board.

67. Licensee's essay must be submitted to the Board on or before March 29, 2019. The essay shall be submitted to:

Kansas Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

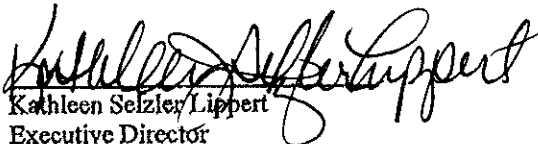
TIMEFRAME

68. This Consent order is self-terminating. Once Licensee has successfully completed all of the previously mentioned conditions, the Consent Order is terminated.


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 4 day of Jan, 2019.

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


Kathleen Selzler Lippert
Executive Director

1/4/19
Date


Kenneth A. Fischer, M.D.
Licensee

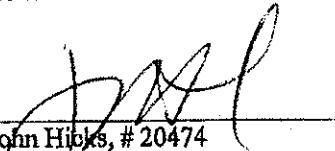
10-8-18
Date


Consent Order
Kenneth A. Fischer, M.D.

PREPARED BY:


Courtney E. Manly, # 27787
Associate Litigation Counsel
800 SW Jackson Street
Lower Level Suite A
Topeka, KS 66606
(785) 368-7257
(785) 368-8210 – facsimile
courtney.manly@ks.gov

APPROVED BY:


John Hicks, # 20474
Attorney for Licensee
Norris & Keplinger, LLC
9225 Indian Creek Parkway, Building 32 Suite 750
Overland Park, KS 66210
(913) 323-3184
(785) 663-2006 – facsimile
JH@nkfirm.com


Ted McDonald ~~KS Bar~~ #16978
Attorney for Licensee
McDonald Davidson PA
9300 West 110th Street, Building 55, Suite 470
Overland Park, KS 66210
(913) 323-3184
(785) 663-2006 – facsimile
TH@mcdd-firm.com – Ted@mcdd-firm.com

Consent Order
Kenneth A. Fischer, M.D.

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 4th day of Jan, 2018, to the following:

Kenneth Fischer, M.D.
Licensee
1419 Westport Landing Place, Suite 101
Manhattan, Kansas 66502.

John Hicks
Attorney for Licensee
9225 Indian Creek Parkway, Building 32 Suite 750
Overland Park, KS 66210

Ted McDonald
Attorney for Licensee
9300 West 110th Street, Building 55, Suite 470
Overland Park, KS 66210

And the original was hand-filed with:

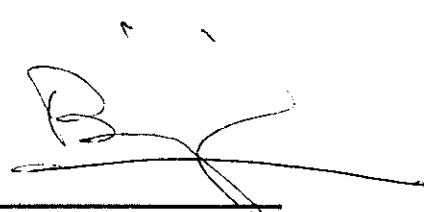
Kathleen Selzler Lippert, Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

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

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topcka, Kansas 66612

Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Consent Order
Kenneth A. Fischer, M.D.