

FILED
AUG 15 2014
CAB

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
) Docket No. 15-HA 00021
Sanford Fitzig, M.D.)
Kansas License No. 04-18108)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Susan R. Gering, Associate Litigation Counsel ("Petitioner"), and Sanford Fitzig, M.D. ("Licensee"), *pro se*, 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: 3311 E. Murdock, Wichita, Kansas 67208.
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. 04-18108 on approximately June 15, 1979. 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. 77-505 and 65-2838. Upon approval, these stipulations shall

Consent Order
Sanford Fitzig, M.D.

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 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) and K.S.A. 65-2837(b)(12) to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. Patient was a sixty-nine (69) year old female who was morbidly obese with a BMI of 43.591 with a history of coronary artery disease, diabetes, and hypertension.

Patient was found to have a left kidney mass thought to be renal cell carcinoma. Licensee scheduled Patient for a hand-assisted left nephrectomy to occur on or about November 17, 2010 at Wesley Medical Center (WMC).

10. Preoperatively, Patient was evaluated by her cardiologist, primary care physician, and pulmonologist and was cleared for surgery.
11. On November 17, 2010, Patient was admitted for the scheduled hand-assisted left nephrectomy, and the procedure began at 1109.
12. At some point during the procedure, it was determined that a vascular injury had occurred and that the aorta had been stapled. Licensee's operative report stated:

[t]he colon was moved medially and taken off of the lateral border of the abdomen through the white line of Toldt, and taken off of the spleen above and attention was directed to the hilum of the kidney. The vessels were rather high and somewhat thickened due to this lady's intraabdominal fat and her size. Dissection was carried out with the Harmonic scalpel, but was originally thought to be the renal pedicle, running laterally which was divided using a 65-mm linear stapler and it actually turned to be the aorta. The injury was recognized and that was later repaired

13. The nephrectomy was completed by Licensee and then an assisting vascular surgeon opened Patient to repair the vascular injury. Documentation indicates that the aorta had been stapled for about an hour and Patient was at risk for ischemic problems in her lower extremities.
14. Post-operatively, Patient was ventilator dependent, and was taken to the Surgical Intensive Care Unit (SICU). In the SICU, Patient received critical care treatment from the cardiology and pulmonology departments. A colorectal consultation was

also requested based on Patient becoming increasingly acidotic despite fluid resuscitation.

15. Patient's condition continued to decline, and a flexible sigmoidoscopy as well as an abdominal exploration performed the following day indicated nothing could be done to improve Patient's condition. Patient's family was advised of Patient's condition, and Patient was placed on comfort care. Patient died at approximately 2154 on November 18, 2010.

16. Confidential

17. In April 2011, a Board Investigator sent Licensee a letter requesting Licensee to provide a complete narrative statement regarding the allegations received by the Board. Licensee failed to provide the Board with a narrative statement regarding his care and treatment of Patient.

18. Based upon the above incident, Disciplinary Panel No. 28 requested Licensee undergo a competence assessment to evaluate whether Licensee was able to safely practice medicine and surgery at the Center for Personalized Education for Physicians (CPEP).

19. Licensee enrolled in and completed the CPEP Competence Assessment on February 3, 2014, through February 5, 2014. CPEP prepared an Assessment Report detailing its findings and recommendations for Licensee. A copy of Licensee's Assessment Report was provided to Licensee and Petitioner on or about March 13, 2014.

Confidential

20.

21.

Confidential

22. 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.
23. Licensee's acts, if proven, constitute unprofessional conduct or dishonorable conduct or professional incompetency as set forth in K.S.A. 65-2836(b).
24. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12) in that Licensee's conduct is likely to deceive, defraud or harm the public.
25. 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.
26. 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.
27. All pending investigation materials in KSBHA Investigation number 11-00479 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 28

authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

28. 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 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.*
29. 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.
30. 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.

31. 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.
32. 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.
33. 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.
34. 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.

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

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

37. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

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

38. 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.

39. 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.

40. This Consent Order constitutes public disciplinary action.
41. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
42. 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 medicine and surgery:

CENSURE

43. Licensee is **publicly censured** for violating the Kansas Healing Arts Act.

EDUCATION

44. Licensee shall attend and successfully complete the in-person Medical Record Keeping Seminar put on by the Center for Personalized Education for Physicians (CPEP), on one of the following dates listed, unless otherwise approved by the Board: September 27, 2014, or December 5, 2014.
45. All costs associated with such seminar shall be at Licensee's own expense to include, but not be limited to, the cost of the seminar, the cost of travel to and from the seminar, and the cost of accommodations while attending the seminar.
46. These hours shall be in addition to those hours required for renewal of licensure.
47. On or before August 30, 2014, Licensee shall notify the Compliance Coordinator in writing of which course date Licensee has registered to attend.
48. Licensee shall provide proof of successful completion of the CPEP Medical Record Keeping Seminar to the Compliance Coordinator within thirty (30) calendar days of successfully completing the program.

49. Proof of completion of the Medical Record Keeping Seminar requirement shall be submitted by sending the same to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Ste. A
Topeka, Kansas 66612

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

LIMITATIONS/MONITORING

51. Licensee's license to practice medicine and surgery shall be limited in that he shall not practice under the Kansas Healing Arts Act unless he complies with each of the following:

- a. Licensee shall only independently perform vasectomies, cystoscopies, Extracorporeal Shock Wave Lithotripsies, circumcisions, meatoplasties, repair of hernia/hydroceles in children, hydrocelectomy, epididymectomy, orchiectomy, TVT sling procedure for incontinence, and suprapubic cystostomy. Should complications arise during any of the independently performed procedures, requiring an open-surgical operation, Licensee shall have a senior partner or other surgical physician consult and assist on each patient case requiring an open-surgical procedure. For all other surgical procedures, including open-surgical operations, Licensee shall have a senior partner or other surgical physician consult and assist on each patient case requiring a surgical procedure.

- b. Such senior partner or surgical physician shall function as a practice monitor. The practice monitor shall conduct weekly chart reviews of all patients seen and treated by Licensee during that week. The monitor shall then submit all weekly reports to the Board on the 15th day of the each month. The report shall be on a form provided by Board staff and shall include the number of patient charts reviewed, a brief summary of Licensee's services rendered during the week and an opinion as to whether Licensee services are within the standard of care. The monitor must immediately notify Board staff if he/she believes Licensee's services are outside the standard of care.
- c. On or before August 30, 2014, Licensee shall submit the curriculum vitae of his proposed practice monitor for approval of the Board. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the practice monitor. Such monitoring shall be conducted at Licensee's own expense.
- d. Licensee agrees to change his licensure status from Active to Inactive or Exempt on or before December 31, 2014. Upon Licensee's designation change from Active to Inactive or Exempt, Licensee shall not perform any type of surgical procedure.
- e. For the purposes of the limitation, the term "surgery" is defined as manual or operative method that involves the partial or complete excision or resection, destruction, incision, or other structural alteration of human tissue by any means, including the use of lasers, performed upon the

human body for the purpose of preserving health, diagnosing or treating disease, repairing injury, correcting deformity or defects, or for aesthetic, reconstructive, or cosmetic purposes. The limitation will also include endoscopic procedures.

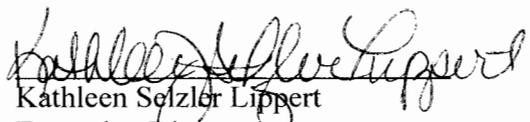
52. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

53. Any request for modification or termination of this Consent Order by Licensee shall be submitted to the Board during Licensee's request for change in his licensure status from Exempt/Inactive status to Active.

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 15 day of Aug, 2014.

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


Kathleen Selzler Lippert
Executive Director

8/15/14
Date

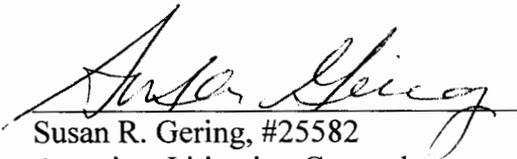


Sanford Fitzig, M.D.
Licensee

6/24/14

Date

PREPARED AND APPROVED BY:



Susan R. Gering, #25582
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-368-8212
sgering@ksbha.ks.gov

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 15th day of August, 2014, to the following:

Sanford Fitzig, M.D.
Licensee
3311 E. Murdock
Wichita, Kansas 67208

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 delivered to:

Susan R. Gering
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
Topeka, Kansas 66612

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



Consent Order
Sanford Fitzig, M.D.