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

KS State Board of Healing Arts

In the Matter of)
JEAN-MICHEL HASSAN, M.D.)
)
Kansas License No. 04-31410 (Cancelled))
_____)

KSBHA Docket No. 13-HA00079

**FINAL ORDER DENYING REQUEST FOR
TERMINATION OF SURGICAL LIMITATION**

NOW on this 13th day of June, 2014, comes before the Kansas State Board of Healing Arts (“Board”) the request of Jean-Michel Hassan, MD (“Licensee”) for termination of the limitation in the Consent Order filed on April 15, 2013, in this matter. Licensee appears in person by video conferencing and *pro se*. Jane Weiler, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving evidence and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee was previously licensed to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-31410. Such license was last renewed on May 27, 2010. Subsequently, Licensee failed to renew his license by the renewal deadline of July 1, 2011, and Licensee’s license was thereafter canceled by operation of law.

2. On or about April 15, 2013, Licensee entered into a Consent Order with the Board to resolve concerns regarding thirteen (13) medical malpractice settlements involving surgical procedures which were paid out in 2012 on Licensee's behalf, Confidential

3. The Consent Order provides that if Licensee's Kansas medical license is ever reinstated, such license will immediately be subject to a limitation prohibiting the performance of surgery.

4. The Consent Order further provides that Licensee agrees that he is required to submit to the Board clear and convincing evidence demonstrating that he is competent to perform surgery in order for the Board to terminate the surgical limitation. Clear and convincing evidence is defined as "that which is sufficient to establish that the truth of the facts asserted is highly probable." *In re B.D.Y.*, 286 Kan. 686, 696 (2008). In the context of the Consent Order, "competence" refers to one's knowledge, skill and application of the two that meets the standard of care.

5. Licensee has not applied to reinstate his Kansas medical license. However, Licensee submitted a request to the Board for termination of the surgical limitation. In his request to terminate the surgical limitation, Licensee states that he does not intend to reinstate his Kansas medical license, nor does he plan on practicing in Kansas ever again, but wished to "clear his record."

6. In support of terminating the surgical limitation, Licensee offers evidence that he became certified by the French College of Plastic, Reconstructive and Aesthetic Surgery on October 12, 2013. Licensee also offers letters from two (2) physicians who recommended that Licensee have unrestricted surgical privileges and medical licensure based on their personal observations of his practice. Lastly, Licensee offers a letter from his treating physician in France

who performed corneal corrective surgery with excimer laser in-situ keratomileusis (LASIK) on Licensee in January of 2012 to treat his severe bilateral astigmatism.

7. Licensee also asserts that his previously undiagnosed vision impairment was the most probable cause for the malpractice claims underlying the Consent Order's surgical limitation. Licensee argues that, as a result of his vision correction prior to entering into the Consent Order, the limitation should never have been imposed. Licensee contends that the Board's litigation attorney with whom the Consent Order was negotiated refused to take his visual impairment and subsequent correction into account. Licensee suggests these are reasons for the Consent Order be canceled and "rendered moot."

8. Licensee's arguments regarding the integrity of the Consent Order are both unpersuasive and untimely. Licensee was represented by a Kansas attorney during the negotiations and in the execution of the Consent Order. Additionally, Licensee voluntarily agreed to the Consent Order in lieu of exercising his right to a hearing on the Board's allegations. Finally, Licensee had an opportunity to request reconsideration or seek judicial review of the Consent Order within the applicable statutory timeframes that have long since passed.

9. Limited weight is given to the evidence regarding Licensee's corrected vision as proof of competence to perform surgery. Licensee's treating physician opined that, subsequent to correcting Licensee's vision, there was "no ocular reason to restrict his surgical privileges." This opinion relates to Licensee's physical ability to perform surgery rather than Licensee's inherent competency to perform surgery.

10. As noted above, Licensee urges the Board to infer that his impaired vision was the probable cause for all of the claims underlying his thirteen (13) malpractice settlements. Licensee's arguments are not persuasive. Ten (10) of the claims included allegations of

unnecessary surgeries. One (1) claim included an allegation that Licensee inappropriately discontinued a medication prior to surgery. Lastly, one (1) claim included an allegation that Licensee used an un-insulated cautery. The Board concludes that it is highly unlikely that a visual impairment would be causally related to the foregoing allegations.

11. The Board further concludes that Licensee's French certification in Plastic, Reconstructive and Aesthetic Surgery does not meet the clear and convincing evidence standard of proof that Licensee is competent to perform surgery. No verifiable evidence is offered by Licensee to show that his foreign specialty certification is equivalent to a corresponding American medical specialty board certification. No evidence is offered by Licensee regarding the specific training requirements, examinations or official recognition by a corresponding American medical specialty board.

12. The Board also concludes that the recommendation letters from two other physicians do not provide clear and convincing evidence of Licensee's surgical competence. One letter is from a physician who was on staff with Licensee at a Kansas hospital beginning in 2005. As noted by Associate Litigation Counsel, the letter was authored prior to the Consent Order's execution. The other letter is from the physician who was Licensee's residency program director in France from April of 2011 to October of 2013. Both letters afford only general opinions about Licensee's surgical abilities. Neither letter provides substantive evidence of Licensee's clinical knowledge, clinical decision-making abilities, surgical performance or technical skills. Additionally, because the basis for the opinions in the letters could not be subject to cross examination, the Board determines the letters are of minimal evidentiary value.

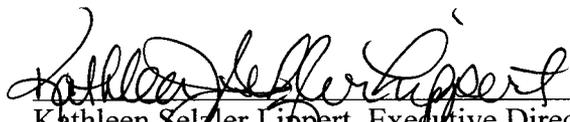
13. Associate Litigation Counsel offers documentary evidence of other state medical board disciplinary actions against Licensee which were, in part, based on the Consent Order at

issue in this matter to show Licensee's motivation in requesting termination of the surgical limitation. The Board accordingly restricts its consideration of this evidence. The other state medical board disciplinary actions which are partially based on the Consent Order are evidence of Licensee's reason for seeking to terminate the surgical limitation, hence Licensee's expressed desire to "clear my record." The Board concludes that Licensee's underlying motivation for requesting termination of the surgical limitation is inconsequential to the issues at hand.

14. The Board concludes that the evidence presented by Licensee fails to meet the clear and convincing evidence standard to prove he is competent to perform surgery warranting termination of the surgical limitation.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee's request for termination of the surgical limitation in the Consent Order filed on April 15, 2013, is hereby **DENIED**.

IT IS SO ORDERED THIS 24th DAY OF JUNE, 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER DENYING REQUEST FOR TERMINATION OF SURGICAL LIMITATION** was served this 24th day of June, 2014 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jean-Michel Hassan, MD
1208 8th Avenue
Decatur, Alabama 35601
Jmhassan2546@yahoo.com

And a copy was hand-delivered to:

Jane Weiler, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

And the original was filed with the office of the Executive Director.



Cathy Brown, Executive Assistant