

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

FILED DEC 13 2004 KANSAS STATE BOARD OF HEALING ARTS
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In the Matter of)
)
Charles W. Hastings, M.D.,)
Application for License) Docket No. 05-HA-33
_____)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Charles W. Hastings, M.D., (“Applicant”), by and through legal counsel, John Hastings, and move the Board for approval of a Consent Order as a condition to granting Applicant’s application for license to practice medicine and surgery in Kansas. The parties stipulate and agree to the following:

1. On or about June 21, 2004, Applicant submitted an application for license to practice medicine and surgery in Kansas, which was deemed complete on November 15, 2004.
2. Applicant’s mailing address as provided to the Board is 1590 Blue Sage Court, Boulder, Colorado, 80305.
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.*; 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 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.

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. Applicant 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. 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 April 15, 2004, Applicant entered into a Stipulation and Final Agency Order (Final Order) with the Colorado Board of Medical Examiners (“Colorado Board”) regarding his medical license in that state.

10. In the Colorado Board’s Final Order, Applicant admitted that he treated several patients’ lesions and skin cancers with ineffective modalities; he failed to diagnose several patients’ skin cancers due in part to ineffective treatment modalities; and that he failed to request adequate follow-up on high risk patients.

11. The Colorado Board’s Final Order provided that Applicant’s medical license would be placed on probation for a period of five (5) years and required Applicant to participate in an education plan recommended by the Center for Personalized Education for Physicians (“CPEP”); take photographs of lesions; and submit to monthly monitoring of his practice by an approved practice monitor.

12. Pursuant to K.S.A. 65-2836(j), the Board has grounds to revoke, suspend, censure or otherwise limit Applicant’s license due to the disciplinary action taken against Applicant’s license by the proper licensing authority of another state.

13. 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.

14. 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 limitations placed on his license to engage in the practice of medicine and surgery as a condition to being granted such a license:

CPEP Educational Plan

- (a) Prior to engaging in the active practice of medicine and surgery, Applicant agrees to formally enter a CPEP Educational Plan as

recommended by CPEP and upon the approval of the Board's designee, Mark McCune, M.D.;

- (b) Applicant further agrees to participate in and fully complete the CPEP Educational Intervention Plan, the terms of which are incorporated herein by reference as if fully restated. Licensee shall bear all costs of the CPEP Educational Intervention Plan;
- (c) Applicant shall complete any necessary waiver/release so that the Board may receive a copy of the CPEP Educational Intervention Plan and any and all reports regarding Applicant's participation, completion and follow-up evaluations;

Photographic Documentation of Skin Lesions

- (d) Each time Applicant treats a skin lesion before the particular lesion has been biopsied, Applicant shall assure that a photograph is taken of the particular lesion prior to the initiation of treatment and included in the patient's chart. The photograph shall be accurately labeled and dated.

Practice Monitor

- (e) Applicant shall have his practice monitored by an independent physician monitor for a period of at least three (3) years. Such physician monitor must be board certified in dermatology and actively practicing in Kansas. Prior to Applicant engaging in active practice, such physician monitor must be approved by the Board's designee, Mark McCune, M.D. Applicant shall bear all costs associated with such physician monitor's monitoring activities.
- (f) Each month, the monitor will randomly choose five (5) patient charts from each of Applicant's practice locations on which to perform chart reviews and submit quarterly monitoring reports to Board staff for those charts. The physician monitor's reports shall be on a form provided by Board staff and must include an assessment of each patient chart reviewed that includes a description of the patient case; a statement as to whether the photographic documentation requirement in paragraph 14(d) above has been complied with; and the physician monitor's opinion regarding whether Applicant's evaluation and treatment of each patient is within with that level of care, skill and treatment which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances; and the physician monitor's opinion as to the adequacy of Applicant's documentation;

- (g) The physician monitor must immediately notify Board staff if the monitor finds any patient case where he reasonably believes Applicant may have been negligent or otherwise acted outside the standard of care in the evaluation and/or treatment of a patient; and
- (h) Each monitoring report shall be due within fifteen (15) days of the conclusion of each three-month quarter. Applicant shall be responsible for ensuring the timely submission of the physician monitor's reports to Board staff.

15. The limitation provisions of this Consent Order are not self-terminating and shall remain in effect for at least three (3) years. At the end of three (3) years, Applicant may petition the Board for removal of the limitations. Any request to modify this Consent Order by either party shall be heard by the Board's designee, Mark McCune, M.D..

16. For any period of time that Applicant is not actively practicing in Kansas, the limitations will remain in effect but will be tolled and not counted towards reducing the three-year timeframe.

17. Applicant's failure to comply with the provisions of the Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

18. 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.

19. 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.

20. Applicant further understands and agrees that upon signature by Applicant, 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 requiring disclosure of this Consent Order.

21. 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.

22. 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.

23. 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.

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

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: Kelli J. Benintendi, 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.

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

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein are adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and limitations placed on his license to engage in the practice of medicine and surgery in Kansas:

CPEP Educational Plan

- (a) Prior to engaging in the active practice of medicine and surgery, Applicant agrees to formally enter a CPEP Educational Plan as recommended by CPEP and upon the approval of the Board's designee, *_Mark McCune, M.D._*;
- (b) Applicant further agrees to participate in and fully complete the CPEP Educational Intervention Plan, the terms of which are incorporated herein by reference as if fully restated. Licensee shall bear all costs of the CPEP Educational Intervention Plan;
- (c) Applicant shall complete any necessary waiver/release so that the Board may receive a copy of the CPEP Educational Intervention Plan and any and all reports regarding Applicant's participation, completion and follow-up evaluations;

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/s/
Charles W. Hastings, M.D.
Applicant

12/2/04
Date

Prepared and Approved by:

/s/
Kelli J. Benintendi, #16032
Associate Counsel
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Approved by:

/s/
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Attorney for Applicant