

JUN 26 2020

KS State Board of Healing Arts

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

In the Matter of

Rebecca S. Hierholzer, M.D.
Kansas License No. 04-20017

KSBHA Docket No.: 19-HA00073

CONSENT ORDER FOR SURRENDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Tammie L. Mundil, Deputy Litigation Counsel, and Rebecca S. Hierholzer, M.D. ("Licensee"), by and through her attorney Greg Forney, of Shaffer Lombardo Shurin, move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in Kansas. The Board and Licensee stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is:

CONFIDENTIAL

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2. Licensee is or has been entitled to practice medicine and surgery in Kansas, having been issued Kansas License No. 04-20017 on June 17, 1983, and having last renewed such license on August 08, 2019. Licensee's current license status is Suspended.

3. On March 29, 2019, Licensee's license was emergently suspended after Petitioner filed a Motion for *Ex Parte* Emergency Order and Suspension and for Emergency Proceedings ("Motion") on March 26, 2019, based on

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The evaluation stated the Licensee was not fit to remain in independent practice until Licensee had undergone extensive retraining to bring her clinical skills

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up to a minimum level of competency. (See Agency Record, *In the Matter of Rebecca S. Hierholzer, M.D.*, KSBHA Docket No. 19-HA00073).

4. This Consent Order incorporates herein by reference the facts as stated in the Petition that was filed on March 26, 2019, and the Motion that was filed on the same day. Generally, the Petition alleges multiple violations of the Healing Arts Act including professional incompetency and standard of care violations. (Exhibit A, Petition, *In the Matter of Rebecca S. Hierholzer, M.D.*, KSBHA Docket No. 19-HA00073).

5. Licensee also has a pending investigation with the Board, CONFIDENTIAL alleging concerns regarding professional competency and standard of care violations. The complaint is dated September 23, 2019. This Consent Order will also address and resolve this pending investigation. (See Exhibit B, Complaint).

VIOLATIONS OF THE HEALING ARTS ACT

6. If proven, the Board believes Licensee's acts and conduct constitutes acts in violation of the Kansas Healing Arts Act as follows:

- a. Licensee violated K.S.A. 65-2836(b), in that Licensee committed an act of unprofessional or dishonorable conduct.
- b. Licensee violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(3), in that she has exhibited a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts.

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- c. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), in that Licensee committed an act of unprofessional or dishonorable conduct likely to deceive, defraud, or harm the public.
- d. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24), in that Licensee has repeatedly failed to practice healing arts with that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
7. Under K.S.A. 65-2836 *et seq.*, the Board has grounds to revoke, suspend, censure, place on probation or otherwise limit Licensee's license for violations of the Kansas Healing Arts Act.
8. 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. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

SURRENDER

9. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby surrenders her license to practice medicine and surgery in Kansas. Such surrender shall be treated as a revocation for all purposes, including reporting. Licensee agrees that an application for reinstatement of the license will be considered in accordance with the provisions of K.S.A. 65-2844 and all applicable statutes, law, rules, and regulations regarding qualifications

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for licensure and reinstatement. Further, Licensee's application will be governed by *Vakas v. the Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991).

10. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement.

11. Licensee agrees that in the event she applies for reinstatement of her license, the allegations contained in this Consent Order will be considered for any application for reinstatement.

12. Licensee agrees that she will not apply for reinstatement or stay of this revocation of her license until three (3) years has elapsed from the date of the approval of this Consent Order.

13. Licensee shall place her patients' records in the custody of another licensed medical doctor, or a records maintenance facility, in compliance with K.A.R. 100-24-2 and 100-24-3. Licensee shall notify the Board in writing on or before **July 28, 2020**, of the specific measure taken and the appropriate contact information of the designated record custodian so that the Board can respond to questions from patients about the location of their medical records, and how they can obtain them.

14. Licensee acknowledges that under K.S.A. 65-2867, it shall be unlawful for Licensee to open or maintain an office for the practice of the healing arts, or to announce or hold out to the public the intention, authority, or skill to practice the healing arts.

15. Licensee is prohibited from owning, managing, being employed by, or in any way acting in an advisory capacity, for any entity providing health care services.

MISCELLANEOUS PROVISIONS

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16. 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.

17. 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 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.

18. 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.

19. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her 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.

20. 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.

21. 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.

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22. 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 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 her 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.*

23. 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.

24. 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

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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.

25. 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 this Consent Order.

26. 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.

27. 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.

28. 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.

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29. Licensee acknowledges she has read this Consent Order and fully understands the contents.
30. Licensee acknowledges this Consent Order has been entered into freely and voluntarily.
31. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in 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.
32. 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 Final Order when filed with the office of the Executive Director for the Board and no further Order is required.
33. This Consent Order constitutes **public disciplinary action**.
34. 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, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 26th day of June, 2020.

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

Tucker Poling
Acting Executive Director

6/26/20
Date

Rebecca S. Hierholzer
Rebecca S. Hierholzer, M.D.
Licensee

June 6, 2020
Date

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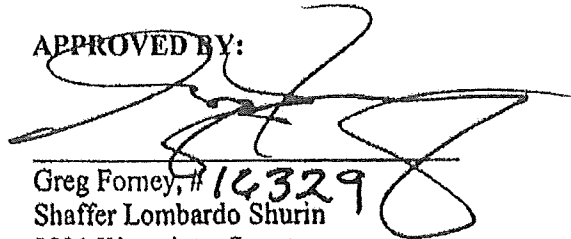
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PREPARED AND APPROVED BY:



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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the **CONSENT ORDER FOR SURRENDER** by United States mail, postage prepaid, on this 26th day of June, 2020 to the following:

Greg Forney
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Attorney for Licensee

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And the original was hand-delivered for filing to:

Tucker Poling, Acting Executive Director
Kansas Board of Healing Arts
800 SW Jackson
Lower Level-Suite A
Topeka, Kansas 66612



Staff Member

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