

RATIFIED BY BOARD

DATE: 10/24/13

FILED
AUG 27 2013

CAB

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 14-HA00021
Jose L. Hinojosa, M.D.)	
Kansas License No. Pending)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jessica A. Bryson, Associate Litigation Counsel ("Petitioner"), and Jose L. Hinojosa, M.D. ("Applicant"), by and through his counsel, Carol Ruth Bonebrake, Holbrook & Osborn, P.A., and move the Board for approval of a Consent Order affecting Applicant's license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant's last known mailing address to the Board is: P.O. Box 3550, Edinburg, Texas 78540-3550.
2. On or about March 13, 2013, Applicant submitted to the Board an application for licensure in medicine and surgery. Such application was deemed complete and filed with the Board on August 26, 2013.
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

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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. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. 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.
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. Applicant 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. 65-2936 to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. In his application for licensure, Applicant answered "yes" to disciplinary questions 1, 4, 7, 8, 9, 10, 18, 19, and 23.

10. Applicant provided the following explanations:

- a. For question 1, Applicant stated that he was placed on academic probation during his junior year at Brown University in 1979, but that the probation was lifted the following semester.
- b. For question 4, Applicant stated that he has never been denied hospital privileges, but that once or twice in the 1990's, his privileges were temporarily suspended **Confidential**
Confidential
- c. For question 7, Applicant stated that, in January 2010, he “permanently surrendered” his Texas medical license “due to writing refills in 2008 for three Telemedicine patients in Florida – a state where [he] was not licensed. This was an error in judgment for both writing the refills and for surrendering [his] license.” Applicant stated that a P.A. licensed in Florida had consulted with the patients via telephone and then Applicant reviewed the patients’ records. He stated he directly communicated with the P.A. prior to approving the refills. He stated that he now realizes that, since he was not licensed in Florida, he should not have done that. He also stated that he surrendered his license because he thought he was ready to retire and because he thought he had no other choice. He also stated that he takes full responsibility for his actions and that he regrets his poor judgment in this case. He further stated that, on March 7, 2013, he obtained an active, unrestricted license to practice in Oklahoma.

- d. For question 8, Applicant stated that he had been fined \$ 500 in April 2004 by the Texas Board because he had utilized the services of an x-ray technician who had allowed his certification to expire, and Applicant was not approved to supervise non-certified x-ray technicians.
- e. For questions 9, 10, and 19, Applicant stated that his answer to question 7 also applied to these questions.
- f. For question 18, Applicant stated that he did not surrender any other licenses or permits, but because he surrendered his Texas medical license, his “other permits and licenses were automatically cancelled after [he] surrendered [his] Texas medical license.”
- g. For question 23, Applicant disclosed being named in a malpractice suit for prescribing the weight loss medication Redux. He stated that he prescribed the medication to only one patient for three or four months and that the patient eventually left the clinic. He stated that, in 1999, he learned that he had been sued. He stated that the case was closed in December 2000 with no money paid on his behalf.

11. Confidential

Confidential

- b. In July 2010, the Texas Health and Human Services Commission excluded Applicant from participation in the Texas State Health Program because he had voluntarily surrendered his Texas medical license.
12. Since surrendering his medical license in February 2010, Applicant has only practiced medicine in Oklahoma since March 2013.
13. On October 1, 2012, Applicant took and successfully completed the Special Purpose Examination (SPEX) Confidential
14. In 2012, Applicant obtained 120.50 Continuing Medical Education (CME) hours, and he also participated in the 4th Annual Medical Education Conference from September 21 through September 23, 2012, provided by Doctors Hospital at South Padre Island, Texas.
15. From January 1, 2013, to June 26, 2013, Applicant had completed 35.50 CME hours.
16. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant has violated the Kansas Healing Arts Act with respect to the above allegations. Applicant further waives

his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

17. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-4925.
18. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
19. Applicant violated K.S.A. 65-2836(j) in that the Texas Medical Board, which is the proper licensing authority for the State of Texas, took disciplinary action against Applicant's Texas medical license.
20. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant'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.
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.
22. All pending investigation materials in KSBHA Investigative Case Number 13-00628 regarding Applicant, 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.
23. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant 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 Applicant's license to practice medicine and surgery in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant 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, Applicant 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.*

24. 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.

25. Applicant 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 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.

26. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
27. 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.
28. 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.
29. Applicant, 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.

30. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
31. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
32. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
33. 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.
34. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final 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.
35. This Consent Order constitutes non-disciplinary action.
36. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

37. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee, and abiding by the terms of this Consent Order. Applicant further understands that the Temporary License is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent licensure under the terms of this Consent Order.
38. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice of medicine and surgery:

EDUCATION

39. Applicant shall attend and successfully complete the following continuing education course: Intensive Course in Controlled Substance Prescribing-Pain, Anxiety, Insomnia, offered by Case Western Reserve University School of Medicine Continuing Medical Education Program by December 15, 2013, at his own expense. Applicant shall provide proof of successful completion by December 31, 2013.
40. Applicant shall also attend and successfully complete the following continuing education course: Two-day Telehealth Education Program, offered by University of California Davis Health System Center for Health and Technology, by February 15, 2014, at his own expense. Applicant shall provide proof of successful completion by February 28, 2014.

41. These hours shall be in addition to those hours required for renewal of licensure.

MONITORING

42. Applicant agrees to have a Board-approved practice monitor, who is another Kansas-licensed physician, to review the practices and procedures of Applicant's office to ensure compliance with community and ethical standards. Applicant shall bear all expenses associated with the practice monitor.

43. On or before September 10, 2013, Applicant shall submit the curriculum vitae of a proposed practice monitor and a plan of ~~supervised~~ ^{monitored} practice for approval to the Board.
 CRB *GAB*

44. The practice monitor shall submit monthly reports to the Board on a form provided by Board staff. The reports shall be due on the following dates: October 15th, November 15th, December 15th, January 15th, February 15th, and March 15th. Such reports shall include a summary of whether Applicant is seeing patients, documenting in the medical record, and prescribing medications in an appropriate and timely manner. Applicant is responsible for ensuring that the practice monitor's reports are submitted by the monthly deadlines. Applicant further acknowledges that, until this monitoring provision is terminated by the Board, he is responsible for ensuring that the practice monitor shall continue to submit monthly reports to the Board on the 15th day of each month.

45. The Board designates Disciplinary Panel #28 to review and approve/disapprove of the proposed practice ^{*CRB*} ~~supervisor~~ and plan of ~~supervised~~ ^{*CRB*} practice.
 CRB monitor *GAB monitored*

46. Applicant is responsible for ensuring the monitor's timely submission of the report each month. For any period(s) of time that Applicant is not actively

practicing the healing arts in Kansas, the monitoring provisions of this Consent Order shall be tolled and not be counted in reducing the required timeframe for monitoring.

47. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A., Topeka, Kansas 66612.
48. Applicant will furnish a copy of this Consent Order to each and every state in which he holds licensure or applies for licensure.
49. Applicant shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Applicant shall provide the above information in writing to the Board within ten (10) days of any such change.

TIMEFRAME


50. The above monitoring provisions are not self-terminating. After a period of six (6) months, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing medicine and surgery in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the six (6) month timeframe.

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.

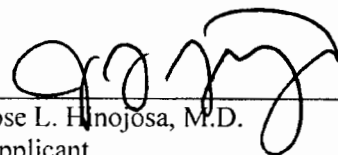
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 26th day of August, 2013.

FOR THE KANSAS STATE
BOARD OF HEALING ARTS:

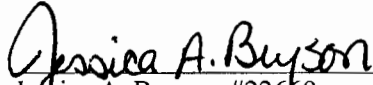

Kathleen Selzler Lippert
Executive Director

8/26/13
Date

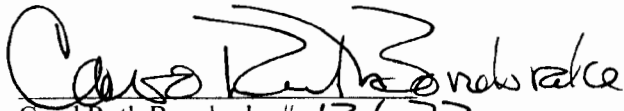

Jose L. Hinojosa, M.D.
Applicant

8/22/2013
Date

PREPARED AND APPROVED BY:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-8022

AGREED TO BY:


Carol Ruth Bonebrake # 12672
Attorney for Applicant
Holbrook & Osborn, P.A.
107 SW 6th Ave Ste 210
Topeka, Kansas 66603
785-232-6200

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **RATIFIED CONSENT ORDER** was served this 24th day of October 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jose L. Hinojosa, M.D.
P.O. Box 3550
Edinburg, TX 78540-3550


And a copy was hand-delivered to:

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

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

Kelli Stevens, General Counsel
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.

for 

Cathy Brown, Executive Assistant