

JUN 15 2020

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KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

In the Matter of)
)
Clinton D. Humphrey, M.D.) Docket No. 20-HA 00087
Kansas License No. 04-33336)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Tammie L. Mundil, Deputy Litigation Counsel ("Petitioner"), and Clinton D. Humphrey, M.D. ("Licensee"), by and through his attorneys, Julie A. Roth and Mark Cole of Spencer Fane, LLP, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in Kansas. The Parties stipulate and agree to the following:

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

CONFIDENTIAL Licensee's last known email address to the Board is

CONFIDENTIAL

2. Licensee is entitled to engage in the practice of medicine and surgery in Kansas, having been issued original license number 04-3336 on September 11, 2008. Licensee's current license status is Active, having last renewed such license on or about May 16, 2019.

3. The Board has received information and investigated the same, and has reason to believe there are grounds to take action against Licensee under the Kansas Healing Arts Act, K.S.A. 65-2801 et seq.

4. The facts offered in support of this Consent Order are as follows:

- a. Licensee is employed by The University of Kansas Physicians ("UKP"), which is affiliated with Kansas University Physicians, Inc., ("KUPI"). KUPI, with the

consent of UKP, is a party to a Medical Director Agreement with TTRI, LLC d/b/a Invisible Ink pursuant to which the Licensee provides certain services to Invisible Ink. Licensee agreed to the use of his name, address, and specialty, if any, educational training and professional credentials in brochures, provider directories and similar materials utilized to market the existence of services provided by Invisible Ink. Licensee also agreed to provide medical direction and supervision of Invisible Ink, among many other stipulations set forth in a Medical Director Agreement.

- b. Licensee allowed Invisible Ink to use his name and credentials.
- c. Licensee did not actively practice, supervise on-site, nor was he routinely present at the Invisible Ink location.
- d. Licensee did not maintain an on-site schedule at Invisible Ink but was available by telephone if needed.
- e. The Licensee's office was over twenty minutes away and no evidence was presented to suggest or support he made any visits to the tattoo removal centers or kept any notes or records indicating time spent reviewing the electronic records of each new client entering into treatment/treatments to verify that the approved protocol, process and procedure had been properly conducted and appropriately documented as required by the medical agreement the Licensee entered into.
- f. On January 17, 2018, Patient, A.G., submitted a complaint against Licensee regarding certain advertising issues.
- g. Invisible Ink advertised and offered a guarantee of tattoo removal services.

- h. Invisible Ink advertised they would provide a “final cost” to patients with an attached guarantee they would “never exceed” this amount.
- i. Invisible Ink utilized a third-party vendor (Fortiva) to help patients with financing the costs of the treatment. Fortiva charged A.G. late fees, which exceeded the final cost amount A.G. was provided.

5. 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. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

6. The Board is the sole and exclusive administrative agency in Kansas authorized to regulate the practice of the healing arts, and specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*

7. 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.

8. 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 possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

9. 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.

10. The Board has received information and investigated the same, and has reason to believe there are grounds to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.* Specifically, the Board has evidence to establish the following:

- a. The Medical Director Agreement, to which Licensee was a signatory, resulted in a violation of the corporate practice of medicine doctrine which forbids a corporation from contracting with a physician to practice medicine that the corporation itself is not licensed to perform." *Cent. Kansas Med. Ctr. v. Hatesohl*, 308 Kan. 992, 1001 (2018).
- b. Licensee violated K.S.A. 65-2836(b) by committing acts of unprofessional conduct, as defined by K.S.A. 65-2837(b)(1), (7), (8), (12), (15), (26), and (30). Specifically, the Board has evidence to establish the following:
 - i. Licensee used false or fraudulent advertisement by guaranteeing results to solicit patients. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(1).
 - ii. Licensee advertised a professional service in a superior manner leading the general public to believe tattoo removal could be guaranteed. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(7).

- iii. Licensee advertised the guarantee of a professional service. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(8).
- iv. Licensee's advertisement of a guarantee was likely to deceive the public. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(12)
- v. Licensee allowed Invisible Ink and the staff at Invisible Ink to use his license to practice the healing arts. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(15).
- vi. Licensee delegated professional responsibilities to staff at Invisible Ink when the licensee had reason to know that such staff was not qualified by training, experience or licensure to perform them. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(26).
- vii. Licensee failed to properly supervise, direct or delegate acts that constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols. This is unprofessional conduct as defined by K.S.A. 65-2837(b)(30).

c. Licensee violated K.S.A. 65-2836(d) by using fraudulent or false advertisements.

11. Licensee acknowledges that if formal proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, and did not in any way otherwise contest the allegations and averments made by the Board, 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.

12. 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 violations of the Kansas Healing Arts Act.

13. According to K.S.A. 77-505 and 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. All pending investigation materials in KSBHA Investigation No. 18-00446 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 35 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

15. 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 engage in the practice of 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.*

16. 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.

17. 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 for 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

24. Licensee shall obey all federal, state and local laws and rules governing the practice of radiologic technologists 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.

25. 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. 77-505 and 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.

26. Licensee shall immediately notify the Board or its designees of any citation, arrest or charge filed against her or any conviction for any traffic or criminal offense excluding speeding and/or parking violations.

27. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other county, or by a per review body, a health care facility, a professional association or society, or by a governmental agency.

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

29. This Consent Order constitutes **public disciplinary action**.

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

31. 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 in Kansas.

PUBLIC CENSURE

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

FINE

33. Licensee is hereby ordered to pay a **FINE** in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS, (\$1,500.00)** for violations of the Kansas Healing Arts Act.

34. Such fine shall be paid in full within 60 calendar days of the execution of this Consent Order, in the form of a Cashier's Check or Money Order paid to the order of "Kansas State Board of Healing Arts."

35. All monetary payments to the Board relating to this Consent Order shall be mailed to the Board by certified mail, addressed to:

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

EDUCATION: EDUCATION ON ETHICS

36. Licensee shall enter into, complete, and pass all five (5) topic areas of the EBAS Essay Examination that is put on by the **Ethics and Boundaries Assessment Services, L.L.C.** within 180 calendar days of the execution of this consent order. Information regarding the Ethics and Boundaries Examination, including registration, is available at: www.ebas.org.

37. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee **within ten (10) business days of Licensee receiving the test result**. Licensee further agrees that any and all results will be presented to the Board at the time of a request to modify or terminate this Consent Order. The results shall be sent to the Board's Compliance Coordinator.

38. All costs associated with such examination shall be at Licensee's own expense, including, but not limited to, all costs associated with registration for the examination, any testing center costs, the cost of travel to and from the examination, and the cost of accommodations while taking the examination.

39. Any hours earned by Licensee toward continuing education as a result of successfully completing the Ethics and Boundaries Examination shall be in addition to those continuing education hours required for renewal of licensure.

40. All documentation required pursuant to this Consent Order shall be mailed to the Board by certified mail, addressed to:

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

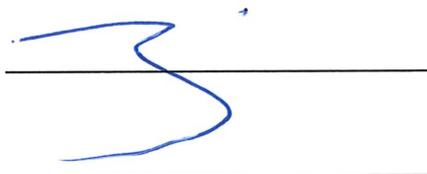
TIMEFRAME

41. Licensee must successfully complete all sections of the Ethics and Boundaries Examination and pay the required fine on or before the dates specified before he may request termination of this Consent Order. A Journal Entry of Satisfaction will be filed upon completion of all terms and conditions of this Consent Order.

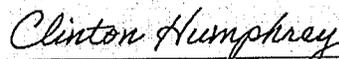
IT IS FURTHER ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 15th day of June, 2020.

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



Date

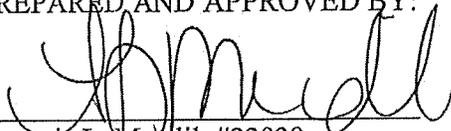


Clinton D. Humphrey, M.D.
Licensee

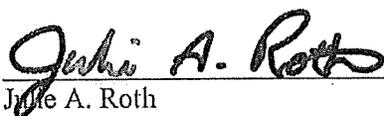
4/17/20

Date

PREPARED AND APPROVED BY:



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Deputy Litigation Counsel
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Consent Order
Clinton D. Humphrey, M.D.

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 June, 2020, to the following:

Clinton D. Humphrey
Licensee
CONFIDENTIAL

Julie A. Roth
Attorney for Licensee
6201 College Blvd, Suite 500
Overland Park, KS 66211 Phone: 913-327-5158
jroth@spencerfane.com

Mark Cole
Attorney for Licensee
6201 College Blvd, Suite 500
Overland Park, KS 66211 Phone: 913-327-5108
mcole@spencerfane.com

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Tammie L. Mundil
Deputy 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

Consent Order
Clinton D. Humphrey, M.D.

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