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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)	
)	Docket No. 18-HA <u>00049</u>
Nizar Kibar, M.D.)	
Kansas License No. 04-29452)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”), by and through Susan R. Gering, Deputy Litigation Counsel, and Nizar Kibar M.D. (“Licensee”), and move the Board for approval of a Consent Order affecting Licensee’s license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: [REDACTED]
Greensburg, Kansas 67054.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-29452 on approximately December 8, 2001. Licensee’s license is active.
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 constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

Consent Order
Nizar Kibar, M.D.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. 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.

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. Licensee 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 to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

9. The facts underlying these violations of the Kansas Healing Arts Act are as follows:

10. Licensee lives and practices in Greensburg, Kansas at the Greensburg Family Practice.

11. On or about January 22, 2014, the Board received a letter from Blue Cross Blue Shield of Kansas ("BCBSKS") indicating that Licensee prescribed controlled substance

medications [REDACTED]

12. Upon further investigation by BCBSKS to see if medical records from Licensee's clinic supported the diagnosis for clinical necessity for issuance of the prescriptions, BCBSKS was told Licensee was not keeping medical records.

13. On or about January 5, 2015, BCBSKS sent the Board another letter, specifically stating that from on or about July 21, 2012, through December 12, 2014, Licensee prescribed the following medications [REDACTED]

- a. Twenty (20) 1mg tablets of Lorazepam on July 21, 2012;
- b. Sixty (60) 10mg capsules of Zaleplon on January 4, 2013, and October 17, 2013;
- c. Thirty (30) 60mg capsules of Cymbalta on October 11, 2013, December 13, 2013, April 4, 2014, May 22, 2014, July 10, 2014, August 7, 2014, August 29, 2014, September 26, 2014, October 22, 2014, November 7, 2014, and December 12, 2014;
- d. Thirty (30) 10mg tablets of Zolpidem on May 30, 2014;
- e. Thirty (30) 100mg tablets of Sertraline on May 30, 2014; and
- f. Seven (7) 150mg tablets and thirty (30) 300mg tablets of Burpron HCL on October 22, 2014; and
- g. Other medications (i.e. Ninety (90) 10mg tablets of Prochlorperazine on November 22, 2013, May 22, 2014, and July 10, 2014).

14. On January 16, 2015, Licensee provided a letter to BCBSKS that [REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

18. At the time, Licensee supervised physician assistant Kelsey Hott, P.A. To date, Licensee is still the supervising physician for Ms. Hott.

19. [REDACTED]

[REDACTED]

[REDACTED]

20. During the course of the Board investigation 15-00447, it was also discovered that Licensee was writing prescriptions for [REDACTED] Specifically:

a. Licensee prescribed multiple medications [REDACTED] that included Acyclovir with multiple refills; Naproxen; Flexeril; Fluconazole with refills; Hydrocodone/Acetaminophen.

b. Licensee failed to keep written medical records regarding the prescriptions written [REDACTED]

21. On November 18, 2015, Licensee sent a letter to the Board explaining the prescribing to [REDACTED]. Licensee stated [REDACTED] was moving between Wichita and Miami, had been diagnosed with [REDACTED]

22. Additionally, Licensee stated that based on a wrist sprain where NSAIDs were not helping he prescribed Norco.

23. Finally, Board Investigation 15-00447 also indicated Licensee wrote a prescription for two (2) 10mg tablets of Valium for the family dog, Pepper. The Pharmacy record received in regard to this prescription stated the following:

a. The pharmacy had only filled this one prescription for Licensee's dog;

b. It is a rural community, where the vet comes once a week for a half day and severe storms were coming; and

c. Pepper has anxiety issues with thunderstorms.

24. On or about November 18, 2015, Licensee wrote a response to the Board's investigation regarding Licensee's prescribing for his dog. Licensee stated his dog was hyperactive and his vet had prescribed acepromazine "to calm him down" on rides between Wichita and Greensburg. However, acepromazine did not work so Licensee prescribed Valium to try.

25. On or about July 1, 2015, the Board initiated investigation no. 16-00012 after it received information from [REDACTED]

[REDACTED]
forwarding a complaint alleging Licensee was prescribing Seroquel to patients in two assisted living facilities (Home Again and Carriage House) and one mental health facility (Iroquois Center).

a. The complaint was an email dated June 4, 2015 from [REDACTED]

[REDACTED]
[REDACTED] stating that Licensee was one of the individuals identified during a proactive analysis focusing on significant Seroquel prescribers. *

b. [REDACTED] sent correspondence to identified “high risk” prescribers of Seroquel like Licensee with the results of the analysis for purposes of education on best prescribing practices.

c. [REDACTED] complaint indicated that Licensee contacted [REDACTED] on or about April 23, 2015, to discuss the letter. It was reported that Licensee stated he prescribed Seroquel to sedate patients within the two assisted living facilities and the mental health facility due to staff shortages so residents could be better managed by staff.

d. On or about December 8, 2015, Licensee submitted a response to the Board stating that he did not use antipsychotics to sedate patients, and that he used them for “dementia related agitation when other interventions are not possible, ineffective or unavailable.”

- e. There is no evidence that Licensee prescribed Seroquel to sedate patients due to staffing shortages.
26. While under investigation for case no. 16-00012, Licensee self-reported on July 18, 2016, that he prescribed methadone for opioid abuse prior to learning he was not allowed to prescribe methadone for such use unless he has a specific DEA or worked in a methadone clinic.
- a. At the time Licensee was prescribing methadone, he neither had a specific DEA to prescribe, nor did he work in a methadone clinic.
 - b. Upon learning the requirements to prescribe methadone, Licensee immediately cease prescribing methadone for opioid abuse.
 - c. There is no evidence to show that Licensee is currently prescribing methadone for opioid abuse.
27. Licensee has violated the Kansas Healing Arts Act, specifically:
- a. K.S.A. 65-2836(b) in that Licensee has committed unprofessional conduct;
 - b. K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(b)(12) in that Licensee has committed conduct that is likely to deceive, defraud, or harm the public;
 - c. K.S.A. 65-2836(b) as defined by 65-2837(b)(23) in that Licensee prescribed, dispensed, administered, or distributed a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner;
 - d. K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(b)(25) in that Licensee failed to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results; and

e. K.S.A. 65-2836(k) in that Licensee violated a lawful rule or regulation of the Board because he medical records violated K.A.R. 100-24-1 for his failure to keep written medical records on the prescriptions written [REDACTED]

28. 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 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.

29. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, privately or publicly 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 for violations of the Kansas Healing Arts Act.

30. 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.

31. All pending investigation materials in KSBHA Investigative Case Number 15-00447 and 16-00012 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel and/or their appointed member for this matter. Disciplinary Panel No. 31 authorized and directed Board counsel, through their appointed member for this matter, to seek settlement of this matter with the provisions contained in this Consent Order.

32. 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 the State of 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 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.*

33. 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.

34. 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 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.

35. 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.

36. 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.

37. 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.

38. 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.

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

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

41. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the following:

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

42. Licensee 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.

43. 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.

44. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offense.

45. 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 country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

46. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

47. This Consent Order constitutes public disciplinary action.

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

49. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action against his license to engage in the practice of medicine and surgery:

PUBLIC CENSURE

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

EDUCATION: MEDICAL RECORDS AND PRESCRIBING

51. Licensee shall attend and successfully complete the continuing education course entitled "Medical Record Keeping Seminar" put on by Center for Personalized Education for Physicians (CPEP) on or before August 31, 2018.

52. Licensee shall also attend and successfully complete continuing education course entitled "Prescribing Controlled Drugs" at CPEP on or before August 31, 2018.

53. CPEP can be contacted at 720 S. Colorado Blvd., Suite 1100-N, Denver, Colorado 80246 - Phone: 303-577-3232 - Fax: 303-577-3241 or at www.cpepdoc.org.

54. On or before June 15, 2018, Licensee shall notify the Compliance Coordinator in writing that Licensee has registered to attend each of these CPEP seminars.

55. Licensee shall provide proof of successful completion of the above course(s)/seminar(s) to the Compliance Coordinator within thirty (30) calendar days of successfully completing both the above seminars.

56. These hours shall be in addition to those continuing education hours required for renewal of licensure.

57. Unless otherwise approved by the Board, said continuing education course(s)/seminar(s) shall consist of a formal live lecture format.

58. All foreseen and unforeseen costs associated with the aforementioned course(s)/seminar(s) shall be at Licensee's own expense to include, but not be limited to, the cost of the course(s)/seminar travel, lodging, program fee, meals, etc.

59. Upon the Board's receipt of proof of successful completion of the above course(s)/seminar(s), the terms of Licensee's EDUCATION: MEDICAL RECORDS AND PRESCRIBING shall be terminated.

EDUCATION/CHART REVIEW: BILLING AND CODING

60. On or before July 30, 2018, Licensee shall attend and successfully complete a continuing education course for billing and coding provided by Coding and Compliance Initiatives, Inc., ("CCI") 11409 S. Gander Street, Olathe, Kansas 66061, by June 30, 2018, unless otherwise approved.

61. Licensee shall provide proof of successful completion of the above billing and coding course(s)/seminar(s) to the Compliance Coordinator within thirty (30) calendar days of successful completion of the course(s)/seminar(s).

62. Within ten (10) days of successfully completing an education course for billing and coding provided by CCI, Licensee shall enter into and comply with all terms and conditions for quarterly chart reviews conducted by CCI.
63. Licensee further agrees to immediately notify the Board of any revisions to the contract and to immediately provide a copy of such revised contract to the Board.
64. The provisions of said contract are incorporated herein as if fully restated.
65. Licensee shall, at a minimum, have CCI conduct quarterly chart reviews for integration of his education for billing and coding into his practice for at least one (1) year.
66. Licensee shall have ten (10) patient charts reviewed by CCI every quarter until such time as this Consent Order is terminated by the Board.
67. Licensee shall ensure that CCI timely submits its quarterly reports to the Board. Such reports shall identify any deficiencies in Licensee's practices, which in the professional judgment of CCI reasonably warrants corrective action by Licensee.
68. Licensee shall take any and all corrective actions which are reasonably necessary to correct any and all deficiencies identified in any of the chart reviews by CCI.
69. All foreseen and unforeseen costs associated with the aforementioned course and chart review shall be at Licensee's own expense to include, but not be limited to, the cost of the course(s)/seminar travel, lodging, program fee, meals, chart reviews, etc.
70. These hours shall be in addition to those continuing education hours required for renewal of licensure.
71. All correspondence 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 Jackson, Lower Level-Suite A,
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

ESSAY

72. After successfully completing all education aspects of this Consent Order, Licensee shall submit an essay, at least 300 words in length, detailing what he has learned from the course(s)/seminar(s) he has taken and how he is implementing this education into his daily practice.

73. Such essay shall be submitted for the Board's review prior to the request for termination of this Consent Order by the Board.

74. Licensee shall provide the completed essay to the Compliance Coordinator at the following address:

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

TIMEFRAME

75. The above EDUCATION/CHART REVIEW: BILLING AND CODING section of this Consent Order is not self-terminating. After a period of one (1) year from the date of the Board's approval of this Consent Order, Licensee may request modification or termination of the EDUCATION/CHART REVIEW: BILLING AND CODING provision.

76. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the provision will remain in effect but will be tolled and not counted towards reducing the aforementioned 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 SO ORDERED on this 18 day of April, 2018.

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

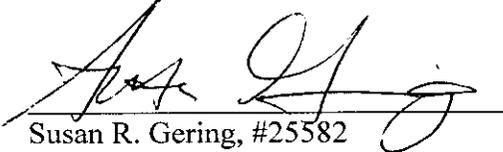

Kathleen Selzler Lippert
Executive Director

4/18/18
Date


Nizar Kibar, M.D.
Licensee

3/13/2018
Date

PREPARED AND APPROVED BY:



Susan R. Gering, #25582
Deputy Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
Phone: 785-368-8212
Fax: 785-368-8210
Email: susan.gering@ks.gov

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 19 day of April, 2018, to the following:

Nizar Kibar, M.D.
Licensee
[REDACTED]
Greensburg, Kansas 67054

And the original was hand-filed with:

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

And a copy was delivered to:

Susan R. Gering
Deputy Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

General Counsel's Office
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

