

FEB 25 2009

BEFORE THE KANSAS BOARD OF HEALING ARTS

KS State Board of Healing Arts

In the Matter of)
)
)
 Vernon L. Kliewer, M.D.)
 Kansas License No. 04-12162)
 _____)

KSBHA Docket No. 07-HA-61
OAH No. 07HA0004 BHA

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kathleen Selzler Lippert, Litigation Counsel and Kelli J. Stevens, Associate Litigation Counsel ("Petitioner"), and Vernon L. Kliewer, M.D. ("Licensee"), by and through counsel, Brian C. Wright, 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 current mailing address as provided to the Board is 1901 East First Street, #467, Newton, Kansas 67114-0467.
2. Licensee is or has been entitled to actively engage in the practice of medicine and surgery in the state of Kansas, having been issued License No. 04-12162 on approximately July 1, 1958. Licensee last renewed his license on or about July 16, 2008.
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.*

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. Licensee agrees that, in considering this matter, the Board is not beyond its jurisdiction as provided by law.

7. 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.

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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. At all relevant times hereto, Licensee has been actively practicing medicine at Prairie View, Inc. in Newton, Kansas. Licensee's specialty is child psychiatry.

10. Petitioner has alleged that with respect to his care and treatment of six (6) patients, Licensee deviated from the standard of care, inappropriately prescribed prescription medications and failed to adequately document in the patients' medical records. The specific allegations are set forth in the First Amended Petition filed September 14, 2007. The parties agree that if proven, such allegations would constitute violations K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(23), 65-2837(b)(24), and 65-2837(b)(25) of the healing arts act.

11. The investigative information and status of the pending action in this matter were fully reviewed and considered by the Board members who served on Disciplinary Panel No. 21. Disciplinary Panel No. 21 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

12. Licensee does not have any prior disciplinary action against his license and has had no malpractice settlements or judgments against him.

13. In May of 2007, Licensee voluntarily ceased taking new patients under the age of six (6). At the time of the execution of this Consent Order, Licensee does not treat any patients under the age of six (6) other than in rare situations involving exigent circumstances where another physician is unavailable and a delay in initiating treatment could create a risk to the patient. Licensee will not resume practicing with that age group without first providing notice to the Board.

14. Licensee does not admit the allegations as set forth in the First Amended Petition, but for the sole purpose of this Consent Order, will not contest the allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the First Amended Petition as grounds for the disciplinary action contained in this Consent Order.

15. Pursuant to K.S.A. 65-2836(b), as amended by HB 2620 on July 1, 2008, the Board may revoke, suspend, censure, place under probationary conditions, impose a fine or otherwise limit Licensee's license for violations of the healing arts act.

16. As set forth in K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without necessity of proceeding to a formal hearing.

17. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to disciplinary action in the form of **PROBATION** against his license to engage in the practice of medicine and surgery. Licensee's license is hereby placed on **PROBATION**, commencing upon the filing of this Consent Order with the Board. The terms of such probation shall be as follows:

- a. During the period of probation, Licensee's practice shall be subject to **MONITORING**, the terms of which are as follows:
 - i. Licensee shall have at least twelve (12) monthly patient chart reviews by a Board-approved monitor who is a Kansas-licensed physician and does not practice at Prairie View, Inc.
 - ii. Licensee shall bear all expenses associated with the practice monitoring.

- iii. On or before March 1, 2009, Licensee shall propose a physician to serve as his practice monitor. The Board's designee, Garold Minns, M.D., is authorized to grant or deny approval of the proposed physician to serve as Licensee's practice monitor with respect to Licensee's evaluation, treatment and medical record documentation for his child psychiatry patients.
 - iv. Upon receiving approval of a monitor, the parties shall determine a schedule and protocol under which the monitor shall randomly select five (5) charts each month from Licensee's active patients who are currently being prescribed atypical antipsychotics and/or have been diagnosed by Licensee with bipolar disorder. The monitor will then provide a monthly written report on the first (1st) of each month to the Board for each chart reviewed during the previous month. The report shall state: whether Licensee in diagnosing, formulating a treatment plan, prescribing medications, and documenting in the record, is in compliance with the standard of care. Compliance with the standard of care means that Licensee is using sound reasoning, and appropriately relying upon education, training and experience in his use of judgment consistent with that which other specialists practicing in the same field of expertise would have used under similar circumstances. The basis for such opinions of the monitor shall also be provided.
 - v. Licensee is responsible for ensuring timely submissions of the monitor's reports.
 - vi. The Board's designee, Garold Minns, M.D., shall have the authority to resolve any disputes of the parties or make further orders regarding the practice monitoring.
- b. Licensee shall complete additional **EDUCATION** at his own expense; specifically the Center for Personalized Education for Physicians Patient Care Documentation Seminar. Licensee must provide the Board with official documentation of completion for such course on or before July 15, 2009.

- c. Licensee shall pay \$13,079.00 in **COSTS** to the Board. Such amount is payable to the "Kansas State Board of Healing Arts." Licensee may make payments in twenty six (26) monthly installments of \$500.00, and one (1) final monthly installment of \$79.00. The first payment shall be due on April 1, 2009, and the first (1st) day of each month thereafter until the full amount has been paid. In the event that the Board does not receive a payment due and owing, the remaining amount shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.
- d. Licensee shall at all times keep the Board informed of and immediately notify the Board regarding any changes of the practice locations and hospitals at which Licensee holds privileges.
- e. The period of probation set forth herein shall be tolled during any period this Consent Order is stayed by administrative or judicial order or upon the filing of an administrative Petition alleging Licensee has violated the terms and conditions. The Board's jurisdiction to adjudicate a probation violation shall continue for a reasonable period of time after the end of the probation for any violations alleged to have occurred during the probationary period.

- f. The period of probation is not self-terminating. Licensee may petition the Board for termination of probation upon the satisfactory completion of all probationary terms in this Consent Order.

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

19. 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.

20. Licensee hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent Order.

21. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported by the Board to any reporting entities authorized to receive disclosure of this Consent Order.

22. 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.

23. 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.

24. Licensee by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, or 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 proceeding 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.

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

26. All correspondence or communication between Licensee and the Board relating to the probationary terms contained in this Consent Order shall be by certified mail addressed to the Kansas Board of Healing Arts, Attn: COMPLIANCE COORDINATOR, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

27. 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. Any violation will be also be considered a violation of this Consent Order and may subject Licensee to further disciplinary action by the Board.

28. 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.

29. 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, and is the Order of the Board.

IT IS FUTHER ORDERED that Licensee's license is hereby placed on **PROBATION**, commencing upon the filing of this Consent Order with the Board. The terms of such probation shall be as follows:

- a. During the period of probation, Licensee's practice shall be subject to **MONITORING**, the terms of which are as follows:
- i. Licensee shall have at least twelve (12) monthly patient chart reviews by a Board-approved monitor who is a Kansas-licensed physician and does not practice at Prairie View, Inc.
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 - v. Licensee is responsible for ensuring timely submissions of the monitor's reports.
 - vi. The Board's designee, Garold Minns, M.D., shall have the authority to resolve any disputes of the parties or make further orders regarding the practice monitoring.

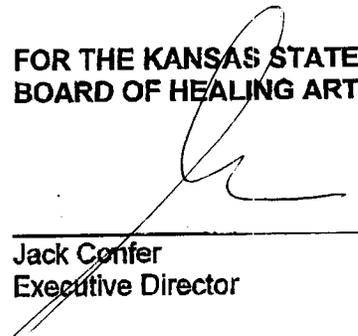
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- c. Licensee shall pay \$13,079.00 in **COSTS** to the Board. Such amount is payable to the "Kansas State Board of Healing Arts." Licensee may make payments in twenty six (26) monthly installments of \$500.00, and one (1) final monthly installment of \$79.00. The first payment shall be due on April 1, 2009, and the first (1st) day of each month thereafter until the full amount has been paid. In the event that the Board does not receive a payment due and owing, the remaining amount shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.
- d. Licensee shall at all times keep the Board informed of and immediately notify the Board regarding any changes of the practice locations and hospitals at which Licensee holds privileges.
- e. The period of probation set forth herein shall be tolled during any period this Consent Order is stayed by administrative or judicial order or upon the filing of an administrative Petition alleging Licensee has violated the terms and conditions.

The Board's jurisdiction to adjudicate a probation violation shall continue for a reasonable period of time after the end of the probation for any violations alleged to have occurred during the probationary period.

- f. The period of probation is not self-terminating. Licensee may petition the Board for termination of probation upon the satisfactory completion of all probationary terms in this Consent Order.

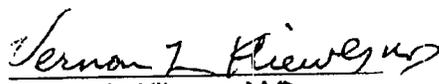
IT IS SO ORDERED.

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



Jack Confer
Executive Director

2-24-09
Date



Vernon L. Kliewer, M.D.
Licensee

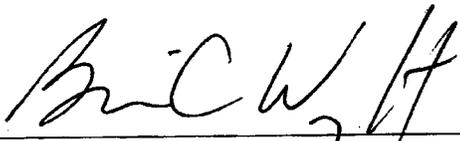
02/02/2009
Date

PREPARED AND APPROVED BY:



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APPROVED BY:



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4312 10th Street Place
Great Bend, Kansas 67530
(620) 793-8900

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served this 25th day of February, 2009, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Brian C. Wright
Law Offices of Brian C. Wright
4312 10th Street Place
Great Bend, Kansas 67530

and a copy was hand-delivered to:

Kathleen Selzler Lippert, Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

Melissa Massey, Compliance Coordinator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

Jack Confer, Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Cathy A. Brown