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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.: 19-HA00005**
BRIAN P. LAHEY, M.D.)
Kansas License No. 04-33861)

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through J. Todd Hiatt, Associate Litigation Counsel, and M. Katie Baylie, Associate Litigation Counsel (“Petitioner”), and Brian P. Lahey, M.D. (“Licensee”), by and through counsel Nancy Crawford of Crawford Law Firm, LLC, and move the Board for approval of a Consent Order affecting Licensee’s license to practice medicine in Kansas. The Board and Licensee stipulate and agree to the following:

FACTUAL BASIS

1. Licensee’s last known mailing address to the Board is: [REDACTED]
Overland Park, Kansas 66221.
2. Licensee is or has been entitled to practice medicine in the State of Kansas, having been issued License No. 04-33861 on approximately July 1, 2009. Licensee last renewed such license on or about July 3, 2018. Licensee’s current license status is Emergently Suspended.
3. The Board is the sole 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.

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Kansas License No. 04-33861

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 final the Board's Final Order.
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 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 under K.S.A. 65-2836(e); K.S.A. 65-2836(g); K.S.A. 65-2836(k); K.S.A. 65-2836(i); and K.S.A. 65-2836(b), as further defined by: K.S.A. 65-2837(a)(3); K.S.A. 65-2837(b)(12); K.S.A. 65-2837(b)(16); and K.S.A. 65-2837(b)(33), 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 supporting the allegations in this Consent Order are as follows:

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a. This Consent Order incorporates herein by reference the facts as stated in the First Amended Petition that was filed on or about January 8, 2019. (Agency Record, First Amended Petition, *In the Matter of Brian P. Lahey, M.D.*, KSBHA Docket No. 19-HA00005.) The First Amended Petition was mailed to Licensee at his last known address, and to his counsel of record, on or about January 8, 2019.

b. Generally, the Petition in *In the Matter of Brian P. Lahey, M.D.*, KSBHA Docket No. 19-HA00005 contains allegations Licensee practiced medicine [REDACTED] [REDACTED] had an inappropriate intimate relationship with a patient; entered into inappropriate financial obligations with a patient; continued to treat patients after his license was emergently suspended; and generally failed to set appropriate boundaries with his patients.

10. This Consent Order resolves all pending KSBHA investigations involving Licensee including 16-00514, 16-00615, 18-00148, 18-00657, and 19-00147.

11. By entering into this agreement, Licensee agrees not to contest the averions set forth in the First Amended Petition identified above.

VIOLATIONS OF THE HEALING ARTS ACT

12. Based on the above and foregoing, Licensee violated the Kansas Healing Arts Act as follows:

- a. [REDACTED]
- b. [REDACTED]

- c. K.S.A. 65-2836(b), in that Licensee's [REDACTED] while actively engaged in the practice of healing arts and his failure to inform his patients of [REDACTED] at the time Licensee was providing medical treatment and/or services combine to form an act or acts of omission likely to deceive, defraud or harm the public in contravention of K.S.A. 65-2837(b)(12).
- d. K.S.A. 65-2836(b) in that Licensee's [REDACTED] while actively engaged in the practice of the healing arts; his failure to inform his patients of [REDACTED] at the time of providing medical treatment and/or services while [REDACTED] and his sexual relationship with Patient 1 constitutes unprofessional and/or dishonorable conduct not otherwise defined.
- e. K.S.A. 65-2836(b), in that Licensee committed an act or acts of unprofessional or dishonorable conduct by committing an act or acts of sexual abuse, misconduct or other improper sexual contact, which exploited the licensee-patient relationship, with a patient in contravention of K.S.A. 65-2837(b)(16).
- f. K.S.A. 65-2836(b), in that a licensee committed an act of unprofessional or dishonorable conduct that violated a patient's trust and exploited the licensee-patient relationship for personal gain in contravention of K.S.A. 65-2837(b)(33).
- g. K.S.A. 65-2836(k), in that Licensee continued to practice medicine on or after July 27, 2018, in violation of the Board's July 24, 2018, order suspending his license to practice medicine in Kansas.
- h. K.S.A. 65-2836(g), in that between July 24, 2018 and July 31, 2018, Licensee practiced medicine while his medical license was suspended.

i. K.S.A. 65-2836(b), in that Licensee provided medical services, treatment and/or back-dated prescriptions to patients all while knowing that his license to practice medicine was suspended and that this constitutes conduct likely to deceive, defraud or harm the public in contravention of K.S.A. 65-2837(b)(12).

13. Under K.S.A. 65-2836 *et seq.*, the Board has grounds to revoke, suspend, censure, placed on probation or otherwise limit Licensee's license for violations of the Kansas Healing Arts Act.

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

SANCTIONS

15. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby agrees to an indefinite suspension of his license to practice medicine in the State of Kansas.

16. Licensee acknowledges and agrees that an application or motion for reinstatement of his license will be considered in accordance with all applicable statutes, law, rules, and regulations regarding qualifications for licensure and reinstatement. Further, Licensee acknowledges and agrees that an application or motion for reinstatement of his license will be governed by *Vakas v. the Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991).

17. Licensee shall be required to pay all fees required for reinstatement as well as costs associated with this action should he seek reinstatement of his license.
18. Licensee agrees that in the event he applies or files a motion for reinstatement of his license, the allegations contained in this Consent Order, whether explicitly set forth or adopted by reference, will be considered the Board.
19. Licensee shall place his patients' records in the custody of another licensed doctor of medicine and surgery, a licensed doctor of osteopathic medicine, 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 May 30, 2019, 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.
20. Licensee acknowledges that pursuant to 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 in the state of Kansas.

MISCELLANEOUS PROVISIONS

21. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), and K.S.A. 65-4925.
22. 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.
23. 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 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.*

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. 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.

26. 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.
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. 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.
29. 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.
30. Licensee acknowledges he has read this Consent Order and fully understands the contents.
31. Licensee acknowledges this Consent Order has been entered into freely and voluntarily.

32. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine 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.
33. 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.
34. This Consent Order constitutes **public disciplinary action**.
35. 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 16 day of April, 2019.

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


Kathleen Selzler Lippert
Executive Director

4/16/19
Date

Consent Order
Brian P. Lahey, M.D.
Kansas License No. 04-33861

LICENSEE:



Brian P. Lahey, M.D.
Licensee

4.4.19

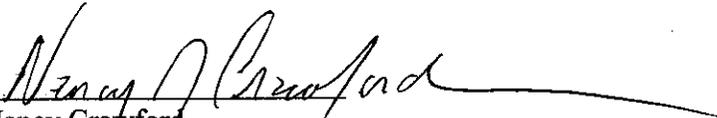
Date

PREPARED AND APPROVED BY:



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Attorney for Licensee

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Brian P. Lahey, M.D.
Kansas License No. 04-33861

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing Consent Order was served this 16th day of Apr., 2019, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Nancy Crawford
Crawford Law Firm, LLC
7300 West 110th Street, Suite 930
Overland Park, KS 66210
crawford.nancyj@gmail.com
Attorney for Licensee

Brian P. Lahey, M.D.
Licensee

████████████████████
Overland Park, Kansas 66221

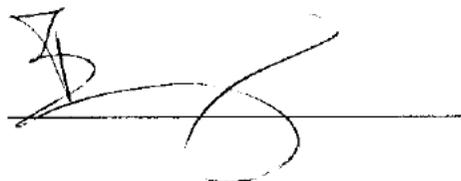
With a copy hand-delivered to:

J. Todd Hiatt, Associate Litigation Counsel
M. Katie Baylie, Associate Litigation Counsel
800 SW Jackson Lower Level, Suite A
Topeka, KS 66612

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

and the original was filed with the office of the Executive Director:

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



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