

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

FILED CAP
APR 16 2011
KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 11-HA-00078
Kris Lewonowski, M.D.)	OAH Docket No. 11-HA0010
Kansas License No.04-25805)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel, and Reese Hays, Litigation Counsel (“Petitioner”), and Kris Lewonowski, M.D. (“Licensee”), by and through his counsel, Stephen M. Joseph, Joseph & Hollander, L.L.C., and Mark Stafford, Holbrook & Osborn, P.A., 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 confidential Ct., Wichita, KS 67206.
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. 04-25805 on approximately August 12, 1995. Licensee’s license is currently expired. On July 16, 2011, Licensee did attempt to timely renew his license on an inactive status through the Board’s website, but a gateway error in processing the renewal application occurred, the renewal was not processed, and Licensee did see the error notation on the application printout receipt.

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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.
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 confidential to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. On or about April 6, 2011, Licensee was observed by an anesthesiologist to be agitated and had a bandage on his left wrist and hand. confidential

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12. After Licensee's meeting confidential , his patient's scheduled surgery was cancelled. The patient was under anesthesia at the time. confidential al

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15. This proceeding was commenced on April 11, 2011, and Licensee's license was suspended by a member of the Board acting as Presiding Officer who issued an *ex parte* emergency order on April 12, 2011. That suspension order continues in effect as of date this Consent Order was signed by the parties.

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18. 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 a prima facie case 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.

19. If a hearing were conducted, Licensee would present testimony and exhibits

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20. A protective order is hereby entered to protect all confidential information

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21. Licensee's acts, if proven, constitute unprofessional conduct as set forth in

K.S.A. 65-2836.

22. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(12) by committing conduct likely to harm the public confidential caused a surgery to be cancelled after the patient was placed under anesthesia.
23. Licensee violated K.S.A. 65-2836(s), in that sanctions or disciplinary actions have been taken against Licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section. Specifically, Licensee's orthopedic clinical privileges were suspended by Via Christi Hospitals on April 8, 2011, which was prior to the suspension of his medical license. Additionally, Licensee's license to practice medicine and surgery in the State of California was revoked because he failed to participate in a reciprocal action by the State of California that was based solely upon the *Ex Parte* Emergency Order of Suspension issued in this case. On November 23, 2011, a Default Order issued by the California Medical Board became effective. This Default Order revoked Licensee's license to practice medicine and surgery in the State of California for failing to participate in the proceedings against him.
24. 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 for violations of the Kansas Healing Arts Act.

25. 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.
26. All pending investigation materials in KSBHA Investigation numbers 11-00498 and 12-00256 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 25 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
27. 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.*

28. 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.
29. 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.
30. 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.

31. 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.
32. 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.
33. 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.
34. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
35. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

36. All correspondence or communication between Licensee 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.
37. 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.
38. 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.
39. Upon execution of this Consent Order and payment of the appropriate renewal fee for the 2011-2012 renewal cycle, Licensee's license to practice medicine and surgery will be returned to active status without limitation on his legal authority to practice medicine and surgery.
40. This Consent Order constitutes disciplinary action and supercedes all previous orders of the Board in this proceeding.
41. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

42. 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:

SUSPENSION

43. Licensee's license to practice medicine and surgery should be suspended for violating the Kansas Healing Arts Act. Licensee's license to practice medicine and surgery has been suspended for the period of time between April 12, 2011, and April 13, 2012. Licensee's license having been suspended during that time period, the parties agree and the Board hereby orders that Licensee's license is hereby retroactively SUSPENDED for the period of time between April 12, 2011, to April 13, 2012, for violating the Healing Arts Act.

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15th, June 15th, July 15th, August 15th, September 15th, October 15th,
November 15th, December 15th, January 15th, February 15th, March 15th, and

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MONITORING

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55. 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 offenses.
56. 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.
57. . Except in the case of medical emergencies, Licensee agrees to refer employees, family members, significant others and any person with whom Licensee has a significant personal relationship to another physician for the ordering, prescribing, dispensing, or administering of controlled substances.
58. Licensee shall only prescribe, order, dispense, or administer prescriptions for person with whom he has a physician-patient relationship and for whom he maintains a medical record.
59. Licensee is prohibited from prescribing, ordering, dispensing, or administering medications to himself, including sample medications.
- Licensee shall arrange to have a personal physician who oversees his care.
60. Licensee is not engaged in the solo practice of medicine and surgery.
- Licensee agrees that he will notify the Board 60 days prior to engaging in professional practice in any other practice type. Licensee and the Board agree to consult in good faith to ensure that that Licensee's practice setting provides sufficient assurance of Licensee's appropriate professional practice. Licensee will not change his practice setting without the approval of the Board.

License has provided information establishing the he is in a supervised, structured environment in which all of Licensee's practice activities are overseen and supervised by a Kansas-licensed physician , who has been approved by the Board or the Board's designee to ensure Licensee is conducting himself appropriately and appropriately within the standard of care for his specialty.

61. On or before April 13, 2012, Licensee shall submit the curriculum vitae of a proposed practice supervisor and a plan of supervised practice for approval to the Board.

62. The practice supervisor shall submit reports twice a month (on the 1st and 15th of each month) for the first twelve (12) months and then quarterly (on March 15th, June 15th, September 15th, and December 15th) for the following twelve (12) months to the Board on a form provided by Board staff. Such reports shall include a summary of whether Licensee is conducting himself appropriately and practicing appropriately within the standard of care for his specialty. Licensee is responsible for ensuring that the practice supervisor's reports are submitted by the appropriate deadlines.

63. The Board designates Disciplinary Panel #25 to review and approve/disapprove of the proposed practice supervisor and plan of supervised practice.

64. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Complaint Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.


TIMEFRAME

65. The above monitoring provisions are not self-terminating. After a period of five (5) years, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (5) year timeframe. Unforeseen changes in circumstances may necessitate modification of this agreement and such modifications are not intended to be prohibited by this paragraph. All modifications of this order must be in writing and approved by the Board.

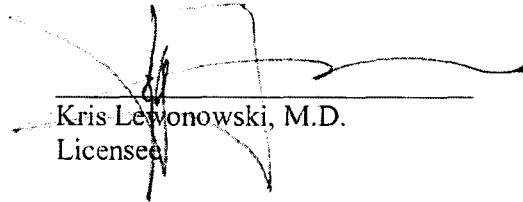
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 13 day of April, 2012.

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

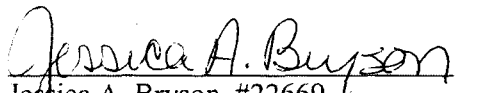

Kathleen Selzler Lippert
Executive Director


4/13/12
Date

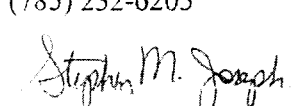

Kris Lewonowski, M.D.
Licensee

3/21/2012
Date

PREPARED AND APPROVED BY:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Reese Hays, #22700
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Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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Holbrook & Osborn, P.A.
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(785) 232-6205


Digitally signed by Stephen M. Joseph
DN: cn=Stephen M. Joseph, o=Joseph &
Hollander LLC, ou=Wichita,
email=sjoseph@josephhollander.com,
c=US
Date: 2012.03.19 16:33:14 -05'00'
Stephen M. Joseph, #7452 Attorney for Licensee
Joseph and Hollander, L.L.C.
500 N. Market St.
Wichita, Kansas 67214
(316) 262-9393

Consent Order
Kris Lewonowski, 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 16th day of April, 2012, to the following:

Kris Lewonowski, M.D.
Licensee
confidential
Wichita, Kansas 67206

Mark Stafford
Attorney for Licensee
Holbrook & Osborn, P.A.
107 SW 6th Ave, Ste 210
Topeka, Kansas 66603
(785) 232-6205

Stephen Joseph
Attorney for Licensee
Joseph and Hollander, L.L.C.
500 N. Market St.
Wichita, Kansas 67214
(316) 262-9393

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

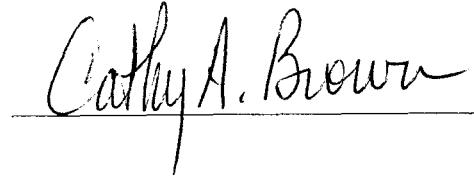
And a copy was hand-delivered to:

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

Consent Order
Kris Lewonowski, M.D.

Melissa Massey
Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

A handwritten signature in cursive script that reads "Cathy A. Brown". The signature is written in black ink and is positioned above a solid horizontal line.