

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 13-HA00033
Ernest L. McClellan, M.D.)	
Kansas License No. 04-15280)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Seth K. Brackman, Associate Litigation Counsel (“Petitioner”), and Ernest L. McClellan, M.D. (“Licensee”), *pro se*, 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** Wichita, Kansas 67230 **Confidential**
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. 04-15280 on approximately June 15, 1973. Licensee’s license is currently inactive and he is requesting his license status be changed to active. Such application was deemed complete on October 24, 2012.
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

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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 pursuant to K.S.A. 65-2809, to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et. seq.*

9. Licensee's license was last active on June 30, 2007, at that time he requested a status change to an exempt license pursuant to his Application for Status Change received by the Board on May 17, 2007.
10. On June 18, 2011, Licensee submitted a request for change of status from exempt to active.
11. Licensee disclosed in his application for status change that he has been absent from the clinical practice of medicine and surgery since June 30, 2007. Licensee also acknowledged that he had not been engaged in a formal educational program during the two years preceding his application for status change.
12. From June 30, 2007 until the time of his application in June of 2012, Licensee was retired.
13. Licensee provided information with his application that he is planning to return to the role of supervising CRNA's as well as providing direct anesthesia. This new employment is with Kansas Professional Anesthesia (KPA), a group that provides anesthesia services at four locations in the Wichita area. Licensee will assume the responsibility of overseeing KPA's daytime anesthesia services and personnel at the main OR at Via Christi Saint Joseph.
14. Licensee submitted to the Center for Personalized Education for Physicians ("CPEP") for a Clinical Practice Re-Entry Evaluation on August 17, 2012. CPEP

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18. Due to the length of time Licensee has been absent from active practice, the Board may require additional testing, training or education as the Board may deem necessary to establish that Licensee's present ability to practice with reasonable skill and safety pursuant to K.S.A. 65-2809(e).

19. Pursuant 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 in order to establish provisions to ensure that Licensee is capable of safely practicing medicine and surgery in Kansas.

20. All pending investigation materials in KSBHA Investigative Case Number 13-00040 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 27

authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

21. 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.*
22. 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.
23. 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.

24. 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.
25. 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.
26. 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.
27. 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.

28. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
29. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
30. 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.
31. 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.
32. 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 Final Order when filed with the office of the Executive Director for the Board and no further Order is required.

33. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
34. Licensee understands that a temporary status change shall be issued based upon Licensee's signing this Consent Order and abiding by the terms of this Consent Order. Licensee further understands that the temporary status change is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the temporary status change shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Licensee shall be issued a permanent status change to active licensure under the terms of this Consent Order.
35. 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 him, and limitations as a condition to being granted active licensure to engage in the practice of medicine and surgery:

MONITORING

36. Licensee shall not practice medicine and surgery unless and until he complies with each of the following:
37. Within ten (10) days of the approval of this Consent Order, Licensee agrees to formally enter a Monitoring Agreement under the supervision of Dr. Greg Meister, with Kansas Professional Anesthesia, located at 1515 South Clifton Avenue, #200, Wichita, Kansas 67218 as set forth below:
- a) Licensee shall have in-person monitoring and supervision for 100% of the Licensee's practice for the first month of the monitoring period to include:
 - i. Direct supervision of all patient contact and subsequent treatment;

- ii. Review of all Licensee's medical assessments, decisions, and recommendations as it relates to the treatment of a patient or patients prior to further action being taken based upon such medical assessments, decisions, and recommendations;
 - iii. Review of all patients' charts, files and any other medical forms or documentation Licensee is required to document or notate per the standard of care requirements in his particular field of practice;
- b) Thereafter, Licensee shall have in-person monitoring and supervision for 25% of the Licensee's practice during the second month of the monitoring period to include:
 - i. Direct supervision of all patient contact and subsequent treatment;
 - ii. Review of all Licensee's medical assessments, decisions, and recommendations as it relates to the treatment of a patient or patients prior to further action being taken based upon such medical assessments, decisions, and recommendations;
 - iii. Review of all patients' charts, files and any other medical forms or documentation Licensee is required to document or notate per the standard of care requirements in his particular field of practice;
- c) Thereafter, Licensee shall coordinate a meeting to be scheduled within the last seven (7) days of the third month and every month thereafter, to review 10% of the Licensee's patient charts. Such charts are to be selected at random by the monitor supervisor;
- d) Licensee shall ensure his monitor supervisor submits monthly reports to the Board's Compliance Coordinator regarding whether Licensee is practicing medicine and surgery with reasonable skill and safety;
- e) The monthly reports shall include whether Licensee is meeting all standards as it relates to Licensee's supervisory role;
- f) The monthly reports shall include whether Licensee is meeting all standards as it relates to Licensee's practitioner role;
- g) The monthly reports shall include whether Licensee is meeting all standards as it relates to Licensee's administrative role;
- h) The monthly reports shall be due on or before the 1st day of the month, with the first report due January 1, 2013, and every month thereafter;
- i) The monitor supervisor, shall complete and submit all monitoring forms as provided by the Board for each reporting date as outlined above;

38. Licensee agrees and understands that he must remain in strict compliance with the Monitoring set forth above.
39. 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.

EDUCATION

40. Licensee shall complete ten (10) hours of additional continuing medical education credits at his own expense; specifically in the area of Electrocardiograms and Advanced Airway Procedure.
41. Licensee shall complete a two-day Difficult Airway Course at his own expense and such training should include training with a video laryngoscope.

TIMEFRAME


42. The above limitations are not self-terminating. After the successful completion of a minimum six (6) months monitoring and educational requirements as provided herein, Licensee may request modification or termination of the provisions.
43. The Board designates a representative of Disciplinary Panel 27 to review and approve/disapprove any issue that may arise in the implementation of this Consent Order.

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


IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Licensee shall be granted status change from exempt to active, pursuant to the conditions above.

IT IS SO ORDERED on this 16th day of Nov, 2012.

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



Kathleen Selzler Lippert
Executive Director

11/16/12
Date


Ernest L. McClellan, M.D.
Licensee

November 8, 2012
Date

PREPARED AND APPROVED BY:


Seth K. Brackman, #23726
Associate Litigation Counsel
Kansas Board of Healing Arts
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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 November, 2012, to the following:

Ernest L. McClellan, M.D.
Licensee
Confidential
Wichita, Kansas 67230

And the original was hand-filed with:

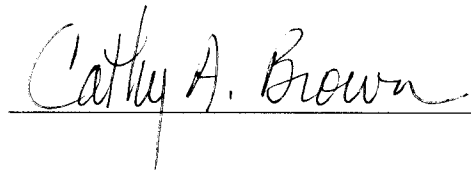
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Seth K. Brackman
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Cathy A. Brown