

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
AUG 25 2003
KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
DESMOND B. MCDONAGH, M.D.)
Kansas License No. 04-23392)
_____)

Docket No. 03-HA-71

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Desmond B. McDonagh, M.D., (“Licensee”), by and through legal counsel, Steve Schwarm, and move the Board for approval of a Consent Order affecting Licensee’s license to practice the healing arts in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s mailing address to the Board is 1101 Perimeter Drive, #615, Schaumburg, Illinois, 60173.
2. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of respiratory. K.S.A 65- 5501 *et seq.*
3. This Consent Order and the filing of such document are in accordance with applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing
4. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be 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 acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing under the Kansas administrative procedure act, K.S.A. 77501 *et seq.* 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. On or about December 7, 1990, Licensee was issued license number 04-23392 to practice medicine and surgery in Kansas. Licensee last renewed his license on or about July 17, 2003, and Licensee's license is presently in inactive status.

10. The Board alleges that Licensee committed misrepresentation on three (3) occasions in applying for renewal of his license by answering "no" to a renewal application question which asked if disciplinary action had been initiated against him by any other state licensing agency, when in fact he had such an action pending before the Department of Professional Regulation of the State of Illinois ("Illinois"). The Board further alleges that Illinois subsequently took disciplinary action against Licensee's license in that state in the form of a reprimand and a \$40,000 fine. The grounds for Illinois' disciplinary action included Licensee's advertisement of a "money-back guarantee" and

his failure to register his medical practice, Illinois Phlebology Associates, S.C., doing business as Vein Clinics of America, as a medical corporation consistent with the Illinois Medical Practice Act. The specific allegations are set forth in the Petition filed with the Board on May 20, 2003.

11. Licensee's acts and conduct, if proven, would constitute unprofessional conduct as defined by K.S.A. 65-2836(a) and 65-2836(j), and as such, the Board has authority to revoke, suspend, censure or otherwise limit Licensee's license.

12. In lieu of conducting formal proceedings and/or the making of findings by the Board, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license to engage in the practice of medicine and surgery:

- (a) Licensee agrees to be publicly censured for the three (3) instances of misrepresentation and for the conduct underlying the disciplinary action by Illinois; and
- (b) Licensee shall pay a fine to the Board in the amount of \$1,500.00, payable in full within thirty (30) days of the filing of this Consent Order;

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

14. 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.

15. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.

16. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the National Practitioner Databank, the Federation of State Medical Boards and any reporting entities requiring disclosure of this Consent Order.

17. 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.

18. 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.

19. Licensee, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board

member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

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

21. Licensee acknowledges that he has read this Consent Order and fully understands the contents and that this Consent Order has been entered into freely and voluntarily.

22. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

23. 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.

24. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. 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.

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 is the Order of the Board.

IT IS FURTHER ORDERED that Licensee is hereby publicly censured and ordered to pay a fine in the amount of \$1,500.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

/s/
Lawrence T. Buening, Jr.
Executive Director

August 23, 2003
Date

/s/
Desmond B. McDonagh, M.D.
Licensee

8/23/03
Date

Prepared and Approved by:

/s/
Kelli J. Benintendi, #16032
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413

Attorney for Petitioner

Approved by:

_____/s/_____
Steve A. Schwarm, #13232
Polsinelli, Shalton & Welte, P.C.
555 S. Kansas Avenue, Ste. 300
Topeka, Kansas 66603
(785) 233-1446

Attorney for Licensee

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above CONSENT ORDER by depositing the same in the U.S. mail, postage prepaid, on this the 25th day of August, 2003, addressed to:

Desmond B. McDonagh, M.D.
1101 Perimeter Drive, #615
Shaumburg, IL 60173

Steve A. Schwarm
Polsinelli, Shalton & Welte, P.C.
555 S. Kansas Avenue, Ste. 300
Topeka, Kansas 66603

and a courtesy copy was sent to:

Bari D. Wood
CHUHAK & TECSON, P.C.
30 S. Wacker Drive, Ste. 2600
Chicago, IL 60606-7413

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068

_____/s/_____
Kelli J. Benintendi
Associate Counsel