BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
APR 2 3 2007
KS State Board of Healing Arts

In the Matter of	)	
	)	
David M. Melniczek, M.D.,	)	
Application for Licensure	)	
	)	Docket No. 07-HA-81

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Stevens Counsel ("Petitioner"), and David M. Melniczek, M.D. ("Applicant") appearing *pro se*, and stipulate and agree to the following:

1. 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.*; K.S.A. 65-2869.

2. Applicant admits that this Consent Order and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Consent Order.

3. Applicant agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case and that the Board, in considering this matter, is not acting beyond its jurisdiction as provided by law.

4. Applicant's mailing address as provided to the Board is 2460 West 26th Avenue, Suite 420-C, Denver, Colorado, 80211.

5. On or about January 10, 2007, Applicant submitted to the Board an Application for Licensure ("Application").

6. In his application, Applicant disclosed that in November of 2006, he was issued a license in Colorado with probationary terms for five (5) years. The probationary terms include provisions for monitoring by the Colorado Physician Health Program.

7. There are grounds for denial of Applicant's application pursuant to K.S.A. 65-2836(j), in that Licensee has had disciplinary action taken by the proper licensing authority of another state.

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

9. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

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

11. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree that as a condition to being granted a license, Applicant voluntarily agrees to the following non-disciplinary provisions as a condition to being granted a license to engage in the practice of medicine and surgery in the State of Kansas:

i. **(Confidential)**

ii. **(Confidential)**

iii. **(Confidential)**

iv. **(Confidential)**

v. **(Confidential)**

vi. **(Confidential)**

12. These provisions above are not self-terminating and shall remain in effect for at least the duration of Applicant's probationary period in Colorado. Upon termination of Applicant's probation in Colorado, or for other good cause shown, Applicant may request the Board terminate this Consent Order.

13. Applicant's failure to comply with the provisions of the Consent Order will result in the Board taking 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. Applicant 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 Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant 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 its content.

16. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to the Federation of State Medical Boards and any reporting entities authorized to receive 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. Applicant 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 Applicant is not present. Applicant 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. Applicant, 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 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.

20. Applicant acknowledges that she has read this Consent Order and fully understands the contents.

21. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

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

23. Applicant 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 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.

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 FURTHER ORDERED that as a condition to being granted a license to practice medicine and surgery, Applicant agrees to the following provisions:

i. **(Confidential)**

iv. **(Confidential)**

v. **(Confidential)** th

its

iv. **(Confidential)**

v. **(Confidential)**

vi. **(Confidential)**

IT IS FURTHER ORDERED that the above provisions above are not self-terminating and shall remain in effect for at least the duration of Applicant's probationary period in Colorado. Upon termination of Applicant's probation in Colorado, or for other good cause shown, Applicant may request the Board terminate this Consent Order.

IT IS FURTHER ORDERED that Applicant's upon meeting all requirements for licensure, such application shall be granted.

IT IS SO ORDERED.

IN WITNESS WHEREOF, the parties have executed this Consent Order on this 23rd day of April, 2007.

KANSAS STATE BOARD OF HEALING ARTS

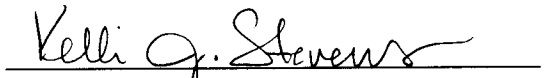
Lawrence T. Buening, Jr.
Executive Director

April 23, 2007
Date

David M. Melniczek, M.D.
Applicant

4-9-07
Date

Prepared By:



Kelli J. Stevens, #16032
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

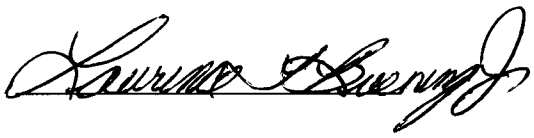
CERTIFICATE OF SERVICE

I, the undersigned, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the above **CONSENT ORDER** by depositing the same in the U.S. mail, postage pre-paid, on this 23rd day of April, 2007 to the following:

David M. Melniczek, M.D.
2460 West 26th Avenue, Suite 420-C
Denver, CO 80211

and a copy was hand-delivered to:

Charlene Abbott
Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

Lawrence T. Buening, Jr.
Executive Director
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