

FILED <sup>CAG</sup>

MAR 02 2011

KS State Board of Healing Arts

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

In the Matter of )  
 )  
NICK A. NAVATO, D.O. )  
 )  
Kansas License No. 05-27198 )

Docket No. 11-HA 00067

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Associate Litigation Counsel, Lori D. Dougherty (“Petitioner”), and Nick A. Navato, D.O., (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice osteopathic 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  
303, Independence, Missouri 64057.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-27198 on approximately August 16, 1997. Licensee’s license is active.
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 osteopathic 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 on or about August 12, 2003, until August 17, 2009, Licensee treated Patient 1 for chronic pain management. Licensee failed to maintain adequate patient medical records for Patient 1.
9. The Board has received information and investigated the same, and has reason to believe that on or about May 30, 2006, Licensee began treating Patient 2 for chronic pain management. On August 18, 2010, Patient 2 was terminated from Licensee's practice for obtaining prescription medications from other sources. Licensee failed to maintain

adequate patient medical records for Patient 2 and inappropriately prescribed controlled substances.

10. The Board has received information and investigated the same, and has reason to believe that on or about July 5, 2005, Licensee began treating Patient 3 for chronic pain management. Licensee failed to maintain adequate patient medical records for Patient 3 and inappropriately prescribed controlled substances.
11. Patients 1, 2, and 3 are family members. On several occasions, patients were seen at the same time. Licensee recorded notes for one patient in the incorrect patient chart on occasion.
12. At five (5) different appointments, Patient 3 appeared for Patient 2 and obtained refills of Percocet and Soma for Patient 2.
13. At five (5) different appointments, Patient 1 appeared for Patient 3 and obtained refills of Lidoderm patches, Lortab, Nortriptylene, and Skelaxin for Patient 3.
14. On April 28, 2008, Patient 2 admitted to taking Patient 1's medications. Licensee did not perform any urinary drug screens on Patient 2 after this visit.
15. Licensee failed to meet minimal requirements in the patient medical records.
16. 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 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.

17. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
18. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(2) by repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.
19. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(23) by prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.
20. Licensee violated K.S.A. 65-2836(k), in that Licensee violated any lawful rule and/or regulation promulgated by the Board. Specifically, Licensee failed to meet the minimal requirements for maintaining adequate patient records as set forth in K.A.R. 100-24-1.
21. 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.
22. 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.
23. All pending investigation materials 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.

24. 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 osteopathic medicine and surgery:

**PROBATION: EDUCATION**

- a. Licensee shall attend and successfully complete a continuing education course for record-keeping with a follow up chart review, by March 31, 2011, at his own expense. The course must provide for follow-up chart review for a minimum of six (6) months after completion of the record-keeping course. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion of the course by April 30, 2011.
- b. Licensee shall attend and successful complete a continuing education course for appropriate prescribing of controlled substances, by March 31, 2011, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion of the course by April 30, 2011.
- c. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.
- d. These hours shall be in addition to those hours required for renewal of licensure.
- e. The Board designates N/A Course approved at Bd Mtg to review and approve/disapprove any proposed educational courses required under this Consent Order.
- f. Proof of completion of education courses 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. After January 15, 2011, all communication should be sent to the Board's new address at 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

### **PROBATION TIME FRAME**

- g. The above monitoring provisions and limitations are not self-terminating. After completion of the education requirements, Licensee may request modification or termination of the probation.
25. 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 osteopathic 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.*
26. 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. 64-4921 *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.

27. 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.
28. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
29. 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.
30. 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.

31. 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.
32. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
33. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
34. 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, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068. After January 15, 2011, all communication should be sent to the Board's new address at 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
35. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic 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.
36. 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.

37. This Consent Order constitutes disciplinary action.

38. 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 and conclusions of law.

**IT IS FURTHER ORDERED** that:

**PROBATION: EDUCATION**

- a. Licensee shall attend and successfully complete a continuing education course for record-keeping with a follow up chart review, by March 31, 2011, at his own expense. The course must provide for follow-up chart review for a minimum of six (6) months after completion of the record-keeping course. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion of the course by April 30, 2011.
- b. Licensee shall attend and successful complete a continuing education course for appropriate prescribing of controlled substances, by March 31, 2011, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion of the course by April 30, 2011.
- c. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.
- d. These hours shall be in addition to those hours required for renewal of licensure.

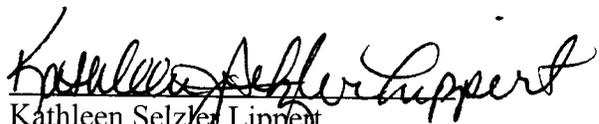
- e. The Board designates N/A Courses approved to review and approve/disapprove any proposed educational courses required under this Consent Order.  
*at mtg.*
- f. Proof of completion of education courses shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068. After January 15, 2011, all communication should be sent to the Board's new address at 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

**PROBATION TIME FRAME**

- g. The above monitoring provisions and limitations are not self-terminating. After completion of the education requirements, Licensee may request modification or termination of the probation.

**IT IS SO ORDERED** on this 28 day of February, 2011.

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

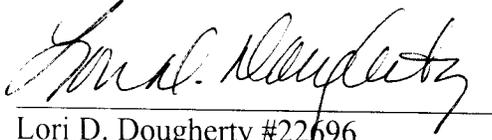
  
Kathleen Selzer Lippert  
Executive Director

2/28/11  
Date

  
Nick A. Navato, D.O.  
Licensee

12/17/10  
Date

PREPARED AND APPROVED BY:



Lori D. Dougherty #22696  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

**CERTIFICATE OF SERVICE**

I, Cathy A. Brown, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 1<sup>st</sup> day of ~~February~~, 2011, to the following: March

Nick A. Navato, D.O.  
Licensee  
confidential

Independence, Missouri 64057

And the original was hand-filed with:

Kathleen Selzler Lippert  
Executive Director  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Lori D. Dougherty  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

Compliance Coordinator  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

