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CAB

AUG 18 2011

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of

John Rand Neuenschwander, M.D.  
Kansas License No. 04-15208

KSBHA Docket No. 08-HA00227

CONSENT ORDER

**COMES NOW**, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel, ("Petitioner"), and Michael O'Neal, attorney for John Rand Neuenschwander, M.D., ("Licensee"), 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: 600 Main, Hoxie, Kansas 67740.
2. Licensee has been in the past entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-15208 on approximately June 15, 1973. Licensee's license is currently suspended, having been suspended on June 6, 2008.
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 this 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 there are grounds pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*

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9. On June 6, 2008, a Petition was filed against Licensee alleging one count violating the Healing Arts Act, confidential confidential and that he may not possess the necessary skills to continue with the practice of medicine and surgery.

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11. On June 6, 2008, Petitioner filed a Motion for Ex Parte Emergency Order of Suspension and for Emergency Proceedings and Attached Proposed Emergency Ex Parte Order of Suspension alleging that Licensee's continuation in the practice of medicine would constitute an imminent danger to the public health and safety.

12. On June 6, 2008, an Emergency Ex Parte Order of Suspension and Protective Order was filed with the Board, in which it was ordered that Licensee's license to practice medicine and surgery in the State of Kansas was suspended due to Licensee's inability to practice medicine with reasonable skill and safety to patients due

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14. Licensee waives his right to contest the allegations contained in the Petition and consents to a finding that confidential, he does not have the ability to practice the healing arts with reasonable skill and safety to patients.

15. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure, deny, or impose administrative fines for violations of the Healing Arts Act.

16. According to K.S.A.65-2836(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

17. 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. 21 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

18. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following action against his license to engage in the practice of medicine and surgery:

**CHANGE OF STATUS TO INACTIVE**

- a. Licensee hereby agrees to changes his license status to inactive, effective upon filing of this Consent Order with the Board;
- b. Licensee agrees that if he applies for a change of status to an active license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will

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be governed by Vakas v. The Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws and rules and regulations regarding the qualifications for licensure and reinstatement; and

- c. Licensee agrees that in the event he applies for a change of status to an active license, the allegations contained in the Petition and this Consent Order will be considered as findings of fact and conclusions of law.

19. 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. 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 Healing Arts Act.

20. 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 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

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shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

21. 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.

22. 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.

23. 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.

24. Licensee, by signature to this document, waives any objection to the participation of the Board members 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.

25. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

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26. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

27. 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.

28. This Consent Order constitutes disciplinary action.

29. 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:

**CHANGE OF STATUS TO INACTIVE**

- a. Licensee hereby agrees to changes his license status to inactive, effective upon filing of this Consent Order with the Board;
- b. Licensee agrees that if he applies for a change of status to an active license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by Vakas v. The Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws and rules and

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regulations regarding the qualifications for licensure and reinstatement;  
and

- c. Licensee agrees that in the event he applies for a change of status to an active license, the allegations contained in the Petition and this Consent Order will be considered as findings of fact and conclusions of law.

IT IS SO ORDERED on this 18<sup>th</sup> day of Aug, 2011.

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

  
Kathleen Selzler Lippert 8-18-11  
Executive Director

7-13-11  
Date

  
John Rand Neuenschwander, M.D.  
Licensee

7-13-11  
Date

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**PREPARED AND APPROVED BY:**

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Reese H. Hays, #22700  
Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson  
Lower Level, Suite A  
Topeka, Kansas 66612  
785-296-7413

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served the above and foregoing  
**CONSENT ORDER** on the 18<sup>th</sup> day of August, 2011, via United States  
mail, first-class, postage pre-paid and addressed to:

Michael R. O'Neal  
Attorney for Licensee  
Gilliland & Hayes, P.A.  
20 West 2<sup>nd</sup> Avenue, 2<sup>nd</sup> Floor  
P.O. Box 2977  
Hutchinson, Kansas 67504-2977

and a courtesy copy was hand-delivered to:

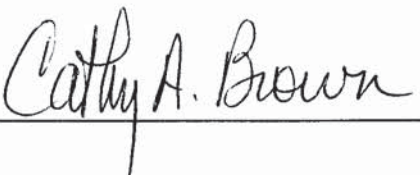
Katy Lenahan, Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson  
Lower Level, Suite A  
Topeka, Kansas 66612

and a copy was hand-delivered to:

Reese H. Hays, Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson  
Lower Level, Suite A  
Topeka, Kansas 66612

and a copy was hand-delivered for filing to:

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

  
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