

MAR 06 2017

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

| | | |
|-----------------------------|---|-----------------------|
| In the Matter of |) | |
| Kirk D. Potter, D.O. |) | |
| |) | |
| Kansas License No. 05-33528 |) | Docket No. 17-HA00024 |
| _____ |) | |

ORDER LIFTING THE EX PARTE EMERGENCY SUSPENSION OF LICENSEE

NOW on this 8th day of February 2017, before Presiding Officer Myron Leinwetter, D.O. comes on for emergency proceedings the Petitioner’s Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings filed against the license of Kirk D. Potter, D.O. (“Licensee”). Jane Weiler, Associate Litigation Counsel, and Susan Gering, Associate Litigation Counsel appear on behalf of Petitioner. Licensee appears in person and through his counsel, Patricia Dengler.

Upon due consideration of the agency record and the exhibits admitted, and after hearing the testimony of the witnesses and arguments of counsel, the Presiding Officer finds, concludes and orders as follows:

Procedural Background

1. On November 4, 2016, Petitioner filed a Petition seeking discipline against Licensee’s osteopathic license. Petitioner also filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings (“Motion”). The Motion incorporated the allegations in the Petition by reference. [REDACTED]

[REDACTED]

2. Based on the facts alleged in the Motion and supporting affidavits, an *Ex Parte* Emergency Order of Suspension of License was entered by the Presiding Officer on November 4, 2016, on the basis that there was cause to believe Licensee had committed violations of the Healing Arts Act and that Licensee's continuation in practice constituted an immediate danger to the public health safety or welfare. A Notice of Hearing was issued which scheduled a hearing on the *Ex Parte* Emergency Order for Suspension and [REDACTED] for November 15, 2016, in order to determine whether the emergency suspension should remain in effect.

3. On or about November 18, 2016, Licensee by and through his attorney, filed a Motion for Continuance for the hearing scheduled for November 22, 2016. In support of such motion, Licensee stated that he had left [REDACTED] outside the state of Kansas and would not be available for the hearing.

4. On or about November 23, 2016, Petitioner filed a Motion to Dismiss Request for [REDACTED]

5. On or about November 28, 2016, an order granting the requested continuance was filed. The order granted the continuance to a date and time to be determined at a later date, when Licensee would be available for the hearing.

6. On or about November 30, 2016, Licensee filed a Motion to Revoke, Limit or Modify Subpoena Duces Tecum. On or about November 30, 2016, Licensee withdrew this motion.

7. On or about December 23, 2016, after having being advised by the parties regarding Licensee's status of his [REDACTED] a Notice of Hearing was issued which scheduled a hearing on the *Ex Parte* Emergency Order for Suspension for February 8, 2017, in order to determine whether the emergency suspension should remain in effect. The hearing was set for this

date at the request of the parties [REDACTED]

8. Emergency proceedings in the form of an evidentiary hearing were held on February 8, 2017, at which Petitioner presented exhibits containing documentary evidence. Licensee also presented documentary evidence. Licensee was questioned by the Presiding Officer. Petitioner submitted exhibits marked 7 and 8 which were admitted without objection. Licensee submitted exhibits marked A and B which were also admitted without objection.

Findings and Conclusions

9. At all times relevant to the allegations set forth in the Petition and Motion, Licensee has been subject to certain requirements contained in a Consent Order he entered into with the Board as a condition to assure that Licensee was safe to practice. Such Consent Order was filed with the Board on October 13, 2015, in Kansas Board of Healing Arts Docket No. 16-HA00024. Such Consent Order required Licensee to [REDACTED]

[REDACTED] As the Consent Order was a prior order of this board, the Presiding Officer will take judicial notice of the Consent Order.

10. Petitioner's Motion for *Ex Parte* Emergency Order of Suspension and Emergency Proceedings was filed the same date as a Petition alleging that Licensee had violated the Healing Arts Act by failing to follow the terms of his 2015 Consent Order. The Petitioner incorporated the allegations contained in the Petition by reference in its entirety to the *Ex Parte* Motion. However, no mention was made of the exhibits which were attached to the Petition.

11. The purpose of a post deprivation hearing is to provide the afflicted party with due process to either contest the *Ex Parte* Order or to acquiesce to the continuation of the *Ex*

Parte Order until such time as a hearing is held on the underlying allegations contained in the Petition to determine if the Licensee violated the Healing Arts Act. This is a two-part process. If the afflicted party chooses to contest the necessity of the *Ex Parte* Order, the burden is on the Petitioner to provide evidence by a preponderance of the evidence standard to show that the allegations in the *Ex Parte* Order are supported and as a result the order issued under K.S.A. 77-536 was proper. Additionally, the Petitioner is also required to show that the continuation of the *Ex Parte* Order is necessary for the protection of the public health, safety and welfare.

12. [REDACTED]

[REDACTED]

13. Licensee further admits [REDACTED] that he went to work on October 29, 2016 and was seeing patients. [REDACTED]

[REDACTED]

[REDACTED] Even though the

[REDACTED] Licensee continued to see patients for the remainder of the day.

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. The Presiding Officer finds that while many of the material facts were not proven by a preponderance of the evidence as is required at the time of the filing of the *Ex Parte* Order, they are generally not disputed by the Licensee and for the purposes of the *Ex Parte* hearing, there does not appear to be a disagreement between the parties regarding the necessity of the *Ex Parte* Order of November 4, 2016. However, there a dispute between the parties regarding the conditions of licensure that Licensee should be under in order to return to the practice of osteopathic medicine and surgery pending a full hearing on the disciplinary petition filed against his license.

16. The Petitioner requests that Licensee be required to continue with the terms and conditions of [REDACTED] monitoring contract; [REDACTED]

[REDACTED]

[REDACTED]

17. Petitioner argues that due to [REDACTED] and the precautions that were previously in place, that Licensee should be prohibited from engaging in a solo practice.

18. Licensee argues that his subsequent actions since October 28, 2016 have shown that he is no longer an imminent danger to the public health, safety and welfare and that the suspension of his license should be lifted.

19. Licensee argues that he has already implemented many of the recommendations made [REDACTED] dated December 19, 2016. And is willing to continue to work on complying with those recommendations. Additionally, Licensee states that he has no objection to continuing [REDACTED]

20. Licensee further argues that it is unreasonable for him to be unable to work as solo practitioner due to the plastic surgery environment in Hays. Currently, Licensee is the only plastic surgeon in Hays and it would be difficult to find another plastic surgeon to work with.

21. Licensee states that in order to assist in not over-working himself and [REDACTED] he has set up his scheduling calendar to only allow patients visits from the hours of 8:00 a.m. to 11:45 a.m. and from 1:15 p.m. to 5:00 p.m., with the last patient visit scheduled at 4:00 p.m. Additionally, Licensee stated that he is no longer going to satellite offices and patients will be required to come to his Hays office for follow-up.

22. [REDACTED]

23. As further evidence of Licensee's understanding and desire to work within his own personal limits, he had submitted a cooperative agreement between himself and Dr. Richard Korentager, M.D. Dr. Korentager, through the cooperative agreement, agrees to accept overflow referrals from Licensee, and that both parties agree and understand that all such treatment would be provided in Kansas City. Both Dr. Korentager and Licensee also both understand and agree that no compensation either in money, property or services will be exchanged between the parties as a result of this agreement. If Dr. Korentager were to provide any treatment or services to such

referred overflow patients, Dr. Korentager and/or his employer would be responsible for all billing and payments for services rendered. Dr. Korentager has also agreed to make himself available to Licensee for discussion of cases in consultation on an as-needed basis. This agreement is set forth in its entirety in Attachment 1.

24. Additionally, as further evidence of Licensee's understanding and desire to work within his own personal limits, he had submitted a cooperative agreement between himself and Dr. PJ Stiles, M.D. Dr. Stiles, through the cooperative agreement, has agreed to cover patient care issues during times with Licensee is unavailable due to vacation. Both parties agree that patient care will be provided at the discretion of Dr. Stiles and at the location determined by Dr. Stiles. Both Dr. Stiles and Licensee also both understand and agree that no compensation either in money, property or services will be exchanged between the parties as a result of this agreement. If Dr. Stiles were to provide any treatment or services to such referred overflow patients, Dr. Stiles would be responsible for all billing and payments for services rendered. This agreement is set forth in its entirety in Attachment 2.

25. The Presiding Officer concludes that at the time of the issuance of the *Ex Parte* Order that Licensee's acts and conduct constituted a situation involving immediate danger to the public health, safety and welfare. And that the use of K.S.A. 77-536 was appropriate.

26. However, the Presiding Officer finds that sufficient safety nets and agreements have been established since the issuance of the emergency order that such order may be lifted under certain restrictions:

a. [REDACTED]

[REDACTED]

i.

ii.

iii.

b.

c.

d. that Licensee only schedule patient appoints in his office in Hays, Kansas.

No appointments shall be made in satellite offices. All such appointments must be made between the hours of 8:00 a.m. and 11:45 a.m. and from 1:15 p.m. to 5:00 p.m. with the last appointment made no later than 4:00 p.m.

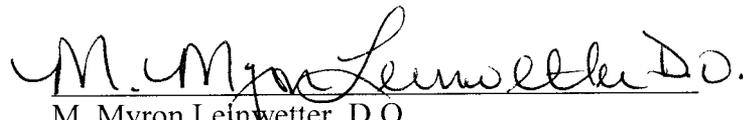
e.

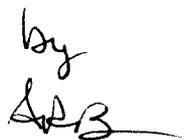
f. that Licensee shall adhere to the cooperative agreements set forth between himself and Dr. Korentanger and Dr. Stiles until such time as determined by the Board that such agreements are no longer required.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that the emergency suspension of Licensee's license is hereby LIFTED WITH RESTRICTIONS.

IT IS SO ORDERED THIS 6th DAY OF MARCH, 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


M. Myron Leinwetter, D.O.
Presiding Officer

by 

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **Order Lifting the Ex Parte Emergency Order of Suspension** was served this 17th day of March, 2017, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

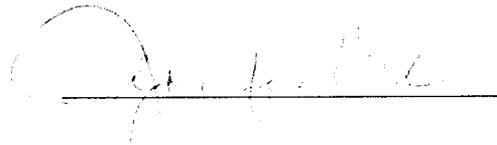
Kirk Potter, D.O.
217 E. 32nd Street
Hays, Kansas 67601

Patricia M. Dengler
Gilliland & Hayes, LLC
1300 Epic Center
301 N. Main
Wichita, Kansas 67202
Attorney for Licensee

and a copy was hand-delivered to:

Jane Weiler, Associate Litigation Counsel
Susan Gering, Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Attorneys for Petitioner

and the original was filed with the office of the Executive Director.



Attachment

1



Potter Plastic & Reconstructive Surgery, PA

Cooperative Agreement

Kirk Potter, DO
Potter Plastic & Reconstructive Surgery
217 E. 32nd Street
Hays, KS 67601
(785)301-2250 telephone
(785)301-2270 fax

Richard Korentager, MD, FACS
Professor of Plastic Surgery
Chair, Department of Plastic, Burn and Wound Surgery
University of Kansas
3901 Rainbow Blvd MS 3015
Kansas City, KS 66160
(913)588-2000 telephone
(913)588-2061 fax

This is an agreement between Potter Plastic Surgery and The University of Kansas Plastic Surgery Department. Dr. Korentager has agreed to accept overflow referrals from Potter Plastic Surgery. Both parties agree that all patient care will be provided in Kansas City.

The parties understand and agree that no compensation, in money, property or services, is exchanged between the parties for any referrals or consultation provided. If Dr. Korentager provides any medical care and treatment to any patients referred by Dr. Potter, Dr. Korentager and/or The University of Kansas Medical Center will be responsible for all billing and receipt of payment for services rendered. Dr. Potter disclaims any right to receive compensation in any form.

Dr. Korentager has also made himself available to Dr. Potter for discussion of cases in consultation on an as-needed basis and has provided Dr. Potter his personal cell phone number.

Richard Korentager, MD
The University of Kansas Plastic Surgery Department

Kirk Potter, DO
Potter Plastic & Reconstructive Surgery

Kirk D Potter D.O. • Plastic and Reconstructive Surgeon
217 E 32nd Street • Hays, KS 67601
PHONE (785) 301-2250 • FAX (785) 301-2270
patientcare@PotterCosmeticSurgery.com • www.PotterCosmeticSurgery.com

Attachment

2



Potter Plastic & Reconstructive Surgery, PA

Cooperative Agreement

Kirk Potter, DO
Potter Plastic & Reconstructive Surgery
217 E. 32nd Street
Hays, KS 67601
(785)301-2250 telephone
(785)301-2270 fax

PJ Stiles, MD
Clara Barton Surgical Services
351 W. 10th Street
Hoisington, KS 67544
(620)653-4191 telephone
(620)653-4566 fax

This is an agreement between Kirk Potter, DO and PJ Stiles, MD. Dr. Stiles has agreed to cover patient care issues during times when Dr. Potter is unavailable due to vacation. Both parties agree that all patient care will be provided at the discretion of Dr. Stiles and at the location decided on by Dr. Stiles.

The parties understand and agree that no compensation, in money, property or services, is exchanged between the parties for any referrals or consultation provided. If Dr. Stiles provides any medical care and treatment to any patients referred by Dr. Potter, Dr. Stiles will be responsible for all billing and receipt of payment for services rendered. Dr. Potter disclaims any right to receive compensation in any form.

Dr. Stiles has also made himself available to Dr. Potter for discussion of cases in consultation on an as-needed basis and has provided Dr. Potter his personal cell phone number.



PJ Stiles, MD *Stiles*



Kirk Potter, DO

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