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**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
_____)	

FINAL ORDER SUSPENDING LICENSE

NOW on this 14th day of April 2017, comes on for conference hearing before the Kansas State Board of Healing Arts (“Board”) the Petition for discipline filed against the osteopathic license of Kirk D. Potter, D.O. (“Licensee”). Jane Weiler, Associate Litigation Counsel, appears on behalf of the Petitioner Board. Licensee appears in person and with counsel, Patricia Dengler.

Pursuant to the authority granted to the Board, K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving exhibits into evidence, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

Procedural Background

1. Licensee is presently entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-33528 on approximately December 9, 2008. Licensee’s license is currently active with restrictions, having last renewed such license on or about September 30, 2016.

2. On November 4, 2016, Petitioner filed a Petition seeking discipline against Licensee's osteopathic license alleging that, pursuant to K.S.A. 65-2836(i), that Licensee failed to practice the healing arts with reasonable skill and safety [REDACTED] on or about October 27, 2017. The Petition also alleged that pursuant to K.S.A. 65-2836(k), [REDACTED] on the night of October 27, 2017, violated a lawful order of the Board previously entered by the Board in Docket No. 16-HA00024 when Licensee [REDACTED] [REDACTED] in violation of his Consent Order. The Petition additionally alleged that, pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), Licensee violated the healing arts act by committing conduct likely to harm the public when [REDACTED] in violation of his Consent Order. 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.

3. 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.

4. 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]

5. On February 8, 2017, a hearing was held regarding the *Ex Parte* Motion for Emergency Suspension. On or about March 6, 2017 the hearing the Presiding Officer issued an order lifting the emergency suspension with restrictions on Licensee's office hours and location of his practice.

Findings and Conclusions

6. [REDACTED]

7. Licensee further admits that [REDACTED]

[REDACTED] Licensee proceeded to see patients from 8:05 a.m. until approximately 5:20 p.m. on October 28, 2016.

8. On October 28, 2016, Licensee was required [REDACTED]

9. [REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

12. [REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

15. Licensee argues that his previous emergency suspension should be considered his discipline for violation of the Healing Arts Act. Licensee through his Position Statements requests that the Board dismiss the Petition filed against him or in the alternative not impose any further discipline.

16. Although Licensee's license may have been emergently suspended from November 4, 2016 through March 6, 2017, what Licensee fails to understand is that pursuant to

K.S.A. 77-536, the Board has a duty to protect the public first and foremost. In this matter an emergency order was necessary to protect the public from Licensee's actions which were an immediate danger to the health, safety and welfare of the public. First and foremost, "[w]hen presented with a doctor who poses a possible threat to his patients, the Board must act in accordance with the interests of the public before the interests of the doctor. Therefore, the Board's responsibility is not to weigh the benefit and harm of this agency action as it pertains to [Respondent] and his personal life, but to the benefit and harm to the public and the public's perception of the Board as a regulatory agency. If the Board is to perform its regulatory function, the public must perceive the Board as acting in the public's best interest, rather than catering its decision to the benefit of the doctors it is tasked with regulating." Redacted Version of Zoeller v. Kansas State Bd of Healing Arts, No. 12-C-50, slip op., Shawnee County District Court, 15 pgs, dated July 3, 2012.

17. The Board finds that Licensee does not dispute the material facts alleged in the Petition as they relate to [REDACTED] in violation of his 2015 Consent Order.

18. The Board concludes that Licensee's acts and conduct constitute a violation of K.S.A. 65-2836(i).

19. The Board concludes that Licensee's acts and conduct constitute a violation of K.S.A. 65-2836(k).

20. The Board concludes that Licensee's acts and conduct constitute a violation of K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12).

21. The Board concludes the evidence presented demonstrated the following aggravating factors:

a. [REDACTED]

b. Licensee is arrested for a DUI on or about February 22, 2013.

c. [REDACTED]

d. [REDACTED]

e. On or about December 13, 2014, Licensee is again arrested for DUI.

f. [REDACTED]

g. [REDACTED]

h. On or about October 13, 2015, enters into the Consent Order in KSBHA Docket No. 16-HA00024. Licensee denies that he violated the healing arts act.

i. [REDACTED]

j. [REDACTED]

22. The Board concludes that Licensee did not present compelling mitigating evidence.

23. In contemplating the appropriate measure of discipline for Licensee's violations of the Healing Arts Act, the Board considers its public protection purpose to be of paramount

importance. Punishing Licensee for his actions is also a necessary action due to the severity of Licensee's actions.

24. The Board concludes that Licensee's violations of the Healing Arts Act warrants suspension of his license to practice osteopathic medicine and surgery in the State of Kansas for at least six (6) months, effective April 14, 2017.

25. The Board further concludes that [REDACTED] monitoring terms and conditions of the 2015 Consent Order shall remain in place and not toll during Licensee's suspension.

26. The Board further concludes that upon any request by Licensee for termination of the suspension, Licensee shall have the burden to demonstrate sufficient evidence of rehabilitation to a degree where he is able to practice with reasonable skill and safety and warrant the public trust as a licensed physician. [REDACTED]

[REDACTED] Such evidence shall also include evidence of compliance with the requirements of his 2015 Consent Order, [REDACTED]

[REDACTED] In exercising its discretion to determine whether or not to terminate the suspension, the Board may consider the factors set forth in *Vakas v. Kansas Bd. Of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991).

27. In the event Licensee is found to be sufficiently rehabilitated to warrant termination of the suspension, the Board may impose additional public protection sanctions for a reasonable period of time necessary to ensure Licensee's safety to practice.

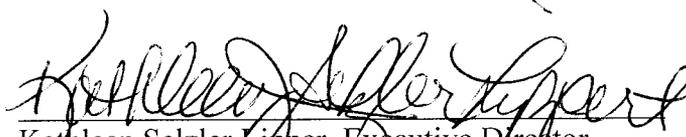
IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee's license to practice osteopathic medicine and surgery is hereby

SUSPENDED for a period of at least six (6) months, effective April 14, 2017, where upon Licensee may request termination of the suspension.

IT IS FURTHER ORDERED that the Board shall maintain jurisdiction over this matter to issue further order(s) deemed necessary and appropriate in the circumstances.

IT IS SO ORDERED THIS 18 DAY OF APRIL, 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lipper, Executive Director
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER SUSPENDING LICENSE** was served this 15th day of April, 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.

