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OCT 27 2011

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

|                             |   |                             |
|-----------------------------|---|-----------------------------|
| In the Matter of            | ) |                             |
| GARY SLAVENS, M.D.          | ) | KSBHA Docket No. 11-HA00007 |
|                             | ) |                             |
| Kansas License No. 04-30103 | ) | OAH No. 11HA00006           |
| _____                       | ) |                             |

**JOURNAL ENTRY and FINAL ORDER REVOKING LICENSE**

NOW on this 21<sup>st</sup> day of October 2011, comes before the Kansas State Board of Healing Arts (Board), review of the Initial Order, OAH No. 11HA00006 (Initial Order), issued in this matter on September 2, 2011 by Edward Gaschler, Presiding Officer, revoking the license of Gary Slavens, M.D. (Licensee) to practice medicine and surgery in the State of Kansas, and assessing costs of the administrative hearing against Licensee. Licensee appears in person, *pro se*. Janith A. Lewis, Associate Litigation Counsel, appears for the Respondent Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, 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.

Upon review of the findings of fact and conclusions of law set forth in the Initial Order, having reviewed the administrative record and upon hearing the statements and arguments of the parties, having given due regard to the presiding officer's opportunity to observe and determine the credibility of witnesses at the administrative hearing, having reviewed Litigation Counsel's Statement of Costs, and having been otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions of law, and orders:

1. Gary Slavens, M.D. ("Licensee") has, since approximately February 26, 2003, maintained License No. 04-30103 to engage in the practice of medicine and surgery in the State of Kansas.

2. Licensee's last known mailing address of record with the Board is: confidential  
confidential Mapleton, Utah 84664.

3. On September 2, 2011 - following an administrative hearing on June 20, 2011 wherein Presiding Officer Gaschler had the opportunity to fully observe all of the facts and evidence, hear all the testimony and argument by the parties, and consider any mitigating information offered by Licensee - an Initial Order was issued finding that Licensee committed multiple violations of the Kansas Healing Arts Act. Based on those findings, the Initial Order revoked Licensee's license to practice medicine and surgery in the State of Kansas. In addition, the Initial Order directed the Petitioner Board to file an Affidavit of Costs for the administrative hearing and ordered those costs to be assessed against Licensee.

4. Each and every finding of fact set forth in the Initial Order is hereby incorporated by reference herein, in its entirety.

5. Pursuant to K.S.A. 2010 Supp. 77-531, the Initial Order was served upon Licensee by mailing a copy of the Initial Order to Licensee at Licensee's last known addresses of record, via United States Mail, first-class postage prepaid.

6. Associate Litigation Counsel Lewis filed a Statement of Costs with the Board setting forth the proposed costs of the administrative hearing, in the amount of \$9,514.23. Each cost of the administrative hearing, as set forth in the Statement of Costs, is hereby incorporated by reference herein.

## **II. Applicable Law**

1. K.S.A. 77-501, *et seq.* – Kansas Administrative Procedure Act
2. K.S.A. 2010 Supp. 77-527(d) of the Kansas Administrative Procedure Act states, in

pertinent part:

... In reviewing findings of fact in initial orders by presiding officers, the agency head shall give due regard to the presiding officer's opportunity to observe the witnesses and to determine the credibility of witnesses. The agency head shall consider the agency record or such portions of it as have been designated by the parties.

3. K.S.A. 2010 Supp. 77-527(f) states, in pertinent part: [t]he agency head or designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order.

4. K.S.A. 65-2801, *et seq.* – Kansas Healing Arts Act

5. K.S.A. 2010 Supp. 65-2836 of the Healing Arts Act states, in pertinent part:

A licensee's license may be revoked ... upon a finding of the existence of any of the following grounds:

... (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency ...

(f) The licensee has willfully or repeatedly violated this act ...

(u) The licensee ... has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

6. K.A.R. 100-16-4 provides: [a] license may be revoked, suspended, or limited when the licensee has been found to have committed any of the acts specified in K.S.A. 65-2836 and 65-2837.



7. K.S.A. 2010 Supp. 65-2837(a) defines "Professional incompetency" as:
- (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.
  - (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.
  - (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts.
8. K.S.A. 2010 Supp. 65-2837(b) defines "Unprofessional conduct" as:
- ... (24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
  - (25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.
9. K.S.A. 65-2846 provides, in pertinent part:
- (a) If the board's order is adverse to the licensee ... costs incurred by the board in conducting any proceeding under the Kansas administrative procedure act may be assessed against the parties to the proceeding in such proportion as the board may determine upon consideration of all relevant circumstances including the nature of the proceeding and the level of participation by the parties. If the board is the unsuccessful party, the costs shall be paid from the healing arts fee fund.
  - (b) For purposes of this section costs incurred shall mean the presiding officer fees and expenses, costs of making any transcripts, witness fees and expenses, mileage, travel allowances and subsistence expenses of board employees and fees and expenses of agents of the board who provide services pursuant to K.S.A. 65-2878a and amendments thereto. Costs incurred shall not include presiding officer fees and expenses or costs of making and preparing the record unless the board has designated or retained the services of independent contractors to perform such functions.
  - (c) The board shall make any assessment of costs incurred as part of the final order rendered in the proceeding. Such order shall include findings and conclusions in support of the assessment of costs.

### **III. Policy Statement**

The public policy of regulating the practice of healing arts in the State of Kansas is set forth in K.S.A. 65-2801:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of

policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

#### **IV. Conclusions**

1. Based upon the findings of fact, applicable law and policy, set forth above, the Board hereby concludes that Licensee violated the Kansas Healing Arts Act, as follows:

- a. Licensee, in his treatment and care of Patient #1, committed professional incompetency as defined in K.S.A. 65-2837(a)(2) by failing to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.
- b. Licensee, in his medial documentation of Patient #1, committed unprofessional conduct as defined in K.S.A. 65-2837(b)(25) by failing to keep written medical records which accurately describe the services rendered to the patient.
- c. Licensee, in his treatment and care of Patient #2, committed professional incompetency as defined in K.S.A. 65-2837(a)(2) by failing to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.
- d. Licensee, in his medial documentation of Patient #2, committed unprofessional conduct as defined in K.S.A. 65-2837(b)(25) by failing to keep written medical records which accurately describe the patient's resuscitation preference.
- e. Licensee, in his treatment and care of Patient #3, committed professional incompetency as defined in K.S.A. 65-2837(a)(2) by failing to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.
- f. Licensee, in his medial documentation of Patient #3, committed unprofessional conduct as defined in K.S.A. 65-2837(b)(25) by failing to keep written medical



records which accurately describe the services rendered to the patient.

- g. Licensee, in his treatment and care of Patient #4, committed professional incompetency as defined in K.S.A. 65-2837(a)(2) by failing to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.
  - h. Licensee, in his medial documentation of Patient #4, committed unprofessional conduct as defined in K.S.A. 65-2837(b)(25) by failing to keep written medical records which accurately describe the services rendered to the patient.
  - i. Licensee violated K.S.A. 65-2836(u) of the Kansas Healing Arts Act by surrendering his provisional staff privileges at Citizen's Medical Center in Colby, Kansas, while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under K.S.A. 65-2836.
2. For the violations of the Kansas Healing Arts Acts stated above, the Board maintains authority to revoke Licensee's license to practice medicine and surgery in the State of Kansas
3. Each cost of the administrative hearing set forth in the Statement of Costs is valid and enforceable against Licensee, and the total cost of \$9,514.23 may be lawfully assessed against Licensee.

### **V. Order**

**IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS** that Licensee did commit multiple violations of the Kansas Healing Arts Act, as set forth in this Order.

**IT IS FURTHER ORDERED** that Licensee's license to practice medicine and surgery in the State of Kansas is hereby REVOKED.

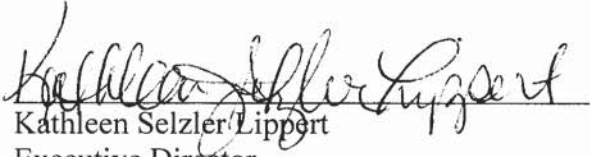
**IT IS FURTHER ORDERED** that the costs incurred by the Board in conducting the administrative hearing in this matter, in the total amount of \$9,514.23, are hereby assessed against Licensee, and that Licensee is hereby ordered to pay such costs to the Kansas State Board of Healing Arts.

The total amount of \$9,514.23 shall be due to the Board **on or before December 1, 2011**. In the alternative, Licensee may make eleven (11) consecutive monthly payments of \$792.85, and a twelfth (12<sup>th</sup>) and final monthly payment of \$792.88, for a total of \$9,514.23. If Licensee prefers this alternative payment plan, then the initial payment shall be due on or before **November 15, 2011**, with the remainder of the monthly payments due to the Board on or before the fifteenth (15<sup>th</sup>) day of each month thereafter.


In the event that the Board does not receive any payment due and owing, the total amount of the assessed costs still due shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received. Licensee shall make all payments payable to the Kansas State Board of Healing Arts, and send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

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

**IT IS SO ORDERED THIS 27 DAY OF OCTOBER, 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

  
Kathleen Selzler Lippert  
Executive Director  
Kansas State Board of Healing Arts

Prepared and Approved by:

  
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Randy E. Stookey, #21885  
Assistant General Counsel  
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, the Board's Executive Director, at 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 **Journal Entry and Final Order Revoking License** was served this 27<sup>th</sup> day of October, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Gary Slavens, M.D.  
confidential  
Mapleton, Utah 84664

And a copy was hand-delivered to:

Stacy Bond, Associate Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

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

Melissa Massey, Compliance Coordinator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

The original was filed with the office of:

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

  
\_\_\_\_\_  
Cathy Brown  
Executive Assistant