

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

In the Matter of )  
Wayne E. Spencer, M.D. )  
Kansas License No. 04-13310 )

Docket No. 12-HA 00047

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Wayne E. Spencer, M.D. (“Licensee”), by and through his counsel, Mark W. Stafford, 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: confidential  
Topeka, Kansas 66614.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-13310 on approximately July 1, 1965. Licensee’s license is currently exempt.
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 provided by K.S.A. 77-505 and 65-2838. Upon approval, these stipulations shall

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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 agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. 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.
8. 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.
9. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A.65-2836, 65-2837, and 65-

2801 *et seq.*, to take action with respect to Licensee's license under the Kansas Healing Arts Act.

10. On or about June 1, 2011, Licensee was indicted on five (5) counts in Case Number 11-40042-01-02-RDR in the U.S. District Court for the District of Kansas.
11. On or about October 19, 2011, Licensee pled Guilty to Count 1, which charged a violation of 18 U.S.C. § 371, conspiracy, and Count 5, which charged a violation of 21 U.S.C. § 331(e); failure to maintain records in relationship to a clinical drug trial in Case Number 11-40042-01-02-RDR. The remaining Counts were dropped.
12. The full facts underlying the indictment can be found in Licensee's Plea Agreement in Case Number 11-40042-01-02-RDR and are herein incorporated by reference into this document.
13. 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.
14. Licensee's acts, if proven, constitute violations of the Healing Arts Act as set forth in K.S.A. 65-2836. Specifically, grounds to discipline include:

- a. Licensee violated K.S.A. 65-2836(c) in that Licensee was convicted of felony offenses when he pled guilty to violating 18 U.S.C. § 371 (conspiracy) and to 21 U.S.C. § 331(e) (failure to maintain records in a clinical drug trial).
- b. Licensee violated K.S.A. 65-2836(b), as set forth in:
  - i. K.S.A. 65-2837(b)(12), in that Licensee has committed conduct likely to deceive, defraud or harm the public in violation of the Kansas Healing Arts Act when he and a co-worker, while employed at Lee Research Institute, conspired in a scheme to defraud Schering/Plough, a subsidiary of Merck, in relation to a Federal clinical drug trial;
  - ii. K.S.A. 65-2837(b)(17), in that Licensee used false, fraudulent, or deceptive statements in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient record, in documenting that he performed physical examinations on two patients involved in the trial when he allowed the two patients to create fictitious names and dates of birth to allow them to participate in the Federal clinical drug trial;
  - iii. K.S.A. 65-2837(b)(18), in that Licensee obtained a fee by fraud, deceit, or misrepresentation;

- iv. K.S.A. 65-2837(b)(19), in that Licensee gave or received any fee, commission, rebate, or other compensation for professional services not actually and personally rendered; and
  - v. K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records that accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results, and test results.
- c. Licensee has violated K.S.A. 65-2836(s), in that Licensee had sanctions or disciplinary actions taken against his license to practice medicine and surgery when he agreed to be disqualified as a Clinical Investigator by the United States Food and Drug Administration (FDA).
  - d. Licensee has violated K.S.A. 65-2836(aa), in that Licensee knowingly submitted any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement.
  - e. Licensee has violated K.A.R. 100-24-1, in that Licensee failed to maintain an accurate record for each patient for whom he performed a professional service.
15. 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.

16. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
17. All pending investigation materials in KSBHA Investigation number 11-00586 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 26 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
18. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and the Kansas Healing Arts Act.
19. 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. 65-4921 *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.
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 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.

21. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Data Bank, Federation of State Medical Boards, and any other 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, 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.

25. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
26. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
27. 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, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
28. Licensee shall obey all federal, state and local laws and rules governing the practice of 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.
29. 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.

30. This Consent Order constitutes disciplinary action.
31. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
32. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of medicine and surgery:

**SURRENDER**

33. Licensee hereby surrenders his license to practice medicine and surgery, effective upon filing of this Consent Order with the Board. Such surrender shall be treated as a revocation for all purposes including reporting. Licensee agrees that an application for reinstatement of the license will be considered in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by *Vakas v. The Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement.
34. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in the Consent Order will be considered as findings of fact and conclusions of law.
35. The burden of proof by clear and convincing evidence shall be on the Licensee to show sufficient rehabilitation to justify reinstatement of the license. All

proceedings conducted on an application for reinstatement shall be in accordance with the provisions of the Kansas Administrative Procedure Act and shall be reviewable in accordance with the Kansas Judicial Review Act.

36. Licensee shall place his patients' records in the custody of another licensed physician or records maintenance facility in compliance with K.A.R. 100-24-2 and 100-24-3. Licensee shall notify the Board on or before December 30, 2011, of the specific measure taken and the appropriate contact information so that the Board can respond to questions from patients about the location of their medical records and how they can obtain them.
37. Licensee shall ensure that all patients and any other person or entity authorized by law to obtain patient records have access to medical records. Specifically, Licensee will comply with K.S.A. 65-4970, 65-4971, 65-4972, 65-4973 and K.A.R. 100-22-1, 100-24-2 and 100-24-3 and all other applicable statutes, rules, or regulations.

**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

**IT IS SO ORDERED** on this 30<sup>th</sup> day of Dec, 2011.

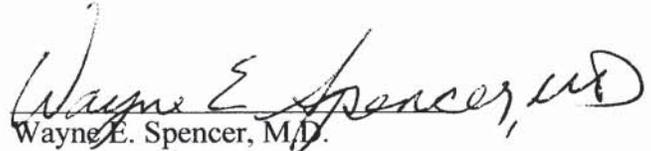
**FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:**

  
Kathleen Selzler Lippert  
Executive Director

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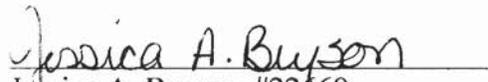
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19 Dec 2011  
Date

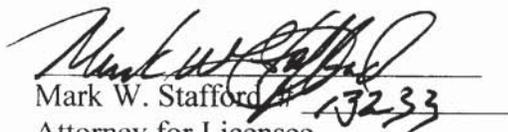
  
Wayne E. Spencer, M.D.  
Licensee

19 Dec 2011  
Date

PREPARED AND APPROVED BY:

  
Jessica A. Bryson, #22669  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612  
785-296-8022

AGREED TO BY:

  
Mark W. Stafford # 13233  
Attorney for Licensee  
Holbrook & Osborn, P.A.  
107 SW 6<sup>th</sup> Ave, Ste 210  
Topeka, KS 66603

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 30<sup>th</sup> day of December, 2011, to the following:

Wayne E. Spencer, M.D.  
Licensee  
confidential  
Topeka, Kansas 66614

Mark W. Stafford  
Attorney for Licensee  
Holbrook & Osborn, P.A.  
107 SW 6<sup>th</sup> Ave, Ste 210  
Topeka, KS 66603

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Jessica A. Bryson  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Melissa Massey  
Compliance Coordinator  
Kansas Board of Healing Arts

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800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

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

A handwritten signature in cursive script that reads "Cathy A. Brown". The signature is written in black ink and is positioned above a solid horizontal line that serves as a baseline for the signature.