

BEFORE THE KANSAS BOARD OF HEALING ARTS

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AUG 17 2009

In the Matter of)
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)
Abdel K. Tayiem, M.D.)
Kansas License No. 04-15418)
_____)

KS State Board of Healing Arts

KSBHA Docket No. 08-HA00164
OAH No. 08-HA0003

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Stevens, Associate Litigation Counsel ("Petitioner"), and Abdel K. Tayiem, M.D. ("Licensee"), by and through counsel, Mary E. Christopher and N. Larry Bork of Goodell, Stratton, Edmonds & Palmer, LLP, 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 current mailing address as provided to the Board is 215 M. Street, Atchison, Kansas 66002.
2. Licensee is or has been entitled to actively engage in the practice of medicine and surgery in the state of Kansas, having been issued License No. 04-15418 on approximately December 8, 1972. Licensee last renewed his license on or about May 19, 2009.
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.*
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. 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.

6. Licensee agrees that, in considering this matter, the Board is not beyond its jurisdiction as provided by law.

7. For purposes of this Consent Order, Licensee voluntarily and knowingly waives his right to a hearing in this matter in that 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. Further, 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. At all relevant times hereto, Licensee has been actively practicing medicine and surgery in Atchison and Leavenworth, Kansas. Licensee's specialty is general surgery.

10. Petitioner has alleged that Licensee deviated from the standard of care with respect to his treatment of eight (8) patients during the time period of 2000 to 2004, and that Licensee had his privileges at a Kansas Hospital revoked in 2004. The specific allegations are set forth in the First Amended Petition filed March 25, 2008. Such allegations, if proven, would constitute violations of certain provisions of the Healing Arts Act.

11. The investigative information and status of the pending action in this matter were fully reviewed and considered by the Board members who served on Disciplinary Panel No. 21. Disciplinary Panel No. 21 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

12. Licensee does not have any prior disciplinary action against his license.

13. Licensee specifically denies the allegations as set forth in the First Amended Petition but, for the sole purpose of entering into this Consent Order, has agreed to the provisions contained herein.

14. Pursuant to K.S.A. 65-2836(b), the Board has authority to revoke, suspend, censure, place under probationary conditions, impose a fine or otherwise limit Licensee's license for violations of the healing arts act.

15. As set forth in K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without necessity of proceeding to a formal hearing.

16. In lieu of proceeding to a formal hearing and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license to engage in the

practice of medicine and surgery, commencing upon the filing of this Consent Order with the Board. The terms of such disciplinary action shall be as follows:

SURGICAL LIMITATION

a) Licensee's license is hereby limited in that he shall not perform gastric bypass, vertical band gastroplasty, sleeve gastroplasty, or carotid endarterectomy surgeries; however,

i. The surgical limitations described in paragraph 16(a) do not restrict or otherwise prohibit Licensee from assisting with any surgeries, and Licensee may assist in the performance of any of the surgeries listed in paragraph 16(a).

ii. The surgical limitations described in paragraph 16(a) do not restrict or otherwise prohibit Licensee from rendering emergency medical treatment to patients with known or suspected complications of any of the surgeries listed in paragraph 16(a) and Licensee may render emergency medical care and treatment to patients with complications of the surgeries listed in paragraph 16(a).

b) ^(confidential)

(confidential)

c) (confidential)

d) (confidential)

SURGICAL MONITORING

e) Licensee's performance of laparoscopic Nissen and "Lap Band" surgeries (hereinafter referred to as "monitored surgeries") shall be subject to monitoring for a period of one (1) year or after the performance of fifteen (15) monitored surgeries, whichever occurs first, under the following terms:

- i. Licensee shall have monthly retrospective patient chart reviews of the monitored surgeries he performs by (See Addendum A), who is a Kansas-licensed physician and board-certified in general surgery;
- ii. At a minimum, Licensee must have performed and had reviewed at least five (5) of each type of monitored surgery in order for the monitoring requirement to terminate at the end of one (1) year;
- iii. If at the end of one (1) year, Licensee has not performed and had reviewed at least five (5) of each type of monitored surgery, the surgical monitoring would continue until a total of five (5) of each type is attained. However, if Licensee is deficient in only one (1) type of monitored surgery, the continued surgical monitoring would only be for the type of surgery that is deficient in number;
- iv. The surgical monitoring will commence August 14, 2009, upon the Board's approval of this Consent Order. At the conclusion of each month, Licensee shall provide to the monitor a copy of Licensee's office notes and the hospital chart for each patient on whom he performed a monitored surgery. A patient whose care is not completed or whose chart is not yet available at the end of any given month may be included in the next month's charts;
- v. Failure by Licensee to provide complete copies of patient charts for the monitor to review shall be deemed a violation of terms of the Consent Order;
- vi. The monitor must submit a monthly written report to the Board on or before the thirtieth (30th) day of each month for each chart reviewed from the previous month. The report shall state whether Licensee, in evaluating, performing surgery, providing post-operative care and documenting in the patient chart, is in compliance with the standard of care. Compliance with the standard of care means that Licensee is using sound reasoning and judgment and exercising surgical skill consistent with that which other general surgeons in the community would have used under similar circumstances. The monitor's report shall be on a form provided by Board staff and shall include the basis for all opinions;

- vii. In any given month, if there are no monitored surgeries to be reviewed, the corresponding monthly report submitted to the Board would merely indicate the same;
 - viii. Licensee shall bear all expenses associated with the surgical monitoring and is responsible for ensuring the timely submission of the monitor's reports;
 - ix. If the surgical monitor resigns or is otherwise no longer available, Licensee shall, within fifteen (15) days, propose a replacement surgical monitor to submit for approval to the Board's designee. The scheduled deadlines for patient chart reviews may be tolled and adjusted as is reasonably necessary due to resignation or unavailability of the monitor;
 - x. For any period of time that Licensee is not actively practicing in Kansas, the surgical monitoring provisions of this Consent Order shall be tolled and such period of time will not be counted in reducing the required timeframe; and
 - xi. The surgical monitoring will automatically terminate upon successful completion of all the surgical monitoring terms contained herein, unless Petitioner files a motion to modify this Consent Order or another request for disciplinary action against Licensee's license beforehand.
- f. Licensee shall at all times keep the Board informed of and immediately notify the Board regarding any changes of the practice locations and hospitals at which Licensee holds privileges.

17. 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.

18. 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. 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 Healing Arts Act.

19. Licensee hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent Order.

20. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported by the Board to any reporting entities authorized to receive disclosure of this Consent Order.

21. 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.

22. 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.

23. 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 proceeding, 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.

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

25. All correspondence or communication between Licensee and the Board relating to the probationary terms contained in this Consent Order shall be by certified mail addressed to the Kansas Board of Healing Arts, Attn: COMPLIANCE COORDINATOR, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

26. 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. Any violation will be also be considered a violation of this Consent Order and may subject Licensee to further disciplinary action by the Board.

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. 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, and is the Order of the Board.

IT IS FUTHER ORDERED that Licensee's license is hereby disciplined as follows:

SURGICAL LIMITATION

- a) Licensee's license is hereby limited in that he shall not perform gastric bypass, vertical band gastroplasty, sleeve gastroplasty, or carotid endarterectomy surgeries; however,
 - i. the surgical limitations described in paragraph 16(a) do not restrict or otherwise prohibit Licensee from assisting with any surgeries, and Licensee may assist in the performance of any of the surgeries listed in paragraph 16(a).
 - ii. The surgical limitations described in paragraph 16(a) do not restrict or otherwise prohibit Licensee from rendering emergency medical treatment to patients with known or suspected complications of any of the surgeries listed in paragraph 16(a) and Licensee may render emergency medical care and treatment to patients with complications of the surgeries listed in paragraph 16(a).

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SURGICAL MONITORING

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- i. Licensee shall have monthly retrospective patient chart reviews of the monitored surgeries he performs by (See

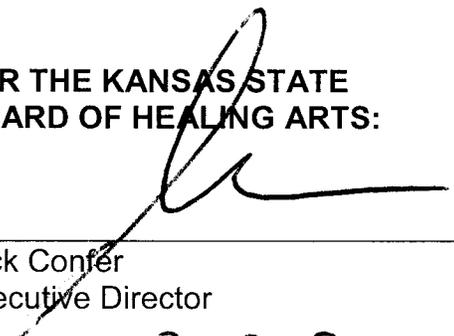
Addendum A), who is a Kansas-licensed physician and board-certified in general surgery;

- ii. At a minimum, Licensee must have performed and had reviewed at least five (5) of each type of monitored surgery in order for the monitoring requirement to terminate at the end of one (1) year;
- iii. If at the end of one (1) year, Licensee has not performed and had reviewed at least five (5) of each type of monitored surgery, the surgical monitoring would continue until a total of five (5) of each type is attained. However, if Licensee is deficient in only one (1) type of monitored surgery, the continued surgical monitoring would only be for the type of surgery that is deficient in number;
- iv. The surgical monitoring will commence August 14, 2009, upon the Board's approval of this Consent Order. At the conclusion of each month, Licensee shall provide to the monitor a copy of Licensee's office notes and the hospital chart for each patient on whom he performed a monitored surgery. A patient whose care is not completed or whose chart is not yet available at the end of any given month may be included in the next month's charts;
- v. Failure by Licensee to provide complete copies of patient charts for the monitor to review shall be deemed a violation of terms of the Consent Order;
- vi. The monitor must submit a monthly written report to the Board on or before the thirtieth (30th) day of each month for each chart reviewed from the previous month. The report shall state whether Licensee, in evaluating, performing surgery, providing post-operative care and documenting in the patient chart, is in compliance with the standard of care. Compliance with the standard of care means that Licensee is using sound reasoning and judgment and exercising surgical skill consistent with that which other general surgeons in the community would have used under similar circumstances. The monitor's report shall be on a form provided by Board staff and shall include the basis for all opinions;
- vii. In any given month, if there are no monitored surgeries to be reviewed, the corresponding monthly report submitted to the Board would merely indicate the same;

- viii. Licensee shall bear all expenses associated with the surgical monitoring and is responsible for ensuring the timely submission of the monitor's reports;
 - ix. If the surgical monitor resigns or is otherwise no longer available, Licensee shall, within fifteen (15) days, propose a replacement surgical monitor to submit for approval to the Board's designee. The scheduled deadlines for patient chart reviews may be tolled and adjusted as is reasonably necessary due to resignation or unavailability of the monitor;
 - x. For any period of time that Licensee is not actively practicing in Kansas, the surgical monitoring provisions of this Consent Order shall be tolled and such period of time will not be counted in reducing the required timeframe; and
 - xi. The surgical monitoring will automatically terminate upon successful completion of all the surgical monitoring terms contained herein, unless Petitioner files a motion to modify this Consent Order or another request for disciplinary action against Licensee's license beforehand.
- f. Licensee shall at all times keep the Board informed of and immediately notify the Board regarding any changes of the practice locations and hospitals at which Licensee holds privileges.

IT IS SO ORDERED.

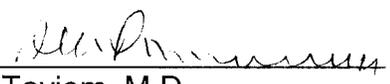
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**



Jack Confer
Executive Director

8-17-09

Date



Abdel K. Tayiem, M.D.
Licensee

8/14/09

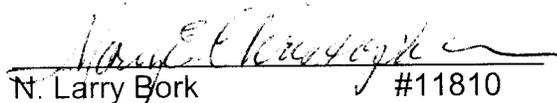
Date

PREPARED AND APPROVED BY:



Kelli J. Stevens #16032
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

APPROVED BY:



N. Larry Bork #11810
Mary E. Christopher #20253
Goodell, Stratton, Edmonds & Palmer, LLP
515 S. Kansas Avenue
Topeka, Kansas 66603-3999
(785) 233-0593

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing **CONSENT ORDER** was served this 17th day of August, 2009, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Abdel K. Tayiem, M.D.
215 M Street
Atchison, Kansas 66002

N. Larry Bork
Mary E. Christopher
Goodell, Stratton, Edmonds & Palmer, LLP
515 South Kansas Avenue
Topeka, Kansas 66603

and a copy was hand-delivered to:

Kelli J. Stevens, Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

Melissa Massey, Compliance Coordinator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was filed with the office of:

Jack Confer, Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



ADDENDUM A

Elizabeth K. Paulsen, M.D.
20375 W. 151st Street, #463
Olathe, KS 66061

Monitoring Lap Nissen surgeries

Fouad Hafiz Hachem, M.D.
1110 St. Mary's Road, Suite 201
Junction City, KS 66441

Monitoring Lap Band surgeries