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APR 20 2009

KS State Board of Healing Arts

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

In the Matter of)
)
PAUL WAYNE TOMA, D.O.)
Kansas License No. 05-20529)
Application for Reinstatement of)
License to Practice Osteopathic)
Medicine and Surgery)
_____)

Investigation No. 09-00298
Docket No. 09-HA- *00177*

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Stacy R. Bond, Associate Litigation Counsel ("Petitioner") and Paul Wayne Toma, D.O. ("Licensee/Applicant"), with counsel Scott E. Vincent, and move the Board for approval of a Consent Order as a condition of being granted a license to practice osteopathic medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee/Applicant's last known mailing address to the Board is 1111 McIntosh Cir., Suite B, Joplin, Missouri, 64804.
2. Licensee/Applicant submitted an application for reinstatement of his license to practice osteopathic medicine and surgery on July 23, 2008.
3. Licensee/Applicant is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-20529 on approximately June 15, 1984. Licensee's license is currently cancelled.
4. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts and allied health

professionals, specifically the practice of osteopathic medicine and surgery, K.S.A. 65-2801, et. seq. and K.S.A. 65-2870.

5. 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.

6. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent order shall constitute the Board's Final Order.

7. The Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee/Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

8. Licensee/Applicant voluntarily and knowingly waives his right to a hearing. Licensee/Applicant 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/Applicant voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

9. 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/Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

10. The Board has received information and investigated the same, and has reason to believe there are grounds to deny a reinstated license with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et. seq.*

11. Licensee/Applicant submitted an application for reinstatement of license on or about July 23, 2008. In his application Licensee/Applicant answered "no" to question 19 in section V. Specifically, question 19 asks:

- a. Have you ever been a defendant in a legal action involving professional liability (Malpractice) or had a professional liability claim paid on your behalf or paid such a claim yourself?

12. On September 26, 2008, Board staff received from Licensee/Applicant a copy of a National Practitioner's Database (NPDB) report regarding Licensee/Applicant. The NPDB report disclosed two malpractice actions against Licensee/Applicant.

13. On October 31, 2008, Licensee/Applicant was required by Board staff to explain his answer of "no" on the disciplinary question regarding malpractice actions and to provide information regarding the malpractice actions to Board staff.

14. On November 19, 2008, Licensee/Applicant submitted a corrected application with question 19 of the disciplinary action answered "yes". Licensee/Applicant provided information regarding the two malpractice actions reflected in the NPDB report and information regarding two additional malpractice actions. Licensee/Applicant failed to provide an explanation for his previous "no" answer to question 19.

15. On December 5, 2008, Licensee/Applicant was again asked by Board staff to provide an explanation for his "no" answer. On December 9, 2008, Licensee/Applicant provided his explanation by stating "Regarding question #19, I

simply overlooked or misread the question as I was completing the application which had 21 questions. All of the 21 questions were answered "no" except this one. Obviously, we knew we had a malpractice history since we had provided this information through the data bank. Again, my sincere apologies for overlooking this and we do believe we have provided adequate documentation of our malpractice history for your review."

16. On January 8, 2009, Licensee/Applicant was questioned regarding a malpractice case in Kansas which he did not disclose. On January 12, 2009, Licensee/Applicant stated the following "However, I was involved in one malpractice case in Kansas. This did involve a case after I closed my practice. I simply saw him in the emergency room along with the other emergency room physician and transferred him to Kansas City for treatment. No surgery was done on this gentleman, but we were cited for improper transport since it was alleged we should have sent him by helicopter rather than ground ambulance even though we didn't have helicopter service at that time. Regardless, this case did go to trial, a verdict in our favor was found and no payout was made on this case. Nor were there any appeals or anything else develop from this case."

17. Licensee/Applicant contends that his failure to properly disclose malpractice actions to the Board was negligent and was not intentional.

18. Licensee/Applicant acknowledges that if formal hearing proceedings were conducted and Licensee/Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that grounds exist to deny Licensee licensure under the Healing Arts Act. Licensee/Applicant further waives his right to dispute or

otherwise contest the allegations contained in the above paragraphs in any further proceedings before this Board.

19. Pursuant to K.S.A. 65-2836 the Board has grounds to revoke, suspend, limit or deny licensure. Specifically: (1) K.S.A 65-2836(a) provides that grounds exist to deny licensure if Licensee/Applicant has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license.

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

21. All pending investigation materials regarding Licensee/Applicant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel #23. The Disciplinary Panel authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

22. In lieu of conducting formal proceedings, Licensee/Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following as a condition to being granted an active license to engage in the practice of osteopathic medicine and surgery in the State of Kansas:

PUBLIC CENSURE

Licensee agrees to be publicly censured for the act of misrepresenting on his application that he had not been subject to malpractice actions.

23. Licensee/Applicant's failure to comply with the provisions of the Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate in accordance with the Kansas Administrative Procedure Act.

24. 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.

25. Licensee/Applicant 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/Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee/Applicant 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.

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

27. 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.

28. Licensee/Applicant 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/Applicant is not present. Licensee/Applicant 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.

29. Licensee/Applicant 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 and 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.

30. Licensee/Applicant acknowledges that he has read this Consent Order and fully understands the contents.

31. Licensee/Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

32. All correspondence or communication between Licensee/Applicant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas Board of Healing Arts, Attention: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

33. Licensee/Applicant 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.

34. 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.

35. 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 as findings of fact and conclusions of law.

IT IS FUTHER ORDERED that upon meeting all technical requirements for licensure, Licensee/Applicant shall be granted an active license to engage in the practice of osteopathic medicine and surgery.

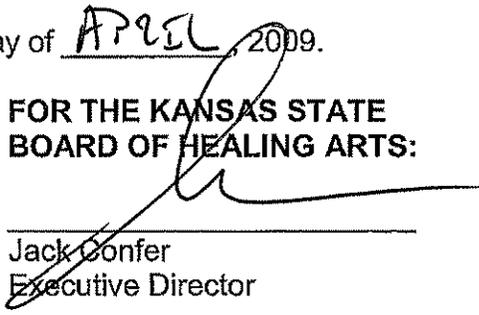
IT IS FURTHER ORDERED that in lieu of conducting a formal proceeding, Licensee/Applicant by his signature affixed to this Consent Order, voluntarily agrees to the following as a condition to being granted an active license to engage in the practice of osteopathic medicine and surgery:

PUBLIC CENSURE

Licensee agrees to be publicly censured for the act of misrepresenting on his application that he had not been subject to malpractice actions.

IT IS SO ORDERED on this 20th day of APRIL, 2009.

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



Jack Confer
Executive Director

4-20-09
Date

Paul Wayne Toma D.O.

Paul Wayne Toma, D.O.
Licensee/Applicant

2/18/09

Date

Scott E. Vincent

Scott E. Vincent #15361
Attorney for Licensee/Applicant

2/18/09

Date

PREPARED AND APPROVED BY:

Stacy R. Bond

Stacy R. Bond #17673
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing **CONSENT ORDER** was served this 21st day of April, 2009, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

Paul Wayne Toma, D.O.
1111 McIntosh Cir., Suite B
Joplin, MO 64804

Scott E. Vincent
Vincent Fontg & Hansen LLC
330 West 47th Street, Suite 250
Kansas City, MO 64112

and a copy was hand-delivered to:

Stacy R. Bond
Associate Litigation Counsel
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 Blvd.
Topeka, Kansas 66603

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

and the original was hand-delivered for filing to:

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



Cathy Brown
Executive Assistant