

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

In the Matter of)
)
JOHN R. TOTH, M.D.) Docket No. 05-HA-
Kansas License No. 4-18310)
_____)

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Petitioner”), by and through Stacy L. Cook and Diane L. Bellquist, and John R. Toth, M.D. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice medicine. The parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is 2115 W. 10th Street, Topeka, Kansas 66604.
2. Licensee was issued License No. 4-18310 on approximately August 13, 1979. Licensee currently holds a license to engage in the practice medicine and surgery in the State of Kansas.
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.
4. This Consent Order and the filing of such document are in accordance with the applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 65-2838, without the necessity of proceeding to a formal hearing.
5. Upon approval, the provisions in this Consent Order shall constitute the

findings of the Board, and this Consent Order shall be the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

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

8. 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.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that 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.

10. On or about, February 3, 2003, Licensee failed to timely respond to pages from the hospital nursing staff regarding a neonate. Licensee had previously been notified of the infant's respiratory difficulties. Licensee also made a diagnosis without examining the infant.

11. Prior to February 3, 2003, there were other noted instances where Licensee failed to timely respond to pages from nursing staff.

12. Pursuant to K.S.A. 65-2836 and K.S.A. 65-2837, the Board has grounds to limit, suspend or revoke Licensee's license.

13. In lieu of conducting formal proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license to practice medicine and surgery:

a. Licensee is publicly censured for failure to timely respond to hospital pages on multiple occasions; and

b. Licensee must respond to his pages at all hospitals where he has privileges within fifteen (15) minutes after the page. In accordance with such requirement, Licensee shall submit to the Board on a quarterly basis a letter from the risk managers at each of the hospitals where he has privileges. Such letter shall include whether there are any known complaints and/or incident reports that Licensee has failed to respond appropriately when paged by hospital staff. Additionally, Licensee shall submit to the Board on a quarterly basis page logs maintained by the staff in the obstetrics departments at each of the hospitals where Licensee maintains privileges (sample page logs are attached hereto collectively as Exhibit "A"). This requirement shall be in effect for at least one year and Licensee must petition the Board for modification or discontinuance of this requirement. The aforementioned documentation is due on or before the following quarterly deadlines:

<u>Quarter Report</u>	<u>Reporting Period</u>	<u>Due Date</u>
I	May 1- July 31, 2005	August 15, 2005
II	Aug 1 – Oct 31, 2005	Nov 15, 2005
III	Nov 1, 2005 – Jan 31, 2006	Feb 15, 2006
IV	Feb 1 – April 30, 2006	May 15, 2006

14. Licensee's failure to comply with this Consent Order will result in the Board

taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

15. 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.

16. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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 and 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.

17. 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 Databank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of the Consent Order.

18. 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.

19. 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 or settlement.

20. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

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

22. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

23. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Diane L. Bellquist, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

24. 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.

25. 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.

26. 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 FURTHER ORDERED that:

- a. Licensee is publicly censured for failure to timely respond to hospital pages on multiple occasions; and
- b. Licensee must respond to his pages at all hospitals where he has privileges within fifteen (15) minutes after the page. In accordance with such requirement, Licensee shall submit to the Board on a quarterly basis a letter from the risk managers at each of the hospitals where he has privileges. Such letter shall include whether there are any known complaints and/or incident reports that Licensee has failed to respond appropriately when paged by hospital staff. Additionally, Licensee

shall submit to the Board on a quarterly basis page logs maintained by the staff in the obstetrics departments at each of the hospitals where Licensee maintains privileges (sample page logs are attached hereto collectively as Exhibit "A"). This requirement shall be in effect for at least one year and Licensee must petition the Board for modification or discontinuance of this requirement. The aforementioned documentation is due on or before the following quarterly deadlines:

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IT IS SO ORDERED on this 25th day of __April__, 2005.

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

/s/ _____
Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:

/s/ Diane L. Bellquist _____
Stacy L. Cook #16385
Diane L. Bellquist #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:

_____/s/_____
John R. Toth, M.D.
Licensee

CERTIFICATE OF SERVICE

I, Diane Bellquist, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served on the 25th day of April, 2005 by United States mail, first-class postage pre-paid and addressed to:

John R. Toth, M.D.
2115 W. 10th Street
Topeka, Kansas 66604

And the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

_____/s/_____
iane L. Bellquist