

CAB

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

In the Matter of)	
)	Docket No. 15-HA00023
Jesse W. Vierthaler, M.D.)	
Kansas License No. 04-35372)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Respondent”), and Jesse W. Vierthaler, M.D. (“Licensee”), by and through counsel, Ivery Goldstein and Carol Ruth Bonebrake of Simpson, Logback, Lynch, Norris, P.A., 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**
Lawrence, Kansas 66049.
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. 04-35372 on October 21, 2011.
3. Licensee placed his license in inactive status on or about May 21, 2014, **Confidential**
Confidential
4. On or about July 18, 2014, Licensee submitted an Application for Change of Designation/Type to change the status of his license to practice medicine and surgery in the State of Kansas from inactive to active. The status change to active was issued per the terms of a Consent Order signed on or about August 13 2014,

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but due to events occurring on or about August 29, 2014, Applicant submitted another Application for Change of Designation/Type to change the status of his license to inactive on September 3, 2014.

5. On or about April 3, 2015, Licensee submitted an Application for Change of Designation/Type to change the status of his license to practice medicine and surgery in the State of Kansas from inactive to active. Such application was deemed complete and filed with the Board on July 1, 2015.
6. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), and K.S.A. 65-4925.
7. 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.
8. 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 constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
9. 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.
10. 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 substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

11. 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.
12. 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(c), K.S.A. 65-2836(e), and K.S.A. 65-2836(k) to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
13. On October 27, 2011, the Board ratified a Consent Order in KSBHA Docket No. 12-HA00039, which granted Licensee a license to practice medicine and surgery in Kansas. This original Consent Order required him **Confidential**
Confidential

Further, the original Consent Order required him **Confidential**
Confidential

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20. On August 13, 2014, Licensee signed a proposed Consent Order (hereinafter “August 2014 Consent Order”), which was also signed by the Board’s Executive Director on or about August 15, 2014. However, the August 2014 Consent Order was never presented to the Board for review as a result of events occurring on or about August 29, 2014, and was, therefore, never ratified by the Board. The August 2014 Consent Order should be treated as withdrawn by the parties.

21. Licensee was arrested for driving under the influence (DUI) of alcohol on or about August 29, 2014, Confidential Licensee was ultimately convicted of the charge DUI (2nd), which is a Class A, non-person, misdemeanor.
22. Confidential
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25. 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.
26. Licensee violated K.S.A. 65-2836(c) because he has been convicted of a Class A misdemeanor for DUI (2nd).
27. Licensee violated K.S.A. 65-2836(e) Confidential

28. Further, Licensee violated K.S.A. 65-2836(k) because he violated the Consent Order, a lawful Board Order, which he entered into with the Board in KSBHA Docket No. 12-HA00039.
29. 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.
30. 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.
31. All pending investigation materials in KSBHA Investigative Case Number 15-00077 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 26. Disciplinary Panel No. 26 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
32. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present

evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

33. 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.

34. 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.

35. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
36. 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.
37. 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.
38. 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.
39. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
40. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

41. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

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

42. 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.

43. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final 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.

44. This Consent Order constitutes public non-disciplinary action.

45. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

46. Licensee understands that, upon Licensee's signing this Consent Order, **Confidential**
Confidential abiding by the terms of this Consent Order, and upon an authorized Board signature, an active status will be issued. Licensee further understands that the active status is only effective until a hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the active status shall immediately return

to inactive status at the conclusion such hearing. If the Board ratifies this Consent Order, Licensee's license shall remain in active status under the terms of this Consent Order and be subject to renewal criteria as set forth under the Kansas Healing Arts Act, K.S.A. 65-2801, *et. seq.*.

47. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice of medicine and surgery:

MONITORING

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67. Licensee will furnish a copy of this Consent Order to each and every state in which he holds licensure or applies for licensure and to an appropriate work site supervisor or personnel Confidential

68. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offenses.

69. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

70. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within five (5) days of any such change.

71. All correspondence or communication between Licensee and the Board relating to the Consent Order as well **Confidential**

Confidential

shall be by certified

mail addressed to:

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

TIMEFRAME

72. The above monitoring and **Confidential** are not self-terminating. The above monitoring and **Confidential** shall be for an indefinite period of time that is to continue in perpetuity. The criteria for requesting modification of any of the monitoring or **Confidential** are as set forth above. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the monitoring and **Confidential** will remain in effect but will be tolled and not counted towards reducing the aforementioned timeframes.

73. All requests for modification of this Consent Order shall be by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Executive Director
800 SW Jackson Lower Level-Suite A
Topeka, Kansas 66612

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 FURTHER ORDERED that upon meeting all technical requirements for licensure, Licensee shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 2 day of July, 2015.

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

Confidential

Kathleen Selzer Lippert 10
Executive Director

7/2/15
Date

Confidential

Jesse W. Vierthaler, M.D.
Licensee

6/29/15
Date

PREPARED AND APPROVED BY:

Jessica A. Bryson
Jessica A. Bryson, #22669

Associate Litigation Counsel
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AGREED TO BY:

Carol Ruth Bonebrake
Carol Ruth Bonebrake, #12672

Ivery A. Goldstein, #22621
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Overland Park, Kansas 66210
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Email: cbonebrake@slln.com

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Jesse W. Vierthaler, M.D.

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 6th day of July, 2015, to the following:

Jesse W. Vierthaler, M.D.
Licensee
Confidential
Lawrence, Kansas 66049

Carol Ruth Bonebrake, #12672
Ivery A. Goldstein, #22621
Simpson, Logback, Lynch, Norris, P.A.
7400 West 110th Street, Suite 600
Overland Park, Kansas 66210

And the original was hand-filed with:

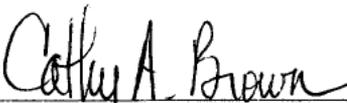
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was delivered to:

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Compliance Coordinator
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Staff Member

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Jesse W. Vierthaler, M.D.