

BEFORE THE BOARD OF HEALING ARTS OF  
THE STATE OF KANSAS

FILED CAB  
JUN 06 2011

In the Matter of )  
)  
**KIMBERLY WIRTHS, M.D.** )  
Kansas License No. 04-25854 )  
\_\_\_\_\_ )

KS State Board of Healing Arts

KSBHA Docket No. 11-HA 00110

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Stevens, Litigation Counsel (“Petitioner”), and Kimberly Wirths, M.D.. (“Licensee”), by and through counsel, Mark 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 current mailing address as provided to the Board is confidential  
confidential Overland Park, Kansas 66213.

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. 04-25854 on approximately August 12, 1995. Licensee currently holds an active license, having last renewed such license on or about June 15, 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. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her 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 investigative information in this matter were fully reviewed and considered by the Board members who served on the Disciplinary Panel who authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

10. At all relevant times hereto, Licensee has held an active current license to practice medicine and surgery in the State of Kansas.

11. Licensee practices family medicine and has previously practiced obstetrics.

12. The Board has received information and has reason to believe that on two (2) occasions in 2008, labor and delivery care provided by Licensee was outside the standard of care and involved inadequate communication by Licensee with the nursing staff.

13. There are grounds for discipline against Licensee's license based on a violation of the Healing Arts, specifically, K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24), for repeated failure to practice the healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

14. Licensee denies the allegations contained in paragraphs 12 and 13 above, but consents to this Board action in order to amicably resolve such allegations.

15. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, censure, place under probationary conditions, impose a fine or otherwise limit a licensee's license for violations of the healing arts act.

16. 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.

17. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to non-disciplinary action against her license to engage in the practice of medicine and surgery in the form of education and practice monitoring. The terms of which shall be as follows:

### **EDUCATION**

- a. Licensee shall attend and successfully complete the Case Western Reserve School of Medicine's course entitled "Managing Difficult

Communications in Medical Practice” on November 17-19, 2010, at Licensee’s own expense;

- b. On or before December 15, 2010, Licensee shall submit written documentation of her completion of the course to the attention of: Compliance Coordinator, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level- Suite A, Topeka, Kansas 66603;

**PRACTICE MONITORING**

- c. Licensee shall be subject to a practice monitoring plan whereby Licensee would have concurrent consultation with a board-certified obstetrician during the course of caring for all patients in labor and delivery. The practice monitoring plan shall be for a specified period of time and provide for periodic case reporting to the Board;
- d. The parties shall develop the specific terms and timeframe of the practice monitoring plan. Such plan shall be considered for approval by the Board’s appointed Presiding Officer, Merle Hodges, Jr., M.D.;
- e. The approved practice monitoring plan shall be deemed to be incorporated herein by reference as if fully restated upon its approval and without further proceedings;
- f. In the event Licensee seeks obstetrical privileges at a health care facility, Licensee agrees to give the Board at least thirty (30) days notice before applying for such privileges;
- g. The implementation of the practice monitoring plan requirement shall be tolled during all times that Licensee does not have obstetrical privileges at a health care facility; and

h. 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.

18. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

19. 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.

20. 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.

21. 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 by law to receive disclosure of this Consent Order. The Board affirms that the Consent Order does not contain any terms which would be reportable to the National Practitioner Databank.

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, or 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.

25. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

26. All correspondence or communication between Licensee and the Board relating to the non-disciplinary action terms contained in this Consent Order shall be by certified mail addressed to the Kansas Board of Healing Arts, Attn: COMPLIANCE COORDINATOR, 800 SW Jackson Street, Lower Level- Suite A, Topeka, Kansas 66612.

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

28. Upon execution of this Consent Order by affixing the Board-authorized signature below of the Presiding Officer appointed by the Board to issue a Final Order, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Final Order when filed with the Office of the Executive Director for the Board and no further order is required.

29. 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 subject to non-disciplinary action against her license to engage in the practice of medicine and surgery in the form of education and practice monitoring. The terms of which shall be as follows:

## **EDUCATION**

- a. Licensee shall attend and successfully complete the Case Western Reserve School of Medicine's course entitled "Managing Difficult Communications in Medical Practice" on November 17-19, 2010, at Licensee's own expense;
- b. On or before December 15, 2010, Licensee shall submit written documentation of her completion of the course to the attention of: Compliance Coordinator, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612;

## **PRACTICE MONITORING**

- c. Licensee shall be subject to a practice monitoring plan whereby Licensee would have concurrent consultation with a board-certified obstetrician during the course of caring for all patients in labor and delivery. The practice monitoring plan shall be for a specified period of time and provide for periodic case reporting to the Board;
- d. The parties shall develop the specific terms and timeframe of the practice monitoring plan. Such plan shall be considered for approval by the Board's appointed Presiding Officer, Merle Hodges, Jr., M.D.;
- e. The approved practice monitoring plan shall be deemed to be incorporated herein by reference as if fully restated upon its approval and without further proceedings;

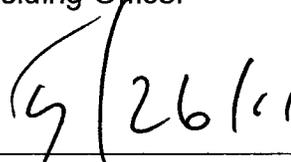
- f. In the event Licensee seeks obstetrical privileges at a health care facility, Licensee agrees to give the Board at least thirty (30) days notice before applying for such privileges;
- g. The implementation of the practice monitoring plan requirement shall be tolled during all times that Licensee does not have obstetrical privileges at a health care facility; and
- a. 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.**

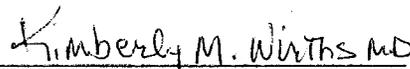
**FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:**



Merle Hodges, Jr., M.D.  
Presiding Officer



Date



Kimberly Wirths, M.D.  
Licensee



Date

**PREPARED AND APPROVED BY:**



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Kelli J. Stevens #16032  
Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065

**APPROVED BY:**

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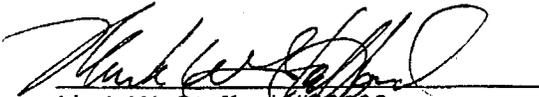
Mark W. Stafford, #13233  
*Attorney for Licensee*  
Holbrook & Osborn, P.A.  
800 SW Jackson, Suite 900  
Topeka, Kansas 66612  
(785)

**PREPARED AND APPROVED BY:**



Kelli J. Stevens #16032  
Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065

**APPROVED BY:**



Mark W. Stafford, #18233  
*Attorney for Licensee*  
Holbrook & Osborn, P.A.  
800 SW Jackson, Suite 900  
Topeka, Kansas 66612  
(785)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing **CONSENT ORDER** was served this 6<sup>th</sup> day of June, 2011, via United States mail, first-class, postage prepaid, and addressed to the following:

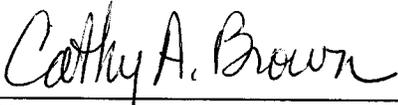
Mark Stafford  
107 SW 6<sup>th</sup> Avenue  
Topeka, Kansas 66603

and a copy was hand-delivered to:

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

and the original was filed with the office of:

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

  
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Signature