

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 acting beyond its jurisdiction as provided by law.

7. 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.

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. In the event the Board does not approve the Consent Order, the Consent Order shall be deemed null and void and of no further force and effect.

9. Petitioner has alleged that Licensee's treatment of fourteen patients deviated from the applicable standard of care. In addition, Petitioner has alleged that Licensee had multiple adverse settlements against him resulting from medical liability claims related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under the Healing Arts Act.

10. Licensee admits that he has had eleven adverse settlements against him resulting from medical liability claims related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action pursuant to K.S.A. 65-2836(w).

11. -----confidential-----

12. Licensee, for the sole purpose of this Consent Order and without admitting any liability or wrongdoing, consents to a finding that grounds for discipline of his medical license exist. Licensee waives his right to dispute or otherwise contest the grounds for this disciplinary action in any future proceeding before this Board. Specifically, Licensee agrees that he waives his right to contest the allegations contained in the Second Amended Petition.

13. 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.

14. 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 the following disciplinary action with respect to his license to engage in the practice of medicine and surgery:

- a. Licensee surrenders his license to practice medicine and surgery. Such surrender shall be treated as a revocation for all purposes, including reporting. Licensee may not apply for reinstatement of his license until three years after the date the Consent Order is filed with the Board;
- b. Licensee agrees that if he applies for reinstatement of his license, such

application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by Vakas v. The Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws, and rules and regulations regarding qualification for licensure and reinstatement; and

- c. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in the Second Amended Petition will be considered as findings of fact and conclusions of law.

15. 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.

16. All protective orders entered into in this matter shall remain in effect.

17. 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.

18. 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 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

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

25. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 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.

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 as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that 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 the following disciplinary action with respect to his license to engage in the practice of medicine and surgery:

- a. Licensee surrenders his license to practice medicine and surgery. Such surrender shall be treated as a revocation for all purposes, including reporting. Licensee may not apply for reinstatement of his license until three years after the date the Consent Order is filed with the Board;
- b. Licensee agrees that if he applies for reinstatement of his license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by Vakas v. The Kansas State Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws, and rules and regulations regarding qualification for licensure and reinstatement; and
- c. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in the Second Amended Petition will be considered as findings of fact and conclusions of law.

IT IS SO ORDERED on this 2ND day of __February__, 2004.

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

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

PREPARED AND APPROVED BY:

_____/s/ SLC_____
Stacy L. Cook #16385
Litigation Counsel
Kelli J. Benintendi #16032
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

_____/s/_____
Leonard R. Frischer
Southcreek Building XIV
13220 Metcalf, Suite 100
Overland Park, Kansas 66213

Jon E. Beetem
Daniel P. Card, II
Beetem law Offices, PC
505 E. State Street
P.O. Box 476
Jefferson City, Missouri 65102-0476
ATTORNEYS FOR LICENSEE

AGREED TO BY:

_____/s/_____
Richard D. Zujko, M.D.
Licensee

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the CONSENT ORDER by United States mail, postage prepaid, on this 2nd day of February, 2004 to the following:

Richard D. Zujko, M.D.
2138 N. Kansas
Libera, Kansas 67901

Leonard R. Frischer
Jon Beetem
Daniel P. Card, II
Southcreek Building XIV
13220 Metcalf, Suite 100
Overland Park, Kansas 66213

and the original was hand-delivered to:

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

_____/s/_____
Stacy L. Cook