FILED
FEB 03 2015
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	KSBHA Docket No. 15-HA00062
	)	
Adnan A. Al-Ashkar, M.D.	)	
Kansas License No. 04-18803	)	
	)	

CONSENT ORDER FOR SURRENDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Joshana L. Offenbach, Associate Disciplinary Counsel, ("Petitioner"), and Adnan A. Al-Ashkar, M.D. ("Licensee"), *pro se*, 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 as provided to the Board is: Confidential Confidential Leavenworth, Kansas 66048.

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. 04-18803 on approximately December 5, 1980. Licensee's license designation is currently inactive, having last been renewed on approximately June 30, 2014.

3. At all times relevant to the allegations set forth in Case Number 2014-CR-428 filed in the 1st Judicial District, District Court, Leavenworth County Kansas, Licensee held a current license for the practice of medicine and surgery in the State of Kansas.

4. 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.

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. 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.

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

9. The Board has received information and investigated the same, and has reason to believe there are grounds pursuant to K.S.A. 65-2836 to take disciplinary action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. On or about July 3, 2014, a Complaint/Information ("Complaint") was filed against Licensee in the 1st Judicial District, District Court, Leavenworth County, Kansas. The complaint listed twelve (12) counts. The specific allegations are set forth therein and incorporated into this Consent Order by reference. The counts are as follows:

a. Count 1: "Unlawful acts concerning computers" in violation of K.S.A. 21-5839(1)(2), K.S.A. 21-5839(b)(1), K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee used a computer to submit false claims to Medicaid, a Severity Level 8 nonperson felony on, about or between July 7, 2009 through on or about July 19, 2013.

b. Count 2: "Making a false claim to the Medicaid program" in violation of K.S.A. 21-5927(a)(1), K.S.A. 21-5927(b)(2), K.S.A. 21-5933, K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee knowingly and with the intent to defraud made false and/or fraudulent claims for office visits with the full amount being $25,000 or more, a Severity Level 7 nonperson felony on, about or between January 1, 2009 through on or about July 19, 2013.

c. Counts 3 - 9: "Obstruction of a Medicaid Fraud Investigation" in violation of K.S.A. 21-5929(a)(2), K.S.A. 21-5929(b), K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee, during a Medicaid fraud investigation, fraudulently

documented in the medical record of Patient Confidential a Severity Level 9 nonperson felony:

i. Count 3: On, about or between April 2012 through on or about June 2012 with the record dated November 3, 2011;

ii. Count 4: On, about or between June 2012 through on or about September 18, 2013 with the record dated November 3, 2011;

iii. Count 5: On, about or between April 2012 through on or about June 2012 with the record dated January 19, 2012;

iv. Count 6: On, about or between June 2012 through September 18, 2013 with the record dated January 19, 2012;

v. Count 7: On, about or between April 2012 through September 18, 2013 with the record dated March 29, 2012;

vi. Count 8: On, about or between April 2012 through on or about June 2012 with the record dated October 25, 2011; and

vii. Count 9: On about or between June 2012 through on or about September 18, 2013 with the record dated October 25, 2011.

d. Count 10: "Obstruction of a Medicaid Fraud Investigation" in violation of K.S.A. 21-5929(a)(2), K.S.A. 21-5929(b), K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee, during a Medicaid fraud investigation, fraudulently documented in the medical record of Patient Confidential a Severity Level 9 nonperson felony on, about or between June 2012 through on or about September 18, 2013 with the record dated October 19, 2011.

e. Count 11: "Theft" in violation of K.S.A. 21-5801(a)(2), K.S.A. 21-5801(b)(3), K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee obtained control over property by deception with the intent to permanently deprive the owner of at least $1,000, but less than $25,000, a Severity Level 9 nonperson felony on, about or between July 7, 2009 through on or about July 19, 2013.

f. Count 12: "Destruction or concealment of records" in violation of K.S.A. 21-5931(a)(1), K.S.A. 21-5931(b), K.S.A. 21-6611(a) and K.S.A. 21-6804 in that Licensee intentionally destroyed or concealed patient records that were to be fully disclosed regarding claims submitted or payment received under the Medicaid program on, about or between April 1, 2012 through September 18, 2013.

11. On or about September 3, 2014, a Plea Agreement was filed and signed by Licensee in the 1st Judicial District, District Court, Leavenworth County, Kansas. Licensee agreed to plead "no contest" to Count 1 through 6. Licensee agreed to the following: paying restitution to the State of Kansas Medicaid Program in the amount of $12,609.59, voluntarily relinquishing all Medicaid provider numbers and allowing his DEA prescribing number to expire while agreeing that he would not renew it in the future. The specific allegations are set forth therein and incorporated into this Consent Order by reference.

12. On or about September 3, 2014, a Plea Agreement was filed and signed by Licensee in the 1st Judicial District, District Court, Leavenworth County, Kansas. Licensee was convicted of "Making A False Claim to the Medicaid Program" a Severity Level 7 nonperson felony (Count 2), "Unlawful Acts Concerning Computers" a Severity Level 8 Nonperson felony

(Count 1), "Obstruction of a Medicaid Fraud Investigation" a Severity Level 9 Nonperson felony (Count Nos. 3, 4, 5, 6), The specific allegations are set forth therein and incorporated into this Consent Order by reference.

13. On or about November 12, 2014, a Kansas Sentencing Guidelines Journal Entry of Judgment was filed in the 1st Judicial District, District Court, Leavenworth County, Kansas.

14. Licensee consents to a finding that Licensee's acts, as set forth in the Plea Agreement and Kansas Sentencing Guidelines Journal Entry of Judgment, constitute further violations of the Healing Arts Act as set forth in K.S.A. 65-2836.

15. Licensee violated K.S.A. 65-2836(b) by committing unprofessional, dishonorable conduct and professional incompetency when he attempted to defraud Medicaid by using a computer to submit false claims to Medicaid.

16. Licensee violated K.S.A. 65-2836(c) when he was convicted of a felony, whether or not related to the practice of the healing arts. K.S.A. 65-2836(c) further states:

> The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust. In the case of a person who has been convicted of a felony and who applies for an original license or to reinstate a canceled license, the application for a license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

17. Licensee violated K.S.A. 65-2836(f) by willfully and repeatedly violating rules and regulations of the secretary of health and environment relevant to the practice of the healing arts when he violated K.A.R. 30-5-60(a) by not complying with applicable state laws,

administrative regulations, or program issuances concerning medical providers, not complying with the a Kansas Medical Assistance Program ("KMAP"), showing a pattern of submitting inaccurate billings or cost reports, civil or criminal fraud against Medicare, the Kansas Medicaid/medikan or social service programs, or any other state's Medicaid or social service programs, and other good cause. Licensee's participation in KMAP was terminated.

18. Licensee violated K.S.A. 65-2836(r) when he failed to furnish the board, its investigators or representatives information indicating he was being investigated by the Attorney General's Office when asked about investigations on his 2014 renewal application for licensure.

19. Licensee violated K.S.A. 65-2836(t) when he failed to report to the board any adverse action taken by a government agency, law enforcement agency or a court for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section when he failed to disclose that he was convicted of a felony related to Medicaid fraud.

20. According to K.S.A. 65-2836(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

21. 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. 64-4921 *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.

22. 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.

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

24. 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.

25. 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.

26. Licensee, 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 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.

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

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

29. 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.

30. This Consent Order constitutes public disciplinary action.

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

32. In lieu of concluding the formal proceeding currently pending, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of medicine and surgery:

SURRENDER OF LICENSE

a. Licensee hereby **SURRENDERS** his license to practice medicine and surgery, effective upon filing of this Consent Order with the Board. Such surrender of licensure shall be treated as a revocation for all purposes, including reporting such action.

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 the qualifications for licensure and reinstatement;

c. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement; and

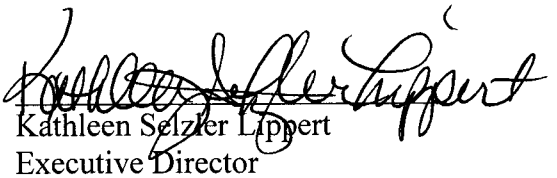
d. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in this Consent Order will be considered as findings of fact and conclusions of law.

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 Licensee's licenses is revoked effective upon the filing of this Consent Order.

IT IS SO ORDERED on this 3 day of Feb, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:



Kathleen Selzler Lippert
Executive Director

2/3/15
Date

Adnan A. Al-Ashkar, M.D.
Licensee

Jan. 27, 2015
Date

PREPARED AND APPROVED BY:

Joshana L. Offenbach, #23438
Associate Disciplinary Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level-Suite A
Topeka, Kansas 66612
joffenbach@ksbha.ks.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the above and foregoing **CONSENT ORDER FOR SURRENDER** on the 3rd day of February, 2015, via United States mail, first-class, postage pre-paid and addressed to:

Adnan A. Al-Ashkar, M.D.
Confidential

Leavenworth, Kansas 66048

and a courtesy copy was hand-delivered to:

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

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612

and a copy was hand-delivered to:

Joshana L. Offenbach, Associate Disciplinary Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level, Suite A
Topeka, Kansas 66612
785/296-5940
joffenbach@ksbha.ks.gov

and a copy was hand-delivered for filing to:

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

Cathy A. Brown