

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 16-HA00051
James D. Dickie, M.D.)	
Kansas License No. 04-27433)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel, and Joseph S. Behzadi, Associate Litigation Counsel ("Petitioner"), and James D. Dickie, M.D. ("Licensee"), by and through his counsel, Mark A. Lynch, 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** Lenexa, Kansas 66215.
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. 04-27433 on or about April 25, 1998. On or about April 3, 2015, Licensee voluntarily changed his State of Kansas license status to Inactive from Active. On August 1, 2015, Licensee failed to renew his Inactive State of Kansas license and it was cancelled by operation of law. Licensee's current license status is Cancelled by Operation of Law, Failure to Renew.
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.* and K.S.A. 65-2869.

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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. 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.

5. 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.

6. 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.

7. 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.

8. The Board has received information and investigated the same, and has reason to believe that there may be grounds to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

9. This Consent Order incorporates, with the exception of Paragraph 34(h), herein by reference the facts as stated in the Petition that was filed on December 31, 2015. Exhibit 1, Petition in the Matter of James D. Dickie, M.D. 16-HA00051.

10. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to conclude 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.

11. If proven, the Board believes Licensee's acts and conduct during the course of treating Patient 1 constitutes acts in violation of the Kansas Healing Arts Acts as follows:

a. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(1): As to a single patient, Licensee committed multiple instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

b. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(3): As to a single patient, Licensee engaged in a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts;

c. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12): As to a single patient, Licensee engaged in conduct likely to harm the public;

d. K.S.A. 65-2836(b) further defined in K.S.A. 65-2837(16): As to a single patient, commission of any act of sexual abuse, misconduct or other improper sexual contact, which exploits the licensee-patient relationship, with a patient;

e. K.S.A. 65-2836(b) as further defined in K.S.A. 65-2837(b)(23), As to a single patient, Licensee prescribed, dispensed, administered, or distributed a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of Licensee's professional practice;

f. K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24): As to a single patient, Licensee engaged in repeated failure to practice 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:

g. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(25): As to a single patient, Licensee failed to keep written medical records which accurately describe services rendered to the patient, including patient histories, pertinent findings, examination results and test results;

h. K.S.A. 65-2836(f), as to a single patient, Licensee has willfully and/or repeatedly violated the Healing Arts Act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts;

i. K.S.A. 65-2836(k), as to a single patient, Licensee violated a lawful regulation promulgated by the board, specifically, K.A.R. 100-24-1, by failing to meet the minimum requirements for an adequate patient record for Patient 1; and

j. K.S.A. 65-2836(p), as to a single patient, Licensee prescribed, sold, administered, distributed or gave a controlled substance to Patient 1 for other than medically accepted or lawful purposes;

12. 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.

13. 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.

14. All pending investigation materials in KSBHA Investigation Number 13-00229 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 29. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

15. 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.*

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

24. 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

25. 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.

26. 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.

27. This Consent Order constitutes **public disciplinary action**.

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

29. In lieu of conducting a formal proceeding, 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:

VOLUNTARY SURRENDER TREATED AS REVOCATION

30. Licensee hereby surrenders his Kansas license to practice medicine and surgery. Such surrender shall be treated as a revocation for all purposes including reporting such action.

31. 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 and K.A.R. 100-8-2. Further, Licensee's application will be governed by *Vakas v. The Kansas*

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Board of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement.

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

33. 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.

34. Licensee agrees that he will not apply for reinstatement or a stay of this revocation of his license until three (3) years has elapsed from the date of the approval of this Consent Order.

COSTS

35. Licensee is hereby ordered to pay the Board's incurred COSTS in conducting these proceedings under the Kansas Administrative Procedure Act in the amount of \$750.00. The total amount of \$750.00 shall be due on or before July 1, 2016.

36. In the alternative, Licensee may make monthly payments of \$100.00 for six (6) months beginning September 5, 2016 for a total of \$600.00 to be paid over six (6) months. The initial payment is due on or before September 5, 2016, with the remainder of the monthly payments due on or before the fifth (5th) day of each month thereafter. On the seventh month, Licensee will pay the remaining \$150.00.

37. In the event that the Board does not receive a payment due and owing, the total amount of the assessed COSTS still due shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.

38. Licensee shall make all payments payable to the Kansas State Board of Healing Arts and send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 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.

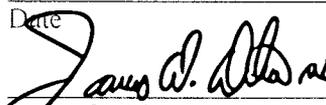
IT IS SO ORDERED on this 2 day of June, 2016.

FOR THE KANSAS STATE
BOARD OF HEALING ARTS:


Kathleen Selzler Lippert
Executive Director

by KQS

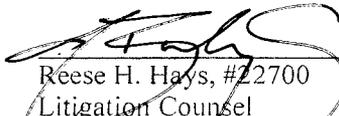

5/23/16

Date

James D. Dickie, M.D.
Licensee

5/23/16

Date

PREPARED AND APPROVED BY:

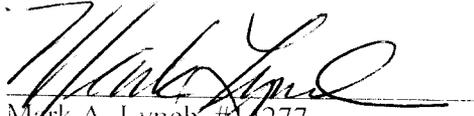


Reese H. Hays, #22700
Litigation Counsel
Joseph S. Behzadi, #24065
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Phone: 785-296-0961

Consent Order
James D. Dickie, M.D.

Fax: 785-368-8210
rhays@ksbha.ks.gov
jbehzadi@kshba.ks.gov

APPROVED BY:



Mark A. Lynch, #14277
Attorney for Licensee
Simpson, Logback, Lynch, Norris P.A.
7400 W. 110th Street, Suite 600
Overland Park, Kansas 66210
mlynch@sln.com

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 2nd day of June, 2016, to the following:

James D. Dickie, M.D.
Licensee
Confidential
Olathe, Kansas 66062

Mark A. Lynch
Attorney for Licensee
Simpson, Logback, Lynch, Norris P.A.
7400 W. 110th Street, Suite 600
Overland Park, Kansas 66210

And the original was hand-filed with:

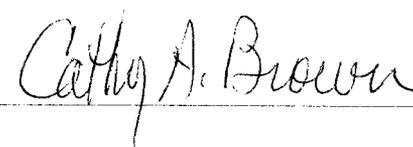
Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Reese H. Hays
Litigation Counsel
Joseph S. Behzadi
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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
Topeka, Kansas 66612

A handwritten signature in cursive script that reads "Cathy A. Brown". The signature is written in black ink and is positioned above a horizontal line.