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

KS State Board of Healing Arts

In the Matter of)
)
Fernando M. Egea, M.D.)
Kansas License No. 04-16231)
_____)

KSBHA Docket No. *14-HA00131*

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 Fernando E. Egea, M.D. ("Licensee"), by and through his counsel, Henri J. Watson, Watson & Dameron, LLP, 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: 8015 Shawnee Mission Parkway, Suite 200, Merriam, Kansas 66202-2956.
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. 04-16231 on approximately June 10, 1972. Licensee's license designation is currently active, having last been renewed on approximately July 3, 2013.
3. At all times relevant to the allegations set forth in Case Number 12-20062-01-KHV filed in the United States District for the District of Kansas, Licensee held a current and active license to engage in the practice of medicine and surgery in the State of Kansas.

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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 May 16, 2012, an Indictment was filed against Licensee in the United States District Court for the District of Kansas. The Indictment listed four (4) counts. The specific allegations stated that Licensee "knowingly and intentionally distributed and dispensed a mixture and substance containing Oxycodone, a controlled substance, other than for a legitimate medical purpose and outside the course of professional practice, in violation of Title 21, United States Code, Section 841(a)(1) on or about June 3, 2009, June 24, 2009, August 19, 2009 and October 7, 2009. The specific allegations are set forth therein and incorporated into this Consent Order by reference.

11. On or about February 8, 2013, a Criminal Information against Licensee was filed in the United States District Court for the District of Kansas. The Information listed 1 (one) count that stated Licensee "knowingly and intentionally distributed and dispensed a mixture and substance containing Oxycodone, a controlled substance, other than for a legitimate medical purpose and outside the course of professional practice . . ." The specific allegations are set forth therein and incorporated into this Consent Order by reference.

12. On or about February 8, 2013, Licensee, entered into a Plea Agreement in the United States District Court for the District of Kansas to resolve the count charged in the Information. The specific allegations are set forth therein and incorporated into this Consent Order by reference.

13. In that Plea Agreement, Licensee acknowledged that since his Kansas medical license “was used to facilitate the criminal activity or constitutes proceeds derived from the criminal activity . . .” his Kansas medical license is subject to forfeiture.

14. In the Plea Agreement, Licensee consented to a money judgment against him.

15. On or about, April 16, 2013, a Preliminary Order of Forfeiture and Imposition of Forfeiture Money Judgment was filed in the United States District Court for the District of Kansas.

16. In that Preliminary Order of Forfeiture and Imposition of Forfeiture Money Judgment the Court found Licensee’s Kansas medical license was subject to forfeiture and that Licensee consented to a forfeiture judgment against him in the amount of \$34,355.00. The specific findings are set forth therein and incorporated into this Consent Order by reference.

17. Licensee consents to a finding that Licensee’s acts, as set forth in the Plea Agreement and Preliminary Order of Forfeiture and Imposition of Forfeiture Money Judgment, constitute further violations of the Healing Arts Act as set forth in K.S.A. 65-2836.

18. Specifically, the Plea Agreement includes Licensee’s guilty plea to Title 21 United States Code, Section 841(a)(1), knowingly or intentionally distributing and dispensing a controlled substance without a legitimate medical purpose and outside the course of the licensee’s professional practice, which is a Class C felony.

19. Licensee violated K.S.A. 65-2836(a) by committing fraud or misrepresentation in securing his renewal when he did not submit a “yes” response to the question asking whether “[i]n the past 12 months have you been arrested, charged with or convicted of any felony or class A misdemeanor?”

20. Licensee violated K.S.A. 65-2836(a) by committing fraud or misrepresentation in securing his renewal when he did not submit a “yes” response to the question asking whether during the past 12 months he knew “of any investigation by or any allegations, complaints, or charges concerning you made to any licensing agency or state or government agency?”

21. Licensee violated K.S.A. 65-2836(b) by committing unprofessional, dishonorable conduct and professional incompetency when distributing and dispensing controlled substances without a legitimate medical purpose and outside the course of his professional practice.

22. 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.

23. Licensee violated K.S.A. 65-2836(f) by willfully and repeatedly violating the uniform controlled substances act when distributing and dispensing controlled substances without a legitimate medical purpose and outside the course of his professional practice.

24. Licensee violated K.S.A. 65-2836(p) by distributing and dispensing a controlled substance to a person(s) for other than medically accepted or lawful purposes.

25. Licensee violated K.S.A. 65-2836(t) by failing 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.

26. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), by committing conduct likely to deceive, defraud or harm the public by distributing and dispensing a controlled substance to a person(s) for other than medically accepted or lawful purposes.

27. Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(23) by distributing and dispensing a prescription drug or substance, including a controlled substance, in an improper and inappropriate manner for other than a medical purpose and not in the course of the licensee's professional practice. Pursuant to K.S.A. 65-2836, the Board may revoke Licensee's license; alternatively, Licensee may surrender his license, so long as it is treated as a revocation. Furthermore, 65-2836(c) requires the board to 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. Licensee has put forth no evidence that he 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.

28. 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.

29. 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

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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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

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

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

37. 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.

38. This Consent Order constitutes disciplinary action.

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

40. 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:

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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 22nd day of April, 2014.

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

Kathleen Selzler Lippert by KPS
Kathleen Selzler Lippert
Executive Director

4/22/14
Date

[Signature]
Fernando M. Egea, M.D.
Licensee

4/17/14
Date

PREPARED AND APPROVED BY:

Joshana L. Offenbach
Joshana L. Offenbach, #23438

AGREED TO BY:

Henri Watson
Henri J. Watson
Attorney for Licensee

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served the above and foregoing **CONSENT ORDER FOR SURRENDER** on the 22nd day of April, 2014, via United States mail, first-class, postage pre-paid and addressed to:

Fernando M. Egea
Inmate #22128031
FCI Forrest City Low
Federal Corrections Institution
Satellite Camp
P.O. Box 8000
Forrest City, AR 72336

Henri J. Watson
Attorney for Licensee
Watson & Dameron, LLP
2500 Holmes St.
Kansas City, Missouri 64108
816/474-3350
hwatson@kctriallawyers.com

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

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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



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