

JUN 24 2016

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 16-HA 00110
Robert H. Fleming, M.D.)	
Kansas License No. 04-24941)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Susan R. Gering, Associate Litigation Counsel (“Petitioner”), and Robert H. Fleming, M.D. (“Licensee”), by and through his attorney, Don D. Gribble, II, 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: 310 W. Central, Andover, Kansas 67002.
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. 04-24941 on approximately February 5, 1994. Licensee’s license is active.
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.
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.

Consent Order
Robert H. Fleming, M.D.

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 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 pursuant to K.S.A. 65-2836(b), K.S.A. 65-2836(w), and K.S.A. 65-2837(b)(12) to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. On or about October 3, 2010, Patient 1, a seventy-two (72) year old male was admitted to Hays Medical Center with a foot ulcer and foot pain.
10. During Patient 1's hospitalization, an ultrasound revealed an 8.5 cm large abdominal aortic aneurysm (AAA). Patient 1 was subsequently scheduled for surgical repair.

11. On or about October 24, 2010, Licensee admitted Patient 1 to Hays Medical Center and completed a History and Physical. Licensee also signed pre-operative orders at that time.
12. On or about October 25, 2010, Licensee performed an endovascular AAA stent repair on Patient 1 using an Endologix stent graft. After surgery, Licensee returned to Wichita, Kansas. Licensee's first assistant, Susan Pfannenstiel, ARNP, signed the post-operative orders and monitored Patient 1's recovery along with other hospital staff.
13. Post-surgery, Patient 1 began to have a decreased urine output and on October 26, 2010, Patient 1 was oliguric and then anuric. Patient 1 failed to respond to large doses of diuretics so a nephrologist was consulted for dialysis.
14. A CT scan on October 26, 2010, showed bilateral renal artery occlusion and segmental occlusion of the proximal superior mesenteric artery.
15. Eventually Patient 1 was transferred to Wichita for further care where he later died on or about October 29, 2010.
16. A malpractice petition was later filed on or about January 30, 2012, in regards to Licensee's care and treatment of Patient 1. A settlement was reached.
17. **Confidential**

18. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove 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.
19. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct or professional incompetency as set forth in K.S.A. 65-2836(b).
20. Licensee is deemed to have violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12) in that Licensee's conduct is likely to harm the public.
21. Licensee is deemed to have violated K.S.A. 65-2836(w) in that Licensee has an adverse judgment, award or settlement against him resulting from a medical liability claim related to acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.
22. 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.
23. 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.
24. All pending investigation materials in KSBHA Investigation number 12-00287 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

25. 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 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.*
26. 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.
27. 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.

28. 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.
29. 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.
30. 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.
31. 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. Licensee

objects to the participation of Dr. Michael J. Beezley, M.D. (“Dr. Beezley”), and Dr. Beezley is recused from participating in the Board’s consideration of this Consent Order.

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

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

34. 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.

35. 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.

36. 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.

37. Licensee shall immediately, within five (5) calendar days, notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offenses, excluding minor traffic infractions.

38. Licensee shall immediately, within five (5) calendar days, notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.
39. This Consent Order constitutes public disciplinary action.
40. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
41. 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:

MONITORING

42. Licensee shall have a Kansas-licensed cardiovascular surgeon and/or interventional radiologist with adequate experience in endovascular abdominal aortic aneurysm repair participate and assist Licensee on his next ten (10) endovascular abdominal aortic aneurysm repair cases. The cardiovascular surgeon and/or interventional radiologist shall assist in performing an intraoperative aortogram to help identify the placement of the endovascular stent graft by Licensee. The cardiovascular surgeon and/or interventional radiologist shall sign a form provided by the Board indicating attendance during the surgery.
43. Licensee shall propose a cardiovascular surgeon and/or interventional radiologist for Board approval on or before Licensee's first scheduled endovascular abdominal aortic aneurysmal repair. Any additional proposed cardiovascular surgeon(s) and/or interventional radiologist(s) shall be approved prior to the performance of a scheduled

endovascular abdominal aortic aneurysm repair. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the cardiovascular surgeon(s) and/or interventional radiologist(s).

44. Licensee shall identify the cardiovascular surgeon and/or interventional radiologist involved in each procedure. It shall be Licensee's responsibility to properly document each patient's procedure in accordance with the requirements of the Kansas Healing Arts Act.
45. Upon successful completion of each of his next ten (10) endovascular abdominal aortic aneurysm repair cases, Licensee shall provide a copy of Licensee's pre-op history and physical and operative report for the Board's review for each procedure.
46. Licensee's documentation relating the ten (10) endovascular abdominal aortic aneurysm repair cases shall be subject to a retrospective review by an adequately experienced vascular surgeon should complications arise during the course of the care and treatment related to the endovascular abdominal aortic aneurysm procedure. The retrospective review shall occur within thirty (30) days of the endovascular abdominal aortic aneurysm procedure.
47. Licensee shall propose a vascular surgeon to serve as a retrospective chart reviewer for Board approval on or before May 27, 2016. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the vascular surgeon.
48. This provision is not self-terminating. After Licensee has completed ten (10) endovascular abdominal aortic aneurysm cases under the terms of this agreement, Licensee shall provide written notification to the Board requesting this provision be terminated.

49. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

PROBATION: EDUCATION

50. Licensee shall successfully complete at least eight (8) hours of board approved continuing medical education (CME) course(s) with an emphasis in endovascular abdominal aortic aneurysmal repair. Licensee shall submit his proposed course or courses to the Board's designated member for Board approval by August 30, 2016.

51. The Board designates the Disciplinary Panel's Appointed Member to review Licensee's proposed course or courses and to determine whether the proposed course or courses are sufficient to address the Board's concerns.

52. Licensee shall provide proof of successful completion of the course(s) to the Compliance Coordinator by October 7, 2016.

53. All costs associated with such CME(s) shall be at Licensee's own expense to include, but not be limited to, the cost of the CME(s), the cost of travel to and from the course(s), and the cost of accommodations while attending the CME(s).

54. These hours shall be in addition to those hours required for renewal of licensure.

55. Upon receipt of Licensee's proof of successful completion of the approved CME(s), Licensee's term of Probation: Education will be terminated.

56. Proof of successful completion of the approved CME(s) requirement shall be submitted by sending the same to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Ste. 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 23rd day of June, 2016.

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

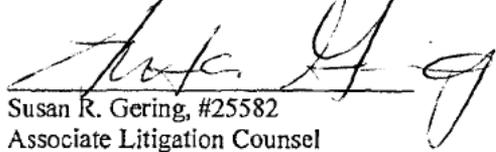
Kathleen Selzler Lippert by KJS
Kathleen Selzler Lippert
Executive Director

6/23/16
Date

Robert H. Fleming
Robert H. Fleming, M.D.
Licensee

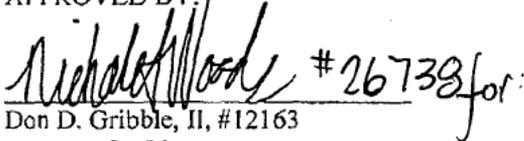
5/8/16
Date

PREPARED AND APPROVED BY:



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APPROVED BY:



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100 North Broadway
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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 24th day of June, 2016, to the following:

Robert H. Fleming, M.D.
Licensee
310 W. Central
Andover, Kansas 67002

Don D. Gribble, II
Attorney for Licensee
Hite Fanning & Honeyman L.L.P.
100 North Broadway
Wichita, Kansas 67202-2209

And the original was hand-filed with:

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

And a copy was delivered to:

Susan R. Gering
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
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