DEC 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA 00031
Mukesh Garg, M.D.	)	
Kansas License No. 04-26886	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jessica A. Bryson, Associate Litigation Counsel ("Respondent"), and Mukesh Garg, M.D. ("Applicant"), *pro se*, and move the Board for approval of a Consent Order affecting Applicant's license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant's last known mailing address to the Board is: 715 N. Kansas Avenue, Suite 200, Hastings, Nebraska 68901.
2. On or about October 1, 2013, Applicant submitted to the Board an application for reinstatement of licensure in medicine and surgery. Such application was deemed complete and filed with the Board on September 9, 2014.
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.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant 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. Applicant 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 to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

9. In his application for reinstatement, Applicant answered "yes" to questions 10(f), 10(h), Confidential 10(s), 10(t), and 10(u).

a. Question 10(f) asks: "Have you ever been requested to resign, withdraw or otherwise terminate your position with a partnership, professional association, corporation or other practice organization, either public or private?"

b. Question 10(h) asks: "Has any licensing authority ever limited, restricted, suspended, revoked, censured or placed on probation or had any other disciplinary action taken against any professional license you have held?"

c. Confidential

d. Question 10(s) asks: "Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?"

e. Question 10(t) asks: "Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued."

f. Question 10(u) asks: "Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued."

10. Applicant provided the following information in explanation of his "yes" answers to question 10:

a. Applicant was arrested for Driving Under the Influence of Alcohol (DUI) in May 1999. The incident occurred while he was off-duty; he completed a diversion program, and the charges were dropped.

b. The Missouri Board of Healing Arts (Missouri Board) issued a letter of reprimand based upon the 1999 DUI.

c. In 2005, Applicant was involved in a non-injury traffic accident after drinking beer with friends. He stated that he pleaded guilty to DUI and was subsequently placed on probation for one (1) year, which he completed.

d. Confidential

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g. Applicant explained that he was arrested for DUI in May 2012 when he drove under the influence of alcohol and hit a curb, resulting in a flat tire.

h. Confidential

i. Confidential

j. Applicant disclosed he was "terminated 'without cause'" from his place of employment due to the May 2012 DUI.

k. Confidential

l. Applicant's Missouri license was "placed under disciplinary order effective from July 30, 2013. The license will be on probation for a period of 5 years." The Missouri licensing action was based upon the May 2012 DUI.

m. Applicant disclosed that he is under investigation by New York's Office of Professional Misconduct (OPMC) as a result of the May 2012 DUI as well.

11. Confidential

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14. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant has violated the Kansas Healing Arts Act with respect to the above allegations. Applicant further waives

his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

15. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), and K.S.A. 65-4925.

16. Applicant violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), by driving a vehicle while under the influence of alcohol on at least three occasions. Driving a vehicle while under the influence of alcohol is conduct likely to harm the public as evidenced by Applicant being involved in a non-injury traffic accident that occurred while he drove under the influence of alcohol in 2005.

17. Applicant violated K.S.A. 65-2836(e) because Confidential

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18. Applicant violated K.S.A. 65-2836(j) because the proper licensing authority of another state has taken disciplinary action against his license to practice the healing arts in that state.

19. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant'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.

20. 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.

21. All pending investigation materials in KSBHA Investigative Case Number 14-00371 regarding Applicant 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.

22. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant 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 Applicant's license to practice medicine and surgery in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant 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, Applicant 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.*

23. 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.

24. Applicant 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 Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

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

26. 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.

27. Applicant 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 Applicant is not present. Applicant 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.

28. Applicant, 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.

29. Applicant acknowledges that he has read this Consent Order and fully understands the contents.

30. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

31. All correspondence or communication between Applicant 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

32. Applicant 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.

33. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final 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.

34. This Consent Order constitutes non-disciplinary action.

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

36. Applicant understands that, upon Applicant's signing this Consent Order, Confidential Confidential , abiding by the terms of this Consent Order, and upon an authorized Board signature, an active license will be issued. Applicant further understands that the active license is only effective until a hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the active license shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant's license shall remain in active status under the terms of this Consent Order and be subject to renewal criteria as set forth under the Kansas Healing Arts Act, K.S.A. 65-2801, *et. seq.*.

37. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice of medicine and surgery:

MONITORING

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49. Applicant 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.

50. Applicant 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.

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

TIMEFRAME

52. The above monitoring provisions are not self-terminating. After a period of five (5) years, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing medicine and surgery in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the five (5) year timeframe.

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 FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 16 day of Dec, 2014.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

12/16/14
Date

Mukesh Garg, M.D.
Applicant

9/5/2014
Date

PREPARED AND APPROVED BY:

Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
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Topeka, Kansas 66612
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Fax: 785-368-8210
Email: jbryson@ksbha.ks.gov

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 16th day of December, 2014, to the following:

Mukesh Garg, M.D.
Applicant
715 N. Kansas Avenue, Suite 200
Hastings, Nebraska 68901

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:

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

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

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