FILED
FEB 24 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 14-HA 00086
Jason A. Hughes, M.D.	)	
Kansas License No. Pending	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jessica A. Bryson, Associate Litigation Counsel ("Petitioner"), and Jason A. Hughes, 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: Confidential Road, Topeka, Kansas 66610.
2. On or about August 21, 2013, Applicant submitted to the Board an application for licensure in medicine and surgery. Such application was deemed complete and filed with the Board on January 8, 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 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. 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(i) 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 licensure, Applicant answered "yes" to disciplinary questions 7, 8, 9, 10, 11, 13, 15, 16, 19, and 23.

10. In response to question 7, Applicant explained that he voluntarily surrendered his Colorado medical license due to the stipulation in an agreement that he signed with the Colorado Medical Board (Colorado Board) in connection with his family's move to Kansas.

11. In response to question 8, Applicant explained that he had entered into an agreement with the Colorado Board for an Interim Cessation of Practice in lieu of Summary Suspension as a result of three (3) complaints to the Colorado Board. Applicant provided the additional following information:

    a. Applicant stated that the complaints to the Colorado Board were from two (2) families and from one (1) physician and Confidential

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    b. Confidential

    c. Confidential

    d. Confidential

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m. Applicant stated that he had just completed a final stipulation with the Colorado Board, which included voluntary inactivation and surrender of his license.

12. In response to question 9, Applicant reiterated that the Colorado Board had received the complaints regarding his competency to practice as described in paragraph 11.

13. In response to questions 10 and 11, Applicant stated that, based on the Colorado Board action, his Board-certification and his Certificate of Added Qualification in Hospice and Palliative Medicine was rescinded as of September 12, 2012, by the American Academy of Family Practice. He also stated that he does still have Board-certification in Emergency Medicine, which recognizes his "added qualification in Hospice and Palliative Medicine."

14. Confidential

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16. In response to question 23, Applicant disclosed that he was named as a co-defendant in a malpractice action that occurred in October 1992. He disclosed that the case settled for $ 45,000.00 with $ 15,750.00 being paid on his behalf. Applicant stated that the case involved a patient who had wounds to the feet after accidentally stepping on nails. Applicant stated that one foot was more painful than the other with the pain out of proportion to the clinical findings. He stated that the patient was referred to an orthopedist, who suspected an ankle fracture. He stated that the patient returned, and he referred the patient to a second orthopedist, who believed the patient was suffering from Reflex Sympathetic Dystrophy. He stated that a bone scan, however, revealed osteomyelitis.
17. Applicant last actively practiced medicine in May 2012.
18. On or about August 14, 2013, the Colorado Board issued a Stipulation and Final Agency Order. The Stipulation and Final Agency Order contained, in part, the following relevant information:

a. On September 24, 2012, Applicant entered into an Interim Cessation of Practice Agreement with the Colorado Board.

b. Applicant has a physical or mental illness or condition that impacts his ability to practice medicine with reasonable skill and safety to patients.

c. On March 23, 2013, CPHP concluded that Applicant was safe to practice medicine in the context of treatment and monitoring.

d. Applicant's Colorado medical license was placed on probation for a period of five (5) years.

e. During the probationary period, Applicant agreed to the following terms and conditions:

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e. Applicant's professional fitness to practice was never questioned between 2001 and 2011.

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20. Confidential

21. Confidential

a. Confidential

b. Applicant was "forthcoming, open, cooperative and willing to sign releases for information gathering without question. Without a formal monitoring contract he has maintained weekly contact with this office in person and by email."

c. Applicant has an opportunity for part-time employment at Midland Care in Topeka, and his potential employers are "fully informed" of Applicant's history and "are willing to provide any support necessary for the worksite."

d. Confidential

22. 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.

23. 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.

24. Applicant violated K.S.A. 65-2836(i) in that he has an inability to practice the healing arts with reasonable skill and safety to patients by reason of Confidential

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25. Applicant violated K.S.A. 65-2836(u) by voluntarily surrendering his Colorado medical license.

26. Applicant violated K.S.A. 65-2836(w) by having an adverse settlement against him resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section..

27. 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.

28. 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.

29. All pending investigation materials in KSBHA Investigative Case Number 14-00250 regarding Applicant, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

30. 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.*

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
38. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
39. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
40. 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.
41. 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.
42. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

43. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee,

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and abiding by the terms of this Consent Order. Applicant further understands that the Temporary License is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent license subject to renewal criteria under the terms of this Consent Order.

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

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MONITORING

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63. Applicant will furnish a copy of this Consent Order to each and every state in which he holds licensure or applies for licensure and to an appropriate work site supervisor or personnel Confidential

64. Applicant shall immediately 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.

65. 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) days of any such change.

LIMITATIONS

66. Applicant shall not practice medicine and surgery unless he complies with each of the following:

67. Applicant's license is hereby LIMITED in that for a period of at least one (1) year, Applicant is prohibited from engaging in the solo practice of medicine and surgery. Applicant shall only practice in Kansas in a supervised, structured environment in which all of Applicant's practice activities are overseen and supervised by a Kansas-licensed physician in a manner which must be pre-approved by the Board or the Board's designee.

68. If Applicant obtains a temporary license, then prior to issuance of a temporary license, Applicant shall submit the curriculum vitae of a proposed practice supervisor and a plan of supervised practice for approval to the Board. If Applicant does not seek a temporary license, then Applicant shall submit the curriculum vitae of a proposed practice supervisor and a plan of supervised

practice for approval to the Board on or before February 14, 2014. Applicant shall not practice medicine and surgery until the Board has approved a practice supervisor.

69. The practice supervisor shall submit quarterly reports (April 15th, July 15th, October 15th, and January 15th) to the Board on a form provided by Board staff. Such reports shall include a summary of whether Applicant is seeing patients, documenting in the medical record, and prescribing medications in an appropriate and timely manner. Applicant is responsible for ensuring that the practice supervisor's reports are submitted by the quarterly deadlines.

70. The Board designates the appointed member of Disciplinary Panel #28 to review and approve/disapprove the proposed practice supervisor and plan of supervised practice.

71. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A., Topeka, Kansas 66612.

TIMEFRAME

72. The above monitoring provisions and limitations are not self-terminating. After a period of at least one (1) year from the date of approval of this Consent Order by the Board, Applicant may request modification or termination of the provision Confidential nd/or of the provision requiring a practice supervisor. After a period of at least five (5) years from the date of approval of this Consent Order by the Board, Applicant may request modification or termination of the monitoring provisions Confidential

73. For any period of time that Applicant is not actively practicing medicine and surgery in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year and five (5) year timeframes.

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 24 day of Feb, 2014.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

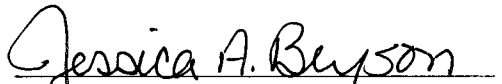
Kathleen Selzer Lippert
Executive Director

2/24/14
Date

Jason A. Hughes, M.D.
Applicant

1/7/14
Date

PREPARED AND APPROVED BY:



Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-8022

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 Feb., 2014, to the following:

Jason A. Hughes, M.D.
Applicant
Confidential
Topeka, Kansas 66610

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
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Cathy A. Brown