FILED

JUN 16 2016

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 16-HA00071
Gregory H. Mears, D.O.	)	
Kansas License No. 05-21870	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Susan R. Gering, Associate Litigation Counsel ("Petitioner"), and Gregory H. Mears, D.O. ("Licensee"), by and through his counsel Patricia Dengler of Gilliland & Hayes LLC, and move the Board for approval of a Consent Order affecting Licensee's license to practice osteopathic 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 Independence, Kansas 67301.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-21870 on approximately June 19, 1987. Licensee's license was temporarily limited by Board Action on March 8, 2016. At all times prior to the March 8, 2016, Licensee's license was 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 osteopathic medicine and surgery. K.S.A. 65-2801 *et seq.*, and K.S.A. 65-2870.

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 herein by reference the allegations as stated in the Petition and Petitioner's Motion for *Ex Parte* Emergency Order of Limitation and Emergency Proceedings. Exhibit 1: Petition in the Matter of Gregory H. Mears, D.O. 16-HA00071; Exhibit 2: Petitioner's Motion for *Ex Parte* Emergency Order of Limitation and for Emergency Proceedings in the Matter of Gregory H. Mears, D.O. 16-HA00071.
10. Licensee denies his actions violated the Kansas Healing Arts Act, but, to avoid the additional costs and time to resolve this matter, Licensee agrees to the provisions stated in this Consent Order.
11. While admitting no wrongdoing, 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 engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto in violation of the Kansas Healing Arts Act based on the allegations referenced in Paragraph 9 above. Licensee further waives his right to dispute or otherwise contest the allegations contained in the Paragraph 9 above in any further proceeding before this Board.
12. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836(b).

13. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(3), in that Licensee has exhibited a pattern of practice of behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts.
14. Licensee, if proven, violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), in that Licensee's conduct is likely to harm the public.
15. 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.
16. 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.
17. All pending investigation materials in KSBHA Investigation Number 14-00426 and KSBHA Docket No. 16-HA00071 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 30 or its appointed Disciplinary Panel member. Disciplinary Panel No. 30 through its appointed member authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
18. 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 osteopathic 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.*

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

26. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
27. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic 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.
28. 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.
29. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or any conviction for any traffic or criminal offense.
30. Licensee shall immediately 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.
31. Licensee shall at all times keep Board staff informed of 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.
32. This Consent Order constitutes **public disciplinary action.**
33. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

34. 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 osteopathic medicine and surgery:

URGENT AND EMERGENT CARE SUPERVISION

35. Licensee shall not practice urgent and/or emergent care until such time as he completes ninety (90) days of shadowing at least ten (10) hours per week or forty (40) hours a month between an Emergency Room Physician(s) and Hospitalist(s) with emergency care experience. The Emergency Room Physician and Hospitalist shall be ~~a~~ Kansas-licensed physicians. Such individual(s) shall be pre-approved by the Board. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the individual(s) proposed by Licensee.

    a. On or before the Licensee's commencement of his three month term of shadowing, Licensee shall submit the curriculum vitae of the individual(s) he proposes to shadow for the term of ninety (90) days for approval.

    b. During Licensee's ninety (90) days of shadowing, the individual(s) approved by the Board, shall complete weekly reports that will be submitted on a monthly basis. These weekly reports will address Licensee's interaction with his Board-approved supervisor during the term of his shadowing. The reports shall be on a form provided by the Board. The form shall be completed in full and provide all requested information and opinions. The last weekly report shall contain, in addition to the information required to be provided in the previous reports, information regarding Licensee's identified strengths and weaknesses and whether in

the individual(s)'s opinion Licensee has received sufficient instruction and experience to return to providing independent urgent and emergent care.

c. Licensee is responsible for the timely submission of the weekly reports for each month. The weekly reports for the preceding month, shall be submitted by the 15th of the following month.

36. Upon completion of the ninety (90) day shadowing terms detailed above including the submission of the last monthly report with review by the Appointed Disciplinary Member, Licensee shall be allowed to return to providing urgent and emergent care for inpatients with 100% end of day review by an Emergency Room physician and/or hospitalists of any orders written by Licensee.

a. Licensee shall submit the initial request for approval of his supervising physician(s) within twenty (20) days of signing this Consent Order to be approved by the Board. The Board hereby designates the Disciplinary Panel's Appointed Member to approve or disapprove the proposed supervisor(s). Further, Licensee shall submit each subsequent request for approval of a new or substitute supervisor prior to the departure of the previously Board-approved supervisor or unless otherwise approved by the Board.

b. The supervisor(s) shall be a Kansas licensed physician.

c. For each patient order written or authorized by Licensee in the inpatient setting, Licensee shall document the initial order(s) in a separate Monthly Order Log. Such log shall be on a form provided by Board staff to Licensee. The log shall serve as a reference to determine all patients who were seen

by Licensee each month for urgent and emergent care. This Monthly Order Log shall be submitted to the Board along with a copy of each initial order for urgent and emergent care on a monthly basis.

d. At the end of each month, the supervisor(s) shall submit a monthly report to the Board which is due on the 15th day of the following month. The report shall be on a form provided by Board staff and shall include the number of patient charts reviewed, a brief summary of Licensee's order(s)~~'s~~ for patients during the month and an opinion as to whether Licensee is practicing within the standard of care. The supervisor(s) must immediately notify Board staff if he/she believes Licensee is practicing in an inappropriate manner or outside the standard of care.

e. Licensee is responsible for ensuring the supervisor(s) timely submission of the report each month.

37. All foreseen and unforeseen costs associated with the aforementioned shadowing and supervision in this section shall be at Licensee's own expense.

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

CLASS II AND CLASS III PRESCRIBING SUPERVISION

39. Licensee agrees to 100% end of day review of his prescribing of Class II and Class III scheduled drugs in both an inpatient and outpatient setting for the term of at least one (1) year.

40. Licensee shall submit the initial request for approval of his supervising physician(s) within twenty (20) days of signing this Consent Order to be approved by the Board. The Board hereby designates the Disciplinary Panel's Appointed Member to approve or disapprove the proposed supervisor(s). Further, Licensee shall submit each subsequent request for approval of a new or substitute supervisor prior to the departure of the previously Board-approved supervisor or unless otherwise approved by the Board.

41. The supervisor(s) shall be a Kansas licensed physician who is in the active practice of medicine and surgery or in the active practice of osteopathic medicine and surgery in the State of Kansas and has an unrestricted State of Kansas License and DEA registration.

42. For each prescription written or authorized by Licensee, Licensee shall document the initial prescription in the patient chart and in a separate Monthly Medication Log. Such log shall be on a form provided by Board staff to Licensee. The log shall serve as a reference to determine all patients who were prescribed Class II and Class III scheduled drugs each month. This Monthly Medication Log shall be submitted to the Board along with a copy of each prescription for Class II and Class III scheduled drugs on a monthly basis.

43. At the end of each month, the supervisor(s) shall submit a monthly report to the Board which is due on the 15th day of the following month. The report shall be on a form provided by Board staff and shall include the number of patient charts reviewed, a brief summary of Licensee's prescribing activity during the month and an opinion as to whether Licensee is prescribing medications within the standard of

care. The supervisor(s) must immediately notify Board staff if he/she believes Licensee is prescribing Class II and Class III medications in an inappropriate manner or outside the standard of care.

44. Licensee is responsible for ensuring the supervisor(s) timely submission of the report each month.

45. All foreseen and unforeseen costs associated with the aforementioned supervision shall be at Licensee's own expense.

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

EDUCATIONAL PRECEPTOR

47. Within thirty (30) days of the approval of this Consent Order, Licensee agrees to formally enter into an educational program designed to incorporate the educational needs identified in the Center for Personalized Education for Physicians ("CPEP") identified in the Assessment Report. Licensee shall have a minimum of twelve (12) months to complete the designed education program. Licensee shall further notify the Compliance Coordinator of the institution through which his educational program based on the CPEP Assessment Report identified educational needs was developed.

48. The educational program may be developed by the following institution unless otherwise approved by the Board:

    a. CPEP located in Denver, Colorado;

49. Licensee shall submit a copy of the developed educational program to the Compliance Coordinator within sixty (60) days of the approval by the Board of this Consent Order.

50. Licensee shall have an educational preceptor who shall serve as a mentor and ensure his progression and successful completion of the educational program developed for Licensee.

51. The educational preceptor shall submit monthly reports regarding Licensee's compliance with the terms of his educational program until such time as he has successfully completed the educational program. The educational preceptor shall submit a monthly report to the Board which is due on the 15th day of the following month.

52. Licensee shall submit the initial request for approval of his educational preceptor within twenty (20) days of signing this Consent Order to be approved by the Board. The Board hereby designates the Disciplinary Panel's Appointed Member to approve or disapprove the proposed educational preceptor(s). Further, Licensee shall submit each subsequent request for approval of a new or substitute educational preceptor prior to the departure of the previously Board-approved educational preceptor or unless otherwise approved by the Board. Licensee will be responsible for submitting the Board with the proposed supervisor's Curriculum Vitae prior to his approval.

53. The Educational Preceptor shall be a Kansas licensed physician who actively practices medicine and surgery or actively practices osteopathic medicine and surgery in the State of Kansas.

54. The Educational Preceptor may be the individual(s) identified by Licensee who are approved to serve as Licensee's supervising physicians.

55. These continuing education hours received pursuant to Licensee developed educational program shall be in addition to those hours required for renewal of licensure.

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

TIMEFRAMES

57. The above supervision provision in paragraph 35 is self-terminating; however, the remaining supervision provisions are not self-terminating. After the period of at least one (1) year, Licensee may request modification or termination of the remaining above supervision provisions. For any time that Licensee is not actively practicing osteopathic medicine and surgery in the state of Kansas, the supervision provisions will remain in effect, but will be tolled and not counted towards reducing the one (1) year timeframe.

58. The above educational preceptorship provision is not self-terminating. After successful completion of the requirements of his educational program, Licensee may request modification or termination of the above educational preceptorship provision.

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 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 15 day of June, 2016.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

6/15/16
Date

Gregory H. Mears, D.O.
Licensee

6-10-16
Date

PREPARED AND APPROVED BY:

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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 16th day of June, 2016, to the following:

Gregory H. Mears, D.O.
Licensee
Confidential
Independence, Kansas 67301

Patricia Dengler
Attorney for Licensee
Gilliland & Hayes LLC
301 North Main, Suite 1300
Wichita, Kansas 67202

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 hand-delivered to:

Reese H. Hays, Litigation Counsel
Susan R. Gering, 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

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

Debra Albright