

OCT 13 2015

KS State Board of Healing Arts

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

In the Matter of)
)
ROBERT M. OSBORN, D.O.)
)
Kansas License No. 05-14543)

Docket No. 16-HA 00026

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Reese H. Hays, Litigation Counsel, (“Petitioner”), and Robert M. Osborn, D.O. (“Licensee”), by and through his counsel of record Paul Oakleaf 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: P.O. Box 826, 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. 05-14543 on or about June 6, 1970. Licensee’s license is active and was last renewed on or about October 1, 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 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 this 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 to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. All investigative information, specifically information related to KSBHA Investigation No. 14-00320, was fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 29, through their appointed member, authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

10. Licensee does not admit nor deny the allegations in the Consent Order. 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 these allegations in any future proceeding before this Board.
11. On or about November 23, 2013, the Board received a complaint alleging improper prescribing by Licensee in Montgomery County, Kansas. This complaint was received from Kansas Law Enforcement with over thirteen (13) years of law enforcement experience who received numerous reports that Licensee was the physician to go see for the “good stuff.” The Kansas Law Enforcement Officer also advised that Licensee was a common prescriber noted on prescription medications found during impaired driving evaluations and arrests that occurred in the area.
12. As a result of the allegation in the complaint, a Request for Prescription Data was submitted to the Kansas Board of Pharmacy for Licensee’s K-TRAC Reports from July 1, 2010, to November 27, 2013.
13. On or about March 7, 2014, a subpoena for medical records was sent to Licensee by the Board’s investigator requesting patient records for four (4) patients.
14. Licensee agrees that he inappropriately prescribed controlled substances to the aforementioned four (4) patients who he provided the patient records for to the Board for review. He further agrees that he failed to meet the standard of care when he inappropriately prescribed to those four (4) patients.
15. Further, Licensee agrees that he inappropriately did the following for all four (4) patients:

- a. Prescribed inappropriate refills for multiple prescriptions of the same medication at one (1) visit;
 - b. Prescribed combinations of prescriptions that when taken together had a high risk of adverse events to occur; and
 - c. Failed to use necessary pain management contracts in the care and treatment of these four (4) patients.
16. Licensee agrees that the Board has sufficient evidence to prove that Licensee has violated the following provisions of the Kansas Healing Arts Act with respect to the above facts:
- a. K.S.A. 65-2836(b), Licensee has committed acts of unprofessional conduct and acts of professional incompetency;
 - b. K.S.A. 65-2837(a)(2), Licensee has committed acts of professional incompetency; in that, Licensee has had repeated instances involving the failure to adhere to the applicable standard of care to a degree in which constitutes ordinary negligence, as determined by the Board;
 - c. K.S.A. 65-2837(b)(12), Licensee has committed acts of unprofessional conduct; in that, Licensee has committed conduct likely to harm the public; and
 - d. K.S.A. 65-2837(b)(23), Licensee has committed acts of unprofessional conduct when he prescribed, dispensed, administered and/or or distributed a prescription drug or substance, in an improper or inappropriate manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.
17. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

18. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, and/or censure Licensee's license. Pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.
19. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
20. 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. 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 Kansas Healing Arts Act.
21. 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.

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 acknowledges and agrees that Licensee's failure to comply with any of the provisions of this Consent Order is a violation of a Board order and grounds for disciplinary action against Licensee's license pursuant to K.S.A. 65-2836(k).

28. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Data Bank, Federation of State Medical Boards, and any other entities authorized to receive disclosure of the Consent Order.
29. 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.
30. 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.
31. This Consent Order constitutes public disciplinary action.
32. The Board may consider all aspects of this Consent Order in any future disciplinary matter regarding Licensee.
33. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of osteopathic medicine and surgery:

SURRENDER OF DEA LICENSE

34. Licensee will surrender his DEA license indefinitely within ten (10) days of the approval of this Consent Order.

LIMITATION

35. Licensee is indefinitely prohibited and limited from ordering, prescribing, dispensing, distributing and/or administering any controlled substance in Schedules II, III, IV, and V of the Controlled Substances Act.

IT IS THEREFORE ORDERED that the Consent Order containing the agreement of the parties contained herein is hereby adopted by the Board as findings of fact and conclusions of law.

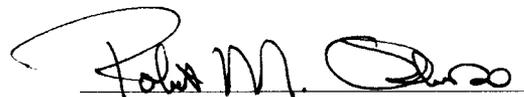
IT IS SO ORDERED on this 13 day of Oct, 2015.

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


Kathleen Selzler Lippert

Executive Director

Oct 13, 2015
Date



Robert M. Osborn, D.O.

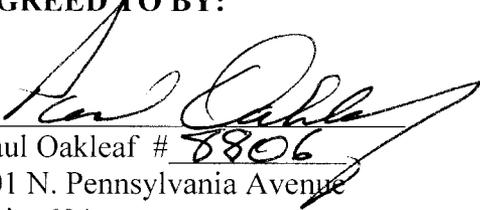
Licensee

9/21/15
Date

PREPARED AND APPROVED BY:

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Litigation Counsel
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Topeka, KS 66612
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AGREED TO BY:


Paul Oakleaf # 8806
201 N. Pennsylvania Avenue
Suite 604
P.O. Box 1212
Independence, Kansas 67301

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 13th day of Oct., 2015, to the following:

Robert M. Osborn, D.O.
P.O. Box 826
Independence, Kansas 67301

Paul Oakleaf
201 N. Pennsylvania Avenue
Suite 604
P.O. Box 1212
Independence, Kansas 67301

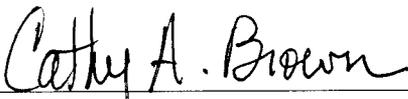
And the original was filed with:

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

And copies were hand-delivered to:

Reese H. Hays, Litigation Counsel
Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level- Suite A
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Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson
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Staff Member