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OCT 13 2015

KS State Board of Healing Arts

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

In the Matter of)
) Docket No. 16-HA 00074
Kirk Potter, D.O.)
Kansas License No. 05-33528)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Anne Barker Hall, Associate Litigation Counsel ("Petitioner"), and Kirk Potter, D.O. ("Licensee"), by and through his attorney Patricia Dengler of BROWN DENGLER, 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** Hays, Kansas 67601.
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. 05-33528 on approximately December 9, 2008. Licensee most recently renewed his license on August 29, 2014. 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 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

Consent Order
Kirk Potter, D.O.

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. The facts underlying this Consent Order are as follows:

a. Confidential

b. In 2009, when Licensee was employed by Hays Medical Center, he lost a camera containing before and after plastic surgery patient photos. Confidential
Confidential

c. On February 22, 2013, Licensee was arrested by the Kansas Highway Patrol for driving under the influence. This case was dismissed, however, when Licensee completed the diversion program;

d. Confidential

e.

f. Confidential

g. On December 13, 2014, Licensee was arrested by the Hays Police Department for driving under the influence;

10. The following facts show that Licensee as taken steps to mitigate the actions noted in paragraph 9:

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11. Licensee denies that all conduct alleged in Paragraph 9 constitutes violations of the Kansas Healing Arts Act, however, for the sole purpose of entering into this Consent Order, Licensee has agreed to the provisions contained therein.

12. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board may have 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.

13. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836. Specifically, Licensee has violated:

a. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), in that Licensee's conduct as alleged in Paragraph 9 herein, was likely to harm the public;

b. Licensee violated K.S.A. 65-2836(e) **Confidential**
Confidential

14. 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.

15. 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.

16. All pending investigation materials in KSBHA Investigation Number 15-00481 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 30. Disciplinary Panel No. 30 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

17. 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.*

18. 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.

19. 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.

20. 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.
21. 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.
22. 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.
23. 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.

24. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
25. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
26. 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
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 non-disciplinary action**.
33. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee including any mitigating information.
34. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action against his license to engage in the practice of osteopathic medicine and surgery:

NON-DISCIPLINARY MONITORING

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41. **Confidential**

42. Licensee 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**

43. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any criminal or traffic misdemeanor or felony offenses.

44. 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.

45. 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) calendar days of any such change.

PRACTICE MONITOR

46. For the period of at least one (1) year, Licensee agrees to have a Board-approved practice monitor, who is another Kansas-licensed physician or osteopathic physician, to review the practices and procedures of Licensee's practice to ensure compliance with the standard of care for Licensee's specialty and with the

community and ethical standards. Licensee shall bear all expenses associated with the practice monitor.

47. Within ten (10) days of the approval of the Consent Order, Licensee shall submit the curriculum vitae (CV) of a proposed practice monitor for approval of the Board. Licensee shall propose a physician to serve as his practice monitor. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the monitoring physician.
48. The practice monitor shall submit quarterly reports (January 15th, April 15th, July 15th, and October 15th) to the Board in the form provided by Board staff. Such reports shall include a summary of whether Licensee is seeing patients, documenting in the medical record, treating patients appropriately, and prescribing medications in an appropriate and timely manner. Licensee is responsible for ensuring that the practice monitor's reports are submitted by the quarterly deadlines. Licensee shall ensure that the quarterly reports continue until the monitoring provision is lifted by the Board.
49. All reports required pursuant to this Consent Order shall be submitted to the following address:

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

TIMEFRAME

50. The above monitoring provisions are not self-terminating.

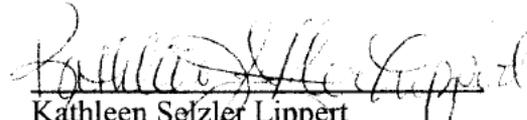
- a. After a period of one (1) year from the entry of this Consent Order, Licensee may request modification or termination of the provision requiring a practice monitor.
- b. After a period of five (5) years from the date of April 18, 2015, Licensee may request modification or termination Confidential

51. For any period Licensee is not actively practicing osteopathic medicine and surgery in the State of Kansas, the monitoring provisions will remain in effect but will be tolled and not count towards the required 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 SO ORDERED on this 13 day of Oct, 2015.

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

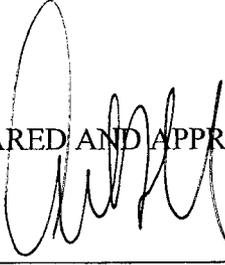

Kathleen Seizler Lippert
Executive Director

Oct 13, 2015
Date

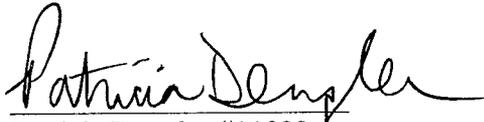

Kirk Potter, D.O.
Licensee

Sept. 9, 2015
Date

PREPARED AND APPROVED BY:



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Kansas State Board of Healing Arts
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Wichita, KS 67206
Telephone: (316) 260-9720
Facsimile: (316) 260-8867
Email: pdengler@browndengler.com

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 October, 2015, to the following:

Kirk Potter, D.O.
Licensee
Confidential
Hays, KS 67601

Patricia Dengler
Attorney for Licensee
BROWN DENGLER LLC
Polo Club Office Park
1223 N. Rock Road, Bldg. G-100
Wichita, KS 67206

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:

Anne Barker Hall
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
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