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OCT 30 2015
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA00116
	)	OAH No. 15HA0018
DONALD G. SCHMITT, L.R.T.	)	
Kansas License No. 22-04912	)	

CONSENT ORDER FOR SURRENDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jane E. Weiler, Associate Litigation Counsel, and Anne Barker Hall, Associate Litigation Counsel ("Petitioner"), and Donald G. Schmitt, L.R.T. ("Licensee"), *pro se*, and moves the Board for approval of a Consent Order affecting Licensee's license to practice radiographic technology 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 Port Falls, Idaho 83854.
2. Licensee is or has been entitled to engage in the practice of radiologic technology in the State of Kansas, having been issued original and permanent license No. 22-04912 on or about April 10, 2015.
3. On or about June 5, 2015, Licensee's license was Emergently Suspended pending a hearing on Petitioner's Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings.
4. 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 radiologic technology. K.S.A.65-7301 *et seq.*

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5. 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. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. The Kansas Radiologic Technologists Practice 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.
7. 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.
8. 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.
9. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-7313, to take action with respect to Licensee's license under the Kansas Radiologic Technologists Practice Act, K.S.A. 65-7301, *et seq.*

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10. On June 5, 2015, Petitioner filed a Petition against Licensee's license to practice radiologic technology alleging violations of the Kansas Radiologic Technologists Practice Act pursuant to K.S.A. 65-7313. Petitioner incorporates the Petition herein by reference in its entirety. In addition, the following facts are presented:

    a. On or about February 24, 2015, Licensee entered into a settlement agreement in the form of a Consent Order *In the Matter of Donald G. Schmitt, L.R.T.*, KSBHA Docket No. 15-HA00067 ("2015 Consent Order"). The 2015 Consent Order constituted a lawful order of the Board and constituted non-disciplinary public action against Licensee's license to practice radiologic technology as a radiologic technologist in the State of Kansas.

    b. Further, due to Licensee's agreement comply with the terms and conditions of the 2015 Consent Order, the Board granted Licensee a temporary license to practice radiologic technology as a radiologic technologist in the State of Kansas.

    c. Confidential

    d. Additionally, pursuant to the 2015 Consent Order, Licensee is required to comply with all terms and conditions of the Consent Order, which included, in part:

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e. Confidential

f. On or about April 10, 2015, the Board accepted and ratified the 2015 Consent Order. Further, the Board granted Licensee an active license to practice radiologic technology as a radiologic technologist.

g. Confidential

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Confidential

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Confidential

11. 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 Radiologic Technologists Practice 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.

12. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-7313, and K.S.A. 65-4925.

13. Licensee's acts constitute unprofessional conduct as set forth in K.S.A. 65-7313.

14. Licensee violated K.S.A. 65-7313(a)(3), Confidential
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15. Licensee violated K.S.A. 65-7313(a)(4), in that Licensee Confidential Confidential in the opinion of the Board continued practice by Licensee would constitute a danger to the public's health and safety.

16. Licensee violated K.S.A. 65-7313(a)(1), in that Licensee is guilty of fraud or deceit in the procurement or holding of a license.

17. Licensee violated K.S.A. 65-7313(a)(8), as further defined by K.A.R. 100-73-6(h), in that Licensee committed unprofessional conduct by engaging conduct likely to deceive, defraud, or harm the public.

18. Pursuant to K.S.A. 65-7313, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license violations of the Kansas Radiologic Technologists Practice Act.

19. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

20. 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 as a radiographic technologist 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

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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 Radiologic Technologists Practice Act, K.S.A. 65-7301 *et seq.*

21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Radiologic Technologists Practice 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 Radiologic Technologists Practice Act.

22. 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.

23. 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 this Consent Order.

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24. 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.

25. 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.

26. 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.

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

28. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

29. Licensee shall obey all federal, state and local laws and rules governing the practice of radiologic technology in the State of Kansas that may be in place at the time of execution

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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. 77-505. This Consent Order shall constitute the Board's Final 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 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 against his license to engage in the practice of radiologic technology:

SURRENDER TREATED AS REVOCATION

34. Licensee hereby surrenders his Kansas license to practice radiologic technology. Such surrender shall be treated as a revocation for all purposes including reporting such action.

35. Licensee's agrees that if he applies for reinstatement of his license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-7305 and K.A.R. 100-73-2. Further, Licensee's application will be governed by *Vakas v. The Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement.

36. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement.

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37. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in the Petition and this Consent Order will be considered as findings of fact and conclusions of law.

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 Licensee's license is revoked effective upon filing of this Consent Order.

IT IS SO ORDERED on this 21st day of Oct, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

10/21/15
Date

Donald G. Schmitt, L.R.T.
Licensee

10-15-2015
Date

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PREPARED AND APPROVED BY:

Jane E. Weiler, #25276
Associate Litigation Counsel
Anne Barker Hall, #23672
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Ave
Lower Level Suite A
Topeka, Kansas 66612
(785) 296-1479
(785) 368-8210 (facsimile)
jweiler@ksbha.ks.gov
ahall@ksbha.ks.gov

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order for Surrender by United States mail, postage prepaid, on this 30th day of October, 2015, to the following:

Donald G. Schmitt. L.R.T.
Confidential

Post Falls, Idaho 83854

And the original was hand-delivered for filing to:

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

And a copy was hand-delivered to:

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

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

Cathy A. Brown

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