

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 17-HA <u>00026</u>
David L. Silverman, M.D.)	
Kansas License No. Pending)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Tracy Fredley, Associate Litigation Counsel (“Respondent”), and David L. Silverman, 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: [REDACTED]
Westminster, MD 21158.
2. On or about August 3, 2016, Applicant submitted to the Board an application for a license to practice medicine and surgery. Such application was deemed complete and filed with the Board on November 9, 2016.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts. K.S.A. 65-2801 *et seq.*
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. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

Consent Order
David L. Silverman, M.D.

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 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), (j), (s), and (w) to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

State Board Actions

9. **Virginia:** In June 2009, Applicant entered into a Consent Order with the Virginia Board of Medicine. Applicant admitted that he was impaired to practice medicine with

reasonable skill and safety [REDACTED] The factual basis for the Consent Order, includes but is not limited to the following:

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

- d. From 2002 to 2006, during Applicant's employment, he was observed by other employees to have slowed, slurred, rambling speech; bloodshot and droopy eyes; sluggishness; substandard personal hygiene; a "spacey" demeanor; and displayed erratic behavior in arriving to the office hours late, leaving early, cancelling patient appointments, taking excessive sick days, and leaving in the office in the middle of treating patients;
- e. In November 2005, Applicant failed to respond to several calls while on-call at Memorial Hospital in Martinsville, Virginia;
- f. From 2005 to 2007, on multiple occasions, Applicant obtained Xanax, Ativan, and Valium for personal use by ordering it through the internet, without a valid prescription issued him by a practitioner. Applicant also, on

multiple occasions, wrote prescriptions for patient(s) and then diverted them for his own personal and unauthorized use.

10. As a result of the Consent Order, Applicant was indefinitely suspended and could not petition the Virginia Board for reinstatement of his license for at least two (2) years. He was also required to surrender his Drug Enforcement Agency (“DEA”) certificate.

11. In 2013, Applicant submitted his application for reinstatement of his license in Virginia. In January 2014, the Virginia Board decided to reinstate his license, and imposed the following conditions: (1) Applicant was prohibited from independently performing ophthalmologic surgery until he completed a twelve (12) month preceptorship/training program, and (2) Applicant was required to undergo a clinical competency assessment.

12. In April 2015, Applicant completed a competency assessment with evaluator, Dr. Louis Edward Perraut, M.D.; they met on several occasions in-person in between December 2013 and April 2015. The evaluator ultimately determined that Applicant was safe to practice. On or about July 2, 2015, the Virginia Board determined that all of the terms and conditions imposed with the reinstatement of his license have been terminated. The Board stated Applicant was in full compliance.

13. **North Carolina:** On or about February 24, 2010, the North Carolina Board took reciprocal action based on the Virginia Board action. Applicant entered into a Consent Order that indefinitely suspended his license. At the time, he held an inactive license.

14. On or about February 9, 2014, Applicant requested that the Board change his North Carolina license back to inactive status and relieve him of any ongoing obligations. The North Carolina Board did change his license back to inactive status, and relieved him of all obligations.

Board Certification, DEA Registration, & Medicare/Medicaid

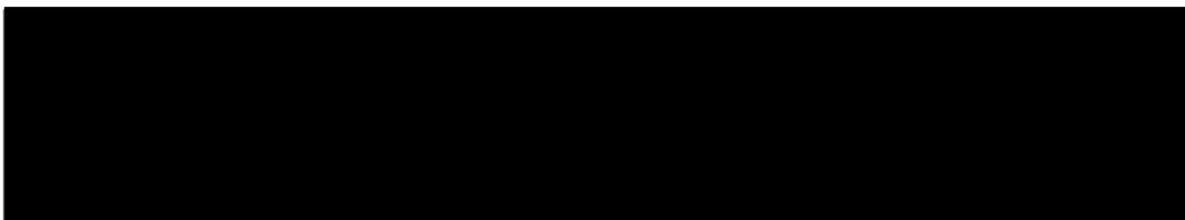
15. Based on the Virginia Board action, the American Board of Ophthalmology (“ABO”) suspended Applicant’s certification. When Applicant restored his Virginia license to unrestricted active status, the ABO allowed Applicant to engage in the accelerated maintenance of certification program, so that Applicant could become re-certified. On or about November 13, 2015, Applicant enrolled in the program. The fast track program granted Applicant a three (3) year window to complete the maintenance of certification.

16. Applicant surrendered his DEA registration in 2009. Presently, however, he has a full DEA registration in both Virginia and Maryland, which were reinstated on July 6, 2016 and October 21, 2015, respectively. He also has a Controlled Dangerous Substance Registration in Maryland.

17. In 2010, the Office of Inspector General excluded Applicant from participation in Medicare, Medicaid, and all other Federal Programs. Since reinstating his Virginia license, these restrictions have been removed and Applicant is now fully enrolled in Medicare/Medicaid.



18. Prior to the suspension of Applicant’s license in Virginia, he moved from Virginia to California in 2008



19. [REDACTED]

[REDACTED]

20. In January 2014, Applicant moved from California to Maryland [REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

24. [REDACTED]

[REDACTED]

Malpractice Payouts

25. In 2009, eight (8) malpractice cases were settled against Applicant. They were settled collectively, [REDACTED]

[REDACTED] He further stated that although some of the cases involved less than optimal surgical outcomes and postoperative complications. Applicant contends that these cases were not deviations from the standard of care. Applicant further reported that “as a condition of [his] initial Virginia medical license reinstatement [he] spent a great number of hours reviewing these cases in detail with an Associate Professor of Ophthalmology at University of Virginia who is an ophthalmologist certified by ABO. The satisfactory completion of this review found [him] safe to practice medicine as well as surgery and was deemed sufficient under Virginia Law to have all restrictions removed from [his] medical license”.

26. Applicant also disclosed that in 2000, he had a payout made on his behalf [REDACTED] [REDACTED] in 2003 [REDACTED] and in 2003 [REDACTED] [REDACTED]

27. 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.

28. Applicant's acts, if proven, constitute a violation under K.S.A. 65-2836. More specifically, Applicant violated K.S.A. 65-2836(j) as a result of having disciplinary action taken against his license by another state's licensing board.

29. Applicant violated K.S.A. 65-2836(i), due to Applicant having an inability to practice the healing arts with reasonable skill and safety [REDACTED] [REDACTED]

30. Applicant violated K.S.A. 65-2836(s), due to Applicant having sanctions taken against him by a governmental agency.

31. Applicant violated K.S.A. 65-2836(w), due to having multiple malpractice payouts made on his behalf, for conduct that would be actionable under the Healing Arts Act.

32. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license to practice medicine and surgery.

33. 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.

34. All pending investigation materials in KSBHA Investigative Case Number 17-00067 regarding Applicant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 31 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

35. 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.*

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. Applicant acknowledges that he has read this Consent Order and fully understands the contents.

43. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

44. 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.

45. This Consent Order constitutes **public non-disciplinary** action.

46. 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. 77-505. 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.

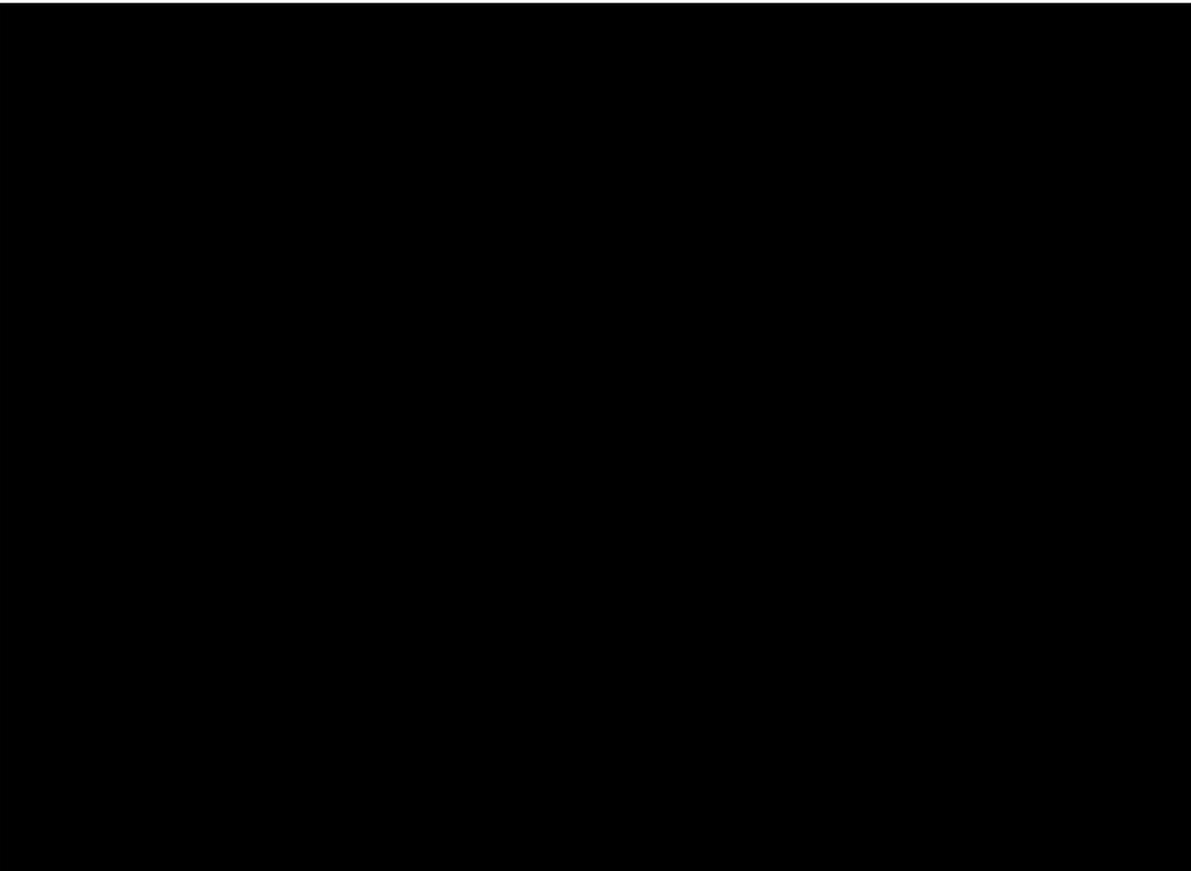
47. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

48. Applicant understands that a Temporary License shall be issued based upon Applicant signing this Consent Order, paying the temporary license fee, 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 of such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent license under the terms of this Consent Order.

49. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public non-disciplinary action against his license to practice medicine and surgery:

MONITORING

50. 


52. [Redacted]

[Redacted]

53. [Redacted]

[Redacted]

54. [Redacted]

[Redacted]

55. [Redacted]

[Redacted]

56. [Redacted]

[Redacted]

57. [Redacted]

[Redacted]

58. [Redacted]

[Redacted]

[REDACTED]

59. [REDACTED]

[REDACTED]

60. 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.

61. Applicant 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.

MONITORING TIMEFRAME

62. The above monitoring provisions are not self-terminating. [REDACTED]

[REDACTED]

[REDACTED] August 27, 2017, then at that time, Applicant may appear before the Board to request modification or termination of the provisions contained in this Consent Order. At that time, Applicant will have the burden to show that he is safe to practice without the monitoring requirements he is requesting to be lifted. If Applicant has not been fully compliant [REDACTED] and/or all of the provisions of this Consent Order, Applicant must complete at least one (1) full year of monitoring prior to requesting to appear before the Board to request modification or termination of the provisions.

63. For any period of time that Applicant is not actively practicing medicine and surgery in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the aforementioned timeframe(s). Furthermore, if Applicant obtains a temporary license as outlined above, Applicant acknowledges that the monitoring period will not start until the Board ratifies the Consent Order.

64. Any and all requests for termination and/or modification of this Consent Order will be made in writing and submitted to the Board by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Executive Director
800 SW Jackson Lower Level Suite A

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 a license, Applicant shall be granted a license to practice medicine and surgery, pursuant to the conditions above.

IT IS SO ORDERED on this 9th day of November, 2016.

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



Kathleen Selzler Lippert
Executive Director

11-9-2016

Date



David L. Silverman, M.D.
Applicant

11-7-2016

Date

PREPARED AND APPROVED BY:


Tracy Fredley, #25467
Associate Litigation Counsel
Kansas Board of Healing Arts
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Topeka, Kansas 66612
Phone: 785-368-7257
Fax: 785-368-8210
Email: tracy.fredley@ks.gov

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 9th day of November, 2016, to the following:

David L. Silverman, M.D.
[REDACTED]
Westminster, MD 21158

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:

Tracy Fredley
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

General Counsel's Office
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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