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KS State Board of Healing Arts

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BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA 00096
Timothy C. Spears, D.O.	)	
Kansas License No. 05-23246	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Susan R. Gering, Associate Litigation Counsel ("Petitioner"), and Timothy C. Spears, D.O. ("Licensee"), *pro se*, 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:

Confidential

1. Licensee's last known mailing address to the Board is:

   Kansas 66749.

2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 05-23246 on approximately June 15, 1990. 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 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. On April 26, 2013, the Board received an anonymous complaint alleging Licensee was inappropriately prescribing pain medications to Confidential Patient 1.

10. Patient 1 is a thirty-nine (39) year old female with a history of migraine headaches, diabetes and cardiac disease.

11. Patient 1's medical history with Licensee's office dates back to approximately July 2008. The records received by the Board consist mostly of notes entitled "Nurse Note/Verbal Orders." Many of the notes are unsigned or were signed months after they were created. On forty-one (41) separate occasions, Licensee was listed as the Supervisor of the listed provider for Patient 1's scheduled visit, but his signature does not appear anywhere in the record.

12. The information contained in the "Nurse Note/Verbal Orders" are sparse and incomplete, but show that Patient 1 received Demerol and Phenergan injections for her migraine headaches. In addition, she would sometimes receive Norflex, Ketorolac, or Kenalog.

13. Further, medication administration is noted to have been given by Licensee and additional notes indicate he frequently administered medications to Patient 1. Licensee is documented to have given administered medications to Confidential on or about the following occasions: February 25, 2009; January 6, 2010; January 14, 2010 at 12:31 p.m.; January 14, 2010 at 5:48 p.m.; February 25, 2010; November 1, 2010; March 31, 2011; April 1, 2011; April 8, 2011; April 18, 2011; April 5, 2012; May 7, 2012; June 1, 2012; June 21, 2012; June 27, 2012; July 20, 2012; August 3, 2012; August 23, 2012; September 20, 2012; September 24, 2012; September 26, 2012; October 22, 2012; and December 3, 2012. Licensee failed to make any notes for these dates regarding his treatment or administration of medications to Patient 1.

14. 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 the allegations contained in the above paragraphs in any further proceeding before this Board.
15. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836.
16. Licensee 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.
17. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(22) in that Licensee prescribed, dispensed, administered or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner.
18. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately described the services rendered to Patient 1, including patient histories, pertinent findings, examination results and tests.
19. Licensee violated K.S.A. 65-2836(k) in that Licensee violated any lawful rule and/or regulation promulgated by the Board. Specifically, Licensee violated K.A.R. 100-24-1 by failing to maintain an adequate record for Patient 1.
20. 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.

21. 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.

22. All pending investigation materials in KSBHA Investigation Number 14-00080 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 29. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

23. 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.*

24. 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.
25. 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.
26. 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.
27. 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.

28. 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.
29. 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.
30. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
31. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
32. 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

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. This Consent Order constitutes **public disciplinary action.**

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

40. 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:

CENSURE

41. Licensee is publicly censured for violating the Kansas Healing Arts Act.

PROBATION: EDUCATION

42. As a term of Probation, Licensee shall attend and successfully complete the following continuing education course(s):

    a. Licensee shall attend and successfully complete the in-person seminar entitled "Controlled Substance Prescribing: Pain, Anxiety, Insomnia" put on by Case Western Reserve University (Case Western).

        i. Licensee shall attend and complete the scheduled seminar on of the following dates, unless approved by the Board and/or the Appointed Disciplinary Panel Member: May 5-8, 2015, or December 1-4, 2015.

        ii. On or before March 15, 2015, Licensee shall notify the Compliance Coordinator in writing of the course date Licensee has registered to attend the Case Western "Controlled Substance Prescribing: Pain, Anxiety, Insomnia" seminar. Licensee shall provide proof of successful completion for the Case Western seminar to the Compliance Coordinator within thirty (30) calendar days of successfully completing the seminar.

    b. Licensee shall attend and successfully complete the ProBE program provided by the Center for Personalized Education for Physicians (CPEP).

        i. Licensee shall attend and complete the scheduled program on of the following dates, unless approved by the Board and/or the Appointed

Disciplinary Panel Member: April 23, 2015, May 15, 2015, June 9, 2015, July 10, 2015, or August 13, 2015.

ii. On or before March 15, 2015, Licensee shall notify the Compliance Coordinator in writing of the course date Licensee has registered to attend the CPEP ProBE program. Licensee shall provide proof of successful completion for the ProBE program to the Compliance Coordinator within thirty (30) days of successfully completing the program.

c. Licensee shall attend and successfully complete at least eight (8) hours of Board approved continuing education with an emphasis in pain management. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of Licensee's proposed course(s).

i. Licensee shall submit his proposed course or courses to the Board for Board approval by March 15, 2015. Licensee shall provide proof of successful completion of the course to the Compliance Coordinator within thirty (30) calendar days of successfully completing the course(s).

43. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.

44. These hours shall be in addition to those hours required for renewal of licensure.

45. All foreseen and unforeseen costs associated with the aforementioned course(s)/seminar(s) shall be at Licensee's own expense to include, but not be

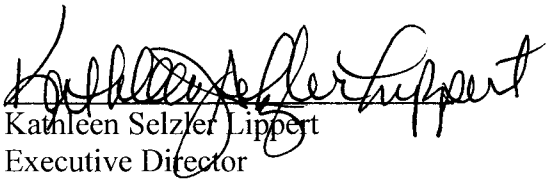
limited to, the cost of the course(s)/seminar(s) travel, lodging, program fee, meals, etc.

46. Upon receiving proof of successful completion of all continuing education course(s)/seminar(s)/program(s), this portion of Licensee's Probation: Education shall be terminated.

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.

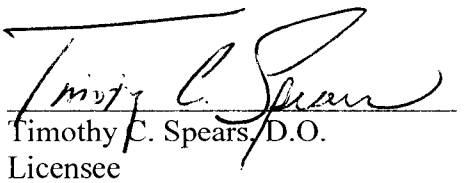
IT IS SO ORDERED on this 15 day of April, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:



Kathleen Selzler Lippert
Executive Director

4/15/15
Date



Timothy C. Spears, D.O.
Licensee

1-25-15
Date

PREPARED AND APPROVED BY:

Susan R. Gering, #25582
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Phone: 785-368-8212
Fax: 785-368-8210
sgering@kshba.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 15th day of April, 2015, to the following:

Timothy C. Spears, D.O.
Licensee
Confidential

Iola, Kansas 66749

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:

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