FILED
AUG 19 2014
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	KSBHA Docket No. 15-HA 00025
Whitney L. VinZant, M.D.	)	
Kansas License No. 04-16020	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel ("Petitioner"), and Whitney L. VinZant, M.D. ("Licensee"), by and through, Tracie R. England and Randy J. Troutt of Hite, Fanning & Honeyman, L.L.P., and move the Board for approval of a Consent Order affecting Licensee's license to practice 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: 818 North Emporia, Suite 200, Wichita, Kansas 67214.
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. 04-16020 on approximately December 6, 1974. 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 medicine and surgery. K.S.A. 65-2801, *et seq.* and K.S.A. 65-2869.
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 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 pursuant to K.S.A. 65-2836(b), K.S.A.65-2836(i), K.S.A. 65-2836(s), K.S.A. 65-2837(a)(2), K.S.A. 65-2837(a)(3), and 65-2837(b)(12); to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

9. While admitting no wrongdoing, 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 allegations contained within this Consent Order. Licensee further waives his right to dispute or otherwise contest the allegations contained within this Consent Order in any further proceeding before this Board. Licensee further waives his right to dispute or otherwise contest the facts contained in this Consent Order in any future proceeding before this Board.

10. Licensee does not admit nor deny the following facts; however, 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:

    a. From February 17, 2012, to January 14, 2013, Licensee failed to meet the standard of care during the care and treatment of at least three (3) separate oncologic abdominal surgical patients.

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    b.

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c.

d.

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e. On approximately January 17, 2013, Licensee's clinical privileges at Via Christi Health ("Via Christi"), in Wichita, Kansas, were formally restricted. Confidential

f.

g. On approximately May 14, 2013, Licensee's clinical privileges at Via Christi were Confidential suspended for twenty-nine (29) days Confidential Confidential

h. Confidential

i. Confidential

j. Confidential

k. On approximately June 21, 2013, Licensee's suspended clinical privileges at Via Christi were reinstated. Confidential the restrictions imposed in January 2013 remained in effect.

11. Licensee's acts, if proven, constitute professional incompetence, unprofessional and/or dishonorable conduct as set forth in K.S.A. 65-2836 and K.S.A. 65-2837:

a. K.S.A. 65-2836(b), in that Licensee has committed acts of professional incompetency, as further defined by K.S.A. 65-2837(a)(2), in that Licensee has had repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence;

b. K.S.A. 65-2836(b), in that Licensee has committed acts of professional incompetency, as further defined by K.S.A. 65-2837(a)(3), in that Licensee

has had a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts;

c. K.S.A. 65-2836(b), in that Licensee has committed acts of unprofessional and/or dishonorable conduct, as further defined by K.S.A. 65-2837(b)(12), for conduct likely to harm the public;

d. K.S.A. 65-2835(b), in that Licensee has committed acts of unprofessional and/or dishonorable conduct, as further defined by K.S.A. 65-2837(b)(24), in that Licensee has repeated failure to practice the healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions or circumstances;

e. K.S.A. 65-2836(i), in that Licensee has the inability to practice the healing arts with reasonable skill and safety to patients by reason of Confidential

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f. K.S.A. 65-2836(s), in that Licensee has had sanctions or disciplinary actions taken against him by a peer review committee and health care facility for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

12. 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.

13. 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.

14. All pending investigation materials in KSBHA Investigation Nos. 13-00485 and 14-00031 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

15. 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 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.*

16. 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.

17. 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.
18. 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.
19. 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.
20. 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.

21. 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.

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

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

24. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

25. Licensee 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.

26. 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 Final Order when filed with the office of the Executive Director for the Board and no further Order is required.

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

28. This Consent Order constitutes public disciplinary action in the form of a limitation being placed upon Licensee's license to practice medicine and surgery in the State of Kansas.

29. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against him and limitations on his license to engage in the practice of medicine and surgery:

LIMITATION

30. Licensee's State of Kansas License to Practice Medicine and Surgery has hereby placed upon it **LIMITATIONS** in which Licensee is prohibited from performing any surgery; but for, the following procedures:

1) Laparoscopy – Diagnostic and Therapeutic Level 1
2) Colonoscopy – Diagnostic and Therapeutic
3) Endoscopy – Diagnostic and Therapeutic
4) Appendectomy
5) Drainage procedure for anorectal abscess
6) Pilonidal cystectomy
7) Cholecystectomy with or without operative cholangiogram
8) Breast – Simple Mastectomy
9) Herniorrhaphy – Inguinal
10) Incisional Hernia Repair
11) Bowel Resection Surgery

LIMITATION TIMEFRAME

31. The above limitation is not self-terminating. Such limitation shall continue until such time Licensee presents clear and convincing evidence to the Board that he has the requisite skill and competence to perform surgery.

CPEP EVALUATION

32. Within ten (10) calendar days of the approval of the Consent Order, Licensee shall contact the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230, Phone: 303-577-3232 - Fax: 303-577-3241, to schedule a clinical skills assessment for the earliest dates available to both CPEP and Licensee. Both parties may provide relevant information to CPEP for consideration as part of the clinical skills assessment. In order to permit the Board to provide such relevant information, Licensee shall immediately notify Board Counsel of the assessment dates once the assessment is scheduled.

33. Licensee shall travel to CPEP and complete the assessment as scheduled at his own expense.

34. Both parties will be provided a copy of the draft Assessment Report and the final Assessment Report for their review. Licensee shall complete any necessary waiver/release so that the Board may receive a copy of the draft Assessment Report and the final Assessment Report.

35. Once the parties receive the final Assessment Report, the report will be presented at the next regularly scheduled Board Meeting. Licensee agrees that the Board,

after reviewing the final Assessment Report, may modify the terms and requirements of this Consent Order to address the findings and recommendations of CPEP.

36. The parties stipulate and agree that the Assessment Report will be admitted into evidence, to be considered fully by the Board, without requiring CPEP's Medical Director to appear as a witness to either provide an evidentiary foundation for the Report or to provide substantive testimony relating to the Report's testing procedures, opinions and/or conclusions.

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 18 day of Aug, 2014.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

7.9.14
Date

Whitney L. VinZant, M.D.
Licensee

Date

PREPARED AND APPROVED BY:

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, first class, postage prepaid, on this 11th day of August, 2014, to the following:

Whitney L. VinZant, M.D.
818 North Emporia, Suite 200
Wichita, KS 67214

Tracie R. England and Randy J. Troutt
Attorneys for Respondent
100 N. Broadway
Suite 950
Wichita, Kansas 67202

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 delivered to:

Reese H. Hays
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
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Katy Lenahan
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Cathy A. Brown
Staff Member