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

KS State Board of Healing Arts

In the Matter of)
)
JOHN R. TOTH, M.D.)
Kansas License No. 04-18310)
_____)

Docket No. 05-HA-79

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board"), by and through Kelli J. Stevens, Litigation Counsel ("Petitioner"), and John R. Toth, M.D. ("Licensee"), by and through counsel, Steve A. Schwarm, and move the Board for approval of a Consent Order affecting Licensee's license to practice the medicine and surgery in Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 2115 West 10th Avenue, Topeka, Kansas 66604.
2. Licensee was issued License No. 04-18310 on approximately August 13, 1979. Licensee currently holds an active license to engage in the practice of medicine and surgery in the State of Kansas, having last renewed his license on approximately May 24, 2005.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the medicine and surgery.
4. This Consent Order and the filing of such document are in accordance with the applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 65-2838, without the necessity of proceeding to a formal hearing.

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5. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

7. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

8. 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.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that 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.

10. Petitioner alleges that Licensee deviated from the standard of care to a degree constituting ordinary and/or gross negligence with respect to his care and treatment of two (2) patients and to a degree constituting ordinary negligence with respect to one (1) patient. Petitioner further alleges that Licensee violated his duty of confidentiality to a patient by disclosing patient-identifying information to a third person,

and that Licensee exploited his physician-patient relationship with a patient to further his own economic interests by soliciting financial contributions from that patient. Petitioner further alleges that Licensee's hospital privileges at a hospital have been revoked. The specific allegations are set forth in the First Amended Petition filed on October 12, 2005.

11. For the sole purpose of this Consent Order, Licensee acknowledges that his acts and conduct with respect to the patients named in the First Amended Petition violated the Healing Arts Act. Licensee further waives his right to dispute or otherwise contest the allegations contained in the First Amended Petition in any future proceeding before this Board.

12. Pursuant to K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

13. In lieu of concluding the presently pending formal proceedings, Licensee, by his signature affixed to this Consent Order, voluntarily agrees to the following disciplinary measures regarding his license:

Limitations

- a. On December 15, 2005, Licensee's license shall immediately be changed from active to inactive status, and such change shall constitute a limitation. Licensee must petition the Board to return to active status;
- b. Prior to petitioning the Board to return to active status, Licensee must be current in his continuing medical education credits as would be required for him to maintain an active license;
- c. Prior to petitioning the Board to return to active status, Licensee

shall, at his own expense, complete and provide proof of completion of a continuing medical education course(s) that provides at least ten (10) contact hours in professional ethics. The course must be pre-approved by the Board or the Board's designee.

- d. Prior to petitioning the Board to return to active status, if Licensee is absent from active practice for two (2) years or more, Licensee may be required to complete additional testing, training or education as set forth in K.S.A. 65-2809(g);
- e. If granted a return to active status, Licensee's license shall be limited in a manner to be determined by the Board at the time as such return to active status is granted, but shall include the following:
 - i. Licensee shall not prescribe, order or treat any patient with intravenous bismuth;
 - ii. Licensee shall not initiate diagnosis and treatment of Lyme disease, except in consultation with and upon approval by another Kansas-licensed physician having a practice specialty in infectious disease;
 - iii. Licensee shall not engage in the practice of the healing arts except the practice allopathic medicine and surgery that is generally accepted in the medical community;
 - iv. Licensee shall not prescribe, order or administer any drug, whether or not designated as prescription-only, that has not

been approved by the Food & Drug Administration (“FDA”) and that such drug, if prescribed by, ordered by, or administered by Licensee shall either conform to the drug label, or shall be fully supported by peer-reviewed scientific literature that is published in a journal generally accepted by the medical community;

- v. Licensee shall not compound drugs;
- vi. Licensee shall be prohibited from engaging in the solo practice of medicine, and shall only practice in a group setting and/or in a structured medical care facility, physician practice setting in which there are actively licensed allopathic and/or osteopathic physicians;

Practice Mentor

- f. Prior to being granted a return to active status, Licensee shall, at his own expense, enter into a practice mentor relationship with another Kansas-licensed physician who is approved by the Board. Such mentoring physician relationship shall be for a period of time and in a manner to be determined by the Board at the time Licensee petitions for a return to active status;

Public Censure

- g. Licensee is publicly censured for the violations of the Healing Arts Act as set forth in allegations contained in the First Amended Petition; and

Costs

- h. Licensee agrees to pay the Board's costs incurred to date in the formal proceedings of this action in the amount of \$1,026.33, payable at the time this Consent Order is approved by the Board.

14. Licensee's failure to comply with this Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

15. 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.

16. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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 and 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.

17. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, the Federation of State Medical Boards and any other reporting entities authorized to receive disclosure of the Consent Order.

18. 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.

19. 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 or settlement.

20. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

21. Licensee acknowledges that he has read this Consent Order and fully understands the contents and that this Consent Order has been entered into freely and voluntarily.

22. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Stevens, Litigation Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

23. Licensee shall obey all federal, state and local laws and rules governing the practice of the healing arts 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.

24. 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.

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

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that in lieu of concluding the presently pending formal proceedings, Licensee, by his signature affixed to this Consent Order, voluntarily agrees to the following disciplinary measures regarding his license:

LIMITATIONS

- a. On December 15, 2005, Licensee's license shall immediately be changed from active to inactive status, and such change shall constitute a limitation. Licensee must petition the Board to return to active status;
- b. Prior to petitioning the Board to return to active status, Licensee must be current in his continuing medical education credits as would be required for him to maintain an active license;
- c. Prior to petitioning the Board to return to active status, Licensee shall, at his own expense, complete and provide proof of completion of a continuing medical education course(s) that provides at least ten (10) contact hours in professional ethics. The course must be pre-approved by the Board or the Board's designee.
- d. Prior to petitioning the Board to return to active status, if Licensee is absent from active practice for two (2) years or more, Licensee may be required to complete additional testing, training or education as set forth in K.S.A. 65-2809(g);
- e. If granted a return to active status, Licensee's license shall be limited in a manner to be determined by the Board at the time as such return to active status is granted, but shall include the following:
 - a. Licensee shall not prescribe, order or treat any patient with intravenous bismuth;
 - b. Licensee shall not initiate diagnosis and treatment of Lyme

disease, except in consultation with and upon approval by another Kansas-licensed physician having a practice specialty in infectious disease;

- c. Licensee shall not engage in the practice of the healing arts except the practice allopathic medicine and surgery that is generally accepted in the medical community;
- d. Licensee shall not prescribe, order or administer any drug, whether or not designated as prescription-only, that has not been approved by the Food & Drug Administration (“FDA”) and that such drug, if prescribed by, ordered by, or administered by Licensee shall either conform to the drug label, or shall be fully supported by peer-reviewed scientific literature that is published in a journal generally accepted by the medical community;
- e. Licensee shall not compound drugs;
- f. Licensee shall be prohibited from engaging in the solo practice of medicine, and shall only practice in a group setting and/or in a structured medical care facility, physician practice setting in which there are actively licensed allopathic and/or osteopathic physicians;

Practice Mentor

- f. Prior to being granted a return to active status, Licensee shall, at his own expense, enter into a practice mentor relationship with another Kansas-licensed physician who is approved by the Board. Such

mentoring physician relationship shall be for a period of time and in a manner to be determined by the Board at the time Licensee petitions for a return to active status;

Public Censure

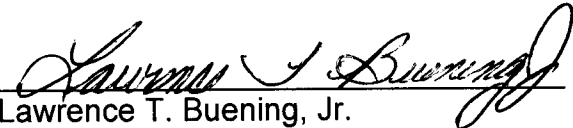
- g. Licensee is publicly censured for the violations of the Healing Arts Act as set forth in allegations contained in the First Amended Petition; and

COSTS

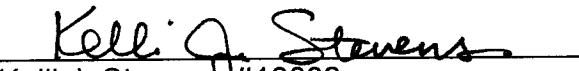
- h. Licensee agrees to pay the Board's costs incurred to date in the formal proceedings of this action in the amount of \$1,026.33, payable at the time this Consent Order is approved by the Board.

IT IS SO ORDERED on this 12th day of December, 2005.

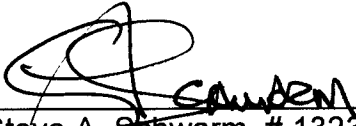
**FOR THE KANSAS STATE BOARD
OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:



Kelli J. Stevens #16032
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

APPROVED BY:



Steve A. Schwarm, # 13232
POL SINELLI, SHALTON, WELTE
& SUELTHAUS, P.C.
555 Kansas Avenue, Suite 301
Topeka, Kansas 66603

APPROVED BY:



John R. Toth, M.D.
Licensee

12/10/2005

Date

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **Consent Order** was served on the 12th day of December, 2005 by hand-delivery and by United States mail, first-class postage pre-paid and addressed to:

Steve A. Schwarm
POL SINELLI, SHALTON, WELTE
& SUELTHAUS, P.C.
555 Kansas Avenue, Suite 301
Topeka, Kansas 66603

and a copy was hand-delivered to:

Kelli J. Stevens
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

and the original was hand-delivered for filing to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

