

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
)	KSBHA Docket No. <u>23-HA00021</u>
Dary K. Zerbe, M.D.)	
Kansas License No. 04-29801)	

JOINT CONSENT ORDER

COMES NOW, Petitioner, Disciplinary Panel #37 (“Petitioner”), a duly authorized committee of the Kansas State Board of Healing Arts (“Board”), by and through Bradley S. Taylor, Associate Litigation Counsel, and Dary K. Zerbe, M.D. (“Licensee”), *pro se*, and move the Board for approval of a Joint 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: **CONFIDENTIAL**,
CONFIDENTIAL
2. Licensee’s last known e-mail address to the Board is: **CONFIDENTIAL**
3. Licensee is or has been entitled to engage in the practice of medicine and surgery in Kansas, having been issued License No. 04-29801 on approximately August 17, 2002. Licensee’s license is Active, having last renewed on May 22, 2022.
4. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of medicine and surgery. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2869.
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.

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77-505 and K.S.A. 65-2838. 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 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.

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. A protective order is hereby entered to protect all confidential information under K.S.A. 65-2898a.

9. The Board has received information and investigated the same, and has reason to believe there are grounds under K.S.A. 65-2836(b), K.S.A. 65-2836(f), K.S.A. 65-2837(a)(2), K.S.A. 65-2837(a)(3), K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(24), and/or K.S.A. 65-2837(b)(25), to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. The facts offered in support of the allegations set forth in Paragraph 10 of this Consent Order are as follows:

- a. On February 3, 2021, Licensee was called to insert an epidural catheter for Patient 1 during her labor.

- b. At 0940, Licensee erroneously placed a catheter into Patient 1's intrathecal (spinal) space rather than the epidural space. The location of the catheter being placed in the intrathecal space as opposed to the epidural space is not documented in Licensee's anesthesia record.
- c. Between 0930 and 0955, Licensee's anesthesia record does not indicate the time of administration for medications neo-syneprine (phenylephrine) 100mg and Lactated Ringers 1500ml.
- d. At 0941 a pain medication test dose was administered by Licensee.
- e. At 0945 Patient 1's baby was noted to have recurrent late decelerations and Lactated Ringers 1000ml at 999ml/hr were started.
- f. Between 1000 and 1013, Licensee administered multiple doses of phenylephrine to Patient 1.
- g. At 1012 Licensee informed nursing staff that Patient 1 was not to have access to her Patient Controlled Analgesic button due to her spinal catheter.
- h. At 1206 Licensee presented to Patient 1's room and administered a 100mcg Fentanyl bolus via Patient 1's intrathecal (spinal) catheter.
- i. At 1209 Patient 1's oxygen saturation dropped to 86% then rebounded to 100%. Licensee's anesthesia record does not reflect Patient 1's drop in oxygen saturation.
- j. Between 1211 and 1214, Patient 1's blood pressure dropped to 87/50. She was started on 10 liters of oxygen via a non-rebreather, a Lactated Ringers bolus was administered, and fetal heart tones were noted in the 40-50s.

Licensee administered additional doses of phenylephrine. Patient 1 was noted as being groggy and confused with labored breathing, and she was sent to the operating room.

k. At 1215 prolonged decelerations were noted and Licensee again administered phenylephrine.

l. At 1225 Patient 1's baby was delivered via emergency c-section with Apgars of 8/9.

11. Licensee understands that he has the right to retain counsel to provide legal advice in the present matter and voluntarily and knowingly waives his right to counsel.

12. 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.

13. While Licensee admits to no wrongdoing, he acknowledges that, if proven, the allegations set forth above would be violations of the Kansas Healing Arts Act.

14. 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.

15. All the materials in **CONFIDENTIAL** regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 36 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

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16. 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 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.*

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

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

25. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in 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 a Final Order under K.S.A. 77-526. 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.

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

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

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 his license to engage in the practice of medicine and surgery.

PRACTICE LIMITATION

30. Licensee agrees as a limitation on his license that he will not provide treatment services to or participate in the care of obstetrics patients until further Order of the Board.

31. Further, Licensee certifies that as of the date of the execution of this Consent Order he currently has no obstetrics patients under his care as a physician.

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.

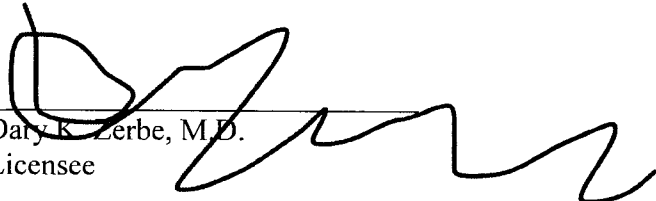
IT IS SO ORDERED on this 13th day of February, 2023.

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

Jusan Hill

Acting Executive Director

2/13/2023
Date



Dary K. Zerbe, M.D.
Licensee

January 18, 2023

Date

PREPARED AND APPROVED BY:

/s Bradley Taylor

Bradley Taylor, #28946
Associate Litigation Counsel
Kansas Board of Healing Arts
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above **Consent Order** by United States mail, postage prepaid, and via e-mail on this 13th day of February, 2023, to the following:

Dary K. Zerbe, M.D.
Licensee

CONFIDENTIAL

And the original was hand-filed with:

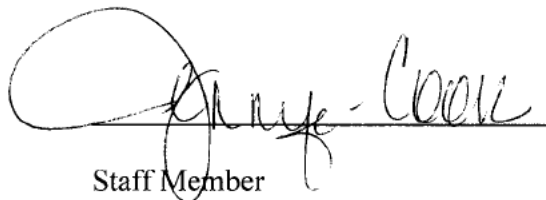
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Bradley Taylor
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Staff Member

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