

FILED

APR 15 2015

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts



In the Matter of)	
)	Docket No. 15-HA00014
Constantine L. Fotopoulos, M.D.)	
Kansas License No. 04-25099)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Reese H. Hays, Litigation Counsel, and Susan R. Gering, Associate Litigation Counsel (“Petitioner”), and Constantine L. Fotopoulos, M.D. (“Licensee”), by and through his counsel, Mark A. Lynch, Simpson, Logback, Lynch, Norris, P.A., 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: 3651 College Blvd., Leawood, Kansas 66211.
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. 04-25099 on approximately June 3, 1994. 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

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Constantine L. Fotopoulos, M.D.

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. This Consent Order incorporates herein by reference the facts as stated in the Petition that was filed on July 25, 2014, except for paragraphs 7, 15, and 18. Exhibit 1, Petition in the Matter of Constantine L. Fotopoulos, M.D. 15-HA00014.

10. 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.
11. Licensee's acts, if proven, violated K.S.A. 65-2836(f) as alleged in the Petition.
12. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(16) and K.S.A. 65-2837(b)(25) as alleged in the Petition.
13. Licensee's acts, if proven, violated K.A.R. 100-24-1 and, as such, also violated K.S.A. 65-2836(k).
14. 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.
15. 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.
16. All pending investigation materials in KSBHA Investigation Number 14-00343 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.

17. 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.*

18. 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.

19. 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.

20. 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.
21. 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.
22. 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.
23. 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.

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

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

26. 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

27. 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.

28. 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.

29. 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 excluding speeding and/or parking violations.

30. 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.
31. 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.
32. This Consent Order constitutes **public disciplinary action**.
33. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
34. 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:

SUSPENSION

35. Licensee's license shall be suspended for a period of sixty (60) calendar days with said suspension to begin on April 10, 2015 and to end on June 9, 2015.
36. This provision is self-terminating. Licensee may resume practice effective June 10, 2015.

PROBATION: EDUCATION

37. As a term of Probation, Licensee shall attend and successfully complete the course entitled "Maintaining Proper Boundaries" put on by Vanderbilt University.
- a. Licensee shall attend and successfully complete the in-person seminar course.

b. Licensee shall provide proof of successful complete of the seminar portion to the Board within thirty (30) days of attending the in-person seminar or within thirty (30) days of the approval of this Consent Order if the course has been completed prior to the approval of this Consent Order by the Board.

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

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

40. 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.

41. Upon the Board's receipt of proof of successful completion of the above seminar, this term of Licensee's Probation: Education shall be terminated.

PROBATION: PRACTICE MONITOR AND CHAPERONE

42. As a term of Probation, for a period of at least one (1) year, Licensee shall not practice medicine and surgery unless he has a chaperone in the room at all times he is consulting, examining, or treating any female patient.

43. Licensee agrees to use the Board-approved chaperone protocol that includes daily log sheets of his patient contact to be filled out by his designated chaperone. The chaperone protocol will be submitted to the Board for approval prior to the lifting of Licensee's suspension. The Board designates the Disciplinary Panel's

Appointed Member to approve or disapprove of the chaperone protocol. Licensee shall bear all expenses associated with the patient chaperone.

44. Furthermore, the chaperone shall be required to utilize and maintain the Board's approved chaperone daily log identifying all patients seen in the office that day and certifying their presence for all patients seen in the office that day. Such daily logs must be submitted to the Board and to Licensee's practice monitor on a monthly basis and must be received on or before the 15th day of the following month. Licensee is responsible for ensuring that the daily logs are submitted to the Board.
45. Within ten (10) business days of the approval of the Consent Order, Licensee shall propose a professionally – licensed health professional to serve as his chaperone. Such information shall include the proposed chaperone's name, a description of the proposed chaperone's professional employment history, and a copy of the proposed chaperone's Kansas professional license. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the chaperone. The chaperone must speak with a representative of the Board, or its designee, prior to approval.
46. As a term of Probation, for the period of at least one (1) year, after the approval of this Consent Order and termination of Licensee's suspension, Licensee agrees to have a Board-approved practice monitor, who is another Kansas-licensed physician. The practice monitor will review all of the chaperone's daily log sheets of patient contact to determine whether Licensee is complying with all community and ethical standards for patient contact. Licensee shall bear all expenses associated with the practice monitor.

47. Within ten (10) business days of the approval of the Consent Order, Licensee shall submit the curriculum vitae of a proposed practice monitor for approval of the Board. Licensee shall propose a physician to serve as his practice monitor. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the monitoring physician.
48. The practice monitor shall submit quarterly reports (July 15th, October 15th, January 15th, and April 15th) to the Board on a form provided by Board staff. Such reports shall include a summary of whether Licensee is seeing patients, documenting in the medical record, treating patients appropriately, and prescribing medications in an appropriate and timely manner. Licensee is responsible for ensuring that the practice monitor's reports are submitted by the quarterly deadlines.
49. All reports required pursuant to this Consent Order shall be submitted to the following:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A,
Topeka, Kansas 66612

BOARD COSTS

50. Licensee is hereby ordered to pay the Board's COSTS in conducting this proceeding under the Kansas Administrative Procedure Act in the amount that is put forth by the Board in a Statement of Costs. These costs shall be paid in full prior to the Board's consideration to terminate Licensee's Probation: Practice Monitor and Chaperone requirement.

51. Licensee shall make all payments, which shall be in the form of cashier's check or money order, to the "Kansas State Board of Healing Arts" and send all payments to the attention of:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A,
Topeka, Kansas 66612


PROBATION PRACTICE MONITOR AND CHAPERONE TIMEFRAME

52. The above terms of Probation of a Practice Monitor and Chaperone provisions are not self-terminating. After a period of one (1) year following his sixty (60) day suspension, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing medicine and surgery in Kansas, the aforementioned probation terms will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

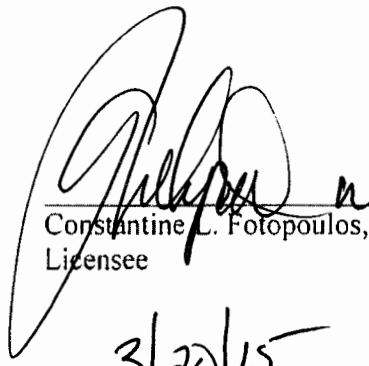
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

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

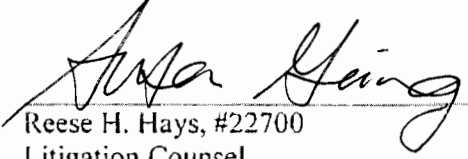
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Kathleen Selzler Lippert
Executive Director

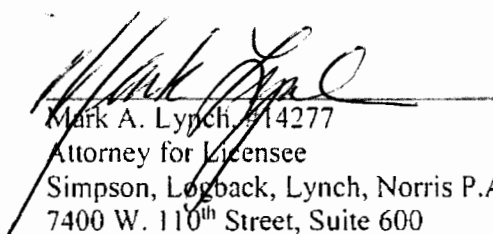
4/15/15
Date


Constantine L. Fotopoulos, M.D.
Licensee
3/20/15
Date

PREPARED AND APPROVED BY:


Reese H. Hays, #22700
Litigation Counsel
Susan R. Gering, #25582
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Phone: 785-296-0961
Fax: 785-368-8210
rhays@ksbha.ks.gov
sgering@kshba.ks.gov

APPROVED BY:


Mark A. Lynch, #14277
Attorney for Licensee
Simpson, Logback, Lynch, Norris P.A.
7400 W. 110th Street, Suite 600
Overland Park, Kansas 66210
mlynch@slln.com

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:

Constantine L. Fotopoulos, M.D.
Licensee
3651 College Blvd.
Overland Park, Kansas 66211

Mark A. Lynch
Attorney for Licensee
Simpson, Logback, Lynch, Norris P.A.
7400 W. 110th Street, Suite 600
Overland Park, Kansas 66210

And the original was hand-filed with:

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

And a copy was hand-delivered to:

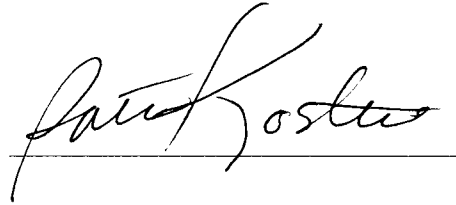
Reese H. Hays
Litigation Counsel
Susan R. Gering
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Kay Lenahan
Licensing Administrator
Kansas State Board of Healing Arts

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Paul Kostler