

FILED

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

AUG 28 2001

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
DONALD R. JANES, M.D.)
Kansas License No. 4-12655)
_____)

Docket No. 01-HA-18

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Donald R. Janes, M.D. ("Licensee"), by and through legal counsel Steve A. Schwarm, and stipulate and agree to the following:

1. 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.*; K.S.A. 65-2869.

2. Licensee admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.

3. Licensee agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.

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

5. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued license number 4-12655 on January 20, 1962. At all times relevant to the allegations set forth below, Licensee has held a

current license to engage in the practice of medicine and surgery in the State of Kansas, having last renewed his license on June 18, 2001.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts that violate the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836. Specifically the acts alleged are contained in the Petition to Revoke, Suspend, or Otherwise Limit License, filed on January 29, 2001. Petitioner believes it would be successful in proving the violations of the healing arts act that it has alleged. Licensee denies the allegations.

7. Violation of the provisions set forth in the Petition to Revoke, Suspend or Otherwise Limit License constitutes grounds for disciplinary action by the Board. According to K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

8. Licensee voluntarily and knowingly waives his right to a hearing concerning the presentation of this Stipulation to the Board for the Board's approval and if the Board approves the Stipulation. 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 in the presentation of this Stipulation to the Board for its approval. In the presentation of this Stipulation to the Board for its approval, 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. If this Stipulation as drafted is not accepted by the Board, this paragraph shall not be applicable and Licensee is entitled to contest the allegations and present a defense as

he deems appropriate in compliance with Kansas Administrative Procedure Act at any subsequent hearing on the merits of the allegations. If the Board accepts the Stipulation as proposed, Licensee agrees to waive his rights as explained above.

9. The terms and conditions of the Stipulation 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 Stipulation 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 Stipulation on behalf of the Board.

10. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

(a) In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary measures and limitations placed on his license to engage in the practice of medicine and surgery:

- (i.) Licensee is prohibited from practicing in the emergency room, emergency department, and/or urgent care department of any healthcare facility.
- (ii.) Licensee shall undergo an evaluation at the Colorado Personalized Education for Physicians ("CPEP") at his own expense. Licensee must arrange for an evaluation at CPEP within thirty (30) days of the date that this Stipulation becomes an Order. Licensee agrees to

complete the evaluation within 60 days, or at CPEP's earliest opening, if more than 60 days. Licensee agrees to provide all information and materials requested by CPEP. Licensee agrees to provide the Board and its staff with a copy of the recommendation from CPEP.

- (iii.) Licensee agrees to follow all recommendations given by CPEP.
- (iv.) Licensee shall pay the costs of the matter in the amount of \$1, 193.55. Such costs are due on or before September 18, 2001.
- (v.) ~~(Confidential)~~



(b) This Order constitutes disciplinary action and limitations on Licensee's license to practice medicine and surgery in the State of Kansas.

(c) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this Stipulation shall be construed to deny the Board jurisdiction to investigate alleged violations of the 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 Stipulation, or to initiate formal proceedings

based upon known or unknown allegations of violations of the Healing Arts Act.

(e) 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 Stipulation. 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.

(f) 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, Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Stipulation.

(g) This Stipulation, 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.

(h) 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.

(i) Licensee, by signature to this document, waives any objection to the participation of the Board members, except the Presiding Officer, 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.

(j) Licensee acknowledges that he has read this Stipulation and fully understands the contents.

(k) Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

(l) All correspondence or communication between Licensee and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(m) 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 Stipulation or may become effective subsequent to the execution of this document.

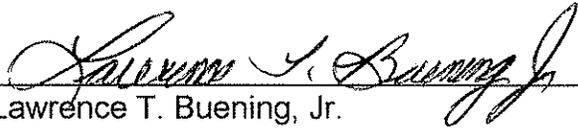
(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838.

————— This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

(o) The Board may consider all aspects of this Stipulation in any future matter regarding Licensee.

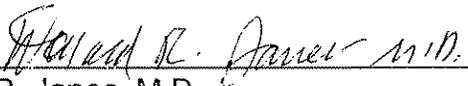
IN WITNESS WHEREOF, the parties have executed this agreement on this 28th day of August, 2001.

KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director

August 28, 2001
Date



Donald R. Janes, M.D.

8/21/01
Date

Prepared By:



Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413

Approved as to form by:



Steve A. Schwarm, #13232
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 S. Kansas Ave.
Topeka, Kansas 66603
(785) 233-0593
Attorney for Licensee

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 23rd day of August, 2001 to the following:

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 S. Kansas Ave.
Topeka, Kansas 66603
(785) 233-0593
Attorney for Licensee

and the original was hand-delivered to:

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



Stacy L. Cook