

FILED

DEC 13 1999

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

In the Matter of)
the Application of)
Marion H. Baker, M.D.)
_____)

Case No. 00-HA-21

**KANSAS STATE BOARD OF
HEALING ARTS**

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Marion H. Baker, M.D. ("Applicant") appearing by and through counsel, Thomas Wright, of Wright, Henson, Somers, Sebelius, Clark & Baker, L.L.P., and stipulate and agree to the following:

1. The Board is the sole and exclusive administration 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. Applicant 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. Applicant agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.
4. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
5. Applicant filed an application for licensure to practice medicine and surgery in the

State of Kansas on July 23, 1999.

6.

(confidential)

(confidential)

7. 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. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant 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 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. Applicant 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, Applicant, by signature affixed to this Stipulation, hereby voluntarily agrees to the following limitations placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

(i)

(confidential)

(ii)

(confidential)

(iii)

(confidential)

(iv)

(confidential)

(v)

(confidential)

(b) This Order constitutes limitations on Applicant's license to practice medicine and surgery in the State of Kansas. These limitations shall remain in effect for at least five years. At the end of five years, Applicant may request the termination of the limitation.

(c) Applicant'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) Applicant hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board of any and all claims or demands of every kind and nature that Applicant has claimed to have had at the time of

this release or might have had, either known or unknown, suspected or unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Board, its employees or agents, arising out of acts leading to the execution of this Stipulation or the content of this Stipulation.

(f) Applicant further understands and agrees that upon signature by Applicant, 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) Applicant 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 Applicant is not present. Applicant 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) Applicant, by signature to this document, waives any objection to the participation of the Board members 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) Applicant acknowledges that he has read this Stipulation and fully understands the contents.

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

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

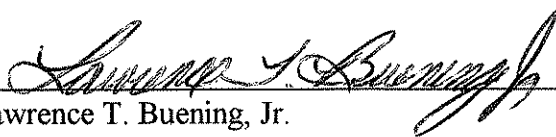
(m) Applicant shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(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.

IN WITNESS WHEREOF, the parties have executed this agreement on this

13th day of December, 1999.

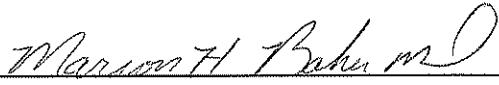
KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director

December 13, 1999

Date




Marion H. Baker, M.D.
Applicant



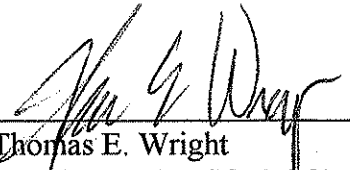
Date

Prepared By:



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

Approved as to form by:



Thomas E. Wright
WRIGHT, HENSON, SOMERS, SEBELIUS,
CLARK & BAKER, L.L.P.
100 SE 9th Street, 2nd Floor
Topeka, Kansas 66601
(785) 232-2200

Attorney for Applicant

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas Board of Healing Arts, 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 13th day of December, 1999, to the following:

Thomas E. Wright
WRIGHT, HENSON, SOMERS, SEBELIUS,
CLARK & BAKER, L.L.P.
P.O. Box 3555
Topeka, Kansas 66601-3555

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

Kelli J. Benintendi
Kelli J. Benintendi
Associate Counsel