

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED**

OCT 28 1999

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  
FOR TEMPORARY PERMIT**

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 *pro se*, 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 for Temporary Permit ("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 ("Application") in the State of Kansas on July 23, 1999.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Applicant **Confidential** as set forth in K.S.A. 65-2836(e), and Applicant has the inability to practice the healing arts with reasonable skill and safety to patients **Confidential** as set forth in K.S.A. 65-2836(i), which constitute grounds for denial of an application for a license pursuant to the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836.

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) Upon Applicant's execution of this Stipulation and payment of the applicable fee, Applicant will be issued a Temporary Permit to Practice Medicine and Surgery in the State of Kansas pursuant to K.S.A. 65-2811(a), pending final action by the Board on Applicant's Application. Such permit will remain in effect through December 11, 1999.

(b) Upon issuance of the Temporary Permit to Applicant, Applicant voluntarily stipulates and agrees to the following restrictions and limitations on the Temporary Permit to engage in the practice of medicine and surgery in the State of Kansas.

i. Applicant agrees to abstain from the consumption or use of alcohol, narcotics, and controlled substances, unless prescribed by a licensed physician for a medically necessary purpose and taken pursuant to the directives of a physician.

Confidential

(c) This Order places limitations on Applicant's Temporary Permit to Practice Medicine and Surgery in the State of Kansas. These limitations shall remain in effect until Applicant's Application is acted upon by the Board at a regularly scheduled Board meeting, presently scheduled for December 11, 1999.

(d) 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.

(e) It is the intent and purpose of this Stipulation to enable Applicant to receive a Temporary Permit to Practice Medicine and Surgery in the State of Kansas, and at the same time provide protection to the public during the pendency of a determination on Applicant's qualifications for licensure. Nothing herein shall be construed to constitute a waiver by the Board of any grounds for denial or limitation of licensure pursuant to either statute or rule and regulation.

(f) By this Stipulation, Applicant waives any and all time limitations imposed by the Kansas Administrative Procedure Act in the processing of Applicant's Application, and in rendering any determination as to Applicant's qualifications for licensure, or denial of such license. Further, Applicant agrees that the Board may take action on his Application at its regularly scheduled meeting to be held December 11, 1999.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) Applicant acknowledges that he has read this Stipulation and fully understands the contents.

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

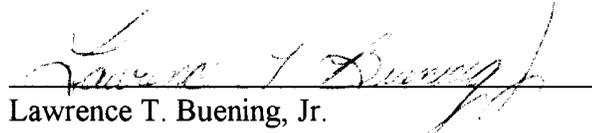
(o) All correspondence or communication between Applicant and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(p) 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.

(q) 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 28<sup>th</sup>  
day of October, 1999.

KANSAS STATE BOARD OF HEALING ARTS

  
\_\_\_\_\_  
Lawrence T. Buening, Jr.  
Executive Director

October 28, 1999  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Applicant

10/28/99  
\_\_\_\_\_  
Date

Prepared By:

Kelli J. Benintendi

Kelli J. Benintendi #16032

Associate Counsel

Kansas State Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3065

(785) 296-7413

**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 FOR TEMPORARY PERMIT** by hand delivery, on this 28<sup>th</sup> day of October, 1999, to:

Marion H. Baker, M.D.  
127 N. Forrest  
Chanute, Kansas 66720

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