

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

AUG 17 1998

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
Llewellyn V. Borgendale, M.D.)
Kansas License No. 04-12558)
_____)

Case No. 95-00176

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel ("Petitioner"), and Llewellyn V. Borgendale, M.D. ("Licensee"), by and through his attorney Thomas E. Wright, and stipulate and agree to certain terms. Stacy L. Cook, Associate Counsel, has been designated to pursue this matter on behalf of Disciplinary Counsel. Petitioner and Licensee hereby stipulate and agree as follows:

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. 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

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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 04-12558 on July 1, 1961. 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 13, 1997.

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. The specific allegations are set forth in the Petition to Revoke, Suspend or Otherwise Limit License filed by Petitioner on March 5, 1998.

7. Licensee's violation of the provisions set forth in the Petition to Revoke, Suspend or Otherwise Limit License filed by Petitioner on March 5, 1998 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 any matter within the jurisdiction of the Board regarding his license to engage in the practice of medicine and surgery. 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.

9. The terms and conditions of the Stipulation are entered into between the undersigned

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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. When the Licensee signs this document, the document shall be deemed a unilateral contract and agreement and shall bind Licensee to the terms and conditions set forth herein regardless of whether the Board's signature is affixed to the document. Licensee specifically acknowledges that Petitioner 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 commencement 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 in the State of Kansas:

(i) Licensee must attend the Mini-Residency course entitled "The Proper Prescribing of Controlled Dangerous Substances" offered by the Forensic and Educational Consultants on November 10-15, 1997. Licensee must attend this course at his expense.

(ii) Licensee shall comply with K.A.R. 100-24-1.

(iii) Licensee agrees to the monitoring of his Kansas practice for a period of at least one year, which for purposes of this Stipulation, means that Licensee must submit at least twelve (12) monitoring reports. Licensee shall keep a record of all the names of patients to whom Licensee has prescribed controlled substances. Licensee will provide, at his own

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expense, another licensed physician with a similar practice to review and evaluate on a monthly basis the medical records of at least fifteen (15) of Licensee's patients who are included on the list as having been prescribed controlled substances. John R. Whitehead, D.O. shall serve as the monitoring physician. Licensee is responsible for ensuring the submission of the monitor's report to the disciplinary staff on a monthly basis. Licensee shall provide a copy of this Stipulation to Dr. Whitehead. The reports for the first monitoring period shall be submitted to Associate Counsel within sixty (60) days following the date that the Stipulation becomes the Board Order pursuant to paragraph 10(n) of this Stipulation. Subsequently, the reports must be submitted to Associate Counsel within fifteen (15) days after the end of each month.

(iv) The monitor must include in his reports an opinion as to whether Licensee is practicing medicine with that level of care, skill and treatment which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances. The monitor must also report whether Licensee is creating and maintaining proper and complete medical records, and whether Licensee is prescribing medications in a manner which is recognized by a reasonably prudent practitioner in similar circumstances.

(v) The monitor must immediately notify the disciplinary staff of the Board if he believes that Licensee is over-prescribing to any patients or if Licensee has failed to create and maintain complete and legible patient records.

(vi) Licensee agrees to pay to the Board the costs of this matter, in the amount of \$650.00. Licensee shall pay the costs to the Board within thirty (30) days after the Board's

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approval of the Stipulation.

(b) Nothing in this subsection is intended to prevent the subject matter of this Stipulation from being used as evidence, in conjunction with any future violations by Licensee, of the disciplinary provisions of the Healing Arts Act.

(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 agreement shall be construed to deny the Board jurisdiction to investigate other alleged violations of the Healing Arts Act, to initiate formal proceedings based upon known or unknown allegations of the violations of the Healing Arts Act, or to investigate complaints received under the Kansas Risk Management Law, K.S.A. 65-4921 *et seq.* that are unknown to the Board at the present time.

(e) Licensee 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 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 Board, its employees or agents, arising out of acts leading to the execution of this Stipulation or the content of this Stipulation.

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(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 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.

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(l) All correspondence or communication between Licensee and the Board shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Associate Counsel, 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.

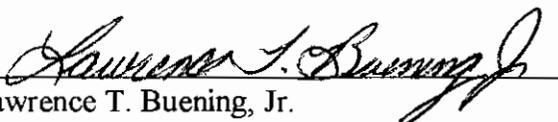
(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

(o) Upon execution of this Stipulation by affixing a Board authorized signature below, the Petition to Revoke, Suspend or Otherwise Limit License shall be dismissed without prejudice.

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

17th day of August, 1998.

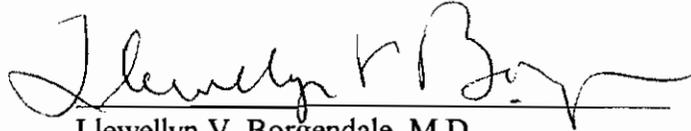
KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

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Llewellyn V. Borgendale, M.D.

6-17-98

Date



Llewellyn V. Borgendale, M.D.

6-17-98

Date

Prepared By:



Stacy L. Cook, #16385

Associate Counsel

Kansas State Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3065

(913) 296-7413

Approved as to form by:



Thomas E. Wright

Wright, Henson, Somers, Sebelius, Clark & Baker, LLP

100 S.E.9th Street, 2nd Floor

P.O. Box 3555

Topeka, Kansas 66601-3555

Attorney for Licensee

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CERTIFICATE OF SERVICE

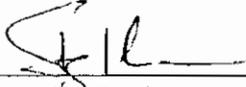
I, Stacy L. Cook, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 17th day of August, 1998, to the following:

Llewellyn V. Borgendale, M.D.
P.O. Box 7.
Wamego, Kansas 66547

Thomas E. Wright
Wright, Henson, Somers, Sebelius, Clark & Baker, LLP
100 S.E.9th Street, 2nd Floor
P.O. Box 3555
Topeka, Kansas 66601-3555
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

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