

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

In the Matter of )  
Henry M. Borra, M.D. )  
License No. 424115 (CAN) )  
\_\_\_\_\_ )

Docket No. 05-HA- 48

**FILED**

FEB 14 2005

**KANSAS STATE BOARD OF  
HEALING ARTS**

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Henry M. Borra, M.D. ("Applicant") appearing *pro se*, and stipulate and agree to the following regarding Applicant's Application for Reinstatement of his license to practice medicine and surgery in Kansas:

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. Applicant admits that this Consent Order ("Consent Order") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Consent Order.

3. Applicant agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case, and Applicant further agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

4. On or about August 15, 1992, Applicant was issued license number 04-24115, which was canceled for nonrenewal on or about August 1, 1998.

5. On or about January 23, 2003, Applicant submitted an Application for Reinstatement ("Application"), which remained pending at Applicant's request.

6. On or about December 8, 2004, Applicant notified Board staff that he wished to proceed with his Application. Following the submission of updated information by Applicant, such Application was deemed complete and filed with the Board on January 31, 2005.

7. The Board has received information, has investigated such information, and has reasonable cause to believe that Applicant has a **(Confidential)** which may affect Applicant's ability to practice the healing arts with reasonable skill and safety.

8. According to K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

9. 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.

10. 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. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

11. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree that upon execution of this Consent Order and upon Applicant meeting all other requirements for licensure, the Board shall grant Applicant a license to practice medicine and surgery in Kansas.

12. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, Applicant voluntarily stipulates and agrees to the following limitations and provisions regarding on license to engage in the practice of medicine and surgery in Kansas as a condition to being granted a license:

**Practice Monitoring**

- (a) For a period of at least one (1) year, Applicant's clinical practice shall be monitored by a Kansas-licensed physician approved by the Board or the Board's designee. Such monitoring shall be at Applicant's own expense;
- (b) Upon Applicant commencing active practice, such practice monitor shall initially meet with Applicant once a week for a period of one (1) month to discuss Applicant's patient cases and any other issues associated with returning to practice. Thereafter, such practice monitor shall meet with Applicant at least one (1) time per month for the remainder of year;
- (c) For a period of at least one (1) year, Applicant's patient charts shall be reviewed by the practice monitor. The chart review shall include the practice monitor's opinion as to the appropriateness of the anesthesia services provided by Applicant and shall be submitted on a form provided by Board staff. Such practice monitor shall review all of Applicant's patient charts for the first two (2) weeks of Applicant's practice. Thereafter, such practice monitor shall review five (5) patient charts per month for the remainder of the year;
- (d) Applicant shall maintain a monthly log of all patient cases, including the patient's name, practice location where service was provided, the procedure performed which required anesthesia, and type of anesthesia services provided. Such log shall be on a form provided by Board staff. At the end of each month, Applicant shall submit the patient log to the practice monitor. The practice monitor will then select the appropriate number of patient cases to review and request the patient charts from Applicant;
- (e) Such Practice monitor shall submit a monthly report to the Board summarizing the meetings with Applicant and the chart reviews. Each monthly report shall be due on the 25<sup>th</sup> day of each following month Applicant is responsible for submitting patient charts to the practice monitor in a timely manner so the reviews may be completed. Applicant is responsible for ensuring the timely submission of the practice monitor's reports;

- (f) Applicant shall inform Board staff and the practice monitor of all practice locations. Such disclosure shall be made prior to Applicant practicing at a each particular location. The practice monitor's chart reviews shall include charts from all practice locations;
- (g) The monitor shall immediately notify Board staff if the monitor reasonably believes Applicant is unable to practice with reasonable skill and safety to patients or may have acted outside the standard of care in the treatment of a patient;

**(Confidential)**

(h)

(i) **(Confidential)**

(j) **(Confidential)**

(k) **(Confidential)**

13. This Consent Order constitutes limitations on Applicant's license to practice medicine and surgery in Kansas, and such limitations are not self-terminating. Applicant must petition the Board to request the termination of any of the limitations.

14. Applicant's failure to comply with the provisions of the Consent Order will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

15. Nothing in this Consent Order 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 Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the healing arts act.

16. 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 or the content of this Consent Order.

17. 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 Consent Order.

18. 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.

19. 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.

20. 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.

21. Applicant acknowledges that he has read this Consent Order, fully understands the contents, and Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

22. All correspondence or communication between Applicant and the Board relating to this Consent Order 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.

23. 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 Consent Order or may become effective subsequent to the execution of this document.

24. 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.

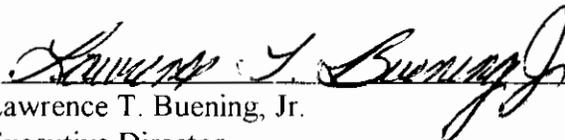
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted as the Order of the Board.

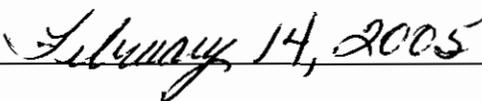
**IT IS FURTHER ORDERED** that upon execution of this Consent Order and upon Applicant meeting all other requirements for licensure, Applicant shall be granted a license to practice medicine and surgery in Kansas.

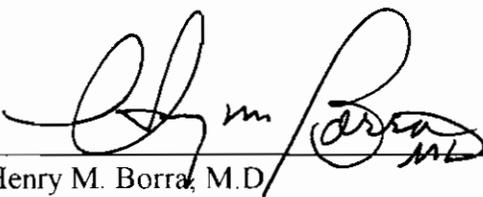
**IT IS FURTHER ORDERED** that as a condition of being granted a license, such license is hereby limited by the provisions contained in paragraph twelve (12) of this Consent Order.

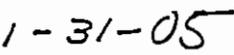
**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

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

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Henry M. Borra, M.D.  
Applicant

  
\_\_\_\_\_  
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 this **Consent Order** by U.S. Mail, postage prepaid, on this 14th day of February, 2005, to:

Henry Borra, M.D.  
8220 E. Oxford Circle, #17-203  
Wichita, Kansas 67226

and the original was hand-delivered for filing 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