

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

AUG 21 2001

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
Mark Bryniarski, M.D.)
)
_____)

Case No. 01-00140

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Shelly R. Wakeman, Disciplinary Counsel ("Petitioner"), and Mark Bryniarski, M.D. ("Permitee") appearing through counsel, Thomas G. Kokoruda, Shughart Thomson & Kilroy, 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. Permitee 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. Permitee agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.
4. Permitee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

5. Permittee obtained a Postgraduate Permit on July 1, 1999, which will expire on June 30, 2002.

6. By letter dated November 29, 2000 Permittee self-reported to the Board that a November 14, 2000 Agreed Order was issued by the Washington State Medical Quality Assurance Commission. In the Agreed Order, Permittee stipulated to the fact that on or about April 4, 1999 while off duty, he intentionally exposed his buttocks to a female custodial worker in a non-patient care area of the hospital at which both of them were employed.

7. Permittee's act constitutes unprofessional conduct under the applicable Washington statute, as well as under the Healing Arts Act, K.S.A. 65-2801, *et. seq.*; 65-2836 (b). This Stipulation is based solely on the April 4, 1999 act in Washington and no act or similar act is being alleged to have occurred in Kansas. At the time the Washington Agreed Order was issued, Permittee's limited license to practice medicine had expired. The Agreed Order required that if Permittee wanted to practice in Washington, he was required to submit a full and complete application for a license to practice medicine. The Commission retained discretion to grant, deny or limit a license based on **(Confidential)**
(Confidential) other requirements, and would assess a fine of \$1000.00 upon application.

8. 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.

9. In the presentation of this Stipulation to the Board, Permittee voluntarily and knowingly waives his right to a hearing. Permittee 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. Permittee 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 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. Permittee specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

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

(a) In lieu of the filing of formal proceedings and/or the making of findings by the Board, Permittee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following limitations placed on his Postgraduate Permit to engage in the practice of medicine and surgery in Kansas:

(i) **(Confidential)**

(Confidential)

(ii) (Confidential)

(iii) (Confidential)

(iv) (Confidential)

(Confidential)

(v) **(Confidential)**

(vi) **(Confidential)**

(vii) **(Confidential)**

administrative procedure act.

- (viii) Permittee must obtain prior Board approval before modifying or discontinuing any of the requirements of this Stipulation.

(b) This Order constitutes a limitation on Permittee's Postgraduate Permit to practice medicine and surgery in the State of Kansas. This limitation shall remain in effect as long as Permittee holds a Kansas Postgraduate Permit unless modified.

(c) Permittee's failure to comply with the provisions of the Stipulation may result in the Board taking further disciplinary action as the Board deems appropriate in accordance with 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) Permittee hereby releases the Board, its individual members (in their official and personal capacities), its attorneys, employees and agents (hereinafter individually or jointly referred to as "Releasees"), from any and all claims and causes of action, 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 from any and all claims or demands of every kind and nature that Permittee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Permittee shall not commence to

prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

(f) Permittee further understands and agrees that upon signature by Permittee, portions of this document not otherwise deemed confidential or privileged 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) Permittee 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 Permittee is not present. Permittee 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) Permittee, 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 under paragraph 11(h) above which otherwise may not be admissible or admitted as evidence.

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

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

(l) All correspondence or communication between Permittee and the Board relating to

this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Shelly R. Wakeman, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

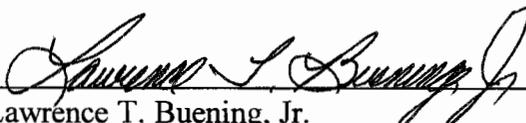
(m) Permittee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(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

21st day of August, 2001.

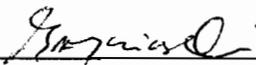
KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director

August 21, 2001

Date



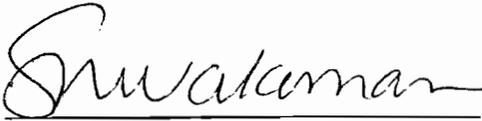
Mark Bryniarski, M.D.
Permittee

8.6.01

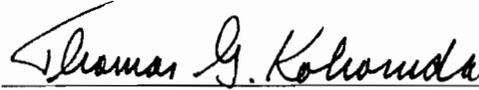
Date

Prepared By:

Approved by:



Shelly R. Wakeman
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413



Thomas G. Kokoruda
Attorney for Permittee
Shughart Thomson and Kilroy
120 West 12th Street
Kansas City, MO 64105
(816) 421-3355

CERTIFICATE OF SERVICE

I, Shelly R. Wakeman, Disciplinary 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 22nd day of August, 2001, to the following:

Mark Bryniarski, M.D.
University of Kansas Medical Center
Neurology Department
3901 Rainbow Blvd.
Kansas City, KS 66160-7385

Thomas Kokoruda,
Shughart Thomson and Kilroy
Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, MO 64105

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



Shelly R. Wakeman
Disciplinary Counsel