

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED**

JUL 01 1997

IN THE MATTER OF )  
 )  
GLENN V. CARNEY, D.O. )  
Kansas License No. 05-12264 )  
\_\_\_\_\_ )

KANSAS STATE BOARD OF  
HEALING ARTS  
Case # 97-00126

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 Glenn V. Carney, D.O. ("Licensee"), and stipulate and agree as follows:

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 osteopathic medicine and surgery. K.S.A. 65-2801 et seq; K.S.A. 65-2870. Licensee admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and is lawfully constituted to consider this matter to include consideration of this Stipulation. Licensee further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued license number 05-12264 on February 2, 1959. At all times relevant to the allegations set forth below, Licensee has held a current license to engage in the practice of osteopathic medicine and surgery in the state of Kansas, having last renewed his license on June 7, 1996.

3. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts in violation of the Healing Arts Act. K.S.A. 65-2801 et seq; K.S.A. 65-2836. It is alleged Licensee violated K.S.A. 65-2836(k), in that Licensee has failed to follow the dispensing physician regulations detailed in K.A.R. 100-21-1 through 100-21-5. It is further alleged Licensee surrendered his controlled substances dispensing privileges to the U.S. Drug Enforcement Agency, and agreed to pay a settlement of \$25,000.00 to the U.S. Attorney General's office, which constitutes a violation of K.S.A. 65-2836(s). The Board states it would present substantial evidence in an administrative hearing in support of its allegations. Licensee denies that he committed any violation of the Healing Arts Act.

4. Such acts or conduct as alleged by the Board as set forth above could constitute grounds for disciplinary action by the Board pursuant to the cited provisions of the Healing Arts Act. Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if a licensee to the Board has engaged in any commissions or omissions to bring licensee within the purview of K.S.A. 65-2836. Under the provisions of K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing. Licensee voluntarily and affirmatively waives his right to a hearing pertaining to any matter under the jurisdiction of the Board regarding his license to engage in the practice of osteopathic medicine and surgery. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, to conduct such cross-examination of witnesses as may be desired and to waive any and all substantive and procedural motions and defenses that could be raised if an administrative hearing would be held.

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. Upon signature by Licensee to this document, it shall be deemed a unilateral contract and agreement and shall bind Licensee to the terms and conditions set forth in the Stipulation whether or not the Board's signature is affixed to the document. If the Board determines not to enter into this Stipulation, Licensee shall be released from the terms of this Stipulation. Licensee specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

5. 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 attached to this Stipulation, hereby voluntarily agrees to the following disciplinary measures placed on his license to engage in the practice of osteopathic medicine and surgery in the State of Kansas:

i) Licensee is hereby fined five thousand dollars (\$5,000.00).

ii) Licensee is hereby formally and publicly reprimanded.

iii) Licensee agrees that the fine detailed in (i) above shall be due and payable as follows:

a) a payment of two thousand dollars (\$2,000.00) shall accompany this signed Stipulation for presentation to the Board for its approval; then

b) the balance of the fine shall be payable with payments of \$1,000.00 (one thousand dollars) due the first day of each month

following Board acceptance of this Stipulation, with the first such payment due August 1, 1997.

iv) Licensee agrees he will not practice as a "dispensing physician" as defined in K.A.R. 100-21-1 in the state of Kansas for a period of at least three years from the date of Board acceptance of this Stipulation except as is expressly set forth in this paragraph. Licensee agrees that, if he requests the Board to remove this limitation on his license to practice osteopathic medicine and surgery, he bears the burden of proving with clear and convincing evidence that it would be appropriate for the Board to allow him to practice as a "dispensing physician". This limitation shall only relate to controlled substances/scheduled drugs as defined by Kansas law and shall not relate in whole or in part to non-scheduled drugs of which Licensee may possess, administer, and/or dispense. Furthermore, this limitation shall not restrict the ability of Licensee to possess and administer to a patient controlled substances/scheduled drugs through injection or other means in his professional practice, provided that he obtain said controlled substances/scheduled drugs from the clinic inventory stock immediately prior to the administration to the patient. The limitation of Licensee shall only relate to the dispensing of controlled substances/scheduled drugs in which a patient would transport such drug out of Licensee's office in a container as set forth in K.A.R. 100-21-1 et seq. Licensee's controlled substances/scheduled drugs will be maintained separately from any other scheduled drug stock. Licensee may possess injectable scheduled drugs for administration to hospice patients, nursing home patients or other similarly situated out-of-clinic patients. Licensee must comply with the Settlement Agreement and Judgement entered into with the U.S. Government on February 12, 1997.

b) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board

deems appropriate in compliance with the Kansas Administrative Procedure Act and/or the terms of this Stipulation.

c) Nothing in this agreement 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 unknown and are not covered under the conditions of this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

d) This Stipulation constitutes the entire agreement between the parties and may only be modified and/or amended by a subsequent document executed in the same manner by the parties.

e) Licensee acknowledges that he has read this Stipulation and fully understands its contents. Licensee acknowledges that this Stipulation has been entered in freely and voluntarily given.

f) Licensee releases the Board, its employees and agents, from all claims to mean those damages, actions, liabilities and causes of actions, 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 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 and Agreement or the contents of this Stipulation and Agreement.

g) Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document and Board

acceptance of the terms of this document. Licensee further acknowledges this action is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards and other reporting agencies.

h) Licensee authorizes Petitioner to present this Stipulation to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, even if Licensee is not present.

6. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to: Kansas State Board of Healing Arts, ATTENTION: Disciplinary Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

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

8. Licensee has an affirmative duty to notify the Board of changes in his personal professional status which would inhibit compliance with the above conditions in this Stipulation.

9. Upon execution of this Stipulation by the affixing of a Board authorized signature below, the provisions of this Stipulation shall become an Order of the Board and shall be deemed a proper and lawful Enforcement 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 the

1<sup>st</sup> day of July, 1997.

KANSAS STATE BOARD OF HEALING ARTS

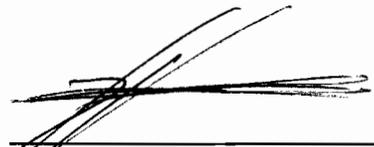
  
Lawrence T. Buening, Jr.  
Executive Director

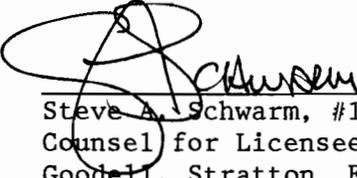
Date June 30, 1997

  
Glenn V. Carney, D.O.  
Licensee

Date 6-24-97

Prepared and Approved As To Form By:

  
Kevin K. LaChance, #15058  
Disciplinary Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
(913) 296-2075

  
Steve A. Schwarm, #13232  
Counsel for Licensee  
Goodell, Stratton, Edmonds & Palmer, LLP  
515 S. Kansas Avenue  
Topeka, Kansas 66603-3999  
(913) 233-1593

CERTIFICATE OF SERVICE

I, Kevin K. LaChance, do hereby certify that on the 15<sup>th</sup> day of July, 1997, a true and correct copy of the above and foregoing STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER was deposited in the United States mail, first class postage, prepaid to the following:

Glenn V. Carney, D.O.  
411 N. Washington  
Iola, KS 66749

and

Steve A. Schwarm, #13232  
GOODELL, STRATTON, EDMONDS  
& PALMER, L.L.P.  
515 S. Kansas Avenue  
Topeka, KS 66603  
(913) 233-0593

and the original was hand-delivered to:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, KS 66603  
(913) 296-7413



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KEVIN K. LACHANCE, #15058  
Disciplinary Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, KS 66603  
(913) 296-2075