

**FILED**

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

APR 29 2002

In the Matter of )  
)  
**Alan Creek, D.O.** )  
License No. 05-18619 )  
\_\_\_\_\_ )

KANSAS STATE BOARD OF  
HEALING ARTS  
Docket No. 02-HA-005

**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 Alan Creek, D.O., by and through Steve Schwarm, Attorney at Law ("Licensee"), and stipulate and agree to the following:

1. The Board is the sole and exclusive administrative agency in 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 jurisdiction as provided by law.
5. Licensee was entitled to engage in the practice of medicine and surgery in Kansas, having been issued license number 05-18619 on June 30, 1980. At all times relevant to the allegations set forth below, until November 1, 2001, Licensee held a current license to engage in the

practice of medicine and surgery in Kansas.

6. Licensee closed his practice location on October 26, 2001 with little or no notice to patients. The Board received complaints from some patients that they were unable to obtain information about the location of their medical records, or copies of their medical records during the weeks that followed the office closure. Licensee later made copies of medical records available to patients who requested them.

7. On September 30, 2001 licensee submitted a renewal application along with a request to change the status of his license from active to inactive. A form was sent to licensee to effectuate this change, and on October 2, 2001, he completed it and returned it. He requested that his license be made inactive effective October 11, 2001. In a hand written letter from licensee dated October 10, 2001 and faxed to the Board, licensee requested his license be placed inactive effective November 1, 2001 instead of October 11, 2001. Approximately one week before November 1, 2001, licensee spoke to a Board Licensing Specialist, wherein Licensee stated he may want his license status to remain active and not be changed to inactive. The Licensing Specialist advised licensee he needed to submit proof of Continuing Medical Education or he would not meet the requirements for an active license. The Licensing Specialist advised him to have the information to the Board by November 1, 2001 or at least within the one-week grace period the Board customarily affords licensees to renew and still be considered timely, November 8, 2001. When the Licensing Specialist did not receive further response from Licensee, she sent Licensee a reminder letter on November 6, 2001, stating Licensee had until November 8, 2001 to submit proof of insurance, a \$200 renewal fee, and proof of CME to be eligible for an active license. Licensee had no further contact with the Board until December 12, 2001, when we received a hand written letter from Licensee requesting his

license be canceled. Licensee was thereafter advised in writing that his license was canceled for failure to renew it on November 1, 2001.

8. Licensee's license to practice medicine and surgery was canceled by the Board on November 1, 2001 for his failure to renew the license. Thereafter, licensee continued to practice medicine and surgery without a license and may have done so until at least January 22, 2002. Licensee's practice consisted of primarily writing or authorizing prescriptions for patients during these months. The majority of prescriptions were written or authorized by Licensee on or before December 12, 2001. Licensee did not keep medical records for patients to whom he prescribed, and did not examine the patients to whom he prescribed medication, including controlled substances, after he closed his office on October 26, 2001.

9. Licensee violated the Healing Arts Act when he practiced the healing arts without a license in violation of K.S.A. 65-2803(a).

10. Licensee committed unprofessional conduct in violation of K.S.A. 65-2837(b)(25) 2001 Supp., when he failed to keep medical records which accurately describe the services rendered to a patient.

11. On December 12, 2001 Licensee voluntarily surrendered to the Drug Enforcement Administration his authority to write prescriptions for controlled substances.

12. Licensee practiced the healing arts during times he had no professional liability insurance, the first period commencing February 4, 2001 and ending March 12, 2001, and the second period commencing October 5, 2001 and continuing until the last date he practiced the healing arts. Licensee has on two occasions failed to maintain a policy of professional liability insurance in violation of K.S.A. 65-2809 and 40-3402, 2001 Supp. Licensee has since obtained provisional professional liability insurance coverage for reinstatement purposes.

13. Licensee made an untrue statement in correspondence to the Board and to a hospital credentialing committee. Licensee wrote to the Board he was seeking inactive status, and to the hospital he resigned privileges, attributing his inability to practice to an unsuccessful knee surgery. Licensee did not undergo knee surgery. Misrepresenting information in an attempt to secure a reinstated license is a violation of K.S.A. 65-2836(a) 2001 Supp.

14. Licensee submitted an Application for Reinstatement of License, which was received by the Board on December 26, 2001.

15. The acts and conduct as described above constitute grounds for disciplinary action by the Board against Licensee as specified in the cited statutes. 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.

16. Licensee voluntarily and knowingly waives his right to have a Petition with formal allegations filed and his right to a hearing. 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. Licensee proposes this Stipulation instead of affording himself of the procedural rights he would have in a formal disciplinary hearing. If the proposed Stipulation is rejected by the Board, the terms agreed to by Licensee in this document will not bind him in any disciplinary proceeding that may follow.

17. 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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

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

(a) In lieu of instituting formal proceedings and/or making findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary action, reinstatement, suspension of his license to engage in the practice of medicine and surgery in Kansas, limitation and fine:

- (i) Effective April 6, 2002, Licensee's license to practice medicine and surgery in Kansas shall be retroactively reinstated to November 1, 2001 in active status if all licensing requirements for reinstatement of a license are met;
- (ii) Licensee's license to practice medicine and surgery shall simultaneously be suspended for a period of 31 days, commencing March 1, 2002 and ending March 31, 2002.
- (iii) Licensee shall be fined \$6,000 (six-thousand dollars), payable to the Board over the 12 month period commencing the date this Stipulation is made an Order of the Board. Failure to pay the fine in full within the 12 month period commencing the date this Stipulation is made an Order of the Board may result in further disciplinary action against Licensee.
- (iv) Licensee's license to practice medicine and surgery shall be limited in that he may not prescribe any controlled substance to any patient unless the patient is seen and treated by licensee in a hospital, medical clinic, or Licensee's official practice location.
- (v) Licensee shall comply with all provisions of the Healing Arts Act, and other state and federal law.

(b) This Order constitutes a Suspension, and other disciplinary action of Licensee's license to practice medicine and surgery in the State of Kansas.

(c) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking further disciplinary action as the Board deems appropriate according to 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 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) 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.

(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.

(l) All correspondence or communication between Licensee 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, Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

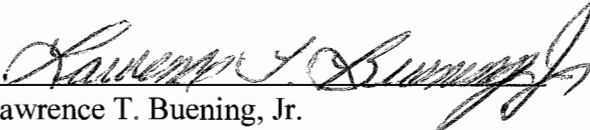
(m) Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in Kansas that may be in place at the time of execution of the Stipulation

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 28<sup>th</sup> day of April, 2002.

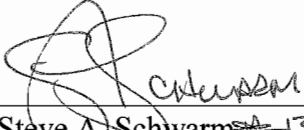
KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

April 28, 2002.  
Date

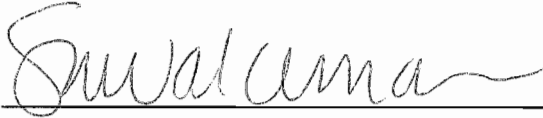
  
Alan D. Creek, D.O.  
Licensee

4/17/02  
Date

  
Steve A. Schwarm ~~13232~~  
Attorney for Licensee

041802  
Date

Prepared By:



Shelly R. Wakeman, #15057

Disciplinary Counsel

Kansas State Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3065

(913) 296-7413

**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 the 30<sup>th</sup> day of April, 2002, to the following:

Alan D. Creek, D.O.  
9400 W. 116<sup>th</sup> Street  
Overland Park, Kansas 66210

Steve A. Schwarm  
Goddell Stratton Edmonds & Palmer  
515 S. Kansas Ave.  
Topeka KS 66603-3999

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