

FEB 28 2000

**KANSAS STATE BOARD OF HEALING ARTS****KANSAS STATE BOARD OF  
HEALING ARTS**IN THE MATTER OF  
HERBERT A. DANIELS, M.D.**VOLUNTARY STIPULATION  
AND AGREEMENT**

License No. 421291

Case No. 00 HA-36

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner") and Dr. Herbert Daniels ("Licensee"), by and through legal counsel, Thomas J. Kenny, and stipulate and agree to the following:

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 agrees that this Stipulation and Agreement and Order ("Stipulation") and the filing of such documents 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 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 is or has been entitled to engage in the practices of medicine and surgery in the State of Kansas, having been issued license number 4-21291 on June 13, 1986. 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 May 24, 1999.
6. Licensee voluntarily notified the Board that on November 17, 1999 an Indictment was returned against Licensee in *United States v. Daniels* (No. 99-40099-DES) alleging fraud as it relates to Licensee's medical practice. Licensee denies all charges in the Indictment. The Board recognizes that Licensee is presumed innocent of the charges alleged in the Indictment unless and until proven guilty. The Board has reached no conclusions with respect to the conduct alleged in the Indictment. However, the parties voluntarily agree to enter into this Stipulation to promote the interest of the public pending the trial, and to satisfy the Board's concerns relating to the Indictment.
7. Pursuant 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 the presentation of this Stipulation to the Board for the Board's approval. 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 in the presentation of this Stipulation to the Board for its approval. In the presentation of this Stipulation to the Board for its approval, Licensee voluntarily and knowingly agrees to waive his right to an administrative hearing.

9. 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.

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

(a) In lieu of the conclusion of formal proceedings and/or an investigation of Licensee by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following measures relating to his practice of medicine and surgery in the State of Kansas:

1. Use of Informed Consent Form.

Licensee agrees to utilize a written "informed consent form" ("Form"), to be developed by the "Monitor" described below, with regard to his office visits with patients for whom he recommends a surgical procedure. This Form would be used in conjunction with Licensee's office visits with patients, and would reflect Licensee's descriptions of the risks, complications and alternatives to surgery. For purposes of this Stipulation, "surgery" or "surgical procedures" shall mean procedures performed in an in-patient hospitalization setting, in which the patient is placed under general anesthesia. The Form would be prepared, by the monitor, in advance for each of the surgical procedures performed by the Licensee, and signed by the patient at the time of the office visit. The Monitor selected would prepare the Form in consultation with Licensee and the Board, as necessary.

2. Monitor.

Licensee hereby designates, subject to approval by Board, a Monitor and authorizes said Monitor to perform peer review activities relating to his surgical practices, as defined in K.S.A. 65-4915. The Monitor must be a Board-certified Otolaryngologist and must be approved by the Board, or its designees, and Licensee and Board agree to confer to select an acceptable Monitor. The Monitor

shall review 5-10 surgery cases per month. The Monitor shall review the cases following the office visit, but before the surgery. Licensee shall keep a list of all names of patients who have been scheduled for surgery. Licensee agrees to fax such a list to the Monitor at the end of each week. The Monitor, in conjunction with the Board if requested, will decide which surgery cases to review. Licensee agrees to make all relevant records available to the Monitor for review.

The Monitor may find it necessary to contact patients in order to perform the review. The Monitor shall review the records and discuss the matter with Licensee before contacting the patients. Licensee agrees to provide the Monitor with the address and phone number of patients if requested by the Monitor.

The Monitor shall submit monthly reports to the Board staff on a form provided. The monthly reports shall be submitted fifteen (15) days after the end of each month and shall include the Monitor's opinion as to whether it is within the standard of care to perform the surgery recommended by Licensee. In the event that in the Monitor's opinion, the surgery recommended is not within the standard of care, the Monitor will contact Licensee prior to the surgery and so advise. Before the first reports are due, the Monitor will review the Stipulation and participate in a phone conference with counsel for the parties.

For purposes of this Stipulation, "surgery" or "surgical procedures" shall mean procedures performed in an in-patient hospitalization setting in which the patient is placed under general anesthesia.

The Licensee and the Board acknowledge that the Monitor may not be able to review cases requiring emergency or urgent surgery.

(b) The parties agree that this Stipulation does not constitute disciplinary action under the Healing Arts Act and does not constitute a limitation on Licensee's license to practice in Kansas. The Board understands that this Stipulation is not required to be reported to the National Practitioner Databank, the Federation of State Medical Boards, or any other person or entity.

(c) These voluntary supervisory measures shall remain in effect until the trial in the United States District Court for the District of Kansas has concluded.

(d) Licensee's failure to comply with the provisions of the Stipulation may result in the Board initiating disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(e) 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. Specifically, the Board may initiate disciplinary action in the event Licensee is convicted as a result of the Indictment.

(f) Licensee hereby releases the Board and its individual members (in their official and personal capacities), its employees and agents (hereinafter individually or jointly referred to as "Releases"), from any and all claims and causes of action, 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 Releasees from 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 (either directly or indirectly), cause or permit to be prosecuted, any action or proceeding of any description against Releasees.

(g) Licensee further understands and agrees that, upon signature by Licensee, this document shall be deemed a public record. The Board agrees, however, that the activities of the Monitor appointed herein with regard to the Monitor's peer review activities relating to Licensee, and any documents created by such Monitor, shall constitute peer review activities, shall be confidential, shall not be deemed a public record and shall not be available to anyone under the Open Records Act, as set forth in K.S.A. 45-221(a)(36), except as may otherwise be subject to disclosure under K.S.A. 65-4915.

(h) 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.

(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, 235 South Topeka Boulevard, Topeka, Kansas 66603-3068, Attention: Stacy L. Cook, Esq.

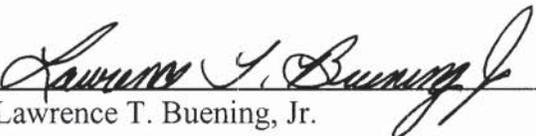
(m) Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(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(b). 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) The Board agrees that Licensee's disclosure to the Monitor of any patient records shall not violate the physician-patient privilege set forth in K.S.A. 60-427, as provided for pursuant to K.S.A. 65-2839a(e), and shall not violate any other provision of law.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28<sup>th</sup> day of February, 2000.

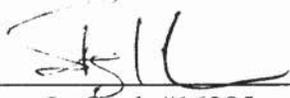
KANSAS STATE BOARD OF HEALING  
ARTS

By   
Lawrence T. Buening, Jr.  
Executive Director

Date: February 22, 2000

  
Licensee  
Herbert A. Daniels, D.O.

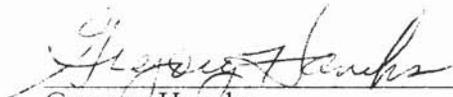
Prepared By:



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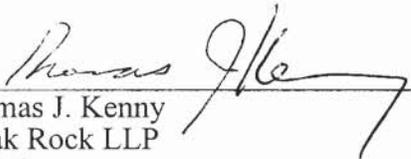
Stacy L. Cook #16385  
Litigation Counsel  
Kansas State Board of Healing Arts  
235 South Topeka Boulevard  
Topeka, KS 66603-3065  
(913) 296-7413

Approved as to form by:



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Gregory Hancks  
Kutak Rock LLP  
Suite 810, One Main Plaza  
4435 Main Street  
Kansas City, MO 64111-7727



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Thomas J. Kenny  
Kutak Rock LLP  
1650 Farnam  
Omaha, NE 68102-2186

**CERTIFICATE OF SERVICE**

I, Stacy L. Cook, Litigation Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the Voluntary Stipulation and Agreement by United States mail, postage prepaid, on this 20th day of February, 2000, to the following:

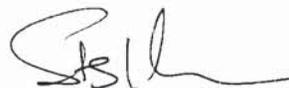
Herbert A. Daniels, M.D.  
8919 Parallel Parkway, #550  
Kansas City, KS 66112

Gregory Hancks, Esq.  
Kutak Rock, L.L.P.  
One Main Plaza, Suite 810  
4435 Main Street  
Kansas City, MO 64111-7727

Thomas J. Kenny, Esq.  
Kutak Rock, L.L.P.  
1650 Farnam  
Omaha, NE 68102-2186

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 66603-3068



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Stacy L. Cook