

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

JUN 16 1995

IN THE MATTER OF)
)
BISMARCK C. D'SOUZA, M.D.)
Kansas License No. 04-17818)
_____)

Case # 94-00217 **KANSAS STATE BOARD OF HEALING ARTS**

STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel, and Bismarck C. D'Souza, M.D. ("Licensee") by and through his attorney, Charles R. Hay, of Goodell, Stratton, Edmonds, and Palmer, Topeka, Kansas, 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 medicine and surgery. K.S.A. 65-2801 et seq; K.S.A. 65-2869. 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 medicine and surgery in the State of Kansas, having been issued license number 04-17818 on December 15, 1978. 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 June 3, 1994.

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. Specifically, it is alleged that Licensee violated certain provisions of the Pharmacy Act and/or the Uniform Controlled Substances Act, in violation of K.S.A. 65-2836(f). Further, it is alleged that Licensee prescribed a controlled substance to a person for other than a medically accepted and/or a lawful purpose, in violation of K.S.A. 65-2836(p). Further, it is alleged that Licensee violated a federal law or regulation relating to controlled substances. Further, it is alleged that Licensee prescribed a prescription drug, and specifically a controlled substance, not in the course of the Licensee's practice, in violation of K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(23). Finally, it is alleged that Licensee failed to keep written medical records which accurately described the services rendered to a patient, in violation of K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(25). The Board states it would present substantial evidence in an administrative hearing in support of its allegations. Licensee neither confirms nor denies the allegations.

4. Such acts or conduct 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 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. 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 and Agreement, hereby voluntarily agrees to the following disciplinary measures placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

(i) Licensee is fined a sum of one thousand dollars (\$1,000.00) payable within thirty (30) days of Board acceptance of this Stipulation.

(ii) Licensee agrees to submit quarterly monitoring reports of all controlled substance prescriptions he transmits (oral, written, or otherwise) to the Board office for a period of one year. Licensee agrees to

provide the quarterly report to the Board office not later than the fifteenth (15th) day of the month for the preceding quarter.

iv) Licensee agrees to attend and successfully complete the mini-residency titled "The Proper Prescribing of Controlled Dangerous Substances", to be conducted May 1-6, 1995, at the Kennedy Memorial Hospital, University Medical Center, University of Medicine and Dentistry of New Jersey. Licensee understands and agrees such attendance shall be at his personal cost, and at no cost to the Board.

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 that the Board has determined that this action requires the Board to make a report to the National Practitioner Databank and the Federation of State Medical Boards. Licensee shall have such rights to make objections, replies, or other responses to the Board's filing as are permitted under applicable law.

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 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.

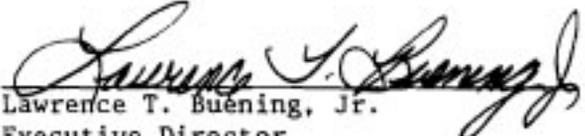
9. Upon execution of this Stipulation by the affixing of a Board authorized signature below, the provisions of this Stipulation shall become

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

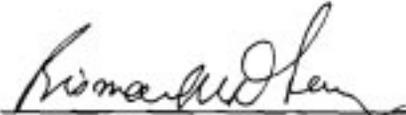
23^d day of June, 1995.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

Date

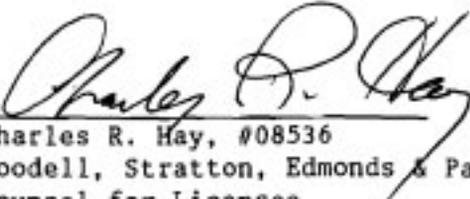
June 23, 1995


Bismarck C. D'Souza, M.D.
Licensee

Date

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) 296-7413


Charles R. Hay, #08536
Goodell, Stratton, Edmonds & Palmer
Counsel for Licensee
515 S. Kansas Avenue
Topeka, Kansas 66603-3999
(913) 233-0593

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

IN THE MATTER OF:)
)
BISMARCK C. D'SOUZA, M.D.)
Kansas License No. 04-17818)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Stipulation and Agreement and Enforcement Order was deposited in the United States mail, first-class postage prepaid, on this 27th day of June, 1995, addressed to the following:

Bismarck D'Souza
625 Upper Mill Heights
Salina, Kansas 67401

Charles R. Hay
Goodell, Stratton, Edmonds & Palmer, LLP
515 S. Kansas Ave.
Topeka, Kansas 66603-3999

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068



Kevin K. LaChance, #15058
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