

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**F I L E D**

OCT 16 2000

In the Matter of )  
 )  
**David D. Edalati, M.D.** )  
License No. 04-24423 )  
\_\_\_\_\_ )

Docket No. 00-HA-40 KANSAS STATE BOARD OF  
HEALING ARTS

**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel, and Kelli J. Benintendi, Associate Counsel ("Petitioner"), and David D. Edalati, M.D. ("Licensee"), by and through counsel, Reid Holbrook and Lynaia Holsapple of Holbrook, Heaven and Osborn, P.A., 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. 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 is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued license number 04-24423 on February 13, 1993. 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 28, 1999.

6. Pursuant to K.S.A. 65-2836, there are grounds for disciplinary action for the following actions and conduct:

- (a) The Board alleges Licensee failed to adhere to the applicable standard of care to a degree constituting ordinary negligence in his treatment of patients J.G. and S.R. and A.T.;
- (b) The Board alleges Licensee improperly prescribed controlled substances to patients P.I., J.B., P.H., C.H., D.M., D.R., R.O., N.R., L.D. and D.B.; and
- (c) The Board alleges Licensee has failed to create and maintain medical records as required by regulation.

The Board asserts that it has sufficient evidence to prove its allegations. Licensee denies the acts of negligence and improper prescribing, described above, but stipulates he failed to create and maintain medical records as required by regulation. The above actions and conduct, if proven, would constitute grounds for disciplinary action pursuant to K.S.A. 65-2836(b), as defined by K.S.A. 65-2837(a)(2) and 65-2837(b)(23). Licensee's failure to create and maintain adequate medical records is grounds for disciplinary action pursuant to K.S.A. 65-2836(k), due to violations of K.A.R. 100-24-1, and K.S.A. 65-2837(b)(25).

7. 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.

8. Licensee voluntarily and knowingly waives his right to a hearing concerning any matter within 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, 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.

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 the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary action regarding his license to practice medicine and surgery in the State of Kansas:

**RECORD-KEEPING**

- (i) Licensee must dictate all office notes in patients' charts within 48 hours of the patient visit. All notes will include the date of dictation, date of transcription, and the name of the transcriber.
- (ii) Licensee's office charts must fully comply with K.A.R. 100-24-1.
- (iii) Licensee must use a numbered triplicate prescription pad for all controlled substances and keep a copy of all such prescriptions in the patient chart kept in his office. If the prescription is phoned-in to a pharmacy, all pertinent information shall be noted in the patient chart, including the name and location

of the pharmacy.

- (iv) Licensee must maintain all patient charts in his office in a medical record organization format provided by the Board staff. Licensee will agree to random inspections of his patient charts by Board staff for a period of one (1) year from the date this Stipulation is approved by the Board. After the first year, the random inspections will occur no more than two (2) times per year for the duration of the Stipulation. Licensee shall accommodate the Board staff conducting these inspections. Inspections shall occur during office hours, unless otherwise agreed upon, and the Board staff shall perform their work in an unobtrusive manner.
- (v) Licensee shall attend and successfully complete a course on medical record keeping within six (6) months after the Board's approval of the Stipulation. The course must be approved by the Board or its designee and will be at Licensee's own expense. Licensee must provide Board staff with proof of completion of the course.

#### **PRESCRIBING**

- (vi) Licensee shall follow the *Guidelines for the Use of Controlled Substances for the Treatment of Pain*, approved by the Board on October 17, 1998. Licensee shall also complete forms provided by Board staff when prescribing controlled substances to patients and maintain a copy in the patient's chart.
- (vii) Licensee agrees to have his controlled substance prescribing monitored by another Kansas licensed physician at licensee's expense. The monitor must

be approved by the Board or its designee. The monitor must review at least five (5) to ten (10) patient charts per month which have been identified by Board staff, submit monthly monitoring reports as set forth below and attend monthly conference calls with attorneys from the Board and Licensee.

- (viii) Each month Licensee shall submit to Board staff a copy of all of the prescriptions from the triplicate prescription pad for any and all controlled substances prescribed during the course of each month. These prescriptions shall be provided to the Board by the tenth (10<sup>th</sup>) day of the following month.
- (ix) The Board shall determine those five (5) to ten (10) patient charts to be reviewed by the monitor and notify Licensee of the charts requested. Licensee shall provide all requested patient charts to the monitor within fourteen (14) days of receiving such notification. The monitor must regularly submit a monitoring report to Board staff within forty-five (45) days after receiving a month's set of charts from Licensee.
- (x) The monitor's monthly reports shall be on a form provided by Board staff and must include an assessment for each patient chart as to whether Licensee is prescribing medications in a manner which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances, whether Licensee is following the *Guidelines for the Use of Controlled Substances for the Treatment of Pain*, and provide a general opinion regarding whether Licensee is practicing medicine with that level of care, skill and treatment which is recognized by a reasonably prudent

practitioner as being acceptable under similar conditions and circumstances with respect to each patient's chart reviewed.

- (xi) The monitor must immediately notify Board staff if the monitor believes that Licensee is over-prescribing or inappropriately prescribing to any patients.
- (xii) Licensee is responsible for ensuring the timely submission of the monitor's report to Board staff. Board staff must receive at least twenty-four (24) reports. After twenty-four (24) reports have been submitted, Licensee may request termination of the limitations.
- (xiii) Licensee shall attend and successfully complete a course on proper prescribing of controlled substances within six (6) months after the Board's approval of the Stipulation. The course will be at Licensee's own expense. Licensee must provide Board staff with proof of completion of the course.

#### **OTHER**

- (xiv) Licensee shall pay to the Board the costs of this matter, in the amount of \$3,500.00. Licensee shall pay the costs to the Board within thirty (30) days after the Board's approval of this Stipulation.
- (xv) Upon completion of the terms of this agreement, Licensee may petition the Board to terminate the conditions of this Stipulation and Agreement and Enforcement Order and to report such completion to the National Practitioner Databank, Federation of State Medical Boards, and any other reporting entities.

(b) This Order constitutes disciplinary action pursuant to K.S.A. 65-2836, but does not constitute a limitation on the scope of Licensee's license to practice.

(c) Nothing in this subsection is intended to prevent the subject matter of this Stipulation from being used as evidence, in conjunction with any future violations by Licensee of the disciplinary provisions of the Healing Arts Act.

(d) Licensee's failure to comply with the provisions of this Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act. If Licensee is unemployed for a period of thirty (30) consecutive days or longer, or is employed outside the State of Kansas, Licensee shall notify the Board in writing. The provisions of this Stipulation which have specific time frames will be tolled during such period(s) and not be counted in reducing said time frames. Any extension of time or grace period for reporting granted by Board staff shall not be a waiver or preclude the Board's right to take action at a later time. The Board shall not be required to grant future extensions of time or grace periods.

(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.

(f) Licensee 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 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 Releasees.

(g) 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.

(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 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.

(j) 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.

(k) Licensee acknowledges that he has read this Stipulation and fully understands the



contents.

(l) Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

(m) 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: Kelli J. Benintendi, Associate Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

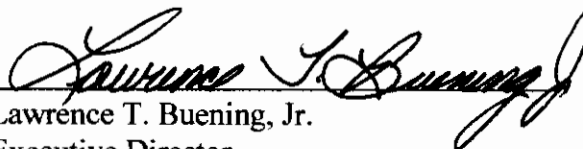
(n) Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(o) 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.

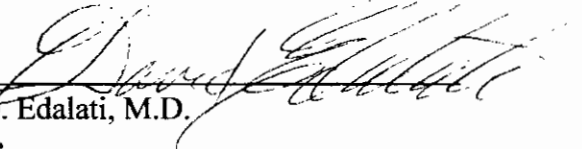
IN WITNESS WHEREOF, the parties have executed this agreement on this

14<sup>th</sup> day of October, 2000.

KANSAS STATE BOARD OF HEALING ARTS


  
Lawrence T. Buening, Jr.  
Executive Director

October 14, 2000  
Date

  
\_\_\_\_\_  
David D. Edalati, M.D.  
Licensee

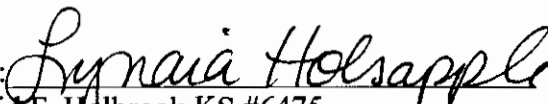
10/14/2000  
\_\_\_\_\_  
Date

Prepared By:

  
\_\_\_\_\_  
Stacy L. Cook #16385  
Litigation Counsel  
Kelli J. Benintendi #16032  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065  
(785) 296-7413

Approved as to Form

HOLBROOK, HEAVEN & OSBORN, P. A.

By:   
\_\_\_\_\_  
Reid F. Holbrook KS #6475  
Lynaia M. Holsapple, KS #17390  
757 Armstrong  
P.O. Box 171927  
Kansas City, KS 66117  
(913) 342-2500  
(913) 342-0603 facsimile

**CERTIFICATE OF SERVICE**

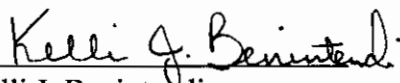
I, Kelli J. Benintendi, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 17<sup>th</sup> day of October, 2000, to the following:

David D. Edalati, M.D.  
1320 S. Ash #203  
Ottawa, Kansas 66067

Reid Holbrook  
Lynaia Holsapple  
Holbrook, Heaven & Osborn, P.A.  
757 Armstrong Ave.  
P.O. Box 171927  
Kansas City, Kansas 66117-1927

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

  
Kelli J. Benintendi  
Associate Counsel