

FILED

JUN 26 1995

**KANSAS STATE BOARD OF
HEALING ARTS**

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

IN THE MATTER OF)
)
MERLE J. FIESER, M.D.)
Kansas License No. 04-18324)
_____)

Case # 94-00258

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 Jerry R. Palmer, duly appointed Special Counsel for the Board, and Merle J. Fieser, M.D. ("Licensee"), by and through Eldon Boisseau and Brian Wright, Counsel for Licensee, and stipulate and agree as follows:

1. The Board is the sole and exclusive regulatory agency in the State of Kansas regarding 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 is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued license number 04-18324 on July 28, 1979. 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 her license on June 3, 1994.

3. Information provided to the Board indicates that Licensee may have committed acts which, if proven to be true, would constitute violations of the Healing Arts Act, K.S.A. 65-2801 et seq. Specifically, the Board has caused to be filed a Petition to Revoke, Suspend or Otherwise Limit Licensure on August 12, 1994, pertaining to allegations regarding Licensee's practice of the healing arts. Further, the Board has caused to be filed an Emergency Petition on April 18, 1995, pertaining to additional

allegations pertaining to Licensee's practice of the healing arts. The Board maintains substantial evidence exists that the allegations contained in the abovenamed petitions are true. Licensee admits the alleged violations contained in paragraph 8 of the Emergency Petition and counts 4 and 5 of the original Petition in the following particulars: The suspension of obstetrical and neonatal privileges by Central Kansas Medical Center in 1992; nondisclosure of the extent of the Central Kansas Medical Center's suspension on Licensee's application for privileges at Clara Barton Hospital; the performance of a VBAC (vaginal birth after a cesarean section) delivery at Clara Barton Hospital in violation of the hospital's policy; and suborning the false statements of the patient who underwent the VBAC, as well as modifying records in order to accomplish the VBAC delivery, and resigning her Clara Barton Hospital clinical privileges while under investigation by the hospital for the circumstances surrounding the VBAC delivery; and the settlement of a malpractice case (Suchy). Licensee admits the above occurrences are true and actionable by the Board. Licensee neither confirms nor denies Counts 1, 2, and 3 of the original Petition in this matter.

4. Such acts or conduct as set forth above constitute grounds for disciplinary action by the Board pursuant to provisions of the Healing Arts Act. K.S.A. 65-2836(c). Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if a licensee of the Board has engaged in any commissions or omissions to bring the 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 and Agreement and Enforcement Order ("Stipulation").

5. It is the intent and purpose of this Stipulation to provide for settlement of all issues without the necessity of proceeding to a formal

hearing. K.S.A. 65-2838(b). Licensee voluntarily and affirmatively waives her right to a hearing pertaining to any matter under the jurisdiction of the Board regarding her license to engage in the practice of medicine and surgery. Licensee voluntarily and knowingly waives her 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 is 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.

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

a) The Board is the duly authorized administrative agency of the State of Kansas with appropriate statutory authority to regulate the practice of the healing arts to include the practice of medicine and surgery in the State of Kansas.

b) Licensee admits that this 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.

c) In lieu of formal proceedings and/or findings by the Board, Licensee, by signature attached to this Stipulation and Agreement, hereby voluntarily agrees to the conditions placed on her license to engage in the practice of medicine and surgery in the State of Kansas.

d) Licensee hereby agrees to disciplinary measures against her license to engage in the practice of medicine and surgery in the State of Kansas based on the following specific conditions:

i) Licensee agrees to that her license to practice medicine and surgery is hereby limited to the extent that she will not practice obstetrics in any form, nor will she undertake to treat neonates (newborns), in the State of Kansas unless certain requirements are met. This further means that, in the event a patient attends with Licensee with a diagnosis of pregnancy, or if Licensee makes a diagnosis of pregnancy, the patient will be immediately referred to another physician, and Licensee will have no further management of the patient during the period of the pregnancy and will not participate in the delivery. Further, once a baby is born, Licensee will not accept the neonate into her practice until some other doctor has made a diagnosis that this is a well neonate, and the neonate has been released from care from the facility in which it was born, or, if not born in a facility, has been adjudged in writing by another doctor to be a healthy neonate. For purposes of this Stipulation, a "neonate" is defined as a baby less than twenty-nine (29) days of age.

ii) Licensee will not apply for termination of the limitation described immediately above for a period of at least three (3)

years. Licensee agrees that, if she applies for termination of the limitation, such request for termination of limitation will be taken under consideration by the Board utilizing the eight factors enumerated by the Kansas Supreme Court in Vakas v. Kansas State Board of Healing Arts. Further, the Board may take under consideration the underlying conduct which was at hearing in the two above-described Petitions, and hearings conducted in furtherance of adjudication of the Petitions.

iii) Licensee agrees that she will pay a fine of twenty thousand dollars (\$20,000.00) to the Board pursuant to K.S.A. 65-2863a pertaining to the allegations which she has admitted are true in Paragraph 3 above. Licensee agrees that such a fine would be properly levied in accordance with the law. Licensee further agrees to pay said fine within fourteen days of the Board's acceptance of this Stipulation.

iv) Licensee agrees to pay all such costs of the proceedings as contemplated under the provisions of K.S.A. 65-2846. The costs of making the record of the proceedings is one thousand one hundred seventy nine dollars and sixty cents (\$1,179.60). Licensee agrees to pay these costs within fourteen (14) days of Board acceptance of this Stipulation. Further, the presiding officer's costs have not been presented to date, but will be presented by the Board to Licensee for payment when received. Licensee agrees to pay the presiding officer's costs within fourteen (14) days of presentation of the bill from the Board.

Licensee's agreement to the above terms pertaining to her license are evidenced by her signature affixed to this document.

e) 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 and Agreement or subsequent acts which are unknown to the Board or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

f) This Stipulation and Agreement 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.

g) Licensee acknowledges that she has read this Stipulation and Agreement and fully understands its Contents.

h) Licensee hereby 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.

i) Licensee acknowledges that this Stipulation and Agreement has been entered in freely and voluntarily given.

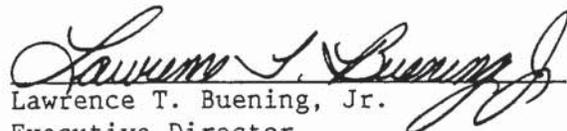
j) Licensee acknowledges that this document shall be deemed a public record upon Licensee's signing this document, whether or not an authorized Board signature appears on same, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

10. Upon execution of this Stipulation and Agreement by the affixing of a Board authorized signature below, the provisions of this Stipulation and

Agreement 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 and Agreement and Enforcement Order 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

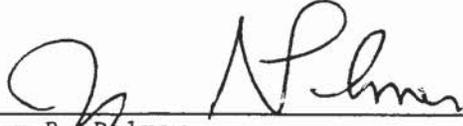
June 23, 1995
Date


Merle J. Fieser, M.D.
Licensee

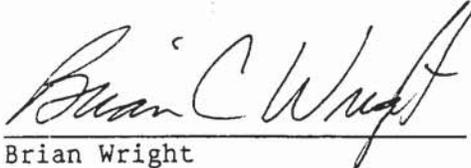
June 14, 1995
Date

Prepared and Approved As To Form By:


Kevin K. LaChance
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068


Jerry R. Palmer
Palmer & Lowry
Special Counsel
Kansas State Board of Healing Arts
Columbian Building, Suite 102
112 W. Sixth Street
Topeka, Kansas 66603-3810


Eldon Boisseau
Turner & Boisseau
Counsel for Licensee
825 N. Waco
Wichita, Kansas 67203
(316) 263-2267 Counsel for Licensee


Brian Wright
Turner & Boisseau
Counsel for Licensee
3900 Broadway
Great Bend, Kansas 67530
(316) 792-2441