

FILED

OCT 16 2000

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

In the Matter of)
the Application for Reinstatement of)
Sherman Hawkins, R.T.)
Kansas License No. 16-00441)
_____)

KANSAS STATE BOARD OF
HEALING ARTS
Docket No. 01-11A-09

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Sherman Hawkins, R.T. ("Applicant") 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 respiratory therapy. K.S.A 65- 5501 *et seq.*

2. Applicant 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. Applicant agrees that the respiratory therapy practice act is constitutional on its face and as applied in this case.

4. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

5. Applicant filed an Application for Reinstatement as a Respiratory Therapist in the State of Kansas on July 10, 2000.

6. Applicant disclosed in his application materials that he received a felony conviction in 1999 for Possession of Cocaine and Possession of Cocaine with Intent to Sell, and that in October 1999, Applicant was sentenced to eighteen months of incarceration. Applicant has since been released and is currently under post-release supervision.

7. (confidential)

(confidential)

8. The Board may deny reinstatement of licensure to practice respiratory therapy when the applicant has been guilty of unprofessional conduct. Pursuant to K.S.A. 65-5510(a)(3), unprofessional conduct includes being convicted of a felony if the acts for which such a person was convicted are found by the Board to have a direct bearing on whether such a person should be entrusted to serve the public in the capacity of respiratory therapist. (confidential)

(confidential)

(confidential)

According to K.S.A. 77-505, the Board may enter into an informal settlement of this matter in lieu of denying reinstatement of Applicant's license.

9. Applicant voluntarily and knowingly waives his right to a hearing pursuant to K.S.A. 65-5510(b) and under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* Applicant 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. Applicant

voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

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

11. 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, Applicant, by signature affixed to this Stipulation, hereby voluntarily agrees to the following:

(i) (confidential)

(ii) (confidential)

(confidential)

(iii) (confidential)

(iv) (confidential)

(v) (confidential)

(vi) (confidential)

(vii) (confidential)

(b) This Order constitutes limitations on Applicant's license as a respiratory therapist in lieu of denial of reinstatement pursuant to K.S.A. 65-5510(a). These limitations shall remain in effect for at least three (3) years. At the end of three (3) years, Applicant may request the termination of the limitations.

(c) Applicant's failure to comply with the provisions of this Stipulation will result in the Board initiating disciplinary action to immediately suspend Licensee's license pursuant to and in compliance with the Kansas administrative procedure act.

(d) Nothing in this Stipulation shall be construed to deny the Board jurisdiction to investigate alleged violations of the respiratory therapy practice 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 respiratory therapy practice act.

(e) Applicant 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 Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant 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) Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to all 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) Applicant 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 Applicant is not present. Applicant 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) Applicant, 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) Applicant acknowledges that he has read this Stipulation and fully understands the contents.

(k) Applicant acknowledges that this Stipulation has been entered into freely and voluntarily.

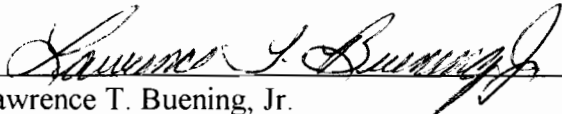
(l) All correspondence or communication between Applicant and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(m) Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory therapy 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. 65-5510(a). 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 14th day of October, 2000.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

October 14, 2000
Date


Sherman Hawkins, R.T.
Applicant

October 4, 2000
Date

Prepared By:

Kelli J. Benintendi

Kelli J. Benintendi #16032
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate 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 16th day of October, 2000, to the following:

Sherman Hawkins, R.T.
2043 Random Road
Wichita, Kansas 67214

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
Kelli J. Benintendi
Associate Counsel