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

DEC 1 9 1997

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
Donald R. Janes, M.D.)
Kansas License No. 04-12655)
_____)

Case No. 94-00025

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel ("Petitioner"), and Donald R. Janes, M.D. ("Licensee"), represented by legal counsel Steve A. Schwarm, and stipulate and agree to certain terms. Stacy L. Cook, Associate Counsel, has been designated to pursue this matter on behalf of Disciplinary Counsel. Petitioner and Licensee hereby stipulate and agree as follows:

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 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

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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 04-12655 on January 20, 1962. 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 7, 1997.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts that violate the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836. Specifically, the Board has reasonable cause to believe that Licensee has violated the following provisions:

(a) K.S.A. 65-2836(b) professional incompetency, as further defined by K.S.A. 65-2837(a)(1), failing to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the Board, in regards to patient M.M. who was in Licensee's care in the Emergency Room of the Anderson County Hospital on April 17, 1994. Patient M.M. presented to the Emergency Room of the Anderson County Hospital on April 17, 1994 at approximately 0430. Licensee failed to examine patient until 0830, and after M.M.'s family requested that M.M. be transferred to another facility.

(b) K.S.A. 65-2836(b) unprofessional conduct, as further defined by K.S.A. 65-2837(b)(26), delegating professional responsibility to a person when Licensee knows or has reason to know that such person is not qualified by training, experience, or licensure to perform them, in that Licensee relied upon the nursing staff at Anderson County Hospital to determine M.M.'s medical

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condition.

7. By entering into this Stipulation, Licensee has not admitted that he has violated the provisions set forth in the subsections of Paragraph 6, above.

8. Violation of the provisions set forth in the subsections of paragraph 6 of this Stipulation constitutes grounds for disciplinary action by the Board. 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.

9. Licensee and the Board voluntarily and knowingly waive their right to a hearing concerning the presentation of this Stipulation to the Board for the Board's approval. Licensee and the Board voluntarily and knowingly waive their 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 and the Board voluntarily and knowingly agree to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held. In the event that the Board does not approve of the Stipulation, Licensee and the Board have all of the rights set forth in the Healing Arts Act and the Kansas Administrative Procedures Act. Nothing in this paragraph is intended to limit the provisions of paragraph 11(i).

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

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affixed at the end of this document. When the Licensee signs this document, the document shall be deemed a unilateral contract and agreement and shall bind Licensee to the terms and conditions set forth herein regardless of whether the Board's signature is affixed to the document. Licensee 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 commencement 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 measures placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

(i) Licensee agrees to the monitoring of the time of his physical examination of patients presenting to the Emergency Room. Licensee shall ensure that he writes on the Emergency Room physician record the time and date of his personal physical examination of all of his emergency room patients. Licensee shall ensure that hospital nursing personnel records in writing on the Emergency Room face sheet that Licensee did conduct a physical examination of the patient at the time and date noted by Licensee, with such recording based on personal knowledge of the nursing personnel that such examination did take place at the date and time recorded, if Licensee has explained to the nursing personnel that personal knowledge is required for the signature. Licensee agrees to provide a written explanation if Licensee does not conduct a personal physical examination within 30 minutes of notification by the Emergency Room for any patient who presents to the

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Emergency Room in a "Code Grey" or more critical status. "Code Grey" is defined as urgent, serious, and should be evaluated, and may require the attention of a physician. This monitoring period shall commence upon the Board's approval of the Stipulation and shall remain in place for a period of at least 6 months thereafter. Licensee shall ensure that copies of the Emergency Room physician records, face sheets, and any of Licensee's written explanations are provided to Stacy L. Cook, Associate Counsel, on the first day of each month for the emergency room patients seen by Licensee in the previous two weeks, and on the fifteenth day of each month for the emergency room patients seen by Licensee in the previous two weeks.

(ii) Licensee is hereby fined two thousand dollars (\$2,000.00).

(iii) Licensee agrees that the fine as stated above shall be due and payable within thirty (30) days of Board acceptance of this Stipulation.

(b) This Stipulation constitutes a limitation on the Licensee's license to practice medicine and surgery in the State of Kansas, but does not constitute a limitation or restriction upon the scope of Licensee's practice.

(c) Upon Licensee's completion and satisfaction of the terms and conditions of this Stipulation, he will be deemed to have complied with the Board's suggestions and recommendations, and no further action shall be taken by the Board with regard to the Licensee's treatment of patient M.M. at Anderson County Hospital on April 17, 1994. However, 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 the Stipulation will result in the

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Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(e) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate other alleged violations of the Healing Arts Act, to initiate formal proceedings based upon known or unknown allegations of the violations of the Healing Arts Act, or to investigate complaints received under the Kansas Risk Management Law, K.S.A. 65-4921 *et seq.* that are unknown to the Board at the present time.

(f) Licensee 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 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 or the content of this Stipulation.

(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 Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Stipulation. However, this Stipulation will not be reported to the National Practitioner Databank.

(h) This Stipulation, when signed by both parties, constitutes the entire agreement

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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: Office of the Disciplinary 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

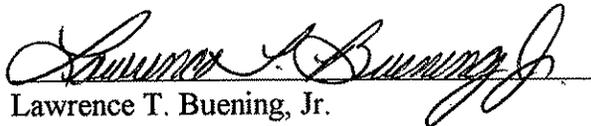
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Stipulation or may become effective subsequent to the execution of this document.

(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 19th day of December, 1997.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

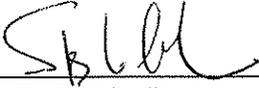
December 19, 1997
Date

Donald R. Janes M.D.
Donald R. Janes, M.D.

Date

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Prepared By:



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

Approved as to form by:



Steve A. Schwarm, #13232
Attorney for Licensee
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue
Topeka, Kansas 66603-0593

CERTIFICATE OF SERVICE

I, Stacy L. Cook, 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 22nd day of December, 1997, to the following:

Steve A. Schwarm
Attorney for Licensee
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue

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Topeka, Kansas 66603-0593

Donald R. Janes, M.D.
536 W. 4th Avenue
P.O. Box 369
Garnett, Kansas 66032-0369

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



Stacy L. Cook

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