

FEB 19 2003

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
SCOTT D. JAY, M.D.)
Kansas License No. 4-27060)
_____)

Docket No. 03-HA-58

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Scott D. Jay, M.D. ("Licensee"), by and through Audrey Hanson McIntosh, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known address to the Board is 5614 Foxfire Lane, Lohman, Missouri 65053.
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 No. 4-27060 on August 16, 1997. Licensee last renewed his license on July 23, 2002. Licensee's license status is inactive.
3. 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.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided

by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

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

7. Licensee voluntarily and knowingly waives his right to a hearing. 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.

8. The terms and conditions of the Consent Order 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 Consent Order 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 Consent Order on behalf of the Board.

9. Licensee is a cardiologist. When Licensee's license was active, he practiced in Hutchinson. Petitioner alleges that Licensee's treatment of four patients deviated from the applicable standard of care to a degree constituting ordinary negligence. Licensee denies the Board's allegations.

10. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(2), the Board has authority to revoke, suspend, or otherwise limit Licensee's license.

11. On or about February 5, 2002, Hutchinson Hospital suspended Licensee's hospital privileges.

12. Licensee admits that his hospital privileges were suspended.

13. Pursuant to K.S.A. 65-2836(s), the Board has authority to revoke, suspend, or otherwise limit Licensee's license.

14. According to K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

15. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following limitations placed on his license to engage in the practice of medicine and surgery:

- a. Licensee agrees to maintain his license status as inactive. In order for Licensee to change his license status he agrees to do the following:

- i. **(Confidential)**

- ii. Have the records and other relevant information of 20% of all of the patients Licensee treats per month reviewed by a

monitor. The monitor must be a Board certified cardiologist and must be approved by the Board or its designee. The monitoring will be in effect for at least six months. Licensee is responsible for providing to Board staff a list of all patients treated each month. The Board and/or its designee, with the monitor's assistance, will determine which patient charts to review. The monitor must prepare a report regarding the information reviewed and provide it to the Board on a monthly basis. The reports are due on or before the 20th day of the following month. For example, for all patients seen in March, the reports are due April 20. Licensee is responsible for ensuring that the reports are submitted in a timely manner and is responsible for all costs associated with the monitor. Licensee must appear before the Board prior to such status change and demonstrate that arrangements have been made for monitoring. At the end of six months, and after the monitor has submitted at least six (6) reports, Licensee may appear before the Board to request termination of this limitation. The monitoring requirement shall continue until the Board orders termination.

16. Licensee's failure to comply with the provisions of the Consent Order will result in the Board taking disciplinary action as the Board deems appropriate according to

the Kansas Administrative Procedure Act.

17. Nothing in this Consent Order 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 Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

18. Licensee hereby releases the Board, its individual members (in their official and personal capacities), attorneys, employees and agents, hereinafter collectively referred to as ("Releasees"), from any and all claims, 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 Consent Order. This release shall forever discharge the Releasees 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 Releasees.

19. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record.

20. This Consent Order, 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.

21. 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.

22. 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.

23. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

24. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

25. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

26. 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 Consent Order or may become effective subsequent to the execution of this document.

27. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent 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.

28. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Licensee agrees to maintain his license status as inactive. In order for Licensee to change his license status he agrees to do the following:

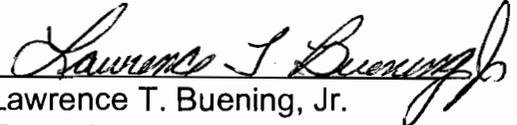
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IT IS SO ORDERED on this 18th day of February, 2003.

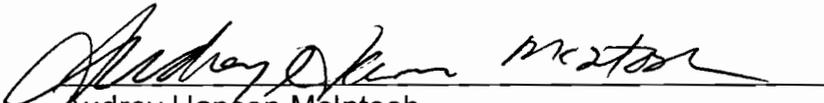
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:



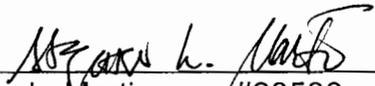
Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413



Audrey Hanson McIntosh
609 E. High Street
P.O. Box 1497
Jefferson City, Missouri 65102



Scott Jay, M.D.



Stephen L. Martino #20586
Foulston Sierkin, LLP
555 S. Kansas Avenue, Suite 101
Topeka, Kansas 66603-3423
(785) 233-3600
Attorneys for Scott Jay, M.D.

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the **CONSENT ORDER BY** United States mail, postage prepaid, on this 20th day of February, 2003 to the following:

Scott D. Jay, M.D.
5614 Foxfire Lane
Lohman, Missouri 65053

Audrey Hanson McIntosh
609 E. High Street
P.O. Box 1497
Jefferson City, Missouri 65102

Stephen L. Martino
Foulston Siefkin, LLP
555 S. Kansas Avenue, Suite 101
Topeka, Kansas 66603-3423
Attorneys for Scott Jay, M.D.

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