

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS



IN THE MATTER OF)
)
BASSAM KHULUSI, M.D.)
Kansas License No. 04-19944)
_____)

FEB 16 1997
Case # 96-00227
KANSAS STATE BOARD OF
HEALING ARTS

STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel ("Petitioner"), and Bassam Khulusi, M.D. ("Licensee"), by and through his attorney Samuel K. Cullan, and stipulate and agree as follows:

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. Licensee admits that this Stipulation and Agreement and Enforcement Order ("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.

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 04-19944 on February 28, 1983. 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 July 31, 1996.

3. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts in violation of the Healing Arts Act. K.S.A. 65-2801 et seq; K.S.A. 65-2836. Specifically, it is alleged that Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(11), prescribing, ordering, dispensing, administering, selling, supplying or giving any amphetamines or sympathomimetic amines except as authorized by K.S.A. 65-2837a and amendments thereto. Further, it is alleged Licensee violated K.S.A. 65-2836(k), in that Licensee has failed to follow the dispensing physician regulations detailed in K.A.R. 100-21-1 through 100-21-5, the obesity drug treatment requirements detailed in K.A.R. 100-23-1, and the recordkeeping requirements detailed in K.A.R. 100-24-1. The Board states it would present substantial evidence in an administrative hearing in support of its allegations. Licensee alleges he complied with the Healing Arts Act, and specifically alleges the applicable statutes and regulations relating to the prescribing of drugs for obesity are vague and ambiguous, and that his interpretations of same was reasonable. Licensee asserts he would present substantial evidence of compliance at an administrative hearing. Licensee further asserts he can present computer and billing records which prove conclusively that all controlled substances were accounted for, and no diversion of such medications occurred.

4. Such acts or conduct as alleged by the Board as set forth above could constitute grounds for disciplinary action by the Board pursuant to the cited provisions of the Healing Arts Act. Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if a licensee to the Board has engaged in any commissions or omissions to bring 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 without the necessity of proceeding to a formal hearing.

Licensee voluntarily and affirmatively waives his right to a hearing pertaining to any matter under 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, 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 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. 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.

5. 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 attached 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 and is hereby fined six thousand dollars (\$6,000.00).

ii) Licensee agrees to and is hereby assessed administrative costs of conducting the investigation of the abovedescribed allegations in the amount of four thousand dollars (\$4,000.00).

iii) Licensee may not dispense controlled drugs from his office for a period of two years from the date of Board acceptance of this Stipulation.

iv) Licensee shall establish a written office protocol pertaining to the prescribing of controlled substances. This protocol will specify office procedures for handling telephone calls when patients request controlled substances and how to document controlled substance prescriptions in the chart. Further, the protocol will detail and implement a triplicate prescription program for all controlled substances. Said protocol shall be provided to the Board or its designee for review and acceptance within thirty (30) days of the date of Board acceptance of this Stipulation.

v) Licensee shall be allowed to participate in the Phen-Fen prescribing study currently being conducted by the Board upon approval of appropriate protocols for participation in the study by a practitioner in private practice. Upon acceptance into the program, Licensee understands and agrees to comply with all standards of performance expected of practitioners participating in the study. Licensee specifically acknowledges that he will be required to timely file all required records associated with his participation in the study, which include but are not limited to patient informed consent forms, initial eligibility screenings, initial histories and physicals, prescribed periodic progress reports, and prescribed termination reports. All reports shall be in a format detailed by the Board, and shall contain all information required by the Board.

vi) Licensee agrees that the fines and costs detailed in (i) and (ii) above shall be due and payable as follows:

a. One thousand dollars (\$1,000.00) shall be presented with this Stipulation for Board acceptance.

b. One thousand dollars (\$1,000.00) shall be due on the first day of the month of every month following Board acceptance of this Stipulation, until a total of ten thousand dollars (\$10,000) has been paid to the Board.

b) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate in compliance with the Kansas Administrative Procedure Act and/or the terms of this Stipulation.

c) 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, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

d) This Stipulation 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.

e) Licensee acknowledges that he has read this Stipulation and fully understands its contents. Licensee acknowledges that this Stipulation has been entered in freely and voluntarily given.

f) Licensee 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.

g) Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document and Board acceptance of the terms of this document. Licensee further acknowledges this action is reportable to the National Practitioner Data Bank and the Federation of State Medical Boards and other reporting agencies.

h) Licensee authorizes Petitioner to present this Stipulation to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, even if Licensee is not present.

6. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to: Kansas State Board of Healing Arts, ATTENTION: Disciplinary Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

7. 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 and Agreement or may become effective subsequent to the execution of this document.

8. Licensee has an affirmative duty to notify the Board of changes in his personal professional status which would inhibit compliance with the above conditions in this Stipulation.

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

15th day of February, 1997.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.
Lawrence T. Buening, Jr.
Executive Director

February 15, 1997
Date

Bassam Khulusi, M.D.
Bassam Khulusi, M.D.
Licensee

2/12/1997
Date

Prepared and Approved As To Form By:

Kevin K. LaChance, #15058
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(913) 296-2075

Samuel K. Cullan, #13679
Counsel for Licensee
4700 Belleview, Suite 415
Kansas City, Missouri 64112
(816) 861-7600

CERTIFICATE OF SERVICE

I, Lawrence T. Buening, do hereby certify that on the 15th day of February, 1997, a true and correct copy of the above and foregoing STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER was deposited in the United States mail, first class, postage prepaid to the following:


Bassam Khulusi, M.D.
10560 Barkley Suite 24
Overland Park, KS 66212

and

Sam K. Cullan, #13679
Counsel for Licensee
4700 Belleview, Suite 415
Kansas City, MO 64112
(816) 861-7600

and a copy was hand-delivered to:

Kevin K. LaChance, #15058
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
(913) 296-2075


LAWRENCE T. BUENING, JR.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
(913) 296-7413