

**FILED**

FEB 14 2000

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

**KANSAS STATE BOARD OF  
HEALING ARTS**

In the Matter of )  
Robert B. McCown, M.D. )  
Kansas License Number 04-21782 )  
\_\_\_\_\_ )

Case No. 00-HA-34

**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**

COME NOW, the Kansas State Board of Healing Arts ("Board"), by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Robert B. McCown, M.D. ("Licensee"), by and through legal counsel James Z. Hernandez, 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 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 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 04-21782 on June 19,

1987. 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 30, 1999.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts that allegedly violate the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836, and that as a result, on April 29, 1999, Licensee entered into a Memorandum of Agreement with the Drug Enforcement Administration (“DEA”), which constitutes a limitation on Licensee’s DEA registration. Licensee does not admit the allegations, but does wish to resolve this matter without a hearing.

7. 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.

8. 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.

9. 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. Licensee

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

10. 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, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following conditions placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

- (i) Licensee shall not treat "pain management" patients by prescribing, administering or dispensing controlled substances to such patients. "Pain management patients" are those patients who suffer from chronic pain, as defined in the Guidelines for Use of Controlled Substances for the Treatment of Pain, adopted by the Board on October 17, 1998.
- (ii) Licensee shall make duplicate copies of all controlled substance prescriptions, whether written or authorized by telephone, including all information as set forth by 21 C.F.R. 1306.05(a).
- (iii) Licensee shall reduce to written form any refills for controlled substances. In addition to containing the information as set forth by 21 C.F.R. 1306.05(a), the written forms will indicate the name and address of the pharmacy authorized to refill the prescription.
- (iv) If Licensee dispenses or administers controlled substances, he must

maintain records in conformity with 21 C.F.R. 1304.22(c), and the inventory requirements of 21 C.F.R. 1304.11. This provision does not apply to Licensee's ordering and administering controlled substances at a DEA registered hospital.

- (v) Licensee shall comply with all terms of the Memorandum of Agreement which he entered into on April 29, 1999, with the DEA.
- (vi) Licensee shall attend the Mini-residency on the Proper Prescribing of Controlled Substances given by William Vilenski, D.O. Licensee's attendance at the prescribing mini-residency course will be at his expense. Licensee must provide verification to the Board that he has attended the course within one (1) year of the filing of this Stipulation.

(b) This Order constitutes disciplinary action and conditions on Licensee's license to practice medicine and surgery in the State of Kansas. These conditions shall remain in effect until Licensee verifies to the Board that he has been released from the Memorandum of Agreement entered into on April 29, 1999.

(c) Licensee's failure to comply with the provisions of the Stipulation shall be deemed a violation of a Board Order, which is grounds for disciplinary action.

(d) Nothing in this Stipulation 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 Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

(e) Licensee hereby releases the Board and its individual members (in their official and personal capacities), its employees and agents (hereinafter individually or jointly referred to as "Releasees"), from any and all claims and causes of action, 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 Releasees from 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 (either directly or indirectly), cause or permit to be prosecuted, any action or proceeding of any description against Releasees.

(f) Licensee further understands and agrees that upon signature by Licensee, 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) 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.

(i) 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.

(j) Licensee acknowledges that he has read this Stipulation and fully understands the contents.

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

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

(m) 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 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. 65-2838. 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 14<sup>th</sup>

\_ day of February, 2000.

KANSAS STATE BOARD OF HEALING ARTS

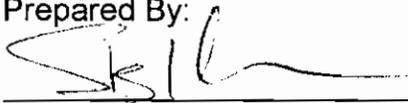
Lawrence T. Buening, Jr.  
Lawrence T. Buening, Jr.  
Executive Director

February 14, 2000  
Date

Robert B. McCown, M.D.  
Robert B. McCown, M.D.

1-13-2000  
Date

Prepared By:



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

Approved as to Form By:



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Jim Z. Hernandez, Esq.  
WOODARD, HERNANDEZ, ROTH & DALY, L.L.C.  
Emprise Bank Center, Suite 300  
257 North Broadway  
P.O. Box 122  
Wichita, KS 67201-0127

**CERTIFICATE OF SERVICE**

I, Stacy L. Cook, Litigation 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 15th day of February, 2000, to the following:

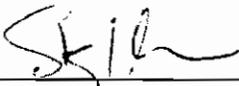
Robert B. McCown, M.D.  
Wesley Medical Center  
550 N. Hillside  
Wichita, KS 67214

and

Jim Z. Hernandez, Esq.  
WOODARD, HERNANDEZ, ROTH & DALY, L.L.C.  
Emprise Bank Center, Suite 300  
257 North Broadway  
P.O. Box 122  
Wichita, KS 67201-0127

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