

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

JAN 04 1999

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
Thomas R. McLean, M.D.)
Kansas License No. 04-24068)
_____)

Case Nos. 94-00101
95-00215
96-00117
96-00118

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel, and James R. Jarrow ("Petitioner"), and Thomas R. McLean, M.D. ("Licensee"), by and through legal counsel, Scott K. Logan, and stipulate and agree to the following:

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.

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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 04-24068 on June 12, 1992. 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 June 29, 1998.

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. The acts alleged are contained in the Petition to Revoke, Suspend, or Otherwise Limit License, filed on March 12, 1998. Specifically, the Board alleges that Licensee failed to adhere to the applicable standard of care to a degree constituting ordinary negligence in the treatment of the following patients:

K.M. The procedure was a coronary revascularization with coronary artery bypass grafting times three performed on February 9, 1993.

J.S. The surgery to be performed was a femoral peroneal bypass. The surgery actually performed was a femoral posterior tibial bypass. The surgery was on September 27, 1994.

W.S. The procedure was a left femoral popliteal bypass graft performed on June 15, 1993.

D.S. Licensee assisted on an interior spinal disectomy with lumbar fusion on June 14, 1994.

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In addition, Licensee resigned his privileges at Bethany Medical Center while under investigation for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under the healing arts act.

7. Licensee hereby denies any and all allegations that have been alleged by the Board, and has voluntarily entered into this agreement to avoid further litigation.

8. Licensee states that since July of 1995, Licensee's scope of medical practice has been providing medical services in emergency rooms, and non-cardiac thoracic surgery. Since July of 1995, Licensee has voluntarily not performed cardiac and vascular surgery and has no intention of changing the scope of his current practice.

9. Violation of the provisions set forth in the Petition to Revoke, Suspend or Otherwise Limit License 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.

10. Licensee voluntarily and knowingly waives his right to a hearing concerning the presentation of this Stipulation to the Board for the Board's approval. 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 in the presentation of this Stipulation to the Board for its approval. In the presentation of this Stipulation to the Board for its

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approval, 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.

11. 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. 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.

13. 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:

(i) Licensee agrees to sign and execute an affidavit confirming that he voluntarily eliminated cardiac and vascular surgery from his practice, and will only practice emergency room medicine and non-cardiac surgery. Said Affidavit is hereto incorporated by reference.

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(ii) Licensee further agrees to notify the Board in writing of any changes in licensee's hospital privilege status within forty-eight hours of that change in status.

(iii) Licensee agrees to pay a fine in the amount of \$1,000. Such fine will be due and payable to the board within thirty days of this stipulation becoming a final order.

(iv) Licensee agrees to pay costs in this matter in the amount of \$849.00. Said costs will be due and payable to the board within thirty days of this stipulation becoming a final order.

(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 according to the Kansas Administrative Procedure Act.

(c) The Board acknowledges, that based on the Licensee's current scope of medical practice, that the conditions agreed to herein are not a restriction on the scope of his medical practice, that the conditions agreed to herein are not a restriction or limitation of his medical license, and therefore will not be considered or reported as a "limited" or "restricted license".

(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 unknown or are not covered under this Stipulation, or to initiate formal proceedings based upon unknown allegations or on allegations of the Healing Arts Act not covered under this Stipulation.

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(e) 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.

(f) Licensee and Board acknowledge that this document shall not be considered a reportable event to the National Practitioner Databank. The Licensee does understand and agree that upon his signature, 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.

(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

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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 certified 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

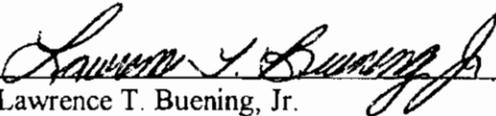
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(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

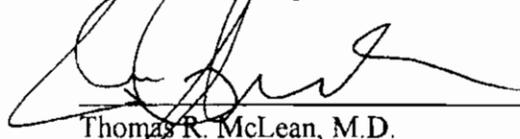
(o) Upon execution of this Stipulation by affixing a Board authorized signature below, the Petition to Revoke, Suspend or Otherwise Limit License shall be dismissed without prejudice.

IN WITNESS WHEREOF, the parties have executed this agreement on this 4th
day of January, 1998. ^{9:58}

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

Date January 4, 1999.


Thomas R. McLean, M.D.

12/29/98
Date

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Prepared By:

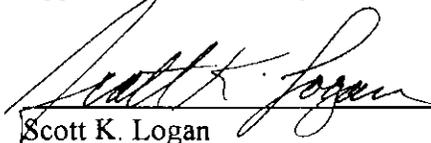


Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413



James R. Jarrow, #14287
51 Corporate Woods
9393 West 110th Street, 508
Overland Park, Kansas 66210

Approved as to form by:



Scott K. Logan
Logan & Logan
Attorneys for Licensee
8340 Mission Road, Suite 106
Prairie Village, Kansas 66206

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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 4th day of January, 1998⁹, to the following:

Scott K. Logan
Logan & Logan
Attorneys for Licensee
8340 Mission Road, Suite 106
Prairie Village, Kansas 66206

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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AFFIDAVIT

STATE OF KANSAS)
) ss:
COUNT OF JACKSON)

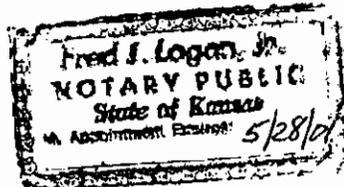
I, **THOMAS R. McLEAN, M.D.**, of lawful age, being first duly sworn upon my oath, state:

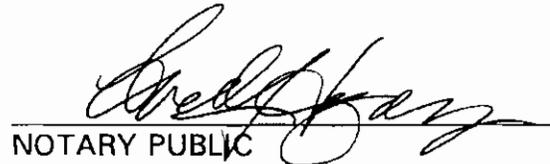
Since approximately July 1995, I voluntarily chose to eliminate cardiac and vascular surgery from my practice of medicine, and since that time have been involved in providing medical services in emergency rooms, as well as on a part-time basis doing non-cardiac thoracic surgery at Truman medical Center in Kansas City, Missouri. I agree to voluntarily eliminate cardiac and vascular surgery from my practice. I will further notify the Board of any changes in my hospital privilege status within 48 hours of that change.

FURTHER, AFFIANT SAIETH NAUGHT.


THOMAS R. McLEAN, M.D.

Subscribed and sworn to before me this 29th day of December, 1998.




NOTARY PUBLIC