

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

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IN THE MATTER OF)
)
DAVID E. MULLIES, P.A.)
Kansas Registration #15-00409)
_____)

Case # 93-00209
**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, and David E. Mullies, P.A. ("Registrant") 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 physician's assistants. K.S.A. 65-2896 et seq. Registrant 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. Registrant further notes that the Kansas Healing Arts Act and the laws specifically pertaining physicians' assistants are constitutional on their face and as applied in this case. Registrant further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

2. Registrant is or has been entitled to practice as a physician's assistant in the State of Kansas, having been issued registration number 15-00409 on February 5, 1994. At all times relevant to the allegations set forth below, Registrant has held a current registration to practice as a physician's assistant in the state of Kansas, having last renewed his registration on December 21, 1994.

3. It is alleged that Registrant has committed acts or conduct which violate the disciplinary provisions of the physician's assistant registration statutes, K.S.A. 65-2896b. Specifically, it is alleged that Registrant wrote prescriptions for controlled substances and provided drug orders for known drug abusers. Further, it is alleged that Registrant post-dated prscriptions in an attempt to control the dispensing of controlled substances to known drug abusers. Finally, it is alleged that Registrant failed to document all written prescriptions.

4. Such acts or conduct as set forth above could constitute grounds for disciplinary action by the Board. Under the provisions of K.S.A. 65-2896b, the Board has jurisdiction to remove Registrant's name from the register of physicians' assistants if a registrant of the Board has engaged in any commissions or omissions to bring licensee within the purview of K.S.A. 65-2896b. 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. Registrant voluntarily and affirmatively waives his right to a hearing pertaining to any matter under the jurisdiction of the Board regarding his registration to practice as physician's assistant. Registrant 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 Registrant to this document, it shall be deemed a unilateral contract and agreement and shall bind

Registrant to the terms and conditions set forth in the Stipulation whether or not the Board's signature is affixed to the document. Registrant 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 initiation of formal proceedings and/or findings by the Board, Registrant, by signature attached to this Stipulation and Agreement, hereby voluntarily agrees to the following disciplinary measures placed on his registration to practice as a physician's assistant in the State of Kansas:

i) Registrant agrees to attend and successfully complete the Mini-Residency titled "The Proper Prescribing of Controlled Dangerous Substances", to be conducted May 1-6, 1995, at the Kennedy Memorial Hospital, University Medical Center, University of Medicine and Dentistry of New Jersey. Registrant understands such attendance shall be at his personal cost, and at no cost to the Board.

ii) Registrant agrees to maintain a running list of all prescription orders transmitted (written or telephoned) for a period of at least twelve months. Registrant agrees to provide a monthly report of all prescription orders transmitted to the legal staff of the Board no later than the fifteenth day of the month for the preceding month. After the twelfth month, Registrant may petition the Board for termination of this requirement. The Board or its designee may determine whether Registrant's petition should be approved.

b) Registrant'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. It is further understood that if

Registrant fails to fulfill any of the obligations under the Stipulation, the Board will be released from the Stipulation and shall be free to take whatever steps it deems appropriate to include exercise of its right to issue a Summary Revocation Order as set forth below. Registrant acknowledges that proof submitted to the Board by an Affidavit or other form that Registrant has failed to meet the conditions of the Stipulation or any provision of Kansas law shall be deemed good and sufficient evidence to support the alleged violation to determine noncompliance with this Stipulation. Any breach of the Stipulation may result in the Board issuing a Summary Revocation Order of Registrant's registration to practice as physician's assistant in the State of Kansas in which Registrant agrees not to contest, defend, or challenge in any civil or administrative proceeding.

c) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act or the physicians' assistant practice statutes, 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 and/or the physicians' assistants practice statutes, 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) Registrant acknowledges that he has read this Stipulation and fully understands its contents. Registrant acknowledges that this Stipulation has been entered in freely and voluntarily given.

f) Registrant releases the Board, its employees and agents, from all claims to mean those damages, actions, liabilities and causes of ac-

tions, 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 Registrant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Registrant 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) Registrant acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document, whether or not an authorized Board signature appears on same, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

6. All correspondence or communication between Registrant 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. Registrant shall obey all federal, state, and local laws and rules governing the practice of physicians' assistants 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. Registrant 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

13th day of February, 1995.

KANSAS STATE BOARD OF HEALING ARTS

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

February 13, 1995
Date

David E. Mullies
David E. Mullies, P.A.
Registrant

1-18-95
Date

Prepared and Approved As To Form By:

[Signature]
Kevin K. LaChance, #15058
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(913) 296-7413