

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

CAB

JUL 22 2005

In the Matter of)

KS State Board of Healing Arts

THOMAS R. PLUMERI, D.O.)

Docket No. 05-HA-62

Kansas License No. 05-30783)

_____)

AMENDED CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through Kelli J. Benintendi, Litigation Counsel ("Petitioner"), and Thomas R. Plumeri, D.O. ("Licensee"), and move the Board for approval of the Amended Consent Order affecting Licensee's license to practice osteopathic 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 1677 East 250 Lane, Phillipsburg, Kansas 67661.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-30783 on approximately June 19, 2004.
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 osteopathic medicine and surgery. K.S.A. 65-2869.
4. The Amended Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Amended Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Amended 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 Amended 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 Amended 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 Amended Consent Order on behalf of the Board.

9. On the evening of April 19, 2005, Licensee was called by the hospital to provide medical treatment to a patient who had presented to the hospital in labor.

10. On the same evening Licensee had consumed alcoholic beverages.

11. Licensee arrived at the hospital that evening to treat the patient.

12. When Licensee arrived at the hospital to treat the patient he was intoxicated.

13. The patient's significant other refused to allow Licensee to provide treatment to the patient due to Licensee's obvious intoxication.

14. On April 21, 2005, Licensee entered into a Consent Order wherein he agreed to a suspension of his license.

15. **(Confidential)**

(Confidential)

16. Pursuant to K.S.A. 65-2836(i), K.S.A 65-2836(b), K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), the Board has grounds to revoke, suspend or limit Licensee's license.

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

18. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Amended Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his license to practice osteopathic medicine and surgery:

- a. The suspension of Licensee's license is concluded;
- b. Licensee agrees to abstain from the consumption of alcohol and from the use of controlled substances, narcotics and all mind-altering and potentially addicting drugs or medication, unless prescribed by a physician for a medically necessary purpose and taken pursuant to the direction of a physician;
- c. **(Confidential)**

(Confidential)

d.

e.

f. Licensee has the affirmative duty not to ingest any other substances which will cause a body fluid sample to test positive for controlled or illegal substances or alcohol;

g. **(Confidential)**

h.

(Confidential)

- i. Licensee shall personally appear before the Board at the August 13, 2005 Board meeting; and
- j. **(Confidential)**

19. Licensee's failure to comply with the provisions of the Amended Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

20. Nothing in this Amended 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. 64-4921 *et seq.*, that are known or unknown and are not covered under this Amended Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

21. Licensee hereby releases the Board, its individual members (in their official and personal capacity), 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 Amended

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.

22. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to entities requiring disclosure of the Amended Consent Order.

23. This Amended 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.

24. 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.

25. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceedings on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

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

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

28. All correspondence or communication between Licensee and the Board relating to the Amended Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

29. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic medicine and surgery in the State of Kansas that may be in place at the time of execution of the Amended Consent Order or may become effective subsequent to the execution of this document.

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

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

IT IS THEREFORE ORDERED that the Amended 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:

- a. The suspension of Licensee's license is concluded;
- b. Licensee shall abstain from the consumption of alcohol and from the use of controlled substances; narcotics and all mind-altering and potentially addicting drugs or medication, unless prescribed by a physician for a medically necessary purpose and taken pursuant to the direction of a physician;
- c. **(Confidential)**

d.

e.

f. Licensee has the affirmative duty not to ingest any other substances which will cause a body fluid sample to test positive for controlled or illegal substances or alcohol;

g. **(Confidential)**

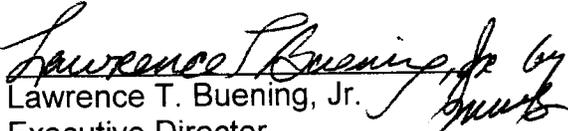
h. **(Confidential)**

i. Licensee shall personally appear before the Board at the August 13, 2005 Board meeting; and

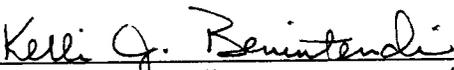
j. **(Confidential)**

IT IS SO ORDERED on this 22nd day of July, 2005.

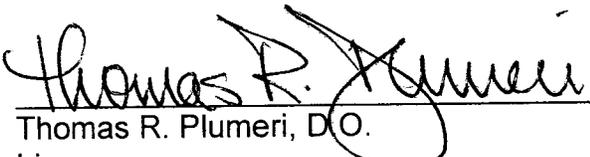
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:


Kelli J. Benintendi #16032
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:


Thomas R. Plumeri, D.O.
Licensee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing AMENDED CONSENT ORDER was served on the 22nd day of July, 2005 by United States mail, first-class postage prepaid and addressed to:

Thomas R. Plumeri, D.O.
1877 East 250 Lane
Phillipsburg, KS 67861

and a copy was hand delivered to:

Kelli J. Benintendi
Kansas Board of Healing Arts
235 South Topeka Boulevard
Topeka, KS 66603

and the original was hand-delivered for filing to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068