

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

DEC 08 1997

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
Jeffrey P. Rhoads, M.D.)
Kansas License No. 04-21193)
_____)

Case No. 96-00225
97-00191
97-00264

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel ("Petitioner"), and Jeffrey P. Rhoads, M.D. ("Licensee"), represented by legal counsel Thomas E. Wright and stipulate and agree to certain terms. Stacy L. Cook, Associate Counsel, has been designated to pursue this matter on behalf of Disciplinary Counsel. Petitioner and Licensee hereby stipulate and agree as follows:

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.
4. Licensee agrees that, in considering this matter, the Board is not acting beyond its

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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 04-21193 on December 6, 1985. 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 6, 1997.

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. Specifically, the Board has reasonable cause to believe that Licensee has violated the following provisions:

(a) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(16), in that Licensee engaged in an intimate and sexual relationship with patient MAT, beginning in approximately October of 1996;

(b) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. 65-2837a(a) and 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-23-1(a). On or about May 30, 1996, Licensee began prescribing Phentermine and Pondimin to patient MAT without a complete history of the patient and without a physical examination;

(c) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-

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2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. 65-2837a(a) and § 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-23-1(d), by failing to weigh patient MAT after the initial prescription of the sympathomimetic amines to determine if the patient achieved a significant weight loss;

(d) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. 65-2837a(a) and 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-23-1(b), by failing to prescribe a diet for weight loss to patient MAT;

(e) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. § 65-2837a(a) and § 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-23-1(d) and K.A.R. 100-23-1(e), in that Licensee continued to prescribe Phentermine and Pondimin to patient MAT on August 6, 1996, October 21, 1996, January 10, 1997, and February 27, 1997 without weighing the patient at each visit, monitoring the patient at visits, and checking the patient's weight, blood pressure, pulse, heart, and lungs;

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(f) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. 65-2837a(a) and § 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-23-1(f), by prescribing Phentermine and Pondimin to MAT for a period more than 90 days. Licensee did not request an exception to the 90-day limit, as provided by the Board's decision of August 12, 1995 which grants the Board authority to provide exceptions;

(g) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(11), prescribing, supplying, or giving amphetamines or sympathomimetic amines in a manner other than that authorized by K.S.A. 65-2837a. Licensee violated K.S.A. 65-2837a(a) and 65-2837a(b)(7) in that he prescribed schedule III and IV amphetamines or sympathomimetic amines in violation of the rules and regulations adopted by the Board of Healing Arts, K.A.R. 100-24-1. Licensee failed to create and maintain medical records regarding his treatment of MAT;

(h) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(17) in that Licensee used a false, fraudulent, or deceptive statement in the medical record of TN;

(i) K.S.A. 65-2836(b), unprofessional conduct as further defined by K.S.A. 65-2837(b)(17) in that Licensee used a false, fraudulent, or deceptive statement in the medical record of JM; and

(j) K.S.A. 65-2836 in that sanctions or disciplinary actions have been taken against the

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Licensee by a peer review committee or health care facility for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section. [REDACTED]



7. Violation of the provisions set forth in the subsections of paragraph 6 of this Stipulation 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.

8. Licensee voluntarily and knowingly waives his right to a hearing concerning any matter within 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, 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. When the Licensee signs this document, the document shall be

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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.

10. 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 affixed 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 the monitoring of his practice. (1) Licensee will make rounds in the hospital every day before 10:00 p.m. (2) Licensee will see patients within 10-12 hours after admission to the hospital (3) Licensee will have no more than five primary care patients in the hospital. In addition to the five primary care patients, Licensee can see some consults. (4) Licensee will not participate in his previous call group. (5) Licensee shall complete all hospital paperwork and dictations in a timely manner. (6) Licensee will limit his outpatient practice to 20-25 patients a day, and 2-3 history and physical examinations. (7) Licensee shall limit himself to only one practice location. (8) Licensee shall accurately note the time and date that he makes an entry into a medical record. (9) [REDACTED] (10)

[REDACTED]

[REDACTED] A nurse practitioner and Kent E. Palmberg, M.D. shall monitor all of the above

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requirements. Dr. Palmberg shall work with the nurse practitioner and shall create a written report at the end of each month stating whether Licensee has complied with all of the above requirements. The written report shall address each requirement separately. Licensee shall ensure that Dr. Palmberg provides a copy of the report within 15 days after the end of each month to Stacy L. Cook, Associate Counsel at the Board. Dr. Palmberg shall state in the monthly report if Licensee has failed to meet any of the above requirements. The monitoring requirements set forth herein shall commence upon the Board's approval of the Stipulation and shall remain in place for a period of at least six months thereafter, and shall be conducted at Licensee's expense.

(ii) Licensee is hereby fined seven thousand dollars (\$7,000.00).

(iii) Licensee agrees that the fine as stated above shall be due and payable within thirty (30) days of Board acceptance of this Stipulation.

(b) Nothing in this subsection is intended to prevent the subject matter of this Stipulation from being used as evidence, in conjunction with any future violations by Licensee, of the disciplinary provisions of the Healing Arts Act.

(c) 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.

(d) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate other alleged violations of the Healing Arts Act, to initiate formal proceedings based upon known or unknown allegations of the violations of the Healing Arts Act, or to investigate complaints received under the Kansas Risk Management Law, K.S.A. 65-4921 *et seq.* that are unknown to the

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Board at the present time.

(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 further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the National Practitioner Databank, 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 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: Office of the Disciplinary Counsel, 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.

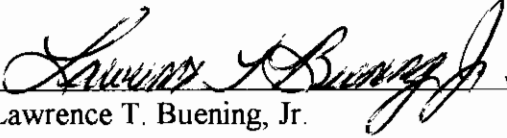
(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order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

IN WITNESS WHEREOF, the parties have executed this agreement on this 8th

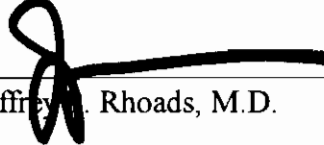
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day of December, 1997.

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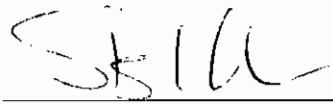

Lawrence T. Buening, Jr.
Executive Director

December 8, 1997
Date


Jeffrey P. Rhoads, M.D.

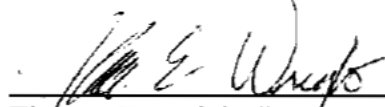
12/1/97
Date

Prepared By:


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

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Approved as to form by:



Thomas E. Wright #06115
Attorney for Licensee
Wright, Henson, Somers, Sebelius, Clark & Baker
Commerce Bank Building, 2nd Floor
Topeka, Kansas 66601-3555

CERTIFICATE OF SERVICE


I, Stacy L. Cook, Associate 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 8th day of December, 1997, to the following:

Thomas E. Wright #06115
Attorney for Licensee
Wright, Henson, Somers, Sebelius, Clark & Baker
Commerce Bank Building, 2nd Floor
Topeka, Kansas 66601-3555

Jeffrey P. Rhoads, M.D.
[REDACTED]
Topeka, Kansas 66610

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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