

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS



NOV 01 1996

In the Matter of )  
 )  
Ashok H. Shah, M.D. )  
Kansas License No. 04-18469 )  
\_\_\_\_\_ )

Case Nos. 95-00240  
95-00278

KANSAS STATE BOARD OF  
HEALING ARTS

**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts (hereinafter "Board") and Ashok H. Shah, M.D., (hereinafter "Licensee") and stipulate and agree as follows:

1. The Board is the sole and exclusive regulatory agency in the State of Kansas regarding 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 is licensed to practice medicine and surgery in the State of Kansas, having been issued license no. 04-18469 on December 14, 1979, last renewed June 2, 1996.

3. The Board has jurisdiction pursuant to K.S.A. 65-2836 and 65-2838(a) to revoke, suspend or otherwise limit a license if Licensee has committed an act in violation of the Healing Arts Act, specifically K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(b)(3). Under the provisions of K.S.A. 65-2838(b), the Board has the authority to enter into this Stipulation and Agreement and Enforcement Order (hereinafter "Stipulation").

4. It is the intent and purpose of this Stipulation to provide for settlement of all issues relating to the Licensee's care and treatment of M.B., J.C. L.L., L.M. and C.T. without the necessity of proceeding to a formal disciplinary hearing. K.S.A. 65-2838(b). Licensee voluntarily and

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affirmatively waives his right to a hearing pertaining to any matter under 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, 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.

5. The terms and conditions of this Stipulation are entered into between the undersigned parties and the Stipulation is submitted for the purpose of allowing those terms and conditions to become an Order of the Board.

6. Information provided to the Board indicates that Licensee may have committed acts which, if proven to be true, would constitute violations of the Healing Arts Act, K.S.A. 65-2801 et seq. Specifically, Licensee allegedly failed to practice obstetrics and gynecology with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances in the treatment of patients M.B., J.C., L.L., L.M. and C.T. Such conduct, if proven to be true, would constitute a violation of K.S.A. 65-2836(b)<sup>1</sup> (unprofessional or dishonorable conduct or professional incompetency) as defined by K.S.A. 65-2837(a)(1)<sup>2</sup> (one or more instances of gross negligence), K.S.A. 65-2837(a)(2)<sup>3</sup>

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<sup>1</sup> K.S.A. 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured...upon a finding of the existence of any of the following grounds: (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

<sup>2</sup> K.S.A. 65-2837. (a) "Professional incompetency" means: (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

(continued...)

(repeated instances of ordinary negligence), K.S.A. 65-2837(b)(24)<sup>4</sup> (failure to adhere to standard of care), and K.S.A. 65-2837(a)(3)<sup>5</sup> (pattern of incompetent practice). In addition to the statutory violations alleged above, Licensee's privileges to care for obstetrical patients were limited by Mercy Hospital in February 1995. Said suspension/limitation of privileges is grounds for disciplinary action under K.S.A. 65-2836(s)<sup>6</sup> (disciplinary action by a health care facility for acts which would constitute violations of the Healing Arts Act).

7. This Stipulation shall not become binding on the Board until an authorized signature is affixed at the end of this document. Upon signature by Licensee to this document, Licensee hereby agrees that he will adhere to the requirements set forth in paragraph 9.b. whether or not the Board signature is affixed to this document. However, following Licensee's execution of this document, should the Board or one of its authorized representatives modify or change this Stipulation in any manner unsatisfactory to either party, either party may withdraw its consent and

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(...continued)

<sup>3</sup> K.S.A. 65-2837. (a) "Professional incompetency" means: (2) Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board.

<sup>4</sup> K.S.A. 65-2837. (b) "Unprofessional conduct" means: (24) Repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.

<sup>5</sup> K.S.A. 65-2837. (a) "Professional incompetency" means: (3) A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.

<sup>6</sup> K.S.A. 65-2836. A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured...upon of a finding of the existence of any of the following grounds: (s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, health care facility...for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under this section.

the matter may proceed to an administrative hearing. Furthermore, if this Stipulation, as signed by the Licensee, is not acceptable to the Board, neither party shall be bound to any representations made in this agreement. Licensee acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

8. Licensee agrees this Stipulation and the filing of this document are in accordance with the requirements of law, that the Board has jurisdiction to consider this Stipulation and that the Board is lawfully constituted to consider this matter. Licensee further agrees that the Kansas Healing Arts Act, K.S.A. 65-2801 et seq., as set forth by statute and as recited in this Stipulation, is constitutional on its face and as applied in this case.

9. In lieu of formal proceedings and/or findings by the Board, and to avoid the time, expense, and uncertainties associated with an administrative hearing, Licensee, by signature attached to this Stipulation, agrees to the following:

(confidential)

b. Licensee agrees to refer to another qualified health care professional all obstetrical patients who, at any time during Licensee's evaluation and treatment of such patient, present as or become "high risk" according to the reasonable medical judgment of Licensee. This includes, but is not limited to, all pregnant diabetic patients. Licensee agrees to refer all obstetrical patients to another qualified health care professional for evaluation and treatment if there is a question as to whether they are presenting as a "high risk."

(confidential)

11. Upon Licensee's completion and satisfaction of the terms and conditions of this Stipulation, (confidential) he will be deemed to have complied with the Board's suggestions and recommendations and no further action shall be taken with regard to Licensee's care and treatment of patients M.B., J.C., L.L., L.M. and C.T. However, nothing in this subsection is intended to prevent this disposition from being used as evidence, in conjunction with any future violations of Licensee, pursuant to K.S.A. 65-2836(f) and 65-2837(a)(3).

12. Licensee'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.

13. Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act or to investigate complaints received under the Kansas Risk Management Law, K.S.A. 65-4921 et seq. which are unknown to the Board at the

present time, or subsequent acts which are unknown to the Board to initiate formal proceedings based upon known or unknown allegations of the violations of the Healing Arts Act.

14. Licensee hereby releases the Board, its employees and agents, from all claims, to mean 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.

15. 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.

16. 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.

17. 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 prior to the complete or partial acceptance or rejection of any offer of settlement.

18. 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 which otherwise may not be admissible or admitted as evidence.

19. Licensee acknowledges that he has read this Stipulation and fully understand the contents.

20. Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

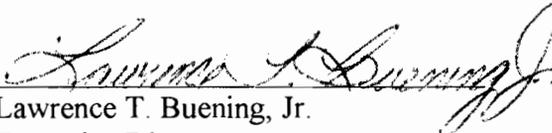
21. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Office of the Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

22. 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.

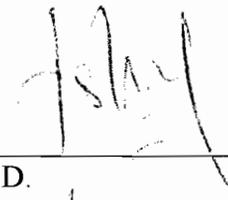
23. Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order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

IN WITNESS WHEREOF, the parties have executed this agreement on this 5<sup>th</sup>  
day of September, 1996.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

September 5, 1996  
Date

  
Ashok H. Shah, M.D.  
10/15/96  
Date

Prepared by:

  
Lori Miskel McNett, #17223  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, Kansas 66603-3068  
(913) 296-7413

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**Ashok H. Shah, M.D.**

**CERTIFICATE OF SERVICE**

I, Lori Miskel McNett, hereby certify that on the 10<sup>th</sup> day of January, 1996, a true and correct copy of the above and foregoing STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER was deposited in the U.S. mail, first class postage prepaid, to the following:

Ashok H. Shah, M.D.  
c/o Todd A. Scharnhorst  
Blackwell, Sanders, Matheny, Weary & Lombardi, L.C.  
40 Corporate Woods, Suite 1200  
9401 Indian Creek Parkway  
Overland Park, Kansas 66210  
Counsel for Licensee

and the original was hand delivered to:

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

  
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Lori Miskel McNett