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**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)			
Eric Swanson, M.D.	)	Case No.	98-00036	98-00340
	)		98-00082	98-00438
Kansas License No. 4-23027	)		98-00173	98-00440
	)		98-00175	98-00459
_____	)		98-00404	99-00008
	)		98-00439	99-00009
	)		99-00146	

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

The Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel and James R. Jarrow, Esq. ("Petitioner"), and Eric Swanson, M.D. ("Licensee"), by and through legal counsel Scott K. Logan and Steve A. Schwarm, and stipulate and agree to the following:

1. **Authority.** The Board is the sole administrative 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. **Applicable Law.** 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 and Agreement and Enforcement Order (hereafter "Stipulation").

3. **Constitutionality.** Licensee agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.

4. **Jurisdiction.** Licensee agrees that, in considering this matter, the Board is acting within its jurisdiction as provided by law.

5. **License.** 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 4-23027 on December 8, 1989. 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 22, 1998.

6. **Grounds for Disciplinary Action.** 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 acts alleged are contained in the Second Amended Petition to Revoke, Suspend, or Otherwise Limit License, filed on December 29, 1998.

7. **Three Findings of Negligence.** Licensee agrees to a finding that Licensee failed to adhere to the applicable standard of care to a degree which constitutes ordinary negligence in the course of treatment of patient R.A. in 1995. Licensee agrees to a finding that Licensee failed to adhere to the applicable standard of care to a degree which constitutes ordinary negligence in the course of treatment of patient P.W. in 1995. Licensee agrees to a finding that Licensee failed to adhere to the applicable standard of care to a degree which constitutes ordinary negligence in

the course of treatment of patient L.R., in that on or about January 29, 1996 Licensee issued a written prescription that was in excess of the Physicians' Desk Reference recommended dosage.

It is also agreed that Licensee denies all other allegations in the Petition, as amended, that are not admitted in his Answer or in this Stipulation. Further, in the event the Board does not approve this Stipulation, the admissions of Licensee contained in this Stipulation are withdrawn.

8. **Authority for Stipulation.** The Findings of Negligence as set forth above, and violation of the provisions set forth in the Second Amended Petition to Revoke, Suspend or Otherwise Limit License constitute 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.

9. **Waiver.** 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.

10. **Purpose of Stipulation.** 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. Licensee acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

11. **Agreement of the Parties.** 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, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary measures and limitations placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

- (i) **Public Censure.** Licensee is publicly censured by the Board for misleading advertising, specifically: the advertisement "A Revolution in Cosmetic Surgery" as it appeared in Time Magazine, Sports Illustrated, and Newsweek on or about October 9, 1995; the advertisement entitled "Aesthetic Surgery Center" appearing in the Kansas City Star on or about March 5, 1996; and the advertisement "Laser Skin Resurfacing - The New Treatment for Aging Skin" appearing in the Kansas City Star on or about March 5, 1996.
- (ii) **TCA Peels.** Licensee shall not perform TCA chemical peels.
- (iii) **Multiple Procedures.** Licensee shall not perform liposuction, abdominoplasty and thigh lifts on a single patient in one operation.

- (iv) **Laser before Blepharoplasties.** Licensee shall not perform laser surgery on the same area in which he is performing a blepharoplasty, immediately prior to the blepharoplasty.
- (v) **Limitation on Liposuction.** Licensee shall not perform liposuction on a patient with a Body Mass Index (BMI) of 40 or greater. Licensee shall include all BMI data and calculations on all liposuction patients prior to performing a liposuction.
- (vi) **Medical Records Requirements.** Licensee shall keep medical records for each patient and comply with the following: (a) Each handwritten entry shall be dated and signed; and (b) Each dictated entry will contain a notation for the date dictated, the date of transcription, and the initials of the transcriptionist. Each entry must be signed by Licensee and dated by date of signature.
- (vii) **Monitoring of Practice.** Licensee agrees to the monitoring of his practice for through and including October 1, 2001, which for purposes of this Stipulation, means that Licensee must submit at least 12 monitoring reports. Bruce Ferris, M.D. will serve as the monitor/reviewer, and will review the following procedures: Liposuction, abdominoplasty, thigh lifts, and laser skin resurfacing. Each month Licensee must keep and maintain a list of all patients for which the above procedures have been performed. Bruce Ferris, M.D. shall determine which patients to review.

For each period of monitoring, 20 percent of patient charts shall be reviewed. For the first six (6) months, the reports must be submitted to Stacy L. Cook, Litigation Counsel, on a monthly basis. The reports are due sixty (60) days after the end of each month. The first report is due July 1, 1999. After the first six months, the reports must be submitted to Stacy L. Cook, Litigation Counsel, every 3 months.

Specifically, the schedule for the reports is as follows:

Deadline for Submission to Board	For Review of Month and Year
July 1, 1999	April 1999
August 1, 1999	May 1999
September 1, 1999	June 1999
October 1, 1999	July 1999
November 1, 1999	August 1999
December 1, 1999	September 1999
March 1, 2000	October - December 1999
June 1, 2000	January - March 2000
September 1, 2000	April - June 2000
December 1, 2000	July - September 2000
March 1, 2001	October - December 2000
June 1, 2001	January - March 2001
September 1, 2001	April - June 2001

The reports must include the following: (a) the name of the patient reviewed and a brief description of the procedure(s) performed; (b) whether the surgery was appropriate for the patient; (c) whether, in the reviewer's opinion to a reasonable degree of medical certainty, Licensee adhered to the applicable standard of care in performing the surgery on the patient; (d) whether, in the reviewer's opinion to a reasonable degree of medical certainty, Licensee adhered to the applicable standard of care in his post-surgical treatment of the patient; and (e) whether Licensee's records are complete. The reviewer shall be provided a copy of this Stipulation. Licensee is responsible for payment of the reviewer's services. Licensee is responsible for ensuring the reports are submitted pursuant to the Stipulation.

Bruce Ferris, M.D. will be told by the Licensee that the monitoring report includes items detailed in this Stipulation.

Bruce Ferris, M.D., as the reviewer, agrees and understands that his monitoring reports will be submitted to the Board, and the reviewer may be called as a witness to the extent a future proceeding is necessary. Bruce Ferris, M.D. will send a letter to Stacy L. Cook, Litigation Counsel, prior to April 10, 1999, indicating reviewer has received a copy of this Stipulation and understands and agrees to

provide the information requested, and understands and agrees to testify if necessary.

If Bruce Ferris, M.D. determines that Licensee deviated from the applicable standard of care, such report and relevant information may be presented to the Board for consideration of further disciplinary action.

Licensee shall be given notice that the Board is to consider such information, and shall be given an opportunity to address the issues.

Licensee agrees not to initiate any contact with Bruce Ferris, M.D. other than sending him the lists and patient files.

- (viii) **Education.** Licensee shall pay for, attend, and complete the following courses:

Intensive Course in Medical Record Keeping offered at Case Western Reserve University in Cleveland, Ohio on June 10 and 11, 1999; and Appropriate Prescribing of Controlled Substances offered at Mercer University in Atlanta, Georgia on May 10 through May 14 or October 11 through October 15, 1999. Licensee shall present Stacy L. Cook, Litigation Counsel, proof of attendance and completion at both of the above courses.

- (ix) **Payment of Costs.** Licensee agrees to pay to the Board the costs of this matter, in the total amount of \$40,000.00. Licensee shall pay to the Board the amount of \$ 7,000.00 on or before May 10, 1999, June 10,

1999, July 10, 1999, August 10, 1999, and September 10, 1999 Licensee shall pay to the Board the amount of \$5,000.00 on or before October 10, 1999. It is specifically agreed that this financial obligation may not be discharged by any bankruptcy proceeding.

- (b) **Disciplinary Action and Limitations.** This Order constitutes disciplinary action and limitations on Licensee's license to practice medicine and surgery in the State of Kansas. These monitoring limitations shall remain in effect for at least two years. At the end of two years, Licensee may request the termination of the limitations.
- (c) **Future Use.** This Stipulation, including the findings of negligence, may be used as evidence in conjunction with any future Board actions concerning alleged violations by Licensee of the disciplinary provisions of the Healing Arts Act. The Licensee does not waive his right to present evidence to rebut any future allegation of negligence.
- (d) **Failure to Comply.** Licensee's failure to comply with any provision of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.
- (e) **Other Matters.** The settlement as contained in this Stipulation also includes the following patients: **(Confidential)** It is also understood that The State of Missouri is/may be pursuing

administrative action against Dr. Swanson. In the event Missouri takes any action or enters any finding concerning Dr. Swanson, for any of the patients in this Kansas action, including (Confidential) then Petitioner in this action will not take any further action against Dr. Swanson for those same patients. Further, the Board is aware that many of the patients named in the Second Amended Petition, as well as (Confidential) have pending lawsuits against Licensee, and in the event any of those matters are settled against the Licensee or an adverse judgment is entered against Licensee, the Petitioner agrees that no further action will be taken against Licensee based upon settlement or judgment from one of those named patients.

- (f) **Investigation of Future Complaints.** 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 not covered under this Stipulation, or to initiate formal proceedings based upon unknown allegations of violations of the Healing Arts Act.
- (g) **General Release.** Licensee releases the Board and its individual members (in their official and personal capacities), its attorneys, employees and agents (hereinafter individually or jointly referred to as "Releasees"), from all claims and causes of action, including but not limited to, those

alleged damages, actions and 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, preparation and prosecution of the Petition, as amended (including the Emergency Hearing) . This release shall forever discharge the Releasees from 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 (either directly or indirectly), cause or permit to be prosecuted, any action or proceeding of any description against the Releasees. Further, if an action is commenced, Licensee will pay for Releasees' attorneys' fees and costs.

- (h) **Reporting.** Licensee further understands and agrees that upon signature by Licensee, this stipulation shall be deemed a public record, and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and other reporting entities.
- (i) **Entire Agreement.** 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 signed by the parties.
- (j) **Presentation to the Board.** 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 part of this stipulation.

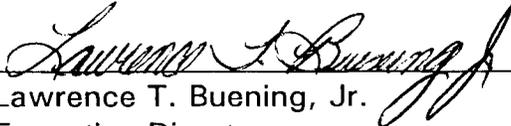
- (k) **Board Members may participate in Future Proceeding if the Board Does Not Accept the Stipulation.** Licensee, by signature to this document, waives all objections to the participation of the Board members in the consideration of this stipulation , including, but not limited to seeking the disqualification 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. Dr. Howard Ellis will not participate consistent with Presiding Officer Jackson's February 4, 1999 Order.
- (l) **Licensee understands the Stipulation.** Licensee acknowledges that he has read this Stipulation, had an opportunity to discuss it with his lawyers, and Licensee fully understands the contents.
- (m) **Voluntary Agreement.** Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

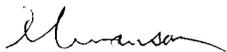
- (n) **Correspondence.** All correspondence or communication between Licensee and the Board relating to this Stipulation, after it has been approved by the Board, shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
- (o) **Compliance with laws.** 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.
- (p) **Execution of Stipulation.** 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.
- (q) **Dismissal of Petition.** Upon execution of this Stipulation by affixing a Board authorized signature below, the Second Amended Petition to Revoke, Suspend or Otherwise Limit License shall be dismissed with prejudice. This subparagraph does not effect subparagraphs 11(c) and 11(d) of this Stipulation.
- (r) This document was prepared jointly by both parties.

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

12th day of April, 1999.

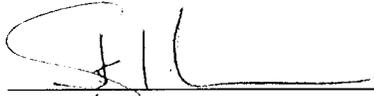
KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr. 4/12/99
Executive Director Date



Licensee 4/9/99
Date

Prepared By:

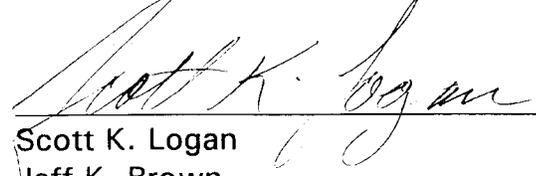


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ATTORNEYS FOR PETITIONER



Scott K. Logan
Jeff K. Brown

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8340 Mission Road, Suite 106
Prairie Village, Kansas 66206

and

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, L.L.P
515 South Kansas Avenue
Topeka, Kansas 66603
ATTORNEYS FOR LICENSEE

CERTIFICATE OF SERVICE

I 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 12th day of April, 1999, to the following:

Scott K. Logan
Jeff K. Brown
Logan & Logan, L.C.
8340 Mission Road, Suite 106
Prairie Village, Kansas 66206

and

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, L.L.P
515 South Kansas Avenue
Topeka, Kansas 66603
ATTORNEYS FOR LICENSEE

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