

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

APR 19 2004

In the Matter of)
)
Cabot L. Sweeney, M.D.)
Application for Reinstatement of)
License to Practice Medicine and Surgery)
License No. 4-21945(canceled))
_____)

KANSAS STATE BOARD OF
HEALING ARTS

Docket No. 04-HA- 60

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Cabot L. Sweeney, M.D. ("Applicant") appearing *pro se*, and move the Board for approval of a Consent Order granting Applicant's application for reinstatement of his license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. 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 medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.

2. Applicant admits that this Consent Order ("Consent Order") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Consent Order.

3. Applicant agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case, and that in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

4. Applicant's last known mailing address as provided to the Board is 5901 W. 90th Terrace, Overland Park, Kansas 66207.

5. Applicant previously held a license to practice medicine and surgery in Kansas, having originally been issued license number 04-21945 on or about July 1, 1987. On or about May 16, 1991, such license was canceled for failure to renew.

6. Applicant has not actively practiced medicine and surgery since approximately 1993. From approximately 1993 to 2002, Applicant did missionary work in the country of Tanzania, in the areas of community health and development.

7. On or about July 29, 2003, Applicant submitted to the Board an application for reinstatement of his license. Applicant stated his intended areas of practice were family medicine and urgent care.

8. **(Confidential)**
(Confidential)

9. Due to the length of time Applicant has been absent from active practice, the Board may require additional testing, training or education as the Board may deem necessary to establish that Applicant's present ability to practice with reasonable skill and safety pursuant to K.S.A. 65-2809(e).

10. According to K.S.A. § 65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing in order to establish provisions to ensure that Applicant is capable of safely practicing medicine and surgery in Kansas.

11. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

12. The terms and conditions of the 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 Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

13. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following as conditions to being granted reinstatement of his license to practice medicine and surgery in the State of Kansas:

(Confidential)

14. The provisions of this Consent Order shall remain in effect until they are so modified or terminated by the Board. Upon Applicant's completion **(Confidential)**
(Confidential) Applicant may request termination of the provisions of the Consent Order.

15. Applicant's failure to comply with the provisions of the Consent Order shall constitute a violation of the healing arts act, and will result in the Board taking immediate

disciplinary action as the Board deems appropriate according to the Kansas administrative procedures act.

16. Nothing in this 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. § 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

17. Applicant 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 Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant 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 Consent Order or the content of this Consent Order.

18. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Consent Order.

19. This 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.

20. Applicant 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 Applicant is not present. Applicant 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.

21. Applicant, 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.

22. Applicant acknowledges that he has read this Consent Order, fully understands the contents, and that this Consent Order has been entered into freely and voluntarily.

23. All correspondence or communication between Applicant and the Board relating to this 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.

24. Applicant 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 Consent Order or may become effective subsequent to the execution of this document.

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

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law and is the Order of the Board.

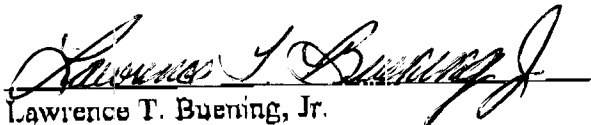
IT IS FURTHER ORDERED that Applicant shall be granted reinstatement of his
license to practice medicine and surgery in Kansas.

IT IS FURTHER ORDERED (Confidential)
(Confidential)

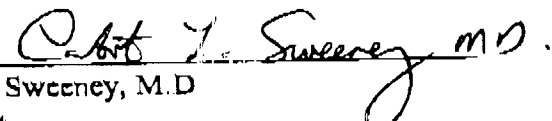
IT IS FURTHER ORDERED (Confidential)
(Confidential)

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

April 19, 2004
Date


Cabot L. Sweeney, M.D.
Applicant

4/15/04
Date

Prepared By:

Kelli J. Benintendi

Kelli J. Benintendi #16032

Associate Counsel

Kansas State Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3065

(785) 296-7413

Attorney for Board

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **Consent Order** by United States mail, postage prepaid, on this 19th day of April, 2004, to the following:

Cabot L. Sweeney, M.D.

5901 W. 90th Terrace

Overland Park, KS 66207

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

Kelli J. Benintendi

Kelli J. Benintendi

Associate Counsel