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

FILE
AUG 26 1992
KANSAS STATE
MEDICAL

IN THE MATTER OF )
KAREN LOUISE TOY, M.D. )
APPLICANT )
)

STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER

**COMES NOW,** the Kansas State Board of Healing Arts (hereinafter referred to as "Board") by and through Kevin K. LaChance, Associate Counsel, and Karen L. Toy, M.D.(hereinafter referred to as "Applicant") 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. Applicant has applied for licensure to engage in the practice of medicine and surgery in the State of Kansas.

3. Applicant entered the internal medicine residency program at the University of Kansas School of Medicine-Wichita, on July 1, 1988 and completed training on June 30, 1989. Applicant then completed one year of anesthesiology residency at that same institution. She then transferred to the University of Kansas Medical Center, Kansas City, Kansas, and began training as a second year anesthesiology resident on July 1, 1990. Applicant's fund of anesthesia knowledge did not meet the standards set for second-year anesthesiology residents at the University of Kansas Medical Center, Kansas City. Applicant received an unsatisfactory evaluation in January 1991 for the period of evaluation July to December 1990. Applicant was placed on probation in June 1991 for a period of three months and again received an

unsatisfactory evaluation for the six month period of January to June 1991. Applicant was given a third unsatisfactory evaluation for the time period July to December 1991. In January 1992, Applicant took a standardized test titled "Anesthesia Knowledge Test 6" and failed the performance standards set for her. Applicant was notified of her dismissal from the anesthesiology residency program on February 24, 1992, and was suspended from participating in departmental activities including patient care until the end of her contract on May 25, 1992. On March 13, 1992, Applicant submitted an application for licensure in medicine and surgery to the Board. Under Section 1, Question 11, Applicant stated that her intended primary specialty was to be anesthesia. On May 13, 1992, Applicant requested that her application for permanent licensure be amended such that Question 11 would read "Internal Medicine". Applicant further requested that Question 12 be amended such that it would be left blank.

4. Based on the above information, the Board has determined there is probable cause to believe Applicant is not fully qualified to practice the healing arts; specifically, the practice of anesthesiology.

5. Such acts or conduct as set forth above could constitute grounds for denial of license under the jurisdiction of the Board pursuant to K.S.A. 1991 Supp. 65-2836(u). Under the provisions of K.S.A. 1991 Supp. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if a licensee to the Board has engaged in any commissions or omissions to bring licensee with the purview of K.S.A. 1991 supp. 65-2836. Under the provisions of K.S.A. 1991 Supp. 65-2838(b), the Board has authority to enter into this Stipulation and Agreement. Th Board has authority pursuant to K.S.A. 65-2836 to deny a license for any reason that appropriate action can be taken against a licensee.

6. It is the intent and purpose of this Stipulation and Agreement to provide for settlement of all issues without the necessity of proceeding to a formal hearing. K.S.A. 65-2838(b). Applicant voluntarily and affirmatively waives her right to a hearing pertaining to any matter under the jurisdiction of the Kansas State Board of Healing Arts regarding the granting of a license to engage in the practice of medicine and surgery.

Applicant further understands and agrees that by entering into this Stipulation and Agreement, she is waiving her right to a hearing. The Applicant voluntarily and knowingly waives her rights 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.

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

This Stipulation and Agreement shall not be binding on the Board until an authorized signature is affixed at the end of this document. Upon signature by Applicant to this document, it shall be deemed a unilateral contract and agreement and shall bind Applicant to the terms and conditions set forth in the Stipulation and Agreement whether or not the Board's signature is affixed to the document. Applicant specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

7. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

a) The Board is the duly authorized administrative agency of the State of Kansas with appropriate statutory authority to regulate the

practice of the healing arts to include the practice of medicine and surgery in the State of Kansas.

b) Applicant admits that this Stipulation and Agreement and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and Agreement and is lawfully constituted to consider this matter to include consideration of this Stipulation and Agreement. Applicant further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case. Applicant further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

c) In lieu of the initiation of formal proceedings and/or findings by the Board, Applicant, by signature attached to this Stipulation and Agreement, hereby voluntarily agrees to the conditions placed on her license to engage in the practice of medicine and surgery in the State of Kansas.

d) Applicant hereby agrees to a probationary limitation, restriction and condition of her license to engage in the practice of medicine and surgery in the State of Kansas based on the following specific conditions:

i) In view of Applicant's failure to successfully complete a post-graduate program of anesthesiology, Applicant agrees to not practice any form of general anesthesia. Applicant may practice local and/or topical anesthesia. Applicant further agrees to not practice any other form of anesthesia, unless she is specifically credentialled for such procedure at a Joint Commission of American Hospitals and/or Medicare accredited hospital, and then only at the hospital conferring such credentials. Documenta-

tion of such credentials shall be provided to the Board prior to performing any other anesthesia.

ii) Applicant is authorized to pursue her studies in the field of anesthesiology. If Applicant successfully completes a post-graduate residency program in anesthesiology, Applicant may apply to the Board to rescind the limitation as stated in the subparagraph directly above.

Applicant's agreement to the probationary limitations, conditions, and restrictions of her license are evidenced by her signature affixed to this document.

e) Applicant's failure to comply with the provisions of the Stipulation and Agreement will result in the Board taking disciplinary action as the Board deems appropriate in compliance with the Kansas Administrative Procedure Act.

It is further understood that if Applicant fails to fulfill any of the obligations under the Stipulation and Agreement, the Board will be released from its Stipulation and Agreement and subsequent Enforcement Order and shall be free to take whatever steps it deems appropriate to include exercise of its right to issue a Summary Revocation order as set forth below.

Applicant acknowledges that proof submitted to the Board by an Affidavit or other form that Applicant has failed to meet the conditions of the Stipulation and Agreement or any provision of Kansas law shall be deemed good and sufficient evidence to support the alleged violation to determine non-compliance with this Stipulation and Agreement and Enforcement Order.

Any breach of the Stipulation and Agreement and Enforcement order shall result in the Board issuing a Summary Revocation Order of Applicant's license to engage in the practice of medicine and surgery in the State of Kansas in which Applicant agrees not to contest, defend or challenge in any civil or administrative proceeding.

Healing Arts, ATTENTION: Office of the General Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

9. 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 Stipulation of Agreement or may become effective subsequent to the execution of this document.

10. Applicant has an affirmative duty to notify the Board of changes in her personal professional status which would inhibit the compliance with the above conditions in the Stipulation and Agreement or subsequent Enforcement Order.

11. Upon execution of this Stipulation and Agreement by the affixing of a Board authorized signature below, the provisions of this Stipulation and Agreement shall become an Order of the Board and shall be deemed a proper and lawful Enforcement Order under K.S.A. 1991 Supp. 65-2838. This Stipulation and Agreement and Enforcement Order shall constitute the Board's Order when filed with the Office of the General Counsel for the Board and no further Order is required.

**IN WITNESS WHEREOF,** the parties have executed this agreement on the 24th day of August, 1992.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.

Lawrence T. Buening, Jr.
Executive Director

Aug 24, 1992
Date

f) 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 Risk Management law, K.S.A. 65-4921 et seq that are unknown and are not covered under the conditions of this Stipulation and Agreement or subsequent acts which are unknown to the Board or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

g) This Stipulation and Agreement constitutes the entire agreement between the parties and may only be modified and/or amended by a subsequent document executed in the same manner by the parties.

h) Applicant acknowledges that she has read this Stipulation and Agreement and fully understands the Contents.

i) Applicant hereby releases the Board, its employees and agents, from all claims to mean those damages, actions, liabilities and causes of actions, 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 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 Stipulation and Agreement or the contents of this Stipulation and Agreement.

j) Applicant acknowledges that this Stipulation and Agreement has been entered in freely and voluntarily given.

8. All correspondence or communication between Applicant and the Board shall be by certified mail addressed to the Kansas State Board of

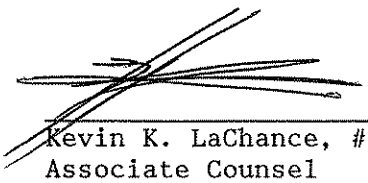
Karen L. Toy, MD

Karen L. Toy, M.D.
Applicant

8-19-92

Date

Prepared and Approved By:



Kevin K. LaChance, #15058
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(913) 296-7413

## CERTIFICATE OF SERVICE

I, Kevin K. LaChance, Associate Counsel, hereby certify that on the 26TH day of AUGUST, 1992, a copy of the above and foregoing Stipulation and Agreement and Enforcement Order was deposited in the United States mail, postage prepaid, addressed to:

Karen L. Toy, M.D.
9624 W. 87th Street
Overland Park, Kansas 66212

Kevin K. LaChance
Associate Counsel