

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

OCT 22 2001

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
Walter J. Turkowski, M.D.)
License No. 04-24204)
_____)

Case No. 01-00153

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Shelly R. Wakeman, Disciplinary Counsel ("Petitioner"), and Walter J. Turkowski, by and through Michael R. Sharp, Attorney at Law ("Licensee"), and 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. 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 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 04-24204 on August 15, 1992. 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 5, 2001. Licensee's license has been in inactive status since June 14, 1996.

6. On or about May 19, 2000, Licensee had a license to practice the healing arts subject to disciplinary action in the form of an Agreed Order with limitations by the Texas State Board of Medical Examiners, which is the proper licensing authority for that state. Texas' disciplinary action against Licensee was based on Licensee's arrest by the Texas Highway Patrol for speeding. Licensee was travelling in excess of one hundred miles per hour with his brother and Licensee's two minor children in the car. Licensee was charged with two counts of child endangerment.

7. On December 21, 1998, Licensee entered into a plea bargain with the District Attorney, whereby he pleaded guilty and agreed to five years deferred adjudication on two counts of child endangerment and agreed to a \$2,500.00 fine, plus court costs. On December 20, 1999, the Court discharged Licensee from probation and dismissed the criminal complaint, four years before the five year deferred adjudication was up. These acts or conduct by Licensee are similar to acts or conduct which would also be grounds for disciplinary action under the Healing Arts Act. K.S.A. 65-2801 *et seq*; K.S.A. 65-2836.

8. On November 8, 1998, Covenant Hospital in Plainview, Texas, summarily suspended Licensee's hospital privileges

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In April 1999, the fair hearing committee recommended Licensee's reinstatement with unspecified conditions. The hospital governing body sustained the loss of privileges and set conditions for reinstatement of Licensee's privileges within one year. On

August 7, 2000, Licensee's hospital privileges were reinstated.

9. The acts and conduct as described above constitute grounds for disciplinary action by the Board under K.S.A. 65-2836(j) since Licensee has had a license to practice the healing arts disciplined by the proper licensing authority of another state, and K.S.A. 65-2836(s) since Licensee has had disciplinary action in the form of a suspension of privileges taken by a health care facility for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action under the Healing Arts Act. 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.

10. Licensee voluntarily and knowingly waives his right to have a Petition with formal allegations filed and 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.

11. 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 specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

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

(a) In lieu of instituting formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following Public

Censure and disciplinary measures on his license to engage in the practice of medicine and surgery in the State of Kansas:

- (i) Licensee's license to practice medicine and surgery in the State of Kansas shall be Publicly Censured;
- (ii) Licensee shall show proof of attendance of at least 50 hours of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association. At least one course shall be in the area of conflict management. This CME may be the same CME Licensee took in compliance with the Texas order, for the period beginning May 19, 2000. Licensee shall show proof of such attendance at the time this Stipulation is signed.
- (iii) Licensee shall notify the Board in writing within 10 days of any change in his home or office address, or any change in existing or new hospital privileges, whether voluntary or involuntary, including having an application for hospital privileges denied.
- (iv) Licensee shall comply with all provisions of the Healing Arts Act, and other state and federal law.

(b) This Order constitutes a Public Censure and other disciplinary action of Licensee's license to practice medicine and surgery in the State of Kansas.

(c) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this Stipulation shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act that are known or unknown and are not covered under this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

(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.

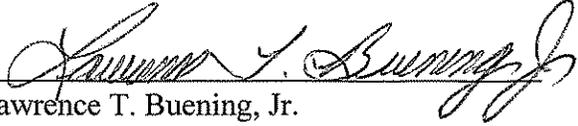
(l) All correspondence or communication between Licensee and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Shelly R. Wakeman, Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(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 22^d day of October, 2001.

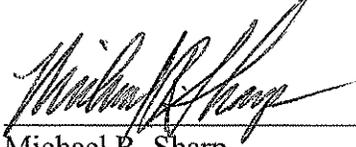
KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

October 22, 2001
Date


Walter J. Turkowski, M.D.
Licensee

9/26/2001
Date


Michael R. Sharp
Attorney for Licensee

September 25, 2001
Date

Prepared By:


Shelly R. Wakeman, #15057
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413

CERTIFICATE OF SERVICE

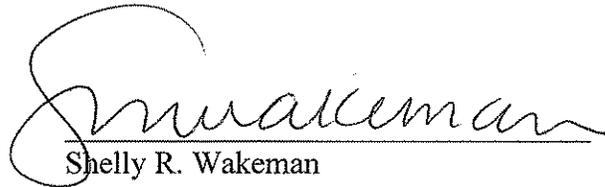
I, Shelly R. Wakeman, Disciplinary Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this the 23rd day of October, 2001, to the following:

Walter J. Turkowski
4505 W. 2nd Street
Plainview, TX 79072

Michael R. Sharp
Sharp and Cobos, P.C.
1717 W. 6th Street, Suite 460
Austin, TX 78703

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


Shelly R. Wakeman