

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

FILE
APR 28 1998

KANSAS BOARD OF
HEALING ARTS

In the Matter of)
)
JAMES R. WEBB, JR., D.O.)
)
_____)

Case # 97-00256

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COMES NOW, the Kansas Board of Healing Arts (hereinafter "Board") by and through Mark W. Stafford, General Counsel (hereinafter "Petitioner") and James R. Webb, Jr., D.O. (hereinafter "Applicant"), and stipulate and agree as follows:

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. Applicant admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and is lawfully constituted to consider this matter to include consideration of the Stipulation. 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.

2. Applicant has applied for a license to practice medicine and surgery in the State of Kansas by endorsement on April 18, 1997.

3. Applicant entered a one-year internship program at Truman Medical Center in July 1994. Applicant had been accepted for the residency program upon completion of the

internship. Applicant was notified he was to be placed on academic probation for a four month period beginning October, 1994. Applicant resigned and transferred to Parklane Medical Center.

4. Applicant remained at Parklane Medical Center from October 1994 to June of 1995 at which time he completed the program. Completion of the program at Parklane satisfied the requirement of one-year post-graduate training under K.A.R. 100-6-2(a). Following the completion of the Parklane program, Applicant enrolled in a residency program in anesthesiology at the University of Texas in Houston. Applicant studied at the University of Texas in Houston from August 1995 until March 1996.

5. Prior to completion of the program at the University of Texas, Applicant transferred to the University of Kansas Medical Center program in anesthesiology. At the time of his second evaluation, approximately January 15, 1997, Applicant's performance was found unsatisfactory and was placed on probation for a period of three months. After the probationary period, Applicant's performance was again found to be unsatisfactory. Applicant accepted several terms spelled out by the medical school faculty and elected to proceed in the residency under those terms. On July 8, 1997, Applicant voluntarily resigned from the program.

6. The Board alleges Applicant's history of incomplete and unsatisfactory performance in residency programs may demonstrate a manifest incompetence to practice medicine. This is defined professional incompetence under K.S.A. 1996 Supp. 65-2837(a)(3). Applicant admits he has engaged in the conduct described above, but denies the allegations he is professionally incompetent.

7. An application for a license to practice the healing arts may be denied or a license

may be limited if an applicant has committed an act of professional incompetence. K.S.A. 65-2836(b). Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate discipline if an applicant to the Board has engaged in any commission or omissions to bring the applicant within the purview of K.S.A. 65-2836. The Board has authority to pursuant to K.S.A. 65-2836 to deny a license for any reason that appropriate action can be taken against an applicant.

8. It is the intent and purpose of the Stipulation to provide for settlement of all issues without the necessity of proceeding to a formal hearing. K.S.A. 65-2838(b). The terms and conditions of the Stipulation 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. Applicant further understands and agrees that by entering into this Stipulation, he is waiving his right to a hearing on his application for licensure. The Applicant voluntarily and knowingly waives his 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.

9. This Stipulation 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 whether or not the Board's signature is affixed to the document.

Licensee specifically acknowledges that counsel for the Board is not authorized to sign for nor

bind the Board.

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

(a) In lieu of the commencement of formal proceedings and/or the making of findings by the Board, the Board will grant the application to practice medicine and surgery, and Applicant, by signature attached to this Stipulation, hereby voluntarily agrees to the following disciplinary limitation on his license:

i) Applicant agrees that his professional practice will be monitored in accordance with the terms of this agreement.

ii) Applicant will nominate a person to monitor Applicant's professional practice. Such person must be board certified in internal medicine or in family practice, and may not be related by blood or marriage and may not be affiliated by ownership or employment with the entity in which Applicant primarily practices.

iii) Applicant agrees that within one year following execution of this stipulation, the monitor shall confer with Applicant and review 30 office patient charts and 10 hospital patient charts selected by the monitor at random, and shall evaluate Applicant's professional practice on the basis of the conference and chart review.

iv) Applicant agrees that the monitor shall provide a report to the Board pertaining to his monitoring and chart review. Failure to provide the required report shall constitute a violation of this Stipulation, attributable to Applicant, and shall constitute grounds for disciplinary action by the Board.

v) Applicant agrees to provide a copy of this Stipulation to the Board approved monitor.

vi) All costs arising out of this agreement, including any expenses required by the monitor, shall be paid by the Applicant.

vii) Upon one year of successful compliance with this Stipulation, Applicant may apply to the Board for termination of this Stipulation. The Board, in its sole discretion, shall determine whether or not Applicant should be released from the terms of this Stipulation, which determination Applicant agrees he shall not appeal in any administrative, civil or other proceedings. This Stipulation will not expire on its own.

(b) Nothing in this agreement shall be construed to deny the Board jurisdiction 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 the conditions of this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

(c) This Stipulation 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.

(d) Applicant acknowledges that he has read this Stipulation and fully understands its contents. Applicant acknowledges that this Stipulation has been entered into freely and voluntarily given.

(e) Applicant 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 or pertaining to the performance of this Stipulation, or the contents of this Stipulation.

(f) Applicant acknowledges that this document shall be deemed a public disciplinary record upon Applicant's signing this document. Applicant further acknowledges this action is reportable and will be reported to the Nation Practitioner Databank and the Federation of State Medical Boards and other reporting agencies.

(g) Applicant authorized Petitioner to present this Stipulation to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation, even if the Petitioner is not present. Further, Applicant waives any objection to Petitioner presenting this Stipulation to the Board in Applicant's absence, and such waiver shall be effective in any proceeding or any manner for any purpose.

11. All correspondence or communication between Applicant and the Board shall be certified mail addressed to: Lawrence T. Buening, Jr. Executive Director, Kansas Board of Healing Arts, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

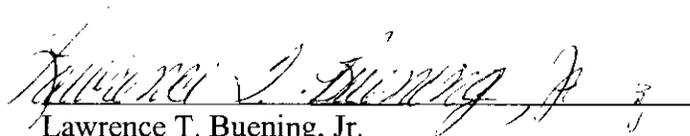
12. Applicant shall obey all federal, state and local laws, rules and regulations

governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of the execution of the Stipulation or may become effective subsequent to the execution of the Stipulation.

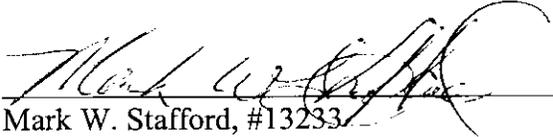
13. Applicant has an affirmative duty to notify the Board of changes in his personal professional status which would inhibit in any way compliance with the above conditions in this Stipulation.

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

KANSAS STATE BOARD OF HEALING ARTS

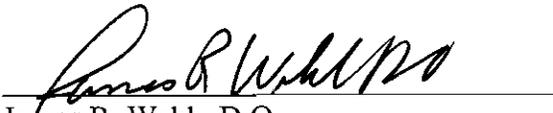

Lawrence T. Buening, Jr.
Executive Director

Prepared by:



Mark W. Stafford, #13233
General Counsel

Approved by:



James R. Webb, D.O.
Applicant