

FILED

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

APR 15 1992

**KANSAS STATE BOARD OF
HEALING ARTS**

IN THE MATTER)
)
OF)
)
KERMIT E. WHITE, M.D.)
Kansas License # 4-20519)

Case No. 92-00215

**STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts (Board) by and through Steve A. Schwarm, General Counsel, and Kermit E. White, M.D., (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 made request for reinstatement of his license to engage in the practice of medicine and surgery in the State of Kansas.

3. On March 7, 1991, under the provisions of a Final Order, the Board, as authorized by Kansas law, specifically K.S.A. 1990 Supp. 65-2809, cancelled license of Applicant #4-20519. The cancellation of Applicant's license was due to failure of Applicant to maintain and be in compliance with the continuing medical education requirements of the Kansas State Board of Healing Arts. The Board acknowledges and accepts that Applicant admitted during

the conference adjudicative proceeding held January 7, 1991, that for the statutory mandated continuing medical education period for three years ending June 30, 1990, Applicant had, "Perhaps less than 50," continuing medical education hours. (Record Volume I, pg 6) Additionally, the Board acknowledges and accepts that Applicant requested, in a letter filed with Lawrence T. Buening, Jr., then General Counsel for the Board, he be afforded an extension until November 30, 1990, to obtain his continuing medical education hours (KSBHA case no. 91-00306, Board exhibit 7). At that time, Applicant specifically stated in his letter, which was received by the Board on August 10, 1990, "The purpose of this extension is to complete the remainder of my 150 hours of CME credit." Applicant appeared at the Prehearing Conference/Conference Adjudicative Proceeding on January 7, 1991, and presented no evidence nor testimony indicating completion, participation or commencement of any program of continuing medical education prior to or subsequent to August 10, 1990, nor prior to or subsequent to the controlling date of December 30, 1990.

At the time of the **FINAL ORDER** issued by the Board, the Board acknowledges and accepts that additional investigative information had been received by the Board to include that Applicant had continued prescribing of controlled substances during the time that Applicant's Federal Drug Enforcement Administration number had been rescinded by the United States Drug Enforcement Administration. Additionally, Applicant had continued the practice

of medicine and surgery in the State of Kansas without the statutory professional liability insurance mandated under Kansas law K.S.A. 40-3402, 40-3403, 65-2809 and K.S.A. 1988 Supp., 1989 Supp., 1990 Supp 65-2836(aa) that Licensee has failed to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or 40-3403a and amendments thereto, K.S.A. 65-2836(bb) that Licensee has failed to pay the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto. [The provisions of K.S.A. 1988-1990 Supp. 65-2836(aa) and (bb) remain lawful statutes of the Board currently reflected as K.S.A. 1991 Supp. 65-2836(y) and (z).]

The Board accepts and acknowledges that Applicant admits that for a total period of 16 months and 14 days, Applicant engaged in the practice of medicine and surgery in the State of Kansas without the benefit of professional liability insurance as mandated by the above statutes. The history of the periods of non-compliance are as follows:

1. September 12, 1985 through December 31, 1985
2. April 4, 1988 through May 5, 1988
3. September 19, 1988 through August 9, 1989
4. August 9, 1990 through September 1, 1990

The Board accepts and acknowledges that Applicant admits that his United States Drug Enforcement Administration number necessary to prescribe controlled substances expired September 20, 1988, that Applicant continued to prescribe controlled substances in violation of the law, and that Applicant completed the

appropriate renewal process for licensure in the State of Kansas subsequent to that date for June of 1989 through July of 1990.

The Board accepts and acknowledges and Applicant admits that for the above time periods, Applicant represented and engaged in a licensed profession in the State of Kansas as a doctor of medicine and surgery pursuant to K.S.A. 65-2801 et seq. and while engaged in such practice, failed to maintain the statutory professional liability insurance and failed to maintain an active United States Drug Enforcement Administration Controlled Substance Prescribing Number.

4. Based on the above information, the Board has determined that there is probable cause to believe that Applicant has engaged in the practice of medicine and surgery in the State of Kansas while failing to maintain statutory professional liability insurance and has engaged in an act of dishonorable conduct; K.S.A. 1991 Supp. 65-2836(b) [Statute being in effect from 1985 through 1990 as K.S.A. 65-2836(b)]

5. Such acts or conduct as set forth above would constitute grounds for discipline under the jurisdiction of the Kansas State Board of Healing Arts pursuant to K.S.A. 1991 Supp. 65-2836(y) and (z) and K.S.A. 65-2836(b). Under the provisions of K.S.A. 1991 Supp. 65-2838(b), the Board has jurisdiction to impose appropriate discipline if a licensee of the Board has engaged in any commissions or omissions to bring licensee within the purview of K.S.A. 1991 Supp. 65-2836. Under the provisions of K.S.A. 1991

Supp. 65-2838, the Board has authority to enter into this **STIPULATION AND AGREEMENT**. The Board has authority pursuant to K.S.A. 65-2836 to deny a license for any reason that appropriate disciplinary action can be taken against a licensee (Applicant herein).

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 disciplinary hearing. K.S.A. 65-2838. Applicant voluntarily and affirmatively waives his 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.

Licensee further understands and agrees that by entering into this **STIPULATION AND AGREEMENT**, he is waiving his right to a hearing. The Licensee 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.

The terms and conditions of this **STIPULATION AND AGREEMENT** are entered into between the undersigned parties and is submitted for the purpose of allowing those terms and conditions to become an Order of the Board.

This **STIPULATION AND AGREEMENT** shall not become binding on the Board until an authorized signature is affixed on the last page of this document. Upon signature by Applicant to this document it shall be deemed a unilateral contract and agreement and shall bind Applicant to all 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 in 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 any findings by the Board, Applicant, by signature attached to this **STIPULATION AND AGREEMENT**, hereby voluntarily agrees to the conditions placed on his 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 his license to engage in the practice of medicine and surgery in the State of Kansas based on the following specific conditions:

i) As an appropriate disciplinary sanction, the Kansas State Board of Healing Arts hereby assesses a civil fine in the amount of \$7,500.00 against Applicant Kermit E. White, M.D., for violation of the Kansas Healing Arts Act.

ii) Applicant is hereby placed under a quarterly reporting system regarding professional liability insurance in the State of Kansas. Applicant shall submit on a sworn, verified affidavit on a quarterly basis a copy of his current professional liability insurance certificate of

insurance documenting compliance with all Kansas insurance laws relative to the practice of medicine and surgery in the State of Kansas to include K.S.A. 40-3402, 40-3403a and 40-3404. Such quarterly reports must be received by no later than the close of business, 4:30 p.m., by the 10th calendar day of the month immediately following the appropriate quarterly reporting period. The first quarterly reporting period shall end on June 30, 1992.

iii) Applicant's license to engage in the practice of medicine and surgery in the State of Kansas is hereby placed under probationary condition, limitation or restriction for a minimum period of seven calendar years from the date of the authorized signature affixed to this Stipulation and Agreement. Computation of the seven year period shall be calculated by adding the figure 7 to the year 1992 associated with the authorized signature and date of this document after execution by the Kansas State Board of Healing Arts.

iv) Applicant hereby agrees to limit his practice of medicine and surgery in the State of Kansas to a Board authorized and accepted residency program and shall not engage in any acts which constitute the practice of medicine and surgery outside of the

Board approved residency program. Such restriction shall mean that Applicant shall not engage in the private practice of the Healing Arts.

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

e) Applicant's failure to comply with the provisions of the **STIPULATION AND AGREEMENT** and Order, including but not limited to failure to limit his practice of medicine and surgery or the failure to submit the required quarterly reports, 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 fulfil 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 AGREEMENT AND ENFORCEMENT ORDER**.

Any breach of the **STIPULATION AGREEMENT AND ENFORCEMENT ORDER** to include failure to maintain professional liability insurance or to submit the required quarterly reports 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 nor challenge in any civil or administrative proceeding.

f) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate the alleged violations of the Healing Arts Act or to investigate complaints received under 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 disciplinary 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 or amended by a subsequent document executed in the same manner by the parties.

h) Applicant acknowledges that he has read this **STIPULATION AND AGREEMENT** and fully understands the contents.

i) Applicant hereby releases the Kansas State Board of Healing Arts, 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/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 into 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 Healing Arts, Attention: Office of General Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603.

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 AND AGREEMENT** or may become effective subsequent to the execution of this document.

10. Applicant has a affirmative duty to notify the Board of changes in his personal professional status which would inhibit the compliance with the above conditions in the **STIPULATION AND AGREEMENT** or subsequent **ENFORCEMENT ORDER**.

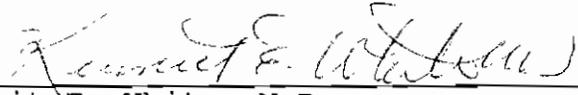
9. Upon execution of this **STIPULATION AND AGREEMENT** by the affixing of a Board authorized signature below, the provisions of this **STIPULATION AND AGREEMENT** shall become an Order of the Board and shall be deemed a proper and lawful **ENFORCEMENT ORDER** under K.S.A. 1991 Supp. 65-2838. This **STIPULATION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

IN WITNESS WHEREOF the parties have executed this agreement on this 13th day of April, 1992.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

April 13, 1992
Date


Kermit E. White, M.D.
Applicant

3/20/92
Date

Prepared and Approved by:

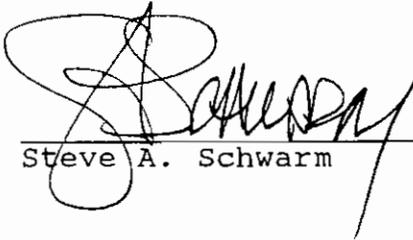

Steve A. Schwarm, #13232
General Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603
(913) 296-7413

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER
Kermit E. White, M.D.

CERTIFICATE OF SERVICE

I, Steve A. Schwarm, hereby certify that on the ^{15th}~~13th~~ of April, 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:

Kermit E. White, M.D.
c/o 2643 N. Wellesley
Wichita, Kansas 67220



Steve A. Schwarm