

OCT 22 2007

BEFORE THE BOARD OF HEALING ARTS **KS State Board of Healing Arts**
OF THE STATE OF KANSAS

In the Matter of)	
)	
Matthew J. Wills, M.D.,)	
Application for Licensure)	Docket No. 08-HA- <u>00046</u>
_____)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Kelli J. Stevens, Litigation Counsel ("Petitioner"), and Matthew J. Wills, M.D. ("Applicant"), appearing *pro se*, and move the Board for approval of a Consent Order as a condition to granting Applicant a license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant's mailing address as provided to the Board is: 707 Vega Ln., Lubbock, TX 79403
2. Applicant submitted to the Board an application for licensure in medicine and surgery. Such application was deemed complete and filed with the Board on August 27, 2007.
3. Applicant is a board-certified neurosurgeon.
4. 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. and K.S.A. 65-2869.

5. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. Applicant agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in the case, and that in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. 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.
8. 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.

9. In his application for licensure, Applicant disclosed that between October 1999 and October 2002, while practicing at Covenant Hospital in Lubbock, Texas, he performed a cervical posterior discectomy at the C5/6 level instead of the C6/7 level, a lumbar microdiscectomy on the left instead of the right, and made craniotomy incision on the right instead of left while practicing at Covenant Hospital in Lubbock, Texas. Subsequently, Applicant took six (6) weeks medical leave for exhaustion and entered into a corrective action plan with the hospital. The corrective action plan was successfully completed.
10. In November 2006, when beginning an endoscopic microlumbar discectomy, Applicant made an incision on the wrong side but corrected his error. Subsequently, he was placed on a two-week leave of absence by the hospital and his practice was monitored for one (1) month by his practice partners.
11. Pursuant to K.S.A. 65-2837(b)(24), there may be grounds for the Board to deny an application for licensure based on a repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
12. The Board has received information indicating that the healthcare facility where Applicant intends to practice in Kansas will have Applicant's practice proctored by another neurosurgeon for a period of one (1) year pursuant to its medical staff bylaws.

13. 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.

14. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following monitoring provisions as a condition to being granted a license to engage in the practice of medicine and surgery in Kansas:

MONITORING

- (a) For the one (1) year period of time that Applicant's surgical practice is proctored, Applicant shall ensure that such proctor submit reports to the Board on a monthly basis summarizing any findings with respect to Applicant's surgical practice, including any wrong-site incisions and/or procedures, surgical complications, and adverse events. Such monthly report shall be on a form provided by Board staff;
- (b) Each monthly report shall be due on the 15th day of the subsequent month. Such monthly reports shall be submitted to the Board addressed to the attention of the Compliance Coordinator. Applicant shall be responsible for ensuring the timely submission of the proctor's reports to the Board; and
- (c) Upon the Board's receipt of twelve (12) monthly reports, Applicant shall appear at the next regularly scheduled Board meeting for the Board to consider whether additional surgical practice monitoring is warranted.

15. The conditions for licensure are considered by the parties to be non-disciplinary and do not constitute a restriction on Applicant's scope of practice.

16. Applicant's failure to comply with the provisions of the Consent Order may result in the Board taking disciplinary action as the Board deems

appropriate according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.

17. 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. 64-4921 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.

18. Applicant hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq. arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees 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 Releasees.

19. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to the Federation of State Medical Boards, and any other reporting entities authorized to receive disclosure of the Consent Order.
20. 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.
21. 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.
22. Applicant, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

23. 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.
24. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
25. 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.
26. 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.
27. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

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

IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license to practice medicine and surgery in Kansas.

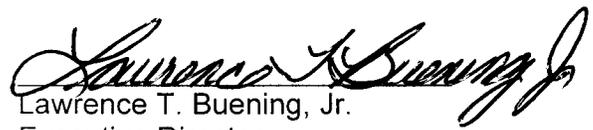
IT IS FURTHER ORDERED that:

MONITORING

- a. For the one (1) year period of time that Applicant's surgical practice is proctored, Applicant shall ensure that such proctor submit reports to the Board on a monthly basis summarizing any findings with respect to Applicant's surgical practice, including any wrong-site incisions and/or procedures, surgical complications, and adverse events. Such monthly report shall be on a form provided by Board staff;
- b. Each monthly report shall be due on the 15th day of the subsequent month. Such monthly reports shall be submitted to the Board addressed to the attention of the Compliance Coordinator. Applicant shall be responsible for ensuring the timely submission of the proctor's reports to the Board; and
- c. Upon the Board's receipt of twelve (12) monthly reports, Applicant shall appear at the next regularly scheduled Board meeting for the Board to consider whether additional surgical practice monitoring is warranted.

IT IS SO ORDERED on this 22nd day of October, 2007.

**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

October 22, 2007
Date

Matthew J. Wills
Matthew J. Wills, M.D.
Applicant

9/6/07
Date

PREPARED AND APPROVED BY:

Kelli J. Stevens
Kelli J. Stevens #16032
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
785-296-7413

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 22nd day of October, 2007, to the following:

Matthew J Wills, M.D.
Applicant
707 Vega Ln.
Lubbock, TX 79403

And a copy was hand-delivered to:

Kelli J. Stevens
Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

And the original was hand-delivered for filing to:

Lawrence T. Buening, Jr.
Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

A handwritten signature in black ink, reading "Lawrence T. Buening, Jr." in a cursive script.