

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

JUN 15 2001

In the Matter of)
)
ANN K. NEUHAUS, M.D.,)
Kansas License No. 04-21596)
_____)

Docket No. 01-HA-14
**KANSAS STATE BOARD OF
HEALING ARTS**

AGREED INITIAL ORDER

NOW ON THIS the ___ day of June, 2001, comes before the State Board of Healing Arts Petitioner's Amended Petition to Revoke, Suspend or Otherwise Limit License against Licensee Ann K. Neuhaus, M.D. Presiding Officers Donald B. Bletz, M.D., Emily Taylor and James Buchele have been appointed to render an Initial Order. Kelli J. Benintendi, Associate Counsel, appears on behalf of the Petitioner Board of Healing Arts. Sally Kelsey and Steve Schwarm appear on behalf of Licensee. There are no other appearances.

Whereupon, the Parties present this Agreed Initial Order, including Findings of Fact, Conclusions of Law and Orders for approval and issuance by the Presiding Officers. Having heard the statements of counsel regarding the Agreed Initial Order and having the agency record before them, the Presiding Officers adopt the following agreed upon Findings of Fact, Conclusions of Law and Orders:

I. FINDINGS OF FACT

A. BACKGROUND

1. Licensee is licensed by the Board to practice medicine and surgery in the State of Kansas, having been initially licensed on December 5, 1986, and issued license

number 4-21596. Licensee has been continually licensed by the Board and actively engaged in the practice of the healing arts in Kansas since that time.

2. This matter was initiated on December 4, 2000, when a Petition to Revoke, Suspend or Otherwise Limit License was filed. An Amended Petition was filed February 2, 2001.
3. 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.
4. The parties agree that this Agreed Initial Order and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Agreed Initial Order.
5. The Presiding Officers have taken official notice of the official agency record of the Stipulation and prior emergency action against Licensee in Docket No. 00-HA-20.

B. STANDARD OF CARE

6. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Order Following Emergency Hearing issued August 29, 2000, as they relate to the allegations regarding patients A.B., S.D., C.L., and H.S. in Counts I through IV in the Amended Petition. The Order is attached hereto as Exhibit A.
7. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Order Following Emergency Hearing issued August 29, 2000,

as they relate to the allegations regarding unmarked pre-drawn syringes in Count VI of the Amended Petition. See Exhibit A.

8. The parties agree and stipulate to the findings of fact and conclusions of Hearing Officer Tipton in the Termination of Emergency Order issued September 11, 2000.

The Order is attached hereto as Exhibit B.

9. The parties agree and stipulate that:

a. Licensee has fully implemented the modifications to her practice to address the deficiencies found by Hearing Officer Tipton.

b. Licensee has completed Advanced Cardiac Life Support Training and her clinical staff has completed Advanced Cardiac Life Support or Basic Life Support Training.

c. Licensee utilizes a clinical staff member whose dedicated responsibility is monitoring of the patient during the administration of sedation and throughout the procedure. This staff member has no other primary duties during the procedure which would impede the ability to address any emergency situation which may arise.

d. Licensee has modified her practices regarding sedation and analgesia to comply with the 1996 American Society of Anesthesiologists (ASA) Guidelines for Sedation and Analgesia by Non-Anesthesiologists.

10. Licensee provided medical treatment to Patient A.G. on June 7, 2000 as follows:

- a. A.G. arrived at Licensee's office on June 7, 2000 for a scheduled appointment for an abortion.
- b. Based on the information provided by A.G., the gestational age was determined to be six (6) weeks.
- c. Licensee's medical record for A.G. reflects a sonogram was performed that day which showed the gestational age to be twelve (12) weeks.
- d. A.G. signed a consent form which listed options for analgesia and/or sedation.
- e. A.G. expressed that she did not want to be sedated with Diazepam for the procedure.
- f. A.G. agreed to have a local anesthetic and to the intravenous administration of Droperidol and Nubain for analgesia.
- g. In the procedure room, following the administration of Droperidol and Nubain, A.G. experienced a brief reaction to the medication.
- h. The medical record reflects Benadryl was administered to counter the reaction.
- i. The medical record reflects A.G. was sedated with Diazepam and the procedure was completed.
- j. At no time did A.G. express a change of heart about having an abortion.

11. Licensee would present testimony at trial as follows:

a. Licensee and Licensee's staff informed A.G. that she could not do the procedure using only a local anesthetic, and sedative medications, including Diazepam, would necessarily have to be used.

b. Licensee and Licensee's staff told A.G. she could cancel the procedure and reschedule later if she wished, but that A.G. chose to continue the procedure that day and did not withdraw consent for the procedure nor did A.G. at any time indicate she did not want to proceed.

12. The Board would present testimony at trial as follows:

a. A.G. limited her consent to having the procedure performed without being sedated.

b. Following her reaction to the medication, A.G. expressed that she did not wish to continue with the procedure.

C. WOMAN'S RIGHT TO KNOW ACT

13. Licensee's medical record for patients A.B., S.D., C.L. and A.G. do not reflect the patients were informed in writing at least 24 hours before the abortion of the probable gestational age of the fetus at the time the abortion was to be performed.

14. Licensee would offer testimony at trial that proper written notice of the gestational age was given to patients A.B., S.D. and C.L., but the notices which were copied for the medical records are duplicates of the ones the patients signed in the Licensee's office, having forgotten to bring the original notices to the office.

15. The Board would present testimony at trial that patient A.G. was not informed in writing at least 24 hours before the abortion of the probable gestational age of the fetus at the time the abortion was to be performed.

EXHIBITS

16. The parties agree and stipulate to the admission into evidence of Licensee's clinic's medical records for patients A.B., S.D., C.L., H.S. and A.G., and that such records are subject to the protective order previously entered.
17. The parties agree and stipulate to the admission into evidence of Licensee's sedation monitoring form presently in use in Licensee's practice.

CONCLUSIONS OF LAW

18. The parties agree that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.
19. The parties agree that, in considering this matter, the Presiding Officers and the Board are not acting beyond their jurisdiction as provided by law.
20. Licensee's sedation and pre-, intra- and post-procedure monitoring of patients A.B., S.D., C.L., H.S. and A.G. deviated from the applicable standard of care.
21. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24), the Board may limit a license to practice the healing arts upon a finding that Licensee committed unprofessional conduct by 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.

22. The intentional, knowing or reckless failure to provide written notice of the gestational age of the fetus in compliance with the Woman's Right to Know Act constitutes unprofessional conduct pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b) and set forth in K.S.A. 65-6712.
23. The failure to provide adequate informed consent to sedation would also constitute unprofessional conduct pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(24).
24. The lack of documentation regarding sedation and pre-, intra- and post-procedure monitoring for patients A.B., S.D., C.L., H.S. and A.G. constitutes a failure to maintain an adequate patient medical record as required by K.A.R. 100-24-1.
25. Pursuant to K.S.A. 65-2836(k), the Board may limit Licensee's license to practice the healing arts in the State of Kansas for violation of K.A.R. 100-24-1, a lawful regulation promulgated by the Board.
26. There is no evidence that Licensee acted with malice or lack of concern for patients' well being with regard to any of the allegations set forth in the Amended Petition.

III. ORDERS

27. In light of the foregoing Findings of Fact and Conclusions of Law, the Presiding Officer orders as follows:
28. Pursuant to the terms of a previous Stipulation and Agreement and Enforcement Order entered October 18, 1999, in Docket No. 00-HA-20, Licensee has been

subject to limitations on her license for a period of time from October 18, 1999, through the date this agreement is filed. The Stipulation entered October 18, 1999, remains in full force and effect and is not superceded by this Agreed Initial Order. The Stipulation is attached hereto as Exhibit C.

29. Licensee's license to practice medicine and surgery is hereby limited as follows:

SEDATION AND MONITORING

30. The Termination of Emergency Order entered September 11, 2000, in Docket No. 00-HA-20, found that Licensee had modified her practice to correct deficiencies regarding sedation and monitoring as previously determined by the Hearing Officer in the Emergency Order Following Hearing entered August 29, 2000. Monitoring of those items shall continue pursuant to the August 29, 2000 Order.
31. Licensee's staff member whose responsibility is monitoring during the administration of sedation and throughout the procedure shall have no other primary duties during the procedure that would impede the ability to address any emergency situation that may arise.
32. Licensee agrees to follow the 1996 American Society of Anesthesiologist's (ASA) Guidelines for Sedation and Analgesia by Non-Anesthesiologists and subsequent revisions and/or amendments.

DOCUMENTATION

33. Licensee shall comply with all provisions of K.A.R. 100-24-1, with respect to medical record-keeping.
34. Licensee shall ensure that all sonograms which are performed by Licensee or Licensee's staff are printed and are made part of the patient's medical record. This requirement includes sonograms, if any, performed to determine gestational age prior to the date of the appointment for an abortion. In the event of unforeseen circumstances, such as an equipment breakdown of a sonogram printer, Licensee agrees to notify Board staff immediately and expeditiously repair the problem.
35. All sonograms and entries in the patient's medical record regarding the performance of a sonogram shall be dated and timed.

INFORMED CONSENT

36. Licensee shall comply with the provisions of the Woman's-Right-to- Know Act ("WRTKA"), K.S.A. 65-6701, *et seq.*, including informing all abortion patients, in writing at least 24 hours in advance, of the probable gestational age of the fetus at the time the abortion is to be performed. If a patient does not know the date of her last menstrual period so the gestational age can be determined, Licensee shall ensure that the gestational age is determined by an appropriate dating method

whereby such notice of the gestational age can be provided to the patient in compliance with the WRTKA;

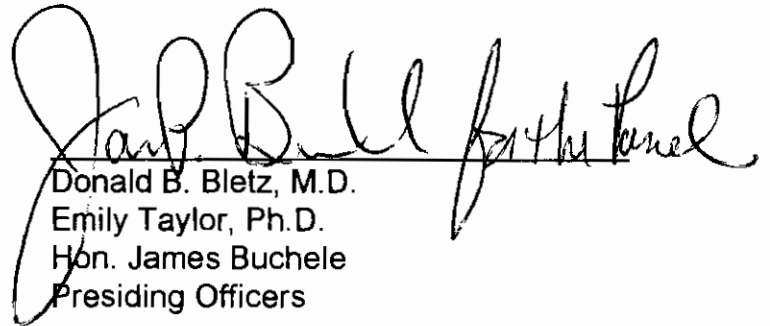
37. Licensee shall utilize an informed consent form which includes more detailed provisions relating to anesthesia and sedation. The form shall include the risks associated with each anesthesia and/or sedation choice, and shall include a description of any circumstances where certain anesthesia and/or sedation choices may not be an option. An example would be that a "local only" may not be an option for a patient who is over a certain number of weeks pregnant. An informed consent form which includes these provisions is attached hereto as Exhibit D.
38. Licensee shall ensure that the informed consent form is reviewed and signed by the patient during the appointment for the procedure and such signature is dated and timed. A witness signature which is dated and timed shall also be included in the informed consent form.
39. Licensee shall meet with all abortion patients outside of the procedure room before such patients are physically prepared for the procedure to review the informed consent form.

OTHER

40. Licensee's clinic medical records shall be randomly inspected by Board staff for


compliance with the provisions of this Agreed Initial Order, but such inspections shall not occur more than four (4) times per year, for a period of at least two (2) years.

IT IS SO ORDERED THIS 15th day of June, 2001.



Donald B. Bletz, M.D.
Emily Taylor, Ph.D.
Hon. James Buchele
Presiding Officers

Prepared by:

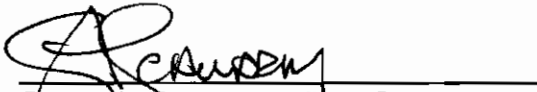


Kelli Benintendi, #16032
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Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413
Attorney for Petitioner

Approved as to form by:



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16 East 13th Street
Lawrence, Kansas 66044
(785) 842-5116
Attorney for Licensee



Steve A. Schwarm, #13232
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue
Topeka, Kansas 66603
Attorney for Licensee

Agreed Initial Order
In the Matter of Ann K. Neuhaus, M.D.
01-HA-14

NOTICE REGARDING REVIEW

Please take notice that this is an Initial Order. Pursuant to Board Policy Statement No. 00-03, The Board, as a matter of course following service of an Initial Order, will on its own motion conduct review. A party may also file a Petition for Review with the Executive Director, 235 S. Topeka Blvd., Topeka, Kansas 66603, within 15 days following service of this Order.

CERTIFICATE OF SERVICE

I, _____, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above AGREED INITIAL ORDER by depositing the same in the U.S. mail, postage prepaid, on this the ____ day of _____, 2001 addressed to:

Ann K. Neuhaus, M.D.
205 West 8th Street
Lawrence, Kansas 66044

Sally Kelsey
Attorney at Law
16 E. 13th Street
Lawrence, Kansas 66044

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 South Kansas Avenue
Topeka, Kansas 66603

and a copy was hand-delivered to:

Kelli J. Benintendi
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068

and the original was hand-delivered for filing to:

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

FILED

AUG 29 2000

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
ANN K. NEUHAUS, M.D.)
Kansas License No. 4-21596)
_____)

Docket No. 00-HA-20

EMERGENCY ORDER FOLLOWING HEARING

NOW ON THIS Twenty-eighth Day of August, 2000, this matter comes on for hearing. Kelli J. Benintendi, Associate Counsel, and Stacy L. Cook, Litigation Counsel, appear for Petitioner Board of Healing Arts. Ann K. Neuhaus, M.D., Respondent, appears in person and through Donald Strole, Attorney at Law.

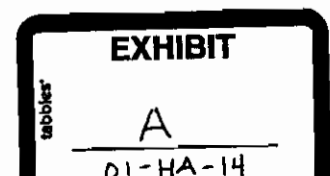
Petitioner and Respondent offer testimony and exhibits and rest. Written stipulations signed by counsel for Petitioner and Respondent are offered and accepted. Upon the conclusion of the testimony, Respondent makes an oral motion to stay the order of emergency limitation dated August 14, 2000. That motion is denied.

The Presiding Officer makes the following findings of fact, conclusions of law and orders:

1. The Board and Licensee entered into a Stipulation and Agreement and Enforcement Order which was filed in the Board office on October 18, 1999. Paragraph 10(a)(i) of that agreement prohibits Licensee from purchasing any controlled substances for office use other than injectable Valium or its generic equivalent.

2. Licensee filed a written request dated July 24, 2000 asking that the Stipulation and Agreement and Enforcement Order be modified to permit her to use ketamine in addition to Valium (diazepam) for sedating patients upon whom in-office surgery was to be performed.

3. A Notice of Conference Hearing on Licensee's request was filed in the Board office on



July 26, 2000, setting this matter for hearing before the Board at 10:00 a.m. on August 12, 2000. Following the conference hearing, the Board issued an order dated August 14, 2000 denying Respondent's request and imposing additional limitations upon Respondent's license. More specifically, the emergency order prohibited Respondent from administering or ordering any anesthetic agent, controlled substance or narcotic to a patient. Because the emergency order was not foreseen when the Notice of Conference Hearing was served, Respondent was not advised in advance that her license might be adversely affected. Thus, the emergency order required that a hearing be held within ten working days.

4. The emergency order of limitation was further explained in a letter to Respondent dated August 16, 2000 from the Board's General Counsel. The emergency order was not intended to preclude Respondent from administering a local anesthetic. The order did prohibit Respondent from using those categories of drugs to achieve regional or general anesthesia or conscious sedation. Additionally, the parties agreed during the hearing that the emergency order did not prohibit the use of diazepam to control seizures.

5. The sole issue to be resolved by this hearing is whether Respondent may administer drugs for regional or general anesthesia or conscious sedation purposes without creating an immediate threat to the public health, safety or welfare. Whether Respondent should be subject to discipline for engaging in specific acts in a manner alleged to be below the standard of care is not an issue in an emergency hearing.

6. For purposes of determining whether there exists an immediate threat to the public health, safety or welfare, the Presiding Officer concludes that the likelihood of patient injury is not the only factor. Rather, the nature and severity of potential injury should be considered.

Additionally, if there is a significant threat of danger to the public, the ease with which the threat is reduced should be a consideration in determining whether the public is appropriately protected.

7. In the present case, the parties appear to agree that the minimum standards of care for conscious sedation are stated in the Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologists, a 1996 report by the American Society of Anesthesiologists (ASA). In applying these standards, and in relying upon the expert opinion of an anesthesiologist, the Board does not hold Respondent to the standard of care expected of an anesthesiologist. The expert testimony of the anesthesiologist is helpful to determine whether or not Respondent practices within the ASA standards for non-anesthesiologists and what consequences might occur as a result of a deviation from those standards.

8. The Presiding Officer finds that Respondent does not adhere to the standards of care expressed in the ASA guidelines for non-anesthesiologists when administering conscious sedation in the following respect:

- a. The patient's medical history does not reflect previous adverse experiences with sedation or anesthesia;
- b. there is not a focused physical examination of the cardiovascular and pulmonary systems beyond a simple recording of blood pressure and pulse; a focused evaluation would include at least an auscultation of the heart and lungs and documentation thereof.
- c. pre-, intra-, and post-procedure recordings of vital signs should be both monitored and documented; Respondent states that she does not monitor intra- and post-procedure vital signs;
- d. an anesthesia record that includes periodic documentation of vital signs and

oxygen saturations, is not created;

e. the anesthesia record that is created does not document timing or incremental doses of each drug administered but rather merely states the total amount of each drug administered;

f. the discharge criteria, such as level of alertness, blood pressure, pulse and oxygen saturation, and a method for assessing a patient for discharge are not clearly identified or documented;

g. dismissal of a patient who has received a reversal agent is not intentionally delayed past the effectiveness of the reversal agent. As a consequence, unexpected and unmonitored recurrent sedation can occur if the anesthetic agent has not sufficiently been metabolized.

9. Additionally, the Presiding Officer finds that Respondent's practice of keeping unmarked pre-drawn syringes is a practice falling well below the standard of care and unreasonably subjects patients to danger.

10. Finally, the Presiding Officer is concerned that Respondent is only able to presume staff are capable of performing emergent patient resuscitation based upon their formal training. There is no evidence that Respondent has instructed each staff member in properly performing her role during an emergency or that their competency in patient resuscitation has been demonstrated.

11. The medical record is necessary for reasons beyond merely creating documentation for later review. By monitoring and documenting information periodically, the physician's attention is automatically drawn to those items which, as stated in the ASA guidelines, are necessary for adequate patient protection.

12. The Presiding Officer finds that the practices deviating from the standard of care as described above are not the result of malice or lack of concern for patients' well being.

13. The Presiding Officer also finds that Respondent's practices that are below the standard of care do create a danger to the public that, while not necessarily likely to occur with great frequency, is of such gravity that when an incident does occur, patient harm is all but inevitable.

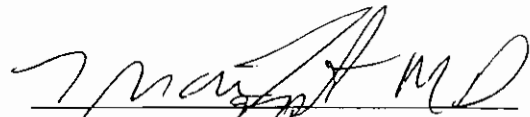
14. The Presiding Officer finds that Respondent is sufficiently knowledgeable of the indication and usage, as well as of the contraindications of ketamine so that her request for authority to use this drug should be reconsidered upon request following termination of the emergency order.

IT IS, THEREFORE, ORDERED that the emergency order issued by the Board on August 14, 2000 remains in effect until such time as Respondent is able to demonstrate that the deviations from the standard of care have been addressed.

IT IS FURTHER ORDERED that Respondent may petition the Board to modify or terminate this emergency order showing that the deviations from the standard of care have been addressed.

PLEASE TAKE NOTICE that either party may seek review of this emergency order by filing a petition for review with the Board. Additionally, a party may seek judicial review of a non-final agency order upon service of an emergency order. Any petition for review shall be served upon the Board's Executive Director at 235 S. Topeka Blvd., Topeka, KS 66603.

DATED THIS ____ day of August, 2000.



Kyle M. Tipton, M.D.
Presiding Officer

Certificate of Service

I certify that a true copy of the foregoing order was served this 29th day of August, 2000 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Ann K. Neuhaus, M.D.
205 W. 8th Street
Lawrence, Kansas 66044

Donald Strole
16 E. 13th Street
Lawrence, Kansas 66044

and a copy was hand-delivered to the office of:

Kelli J. Benintendi
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

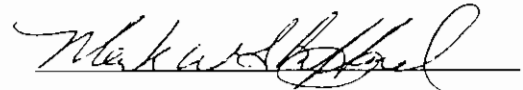


EXHIBIT B

F I L E D

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

SEP 11 2000

In the Matter of)
ANN K. NEUHAUS, M.D.)
Kansas License No. 4-21596)
_____)

**KANSAS STATE BOARD OF
HEALING ARTS**

Docket No. 00-HA-20

TERMINATION OF EMERGENCY ORDER

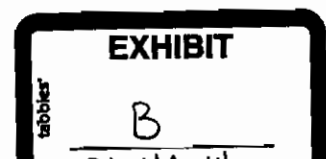
NOW ON THIS Eighth Day of September, 2000, this matter comes on for hearing before the Presiding Officer upon the motion of Respondent Ann K. Neuhaus, M.D. to terminate the emergency order issued August 29, 2000. Kelli J. Benintendi, Associate Counsel, appears for Petitioner Board of Healing Arts. Respondent appears in person and through Donald G. Strole, Attorney at Law.

After hearing the statements of counsel, and having the agency record before him, the Presiding Officer makes the following findings of fact, conclusions of law and orders:

1. The Board and Licensee entered into a Stipulation and Agreement and Enforcement Order which was filed in the Board office on October 18, 1999. Paragraph 10(a)(i) of that agreement prohibits Licensee from purchasing any controlled substances for office use other than injectable Valium or its generic equivalent.

2. Licensee filed a written request dated July 24, 2000 asking that the Stipulation and Agreement and Enforcement Order be modified to permit her to use ketamine in addition to Valium (diazepam) for sedating patients upon whom in-office surgery was to be performed.

3. A Notice of Conference Hearing on Licensee's request was filed in the Board office on July 26, 2000, setting this matter for hearing before the Board at 10:00 a.m. on August 12, 2000. Following the conference hearing, the Board issued an order dated August 14, 2000 denying Respondent's request and imposing additional limitations upon Respondent's license. More



specifically, the emergency order prohibited Respondent from administering or ordering any anesthetic agent, controlled substance or narcotic to a patient. Because the emergency order was not foreseen when the Notice of Conference Hearing was served, Respondent was not advised in advance that her license might be adversely affected. Thus, the emergency order required that a hearing be held within ten working days.

4. A hearing was conducted before the Presiding Officer on August 28. Petitioner offered expert testimony that Respondent did not adhere to the standard of care when administering conscious sedation. The specific aspects of practice below the standard of care were stated in the order issued August 29, 2000. That order continued the emergency order of limitation imposed by the Board's August 14, 2000 order.

5. Respondent has modified her practice to correct the deficiencies found by the August 29 order. The Presiding Officer finds that these modifications, if fully implemented, address the concerns stated in the order.

6. Respondent also indicates that she intends for herself and appropriate staff to obtain cardiac life support certification at the next available opportunity. The Presiding Officer finds that Advanced Cardiac Life Support certification is a proper level of certification for Respondent, and that Basic Life Support certification is adequate for the staff. Both Respondent and staff must ensure that these certifications do not expire as long as they are engaged in the administration of conscious sedation.

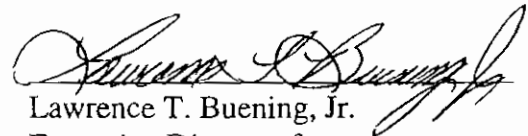
7. The Presiding Officer also finds that some monitoring by the Board is appropriate to confirm that these modifications are fully implemented. The Presiding Officer believes that it is appropriate for the Board to review patient records both in the near future and also after some time

has passed. Because the Board has the statutory authority to make this type of inquiry, specific terms of monitoring are not necessary for this order.

IT IS, THEREFORE, ORDERED that the emergency order issued on August 29, 2000 is terminated as of the date this order is filed.

IT IS FURTHER ORDERED that termination of the emergency order anticipates that prior to December 31, 2000, Respondent must complete a certification course in Advanced Cardiac Life Support, and all staff who will assist her in in-office surgical procedures will complete a Basic Life Support certification course. Both Respondent and staff who assist in procedures involving conscious sedation must maintain current certification.

DATED THIS 11th day of September, 2000.



Lawrence T. Buening, Jr.
Executive Director, for
Kyle M. Tipton, M.D.
Presiding Officer

Certificate of Service

I certify that a true copy of the foregoing order was served this 14th day of September, 2000 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Ann K. Neuhaus, M.D.
205 W. 8th Street
Lawrence, Kansas 66044

Donald Strole
16 E. 13th Street
Lawrence, Kansas 66044

and a copy was hand-delivered to the office of:

Kelli J. Benintendi
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

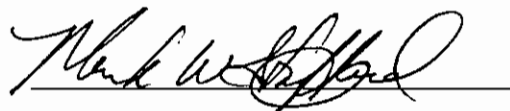


EXHIBIT C

FILED

OCT 18 1999

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
Ann K. Neuhaus, M.D.)
Kansas License Number 04-21596)
_____)

Case No. 00-HA-20

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board"), by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Ann K. Neuhaus, M.D. ("Licensee"), and stipulate and agree to the following:

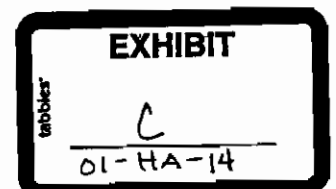
1. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.

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 04-21596 on December 5, 1986. 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 her license on June 30, 1999.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts that violate the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836. Specifically, Licensee violated federal regulations concerning controlled substances, including failure to maintain complete and accurate records of controlled substances received, dispensed, delivered or otherwise disposed of, and failure to maintain a dispensing administration log. In addition, Licensee entered into a Memorandum of Agreement with the Drug Enforcement Agency ("DEA"), which constitutes a limitation of Licensee's DEA registration.

7. The actions and conduct as described above constitute grounds for disciplinary action by the Board. K.S.A. 65-2836(q) and K.S.A. 65-2836(s). 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.

8. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her 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.

9. 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.

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

(a) In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary measures and limitations placed on her license to engage in the practice of medicine and surgery in the State of Kansas:

- (i) Licensee shall not purchase any controlled substances for office use other than injectable Valium or its generic equivalent;
- (ii) Licensee shall maintain a written log to document controlled substance prescriptions which are telephoned to pharmacies. Such log shall include the date, patient name, drug name, strength and quantity, pharmacy name and location, and initials of the persons who made the call. If the prescription is called in by a clinic employee, the log will indicate the date and time that the prescription was authorized by Licensee.
- (iii) Licensee shall maintain duplicate, serially-numbered written prescriptions for controlled substances. Each prescription will be numbered, and if the prescription is unusable, Licensee will maintain such prescription with the word "VOID" written across the face of it.

Copies of such prescriptions shall be maintained at the appropriate registered address along with all other controlled substance records.

- (iv) Licensee shall create a controlled substance administration log that is in compliance with DEA regulations.
- (v) Licensee shall hire a third-party pharmacist to review records at both registered locations, as provided in the paragraph 4 of the Memorandum of Agreement entered into between Licensee and the DEA. Licensee shall ensure that the reports prepared by the third-party pharmacist must also be submitted to the Board of Healing Arts. These reports shall be due within fifteen (15) days following the end of each month.
- (vi) Licensee agrees not to hire any employee who is known to have a substance abuse history. Licensee shall question new employees regarding substance abuse. Licensee shall ensure that new employees are given a drug test at the time of hire.
- (vii) Licensee shall, at her own expense, have all clinic employees, including security personnel, randomly drug tested at every six (6) months during the term of this Agreement.

(b) This Order constitutes disciplinary action and limitations on Licensee's license to practice medicine and surgery in the State of Kansas. These limitations shall remain in effect until the DEA terminates all provisions of the Memorandum of Agreement entered into between Licensee and the DEA on March 19, 1999. In order to eliminate the

limitations contained herein, Licensee must provide proof to the Board that all provisions of the Memorandum of Agreement with the DEA have been terminated.

(c) Licensee's failure to comply with the provisions of the Stipulation shall be deemed a violation of a Board Order, which is grounds for additional disciplinary action.

(d) Nothing in this Stipulation 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 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 all 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 she 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: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

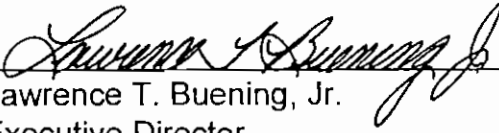
(m) Licensee shall obey all federal, state and local laws and rules governing the

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.

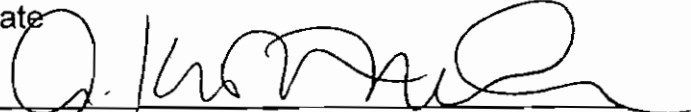
(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF, the parties have executed this agreement on this 16th day of October, 1999.


KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

Oct 16, 1999
Date


Ann K. Neuhaus, M.D.

9/24/99
Date

Prepared By: 

Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413

CERTIFICATE OF SERVICE

I, Stacy L. Cook, Litigation 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 18th day of October, 1999, to the following:

Ann K. Neuhaus, M.D.
205 W. 8th Street
Lawrence, Kansas 66044

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



Stacy L. Cook

EXHIBIT D

CONSENT FOR PREGNANCY TERMINATION

I am A. Kristin Neuhaus, M.D., a 1985 Graduate of the University of Kansas School of Medicine. I have been providing pregnancy termination as well as primary care medicine since 1986. Our clinic Staff is very concerned about safety and confidentiality. All the materials you will need to read or complete are included in this mailing, to shorten your stay at the clinic. YOU MUST BRING THIS CONSENT WITH YOU AT THE TIME OF THE APPOINTMENT. We will review this consent with you at the time of your appointment, and you must sign it at that time in order to have the procedure on that day.

Based on the date of the first day of your last menstrual period of _____, you will be about ____Weeks pregnant by your appointment date on_____. At _____ (You may be a month further if your last period (LMP) was unusually light) Please note that the photographs in the booklet *If Your Are Pregnant* are dated from the point of fertilization of the egg. The more conventional method of dating from last menstrual period(LMP) is listed beneath in parentheses. Our clinic uses this conventional dating, so if you are told 8 weeks LMP, the corresponding picture would be the one labeled "week 6". Fees are based on weeks as dated by sonography (ultrasound).

OPTIONS: If you are pregnant, you have the following options: carry the pregnancy to term and raise a child, carry a pregnancy to term for purposes of adoption, or terminate the pregnancy up to 24 weeks. After 24 weeks, special circumstances may exist for the pregnancy to be terminated. If your last menstrual period began no more than 49 days ago, you may be a candidate for a non-surgical abortion. After 49 days, this method is not very effective. Other limitations may apply as well. No anesthesia is necessary with the non-surgical abortion.

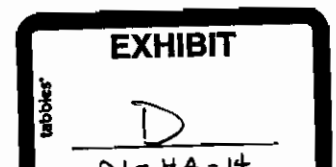
DESCRIPTION OF SURGICAL PROCEDURE: The actual procedure usually takes 5 minutes or less. Following administration of twilight anesthesia and/or a local anesthetic around the cervix, a series of dilator rods, each a little wider than the one before, are used to open the cervix until it will permit the insertion of a tube into the uterus. Suction is then applied to the tube to empty the contents of the uterus. A loop-shaped instrument called a curette is used to remove any remaining tissue.

ANESTHESIA: There are two options available at our clinic. There is no additional charge for any anesthesia option:

Local Anesthetic: Involves the use of a local anesthesia around the cervix. Allows a patient to come alone and drive herself home, but provides a lower level of comfort. This option will not be utilized if I deem it inappropriate. There are circumstances in which the procedure cannot be done with Local anesthetic. Risks of using only local anesthesia include increased discomfort and/or pain.

Twilight Sleep: This option involves the use of IV sedatives. With this option, patients usually have no experience of the procedure, but generally do not wake up feeling ill as with general anesthetics. This is the favored choice for most patients. You must have a support person to drive you home. Risk factors/complications include allergic or other reactions from medications, including respiratory depression.

By consenting to the abortion procedure, you are consenting to use of all sedative medications that I deem appropriate, even if local anesthetic is understood to be the patient's preferred method. While I will attempt to limit medications to that level preferred by the patient, I will use my judgment in determining what medications are necessary for the health and safety of the patient. Circumstances in which sedative medications would likely be used (and where



exclusive use local anesthesia is generally not appropriate) include cases in which there are factors or circumstances indicating a risk that the patient may have excessive movement during the procedure, and cases in which the gestational age is greater than 6 weeks.

COMPLICATIONS: Serious complications are rare. First trimester procedures carry a lower mortality rate than a penicillin injection. The most common complications are infection; a tear in the cervix, which may need to be repaired with stitches; excessive bleeding; an abortion that is not complete or in which blood clots accumulate in the uterus, requiring the procedure to be repeated. Rare complications include medicine allergic reaction; perforation of the wall of the uterus and possibly other organs, which may require surgical repair; severe bleeding due to failure of the uterus to contract, which may require a blood transfusion; first trimester abortion carries a mortality rate of approximately 1 in 200,000 procedures.

RISKS ASSOCIATED WITH TERMINATING A PREGNANCY COMPARED TO CARRYING TO TERM: Health risks are low with either decision. Death and serious complications with full term pregnancy are rare, however first trimester abortion carries about 1/20th of the risk of a full term pregnancy.

FEES: (please bring extra if your are near the next higher date). Fee includes a Rho-gam if you are Rh negative, anesthesia, medications, and follow-up visit: Nonsurgical and surgical up to 12 weeks= \$375.00; 12-14 weeks= \$500.00. (\$50 additional charge if laminaria are necessary for dilation) Fees are payable in cash or money order. Insurance accepted only by prior arrangement, please.

INSTRUCTION CHECK-LIST

Please read everything carefully!

- All persons entering the clinic must bring a photo ID (this is for everyone's safety, so that a potentially dangerous person does not get in, and also because of Kansas abortion laws regarding minors)
- Please bring your information packet (all enclosed materials) with you to your appointment. If everything is filled out, it will save you around 30 minutes time once you arrive at the clinic, since you will have read and completed necessary paperwork in advance.
- Kansas law requires that minors (persons less than 18 years of age on the date of the appointment) be accompanied by a parent or bring the notarized parental notification form. Minors must be accompanied by a parent or bring the notarized parental notification form. Minors must be counseled in the presence of a parent, guardian, or concerned person at least 21 years old; if this causes a hardship, (i.e. parent will not sign form or is unavailable, etc.) A judge can waive this requirement if needed, but this must be arranged beforehand.
- Arrange for someone to be with you from the time you arrive at the clinic until they drive you home if you plan to have twilight anesthesia or intravenous pain medication. If your ride is not with you at the time you arrive, you will be offered a new appointment time or a procedure with local anesthetic, so that you will be able to drive yourself home afterward.
- Wear loose, comfortable clothing.
- No food or fluids within 6 hours of your appointment, or overnight for morning appointments.

- Do not take aspirin for 7 to 10 days before your appointment, if possible - Tylenol (acetomenophen) is OK, since it will not increase the tendency for heavier bleeding.
- Please do not bring young children to your appointment. They will be very bored.

SUPPORT PERSON GUIDELINES:

Unless you are driving yourself, please bring a person who is emotionally supportive and capable of driving you home. Your support person may be with you until you are asleep, if you choose, and should stay with you until you leave the clinic. We ask that you limit the number of people with you to three due to the relatively small waiting areas.

If you are uncertain about your decision, please schedule a consultation first, before actually scheduling a procedure. If the person(s) you choose to accompany you is not in agreement with your decision, you may ask them to wait outside the clinic. We do understand that this is an anxious and stressful time, and we will do everything possible to make you as comfortable as possible.

NOTE: for everyone's protection, we have personnel who are there to assure your safety. All people entering the clinic are scanned electronically. If you bring in a purse, be prepared to open it for inspection. Please plan on a 3 to 4 hour stay, although it is usually not this long. *Your waiting time will be minimized if your paperwork is completed prior to arrival at the clinic.*

Statement: I received this Consent form with Instructions, and the two booklets: *If You Are Pregnant*, have read the above consent, and I consent to this procedure.

_____ 2001 at _____ a.m./p.m.

Signature

Date/time

Witness

Date/time