

STIPULATION

THIS AGREEMENT made and entered into this 25 day of September, 1989, by and between the KANSAS STATE BOARD OF HEALING ARTS (hereinafter referred to as "Board") and DAVID A. SAPPERSTEIN, D.P.M. (hereinafter referred to as "Licensee").

WITNESSETH:

WHEREAS, Licensee is the holder of license number P-174 to practice podiatry in the State of Kansas, originally issued June 25, 1980 and most recently renewed on June 5, 1989 for the period July 1, 1989 through June 30, 1990; and

WHEREAS, complaints have been received by the Board alleging the podiatric treatment by Licensee may have violated the Podiatry Act (K.S.A. 65-2001 et seq. and amendments thereto); and

WHEREAS, the Board has received copies of petitions naming Licensee as a defendant in actions for personal injury and allegedly arising out of the rendering of or the failure to render professional services by Licensee; and

WHEREAS, the Board has caused an investigation into numerous of the complaints and court cases to be conducted to determine if the conduct and treatment of Licensee involved professional incompetency, unprofessional conduct or any other matter which may be grounds for disciplinary action pursuant to K.S.A. 65-2006 and amendments thereto; and

WHEREAS, Licensee has fully cooperated with the Board during the course of its investigation and has appeared at an executive session during the meeting of the Board held October 15, 1988; and

WHEREAS, the Board has had an opportunity to review the investigative files and has paid particular attention to bunion surgery by the use of a small incision and bunionectomies with first and second metatarsal osteotomies; and

WHEREAS, the Board has made no determination, decision or findings of fact from the information contained within the investigative files as to whether there is reason to believe Licensee has violated the Podiatry Act and/or formal adjudicative proceedings should be initiated in accordance with the provisions of the Kansas Administrative Procedure Act; and

WHEREAS, Licensee expressly and vigorously denies that he has violated any provision of the Podiatry Act and is prepared to offer additional information in support of the treatment he has provided to patients; and

WHEREAS, in lieu of further investigations and the possible initiation of formal adjudicative and judicial proceedings and the time, expense and publicity such would involve, the parties are desirous of entering into this stipulation.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties hereto agree as follows:

1. Licensee shall not perform bunionectomies on either the patient's first office visit or on the day the need or benefit for such surgery is determined and/or recommended to patient.

2. Licensee will attach to his present surgical consent form a brief explanation using plain and nontechnical language of the procedure for which the consent is to be given, any alternative form/forms of treatment and any common complications or negative results. A copy of this attachment as prepared by Licensee for laser surgeries, bunion surgeries and bunionectomies with first and second metatarsal osteotomies shall be provided to the Board for approval within ten (10) days of the effective date of this Stipulation. Any modification to these attachments which may be made by the Board shall be incorporated therein by Licensee.

3. Licensee, in accordance with sound clinical principles and generally accepted podiatry practices, shall actively attempt conservative podiatric care and treatment as an alternative to surgical intervention.

4. Licensee shall personally see and treat all surgical patients during each office visit postoperative care is provided.

5. For all surgical procedures performed by Licensee, appropriate preoperative, intraoperative and postoperative radiographic studies will be performed as required or deemed beneficial by sound clinical principles and generally accepted podiatric standards. Diagnosis of the extent of deformities and

the indications for surgical intervention shall be made by utilization of generally accepted methods and standards (e.g. intermetatarsal angle and hallux abductus angle).

6. Radiographic studies shall include such different views as necessary or beneficial to provide Licensee with adequate information to make appropriate diagnoses, determine placement intraoperatively and evaluate healing postoperatively. If postoperative radiographic studies are deemed by Licensee to be necessary or beneficial, a lateral view shall be taken.

7. Within twelve (12) months of the effective date of this Stipulation, Licensee shall attend and successfully complete a minimum of two educational seminars which provide hands-on training in the use of open surgery and different techniques for fixation. These seminars shall be similar in scope and duration to the mini-residency program conducted at the Atlanta Podiatry Institute of the "Super Seminar" sponsored by the California College of Podiatric Medicine and the American College of Foot Surgeons. Proof of attendance and successful completion of the two seminars shall be provided to the Board by Licensee.

8. It is understood by the parties that the Board may receive additional complaints and petitions in court cases which involve the treatment provided by Licensee to patients prior to the effective date of this Stipulation. The Board agrees to terminate all present investigations involving Licensee and will

not investigate new matters which may hereafter be received by the Board which allege or involve treatment provided by Licensee prior to the effective date of this Stipulation.

9. The preceding paragraph shall not be deemed to constitute a waiver, estoppel or res judicata so as to preclude the Board from conducting any further investigation or initiating future proceedings against Licensee for any conduct of Licensee subsequent to the effective date of this Stipulation or for any conduct by Licensee prior to the date of this Stipulation which pertains to conduct substantially different from the information presently contained within the Board's investigative files and known to the Board.

10. It is further understood that this Stipulation does not nor does it intend to be an attempt by the Board to make any clinical judgments or determinations on the treatment individual patients should receive from Licensee. Rather, this Stipulation is to insure that Licensee will follow generally accepted principles and standards in his treatment of patients so that the safety and welfare of the citizens of the State of Kansas are adequately protected.

11. It is understood and agreed that the minutes of the Board meetings during which the Board publicly discussed or took any action relating to Licensee or affecting Licensee's license to practice podiatry in the State of Kansas constitute records which are open to the public. It is further understood that this Stipulation and the resulting Enforcement Order to be entered,

likewise, will constitute public records. Further, it is understood that this Stipulation, together with the resulting Enforcement Order, shall be provided to the Federation of State Podiatric Boards as a disciplinary action report and will be reported by said Federation on its Disciplinary Action Reports. It is further understood that pursuant to K.S.A. 65-2898a(a)(2), the Board may provide matters of a public record, as well as matters contained within its investigative file otherwise required to be confidential to the proper licensing or disciplinary authority of another jurisdiction upon request by such authority. Except as above stated, all matters contained within the investigative files shall, pursuant to K.S.A. 65 2898a, remain confidential and shall not be disclosed or divulged by the Board except as authorized by that statute.

12. Licensee acknowledges his rights to due process to hearing which are afforded to him by the Kansas Administrative Procedure Act and the United States and Kansas Constitutions, but by the execution of this Stipulation specifically waives such right with respect to the matters agreed to herein.

13. Licensee has entered into this Stipulation freely and voluntarily and without any coercion or duress on the part of the Board and further acknowledges that he has been represented by counsel prior to the execution of this Stipulation.

14. This Stipulation and all provisions thereof shall remain in full force and effect until rescinded or otherwise modified by mutual agreement of the parties hereto or by an order of the Board.

15. By entering into this Stipulation, the Board agrees that it shall not make any determination, decision or findings of fact based upon the information presently contained within the investigative files maintained by the Board and will not initiate any formal adjudicative proceedings based upon such information.

16. In the event Licensee fails to comply with any of the terms and conditions of this Stipulation, the Board, may at its sole discretion, rescind this Stipulation and initiate formal adjudicative proceedings against Licensee pursuant to the Kansas Administrative Procedure Act.

17. It is understood and agreed that the provisions of this Stipulation are to be strictly construed and adhered to.

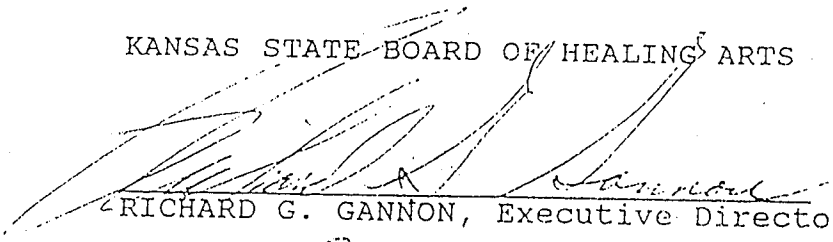
18. This Stipulation constitutes the entire agreement between the parties and there are no other agreements, promises or understandings regarding any matter in question herein other than that expressly set forth.

19. This Stipulation is not an admission of any violations of the Podiatry Act by Licensee. This Stipulation is agreed to by Licensee merely to avoid the time and expenses which would be associated with litigation should formal adjudicative proceedings be initiated against Licensee and imposes obligations upon

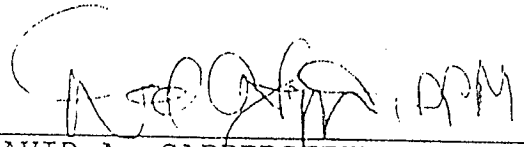
Licensee which, in Licensee's opinion, he has fulfilled in the past and would have voluntarily followed and abided by in the future.

IN WITNESS WHEREOF, the parties hereto have executed this Stipulation on the date indicated below their signature, it being specifically and expressly understood that this Stipulation has been previously and officially approved by both parties hereto and the Board will issue an Enforcement Order based upon such Stipulation.

KANSAS STATE BOARD OF HEALING ARTS

  
RICHARD G. GANNON, Executive Director

9-29-89  
DATE

  
DAVID A. SAPPERSTEIN, D.P.M.  
"Licensee"

9/25/89  
DATE