

**FILED**

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

**APR 19 1993**

**KANSAS STATE BOARD OF  
HEALING ARTS**

**IN THE MATTER OF )  
JEROLD D. ALBRIGHT, M.D. )  
Kansas License No. 04-13725 )  
\_\_\_\_\_ )**

**Case No. 91-00868**

**STIPULATION AND AGREEMENT  
AND ENFORCEMENT ORDER**

**COMES NOW** the Kansas State Board of Healing Arts (hereinafter referred to as "Board") and Jerold D. Albright, M.D. (hereinafter referred to as "Licensee") 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. Licensee was originally licensed in the State of Kansas in July 1, 1967, having last renewed his license on June 4, 1992.

3. a) On or about the period of January 8, 1991, to February 6, 1991 the Board alleges that the Licensee failed to provide proper medical care to F.A.B. The Board alleges that these omissions/commissions constituted a failure to adhere to the applicable standard of care to a degree constituting ordinary negligence on the part of the Licensee.

b) On or about the period of November 8, 1990 to November 12, 1990 the Board alleges that the Licensee through various acts of omission/commission failed to provide proper medical care to patient C.A.B. The Board alleges these omissions/commissions constituted a failure to adhere to the applicable standard of care to a degree constituting ordinary negligence on the part of Licensee.

c) On or about the period of September 5, 1990 through September 14, 1990 the Board alleges that

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the Licensee through various acts of omission/commission failed to provide proper medical care to patient M.V.N. The Board alleges these omissions/commissions constituted a failure to adhere to the applicable standard of care to a degree constituting ordinary negligence on the part of Licensee.

4. Based on the above information the Board has determined that there is probable cause to believe Licensee has committed acts which, if proven to be true, would constitute grounds for discipline by the Board. Specifically, Licensee's treatment of the three named patients may have constituted repeated instances involving the failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence which could constitute grounds for disciplinary action by the Board. K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(2). Further, Licensee's treatment of the named patients could demonstrate a pattern of practice or other behavior which demonstrates a manifest in capacity or incompetency to practice medicine. K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(3). The Board has authority to enter into this **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** (hereinafter referred to as "Stipulation") to provide for settlement of all issues without the necessity of proceeding to a formal disciplinary hearing. K.S.A. 65-2838(b). Licensee understands and agrees that by entering into this **STIPULATION**, he is voluntarily waiving his right to a hearing, 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, to present any and all substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

5. The terms and conditions of the **STIPULATION** are entered into between the undersigned parties to become an Order of the Board, which shall not be bound until an authorized signature is affixed. Licensee's signature of this document creates a unilateral contract binding Licensee to the terms and conditions set forth in the **STIPULATION** whether or not the Board signs the document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

6. 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) Licensee admits that this **STIPULATION** and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the **STIPULATION** and is lawfully constituted to consider this matter. Licensee further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.

c) In lieu of the continuation of formal proceedings and/or findings by the Board, Licensee freely and voluntarily agrees to the following restrictions placed on his license to engage in the practice of medicine and surgery in the State of Kansas, and that he has read and understands the **STIPULATION**.

i) Licensee agrees to undergo a program of training consisting of an evaluation, remediation, and subsequent follow up evaluation of his medical skills. Said program shall be conducted by the University of Kansas Medical Center, Wichita, under the auspices of Dr. Andrew Barclay, the Head of Family Practices Department, and completed no later than October 1, 1993. This evaluation shall include the taking and successful completion of the SPEX Examination. A diagnostic report and all subsequent reports shall be provided to the Board. Licensee may practice medicine under the following restrictions: Licensee may treat only outpatients and only at the Hertzler Clinic. Licensee's patient load shall be limited to a maximum of twenty-five (25) patients per day, with a maximum total patient population limited to one thousand five hundred (1,500) patients. Licensee is to be subject to daily monitoring by a monitor approved by the Board for a minimum period of six months. Said monitor is to provide bi-weekly reports to the Board regarding his monitoring of Licensee's patient care. After the initial six month period, Licensee may request modification of the monitoring requirement. Licensee shall immediately surrender all hospital privileges in the state of Kansas subject to the provisions below. Licensee may only maintain assisting surgeon privileges at hospitals at which Hertzler Clinic physicians practice. Licensee shall not be allowed to practice surgery unmonitored as the primary

surgeon or in an unmonitored state. After one year Licensee may request modification of the hospital restriction privileges.

ii) If the diagnostic portion of the above described program of training indicates that licensee does not possess the requisite skills to practice and cannot successfully complete a remediation program, Licensee agrees to immediately cease the practice of medicine in the state of Kansas pending a Summary Hearing before the Board of Healing Arts at which the Board will consider the diagnostic evaluation and determine whether or not Licensee's license to practice medicine and surgery in the state of Kansas should be immediately revoked. Licensee agrees that no other evidence other than the diagnostic evaluation and this STIPULATION will be necessary for the Board to revoke his license at a Summary Hearing after receipt of the diagnostic evaluation.

iii) If the diagnostic portion of the above described program of training states that Licensee possesses sufficient medical skills that he may take a program of remediation (i.e. remedial training), then Licensee shall attend a course of training equivalent to a mini-residency on a part-time basis at Kansas University Medical Center-Wichita under the control of Dr. Andrew Barclay. If Licensee fails to participate and successfully complete the recommended remediation portion of the program of training, Licensee shall be deemed to be in violation of this STIPULATION AND AGREEMENT and shall have his license revoked immediately with a certificate from Dr. Barclay stating that the Licensee failed to successfully complete the remediation program.

iv) The monitoring <sup>requirements</sup> ~~period limitation~~ and the hospital privileges <sup>shall start on</sup> ~~limitation start date shall be~~ this Stipulation and Agreement and Enforcement Order is signed ~~the date of commencement of the remediation program described above.~~ by all parties. JAL  
LWS  
KHL

v) The cost of all of the above requirements shall be borne by the Licensee.

vi) The Board agrees to waive the cost of the investigation of this alleged violation of the Healing Arts Act.

vii) Licensee admits no deviation from the applicable standard of care in the treatment of the three above named patients.

d) Licensee's failure to comply with the provisions of the **STIPULATION** will result in the Board taking disciplinary action in compliance with the Kansas Administrative Procedure Act. Licensee acknowledges that proof submitted to the Board by an Affidavit or other form that Licensee has failed to meet the conditions of the **STIPULATION** or any provisions of Kansas law shall be deemed good and sufficient evidence to support the alleged violation to determine non-compliance with this **STIPULATION**. Any breach of the **STIPULATION** shall result in the Board issuing a Summary Revocation Order of Licensee's license to engage in the practice of medicine and surgery in the state of Kansas in which Licensee agrees not to contest, defend, or challenge in any civil or administrative proceeding.

e) Nothing in this agreement 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 unknown and are not covered under the conditions of this **STIPULATION** or subsequent acts which are unknown to the Board or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

f) This **STIPULATION** constitutes the entire agreement between the parties and may only be modified and/or amended by a subsequent document executed in the same manner by the parties.

g) Licensee 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 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**.

h) Licensee acknowledges that this document shall be deemed a public record upon Licensee's signing

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**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**

**Jerold D. Albright, M.D.**

this document, whether or not an authorized Board signature appears on same. Licensee further acknowledges that this document is a reportable document to the National Data Bank and the Federation of State Medical Boards.

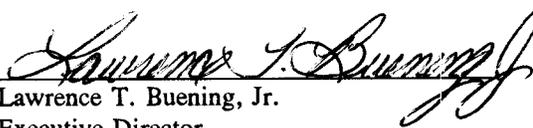
7. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to Kansas State Board of Healing Arts, ATTENTION: Office of the Disciplinary Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

8. 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. Licensee has an affirmative duty to notify the Board of changes in his personal professional status which would inhibit compliance with the above conditions in the STIPULATION.

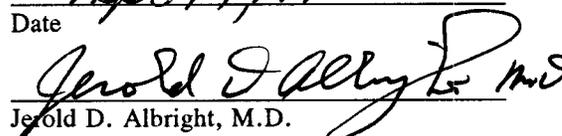
9. Upon execution of this STIPULATION by the affixing of a Board authorized signature below, the provisions of this STIPULATION shall become an Order of the Board and shall be deemed a proper and lawful Enforcement Order. K.S.A. 65-2838. This STIPULATION shall constitute the Board's Order when filed 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 19<sup>th</sup> day of April, 1993.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

April 19, 1993  
Date

  
Jerold D. Albright, M.D.  
Licensee

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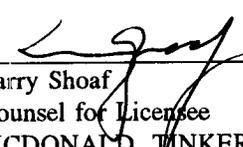
STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER  
Jerold D. Albright, M.D.

4-15-93

Date

Prepared and Approved by:

  
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Kevin K. LaChance  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603  
(913) 296-7413

  
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Larry Shoaf  
Counsel for Licensee  
MCDONALD, WINKER, SKAER,  
QUINN AND HERRINGTON, P.A.  
300 W. Douglas Ave, Suite 500  
Wichita, Kansas 67202-2909

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**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**  
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**CERTIFICATE OF SERVICE**

I, Kevin K. LaChance, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a true and correct copy of the attached **STIPULATION AND AGREEMENT and ENFORCEMENT ORDER** by United States Mail, postage prepaid, on this 15<sup>TH</sup> day of APRIL, 1993 to the following:

Jerold D. Albright, M.D.  
940 N. Tyler, Suite 100  
Wichita, Kansas 67212

Larry Shoaf  
MCDONALD, TINKER, SKAER,  
QUINN AND HERRINGTON, P.A.  
300 W. Douglas Ave, Suite 500  
Wichita, Kansas 67202-2909

  
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Kevin K. LaChance