

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

OCT 22 1996

In the Matter of)
)
Stephen S. Labash, M.D.)
Kansas License No. 04-22961)
_____)

Case No. 94-00168

**KANSAS STATE BOARD OF
HEALING ARTS**

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (hereinafter "Board") and Stephen S. Labash, M.D., (hereinafter "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 is licensed to practice medicine and surgery in the State of Kansas, having been issued license no. 04-22961 on December 8, 1989, last renewed June 19, 1996.

3. The Board has jurisdiction pursuant to K.S.A. 65-2836 and 65-2838(a) to revoke, suspend or otherwise limit a license if Licensee has committed an act in violation of the Healing Arts Act, specifically K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(b)(3). Under the provisions of K.S.A. 65-2838(b), the Board has the authority to enter into this Stipulation and Agreement and Enforcement Order (hereinafter "Stipulation").

4. It is the intent and purpose of this 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 voluntarily and affirmatively waives his right to a hearing pertaining to any matter under the

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER
Stephen S. Labash, M.D.

jurisdiction of the Board regarding his license to engage in the practice of medicine and surgery. Licensee voluntarily and knowingly waives his right 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.

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

6. Information provided to the Board indicates that Licensee may have committed acts which, if proven to be true, would constitute violations of the Healing Arts Act, K.S. 65-2801 et seq. Specifically, Licensee allegedly failed to obtain the informed consent of patient B.W. or patient's legal representatives, but rather "invoked his authority," to perform a mastectomy in lieu of the lumpectomy and axillary node dissection for which he had obtained patient's consent. Such conduct is in violation of K.S.A. 65-2836(b)¹ (unprofessional or dishonorable conduct or professional incompetency) as defined by K.S.A. 65-2837(a)(1)² (one or more instances of gross negligence) and K.S.A. 65-2837(b)(3)³ (failure to obtain consent of patient or patient's legal representatives).

¹ K.S.A. 65-2836 A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured, or an application for a license or for reinstatement may be denied upon a finding of the existence of any of the following grounds: (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

² K.S.A. 65-2837(a) "Professional incompetency" means: (1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board.

³ K.S.A. 65-2837(b) "Unprofessional conduct" means: (3) Assisting in the care or
(continued...)

7. This Stipulation shall not become binding on the Board until an authorized signature is affixed at the end of this document. Upon signature by Licensee to this document, it shall be deemed a unilateral contract and agreement and shall bind Licensee to all terms and conditions set forth in this Stipulation whether or not the Board signature is affixed to the document. Licensee acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

8. Licensee agrees this Stipulation and the filing of this document are in accordance with the requirements of law, that the Board has jurisdiction to consider this Stipulation and that the Board is lawfully constituted to consider this matter. Licensee further agrees that the Kansas Healing Arts Act, K.S.A. 65-2801 et seq., as set forth by statute and as recited in this Stipulation, is constitutional on its fact and as applied in this case.

9. In lieu of formal proceedings and/or findings by the Board, Licensee, by signature attached to this Stipulation, agrees to the following:

- a. Licensee is hereby formally and publicly reprimanded.
- b. Licensee shall not perform any mastectomy upon any patient without first obtaining a second opinion confirming both the diagnosis and proposed procedure. Such opinion must be rendered in writing and shall be provided by a licensee of equal or superior credentials to those of Licensee, including but not limited to a board certified obstetrician/gynecologist, oncologist or surgeon. The consulting licensee shall not otherwise be an interested party.

³ (...continued)
treatment of a patient without the consent of the patient, the attending physician or the patient's legal representatives.

c. Licensee agrees to pay a \$5,000.00 (Five thousand dollars) administrative fine, \$2,500 payable within thirty (30) days of Board acceptance of this Stipulation; the remaining \$2,500 is payable within sixty (60) days of Board acceptance of this Stipulation.

10. This Stipulation shall be in effect for a period of at least two (2) years, after which Licensee may petition the Board for modification or termination of this Stipulation.

11. Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate in compliance with the Kansas Administrative Procedure Act.

12. 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 Kansas Risk Management Law, K.S.A. 65-4921 et seq. that are unknown or not covered under the conditions of this Stipulation, or subsequent acts which are unknown to the Board to initiate formal proceedings based upon known or unknown allegations of the violations of the Healing Arts Act.

13. Licensee hereby releases the Board, its employees and agents, from all claims, to mean 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.

14. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Stipulation.

15. This Stipulation 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.

16. 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 prior to the complete or partial acceptance or rejection of any offer of settlement.

17. 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 which otherwise may not be admissible or admitted as evidence.

18. Licensee acknowledges that she has read this Stipulation and fully understand the contents.



STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER
Stephen S. Labash, M.D.

19. Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

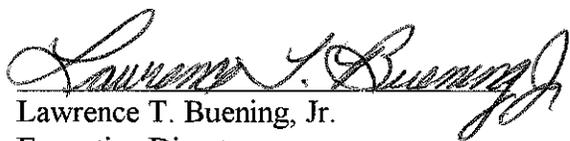
20. All correspondence or communication between Licensee and the Board shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Office of the Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

21. 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.

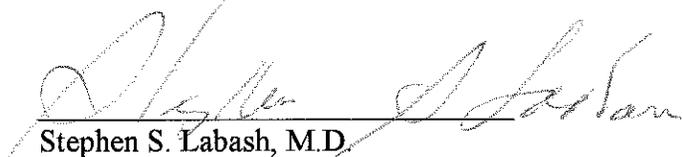
22. Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order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

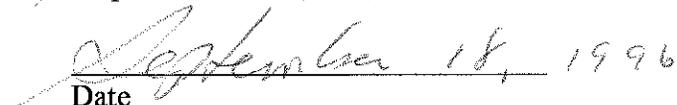
IN WITNESS WHEREOF, the parties have executed this agreement on this 22^d day of October, 1996.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

October 22, 1996
Date


Stephen S. Labash, M.D.


Date

Prepared by:


Lori Miskel McNett, #17223
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068
(913) 296-7413

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CERTIFICATE OF SERVICE

I, Lori Miskel McNett, hereby certify that on the 23rd day of October, 1996, a true and correct copy of the above and foregoing STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER was deposited in the United States mail, first class, postage prepaid, to the following:

Stephen C. Labash, M.D.
Oberlin Medical Arts, P.A.
902 West Columbia
P.O. Box 110
Oberlin, Kansas 67749

and the original was hand delivered to:

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

Vicki L. Gray for
Lori Miskel McNett