

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F. I. L. E. D

FEB. 16 1999

KANSAS STATE BOARD OF
HEALING ARTS

IN THE MATTER OF)
)
Bernard B. Megaffin, M.D.)
Kansas License No. 4-17294)
_____)

Case No. 99-00188

**STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel, ("Petitioner"), and Bernard B. Megaffin, M.D., ("Licensee"), by and through legal counsel, David H. Moses, and hereby stipulate and agree as follows:

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 the requirements of law; that the Board has jurisdiction to consider the Stipulation and is lawfully constituted to consider this matter to include consideration of this Stipulation.

3. Licensee further agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case, and further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.
4. 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 4-17294 on December 9, 1977. At some time before 1989, Licensee's license was canceled for failure to renew. In approximately 1989, Licensee's license was reinstated. 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 his license on June 18, 1998.
5. It is alleged by the Board that Licensee did commit the following acts, to wit:
 - a. Licensee established a physician-patient relationship with patient J.B. After the relationship was established, Licensee obtained J.B.'s home telephone number and telephoned J.B. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
 - b. Licensee established a physician-patient relationship with patient M.H. After the relationship was established, Licensee obtained M.H.'s home telephone number and telephoned M.H. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an

inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).

- c. Licensee established a physician-patient relationship with patient P.E. After the relationship was established, Licensee obtained P.E.'s home telephone number and telephoned P.E. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
- d. Licensee established a physician-patient relationship with patient S.S. After the relationship was established, Licensee obtained S.S.'s home telephone number and telephoned S.S. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
- e. Licensee established a physician-patient relationship with patient D.H. After the relationship was established, Licensee obtained D.H.'s home telephone number and telephoned D.H. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).

- f. Licensee established a physician-patient relationship with patient L.M. After the relationship was established, Licensee obtained L.M.'s home telephone number and telephoned L.M. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
- g. Licensee established a physician-patient relationship with patient T.D. After the relationship was established, Licensee obtained T.D.'s home telephone number and telephoned T.D. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
- h. Licensee established a physician-patient relationship with patient T.S. After the relationship was established, Licensee obtained T.S.'s home telephone number and telephoned T.S. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).
- i. Licensee established a physician-patient relationship with patient H.B. After the relationship was established, Licensee obtained H.B.'s home telephone number and telephoned H.B. at home on multiple occasions. Licensee did not

identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).

j. Licensee established a physician-patient relationship with patient T.F. After the relationship was established, Licensee obtained T.F.'s home telephone number and telephoned T.F. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).

k. Licensee established a physician-patient relationship with patient L.J. After the relationship was established, Licensee obtained L.J.'s home telephone number and telephoned L.J. at home on multiple occasions. Licensee did not identify himself during the calls. Such telephone calls were of an inappropriate tone. Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(b).

l. Pursuant to K.S.A. 65-2836(i), Licensee has the inability to practice the branch of healing arts for which he is licensed with reasonable skill and safety to patients by reason of illness, or as a result of his mental condition.

6. Such acts or conduct as set forth above constitute grounds for disciplinary action by the Board pursuant to the cited provisions of the Healing Arts Act. Under the provisions of K.S.A. 65-2838(a), the Board has jurisdiction to impose appropriate

discipline if a licensee to the Board has engaged in any commissions or omissions to bring licensee within the purview of K.S.A. 65-2836. Under the provisions of K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

7. Licensee voluntarily and affirmatively waives his right to a hearing pertaining to the matters involved in this Stipulation under the 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.
8. The terms and conditions of this 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. Upon signature by Licensee to this document, it shall be deemed a unilateral contract and agreement and shall bind Licensee to the terms and conditions set forth in the Stipulation whether or not the Board's signature is affixed to the document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

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

a. In lieu of the initiation of formal proceedings and/or the making of findings by the Board, Licensee, by signature attached to this Stipulation, hereby voluntarily agrees to the following disciplinary measures placed on his license to engage in the practice of medicine and surgery in the State of Kansas:

- 1) Licensee agrees that his license to practice the healing arts in the State of Kansas is hereby suspended indefinitely.
- 2) Licensee agrees that if he chooses to request termination of the Stipulation, he must make such request in writing to the Board, and he must meet the qualifications provided in paragraph 3, below.
- 3) Licensee agrees that in order to have the suspension terminated, a qualified health care provider must recommend that Licensee can practice the healing arts with reasonable skill and safety and poses no threat to the public safety and welfare. The qualified health care provider must be a person who has been approved by Licensee, the Board or its designee, and the KMS-MAP program. Licensee also agrees that in order to terminate the suspension, he must prove by clear and convincing evidence that he has been rehabilitated. Licensee's request for termination of the Stipulation will be governed by Vakas v. The Kansas Board of Healing Arts, 248 Kan. 589 (Kan.

1991) and all statutes and rules and regulations regarding the qualifications for licensure in effect at the time of the application. The licensee does not waive his right to claim that he is not restricted by statutes, rules and regulations passed or adopted subsequent to his execution of this Order.

- b. Licensee's failure to comply with the provisions of this Stipulation will result in the Board taking disciplinary action as the Board deems appropriate in compliance with the Kansas Administrative Procedure Act and/or the terms of this Stipulation.
- c. 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 not covered under the conditions of this Stipulation, or to initiate formal proceedings based upon unknown allegations of violations of the Healing Arts Act.
- d. 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.
- e. Licensee acknowledges that he has read this Stipulation and fully understands its contents. Licensee acknowledges that this Stipulation has been entered into freely and voluntarily given.

- f. Licensee releases the Board, 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 contents of this Stipulation.
- g. Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document and Board acceptance of the terms of this document, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.
- 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 this 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 this 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. All correspondence or communication between Licensee and the Board shall be by certified mail address to: Kansas State Board of Healing Arts, ATTENTION: Litigation Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.
- k. 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.
- l. 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 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 the 16th
day of February, 1999.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.
Lawrence T. Buening, Jr.
Executive Director

February 16, 1999
Date

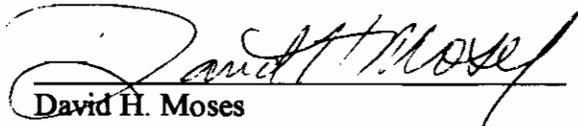
Bernard B. Megaffin
Bernard B. Megaffin, M.D.
Licensee

February 15, 1999
Date

Prepared and Approved as to form by:

Stacy L. Cook
Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Approved as to form by:



David H. Moses

CURFMAN, HARRIS, ROSE & SMITH, L.L.P.
Suite 800, First National Bank Building
106 West Douglas Avenue
Wichita, Kansas 67202-3391
Attorney for Licensee

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that on the 16th day of February, 1999,
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:

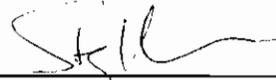
Bernard B. Megaffin
7610 East Oneida Court
Wichita, Kansas 67206

David H. Moses
Attorney for Licensee
106 W. Douglas Avenue
Wichita, Kansas 67202-3391

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

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER
Bernard B. Megaffin, M.D.



STACY L. COOK, #16385
Litigation Counsel

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

FEB 16 1999

IN THE MATTER OF)
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Bernard B. Megaffin, M.D.)
Kansas License No. 4-17294)
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Case No. 99-00188

**KANSAS STATE BOARD OF
HEALING ARTS**

**ADDENDUM TO STIPULATION AND
AGREEMENT AND ENFORCEMENT
ORDER**

This addendum is attached and incorporated fully herein to the Stipulation and Agreement and Enforcement Order (Stipulation) executed this day. All parties agree that the Stipulation shall be a public disciplinary record in its entirety, without redaction for information regarding KMS-MAP program participation upon Licensee's signing the Stipulation and acceptance by the Board. Further, all parties agree the Stipulation is reportable in its entirety without redaction to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

IN WITNESS WHEREOF, the parties have executed this agreement on the 13th

day of February, 1999.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.
Lawrence T. Buening, Jr.
Executive Director

February 13, 1999
Date

Bernard B. Megaffin, M.D.
Bernard B. Megaffin, M.D.
Licensee

February 13, 1999
Date

**ADDENDUM TO STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER
Bernard B. Megaffin, M.D.**