

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

OCT 17 1994

**KANSAS STATE BOARD OF
HEALING ARTS**

IN THE MATTER OF)
)
URBY DUANE SMITH, M.D.)
Kansas License No. 04-20504)
_____)

Case # 94-00071

STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel, and Urby Duane Smith, M.D. ("Licensee") and 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. 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. Licensee further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

2. 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 04-20504 on June 15, 1984. 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 28, 1994.

3. It is alleged that Licensee has committed acts or conduct detailed in the Petition to Revoke, Suspend, or Otherwise Limit Licensure filed March 2, 1994, which alleges violations of the provisions of the Healing Arts Act, K.S.A. 65-2801 et seq.; K.S.A. 65-2836. Specifically, it is alleged that Licensee violated the disciplinary provisions of K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(2) and K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(3). Licensee's license to practice medicine and surgery was suspended on an emergency basis to the extent that his practice was limited on February 9, 1994, to outpatient in-office and Prison Health Services practice.

4. Such acts or conduct as set forth above could constitute grounds for disciplinary action by the Board pursuant to the abovestated 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. Licensee voluntarily and affirmatively waives his right to a hearing pertaining to this matter. 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. If this matter is refiled pursuant to Paragraph 5(a)(ii), Licensee shall be entitled to exercise his due process rights listed immediately above.

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. 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.

5. 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 findings by the Board, Licensee, by signature attached to this Stipulation and Agreement, 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:

i) Documents provided to the Board indicate that Licensee has been accepted into the Family Practice Residency Program of Kansas University Medical Center for a course of training scheduled for completion August 31, 1997. Training with this program will be conducted at various hospitals. Licensee may practice medicine and surgery only within the practice parameters of the residency program. The temporary emergency limitation stated in paragraph three above is hereby stayed. The limitation pertaining to bone marrow aspirations and colonoscopies from the Final Order of the Board filed December 16, 1993 will remain in effect. However, Licensee may receive training under the direct supervision of another Board licensee in the course of the Family Residency Program.

Licensee may not "moonlight" outside of the residency program. However, one year from the date a Board authorized signature is placed on this document signifying Board acceptance of this Stipulation, Licensee may apply for modification of this agreement regarding "moonlighting". Licensee

agrees that he shall bear the burden of proof pertaining to showing that his practice outside the residency program is appropriate and that the public health, safety, and welfare will be properly protected. Licensee agrees to abide by the decision of the Board pertaining to the Board's decision regarding such a request.

ii) The Petition to Revoke, Suspend or Otherwise Limit Licensure filed March 2, 1994 on Case #94-00071 is hereby dismissed without prejudice. If Licensee fails to successfully complete the above stated residency program for any reason, Licensee's license to practice medicine and surgery shall be immediately limited to in-office patient care and care through Prison Health Services without formal Board action. The Board's receipt of written confirmation in any format from the Director of the residency program that Licensee failed to successfully complete the residency program shall constitute sufficient notification and confirmation to effect said limitation. The Board shall be free to reinstitute the disciplinary proceedings pertaining to case # 94-00071.

iii) Upon successful completion of the residency program, Licensee shall be placed on probation for a period of at least two years. During the period of probation, Licensee will be subject to monitoring by the Board disciplinary staff. The staff and/or its agents may review any and all of Licensee's patient care records, and observe Licensee's practice, without notice and as required or requested by the Board. Licensee understands that he may be subject to monitoring wherever his practice may be, but that movement of his practice outside the state of Kansas after completion of the residency is acceptable within the terms of this stipulation.

b) 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

and/or the terms of this Stipulation. It is further understood that if Licensee fails to fulfill any of the obligations under the Stipulation, the Board will be released from the Stipulation and shall be free to take whatever steps it deems appropriate to include exercise of its right to issue a Summary Revocation Order as set forth below. 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 provision of Kansas law shall be deemed good and sufficient evidence to support the alleged violation to determine noncompliance with this Stipulation. Any breach of the Stipulation may 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.

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 unknown and are not covered under the conditions of this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

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 in 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 and Agreement or the contents of this Stipulation and Agreement.

g) Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document, whether or not an authorized Board signature appears on same, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

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

7. 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 and Agreement or may become effective subsequent to the execution of this document.

8. 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 this 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 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.

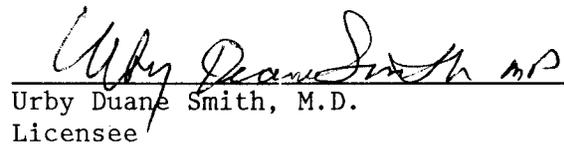
IN WITNESS WHEREOF, the parties have executed this agreement on the

17th day of October, 1994.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

October 17, 1994
Date


Urby Duane Smith, M.D.
Licensee

9/13/94
Date

Prepared and Approved As To Form By:


Kevin K. LaChance, #15058
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(913) 296-7413


Thomas G. Wright, #06115
Wright, Henson, Somers, Sebelius, Clark, & Baker
100 E. 9th Street, 2nd Floor
P.O. Box 3555
Topeka, Kansas 66601-3555
(913) 232-2200

CERTIFICATE OF SERVICE

I, Kevin K. LaChance, Disciplinary Counsel, certify that on this 15th day of October, 1994, a true and correct copy of the above **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** was deposited in the United States mail, first class, postage prepaid, addressed to the following:

Thomas E. Wright
Wright, Henson, Somers, Sebelius, Clark & Baker
2nd Floor, 100 E. 9th Street
P.O. Box 3555
Topeka, Kansas 66601-3555

Urby Duane Smith, M.D.
P.O. Box 366
Ellsworth, Kansas 67439

and the original was hand-delivered to:

Office of the Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068



Kevin K. LaChance

FILED

BEFORE THE KANSAS BOARD OF HEALING ARTS

SEP 22 1994

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
URBY DUANE SMITH, M.D.)
Kansas License No. 4-20504)
_____)

Case No. 94-00071

ORDER

Now on September 22, 1994 this matter comes on for pre-trial conference. Petitioner Kansas Board of Healing Arts (hereinafter "the Board") appears through its attorney, Kevin K. LaChance. Respondent Urby Duane Smith, M.D. (hereinafter "the respondent") appears through his attorney, Thomas E. Wright.

Thereupon the parties announce that on September 13, 1994 the respondent executed a Stipulation And Agreement And Enforcement Order. In the context of that document the respondent has agreed that certain disciplinary measures may be placed upon his medical license. This has been done with the understanding that the respondent shall participate in the Family Practice Residency Program of the Kansas University Medical Center until he has completed the training offered in that course on or about August 31, 1997. Additionally, in order for the respondent to participate in the Family Practice Residency Program it is necessary that the Emergency Order of Limitation filed herein on February 8, 1994 be stayed.

The parties have agreed that the respondent's participation in the aforementioned residency program is in the respondent's best interests. Therefore, after considering the statements of counsel it is determined that as of the date this

order is filed with the Board a stay is entered as to the Emergency Order of Limitation so as to permit the respondent to participate in the Family Practice Residency Program that is offered through the University of Kansas Medical Center. Provided that, under no circumstances shall the respondent perform any medical procedures which are not authorized in the Stipulation And Agreement And Enforcement Order.

In the event that either party determines the stay of the Emergency Order of Limitation should be lifted, a motion will be entertained in this action forthwith.

IT IS SO ORDERED.

Submitted by

Charles A. Briscoe
Charles A. Briscoe
Presiding Officer

CERTIFICATE OF SERVICE

I, Charles A. Briscoe, hereby certify that a copy of the above and foregoing was sent my facsimile transmission on September 22, 1994 to the following:

Kevin K. LaChance
235 S. Topeka Blvd.
Topeka, KS 66603-3068
FAX 913-296-0852

Thomas E. Wright
P.O. Box 3555
Topeka, KS 66601-3555
FAX 913-232-3344

Charles A. Briscoe
Charles A. Briscoe

WD SMITH.ORD

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

OCT 17 1994

**KANSAS STATE BOARD OF
HEALING ARTS**

IN THE MATTER OF)
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URBY DUANE SMITH, M.D.)
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STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel, and Urby Duane Smith, M.D. ("Licensee") and 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. 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. Licensee further notes that the Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

2. 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 04-20504 on June 15, 1984. 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 28, 1994.

3. It is alleged that Licensee has committed acts or conduct detailed in the Petition to Revoke, Suspend, or Otherwise Limit Licensure filed March 2, 1994, which alleges violations of the provisions of the Healing Arts Act, K.S.A. 65-2801 et seq.; K.S.A. 65-2836. Specifically, it is alleged that Licensee violated the disciplinary provisions of K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(2) and K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(3). Licensee's license to practice medicine and surgery was suspended on an emergency basis to the extent that his practice was limited on February 9, 1994, to outpatient in-office and Prison Health Services practice.

4. Such acts or conduct as set forth above could constitute grounds for disciplinary action by the Board pursuant to the abovestated 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. Licensee voluntarily and affirmatively waives his right to a hearing pertaining to this matter. 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. If this matter is refiled pursuant to Paragraph 5(a)(ii), Licensee shall be entitled to exercise his due process rights listed immediately above.

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. 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.

5. 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 findings by the Board, Licensee, by signature attached to this Stipulation and Agreement, 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:

i) Documents provided to the Board indicate that Licensee has been accepted into the Family Practice Residency Program of Kansas University Medical Center for a course of training scheduled for completion August 31, 1997. Training with this program will be conducted at various hospitals. Licensee may practice medicine and surgery only within the practice parameters of the residency program. The temporary emergency limitation stated in paragraph three above is hereby stayed. The limitation pertaining to bone marrow aspirations and colonoscopies from the Final Order of the Board filed December 16, 1993 will remain in effect. However, Licensee may receive training under the direct supervision of another Board licensee in the course of the Family Residency Program.

Licensee may not "moonlight" outside of the residency program. However, one year from the date a Board authorized signature is placed on this document signifying Board acceptance of this Stipulation, Licensee may apply for modification of this agreement regarding "moonlighting". Licensee

agrees that he shall bear the burden of proof pertaining to showing that his practice outside the residency program is appropriate and that the public health, safety, and welfare will be properly protected. Licensee agrees to abide by the decision of the Board pertaining to the Board's decision regarding such a request.

ii) The Petition to Revoke, Suspend or Otherwise Limit Licensure filed March 2, 1994 on Case #94-00071 is hereby dismissed without prejudice. If Licensee fails to successfully complete the above stated residency program for any reason, Licensee's license to practice medicine and surgery shall be immediately limited to in-office patient care and care through Prison Health Services without formal Board action. The Board's receipt of written confirmation in any format from the Director of the residency program that Licensee failed to successfully complete the residency program shall constitute sufficient notification and confirmation to effect said limitation. The Board shall be free to reinstitute the disciplinary proceedings pertaining to case # 94-00071.

iii) Upon successful completion of the residency program, Licensee shall be placed on probation for a period of at least two years. During the period of probation, Licensee will be subject to monitoring by the Board disciplinary staff. The staff and/or its agents may review any and all of Licensee's patient care records, and observe Licensee's practice, without notice and as required or requested by the Board. Licensee understands that he may be subject to monitoring wherever his practice may be, but that movement of his practice outside the state of Kansas after completion of the residency is acceptable within the terms of this stipulation.

b) 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

and/or the terms of this Stipulation. It is further understood that if Licensee fails to fulfill any of the obligations under the Stipulation, the Board will be released from the Stipulation and shall be free to take whatever steps it deems appropriate to include exercise of its right to issue a Summary Revocation Order as set forth below. 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 provision of Kansas law shall be deemed good and sufficient evidence to support the alleged violation to determine noncompliance with this Stipulation. Any breach of the Stipulation may 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.

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 unknown and are not covered under the conditions of this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act, including the information which provides the basis for this Stipulation.

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e) Licensee acknowledges that he has read this Stipulation and fully understands its contents. Licensee acknowledges that this Stipulation has been entered in 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 and Agreement or the contents of this Stipulation and Agreement.

g) Licensee acknowledges that this document shall be deemed a public disciplinary record upon Licensee's signing this document, whether or not an authorized Board signature appears on same, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

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

7. 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 and Agreement or may become effective subsequent to the execution of this document.

8. 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 this 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 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.

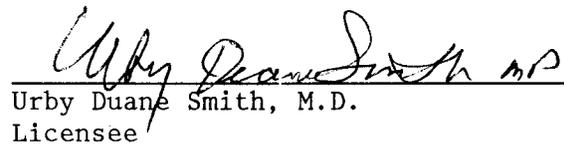
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17th day of October, 1994.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

October 17, 1994
Date


Urby Duane Smith, M.D.
Licensee

9/13/94
Date

Prepared and Approved As To Form By:


Kevin K. LaChance, #15058
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(913) 296-7413


Thomas G. Wright, #06115
Wright, Henson, Somers, Sebelius, Clark, & Baker
100 E. 9th Street, 2nd Floor
P.O. Box 3555
Topeka, Kansas 66601-3555
(913) 232-2200

CERTIFICATE OF SERVICE

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Thomas E. Wright
Wright, Henson, Somers, Sebelius, Clark & Baker
2nd Floor, 100 E. 9th Street
P.O. Box 3555
Topeka, Kansas 66601-3555

Urby Duane Smith, M.D.
P.O. Box 366
Ellsworth, Kansas 67439

and the original was hand-delivered to:

Office of the Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068


Kevin K. LaChance

FILED

BEFORE THE KANSAS BOARD OF HEALING ARTS

SEP 22 1994

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
URBY DUANE SMITH, M.D.)
Kansas License No. 4-20504)
_____)

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The parties have agreed that the respondent's participation in the aforementioned residency program is in the respondent's best interests. Therefore, after considering the statements of counsel it is determined that as of the date this

order is filed with the Board a stay is entered as to the Emergency Order of Limitation so as to permit the respondent to participate in the Family Practice Residency Program that is offered through the University of Kansas Medical Center. Provided that, under no circumstances shall the respondent perform any medical procedures which are not authorized in the Stipulation And Agreement And Enforcement Order.

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IT IS SO ORDERED.

Submitted by

Charles A. Briscoe
Charles A. Briscoe
Presiding Officer

CERTIFICATE OF SERVICE

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Kevin K. LaChance
235 S. Topeka Blvd.
Topeka, KS 66603-3068
FAX 913-296-0852

Thomas E. Wright
P.O. Box 3555
Topeka, KS 66601-3555
FAX 913-232-3344

Charles A. Briscoe
Charles A. Briscoe

WD SMITH.ORD

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

FEB 09 1994

**KANSAS STATE BOARD OF
HEALING ARTS**

IN THE MATTER OF)
URBY DUANE SMITH, M.D.)
Kansas Registration #04-20504)
_____)

Case No. 94-00071

EMERGENCY ORDER OF LIMITATION

COMES NOW, this 5th day of February, 1994, the Kansas State Board of Healing Arts (hereinafter "Board") to consider the Emergency Petition filed in the above captioned case on February 2, 1994, concerning Dr. Urby Duane Smith, M.D., (hereinafter "Respondent"). The Board is represented by its Associate Counsel, Kevin K. LaChance, (hereinafter "Petitioner"). Licensee appears in person and is represented by Counsel, Mr. Thomas Wright.

FINDINGS OF FACT

1. After consideration of evidence and arguments of Petitioner and consideration of the counter arguments of Respondent, the Board makes the following Findings of Fact:

A. Petitioner filed an Emergency Petition on February 2, 1994, requesting that Respondent's license be suspended or otherwise limited on an emergency basis.

B. Counsel for Respondent was served on the 2nd day of February, 1994 with a copy of the Emergency Petition and on the 3rd day of February, 1994 with a copy of the Notice of Hearing on said Petition. On the same days respectively, a copy of the Petition and Notice of the Hearing were mailed to Respondent.

Respondent and counsel both appeared at the hearing.

C. Respondent is or has been entitled to engage in the practice of medicine and surgery in the state of Kansas, having been issued license number 04-20504 on June 15, 1984. Respondent's license was canceled on August 1, 1989 and subsequently reinstated August 9, 1990. Respondent has since 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 16, 1993.

D. There is substantial evidence to indicate that Respondent's practice privileges were suspended at Platte Valley Medical Center, Brighton, Colorado on or about October 26, 1989, (confidential)

The evidence further indicates that a Final Order of the Board dated December 11, 1993 and filed December 16, 1993, found that Respondent had committed repeated instances of deviations from the standard of care constituting ordinary negligence. (confidential)

into evidence by Petitioner from the Colorado Personalized (confidential)

(confidential)

CONCLUSIONS OF LAW

2. The Board makes the following conclusions of law:

A. The Board has authority to temporarily suspend or temporarily limit Licensee's license pursuant to K.S.A. 65-2838(c) and K.S.A. 77-536.

B. Petitioner has presented information and evidence providing cause to believe that Respondent has committed acts which would violate K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(2), in that he has committed multiple acts of professional incompetency in committing repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence.

C. The Petitioner has presented evidence providing cause to believe that Respondent has violated K.S.A. 65-2836(b) as defined by K.S.A. 65-2837(a)(3) in that the Licensee has committed an act or acts of professional competency by engaging in pattern of practice or other behavior which demonstrates a manifest incompetence to practice medicine.

D. The evidence presented by Petitioner provides

reasonable cause to believe that a continuation of Respondent's activities as above described from 1989 to date constitutes an ongoing immediate and/or imminent danger to the public, as envisioned under the provisions of K.S.A. 65-2838(c) and K.S.A. 77-536.

THEREFORE, there being cause to believe Respondent's continued unlimited practice of medicine and surgery presents an immediate and/or imminent danger to the public health it is the order of the Board that:

1. Board staff is directed to proceed with formal proceedings and file a Petition to Revoke, Suspend or Otherwise Limit Licensee's License.

2. Licensee is hereby limited from inpatient and emergency room medicine practiced in hospitals, this being the least restrictive action in order to prevent immediate danger to the public health and safety. Licensee may continue his office practice of medicine and surgery in an out-patient manner and may continue to practice in compliance with his Prison Health Services contract insofar as it complies with the abovestated limitation.

IT IS SO ORDERED.

This order is effective when filed with the Office of the Executive Director, Kansas State Board of Healing Arts. Dated this 9th day of February, 1994.

KANSAS BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

CERTIFICATE OF SERVICE

I, Lawrence T. Buening, Jr., Executive Director, Kansas State Board of Healing Arts, hereby certify that I served a true and correct copy of the attached **EMERGENCY ORDER OF LIMITATION** by United States Mail, postage prepaid, on this 9th day of February, 1994 to the following:

Thomas E. Wright
Wright, Henson, Somers, Sebelius, Clark & Baker
Commerce Bank Building
100 S.E. 9th Street, Second Floor
P.O. Box 3555
Topeka, Kansas 66601-3555

Urby Duane Smith, M.D.
P.O. Box 366
Ellsworth, Kansas 67439

and a copy was hand-delivered to:

Kevin K. LaChance
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068


Lawrence T. Buening, Jr.