

**FILED**

**JUN 28 1995**

**KANSAS STATE BOARD OF HEALING ARTS**

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

**IN THE MATTER OF** )  
**SUBPOENA NO. 1417** )  
[reissued no. 1473] )  
and )  
**ARTHUR P. TALIAFERRO, M.D.** )  
Kansas License No. 11183 )  
\_\_\_\_\_ )

Case no.: 95-00196

**FINAL ORDER DENYING REQUEST TO MODIFY OR  
QUASH SUBPOENA AND DENYING  
REQUEST FOR CONTINUANCE**

**NOW ON THIS 23rd DAY OF JUNE, 1995**, comes on for hearing the request of Dr. Arthur P. Taliaffero, M.D., to modify or quash a subpoena issued, and a request to continue this matter. The Board appears by and through Kevin K. LaChance, Disciplinary Counsel. Dr. Taliaffero does not appear in person or through counsel. After reviewing the record before it, the Board, sitting as Presiding Officer, finds as follows:

**Findings of Fact**

1. Subpoena number 1417 was issued February 7, 1995. The subpoena directed Dr. Taliafferro to produce all patient records pertaining to four specific patients. Service of the subpoena was by certified mail sent February 8, 1995.
2. By way of letter dated February 22, 1995, Dr. Taliafferro requested that the subpoena be quashed.
3. Subpoena number 1417 was modified and reissued as subpoena number 1473. Subpoena number 1473 directed Dr. Taliafferro to produce patient records for the four patients, with the option of substituting a summary of care rather than the actual

patient records relating to care occurring prior to June 1969.

4. Dr. Taliaferro requested that the reissued subpoena be quashed, alleging that the investigation was motivated by bias and prejudice against him on the basis of his race. In his request to quash, Dr. Taliaferro requested a response to numerous questions regarding the investigation. Specifically, Dr. Taliaferro sought information relating to the identity of the persons who had reviewed his prescription profiles and to the learned treatises and supporting authorities used to review such profiles.

5. A hearing before the Board was set for April 29, 1995. A Notice of Conference Hearing was served upon Dr. Taliaferro. Dr. Taliaferro advised by letter dated April 17, 1995 that he was not available on that date and requested a continuance. He renewed his request for information as described above.

6. Dr. Taliaferro wrote a letter dated May 11, 1995 and addressed to Mr. Lawrence T. Buening, Jr., Executive Director, once again requesting answers to the same questions previously raised. Additionally, Dr. Taliaferro sought copies of certain documents from the Board.

7. Dr. Taliaferro was advised by letter dated May 18, 1995 that the questions would not be answered. Dr. Taliaferro was further advised that discovery would be appropriate only after a determination of grounds to commence a disciplinary action. Further, Dr. Taliaferro was advised that any evidence of substance regarding his accusation that the investigation was racially motivated should be brought to the attention of the Board's General Counsel.

8. Dr. Taliaferro's request for continuance was granted at the April 29 Board meeting. The hearing on the motion to quash the subpoena was set for June 23, 1995. A Notice of Conference Hearing was served upon Dr. Taliaferro May 19, 1995.

9. Dr. Taliaferro notified the Board by letter dated June 20, 1995 that he would not appear before the Board on June 23. He also requested a continuance of the hearing until the Board forwards the information he requested. The letter was received in the Board office June 22, 1995.

### **Conclusions of Law**

10. The Board is responsible for enforcing the Kansas healing arts act. Specific authority is given to the Board to make all necessary investigations relating to the healing arts act. Administrative agencies which enforce statutes intended to protect the public health, safety and welfare need not show probable cause for commencing an investigation. An agency may investigate merely on suspicion that the law is being violated, or even to assure itself that the law is not being violated.

11. An agency subpoena is valid if it is authorized, definite and reasonably relevant to the subject matter.

12. The Board is authorized pursuant to K.S.A. 65-2839a to issue subpoenas compelling the production of documents or other physical evidence relating to medical competence, unprofessional conduct, or mental or physical ability of a licensee safely to practice the healing arts.

13. The subpoena in question is authorized, appears sufficiently definite in scope to determine what evidence is demanded, and appears relevant to the subject matter of the healing arts act, including grounds for discipline. The subpoena is therefore a valid demand with which Dr. Taliaferro must comply.

14. Neither due process nor any other provision of law authorizes Dr. Taliaferro to condition his compliance with the subpoena upon first receiving answers to his requests for information. Due process rights to confrontation and discovery do not begin

at the onset of an investigation. Such rights, to the extent they exist at all, arise only after the matter becomes accusatory as a disciplinary hearing. In this case, the matter is an investigation only. Challenges to the subpoena are limited to the grounds stated in K.S.A. 65-2839a.

15. Continuances may be granted upon request and in the sound discretion of a presiding officer. In this case, a prior request for continuance was granted at Dr. Taliaferro's request. That request was based upon the doctor's statement that he had a prior commitment. The immediate request for continuance is based upon a condition he seeks to impose upon the Board relating to his compliance with the subpoena. The request appears to achieve only indefinite delay in this matter. Further, the request was received in the Board office one day prior to the hearing date. Finally, there is no indication of an unforeseen event which caused Dr. Taliaferro to be unavailable. As this matter has been pending for several months already, and in light of the decision announced herein regarding Dr. Taliaferro's request for information, justification for the continuance is outweighed by the legitimate interest of the Board to conduct investigations without undue delay or impairment.

**IT IS, THEREFORE, ORDERED THAT** Dr. Taliaferro's request for continuance of this matter is denied.

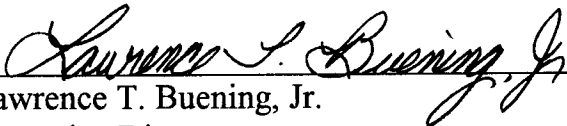
**IT IS FURTHER ORDERED THAT** Dr. Taliaferro's request to quash the subpoena is denied. Dr. Taliaferro is ordered fully and completely to comply with the subpoena by delivering the documents described therein to the Board's agent identified therein on or before the close of the fifth calendar day following service of this Final Order.

**IT IS FURTHER ORDERED THAT** Dr. Taliaferro's request for information and

documents is denied until such time as this matter becomes a disciplinary proceeding, if ever.

ENTERED THIS 28<sup>th</sup> DAY OF JUNE, 1995.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

**Notice Regarding Relief From this Order**

This is a final order. Relief may be sought by filing a Petition for Judicial Review in the District Court for Shawnee County, Kansas. Such petition is not timely unless filed within 30 days of service of this order. A party may request the Board to reconsider its order. A request for reconsideration is not a prerequisite to judicial review. Any request for reconsideration must state its grounds, and be filed with the Board within 15 days following service of this order.

**CERTIFICATE OF SERVICE**

I certify that the above and foregoing Final Order Denying Request to Quash or Modify Subpoena and Denying Request for Continuance was served this 28<sup>th</sup> day of June, 1995, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Arthur P. Taliaferro, M.D.  
2211 North 13th Street  
Kansas City, Kansas 66104

