

99-050

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THIRD JUDICIAL DIST.
TOPEKA, KS.

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, *ex rel.*,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
)
VIAPRO, INC., d/b/a VIAPRO, and)
WILLIAM CLEMANS, M.D.,)
Defendants.)

Case No. 99 C 750

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 11th day of July, 2001, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through David L. Harder, Assistant Attorney General. Defendant William Clemans, M.D. appears by and through Kevin L. Diehl, Ralston & Pope, L.L.C. There are no other appearances.

WHEREUPON, the parties appearing before the Court advise that they have stipulated and agree to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant admits the Court has personal and subject matter jurisdiction.

4. Defendant William Clemans M.D. is a medical doctor and a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definitions of K.S.A. 50-624(c).

5. At all relevant times hereto, Defendant is responsible for the acts of his employees, agents and representatives under the doctrine of *respondeat superior*. Defendant Clemans at all times material hereto denies that Viapro, Inc. or any other entity was his agent, employee or representative for any transactions that may have occurred on or about March 12, 1999.

6. At all relevant times hereto, Defendant Clemans was enjoined from practicing the healing arts in the State of Kansas pursuant to a Journal Entry of Default Judgment filed January 5, 1999, in State, ex rel. Board of Healing Arts v. Cymedic Health Group, Inc., and William Joseph Clemans, M.D., Shawnee County Case No. 98CV1443.

7. The Attorney General alleges Defendant William Clemans, M.D. committed unconscionable acts and practices in violation of K.S.A. 50-627(b) and in reckless disregard for the safety and welfare of Kansas consumers who entered into consumer transactions to purchase prescription-only medications, in that, on or about the 12th day of March, 1999:

- a. Defendant Clemans engaged in the practice of the healing arts in Kansas even though he was not licensed by the Kansas State Board of Healing Arts, and was in fact enjoined from doing so; and

- b. Defendant Clemans prescribed and dispensed the prescription-only medication, Viagra, to a Kansas consumer without requiring an examination or actual consultation to determine the medical need for Viagra and to explain the proper administration, potential side effects, dangers and contraindications of Viagra.

8. Defendant denies each of the Attorney General's allegations, but agrees to this Consent Judgment without trial or adjudication of any issue of fact or law in order to bring this matter to a mutually beneficial conclusion. Specifically, Defendant denies that he was involved in any way or manner in any consumer transactions to purchase prescription medication on or about March 12, 1999. Specifically, Defendant Clemans states that he had terminated his relationship with Viapro, Inc. prior to March 12, 1999 and neither Viapro, Inc. nor any other organization or entity had authority to utilize Dr. Clemans' name in prescribing or obtaining the drug Viagra for sale to a Kansas consumer. Further, the prescription number that was utilized in the alleged sale of March 12, 1999 in the state of Kansas was not the prescription number of William Clemans, M.D. Further, Defendant Clemans wishes to enter into this Journal Entry of Consent Judgment instead of litigating this matter because of underlying medical conditions for which he is being treated, which render litigation impossible.

9. Defendants agree to refrain from and to be permanently enjoined from engaging in violations of the Kansas Consumer Protection Act described in paragraph seven (7) above. Defendant agrees that engaging in such acts after the date of this Consent Judgment shall constitute a violation of this Order.

10. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant. Defendant Clemans specifically denies that the defendant Viapro, Inc. or any other entity was his employee, agent or representative for the alleged sales on March 12, 1999 into the State of Kansas.

11. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

12. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

13. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

14. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

15. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any

representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

16. The parties understand that this Consent Judgment shall not be construed as an admission by the Defendant of any matters alleged in the Petition filed in this matter and Defendant specifically denies each and every allegation contained herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court.

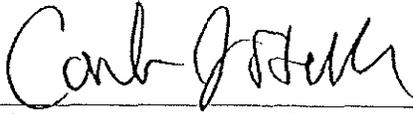
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant William Clemans, M.D. and in favor of the Plaintiff. The Court's Order herein shall not effect Defendant VIAPRO, INC., d/b/a/ Viapro, or any of the allegations against VIAPRO, INC. in the Plaintiff's Petition.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

15/ _____
Judge of the District Court

PREPARED AND APPROVED BY:



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Attorney General



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APPROVED BY:



William Clemans, M.D.
Defendant



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