

**BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS**      **KS State Board of Healing Arts**

In the Matter of	)	
<b>Mark Albers D.C.</b>	)	
	)	Docket No. 08-HA- <u>00018</u>
Kansas License No. 01-03881	)	
_____	)	

**CONSENT ORDER**

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through Dan Riley , Associate Counsel ("Petitioner"), and Mark Albers D.C., ("Licensee"), and move the Board for approval of a Consent Order affecting Licensee's license to practice as a Doctor of Chiropractic in the State of Kansas.

The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 12776 Chisholm Trail, Andover, Kansas 67002.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-03881 on January 02, 1988. Licensee has held a current license to engage in the practice of chiropractic in the State of Kansas, having last renewed his license on approximately January 4, 2007.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the healing arts, specifically the practice of chiropractic, K.S.A. 65-2801 *et seq.*
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the

Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing and/or to dispute or otherwise contest the allegations contained herein before the board. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. The terms and conditions of the Consent Order 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 Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about January 9, 2006, an investigation was initiated following the receipt of a written complaint alleging that Dr. Albers had engaged in misleading advertising. The investigation indicated that Dr. Albers had been

practicing the “Body Restoration Technique” (BRT) which upon review was found to be experimental in nature and therefore prohibited by K.S.A. 65-2837(b)(27) which defines “Unprofessional conduct” as “Using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers”.. In addition, review of the patient records indicated Dr. Albers failed to adequately document patient charts as required by K.A.R. 100-24-1.

10. Pursuant to K.S.A. 65-2836, the Board has grounds to impose disciplinary action against Licensee.

11. According to K.S.A. 65-2838, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

12. In lieu of concluding the pending formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and monitoring provisions with respect to his license to engage in the practice of chiropractic in Kansas:

**[a. Immediately Cease and Desist use of the “Body Restoration Technique” and any and all related advertising until further Order of the Board.**

**[b. Random chart monitoring by Coding Compliance Inc., at the expense of the licensee until further Order of the**

**Board. On or before the last day of each month, for a period not less than 6 months, the licensee shall provide the monitor with a list of all patients seen during that month. The monitor shall randomly select not less than 10% of all patient charts to be reviewed, and shall prepare and submit a monthly report for the board. The report shall indicate whether documentation by the licensee is adequate and meets the minimum standards established by K.A.R. 100-24-1. The licensee may petition the Board for termination of this requirement upon full compliance and completion of 6 months monitoring.**

13. Any period of time during which the licensee is not actively practicing chiropractic in Kansas shall not be counted towards the mandatory 6 month monitoring requirement and shall serve to toll the monitoring provisions of this Order. Licensee shall notify the Board of any changes related to the location of his practice and provide written notification within ten (10) days of any change.

14. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

15. Nothing in the Consent Order 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 known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

16. Licensee hereby releases the Board, its individual members (in their official and personal capacities), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to, those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge Releasees 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 Releasees.

17. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any other reporting entities authorized to receive disclosure of the Consent Order.

18. This Consent Order, when signed by both parties, 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.

19. 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 before the complete or partial acceptance or rejection of any offer of settlement.

20. Licensee, by signature to this document waives any objection to the participation of the Board members, including the Disciplinary Panel, and General Counsel in the consideration of this offer of settlement. Licensee agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceeding on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

21. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

22. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

23. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

24. Licensee shall obey all federal, state and local laws and rules governing the practice of the healing arts in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

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

26. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that in lieu of concluding the presently pending formal proceedings, Licensee, by his signature affixed to this Consent Order, voluntarily agrees to the following disciplinary action and monitoring provisions regarding his license to practice chiropractic in Kansas:

**[a. Immediately Cease and Desist use of the "Body Restoration Technique" and any and all related advertising until further Order of the Board.**

**[b Random chart monitoring by Coding Compliance Inc., at the expense of the licensee until further Order of the Board.** On or before the last day of each month, for a period not less than 6 months, the licensee shall provide the monitor with a list of all patients seen during that month. The monitor shall randomly select not less than 10% of all patient charts to be reviewed, and shall prepare and submit a monthly report for the board. The report shall indicate whether documentation by the licensee is adequate and meets the minimum standards established by K.A.R. 100-24-1. The licensee may petition the Board for termination of this requirement upon full compliance and completion of 6 months monitoring.

IT IS SO ORDERED on this 20<sup>th</sup> day of August, 2007.

**FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:**

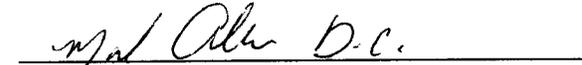
  
Lawrence T. Buening, Jr.  
Executive Director

**PREPARED AND APPROVED BY:**



Dan Riley # 15658  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065  
(785) 296-7413

**AGREED TO BY:**

  
Mark Albers D.C.  
Licensee

1-23-07  
Date

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing  
CONSENT ORDER was served on the 21<sup>st</sup> day of August, 2007 by the  
United States mail, first class postage prepaid and addressed to:

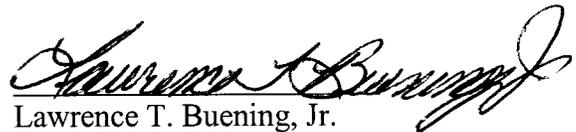
Mark Albers D.C.  
12776 Chisholm Trail  
Andover, Kansas 67002

and the original was hand filed with:

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

and a copy was hand delivered to:

Dan Riley  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka, Boulevard  
Topeka, Kansas 66603-3068

  
Lawrence T. Buening, Jr.  
Executive Director