

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

In the Matter of)
)
Michael P. Estivo, D.O.) Docket No. 11-HA 00079
)
Kansas License No. 05-23235)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Janith A. Lewis, Associate Litigation Counsel (“Petitioner”), and Michael P. Estivo, D.O. (“Licensee”), by and through his counsel, David W. Steed, and move the Board for approval of a Consent Order affecting Licensee’s license to practice osteopathic medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: P.O. Box 780129, Wichita, Kansas 67278.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 05-23235 on approximately June 15, 1990. Licensee’s license is active.
3. 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 osteopathic medicine and surgery. K.S.A. 65-2801 et seq. and K.S.A. 65-2869.
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

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provided by K.S.A. 77-505 and 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 the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Licensee voluntarily and knowingly waives his right to a hearing. 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.
7. 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.
8. The Board has received information and investigated the same, and has reason to believe there are grounds, pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. Licensee maintains a website, www.bodysculptingwichita.com, for his practice at Aesthetic Body Sculpting.

10. The website states that Aesthetic Body Sculpting is “Wichita’s most experienced Smart Lipo Clinic,” which is a statement of superiority.
11. The website also states, “Dr. Estivo is a fully trained surgeon and is Board Certified in cosmetic surgery and in anti-aging medicine.” However, the website fails to identify the official name of the specialty board that granted Licensee board certification in anti-aging medicine.
12. Licensee’s acts constitute unprofessional or dishonorable conduct as set forth in K.S.A. 65-2836(b). Specifically, Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(7), by advertising professional superiority or the performance of professional services in a superior manner.
13. Licensee’s acts constitute unprofessional or dishonorable conduct as set forth in K.S.A. 65-2836(b). Specifically, Licensee violated K.S.A. 65-2836(b), as further defined by K.A.R. 100-22-4(a) and (b), by representing to the public that the licensee is credentialed by a specialty board other than a state licensing agency, through the use of the description “board-certified”, but failing to identify the official name of the specialty board that has granted the credential to the licensee.
14. Licensee violated K.S.A. 65-2836(k), in that Licensee violated any lawful rule and/or regulation promulgated by the Board. Specifically, Licensee violated K.A.R. 100-22-4(a).
15. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or

- otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
16. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Healing Arts Act.
 17. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
 18. All pending investigation materials (and specifically materials in investigation number 10-00750) regarding Licensee were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 25 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
 19. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of osteopathic medicine and surgery:

EDUCATION/SELF-STUDY

- a. Licensee shall perform a thorough review of either the American Academy of Orthopaedic Surgeons' (AAOS) Standards of Professionalism regarding advertising or the published advertising standards of the American Osteopathic Board of Orthopedic Surgery (AOBOS).

- b. Licensee shall write a paper summarizing either the AAOS's advertising standards or the AOBOS's advertising standards and describing how those standards are relevant to the advertising in his own practice.
- c. Licensee shall submit the paper to the Board on or before March 31, 2011, by sending it to the: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson Street, Lower Level-Suite A, Topeka, Kansas 66612.

FINES / COSTS

- d. Licensee is hereby fined \$500. Such fine is payable in full to the "Kansas State Board of Healing Arts" on or before April 30, 2011.

20. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice osteopathic medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in Paragraph 19 above. The Board acknowledges that, at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

21. Nothing in this 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. 64-4921 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.
22. Licensee hereby releases the Board, its individual members (in their official and personal capacity), 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 the 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 the Releasees.
23. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.

24. 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.
25. 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.
26. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Janith A. Lewis, Associate Litigation Counsel, 800 SW Jackson Street, Lower Level-Suite A, Topeka, Kansas 66612.
29. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic medicine and surgery 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.
30. 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.

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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.

31. This Consent Order constitutes disciplinary action.

32. 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:

EDUCATION/SELF-STUDY

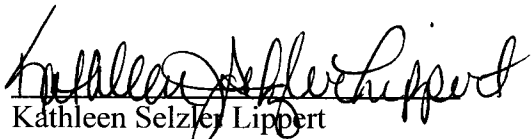
- a. Licensee shall perform a thorough review of either the American Academy of Orthopaedic Surgeons' (AAOS) Standards of Professionalism regarding advertising or the published advertising standards of the American Osteopathic Board of Orthopedic Surgery (AOBOS).
- b. Licensee shall write a paper summarizing either the AAOS's advertising standards or the AOBOS's advertising standards and describing how those standards are relevant to the advertising in his own practice.
- c. Licensee shall submit the paper to the Board on or before March 31, 2011, by sending it to the: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson Street, Lower Level-Suite A, Topeka, Kansas 66612.

FINES / COSTS


Licensee is hereby fined \$500. Such fine is payable in full to the "Kansas State Board of Healing Arts" on or before April 30, 2011.

IT IS SO ORDERED on this 19 day of April, 2011.

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

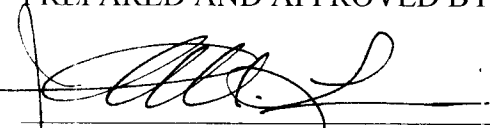

Kathleen Selzler Lippert
Executive Director

4-30-11
Date

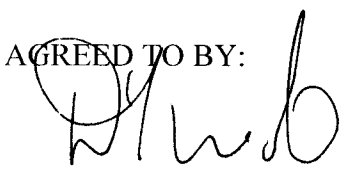

Michael P. Estivo, D.O.
Licensee

4/15/11
Date

PREPARED AND APPROVED BY:


Janith A. Lewis, #18115
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Street, Lower Level-Suite A
Topeka, Kansas 66612
785-368-7257
785-368-8210 fax

AGREED TO BY:


David W. Steed
Klenda, Mitchell, Austerman & Zuercher, LLC

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1605 SW 37th Street
Topeka, Kansas 66611-2563
785-267-4561
785-267-3183 fax

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 19th day of April, 2011, to the following:

Michael P. Estivo, D.O.
Licensee
P.O. Box 780129
Topeka, KS 67278

David W. Steed
Klenda, Mitchell, Austerman & Zuercher, LLC
1605 SW 37th Street
Topeka, Kansas 66611-2563

And the original was filed with the Office of the Executive Director:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson Street, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Janith A. Lewis
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Street, Lower Level-Suite A
Topeka, Kansas 66612

Melissa Massey
Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson Street, Lower Level-Suite A
Topeka, Kansas 66612

