

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

IN THE MATTER)
)
OF WILLIAM A. FISHER, D.C.)
)
_____)

APR 19 1993

Case No. **KANSAS STATE BOARD OF
HEALING ARTS**

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (hereafter "Board") and William A. Fisher, D.C. (hereafter "Licensee") and stipulate and agree as follows:

WITNESSETH:

WHEREAS, the Board is the sole and exclusive regulatory agency in the State of Kansas regarding the practice of the healing arts, specifically chiropractic; and

WHEREAS, Licensee was originally licensed to practice chiropractic in the state of Kansas on June 6, 1970; and

WHEREAS, on June 30, 1989, Licensee's license expired and Licensee failed to renew said license on or before August 1, 1989. Pursuant to K.S.A. 1989 Supp. 65-2809, Licensee's license was cancelled effective August 1, 1989; and

WHEREAS, on August 15, 1992, Licensee appeared before the Board and presented for the first time an application for reinstatement of his license to practice chiropractic in this state; and

WHEREAS, Licensee's license was reinstated on exempt status as of October 1, 1992, the date said application was determined to be complete; and

WHEREAS, on December 9, 1992, the Board received a letter from Licensee dated November 24, 1992 in which Licensee indicated his desire to have his license to practice chiropractic in the state of Kansas changed from exempt to active status; and

WHEREAS, on January 25, 1993, a Notice of Conference Hearing was filed in the Board office and mailed to Licensee in which it was advised that a Conference Hearing would be held on February 13, 1993 at 9:00 a.m. on Licensee's request to place his license on an active status. During the proceedings held pursuant to the Notice of Conference Hearing, it became apparent that there may be disputed issues of material fact regarding Licensee's clinical practice for the last several years and Licensee's current clinical competency; and

WHEREAS, in light of the apparent disputed issues of material fact, the matter was converted to a Summary Proceeding pursuant to the authority of K.S.A. 77-506 and that based upon the information which was at that time available to the Board, questions remained as to Licensee's clinical activities the last several years and current clinical competency and, therefore, Licensee's request to convert his license from exempt to active status was denied; and

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

William A. Fisher, D.C.

WHEREAS, such acts or conduct as set forth above could constitute grounds to refuse to grant Licensee's request for status change pursuant to K.S.A. 65-2836(a) and (b); and

WHEREAS, Licensee has requested a hearing on the request to change his license status from exempt to active and that formal proceedings be held in accordance with the Kansas Administrative Procedure Act; and

WHEREAS, in lieu of formal administrative proceedings required by K.S.A. 77-511, the parties are desirous of entering into this Stipulation.

NOW, THEREFORE, in consideration of the conditions, terms, covenants and promises contained herein, the parties agree as follows:

1. It is the intent and purpose of this Stipulation and Agreement and Enforcement Order to provide for settlement of all issues without the necessity of proceeding to a formal disciplinary hearing. The terms and conditions of this Stipulation and Agreement and Enforcement Order are entered into between the undersigned parties and is submitted for the purpose of allowing those terms and conditions to become an Order of the Board.

2. This Stipulation and Agreement and Enforcement Order shall not become binding on the Board until an authorized signature is affixed on the last page of this document. Upon signature by Licensee to this document it shall be deemed a unilateral contract and agreement and shall bind Licensee to all terms and conditions

set forth in the Stipulation and Agreement and Enforcement Order whether or not the Board signature is affixed to the document. Upon signature by Licensee, this document shall be deemed a public record. Licensee acknowledges that neither Executive Director nor Counsel for the Board is authorized to bind the Board.

3. The parties further agree as follows:

a. The Board is the duly authorized administrative agency in the State of Kansas with appropriate statutory authority to regulate the practice of the healing arts to include the practice of chiropractic.

b. Licensee admits that the form of the Stipulation and Agreement and Enforcement Order and the filing of such document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and Agreement and Enforcement Order and is lawfully constituted to consider this matter to include consideration of this Stipulation and Agreement and Enforcement Order.

c. Licensee further acknowledges that the Kansas Healing Arts Act as set forth in the statute and as recited in the Stipulation and Agreement and Enforcement Order is constitutional on its face and as applied in this case.

d. Licensee further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

e. Licensee further acknowledges that the Board will decide the issue regarding resolution of this matter and acceptance of this Stipulation and Agreement and Enforcement Order as it relates to the Kansas Healing Arts Act at its next regularly scheduled meeting to be held April 17, 1993.

f. Licensee further understands and agrees that by entering into this Stipulation and Agreement and Enforcement Order, he is waiving his right to a hearing. The Licensee voluntarily and knowingly waives his rights to present evidence 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.

4. The status of Licensee's license from exempt to active will be made on a conditional basis to permit the immediate practice of chiropractic by Licensee upon Licensee's execution of this Stipulation. Such conditional status change will be made on a permanent basis only upon the Board's approval of this Agreement as herein stated.

5. The formal administrative proceedings required as a result of Licensee's request for hearing on the Summary Order entered February 13, 1993 shall be dismissed and said Summary Order is hereby set aside and shall have no force or effect.

6. Upon the execution of the status change, Licensee hereby voluntarily stipulates and agrees to the following

probationary conditions, restrictions, and limitations to said license:

a. Licensee agrees to enter into a monitoring contract with a supervising chiropractic as approved by the Board within ten (10) days of Licensee's execution of this Stipulation and, upon entering into such a contract, to provide a copy thereof to the Board. James L. Parmelle, D.C. is an individual who the Board would approve as the supervising chiropractor. Licensee agrees to comply with the terms of the monitoring contract and that the terms of said contract will provide for (1) the review of patient charts, including X-rays, of patients seen by Licensee; (2) that the supervising chiropractor personally observe and monitor the diagnostic and treatment performance of services provided by Licensee three (3) days per week for such period of time deemed necessary by supervising chiropractor to fulfill his reporting obligations; and (3) that reports be supplied to the Board by supervising chiropractor of the chart review and observation of diagnostic and treatment provided by Licensee twice per month. Licensee further agrees that the supervising chiropractor may discuss or otherwise communicate with the Board or its designees such details of his reviews as the supervising chiropractor or the Board deems appropriate to plan and coordinate his individual monitoring program.

b. Licensee agrees to obtain, after execution of this Stipulation and Agreement and Enforcement Order, thirty-six (36)

contact hours of approved Category I Continuing Education and provide proof of such to the Board on or before June 30, 1993.

c. Licensee agrees to sit for the SPEC examination which will be administered in September 1993 at the expense of Licensee. Arrangements for the taking of said SPEC examination shall be the sole responsibility of Licensee.

d. Licensee shall limit his practice to the diagnosis and treatment of persons with whom he has established a doctor/patient relationship. Licensee shall not provide opinions on the necessity or reasonableness of services nor perform utilization reviews or disability determinations relating to persons who have not been personally examined and treated by Licensee. Nothing herein shall prohibit Licensee from providing testimony, reports to attorneys or testimony, opinions and information for individuals Licensee has rendered or is rendering professional treatment or services. Licensee shall further be permitted to provide such advice and consultation as may be requested by other Licensees of the Board or other state licensing agencies.

7. The conditions above specified shall be in full force and effect until the results of the SPEC examination are determined following the test date in September 1993 and the results of Licensee's performance and results and test scores are provided to the Board by Licensee. If Licensee passes the SPEC examination and has met all other conditions herein, Licensee shall be released

from further obligation under this Agreement. If Licensee fails the SPEC examination, the Board may determine to initiate disciplinary proceedings against Licensee's license under the provisions of the Kansas Healing Arts and Administrative Procedure Acts or the parties may mutually agree to terminate this agreement or to modify the provisions thereof by requiring a retake of the examination or such other remedial action as may be deemed appropriate.

8. Nothing in the this Stipulation and Agreement shall be construed to deny the Board jurisdiction to investigate any alleged violations of the Healing Arts Act that are unknown or that are not covered under the conditions of this Stipulation and Agreement and Enforcement order or any past acts which are unknown to the Board or any future acts which may be hereafter brought to the Board's attention.

9. This Stipulation and Agreement and Enforcement order 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. This Stipulation and Agreement and Enforcement Order shall be a public record but as it relates only to issues pertaining to Licensee's qualifications to receive an active license shall not be considered as a disciplinary action and will not be reported as such.

10. Licensee acknowledges that this Stipulation and Agreement and Enforcement Order has been entered into freely and voluntarily given.

11. Licensee hereby releases the Kansas State Board of Healing Arts, its employees and agents, from all claims to mean those damages, actions, liabilities and cause 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 forever 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, appeal, or proceeding of any description against the Board, its employers or agents, arising out of acts leading to the execution of this Stipulation and Agreement and Enforcement Order or the content of this Stipulation and Agreement and Enforcement Order.

12. Licensee acknowledges he has read, understands the contents and has received a copy of this Stipulation and Agreement and Enforcement Order.

13. Upon execution of this Stipulation and Agreement and Enforcement Order by the affixing of a Board authorized signature below, the provisions of this Stipulation and Agreement and Enforcement Order 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 and Agreement and Enforcement Order shall constitute the Board's Order when filed with the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF the parties have executed this agreement on this 19 day of April, 1993.

KANSAS STATE BOARD OF HEALING ARTS

Lawrence T. Buening, Jr.
LAWRENCE T. BUENING, Jr.
Executive Director

April 19, 1993
Date

LICENSEE

William A. Fisher, D.C.
William A. Fisher, D.C.

March 12, 1993
Date

CERTIFICATE OF SERVICE

I, Lawrence T. Buening, Jr., hereby certify that on the 19th day of April, 1993, a true and correct copy of the above and foregoing Stipulation and Agreement and Enforcement Order was deposited in the United States mail, first class, postage prepaid, to the following:

William A. Fisher, D.C.
Route 3
P.O. Box 211
Carthage, MO 64836-0211

Richard D. Anderson
Attorney at Law
534 S. Kansas Ave., Suite 1410
Topeka, KS 66603

and the original was hand-delivered to:

Debra L. Billingsley
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603


LAWRENCE T. BUENING, JR.
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603
(913) 296-7413

LTB19/fisher.stp