

5. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

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

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

8. 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.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that 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.

10. During the relevant time period herein, Licensee had owned and operated his own practice called Fornelli Foot & Ankle, P.A.

11. Licensee's malpractice insurance was cancelled on or about March 24, 2003, for nonpayment of the premium.

12. Licensee did not obtain medical malpractice insurance again until on or

about December 18, 2003.

13. Licensee continued his normal practice between March 24, 2003 and September 30, 2003.

14. On or about September 30, 2003, Licensee terminated the active practice of podiatry.

15. In or about January 2004, Licensee physically vacated his office.

16. Licensee failed to notify the Board, within thirty (30) days of his termination of the active practice of podiatry in Kansas, of the location where his patient records were to be stored, as well as the name, address, and telephone numbers of the agent designated to maintain the records and/or the date on which such records will be destroyed.

17. Licensee failed to furnish health care records to his patient's authorized representative.

18. Pursuant to K.S.A. 65-2006, the Board has grounds to limit, suspend or revoke Licensee's license.

19. In lieu of conducting formal proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license as a podiatrist:

- (a) Licensee is hereby publicly censured;
- (b) Licensee shall be fined in the amount of one thousand five-hundred dollars (\$1,500.00). Such fine is payable to the "Kansas State Board of Healing Arts" and due on or before January 3, 2005; and
- (c) Licensee shall respond to all requests for patient records in

compliance with all relevant statutes.

20. Licensee's failure to comply with this Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Podiatry 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 Kansas Podiatry Act.

22. 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 the Releasees of any and all claims and 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 the National

Practitioner Databank and any other reporting entities requiring 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 or settlement.

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

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

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

29. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas

State Board of Healing Arts, Attn: Diane L. Bellquist, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

30. Licensee shall obey all federal, state and local laws and rules governing the practice of podiatry 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.

31. 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.

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 in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his License to engage in the practice of podiatry:

- (a) Licensee is hereby publicly censured;
- (b) Licensee shall be fined in the amount of one thousand five-hundred dollars (\$1,500.00). Such fine is payable to the "Kansas State Board of Healing Arts" and due on or before January 3, 2005; and

(c) Licensee shall respond to all requests for patient records in compliance with all relevant statutes.

IT IS SO ORDERED on this 13TH day of December, 2004.

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

/s/ _____
Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:

/s/ Diane L. Bellquist _____
Stacy L. Cook #16385
Diane L. Bellquist #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:

/s/ _____
Tony J. Fornelli, D.P.M.
Licensee

CERTIFICATE OF SERVICE

I, Diane Bellquist, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served on the _____ day of December, 2004 by United States mail, first-class postage pre-paid and addressed to:

Tony J. Fornelli, D.P.M.
7224 Bainbridge Court
Wichita, Kansas 67226

And the original was hand-delivered to:

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

Stacy L. Cook #16385
Diane L. Bellquist #20969