

FILED

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KANSAS STATE BOARD OF
HEALING ARTS

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

In the Matter of)
)
LARRY A. HOLTFREERICH, D.C.)
Kansas License No. 1-04388)

Docket No. 02-HA-01

FINAL ORDER

NOW, on this 23rd day of February, 2002, this matter comes before the Board to review the Initial Order issued by Lance E. Malmstrom, D.C., Presiding Officer, and to assess a fine in the amount of \$500.00. Stacy L. Cook, Litigation Counsel appears for the Board. Dr. Holtfreerich appears in person *pro se*.

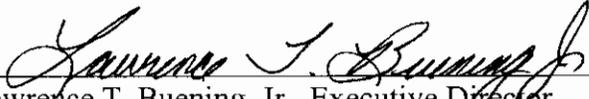
Having the record before it, and upon a motion duly made, seconded and adopted by a majority of the Board present and participating, the findings, conclusions and order stated in the Initial Order are adopted as the findings, conclusions, and Final Order of the Board.

IT IS THEREFORE, ORDERED that Larry A. Holtfreerich, D.C. pay a fine to the Board in the amount of \$500.00 within 30 days of the effective date of the Final Order.

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-610, *et seq.* Reconsideration of the Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon the Board's Executive Director at 235 S. Topeka Boulevard, Topeka, Kansas 66603.

DATED this 7th day of March, 2002.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr., Executive Director

CERTIFICATE OF SERVICE

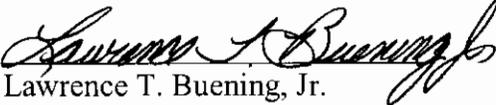
I, Lawrence T. Buening, Jr., Executive Director, Kansas State Board of Healing Arts, do hereby certify that on the 7th day of March, 2002, a true and correct copy of the above and foregoing **FINAL ORDER** was deposited in the United States mail, first class postage prepaid to the following:

Larry A. Holtferich, D.C.
10346 State Line
Leawood, Kansas 66206

and a copy hand delivered to the office of:

Stacy L. Cook, Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

and the original filed with the office of Executive Director.


Lawrence T. Buening, Jr.
Executive Director
(785) 296-3680

JAN 14 2002

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
LARRY A. HOLTFREERICH, D.C.)
Kansas License # 01-04388)
_____)

Docket No. 02-HA-01

INITIAL ORDER

NOW ON THIS 13th Day of December, 2001 this matter comes before the Presiding Officer for a formal hearing. Stacy L. Cook, Litigation Counsel, appears for Petitioner. Respondent appears in person and through Judy Pope-Edwards, Attorney at Law.

After hearing the statements of the parties, the Presiding Officer makes the following findings of fact, conclusions of law and orders:

1. Respondent has been licensed to practice chiropractic in the State of Kansas since August 1996.

2. On September 23, 2000, Licensee sponsored a Kid's Day America event, which was held in his Leawood, Kansas office. This event included a free child identification kit, drawings for prizes, and appearances by civic leaders and sports personalities. Individuals who attended the event entered the building and progressed through the hallways, having the opportunity to stop in various rooms. Dental screening, photographs, massage, and chiropractic screening were offered in various rooms.

3. K.S. is the mother of an infant of approximately one year of age. K.S. took her child to the event at Respondent's office. She visited the photography room and dental room and was aware that her child was being photographed and seen by a dentist. When she visited the room in which Respondent was located, K.S. was not initially aware that her child was going to receive a chiropractic screen. K.S. did not provide a prior written consent to Respondent for the chiropractic screening. The Presiding Officer does not find that Respondent used any fraud or misrepresentation, or that he intentionally failed to disclose the nature of the screening. During the chiropractic screening, which according to the testimony lasted about one minute,

K.S. recognized that Respondent was performing a chiropractic screening. K.S. did not voice any objection to the screening, and did not attempt to have the screening discontinued.

4. The Presiding Officer finds and concludes that consent is necessary to treat or evaluate. A screening such as performed by Respondent requires consent. The law does not require written consent, though a writing certainly documents the existence and the extent of the consent. Consent may be given verbally, and may be inferred by the patient's or parent's conduct. The Presiding Officer finds that consent to the chiropractic screen is inferred by K.S.'s conduct in the present case.

5. Following a complaint to the Board filed by K.S., a Board investigator requested that Respondent produce records of K.S.'s child. Respondent replied verbally and in writing that he did not create or maintain records on anyone screened.

6. A petition was filed on July 2, 2001 alleging in part that Respondent failed to create and maintain a patient record. Respondent then sent a record of the screen to the Board office by fax on July 23, 2001.

7. The Presiding Officer finds that, notwithstanding Respondent's testimony, circumstantial evidence establishes that the record of the screen was not contemporaneous with the examination, but rather was created much later, perhaps even in anticipation of this hearing. The Presiding Officer does not find that the record of the screen is inaccurate as to the patient information it contains. But the record of the screen now exists as required by K.A.R. 100-24-1. The Presiding Officer finds that the screening record of K.S.'s child is the only patient record maintained as a result of the September 23, 2000 Kid's Day America, even though other children were screened.

8. K.S.A. 2001 Supp. 65-2836(r) requires that a licensee furnish to the Board, its investigators and representatives any information legally requested. The Presiding Officer concludes that this statute precludes furnishing information known to be false in response to a request for information. The Presiding Officer finds that Respondent knowingly gave false information to the Board during the investigation and during discovery in this case. Specifically, and as described above, the Board's investigator requested records and Respondent replied that they did not exist, yet the requested record was later produced. Additionally, the Board requested

records of other patients screened during the event. Respondent indicated in a sworn response to an Interrogatory that the records no longer exist, stating that they were ruined when the basement flooded. Respondent later admitted he did not have a basement.

9. K.S.A. 65-2863a authorizes an administrative fine in an amount not to exceed \$5000 for the first violation. An administrative fine is appropriate in light of the finding that Respondent failed to provide truthful information to the Board when requested during the course of the investigation and during discovery.

IT IS, THEREFORE, ORDERED that Larry A. Holtfrerich, D.C. is assessed a fine in the amount of \$500.00, to be paid within 30 days following the effective date of this order.

PLEASE TAKE NOTICE that this is an Initial Order. A party to an agency proceeding may seek review of an Initial Order by filing a petition for review within 15 days following service of the Initial Order. Any such petition must be filed with the Executive Director at 235 S. Topeka Blvd., Topeka, KS 66603.

DATED this 11th day of January, 2002.

Kansas State Board of Healing Arts



Lance E. Malmstrom, D.C.
Presiding Officer

CERTIFICATE OF SERVICE

I certify that on the 11th day of January, 2002 a true and correct copy of the foregoing Notice of Prehearing Conference was deposited in the United States mail, postage prepaid, first class to the following:

Judy Pope Edwards
700 SW Jackson
Jayhawk Tower
Roof Garden Suite
Topeka, Kansas 66603

Attorney for Respondent

And a copy was hand-delivered to the office of:

Stacy L. Cook
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
Attorney for Petitioner

