

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

FILED DEC 8 2003 KANSAS STATE BOARD OF HEALING ARTS
--

In The Matter of)
)
the Application of)
MICHAEL J. JACOBS, N.D.)
)
_____) Docket No. 04-HA-29

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Michael J. Jacobs, (“Applicant”), by and through counsel, Michael E. Francis, and move the Board for approval of a Consent Order granting Applicant registration as a naturopathic doctor in the State of Kansas and imposing a fine against Applicant. The parties stipulate and agree to the following:

1. Applicant’s mailing address as provided to the Board is: 597 Second Street, Phillipsburg, Kansas, 67661.
2. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of naturopathy pursuant to the Kansas naturopathic doctor registration act. K.S.A 65-7201 *et seq.*
3. This Consent Order and the filing of such document are in accordance with applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing.

4. 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.

5. The Kansas naturopathic doctor registration act is constitutional on its face and as applied in this case.

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

7. Applicant voluntarily and knowingly waives his right to a hearing under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* Applicant 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. Applicant 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. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about June 18, 2003, Applicant submitted an Application for Registration as a Naturopathic Doctor ("Application").

10. The Board alleges that Applicant violated K.S.A. 65-7211(a), by using the abbreviation of "N.D." in an advertisement in the October 2003 issue of the Southwestern Bell Yellow Pages for Phillipsburg, Kansas, when in fact, Applicant was not registered as a naturopathic doctor.

11. Without admitting any wrongdoing, Applicant does admit there are grounds for the Board to deny his Application pursuant to K.S.A. 65-7208(a)(4).

12. In lieu of conducting formal proceedings and/or the making of findings by the Board, Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees pay a fine in the amount of \$750.00 to the Board. The fine will be due in three (3) monthly installments of \$250.00, to be paid on January 6, February 6, and March 6, 2004. Failure to pay such fine shall constitute grounds for disciplinary action.

13. Upon meeting all other requirements for registration, the Board shall grant Applicant registration to practice as a naturopathic doctor in Kansas.

14. Applicant 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 or demands of every kind and nature that Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

15. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Consent Order.

16. 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.

17. Applicant 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 Applicant is not present. Applicant 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.

18. Applicant, by signature to this document, waives any objection to the participation of the Board members 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.

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

20. Applicant acknowledges that he has read this Consent Order, fully understands the contents and that he has freely and voluntarily entered into this Consent Order.

21. All correspondence or communication between Applicant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

22. Applicant shall obey all federal, state and local laws and rules governing the practice of naturopathy 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.

23. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. 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.

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

IT IS FURTHER ORDERED that Applicant shall pay a fine in the amount of \$750.00, which is due in three (3) monthly installments of \$250.00, to be paid on January 6, February 6, and March 6, 2004.

IT IS FURTHER ORDERED that upon meeting all other requirements for registration, the Board shall grant Applicant registration as a naturopathic doctor.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

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

Dec. 8, 2003
Date

_____/s/_____
Michael J. Jacobs
Applicant

12/3/03
Date

Prepared by:

_____/s/_____
Kelli J. Benintendi, #16032
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413
Attorney for Petitioner

Approved by:

_____/s/_____
Michael E. Francis, #__8783_____
Attorney at Law
5100 SW 10th Street, Suite 100
Topeka, Kansas 66604-2279
(785) 235-8910
Attorney for Applicant

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above CONSENT ORDER by depositing the same in the U.S. mail, postage prepaid, on this the 8th day of December 2003, addressed to:

Michael J. Jacobs
597 Second Street
Phillipsburg, Kansas 67661

Michael E. Francis
Attorney at Law
5100 SW 10th Street, Suite 100
Topeka, Kansas 66604-2279

and the original was hand-delivered to:

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

_____/s/_____
Kelli J. Benintendi
Associate Counsel