

OCT 17 2002

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

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
MATTHEW S. JOHNSON, M.D.)
Kansas License No.4-21455)
_____)



Docket No. 03-HA-23

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Shelly R. Wakeman, Disciplinary Counsel ("Petitioner"), and Matthew S. Johnson, M.D. ("Licensee"), by and through legal counsel Steve A. Schwarm, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's mailing address is Family Medical Center, SE, 1750 E Harry, Wichita, Kansas 67207.

2. Licensee is or has been entitled to engage in the practice of medicine and surgery in Kansas, having been issued License No. 4-21455 on August 1, 1986. At all times relevant to the allegations set forth below, Licensee held a current license to engage in the practice of medicine and surgery in Kansas, having last renewed his license on May 31, 2002.

3. The Board is the sole and exclusive administrative agency in Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*; 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 provided by K.S.A. 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 this case.

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

7. 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.

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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about September 2, 1999, Licensee established a business separate from his family medical practice to treat patients requesting cosmetic skin care, under the

name Azure Skin Care, L.L.C. Licensee is the medical director, and the only licensed health care provider associated with Azure Skin Care's operation.

10. Patients who sought treatment at Azure Skin Care were provided service by unlicensed personnel employed by Azure Skin Care, as well as Licensee. Since approximately the inception of Azure Skin Care until approximately July 10, 2002, Licensee generally was present at Azure Skin Care for approximately two hours each day to supervise employees and see patients. The remainder of the business day Azure Skin Care employees treated patients with prescription and non-prescription medications, preparations, and medical devices, without the presence of Licensee. Licensee was available by telephone for consultation and supervision when not present at Azure Skin Care.

11. Licensee employed unlicensed personnel to treat patients with prescription and non-prescription medications, preparations, and medical devices. Licensee purchased Botox, a prescription only drug, from the manufacturer and made it available to his unlicensed employees for use on patients at Azure Skin Care. Licensee did administer Botox to some, but not all, patients after examination and consultation. Licensee admits that an unknown number of patients received the prescription drug Botox, administered by an unlicensed employee of Azure Skin Care, without a specific written order or prescription from Licensee but such was administered pursuant to a written protocol. This constitutes aiding or abetting the practice of the healing arts by an unlicensed person by furnishing prescription only products that are administered pursuant only to a protocol, but without a physician order or prescription, in violation of K.S.A. 2001 Supp. 65-2837(b)(14).

12. Since approximately July 10, 2002, Licensee ended this practice and all patients who receive prescription only medications, preparations, or treatment with a medical device do so pursuant to an order or prescription from Licensee or received the treatment directly from Licensee.

13. Pursuant to K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(14), the Board has authority to revoke, suspend, censure or otherwise limit Licensee's license.

14. 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.

15. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measure on his license to engage in the practice of medicine and surgery:

- a. Licensee shall be censured by the Board for providing a prescription only medication to an unlicensed employee for administration to a patient or patients without Licensee's prescription or order.

16. This Consent Order constitutes disciplinary action.

17. 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. 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 Healing Arts Act.

18. 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 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.

19. 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, Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Consent Order.

20. 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.

21. 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.

22. Licensee, 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.

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

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

25. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in 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.

26. 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.

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

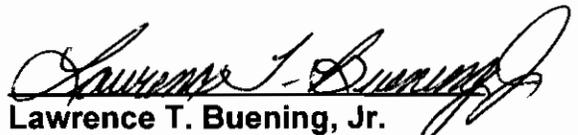
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that:

- a. Licensee is censured by the Board for providing a prescription only medication, Botox, to an unlicensed employee for administration to a patient or patients without Licensee's prescription or order.

IT IS SO ORDERED on this 12th day of October, 2002.

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


**Lawrence T. Buening, Jr.
Executive Director**

AGREED TO BY:

 10 12 02
Matthew S. Johnson, M.D. Date
Licensee

PREPARED AND APPROVED BY:



Shelly R. Wakeman #15057
Disciplinary Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413



Steve A. Schwarm #13232
Goodell Stratton Edmonds & Palmer
515 S. Kansas Ave.
Topeka, Kansas 66603-3999
(785) 233-0593
Attorney for Licensee

CERTIFICATE OF SERVICE

I, Shelly R. Wakeman, do hereby certify that I served a true and correct copy of the
CONSENT ORDER by United States mail, postage prepaid, on this 17th day of October,
2002 to the following:

Matthew S. Johnson, M.D.
Family Medical Center Southeast
7150 E. Harry
Wichita, Kansas 67202

Steve A. Schwarm
Goodell Stratton Edmonds & Palmer
515 S. Kansas Ave.
Topeka, Kansas 66603-3999

and the original was hand-delivered to:

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



Shelly R. Wakeman