

F I L E D

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

FEB 14 2000

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
Daniel H. Kelley, D.C.)
Kansas License Number 1-04017)
_____)

Case No. 00-HA-19

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board"), by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Daniel H. Kelley, D.C. ("Licensee"), by and through legal counsel Ryan Hodge, and stipulate and agree to the following:

1. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of chiropractic. K.S.A 65-2801 *et seq.*; K.S.A. 65-2869.

2. Licensee admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.

3. Licensee agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.

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

5. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued license number 1-04017 on June 15, 1990. At all times relevant to the allegations set forth below, Licensee has held a current license to engage in the practice of chiropractic in the State of Kansas, having last renewed his

license on September 30, 1999.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Licensee has committed certain acts that violate the Healing Arts Act K.S.A. 65-2801 *et seq*; K.S.A. 65-2836. Specifically, Petitioner alleges that Licensee committed the following acts:

In approximately March of 1999, Licensee was employed in practice with a medical doctor. From approximately March 6, 1999 through June 2, 1999, Licensee was delegated the responsibility for the medical doctor's patients while the medical doctor was unavailable and outside of the state. Licensee assumed patient responsibility at the request of the medical doctor. During this approximate time period, Licensee refilled medications per order and also prescribed medications to patients, including, but not limited to, the following:

DATE	PATIENT INITIALS	MEDICATION
06/01/99	B.A.	IBUPROFEN
04/18/99	B.B.	CARDURA
04/30/99	B.B.	CARDURA
04/30/99	B.B.	ZESTRIL
04/09/99	B.B.	CARDURA
04/14/99	B.B.	CARDURA
04/14/99	B.B.	ZESTRIL
06/08/99	B.B.	CARDURA
05/17/99	J.B.	RITALIN
05/06/99	J.B.	RITALIN
04/22/99	R.C.	PERCOCET

04/22/99	R.C.	AMBIEN
04/22/99	R.C.	DAYPRO
04/26/99	R.C.	PERCOCET
04/26/99	R.C.	AMBIEN
04/26/99	R.C.	DAYPRO
05/17/99	R.C.	PERCOCET
05/17/99	R.C.	AMBIEN
05/17/99	R.C.	DAYPRO
06/02/99	R.C.	PERCOCET
06/02/99	R.C.	AMBIEN
06/01/99	R.C.	DAYPRO
03/22/99	J.C.	PHENTERMINE
04/16/99	J.C.	ZOLOFT
05/19/99	J.C.	ZOLOFT
04/26/99	K.C.	PHENTERMINE
05/10/99	K.C.	PHENTERMINE
03/11/99	S.C.	PHENTERMINE
04/28/99	M.D.	IBUPROFEN
05/13/99	B.D.	FLEXERIL
03/04/99	T.D.	PHENTERMINE
03/18/99	T.D.	PHENTERMINE
03/31/99	T.D.	PHENTERMINE
04/14/99	T.D.	PHENTERMINE
04/27/99	B.F.	PHENTERMINE
03/11/99	B.F.	PHENTERMINE
04/19/99	H.F.	PHENTERMINE
03/05/99	N.G.	VICODIN
03/05/99	N.G.	INDERAL
03/05/99	N.G.	PROZAC

03/26/99	N.G.	VICODIN
03/26/99	N.G.	INDERAL
03/26/99	N.G.	PROZAC
04/27/99	N.G.	VICODIN
04/27/99	N.G.	INDERAL
04/27/99	N.G.	PROZAC
05/13/99	N.G.	VICODIN
05/13/99	N.G.	INDERAL
05/13/99	N.G.	PROZAC
04/07/99	D.W.	PHENTERMINE
04/27/99	S.K.	MERIDIA
04/28/99	R.M.	LORTAB
04/08/99	J.W.	EFFEXOR
05/07/99	J.W.	EFFEXOR
05/13/99	R.M.	AMOXICILLIN
04/08/99	S.S.	SOMA
04/16/99	D.K.	ENDOMEYTHECINE
04/30/99	A.W.	GENTAMICIN
04/12/99	S.G.	TYLENOL #3
04/06/99	J.H.	PHENTERMINE
04/20/99	J.H.	PHENTERMINE
05/04/99	J.H.	PHENTERMINE
05/18/99	J.H.	PHENTERMINE
04/07/99	A.H.	SORAZONE
05/17/99	A.H.	PHENTERMINE
04/06/99	R.H.	GLIPISIDE
05/05/99	R.H.	GLIPISIDE
04/06/99	R.H.	PROPRANOLOL HCL
04/06/99	R.H.	CAPTOPRIL

Such conduct is grounds for disciplinary action pursuant to K.S.A. 65-2836(g), K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(17), and K.S.A. 65-2836(f).

7. Violation of the provisions set forth in the Petition to Revoke, Suspend or Otherwise Limit License constitutes grounds for disciplinary action by the Board. According to K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

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 Stipulation 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 Stipulation 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 Stipulation on behalf of the Board.

10. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

(a) In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees

to the following disciplinary measures and limitations placed on his license to engage in the practice of chiropractic in the State of Kansas:

- (i) Licensee's license is suspended for ninety (90) days -- from March 1, 2000 through and including May 29, 2000.
 - (ii) Licensee is prohibited from practicing in association with any medical or osteopathic doctor in a medical context. This includes, but is not limited to, the prohibition that Licensee shall not have an employment relationship with any medical or osteopathic doctor, nor shall Licensee accept delegation from any medical or osteopathic doctor to perform services outside the scope of chiropractic.
 - (iii) Licensee agrees to terminate all business relationships with Gregory Ricke, M.D., and all corporations owned in whole or in part by Gregory Ricke, M.D. Licensee agrees not to practice in the same building as Gregory Ricke, M.D.
 - (iv) Licensee agrees to provide to the Board a written report three (3) months following the end of his suspension. Such written report must describe the location and nature of Licensee's practice, including all business associations.
 - (v) Licensee shall pay the costs in this matter in the amount of \$886.00. Such costs are due and payable to the Board on or before September 12, 2000.
- (b) This Order constitutes disciplinary action and limitations on Licensee's

license to practice chiropractic in the State of Kansas.

(c) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this Stipulation 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 Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

(e) Licensee hereby releases the Board and its individual members (in their official and personal capacities), its employees and agents (hereinafter individually or jointly referred to as "Releasees"), from any and all claims and causes of action relating to this matter, including but not limited to, those damages, actions, liabilities and causes of action, 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 Releasees from 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 (either directly or indirectly), cause or permit to be prosecuted, any action or proceeding of any description against Releasees relating to this matter.

(f) Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to all reporting

entities requiring disclosure of this Stipulation.

(g) This Stipulation, 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.

(h) 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.

(i) 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.

(j) Licensee acknowledges that he has read this Stipulation and fully understands the contents.

(k) Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

(l) All correspondence or communication between Licensee and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(m) Licensee shall obey all federal, state and local laws and rules governing the practice of chiropractic in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

(o) Upon execution of this Stipulation by affixing a Board authorized signature below, the Petition to Revoke, Suspend or Otherwise Limit License shall be dismissed.

IN WITNESS WHEREOF, the parties have executed this agreement on this 11/16
day of February, 2000.

KANSAS STATE BOARD OF HEALING ARTS

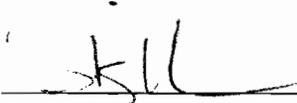
[Signature]
Lawrence T. Buening, Jr.
Executive Director

[Signature]
Date

[Signature]
Daniel H. Kelley, D.C.

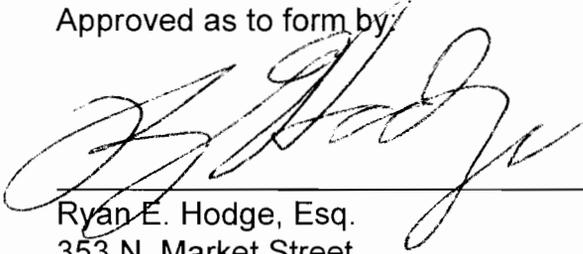
2/2/00
Date

Prepared By:



Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

Approved as to form by:



Ryan E. Hodge, Esq.
353 N. Market Street
P.O. Box 48172
Wichita, KS 67202
(316) 269-1414
Attorney for Licensee

CERTIFICATE OF SERVICE

I, Stacy L. Cook, Litigation Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 12/10 day of February, 2000, to the following:

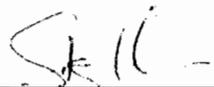
Daniel H. Kelley, D.C.
216 W. Main
Valley Center, KS 67147

and

Ryan E. Hodge, Esq.
353 N. Market Street
P.O. Box 48172
Wichita, KS 67202

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



Stacy L. Cook