

**FILED**

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

APR 10 2002

KANSAS STATE BOARD OF  
HEALING ARTS

In the Matter of )  
 )  
Michael Lum, D.O. )  
Kansas License No. 05-23288 )  
\_\_\_\_\_ )

Docket No. 02-HA-56

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Michael Lum, D.O., ("Licensee"), appearing through counsel, Steve A. Schwarm, and move the Board for approval of a Consent Order affecting Licensee's license to practice osteopathic medicine and surgery in the State of Kansas and regarding Licensee's request to change his license status from inactive to active status. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 1205 Ashpark Lane, Harbor City, California, 90710.

2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License No. 5-23288 on July 1, 1990. At all times relevant to the allegations set forth below, Licensee has held a current license to engage in the practice of medicine and surgery in the State of Kansas, having last renewed his license on July 12, 2001. Licensee's license has been in inactive status since November 10, 1998, and Licensee has now requested a change to active status.

3. 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 osteopathic 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 its consideration of 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 concerning the presentation of this Consent Order to the Board for the Board's approval and if the Board approves the Consent Order. 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 in the presentation of this Consent Order to the Board for its approval. In the presentation of this Consent Order to the Board for its approval, 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. If this Consent Order, as drafted, is not accepted by the Board, this paragraph shall not be applicable and Licensee is entitled to contest the allegations and present a defense as he deems appropriate in compliance with the Kansas Administrative Procedure Act at any subsequent hearing on the merits of the allegations. If the Board

accepts the Stipulation as proposed, Licensee agrees to waive his rights as set forth above.

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. The Board has received information, has investigated such information and has reasonable cause to believe that Licensee committed acts of unprofessional conduct in violation of the healing arts act by possessing pornographic images of children, including images of children under the age of sixteen (16), on his personal computer. The Board asserts that it has sufficient evidence to prove such violations. Licensee denies the acts and conduct as described above.

10. The above acts and conduct, if proven, would constitute conduct likely to harm the public as set forth in K.S.A. 65-2837(b)(12), and are grounds for disciplinary action pursuant to K.S.A. 65-2836(b). Pursuant to K.S.A. 65-2836, the Board has authority to revoke, suspend, censure or otherwise limit Licensee's license.

11. 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.

12. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures whereby Licensee is prohibited from

practicing osteopathic medicine and surgery except in strict compliance with this Consent Order:

- (a) Licensee is prohibited from examining or treating in any manner, any patient who is less than eighteen (18) years of age unless there is an adult medical person physically in attendance during the examination or treatment who is not related to the patient or the licensee and who documents their physical presence in the medical record;
- (b) Licensee's practice shall be subject to random compliance inspections by Board staff. Licensee shall accommodate the Board staff conducting these inspections. Inspections shall occur during office hours, unless otherwise agreed upon, and the Board staff shall perform such inspections in an unobtrusive manner;
- (c) Licensee shall at all times keep the Board informed of any and all practice locations and all hospitals at which Licensee holds privileges. Licensee shall immediately notify the Board of any changes in practice locations or terminations of privileges; and
- (d) Licensee must petition the Board for modification or discontinuance of any of the limitations and other requirements set forth in this Consent Order.

13. Upon showing proper proof of insurance and all other requirements for a status change from inactive to active status, Licensee's request to have his license placed in active status shall be granted.

14. This Consent Order constitutes a disciplinary action and a limitation on Licensee's license to practice osteopathic medicine and surgery in Kansas.

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

24. All correspondence or communication between Licensee 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.

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

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.

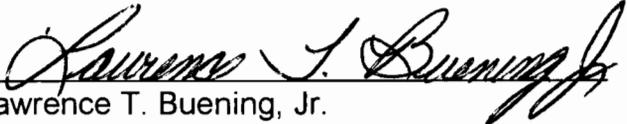
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

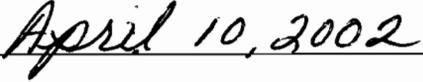
**IT IS FURTHER ORDERED** that Licensee's license is limited as set forth in paragraph 13 of this Consent Order.

**IT IS FURTHER ORDERED** that upon showing proper proof of insurance and all other requirements for a status change from inactive to active status, Licensee's request to have his license placed in active status shall be granted.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

  
\_\_\_\_\_  
Lawrence T. Buening, Jr.  
Executive Director

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michael Lum, D.O.  
Licensee

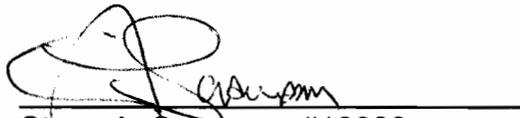
  
\_\_\_\_\_  
Date

Prepared by:



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

Approved by:



Steve A. Schwarm, #13232  
Goodell, Stratton, Edmonds & Palmer, L.L.P.  
515 South Kansas Avenue  
Topeka, Kansas 66603  
(785) 233-0593

Attorney for Licensee

**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 11th day of April, 2002, addressed to:

Steve A. Schwarm  
Goodell, Stratton, Edmonds & Palmer, L.L.P.  
515 South Kansas Avenue  
Topeka, Kansas 66603

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

  
\_\_\_\_\_  
Kelli J. Benintendi  
Associate Counsel