



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. Petitioner has alleged that Licensee's treatment of one patient deviated in several aspects from the applicable standard of care to a degree constituting ordinary negligence. Petitioner has alleged that Licensee's treatment using Nambudripad Allergy Elimination Technique deviated from the standard of care. The specific allegations are set forth in the Petition. Petitioner believes it would be successful in proving the allegations.

10. Licensee does not admit the allegations, but does not contest the allegations.

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 limitations and disciplinary action with respect to his license to engage in the practice of chiropractic:

- a. Licensee is prohibited from performing, ordering and/or interpreting EKGs;
- b. Licensee is prohibited from performing, ordering and/or interpreting pulmonology tests;
- c. Licensee is prohibited from undertaking to diagnose and/or treat allergies. This includes but is not limited to the specific prohibition that Licensee cannot use the Nambudripad Allergy Elimination Technique or any similar treatment;
- d. Licensee is prohibited from drawing and/or interpreting any blood work;
- e. Licensee is publicly censured for using the term "Dr." on stationary without using the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license;
- f. Licensee agrees to always use the letters "D.C." when he uses the term "Dr." or "doctor," and agrees to change the name of his clinic to

- identify that it is a chiropractic clinic;
- g. Licensee agrees to pay a fine in the amount of \$1,500.00. Such fine is due and payable to the Board in monthly installments of \$125.00. Each payment is due on or before the 15<sup>th</sup> of the month;
  - h. Licensee agrees to pay the costs of \$1,000.00. The costs are due and payable to the Board in monthly installments of \$100.00. Each payment is due on or before the 15<sup>th</sup> of the month;
  - i. Licensee must take and pass Part IV of the examination given by the National Board of Chiropractic Examiners. Licensee must take the exam in November of 2003; and
  - j. Licensee agrees to have his practice monitored for at least one (1) year. The monitor must be a licensed chiropractor approved by the Board or its designee. Each month the monitor shall review 20% of Licensee's patient charts. On or before eight (8) days after the end of the month, Licensee shall provide the monitor with a list of all patients seen that month. The monitor will select the charts for review. The monitor shall provide a monthly report to the Board indicating whether Licensee met the standard of care. The monitor shall review all aspects of care, but shall pay special attention to Licensee's physical exam and assessment of the patients. The Board will provide a form for the monitor reporting. Licensee is responsible to ensure that the monitor provides the reports on or before the 25<sup>th</sup> day of the month, for the patients seen the previous month. Licensee

is responsible for any expenses associated with the monitoring. This provision is in effect for at least one year, which means the monitor must submit at least twelve (12) reports before the Board can consider terminating this provision. Licensee must continue to have his practice monitored until further order by the Board. For any period of time that Licensee is not actively practicing the healing arts in Kansas, the monitoring provision of this Consent Order will be tolled and not be counted in reducing said time frames. Any extension of time or grace period for reporting granted by Board staff shall not be a waiver or preclude the Board's right to take action at a later time. The Board shall not be required to grant future extensions of time or grace periods.

13. 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.

14. 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.

15. 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.

16. 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 the Consent Order.

17. 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.

18. 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.

19. 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.

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

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

22. 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: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

23. 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 Consent Order or may become effective subsequent to the execution of this document.

24. 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.

25. 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 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 limitations and disciplinary action with respect to his license to engage in the practice of chiropractic:

- a. Licensee is prohibited from performing, ordering and/or interpreting EKGs;
- b. Licensee is prohibited from performing, ordering and/or interpreting pulmonology tests;
- c. Licensee is prohibited from undertaking to diagnose and/or treat allergies. This includes but is not limited to the specific prohibition that Licensee cannot use the Nambudripad Allergy Elimination Technique or any similar treatment;
- d. Licensee is prohibited from drawing and/or interpreting any blood work;
- e. Licensee is publicly censured for using the term "Dr." on stationary without using the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license;
- f. Licensee agrees to always use the letters "D.C." when he uses the term "Dr." or "doctor," and agrees to change the name of his clinic to identify that it is a chiropractic clinic;

- g. Licensee agrees to pay a fine in the amount of \$1,500.00. Such fine is due and payable to the Board in monthly installments of \$125.00. Each payment is due on or before the 15<sup>th</sup> of the month;
- h. Licensee agrees to pay the costs of \$1,000.00. The costs are due and payable to the Board in monthly installments of \$100.00. Each payment is due on or before the 15<sup>th</sup> of the month;
- i. Licensee must take and pass Part IV of the examination given by the National Board of Chiropractic Examiners. Licensee must take the exam in November of 2003; and
- j. Licensee agrees to have his practice monitored for at least one (1) year. The monitor must be a licensed chiropractor approved by the Board or its designee. Each month the monitor shall review 20% of Licensee's patient charts. On or before eight (8) days after the end of the month, Licensee shall provide the monitor with a list of all patients seen that month. The monitor will select the charts for review. The monitor shall provide a monthly report to the Board indicating whether Licensee met the standard of care. The monitor shall review all aspects of care, but shall pay special attention to Licensee's physical exam and assessment of the patients. The Board will provide a form for the monitor reporting. Licensee is responsible to ensure that the monitor provides the reports on or before the 25<sup>th</sup> day of the month, for the patients seen the previous month. Licensee is responsible for any expenses associated with the monitoring. This

provision is in effect for at least one year, which means the monitor must submit at least twelve (12) reports before the Board can consider terminating this provision. Licensee must continue to have his practice monitored until further order by the Board. For any period of time that Licensee is not actively practicing the healing arts in Kansas, the monitoring provision of this Consent Order will be tolled and not be counted in reducing said time frames. Any extension of time or grace period for reporting granted by Board staff shall not be a waiver or preclude the Board's right to take action at a later time. The Board shall not be required to grant future extensions of time or grace periods.

**IT IS SO ORDERED** on this 23<sup>d</sup> day of August, 2003.

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

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

**PREPARED AND APPROVED BY:**

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

\_\_\_\_\_/s/\_\_\_\_\_  
Brock R. Snyder #06140  
1401 SW Topeka Boulevard  
Topeka, Kansas 66612-1818  
(785) 232-1700  
Attorney for Michael E. Martin, D.C.

**AGREED TO BY:**

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Martin, D.C.  
Licensee

**CERTIFICATE OF SERVICE**

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the **CONSENT ORDER** BY United States mail, postage prepaid, on this \_\_\_\_\_ day of \_\_\_\_\_, 2003 to the following:

Michael E. Martin, D.C.  
5839 SW Indian Hills Road  
Topeka, Kansas 66610

Brock R. Snyder  
1401 SW Topeka Boulevard  
Topeka, Kansas 66612-1818  
Attorney for Michael E. Martin, D.C.

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