

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

OCT 14 2002

In the Matter of)
)
ROBERT F. RUSNAK, D.C.)
Kansas License No.1-04412)
_____)

KANSAS STATE BOARD OF
HEALING ARTS
Docket No. 02-HA-42

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Robert F. Rusnak, D.C. ("Licensee"), by and through legal counsel Brian J. Niceswanger, 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 last known mailing address to the Board is 206 SW Topeka Boulevard, Topeka, Kansas 66703.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 1-04412 on October 19, 1996. 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 December 6, 2001.
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 chiropractic. 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. The Board alleges that Licensee inappropriately touched three patients and kissed one patient during the course of treatment. The specific allegations are set forth in the Petition filed on February 1, 2002. Licensee denies each and every one of the allegations set forth in the Petition and enters into this agreement solely to avoid the risk and uncertainty associated with any adjudicative proceeding.

10. Pursuant to K.S.A. 65-2836(b) as further defined by K.S.A. 65-2837(b)(16), the Board has authority to revoke, suspend, 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, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures and limitations placed on his license to engage in the practice of chiropractic:

- a. Licensee's license shall be suspended for a period of thirty (30) days. Such suspension will be in effect from October 21, 2002 through and including November 19, 2002.
- b. Licensee shall have a female assistant in the room at all times when he is examining and/or treating female patients. The assistant must be approved by the Board and/or its designee and such approval will not be unreasonably withheld. The assistant must speak with a representative of the Board and/or its designee prior to approval. The assistant is required to create and maintain a daily log identifying all patients seen in the office that day, identifying all female patients

seen that day, and certifying her presence for all female patients seen in the office that day. Such daily logs must be submitted to the Board on a monthly basis and must be received on or before the 15th day of each month. Licensee is responsible for ensuring that the daily logs are submitted to the Board.

c. **(Confidential)**

(Confidential)

- d. Licensee agrees that in the course of treating patients, he will not touch a patient's breasts or genital area. Licensee agrees that he will not massage the buttocks of patients, but that he can use Active Release Technique therapy on the buttock area outside of a patient's clothing. Licensee agrees that he will recommend to all female patients that they wear a sports bra to treatment. Licensee agrees that he will not assist in disrobing patients.
- e. Licensee will provide a pamphlet to each patient, prepared by Licensee and by the Board, and ultimately approved by the Board, informing patients of the nature of Active Release Technique. This pamphlet will also inform patients that during treatment Licensee will not touch the breasts or genital area. The pamphlet will inform patients of such items including draping practices, the chaperone, and where to report any uncomfortable situation. Licensee agrees that he will have each patient sign the pamphlet and place a copy of the signed pamphlet in the patient's chart.

- f. Licensee shall attend and successfully complete a course on boundary issues. The course must be approved by the Board or its designee. Licensee must provide proof to the Board on or before June 30, 2003 of his attendance and successful completion of the course. The course will be at Licensee's expense.
- g. Licensee shall attend and successfully complete one of the two following courses on ethics: The Professional Renewal In Medicine Through Ethics course at Robert Wood Johnson Medical School, or The Professional/Problem Based Ethics ("ProBE") in New Jersey. The course will be at Licensee's expense and shall be completed on or before June 30, 2003. Licensee must provide proof to the Board on or before July 15, 2003, of his attendance and successful completion of the course.
- h. Licensee agrees to pay the costs incurred by the Board during the investigation. The costs include deposition costs of Mr. French, patient #1 and patient #3, the video of patient #3, \$87.12 in mileage, and the cost of documents provided to the Board during discovery.

13. This Consent Order constitutes disciplinary action.

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

15. 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.

16. 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.

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

18. 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.

19. 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, except for the Presiding Officers, 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.

20. Licensee, by signature to this document, waives any objection to the participation of the Board members, except for the Presiding Officers, 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.

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

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

23. 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.

24. 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.

25 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.

26. 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's license shall be suspended for a period of thirty (30) days. Such suspension will be in effect from October 21, 2002 through and including November 19, 2002.
- b. Licensee shall have a female assistant in the room at all times when he is examining and/or treating female patients. The assistant must be approved by the Board and/or its designee and such approval will not be unreasonably withheld. The assistant must speak with a representative of the Board and/or its designee prior to approval. The assistant is required to create and maintain a daily log identifying all

patients seen in the office that day, identifying all female patients seen that day, and certifying her presence for all female patients seen in the office that day. Such daily logs must be submitted to the Board on a monthly basis and must be received on or before the 15th day of each month. Licensee is responsible for ensuring that the daily logs are submitted to the Board.

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(Confidential)

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- h. Licensee agrees to pay the costs incurred by the Board during the investigation. The costs include deposition costs of Mr. French, patient #1 and patient #3, the video of patient #3, \$87.12 in mileage, and the cost of documents provided to the Board during discovery.

IT IS SO ORDERED on this 14th day of October, 2002.

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 14th day of ~~August~~
October
2002 to the following:

Robert F. Rusnak, D.C.
206 SW Topeka Boulevard
Topeka, Kansas 66603

Brian Niceswanger
McDowell, Rice, Smith & Gaer
40 Executive Hills
7101 College Boulevard, Suite 200
Overland Park, Kansas 66210
(Attorney for Licensee)

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