

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

FILED

DEC 12 2000

In the Matter of )  
 )  
DAVID SCHLOSSMAN, D.C. )  
Kansas License No. 1-04344 )  
\_\_\_\_\_ )

Case No. 01-HA-5 KANSAS STATE BOARD OF HEALING ARTS

**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 David C. Schlossman, D.C. (“Licensee”), by and through legal counsel Steve A. Schwarm, 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 1-40344 on February 17, 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 October 25, 2000.

6. Licensee admits that he had inappropriate sexual relationships with five female patients. Licensee admits that for thirty-one patients, he failed to keep written records in accordance with Board statutes and regulations. Such admissions are for Board purposes only.

7. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(16), the Board may revoke, suspend or limit Licensee's license. Pursuant to K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(25) and K.S.A. 65-2836(k), as further defined by K.A.R. 100-24-1, the Board may revoke, suspend or otherwise limit Licensee's license. 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 concerning the presentation of this Stipulation to the Board for the Board's approval and if the Board approves the Stipulation. 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 Stipulation to the Board for its approval. In the presentation of this Stipulation 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 Stipulation 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 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 explained above.

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:

**SUSPENSION**

(i.) Licensee's license is suspended for a period of eighteen (18) months. The suspension shall take effect on December 17, 2000. The suspension shall be in effect through and until June 16, 2002.

(ii.) From December 9, 2000 until December 16, 2000, Licensee will be making arrangements for coverage for his patients. From December 9, 2000 until December 16, 2000, Licensee's practice shall be monitored by a Kansas licensed chiropractor. The monitor must be approved by the Board or its designee. The monitor must provide weekly reports to Stacy L. Cook, Litigation Counsel. The reports must be submitted each Monday for the previous week. The reports must include a description of the Licensee's activities for that week, including the number of patients seen by Licensee. The reports must also include the monitor's summary of patient charts reviewed,

including whether Licensee's documentation was complete. Litigation Counsel will prepare a form report for the monitor to complete.

### LIMITATIONS

(iii.) After the suspension has been served, Licensee's practice shall be monitored for record keeping, billing matters, and patient interaction. There may be more than one monitor. The monitor who reviews the billing matters must be a Kansas licensed chiropractor who has had experience in billing reviews. All monitors must be approved by the Board and/or the Board's designee. Twenty (20) percent of patient charts must be reviewed by a monitor for record keeping and patient interaction. Twenty (20) percent of patient charts shall be reviewed for billing issues. The monitor(s) will determine which charts to review. At the end of each week, Licensee must fax to the monitor(s) the patient sign-in sheets. The monitor(s) will then identify patient charts to review. Licensee must provide the monitor(s) with all patient charts and information requested. The monitor(s) must submit reports to Board staff on a monthly basis. Board staff will create forms for the reports of the monitor(s). The monthly reports are due within thirty (30) days after the end of each month. The monitoring shall be in effect for at least one year, which means Licensee's monitor(s) must have submitted twelve (12) reports. Licensee is responsible for ensuring the timely submission of the report to the Board staff. The monitoring will be at Licensee's expense.

(iv.) Licensee agrees to not have social contact with patients. One exception is that Licensee may exercise and teach classes at a gym where his patients may be present. Licensee may not treat a person if he has a social, romantic and/or intimate relationship with such person.

(v.) Licensee shall have a chaperone present during his examination and/or treatment of all female patients. The chaperone must be approved by the Board and/or its designee. The

chaperone must initial each treatment record to certify his or her presence. This limitation shall remain in effect for at least one year after the suspension ends.

(vi.) Licensee is required to use a daily “sign-in sheet.” This means that Licensee must require each patient to sign his or her name on the sign-in sheet prior to treatment. Licensee must maintain the sign-in sheets indefinitely.

(vii.) (confidential)

(confidential)

(viii.) (confidential)

(confidential)

(ix.) (confidential)

(confidential)

(x.) Licensee shall attend an ethics course approved by the Board and/or the Board’s designee. The course will be at Licensee’s expense. Licensee shall attend such course prior to the termination of the suspension. Licensee shall provide Board staff with proof of completion of the course.

(xi.) Licensee shall attend a course on record keeping approved by the Board and/or the Board’s designee. The course will be at Licensee’s expense. Licensee shall attend such course prior to the termination of the suspension. Licensee shall provide Board staff with proof of completion of

the course.

**FINE AND COSTS**

(xii.) Licensee shall pay a fine in the amount of \$5,000.00. Such fine is due and payable to the Board in ten monthly installments of \$500 each. The first payment is due on or before January 9, 2001.

(xiii.) Licensee shall pay the costs of the matter in the amount of \$1,614.02. Such costs shall be made payable to the Kansas Board of Healing Arts and are due on or before February 9, 2001.

(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. After the suspension is complete, if Licensee does not practice in Kansas for a period of thirty (30) consecutive days, Licensee shall notify the Board in writing. The provisions of the Stipulation which have specific time frames will be tolled during such period(s) and not be counted in reducing said time frames.

(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, 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 Stipulation. 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.

(f) Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the Federation of Chiropractic Licensing Boards and any other 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, except the Presiding Officer, 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.

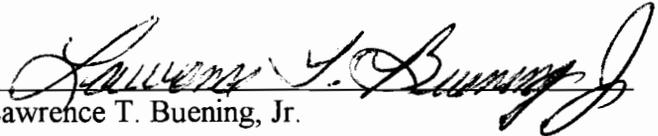
(m) Licensee shall obey all federal, state and local laws and rules governing the practice of chiropractic in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(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 ("Petition") shall be dismissed. The Board will not refile the allegations contained in the Petition or the proposed Second Amended Petition. However, the Board may consider all aspects of this Stipulation, including but not limited to, the admissions and disciplinary action, in any future matter regarding Licensee.

IN WITNESS WHEREOF, the parties have executed this agreement on this 12<sup>th</sup> day of  
December, 2000.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

December 12, 2000  
Date

  
David C. Schlossman, D.C.

12-9-2000  
Date

Prepared By:

  
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Litigation Counsel  
Kansas State Board of Healing Arts  
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