

FILED

CAB

FEB 12 2007

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

KS State Board of Healing Arts

In the Matter of)
)
Tony A. Wilbeck, D.C.)
Kansas License No. 01-03716)
_____)

Docket No. 07-HA-00063

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts ("Petitioner"), by and through Diane L. Bellquist, Associate Counsel, and Tony A. Wilbeck, D.C. ("Licensee"), by and through Judy Pope of Dickson & Pope, P.A., and move the Board for approval of a Consent Order affecting Licensee's license to practice as a chiropractor. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is Wilbeck Chiropractic Center, 24 S Main St, South Hutchinson, Kansas 67505.

2. Licensee was issued License No. 01-03716 on approximately July 10, 1984. Licensee currently holds a license to engage in the practice of chiropractic care and treatment in the State of Kansas.

3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of chiropractic care and treatment.

4. This Consent Order and the filing of such document are in accordance with the applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 65-2838, without the necessity of proceeding to a formal hearing.

5. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

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

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 Consent Order are entered into between the undersigned parties that 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.

10. On or about March 3, 2006, Licensee refused to release a patient's x-ray films to her subsequent treating physician until the patient's account was paid in full.

11. Additionally, from about 2004 to 2006, Licensee used two Levelasers model M300D manufactured by Simed company to treat patients at his clinic.

12. Licensee admits that the Levelaser is an experimental medical device which has not received pre-market approval from the Food and Drug Administration.

13. Licensee admits that he did not comply with the statutory requirements of

K.S.A. 65-2837(b)(27) in using the experimental laser treatment in his practice.

14. After the Kansas Board began investigating Licensee's use of the lasers, he discontinued using them in his practice.

15. Licensee admits that he sold both the lasers to one of his patients.

16. Licensee violated K.S.A. 65-2836(b), by committing unprofessional and/or dishonorable conduct as further defined by K.S.A. 65-2837(b)(20), failing to transfer patient records to another licensee when requested to do so by the patient or the patient's legally designated representative.

17. Licensee violated K.S.A. 65-2836(b), by committing unprofessional and/or dishonorable conduct as further defined by K.S.A. 65-2837(b)(27), using experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee of peers.

18. In lieu of conducting formal proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license as a chiropractor:

- (a) Licensee agrees to a **PUBLIC CENSURE** for his improper use and sale of experimental lasers.
- (b) Licensee agrees to pay a **FINE** in the amount of five-thousand dollars (\$5,000.00). Such fine is payable to the "Kansas State Board of Healing Arts" in full on or before March 1, 2007.

17. Licensee's failure to comply with this Consent Order will result in the Board

taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

19. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas 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 Kansas Healing Arts Act.

20. 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 and 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.

21. 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, CIN-BAD, and any other reporting entities requiring disclosure of the Consent Order.

22. 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.

23. 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 or settlement.

24. Licensee, by signature to this document, waives any objection to the participation of General Counsel, or the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of General Counsel or any Board member in any future proceeding on the basis that General Counsel or the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

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

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

27. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Boulevard,

Topeka, Kansas 66603-3068.

28. Licensee shall obey all federal, state and local laws and rules governing the chiropractic practice 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.

29. 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.

30. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

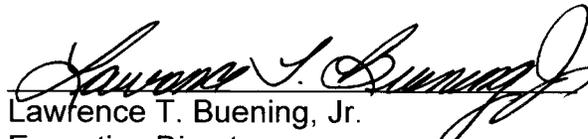
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his License to engage in the practice of chiropractic care and treatment:

- (a) Licensee agrees to a **PUBLIC CENSURE** for his improper use and sale of experimental lasers.
- (c) Licensee agrees to pay a **FINE** in the amount of five-thousand dollars (\$5,000.00). Such fine is payable to the "Kansas State Board of Healing Arts" in full on or before March 1, 2007.

IT IS SO ORDERED on this 12th day of February, 2007.

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

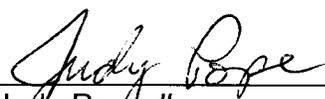

Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:



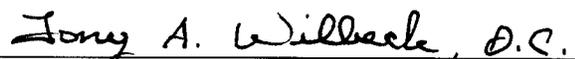
Diane L. Bellquist #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

APPROVED BY:



Judy Pope #
Dickson & Pope, P.A.
700 SW Jackson Street
Jayhawk Tower Building
Roof Garden Suite
Topeka, KS 66603-3758

AGREED TO BY:



Tony A. Wilbeck, D.C.
Licensee

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the CONSENT ORDER by United States mail, first-class postage pre-paid on this 12 day of February 2007, to the following:

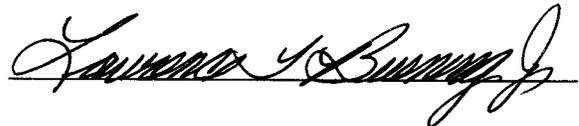
Judy Pope
Dickson & Pope, P.A.
700 SW Jackson Street
Jayhawk Tower Building
Roof Garden Suite
Topeka, KS 66603-3758

and the original was hand-filed with:

Lawrence T. Buening, Jr.
Executive Director
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and a copy was hand-delivered to:

Diane L. Bellquist
Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

A handwritten signature in black ink, appearing to read "Lawrence T. Buening, Jr.", written over a horizontal line.