

Effective May 24, 2005

**BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH
HEALTH OCCUPATIONS PROGRAM**

In the Matter of Troy Aupperle,
Unlicensed Complementary and Alternative
Health Care Practitioner

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by Troy Aupperle [hereinafter "Practitioner"] and the Health Occupations Programs [hereinafter "HOP"] within the Minnesota Department of Health [hereinafter "Department"], that, without trial or adjudication of any issue of fact or law herein, and without any evidence or admission by any party with respect to any issue or fact herein:

1. Except as otherwise specified herein, this Stipulation and Consent Order [hereinafter, "Stipulation"], investigative reports, and related documents shall constitute the entire record herein upon which this Order is based and shall be filed with the Department.
2. The Stipulation document is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA") and Minnesota Statutes, section 146A.06, subd. 2. All other data comprising the record shall not be considered a part of this Stipulation and shall maintain the data classifications to which they are entitled under the MGDPA and Minnesota Statutes, section 146A.06, subd. 2.
3. Practitioner has been and is subject to the jurisdiction of the Department because Practitioner engaged in unlicensed complementary and alternative health care practice as defined in Minnesota Statutes, section 146A.01 after July 1, 2001 when the Department's jurisdiction and legal authority became effective.
4. Pursuant to Minnesota Statutes, section 146A.01, subd. 4, complementary and alternative health care practices include the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (7) detoxification practices and therapies; (11) healing practices utilizing food, food supplements, and nutrients; or (14) herbology or herbalism.
5. Unlicensed complementary and alternative health care practitioners are prohibited from practices that invade the human body by puncture of the skin, or providing a medical diagnosis. Minnesota Statutes, sections 146A.01, subd. 4(b) and (d).
6. Unlicensed complementary and alternative health care practitioners are prohibited from

engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a client; or any other practice that may create danger to any client's life, health, or safety, in any of which cases, proof of actual injury need not be established. Minnesota Statutes, section 146A.08, subd. 1(f).

7. Unlicensed complementary and alternative health care practitioners are required to provide a client bill of rights to each client. Minnesota Statutes, section 146A.11.

8. The Department alleges, and the Practitioner admits, for purposes of these and any future disciplinary proceedings before the Department, the following facts:

A. Practitioner was the founder and Chief Executive Officer of "Enzymology Research Center" (hereinafter "ERC"), a for-profit company. ERC began operating in Minnesota on May 6, 2001.

B. Practitioner has a Bachelor of Arts degree from Arizona State University. Practitioner stated that he is privately certified as a phlebotomist and a nutritional microscopist and has taken many courses on these topics.

C. Regarding Practitioner's activities between July 1, 2001 and October 18, 2001:

1. Practitioner conducted health tests on thirty-two clients in Willmar and Rochester, Minnesota, including dry cell and live cell microscopy, hemoglobin, glucose, body fat, and cholesterol tests. For the dry cell and live cell microscopy, Practitioner took clients' blood using a lancet and put it under the microscope, the results of which were projected onto a computer screen for the clients to view. Cholesterol, glucose and hemoglobin levels were measured in machines on the premises and at the time of the clients' visits. After all the tests above were completed, each client would receive a computer printout with the results of the tests and a product-matching profile with recommendations for various enzyme-based, herbal and vitamin dietary supplements. Practitioner provided the Department with intake sheets and results for twenty-five of the thirty-two clients.

2. Practitioner directed programming of the computer and established the parameters. The computer program would make the product match based on the results that occurred. Past client blood test results were stored in Practitioner's computer system to be referred to when a client came for a second visit.

3. For a first-time visit, each client paid Practitioner \$150 for live cell, dry cell, cholesterol, hemoglobin, glucose, body composition and a summary of their health profile. Preferred clients (ones who had been customers before) paid \$90 for the same services.

4. A description of the Live Blood Cell analysis from Practitioner's flier and advertisement for the service, entitled *Enzymology Research Center presents ZYME-TECH Nutritional Consultations* states, (hereinafter "Zyme-Tech") "this is a live snapshot of the blood you will view on the screen. Some of the 'challenges' that can be noted in the blood using this method are; colon irregularities, stress on organs, sugar problems, free radical damage, bacteria, parasites, yeast, fungus, plaque, cholesterol, and uric acid crystals. It also includes a complete body fat analysis from an electronic scale as well as blood hemoglobin (iron) and glucose (sugar) levels."

5. A document entitled *Enzymology Research Center presents ZYME-TECH Nutritional Consultants* states "ZYME-TECH is the only mobile unit of its kind in the country that provides computerized nutritional consultations. This program is fully insured and complies with state and federal regulations and is performed by technicians that are nationally certified through the American Society of Phlebotomy Technicians (ASPT) and the American Society of Clinical Pathologists (ASCP)."

6. Practitioner's mobile unit under the name of Zyme-Tech was furnished as a laboratory with stainless steel counter tops, lancets, slides, alcohol swabs, microscopes, gauze and computers. The laboratory was not certified under the federal Clinical Laboratory Improvement Act (CLIA) as required by CLIA for laboratories that perform testing on human specimens.

7. The client intake sheet was called "Health Evaluation Profile" and each client filled it out themselves disclosing their "health challenges" and medications.

8. There was a consent and release language at the bottom of the client intake page that stated "...I understand and acknowledge that this blood sample is for a visual demonstration and any decisions or conclusions that I make from viewing my blood will be solely my responsibility. The sample will not be used for diagnostic or medical advice, but merely for educational purposes based on the findings of many noted researchers (Dr. Enderlein and Dr. Naessens). We are nutritional consultants performing research. I hereby certify that I am not a member, employee or agency of any Health, Governmental, Regulatory or related Agency. Notice is hereby given to any person who receives a copy of this Declaration and who, acting under the color of the law, intentionally interferes with the free exercise of the rights retained by me under the Ninth Amendment, as enumerated in this declaration, that they may be in violation of my civil and constitutional rights, Title 42, U.S.C. 1983 et seq. And Title 18, Section 241".

9. The "health challenges" listed on the intake sheet for the client to choose were: allergies, arthritis, back pain, low immune system, blood sugars, bowel

irregularities, gastritis, bloating, acid reflux, weight problems, hormonal problems, ulcers, urinary problems, heart problems, skin problems, memory loss, constipation/diarrhea, depression, low energy, asthma, circulation, and yeast.

10. The twenty-five clients ranged in age from 15 to 75 years old with the majority of clients being between the ages of 40-59 years old. On the Health Evaluation Profile, the clients disclosed the following conditions: low energy; circulation problems; weight problems; allergies; back pain; yeast problems; hormonal problems; bowel irregularities; bloating; low immunity; memory loss; depression; acid reflux; diarrhea; asthma; constipation; skin problems; urinary problems; blood sugars issues, arthritis, and heart problems.

11. The blood tests results were presented on a sheet entitled "Bloodwork Health Profile Worksheet". On Practitioner's worksheet, there were seven possible results for bacteria and out of the twenty-five clients described above, twenty-two of them had a "yeast" result.

12. Another possible result on Practitioner's worksheet was "uric acid crystals". Five of the twenty-five clients described above had a "uric acid crystal" result.

13. Another possible result on Practitioner's worksheet was "Rouleau". Eleven out of the twenty-five clients described above had a "Rouleau" result.

D. Practitioner did not provide a Client Bill of Rights as required by Minnesota Statutes, section 146A.08, subd. 1(r).

E. Practitioner is no longer doing blood work on clients.

9. Practitioner waives any claim that he may have against the Department, the State of Minnesota, or any employee thereof, under the Equal Access to Justice Law, Minnesota Statutes, sections 15.471-15.475.

10. For purposes of this Stipulation, Practitioner expressly waives all procedures and proceedings before the Department to which Practitioner may be entitled under the Minnesota and/or United States Constitution, statutes, rules, and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minnesota Statutes, section 480A.06, or otherwise from the Order issued by the Division Director pursuant to this Stipulation.

11. Except as otherwise specified herein, this Stipulation, investigative reports, and related documents shall constitute the entire record of the proceedings herein upon which this Stipulation is based and shall be filed with the Department. Any report or other material related to this action and received after the date this Stipulation is executed shall become part of the

record and may be considered by the Department in future aspects of this proceeding. These items shall maintain data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and Minnesota Statutes, section 146A.06, subd. 2. They shall not be considered a part of this Stipulation and shall not, to the extent they are not already public documents, become public merely because they are referenced herein.

12. In the event the Division Director, in his discretion, does not approve this settlement, or a lesser remedy than specified herein, this Stipulation shall be null and void and shall not be used for any purpose by either party hereto; provided, however, that should this occur and thereafter an administrative contested case is initiated pursuant to Minnesota Statutes, Chapter 14, Practitioner agrees he will not raise any objections on any administrative level or in any court action to the Department's proceeding and hearing the case on the basis that the Division Director has become disqualified due to the Division Director's review and consideration of this Stipulation and record.

13. This Stipulation shall not in any way or manner limit or affect the authority of the Department to proceed against Practitioner by initiating a contested-case hearing or by other appropriate means on the basis of any act, conduct, or omission of Practitioner justifying action which occurred after the date of this Stipulation and which is not directly related to specific facts and circumstances set forth herein.

14. Any appropriate federal or state court shall, upon application of the Director, enter an order of enforcement of any or all of the terms of this Stipulation;

15. Practitioner hereby acknowledges that he has read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Practitioner acknowledges that he is fully aware that it must be approved by the Division Director. The Division Director may approve the Stipulation as proposed, approve it subject to specific changes, or reject it. If the Division Director approves the Stipulation or makes a change acceptable to the Practitioner, the Division Director will issue the Order and it will take effect. If the changes are unacceptable to Practitioner, or the Division Director rejects the Stipulation, it will be of no effect, except as specified in paragraph 12, above.

16. Practitioner's violation of this Stipulation will be considered a violation of Minnesota Statutes, section 148C.09, subdivision 1(2); and will constitute grounds for further disciplinary action;

17. Upon this Stipulation, and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Practitioner does hereby consent that until further order of the Division Director, made after notice and hearing or after agreement between the Department and Practitioner, the Division Director may make and enter an Order for the following:

A. Practitioner will cease and desist from the practice of unlicensed complementary or alternative health care in Minnesota pursuant to Minnesota Statutes, Chapter 146A, including taking blood from clients, or otherwise puncturing the skin of clients under the auspices of performing services as an unlicensed complementary or alternative health care practitioner. This prohibition shall not apply in the event that he becomes licensed or otherwise meets the regulatory requirements associated with such practices.

B. Practitioner will pay the amount of \$3,500. Practitioner must pay the \$3,500 within seven days of the effective date of the Stipulation. The check must be made payable to "State of Minnesota, Treasurer". If the Practitioner fails to submit the payment, the Department will refer the matter for collection to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or another source for collection. MCE is authorized by Minnesota Statutes, section 16D.17 to obtain a judgment against Practitioner without further notice or proceedings. Practitioner shall mail the payment to Richard Hnasko, Investigator, Health Occupations Program, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882.

C. Practitioner shall cooperate fully during the process of the Department's enforcement and monitoring of compliance with this Stipulation and shall respond to the Department's correspondence within the time provided by law or by the deadline of Department staff.

D. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation; and


F. Practitioner agrees that service of this Stipulation by regular mail at his attorney's office address of Peter C. Saari, M.A., J.D, Integrated Legal Services, P.C., 1440 Louisiana Avenue, Golden Valley, MN 55427, shall be due and sufficient service on Practitioner.

Date: 5/11, 2005

Dated: 5/17, 2005



TROY AUPPERLE, Practitioner, and for



SUSAN WINKELMANN
Investigations and Enforcement Manager
Health Occupations Program
85 East 7th Place, Suite 300
P.O. Box 64882
Saint Paul, MN 55164-0882

Upon consideration of this stipulation and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that the terms of this stipulation are adopted and implemented by the Division Director this 19th day of May, 2005.

MINNESOTA DEPARTMENT OF HEALTH

By: 
David J. Grise, Director,
Division of Compliance Monitoring