

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

In the Matter of Kristi Hughes Hawkes,
Unlicensed Complementary and Alternative
Health Care Practitioner

**STIPULATION AND
CONSENT ORDER**

200412

IT IS HEREBY STIPULATED AND AGREED by Kristi Hughes Hawkes [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 upon which this Order is based and shall be filed with the Department. 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.
2. 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.

3. Practitioner is not now, nor has she ever been licensed or registered by the Minnesota health-related licensing boards or the commissioner of health in Minnesota.
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: (11) healing practices utilizing food, food supplements, nutrients, and the physical forces of heat, cold, water, touch and light; (14) herbology or herbalism; (15) homeopathy; and (20) naturopathy.
5. Minnesota Statutes, Section 146A.01, subd. 4(b) prohibits unlicensed complementary and alternative health care practitioners from puncturing the skin, and providing a medical diagnosis.
6. Minnesota Statutes, Section 146A.01, subd. 4(e) prohibits advertising that is false, fraudulent, deceptive or misleading.
7. Minnesota Statutes, Section 146A.08, subd. 1(f) prohibits 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.
8. Minnesota Statutes, Section 146A.08, subd. 1(j) prohibits using any controlled substance as defined in Chapter 152.
9. Minnesota Statutes, Section 146A.08 subd. 1 (q) prohibits undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.
10. Minnesota Statutes, Section 146A.08, subd. 1(x) prohibits failing to provide a client with a recommendation to see a licensed or registered health care provider if there is a

reasonable likelihood that the client needs to be seen by such a provider.

11. When violations of law are found, the Department has authority to revoke or suspend a practitioner's right to practice (Minnesota Statutes, Sections 146A.09, subd. 1(1) and (2)), to impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed as to deprive the practitioner of any economic advantage gained by reason of the violation or to reimburse the office for all costs of the investigation and proceeding (Minnesota Statutes, Section 146A.09, subd.1(4)), or to impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the Department. (Minnesota Statutes, Section 146A.09, subd. 1(7)).
12. The Department alleges, and the Practitioner unconditionally admits, for purposes of these and any future disciplinary proceedings before the Department, the following facts:
 - A. Practitioner has been practicing as a naturopath in Minnesota since 1997 and founded the Center of Natural Healing Arts, Inc, which has offices in Alexandria and Moorhead, Minnesota. Practitioner is a graduate of the National College of Naturopathic Medicine in Oregon. Practitioner also attended a six-day course entitled, "Applied Functional Medicine and Clinical practice in Functional Medicine". Practitioner stated that she had boundaries training in naturopathic school.
 - B. Practitioner is also the former owner of the Heartland Center of Natural Healing in Park Rapids, Minnesota, and now works there as an independent contractor.

C. Practitioner's brochure lists her practice as including "naturopathic medicine, clinical nutrition, dietary counseling, botanicals/herbals, pain management, frequency specific microcurrent, functional medicine, homeopathy, naturopathic education, fitness classes and yoga".

D. Practitioner stated in her October 12, 2004 interview with Department staff that she uses a "frequency specific microcurrent" machine to treat clients and described it as being a TENS unit which is a medical device pursuant to federal law. Practitioner stated that she did not know if the TENS unit was registered with the Federal Food and Drug Administration.

E. Practitioner also teaches on the weekends outside of Minnesota about clinical applications promoting health body composition and improving chronic disorders sponsored by Metagenics Educational Programs, a nutritional company, out of California. For some of these sessions, Practitioner uses case studies from her own practice. Clients whose situations are used in these case studies are not paid, but do receive a discount on dietary supplements they might purchase from Practitioner. Client One's situation was used as a case study.

F. Practitioner denies doing medical diagnoses in Minnesota, but does have clients give samples of blood, urine and sometimes hair. These samples are sent to diagnostic laboratories for results, which Practitioner reviews with her clients as part of the functional medicine analysis. Practitioner does not draw the blood herself and clients go to a hospital to get blood drawn.

G. Practitioner saw Client One first on December 16, 2002 and two more times in

December. On January 2, 2003, Client One returned to Practitioner complaining of severe abdominal pain. On a scale of one to ten, Client One said the pain was between eight and ten. Practitioner knew that Client One had had an ovarian laparoscopy three weeks before that date due to a ruptured cyst. Client One was in her early twenty's at the time. Practitioner examined the area of the incision on Client One and Practitioner did microcurrent work on that site to reduce inflammation. Practitioner also stated that Client One also presented with severe pain down her right leg. Practitioner stated that regarding the radiating pain, she asked Client One about the pain levels, and talked to her about

where the "neurologic-type symptoms" were occurring.

H. Practitioner stated that she recalled that Client One had been referred to Practitioner for pain management, but also stated that she did not receive any written orders to that effect. Practitioner said she took Client One's word for it that her licensed health care practitioners wanted her to obtain treatment from Practitioner. The Practitioner did not refer Client One to a licensed practitioner in Minnesota, or to a hospital.

I. Practitioner said she treated Client One with frequency specific microcurrent therapy to help Client One manage her pain for the first several days. Practitioner stated that she learned how to use this device while she was employed in Oregon and working on clients with fibromyalgia and myofascial pain.

J. Practitioner stated that Client One was in such a severe pain state that Practitioner wanted her to stay in town and close by since Client One did not live in Alexandria. Client One stayed in a hotel for a couple nights and then Practitioner arranged for Client One to stay at Practitioner's parents' home with her parents for several nights while she

was receiving treatment from Practitioner. The microcurrent treatment was done in the hotel, at Practitioner's office, and in Practitioner's parents' home.

K. After several nights in Practitioner's parents' home, Practitioner referred Client One to a chiropractor-pain specialist in Oregon and had another naturopath in Practitioner's clinic accompany Client One to Oregon by plane that week. Practitioner was unable to go due to having caught a bad cold and being too sick to travel. The treatment in Oregon was done over a week's time period and was done in a conference setting. Practitioner paid for the other naturopath's fee and plane fare of about \$1,000. Client One paid her own way.

L. Practitioner denied ever having treated any other client around the clock like she did with Client One.

M. In February 2003, Practitioner transitioned Client One to her naturopath-partner in the same clinic to handle Client One's care. Practitioner remained available to Client One for case consultations and treatment suggestions.

N. Practitioner also stated that her boyfriend at that time was a good friend of Client One and requested that Practitioner give Client One special discounts for service. Practitioner stated that she saw Client One as a "special favor" to her boyfriend. Practitioner's boyfriend worked as a fitness instructor in a local facility and Practitioner had an arrangement with him to promote his fitness club in her naturopathic office. Practitioner found out in June 2003 that in fact, her boyfriend had also been dating Client One from November 2002 through the time that Practitioner and he were dating and during 2003, living together.

O. In June 2003, Client One went to Arizona to attend a seminar at which Practitioner was teaching about Client One's case study. There were other case studies presented at the seminar. Client One attended Practitioner's seminar and Client One attested at the seminar to her happiness with Practitioner's treatment of her. Practitioner's boyfriend joined Practitioner for the final weekend, which was also Practitioner's birthday.

Practitioner, her boyfriend, and Client One went out one night together to a topless strip club. Practitioner stated in her interview with Department that Client One was no longer a client of hers by that time, but Client One was a client of the clinic and according to

business records had treatments every month from January 2003 through July 2003.

P. After the Arizona trip, Practitioner had a conversation with Client One about her seeing the other naturopath at another clinic and explained that due to the fact that Client One was dating Practitioner's boyfriend, Practitioner did not believe she could make good decisions as Client One's naturopath.

Q. Practitioner's boyfriend was never a client at the clinic, but Practitioner let him use the microcurrent machine to treat himself on his own.

R. Practitioner admitted having smoked marijuana on occasion with her boyfriend.

Practitioner denies having a chemical dependency problem. Practitioner has never had a chemical dependency assessment.

13. Practitioner waives any claim that she 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.
14. 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.

15. 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.
16. 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 she 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.

17. 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.
 18. 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.
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19. Practitioner hereby acknowledges that she has read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Practitioner acknowledges that she is fully aware that it must be approved by the Division Director. The Division Director may either 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 16, above.

20. 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;
21. 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 shall list out each TENS unit or frequency specific microcurrent machine she uses in her practice and provide that to the Department within 14 days of the effective date of the stipulation. Practitioner shall include a copy of the label from each machine regarding whether each machine is restricted by the FDA to be used only by licensed practitioners. In the same communication, Practitioner shall inform the Department as to whether each machine is registered with the FDA as a medical device. Practitioner shall provide information about the machine's maintenance and care while in her possession and how long Practitioner has had each machine.
- B. Practitioner shall refer all clients to a licensed health care provider in the event that the clients exhibit urgent health care symptoms unless Practitioner receives written orders from a Minnesota licensed health care provider referring that client to Practitioner.
- C. Practitioner shall submit quarterly reports to the Department for a period of one year from the effective date of the stipulation reporting how many clients Practitioner saw during that quarter, including a description of the symptoms upon the clients' initial visits, whether or not each client was referred to a Minnesota licensed health care provider, and if so, disclose the name, title, address and telephone number of the health care provider and a reason why the referral was made.
- D. Practitioner shall take at least eight hours of a therapist-client boundaries course from a pre-approved school or sponsor within six months of the effective date of the

stipulation. Practitioner shall submit the title, sponsor or school name, hours of the course, syllabus, and a contact name, address and telephone number prior to attending the course to the Department at Health Occupations Program, P.O. Box 64882, St. Paul, MN 55164-0882 or by faxing it to 651-282-3839. Upon completing the course, Practitioner shall notify the Department within 14 days and submit a written letter describing the topics in the course and explaining how the topics relate to Practitioner's practice. Practitioner is responsible for the cost of the course.

E. Practitioner shall cease all use of controlled substances as defined in Minnesota

Statutes, Chapter 152.

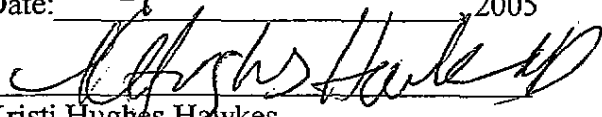

F. Practitioner shall pay a civil penalty of \$705.00 representing the costs of investigations in these proceedings, to date. The payment must be made payable to "State of Minnesota, Treasurer" mailed to the Health Occupations Program, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN 55164-0882. Should Practitioner fail 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 judgement against Practitioner without further notice or proceedings.


G. 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.

22. 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


23. Practitioner agrees that service of this Stipulation by regular mail at her attorney's office address of, Michael J. Dolan, Thornton, Hegg, Reif, Dolan & Bowen, P.A., 1017 Broadway, P.O. Box 819, Alexandria, MN 56308, shall be due and sufficient service on Practitioner.

Date: 6/20, 2005

Kristi Hughes Hawkes
Practitioner


Dated: 6/24, 2005

SUSAN WINKELMANN, Manager
Investigations and Enforcement
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 27th day of June, 2005.

MINNESOTA DEPARTMENT OF HEALTH

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