

BEFORE THE BOARD OF CHIROPRACTIC PHYSICIANS

STATE OF IDAHO

In the Matter of the License of:

MICHAEL ANTHONY SMITH, D.C.,  
License No. CHIA-840,

Respondent.

Case No.: CHI-2014-13

STIPULATION AND CONSENT ORDER

WHEREAS, information has been received by the Idaho State Board of Chiropractic Physicians (the "Board") that may constitute sufficient grounds for the initiation of an administrative action against Michael Anthony Smith ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A. Stipulated Facts and Law**

A.1. The Board regulates chiropractic practice in the State of Idaho in accordance with title 54, chapter 7, Idaho Code.

A.2. The Board has issued License No. CHIA-840 to Respondent. Respondent's license is subject to the provisions of title 54, chapter 7, Idaho Code and the Board's rules at IDAPA 24.03.01, *et seq.*

A.3. The Board alleges that, beginning in at least 2012, Respondent has treated patients for allergies, Lyme disease and parasites using controversial and unproven methods including, but not limited to, making diagnoses without appropriate lab tests and utilizing magnets for

treatment. The Board alleges that such practices violate the Chiropractic standard of care, and constitute an abuse or exploitation of a patient. The Board also alleges that Respondent's treatment methodologies promote unnecessary or inefficacious treatment, procedures, devices or services.

A.4. Respondent contends that the Board's allegations are without merit. Respondent admits that he has evaluated and treated patients for suspected allergies, parasites and Lyme disease, and that his evaluation and treatment techniques include the use of magnets. Respondent contends that he fully informs and provides full written disclosure to all of his patients about his techniques, their efficacy, costs and risks. Respondent further contends that chiropractors are not required to obtain lab tests before making diagnoses. Subject to the foregoing, Respondent denies the Board's allegations set forth in Paragraph A.3, and expressly denies that any of his techniques violate the chiropractic standard of care, or promote unnecessary or inefficacious treatment, procedures, devices or services. This Stipulation is made as a compromise of disputed claims to avoid the time and expense of an administrative hearing.

A.5. The allegations of Paragraph A.3, if proven, may violate the laws and rules governing chiropractic practice, and may constitute grounds for disciplinary action against Respondent's license to practice chiropractic in the State of Idaho.

### **B. Waiver of Procedural Rights**

I, Michael Anthony Smith, by affixing my signature hereto, acknowledge that:

B.1. I have read and understand the allegations pending before the Board, as stated in Section A, Paragraphs A.3 through A.5. I further understand that these allegations, if proven,

may constitute cause for disciplinary action upon my license to practice chiropractic in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of chiropractic in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a compromise and resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action Prescribed by this Stipulation upon my license without further process.

### **C. Stipulated Discipline**

C.1. Before performing any CranioBiotic Technique ("CBT") or LymeStop evaluation, investigation, examination or treatment on any patient, Respondent shall continue to provide a written disclosure to the patient, which the patient shall read and sign, which contains the following:

a. A statement that Respondent is a chiropractic physician, and not a medical doctor or a doctor of osteopathy, and that he does not practice medicine;

b. A statement that the CBT and/or LymeStop techniques and procedures were developed by Respondent, that they are experimental, alternative forms of health care, not yet proven by medical science, not yet subjected to chiropractic peer review nor taught in

chiropractic colleges, and that they are not generally covered by health insurance, Medicare or Medicaid;

c. A statement that the CBT and LymeStop techniques and procedures to be utilized in evaluating, investigating, examining or treating the patient include the use of magnets, energetically imprinted test vials, muscle response testing, manual therapy, nutritional therapy and acupuncture-like points on the body;

d. A statement of the known risks, side effects and contraindications for CBT and/or LymeStop techniques and procedures;

e. A statement that the CBT and LymeStop techniques and procedures are not medical diagnostic procedures, and that a definitive medical diagnosis of allergens, infectious agents, toxins, parasites, and biochemical dysfunctions may require specific objective medical laboratory testing procedures, for which CBT and LymeStop techniques are not substitutes;

f. A statement that the results of medical lab testing may differ from the results of CBT and/or LymeStop evaluations;

g. A statement that the results and benefits of CBT and LymeStop techniques are not guaranteed, and that some people do not benefit from them; and,

h. A statement that the patient should not discontinue any health care provided by other health care providers, and that the patient should fully inform other health care providers about any changes in symptoms or conditions as a result of application of Respondent's procedures and techniques.

C.2. After initial examination and evaluation, Respondent shall also continue to provide each patient for whom CBT or LymeStop procedures are deemed indicated, an estimate

of the number of visits/treatments likely required by each procedure, and an estimate of the cost of each procedure.

C.3. Absent support from scientifically-conducted studies, which have been reviewed and approved by the Board, Respondent shall refrain from making claims of specific success rates (by percentage) for the effectiveness of treatment of symptoms, conditions or disease using his CBT and LymeStop techniques and procedures.

C.4. Respondent shall have thirty (30) days from the date of entry of the Order by the Board adopting this Stipulation within which to modify his website and documents to comply with the requirements of Sections. C.1 through C.3 of this Stipulation.

C.5. Respondent shall pay to the Board investigative costs in the amount of \$2,781.32 and attorney fees in the amount of \$2,162.50 for the total sum of \$4,943.82 within thirty (30) days of the entry of the Board's Order.

C.6. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.7. If Respondent fails to pay the investigative costs and attorney's fees in accordance with the terms set forth within this Stipulation, Respondent shall be ineligible to renew License No. CHIA-840 or obtain any other registration issued by the Board until such costs and attorney's fees are paid in full to the Board.

C.8. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

#### **D. Presentation of Stipulation to Board**

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2, this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations proceeding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2, which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

#### **E. Violation of Stipulation and Consent Order**

E.1. In the event Respondent violates or fails to timely comply with any term or condition of this Stipulation, the Board shall be authorized to take additional disciplinary action pursuant to the following procedures and without regard to any other requirement set forth in the Idaho Code, IDAPA rules, or any other statutory or regulatory provision:

a. The chief of the Bureau of Occupational Licenses shall serve notice of the charges levied against Respondent to Respondent or Respondent's attorney, if any. Within twenty-one (21) days after service of the notice, Respondent may submit both a response (along with supporting documentation) to the allegations and specifically request a hearing before the Board. If Respondent does not submit a timely response, the alleged violations will be deemed admitted. If Respondent does not submit a timely and specific request for hearing, Respondent waives any right to such hearing.

b. At the hearing, if one is requested by the Respondent, the Board and Respondent may submit evidence and present oral argument in support of their positions. Unless otherwise ordered by the Board, oral arguments and the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation. At the hearing, the facts and substantive matters related to the violations alleged in Section A.3 of this Stipulation shall not be at issue.

c. At any hearing or meeting at which the Board finds Respondent has violated this Stipulation and Consent Order, the Board may impose additional discipline, including, but not limited to, the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and fees (including, but not limited to, attorney fees) incurred by the Board, and other conditions or limitations upon Respondent's practice.

d. The stipulated procedure shall not preclude or limit the Board's authority to proceed against Respondent at any time in a contested case proceeding pursuant to the Idaho Administrative Procedure Act, title 67, chapter 52, Idaho code.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 10 day of December 2015.

**REDACTED**

MICHAEL ANTHONY SMITH, D.C.  
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 30th day of December, 2015.

**REDACTED**

JEAN R. URANGA  
Attorney for the Board

**ORDER**

Pursuant to Idaho Code § 54-712, the foregoing is adopted as the decision of the Board of Chiropractic Physicians in this matter and shall be effective on the 29th day of January, 2016. **IT IS SO ORDERED.**

IDAHO STATE BOARD OF CHIROPRACTIC

**REDACTED**

Mary Jo White, D.C.  
Chair

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing **Stipulation and Consent Order** on the following named person(s) on the date indicated below, in the manner indicated below:

<p>Jean R. Uranga URANGA &amp; URANGA 714 N. 5th Street P. O. Box 1678 Boise, Idaho 83701 <i>Counsel for Board of Chiropractic Physicians</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 384-5686 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <a href="mailto:uub@spro.net">uub@spro.net</a></p>
<p>Christopher C. Burke GREENER BURKE SHOEMAKER OBERRECHT P.A. 950 W. Bannock Street, Suite 950 Boise, Idaho 83702 Tel: (208) 319-2600 Fax: (208) 319-2601 <i>Counsel for Respondent, Michael Anthony Smith, D.C.</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: (208) 319-2601 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email: <a href="mailto:cburke@greenerlaw.com">cburke@greenerlaw.com</a></p>

DATED this 29<sup>th</sup> day of January, 2016.



**REDACTED**

Tana Cory, Chief  
Idaho State Bureau of Occupational Licenses