

BEFORE THE BOARD OF EXAMINERS IN OPTOMETRY  
STATE OF KANSAS

In the Matter of )  
 )  
Melissa R. Keusler, O.D. ) Case No. 2005-01  
Kansas License No. 1465-3 )  
\_\_\_\_\_ )

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Board of Examiners in Optometry (the "Board") and Melissa R. Keusler, O.D. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by

\_\_\_\_\_, or has been afforded the independent right of representation and examination, and acting upon the independent right of representation and examination voluntarily enters into this Stipulation and Final Agency Order.

2. The Board is a Kansas administrative agency vested with the authority, pursuant to K.S.A. 74-1501 and K.S.A. 74-1504, to carry out and enforce the provisions of the Kansas Optometry Act, K.S.A. 65-1517 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice optometry.

3. The Respondent is presently entitled to engage in the practice of optometry in the State of Kansas by reason of the Board having issued her Kansas license number 1465-3. At all times relevant hereto, the Respondent has held a current license to engage in the practice

of optometry in the State of Kansas, and is a licensee as that term is defined by K.S.A. 1501a(c) and K.A.R. 65-4-1(i).

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts, in violation of the Kansas Optometry Act, K.S.A. 65-1501, *et seq.*

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that she allowed her employer to submit claims indicating she had performed optometry services that had not actually been performed.

6. The Board hereby finds and concludes that Respondent's conduct, as described above, is grounds for disciplinary action in the State of Kansas, pursuant to K.S.A. 65-1517(b), as defined by K.S.A. 65-1516(b)(8) and (9).

7. The Board hereby finds and the Respondent hereby agrees that the following disposition is just and appropriate under the circumstances:

A. FINE. Respondent hereby agrees and consents to the Board's entry of an order assessing against her an administrative fine in the amount of Fifteen Thousand Dollars (\$15,000.00). Five Thousand Dollars of this Fifteen Thousand Dollar fine shall be paid to the Board within ten (10) days of the effective date of the Final Agency Order contemplated hereby. The Ten Thousand Dollar balance of the Fifteen Thousand Dollar fine shall not be payable if, during a 24-month probation period beginning on the effective date of the Final Agency Order contemplated hereby, the Respondent does not commit another act of the nature described in 5 hereof. If Respondent commits another similar act during the probation period, or fails to meet any condition set out in this Stipulation, the balance of the fine shall be immediately payable. If Respondent does not commit another similar act during the probation

period and meets all the conditions set out in this Stipulation, the balance of the fine shall never become payable.

B. ADDITIONAL CONTINUING EDUCATION. Respondent hereby agrees and consents that within 12 months of the entry of the Final Order contemplated hereby she shall obtain, in addition to continuing education obtained to meet license renewal requirements, no less than 10 hours of education in the topics of billing and coding. The education must be a course or courses approved by the Board's Investigation Member or the Board's Secretary Treasurer. Each entity that administers a course must notify the Board that Respondent has successfully completed the course. Within 30 days of completing a course, Respondent must submit to the Board's Executive Director a report, drafted by the Respondent, detailing the materials presented during the course.

C. OTHER REQUIREMENTS. Respondent hereby acknowledges and agrees that as a condition of this Stipulation and Final Agency Order, she must:

- i. Comply fully with this Stipulation and Final Agency Order; and
- ii. Comply fully with the Kansas Optometry Act, the Board's rules and regulations and all state and federal laws relating to Kansas optometrists.

8. Respondent hereby agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the investigation, which led to this disciplinary action, and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or her attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives

any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

9. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent further agrees that the Kansas Optometry Act, K.S.A. 65-1501, *et seq.*, is constitutional on its face and as applied in this case.

11. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

12. The Respondent acknowledges that she has the following rights:

- A. To have formal notice of charges served upon her;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.

- A. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act For Judicial Review and Civil Enforcement of Agency Action.

13. The Respondent freely waives these foregoing rights and acknowledges that the said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against her to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

14. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1173 Publicly Available Fine/Monetary Penalty"
- B. Basis For Action: "55 Improper billing practices."

15. The following statement will be made in the Board's newsletter: "The license of Melissa R. Keusler, C.D. of Wichita, Kansas was disciplined by the Board assessing an administrative fine."

16. The Respondent acknowledges that she enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of her choosing or after having had the opportunity to do so. The Respondent further acknowledges that she has read this Stipulation and Final Agency order in its entirety, that she understands its legal consequences and that she agrees that none of its terms are unconscionable, arbitrary or capricious.

17. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against her. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

18. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

19. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

20. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

21. The Respondent acknowledges that she has been advised by the Board that she would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas, in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601, *et seq.*, and to serve such a petition for judicial review on the Kansas Board of Examiners in Optometry by serving Sharon Green.

O.D. at 3111 West 6<sup>th</sup> Street, Suite A, Lawrence, Kansas 66049. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:



Melissa R. Keusler, O.D.

2/24/06

Date

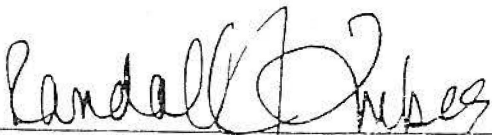
APPROVED BY:

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Date

Attorney for Respondent

APPROVED BY:



Randall J. Forbes, P.A. #09089  
FRIEDEN, HAYNES & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, KS 66603  
785/232-7266

2.27.06

Date

Attorney for Kansas Board of Examiners in Optometry

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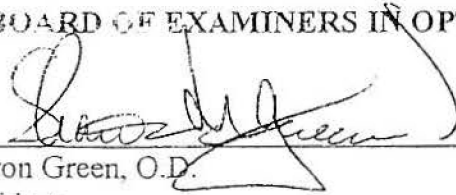
FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Board of Examiners in Optometry (the "Board") hereby approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this the 5<sup>th</sup> day of June, 2006.

KANSAS BOARD OF EXAMINERS IN OPTOMETRY

By



Sharon Green, O.D.  
President



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served by depositing same in the United States mail, postage prepaid, on this the 6 day of June, 2006 addressed to:

Randall J. Forbes, P.A.  
FRIEDEN, HAYNES & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, KS 66603

Melissa R. Keusler, O.D.  
6110 W. Kellogg, Suite #1  
Wichita, KS 67209



Penny Bowie, Executive Officer  
Kansas Board of Examiners In Optometry  
3109 West 6<sup>th</sup> Street, Suite B  
Lawrence, Kansas 66049