

1                                   **BEFORE THE ARIZONA BOARD OF HOMEOPATHIC AND**  
2                                   **INTEGRATED MEDICINE EXAMINERS**

3           In the Matter of:

4           **ELLIOTT SCHMERLER**

5           Holder of License No. 0168 for the Practice  
6           of Medicine as a Homeopathic Physician in  
7           the State of Arizona.

Board Case Nos. 08-11 & 09-06

**CONSENT AGREEMENT AND  
ORDER FOR VOLUNTARY  
SURRENDER OF LICENSE**

8  
9                                   **RECITALS**

10           In the interest of a prompt and judicious settlement of this case, consistent with the  
11 public interest, statutory requirements and the responsibilities of the Arizona Board of  
12 Homeopathic and Integrated Medicine Examiners (“Board”) and under A.R.S. §§ 32-  
13 2901, *et. seq.* and 41-1092.07(F)(5), Elliott Schmerler (“Respondent”), holder of License  
14 No. 0168 for the Practice of Medicine as a Homeopathic Physician in the State of  
15 Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions  
16 of Law and Order (“Consent Agreement”) as a final disposition of this matter.

17           1.       Respondent has read and understands this Consent Agreement and has had  
18 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
19 opportunity to discuss this Consent Agreement with an attorney.

20           2.       Respondent understands that he has a right to a public administrative  
21 hearing concerning the above-captioned matter, at which he could present evidence and  
22 cross examine witnesses. By entering into this Consent Agreement, Respondent  
23 knowingly and voluntarily relinquishes all right to such an administrative hearing, as well  
24 as rights of rehearing, review, reconsideration, appeal, judicial review or any other  
25 administrative and/or judicial action, concerning the matters set forth herein.

1           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
2 irrevocable.

3           4.     Respondent understands that this Consent Agreement or any part of the  
4 agreement may be considered in any future disciplinary action by the Board against him.

5           5.     Respondent understands this Consent Agreement deals with Board  
6 Investigation Case Nos. 08-11 and 09-06. The investigation into these matters against  
7 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

8           6.     Respondent understands that upon acceptance by the Board, this Consent  
9 Agreement shall constitute a resolution of any and all matters currently pending before  
10 the Board.

11          7.     All admissions made by the Respondent in this Consent Agreement are  
12 made solely for the final disposition of this matter, and any related administrative  
13 proceedings or civil litigation involving the Board and Respondent. Therefore, any  
14 admissions made by Respondent in this Consent Agreement are not intended for any  
15 other use, such as in the context of another regulatory agency's proceedings, or civil or  
16 criminal proceedings, whether in the State of Arizona or in any other state or federal  
17 court.

18          8.     Respondent acknowledges and agrees that, upon signing this Consent  
19 Agreement and returning this document to the Board's Executive Director, he may not  
20 revoke his acceptance of the Consent Agreement or make any modifications to the  
21 document regardless of whether the Consent Agreement has been signed by the  
22 Executive Director. Any modification to this original document is ineffective and void  
23 unless mutually agreed by the parties in writing.

24          9.     Respondent understands that the Consent Agreement shall not become  
25 effective unless and until adopted by the Board and signed by its Executive Director.  
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1           10. If a court of competent jurisdiction rules that any part of this Consent  
2 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
3 shall remain in full force and effect.

4           11. Respondent understands and agrees that if the Board does not adopt this  
5 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
6 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

7           12. Respondent understands that this Consent Agreement is a public record that  
8 may be publicly disseminated as a formal disciplinary action of the Board and may be  
9 reported as required by law to the National Practitioner Data Bank and the Healthcare  
10 Integrity and Protection Data Bank.

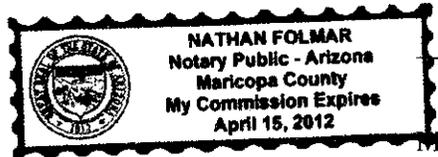
11           13. Respondent understands that any violation of this Consent Agreement  
12 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
13 2933(32), -2934(A).

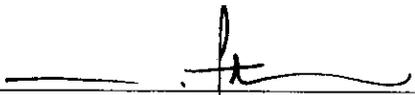
14 ACCEPTED AND AGREED BY RESPONDENT

15  
16   
17 Elliott Schmerler

Dated: 1-6-09

18 Subscribed and sworn to before me in the County of Maricopa, State of Arizona, this \_\_\_\_ day of  
19 January, 2009, by Elliott Schmerler.



  
22 NOTARY PUBLIC

My Commission expires: 4/15/2012

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1 **FINDINGS OF FACT**

2 1. The Board is the state agency authorized under A.R.S. §§ 32-2901 through  
3 32-2951, and the rules promulgated thereunder found in the Arizona Administrative Code  
4 (A.A.C. or "Rules") at R4-38-101 through R4-38-403, to regulate and control the  
5 licensing of Homeopathic Physicians and the practice of Homeopathic Medicine in the  
6 State of Arizona.

7 2. Respondent is the holder of License No. 0168 to practice medicine as a  
8 Homeopathic Physician in the State of Arizona.

9 3. On or about October 14, 2008, Respondent's license to practice medicine in  
10 the State of Nevada was revoked by the Nevada Board of Medical Examiners upon  
11 findings and conclusions that he violated Nevada Revised Statutes § 630.304(1) during  
12 his initial process for re-licensing in 2007 and again in his 2007 renewal.

13 4. On or about November 18, 2008, the Board reviewed the action taken by  
14 the Nevada Board of Medical Examiners, and voted to open a complaint (09-06) against  
15 Respondent and proceed to a formal hearing.

16 5. On or about June 16, 2008, the Board notified Respondent that it had voted  
17 to open an investigation (08-11) into whether or not he had provided cosmetic or other  
18 surgery that may have exceeded the scope of surgery allowed under his homeopathic  
19 license.

20 6. During the course of the Board's investigation of Case No. 08-11, the  
21 Board sought access to patient files for a six month period of time. According to  
22 Respondent, the files are not easily obtainable as they are located in a storage facility in  
23 Nevada, however, he would attempt to retrieve what he could. On November 18, 2008,  
24 the Board voted to request Respondent to provide twenty case files to the Board within  
25 forty days.

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