BEFORE THE ARIZONA BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS

In the Matter of: **ELLIOTT SCHMERLER** Holder of License No. 0168 for the Practice of Medicine as a Homeopathic Physician in the State of Arizona.	Board Case Nos. 08-11 & 09-06 **CONSENT AGREEMENT AND ORDER FOR VOLUNTARY SURRENDER OF LICENSE**

RECITALS

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

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

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

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

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

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

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

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

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

9. Respondent understands that the Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

10. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

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

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

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

ACCEPTED AND AGREED BY RESPONDENT

Elliott Schmerler

Dated: 1-6-09

Elliott Schmerler

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

NATHAN FOLMAR
Notary Public - Arizona
Maricopa County
My Commission Expires
April 15, 2012

NOTARY PUBLIC

My Commission expires: 4/15/2012

FINDINGS OF FACT

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

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

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

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

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

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

7. In lieu of a formal hearing in Case No. 09-06, Respondent has decided to voluntarily surrender his license to the Board. Consequently, he will not be retrieving the patient files for Case No. 08-11.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-2901 *et seq*.

2. The Board may discipline a licensed homeopathic physician who has engaged in unprofessional conduct. A.R.S. § 32-2934.

3. The conduct and circumstances described in paragraph 3 of the Findings of Fact constitute unprofessional conduct pursuant to A.R.S. § 32-2933(18) ("Being disciplined by another regulatory jurisdiction because of the licensee's mental or physical inability to engage safely in the practice of medicine, medical incompetence or unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly with an act of unprofessional conduct prescribed by this section. The disciplinary action may include refusing, denying, revoking or suspending a license, issuing a formal reprimand, issuing a decree of censure or otherwise limiting, restricting or monitoring the licensee or placing the licensee on probation"), as the unprofessional conduct found by Nevada corresponds directly or indirectly with an act of unprofessional conduct prescribed by this section, specifically A.R.S. § 32-2933(10).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, and under the authority granted to the Board, under A.R.S. §§ 32-2901 through 32-2951, and the rules promulgated thereunder found in the Arizona Administrative Code (A.A.C. or "Rules") at R4-38-101 through R4-38-403,

IT IS HEREBY ORDERED that License No. 0168, which was issued to Respondent to allow him to practice medicine as a Homeopathic Physician in the State of Arizona, shall be deemed voluntarily **SURRENDERED**, upon adoption of this Consent Agreement by the Board and Respondent shall immediately return License No. 0168 to the Board.

IT IS FURTHER ORDERED that Respondent shall not use the terms "M.D.(H)", or "H.MD", or "Homeopathic Physician" or use any other similar words, initials, abbreviations, symbols or any combination thereof which would lead the public to believe that respondent is licensed to practice homeopathic medicine in Arizona.

DATED this 13th day of January, 2009.

Arizona Board of Homeopathic and Integrated Medicine Examiners

By: Christine Springer
Christine Springer, Executive Director

ORIGINAL OF THE FORGOING FILED
this 13th day of January, 2009, with:

Arizona Board of Homeopathic
and Integrated Medicine Examiners
1400 W. Washington, Ste 230
Phoenix, Arizona 85007

EXECUTED COPY OF THE FOREGOING MAILED
this 20th day of January, 2009, to:

Elliott Schmerler

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Assistant Attorney General
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By: Christine Springer
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