

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KANSAS

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Terry A. Iles, #17133
Assistant Attorney General
Office of the Attorney General
Kansas Judicial Center, 2nd Floor
301 S.W. 10th Street
Topeka, Kansas 66612-1597
(913) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 11

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
KANSAS STATE BOARD OF HEALING ARTS,)
and KANSAS STATE BOARD OF PHARMACY,)
Plaintiff,)
vs.)
DR. CHRISTENSEN'S WELLNESS GROUP, INC.,)
Defendant.)

Case No. 97CV 732

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 5 day of June, 1997, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Terry A. Iles, Assistant Attorney General. Relator Kansas State Board of Healing Arts appears by and through Mark W. Stafford, General Counsel to the Board, and Realtor State Board of Pharmacy appears by and through Dana W. Killinger, Attorney At Law. Defendant, Dr. Christensen's Wellness Group, Inc., appears by and through Greg J. Mermis, Shughart, Thomson & Kilroy.

Whereupon, the parties advise the Court that they have stipulated and agree to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

3. Relator Kansas State Board of Healing Arts is authorized by K.S.A. 65-2864 to enforce the Kansas healing arts act, K.S.A. 65-2801, *et seq.*

4. Relator State Board of Pharmacy is created by K.S.A. 74-1603 to enforce the Kansas pharmacy practices act, K.S.A. 65-1626, *et seq.*

5. Defendant, Dr. Christensen's Wellness Group, Inc. is a corporation organized under the laws of the state of Kansas. The principal office of the corporation is located at 11970 West 119th Street, Overland Park, Kansas 66213.

6. Defendant's corporate name, "Dr. Christensen," is not derived from a natural person affiliation with the corporation. Dr. Christensen is a fictitious name.

7. Defendant is a supplier within the definition of K.S.A. 50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) and (h).

8. Defendant is not licensed to engage in the practice of the healing arts nor in the practice as a pharmacist.

9. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

10. Defendant stipulates and waives any objections to venue in Shawnee County.

11. Defendant is in the business of nutritional counseling for the purpose of weight control.

12. The Attorney General alleges Defendant engaged in the following deceptive acts and practices which violate the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*:

- a. Defendant engaged in multiple false and misleading statements concerning weight loss in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) and (b), in that:

- i. Defendant misrepresented its property and services have approval, characteristics, uses, and benefits which they do not have in violation of K.S.A. 50-626(b)(1)(A);
- ii. Defendant misrepresented it has sponsorship, approval, status, affiliation or connection that it does not have in violation of K.S.A. 50-626(b)(1)(B);
- iii. Defendant willfully used exaggeration, falsehood, innuendo and ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2);
and
- iv. Defendant willfully failed to state a material fact, and willfully concealed, suppressed and omitted a material fact in violation of K.S.A. 50-626(b)(3).

13. Relator Kansas State Board of Healing Arts alleges Defendant engaged in the following acts which violate the Kansas healing arts act, K.S.A. 65-2801, *et seq.*:

- a. Defendant has opened or maintained an office for the practice of the healing arts by its representatives, in violation of K.S.A. 65-2867;
- b. Defendant has announced to the public by use of its corporate name, that it has the authority to practice the healing arts, in violation of K.S.A. 65-2867;
- c. Defendant has engaged in the practice of medicine and surgery for which it is not licensed by recommending or furnishing controlled substances to individuals to treat obesity, in violation of K.S.A. 65-2803;
- d. Defendant has engaged in the corporate practice of the healing arts, as described by the common law of this state, in violation of K.S.A. 65-2803 and 65-2867.

14. Relator State Board of Pharmacy alleges Defendant engaged in the following acts which violate the Kansas pharmacy practice act, K.S.A. 65-1626, *et seq.*:

- a. Defendant has offered for sale and dispensed prescription-only drugs, including controlled substances, and has acted as a pharmacy as defined in K.S.A. 65-1626(s);
- b. Defendant has acted as a pharmacy without license from the State Board of Pharmacy, in violation of K.S.A. 65-1631.

15. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

16. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive in paragraph twelve (12) of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

17. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices in paragraph thirteen (13) and fourteen (14) of this Consent Judgment, and Defendant agrees to abide by and be permanently enjoined from engaging in conduct in violation of the following terms:

- a. Defendant will not in any manner obtain, possess, sell or distribute to any person any drug listed in any schedule of the controlled substances act of the State of Kansas or any other prescription-only drug within the State of Kansas unless it possesses a valid registration to operate a pharmacy.
- b. Defendant will immediately cease representing, and will not in the future represent in any medium that any controlled substance or other prescription-only drugs, or a prescription order for any controlled substance or other prescription-only drug, may be obtained from Defendant within the State of Kansas unless it possess a valid registration to operate a pharmacy.
- c. Defendant will not employ any person as an agent of Defendant, or represent to another that a person is employed or is an agent of Defendant

for the purpose of engaging in the practice of the healing arts within the State of Kansas.

d. Defendant will not enter or be a party to a contract with another person which contract provides for the other person to become an independent contractor to engage in the practice of the healing arts at any Defendant location within the State of Kansas, unless the following provisions are made a part of such contract:

- i. No patient services provided by the independent contractor are considered or represented to another person to be part of a weight-loss plan offered by Defendant;
- ii. No payment for patient services provided by the independent contractor will be demanded or received by Defendant other than to collect such payment to be forwarded to the independent contractor;
- iii. The independent contractor will not be prohibited from billing any patient for patient services;
- iv. Defendant will offer no inducement to the independent contractor to refrain from billing any patient for patient services;
- v. The independent contractor will be required to create and maintain separate patient records, as provided by Kansas law, to which no employee of Defendant has any control or access, except when providing clerical services for the independent contractor;
- vi. Neither the independent contractor nor Defendant will offer any inducement to any patient to waive the physician-patient privilege to allow employees of Defendant access to a patient record maintained by the independent contractor;

- vii. Defendant will offer no inducement to the independent contractor to prescribe any drug to a patient;
- viii. The independent contractor will not dispense any prescription-only drug from any location owned or operated by Defendant;
- ix. Defendant will not prohibit or offer any inducement to the independent contractor to limit the practice of the healing arts to weight loss treatment, except the independent contractor may determine to what extent any patient service may be provided with reasonable safety at a Defendant location; and
- x. All patient contact between a patient and the independent contractor occurring on any property or location owned, leased or controlled by Defendant within the State of Kansas will take place in an office used exclusively by the independent contractor, and which office is secured so that only the independent contractor has access to such office, except that Defendant may retain a right of entry upon the occurrence of a termination of the contract between the independent contractor and Defendant, or upon the occurrence of any emergency threatening injury, loss of life or damage to property.

18. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant.

19. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents, representatives, and independent contractors within ten days (10) of signing the Consent Judgment, and to any future employees, agents, representatives, and independent contractors.

20. Defendant agrees to resolve any future consumer complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the

satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

21. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

22. Defendant agrees to pay \$5,000.00 in investigation fees and expenses and \$5,000.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas. Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of signing this Consent Judgment.

23. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

24. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof or for the enforcement of compliance herewith.

25. If any portion, provisions, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

26. Compliance with this Consent Judgment does not relieve Defendant of any obligations imposed by applicable federal, state or local law, nor shall Relators be precluded from taking appropriate legal action to enforce civil or criminal statutes under their jurisdiction. However, upon execution of this Consent Judgment and receipt of the amounts set forth in paragraph 22 above, Relators agree to release Defendant from, and not to pursue, any claims, demands or civil causes of action under the Kansas consumer protection act, the Kansas healing arts act and the Kansas pharmacy practices act with respect to acts and practices alleged in paragraphs 12, 13 and 14, up to the date of the execution of this Consent Judgment.

27. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Relators of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the Relators to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices of Defendant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court.

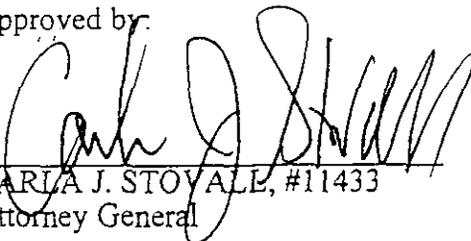
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Relator Carla J. Stovall, Attorney General, in the amount of \$10,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, the provisions of K.S.A. 50-632(b), the provisions of the Kansas healing arts act and the Kansas pharmacy practices act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Approved by:

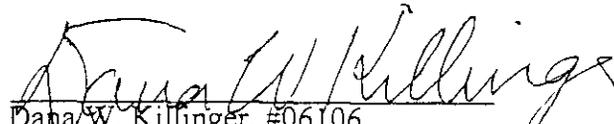

CARLA J. STOVALL, #11433
Attorney General


Terry A. Iles, #17133
Assistant Attorney General
301 SW 10th Street
Topeka, Kansas 66612-1597
(913) 296-3751

Attorney for Relator Carla J. Stovall, Attorney General


Mark W. Stafford, #13233
General Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603
(913) 296-7413

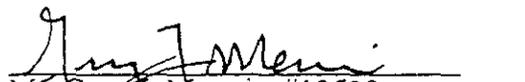
Attorney for Relator Kansas State Board of Healing Arts


Dana W. Killinger, #06106
1505 SW Harrison Street
Topeka, Kansas 66612
(913) 232-9616

Attorney for Relator Kansas State Board of Pharmacy


Mr. Dan Pedersen, President
Dr. Christensen's Wellness Group, Inc.
11970 West 119th Street
Overland Park, Kansas 66213

Defendant


Mr. Greg J. Mermis, #13528
SHUGHART, THOMSON & KILROY
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, Kansas 66210
913-451-3361

Attorney for Defendant