

1 **BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**
2 **ON REFERRAL FROM THE COMMISSIONER OF COMMERCE, COMMUNITY**
3 **AND ECONOMIC DEVELOPMENT**

4
5 In the Matter of:)
6)
7 EMILY KANE, N.D.)
8)
9 Respondent.) OAH No. 11-0084-NAT
10) Agency No. 2200-08-001

11
12 **MEDIATED CONSENT AGREEMENT**

13 The parties met in a mediation session spanning September 13-15, 2011, and through
14 follow-up teleconferences and meetings. Dr. Emily Kane participated, along with her legal
15 counsel, Deborah Holbrook, during the initial mediation session, and Dr. Kane represented
16 herself beginning October 21, 2011. The Division of Corporations, Business and Professional
17 Licensing was represented by Jo Anna Williamson and Assistant Attorney General Andy
18 Harrington. IT IS HEREBY AGREED by the parties as follows:

19 1. Licensure. Dr. Kane has been issued Naturopath License number N22 by the State of
20 Alaska, first issued August 17, 1989, which will lapse unless renewed by March 31, 2012.

21 2. Admission/Jurisdiction. Respondent admits and agrees that the Commissioner of the
22 Department of Commerce, Community and Economic Development (Commissioner) has
23 jurisdiction over the subject matter of her license in Alaska and over this Consent Agreement.

24 3. Admission/Facts. Respondent admits to the following facts:
25 a. Shortly after August 1, 1996, Respondent received a letter from Catherine
26 Reardon, then Director of the Division of Occupational Licensing of the State of Alaska,
27 responding to Dr. Kane’s questions regarding her authority as a naturopathic licensee over
28 certain prescription drugs (epinephrine, hydrochloric acid, pancreatic, pepsin, procaine, silver
29 nitrate, scopolamine, penicillin, etc.) Director Reardon’s letter informed respondent that her
30 interpretation of the applicable laws and regulations was that “if a product requires a
31 prescription, then it is a ‘prescription drug’ and a naturopath may not give prescribe, or
32 recommend it under AS 08.45.050.”

1 b. Shortly after January 12, 2005, Dr. Kane received a letter from P.J. Gingras,
2 Naturopath Licensing Examiner with the State of Alaska, in response to Dr. Kane's questions
3 regarding scope of practice and prescriptive authority of naturopaths licensed by the State of
4 Alaska, with a specific reference again to epinephrine. Ms. Gingras's letter referred Dr. Kane
5 to the applicable Alaska Statute 08.45.050 and stated "It has consistently been the Division's
6 position ... that if a substance requires a written prescription in order to be dispensed, then it
7 may only be prescribed by an individual with license and authority to dispense such items (i.e.
8 medical doctor) ... Alaska naturopaths have no prescriptive authority at the current time."

9 c. From the period January 1, 2006 through April 17, 2008, Dr. Kane wrote over
10 400 prescriptions, including prescriptions for epinephrine and procaine. The prescriptions for
11 epinephrine were filled 7/10/06 and 5/29/07. The prescription for procaine was filled 1/21/08.

12 d. On or about February 21, 2008, the Division received a complaint that Dr. Kane
13 had administered procaine via injection to a patient. Dr. Kane acknowledged to Investigator
14 Jo Anna Williamson that she had done so.

15 Respondent admits that, under current law, as a result of the facts stated above, possible
16 grounds exist for suspension, revocation, or other disciplinary sanctions of her license pursuant
17 to AS 08.45.060 and 08.45.070.

18 4. Formal Hearing Process. It is the intent of the parties to this Consent Agreement to
19 provide for the compromise and settlement of the issues raised by the Accusation in this case,
20 in place of the formal hearing process.

21 5. Waiver of Rights. Respondent acknowledges that she consulted with an attorney during
22 the in-person mediation sessions conducted in September; and, although she has agreed to
23 withdrawal of that attorney from further representation, she understands that she has the right
24 to consult with an attorney of her own choosing, and would have a right to proceed with the
25 administrative hearing she originally requested on the accusation. She understands that, by
26 signing this Consent Agreement, she is waiving her right to a hearing. Further, Respondent
27 understands that she is relieving the Division of any burden it has of proving the facts admitted
28 above, and is voluntarily and knowingly giving up her right to present oral and documentary
29 evidence, to present rebuttal evidence, to cross-examine any witnesses against Respondent, and
30 to appeal the Commissioner's determination to Superior Court.

1 6. Effect of Non-Acceptance of Consent Agreement. Respondent and the Division agree
2 that this Consent Agreement is subject to the approval of the Commissioner. They agree that,
3 if the Commissioner rejects this Consent Agreement, it will be void, and further proceedings
4 will be scheduled on the Division's Accusation. If this Consent Agreement is rejected by the
5 Commissioner, it will not constitute a waiver of Respondent's right to a hearing on the matters
6 alleged in the Accusation and the admissions contained herein will have no effect. Respondent
7 agrees that, if the Commissioner rejects this Consent Agreement, the Commissioner may
8 decide this matter after a hearing, and the Commissioner's consideration of this Consent
9 Agreement shall not alone be grounds for claiming that the Commissioner is biased against
10 Respondent, that she cannot fairly decide the case, or that she has received ex parte
11 communication.

12 7. Consent Agreement, Decision and Order. Respondent agrees that the Commissioner
13 has the authority to approve this Consent Agreement and to issue the following Decision and
14 Order.

PROPOSED DECISION AND ORDER

15
16 IT IS HEREBY ORDERED that the license issued to Respondent is subject to
17 the conditions specified below.

- 18 A. No use of or prescriptions for drugs requiring a prescription. Unless and
19 until a change in the law (statutory or regulatory) allows otherwise, Dr.
20 Kane will not give, prescribe or recommend a medicine that requires a
21 prescription in order to be filled by an Alaska pharmacist. She will not
22 give, prescribe or recommend a medicine included on List 1 of
23 Appendix A. It will not be a violation of this agreement or Dr. Kane's
24 scope of practice for her to give, prescribe or recommend a medicine on
25 List 2 of Appendix A. As to any medicines not appearing on either list,
26 Dr. Kane may give, prescribe or recommend the medicine only if a
27 prescription issued by a person licensed under AS 08.64 or other
28 medical professional authorized by law to issue prescriptions in Alaska
29 would not be required to obtain the medicine from an Alaska pharmacy.
30 B. Effect of Change in Law. If any of the items on List 1 of Appendix A
31 are brought within the scope of Alaska naturopathic practice due to a

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change in law, whether by legislative enactment, regulatory amendment, Alaska court ruling, or change in the prescription status of that particular item, the Division agrees that, upon notification being provided by Dr. Kane to the Division of that change, she may thereafter (but no sooner than the effective date of that particular change), give, prescribe or recommend that item without violating this agreement. This agreement does not bar Dr. Kane from seeking a clarification or change in the law through any means legally available to her, except through administrative adjudication of the accusation being resolved through this agreement. In the event that any of the items on List 2 of Appendix A are placed outside the scope of naturopathic practice, the Division agrees to give Dr. Kane notice of which drugs are to be removed from this list, and Dr. Kane agrees that, upon receipt of that notice, that item will be regarded prospectively as if included on List 1 of Appendix A.

C. Monitoring Condition. For a period of up to three years following this agreement, Dr. Kane agrees to be subject to, and to cooperate in the accomplishment of, a quarterly monitoring visit and report. The monitor will be an Alaska licensed medical doctor, doctor of osteopathy, physician's assistant or advanced nurse practitioner, with prescription authority, chosen by Dr. Kane and approved by the Division. If the monitor requires compensation for performing the monitoring work, Dr. Kane will be responsible for payment of the compensation. Dr. Kane will submit at least one nomination for a proposed monitor to the Division no later than 15 days after the date this agreement is approved by the Commissioner; the Division will indicate its approval of disapproval of that monitor within 15 days of receiving Dr. Kane's nomination. In the event the monitor resigns or becomes unavailable, replacement nomination(s) and approval(s) will follow the same timeframes. The monitor will review a random sample, selected by the monitor, of not less than ten percent of Dr. Kane's patient records active during the quarter, to verify compliance with the condition specified in

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paragraph (A) above. The monitor will provide a written report to the Division and will provide supplemental information as requested by the Division. If the Division so requests, the monitor's information will be submitted on a form to be prepared by the Division. Monitoring will commence starting with the next calendar quarter (January 1 to March 31, April 1 to June 30, July 1 to September 30, October 1 to December 31) following approval of this agreement and issuance of the final order by the Commissioner. Monitoring reports will be submitted by the Monitor to the Division within 15 calendar days of the close of each quarter. Following the submission of four timely and trouble-free monitoring reports, Dr. Kane may request and the Division may agree that the monitoring condition terminate; Dr. Kane will submit this request to the Division by writing or email. Following the submission of six consecutive timely and trouble-free monitoring reports, the monitoring condition will terminate. In this paragraph, the term 'trouble-free' means without any violations of this agreement or naturopathic licensing requirements or other laws. A failure by the Monitor to submit timely and complete reports as required by this Agreement shall (after adequate notice from the Division to Dr. Kane and attempts to rectify the problem) constitute a violation of this Agreement.

D. Spot Check Condition. Dr. Kane agrees to cooperate in and make her records and inventories available for random at-office spot checks by a Division representative. The Division agrees to conduct any spot checks in such a way as to minimize intrusion on Dr. Kane's practice and patients. At the conclusion of each spot check, the Division will provide Dr. Kane with either an exit interview or a written report indicating whether or not the spot check has indicated any problems. Spot checks will not exceed four during a calendar year. The spot check condition will terminate on the earlier of (1) three years from the date of approval of this agreement by the Commissioner and issuance of the final order,

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or (2) six months from the date that both (a) the monitoring condition has been terminated and (b) the final annual report has been received by the Division.

E. Annual Reporting Condition. Dr. Kane will provide the Division with two annual reports listing the medical supplies ordered for her practice, or alternatively providing the Division with copies of all purchase records for such orders. The report for 2012 will be submitted by April 30, 2013, and the report for 2013 will be submitted by April 30, 2014, unless the Division and Dr. Kane agree to an extended date. Failure to submit timely and complete reports constitutes a violation of this agreement.

F. Not binding on other Naturopaths. This Consent Agreement does not bind other naturopaths or preclude other naturopaths from challenging the Division's position that items included on List 1, or any other prescription drugs, may not be given, prescribed or recommended by Alaska naturopaths under current law.

G. Continuation and Renewal of License. No suspension, revocation, probation or reprimand will be sought by the Division based on the Accusation being settled by this Consent Agreement, unless a violation of the terms of this Agreement or an additional violation of the limitations on Dr. Kane's naturopathic practice are brought to the attention of the Division through the conditions imposed under this Agreement or from other sources, and are made the subject of a Notice of Violation or a new Accusation issued to Dr. Kane by the Division. Dr. Kane will be allowed to apply for renewal of her Alaska Naturopath license, and the existence of this Consent Agreement, and the events set forth in the Accusation being settled hereby, will not constitute grounds for denial of renewal, unless additional violations of the terms of this Agreement or the limitations on Dr. Kane's naturopathic practice are brought to the attention of the Division through the conditions imposed under this Agreement or through other complaints. This agreement does

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not relieve Dr. Kane of her obligation of applying for renewal of her Naturopath license, or of disclosing this Agreement if required in order to answer the questions on that renewal application, or of otherwise meeting all of the requirements for renewal independent of this Consent Agreement.

H. Violation of Agreement. A violation of this agreement may constitute grounds for immediate license suspension by the Division or imposition of further sanctions, provided that Dr. Kane will be entitled to request a hearing on the issue of the suspension or further sanctions, and provided that any pre-hearing suspension or revocation will be governed by the standards and procedures of AS 08.45.070(c).

I. Compliance with Other Laws. Dr. Kane will obey all federal, state and local laws and all statutes and regulations governing her naturopath license.

J. Good Faith. All parties agree to act in good faith in carrying out the requirements of this Consent Agreement.

K. Contact Information. Reports from the monitor will be sent to the Division at the below-listed address, and notices, inquires or other communications concerning this consent agreement will be exchanged as follows:

Division of Corporations, Business and Professional Licensing
Jo Anna Williamson, Investigator
550 West 7th Ave., Suite 1500
Anchorage AK 99501-3567
907-269-8614
Fax 907-269-8156
Email Joanna.williamson@alaska.gov

Dr. Emily Kane, N.D.
418 Harris St. #329
Juneau, AK 99801
907-586-3655
Fax 907-586-4326
Email dremilykane@gmail.com

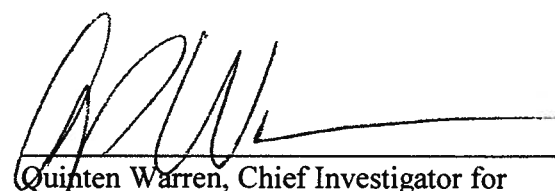
State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195

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IT IS FURTHER ORDERED that this Order shall take effect immediately upon its adoption by the Commissioner and is a public record of the Commissioner and the State of Alaska. Either party may provide a copy of it to any person, professional licensing board, federal, state or local government agency, or other entity making a relevant inquiry.

Approved by:

Dated: 12/14/2011



Quinten Warren, Chief Investigator for
Donald Habeger, Director
Division of Corporations, Business and
Professional Licensing

I, Emily Kane, have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

Dated: _____

Emily Kane, N.D.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2011, at Juneau, Alaska.

Notary Public in and for Alaska
My commission expires _____

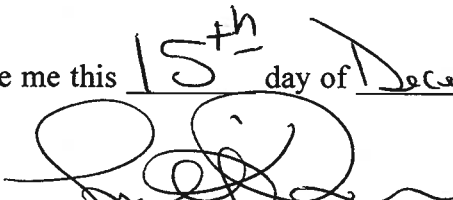
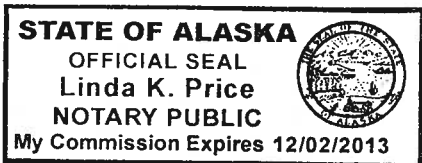
I, Emily Kane, have read the Consent Agreement, understand it, and agree to be bound by its terms and conditions.

Dated: 12-15-11



Emily Kane, N.D.

SUBSCRIBED AND SWORN TO before me this 15th day of December 2011, 2011, at Juneau, Alaska.



Notary Public in and for Alaska
My commission expires 12/02/2013

1 APPENDIX A, LIST 1: ITEMS REQUIRING A PRESCRIPTION

2
3 (This is not a comprehensive list of all items lying outside naturopathic scope of authority; it
4 lists those items from Administrative Record pages 5-16 that require a prescription.)
5

- 6 Bi-Est
- 7 Cortisol
- 8 Cyanocobalamin (by injection; prescription not required for oral)
- 9 Cytomel
- 10 Epinephrine (prescriptions prohibited; ephinephrine for in-office emergency use is
- 11 permitted as long as AS 17.22.010 certificate is valid)
- 12 Estriol
- 13 Methotrexate
- 14 Nitrofurantoin
- 15 Nortrel
- 16 Nuvaring
- 17 Ortho Tri Cyclen
- 18 Procaine
- 19 Progesterone (concentrations of 4% or higher)
- 20 Prometrium
- 21 Pyridoxine (by injection; prescription not required for oral)
- 22 Scopolamine/Scopace
- 23 Selenium Sulfide shampoo (at concentrations of 2.5% or higher)
- 24 Tetanus Toxoid
- 25 Thyroid (including Armour Thyroid, levothyroxine, liothyronine)
- 26 Tri-Sprintec
- 27 Yasmin

28
29 (Additional items on which Dr. Kane and the Division have consulted and agreed to have
30 included on this list):
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- 32 Sprott's Solution
- 33 Saline for irrigation, injection or infusion
- 34 Sterile water for irrigation, injection or infusion

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APPENDIX A, LIST 2: ITEMS NOT REQUIRING A PRESCRIPTION

- Blood Pressure Monitor A 73913-1900-10
- Cervical Traction Kit 23601-04655-04
- Cyanocobalamin (if oral; prescription required for injection)
- DHEA
- Melatonin
- One Touch Ultra System K 53885-247-01
- One Touch Ultra Test Strip 53885-245-10
- One Touch Ultrasoft Lanc 53885-393-10
- Plan B (except prescription required for ages 17 and under)
- Pregnenalone
- Progesterone (at concentrations less than 4%)
- Pyridoxine (if oral; prescription required for injection)
- Selenium Sulfide shampoo (at concentrations of 1.0%)
- Vitamin C (oral)

(Additional items on which Dr. Kane and the Division have consulted and have agreed to include on this list):

- Amino acids in liquid, powdered, tableted or encapsulated forms , as long as they do not require a prescription in Alaska
- Bile
- Bio-identicals derived from plants (phytoestrogens and phytoprogesterones) as long as they are not controlled substances and do not require a prescription in Alaska
- Blood pressure monitoring devices
- Blood typing kits
- Cervical traction devices
- Chlorella
- Enzymes, as long as they do not require a prescription in Alaska
- Epinephrine (for in-office emergency use only, as long as AS 17.22.010 certificate is valid)
- Fish oil
- Garlic
- Ginger
- Glandulars not requiring a prescription in Alaska
- Glucose monitoring devices and strips
- Homeopathic remedies classified as OTC by the Homeopathic Pharmacopeia of the United States (Dec. 1994 version)
- Hydrochloric acid
- Liver
- Lumbar traction devices
- Marrow
- Medicinal herbs in whole, dried, tinctured, tableted or encapsulated forms, as long as they do not require a prescription in Alaska
- Medicines available over the counter (OTC) in Alaska
- Minerals in liquid, powdered, tableted or encapsulated forms, as long as they do not require a prescription in Alaska
- Oxygen compression devices
- Peak flow meters

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APPENDIX A, List 2, continued:

- Podiatric support devices (neuroma pads, corn rings, bunion toe separators)
- Prebiotics, as long as they do not require a prescription in Alaska
- Probiotics, as long as they do not require a prescription in Alaska
- Pulse oximeter devices
- Saline (for eyewash, contact lens solution, nasal rinse, or other form available OTC in Alaska)
- Small gauge syringes (i.e. for home administration of medications not requiring a prescription)
- Sodium Butyrate
- Sterile gauze, surgical tape, Betadyne, topical antibiotics
- Sterile water for dilution
- Stool hemocult kits
- Therapeutic magnets
- Urethral catheters
- Urine FSH detection kits
- Urine glucose detection strips
- Urine ketone detection strips
- Urine pregnancy detection kits
- Vitamins in liquid, powdered, tableted or encapsulated forms, as long as they do not require a prescription in Alaska

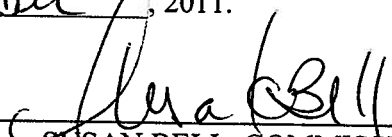
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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BEFORE THE COMMISSIONER

In the Matter of:)
)
Emily A. Kane, N.D.)
)
Respondent) OAH No. 11-0084-NAT
) Agency No. 220-08-001

The Commissioner of the Department of Commerce, Community and Economic Development for the State of Alaska, having examined the Mediated Consent Agreement and Proposed Decision and Order, has adopted the Mediated Consent Agreement and Proposed Decision and Order as the final order in the above-entitled matter on the date signed below.

Dated this 21 day of December, 2011.



SUSAN BELL, COMMISSIONER

State of Alaska
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
Telephone 907-269-8160 Fax 907-269-8195