

Eff. 10/24/06

**BEFORE THE MINNESOTA DEPARTMENT OF HEALTH  
HEALTH OCCUPATIONS PROGRAM**

In the Matter of James Irving Magee,  
Unlicensed Complementary and Alternative  
Health Care Practitioner

**STIPULATION AND  
CONSENT ORDER**

**IT IS HEREBY STIPULATED AND AGREED** by James Irving Magee [hereinafter "Practitioner"] and the Health Occupations Programs [hereinafter "HOP"] within the Minnesota Department of Health [hereinafter "Department"], that, without trial or adjudication of any issue of fact or law herein, and without any evidence or admission by any party with respect to any issue or fact herein:

1. Except as otherwise specified herein, this Stipulation and Consent Order [hereinafter, "Stipulation"], investigative reports, and related documents shall constitute the entire record upon which this Order is based and shall be filed with the Department. The Stipulation document is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA") and Minnesota Statutes, § 146A.06, subd. 2. All other data comprising the record shall not be considered a part of this Stipulation and shall maintain the data classifications to which they are entitled under the MGDPA and Minnesota Statutes, § 146A.06, subd. 2.
2. Practitioner has been and is subject to the jurisdiction of the Department because Practitioner engaged in unlicensed complementary and alternative health care practice as defined in Minnesota Statutes, § 146A.01 after July 1, 2001 when the Department's

jurisdiction and legal authority became effective.

3. Practitioner is not now, nor has he ever been licensed or registered by the Minnesota health-related licensing boards or the *commissioner of health in Minnesota*.
4. Pursuant to Minnesota Statutes, § 146A.01, subd. 4, complementary and alternative health care practices include the broad domain of complementary and alternative healing methods and treatments, including but not limited to: (17) body work, massage and massage therapy.
5. Minnesota Statutes, § 146A.08 subd. 1 (d) prohibits engaging in sexual contact with a complementary and alternative health care client or former client, and engaging in contact that may be reasonably interpreted by a client as sexual. A “former client” means a person who has obtained services from the practitioner within two years of the misconduct.
6. Minnesota Statutes, § 146A.08 subd. 1 (q) prohibits undertaking or continuing a professional relationship with a client in which the objectivity of the professional would be impaired.
7. When violations of law are found, the *Department has authority to revoke, suspend or condition a practitioner's right to practice* (Minnesota Statutes, § § 146A.09, subd. 1(1) and (2)), to impose a civil penalty not exceeding \$10,000 for each separate violation, the amount of the civil penalty to be fixed as to deprive the practitioner of any economic advantage gained by reason of the violation or to reimburse the office for all costs of the investigation and proceeding (Minnesota Statutes, § 146A.09, subd. 1(4)), or to impose a fee on the practitioner to reimburse the office for all or part of the cost of the proceedings resulting in disciplinary action including, but not limited to, the amount paid by the office

for services from the office of administrative hearings, attorney fees, court reports, witnesses, reproduction of records, staff time, and expense incurred by the Department. (Minnesota Statutes, § 146A.09, subd. 1(6)).

8. Practitioner agrees that the Department may consider the following allegations to be true, but only for the purposes of this Stipulation and any further proceedings before the Department, and not for any other purposes, including but not limited to any civil litigation.

A. Practitioner voluntarily resigned from The Marsh, a spa in Minnetonka, Minnesota on February 19, 2002, because he violated company policy when he gave his personal cell phone number to one of his massage therapy clients, Client One, after Client One's massage. Practitioner has practiced massage therapy in Minnesota since 1994. Practitioner has over 800 hours of massage therapy related training. Practitioner was an instructor at the Minneapolis School of Massage and Bodywork from 1995 to 1997. Practitioner is a current member of the Associated Bodywork and Massage Professionals private certifying organization and has been since 1995.

B. Practitioner saw Client One for massage therapy once in 2001, on January 20, 2002, and February 6, 2002. During both massages in 2002, Client One became emotional and in response, Practitioner hugged Client One while she cried. During the February 2002 massage, Practitioner and Client One also kissed during this emotional release. Practitioner stated that he had never kissed a client before and this occurrence, "just kind of happened". When this massage was over, instead of leaving the room in order for Client One to get changed into her robe, Practitioner helped Client One on with

her robe. Practitioner told Client One that he was uncomfortable with what had happened during that massage and if she wanted another massage with Practitioner, Client One should call him at his own massage therapy and hypnosis business.

Practitioner gave Client One his cell phone number.

10. Practitioner waives any claim that he may have against the Department, the State of Minnesota, or any employee thereof, under the Equal Access to Justice Law, Minnesota Statutes, § § 15.471-15.475.
11. For purposes of this Stipulation, Practitioner expressly waives all procedures and proceedings before the Department to which Practitioner may be entitled under the Minnesota and/or United States Constitution, statutes, rules, and also waives the right to any judicial review or appeal under the Administrative Procedures Act, by writ of certiorari under Minnesota Statutes, § 480A.06, or otherwise from the Order issued by the Division Director pursuant to this Stipulation.
12. Except as otherwise specified herein, this Stipulation, investigative reports, and related documents shall constitute the entire record of the proceedings herein upon which this Stipulation is based and shall be filed with the Department. Any report or other material related to this action and received after the date this Stipulation is executed shall become part of the record and may be considered by the Department in future aspects of this proceeding. These items shall maintain data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and Minnesota Statutes, § 146A.06, subd. 2. They shall not be considered a part of this Stipulation and shall not, to the extent they are not already public documents, become

public merely because they are referenced herein.

13. In the event the Division Director, in her discretion, does not approve this settlement, or a lesser remedy than specified herein, this Stipulation shall be null and void and shall not be used for any purpose by either party hereto; provided, however, that should this occur and thereafter an administrative contested case is initiated pursuant to Minnesota Statutes, Chapter 14, Practitioner agrees he will not raise any objections on any administrative level or in any court action to the Department's proceeding and hearing the case on the basis that the Division Director has become disqualified due to the Division Director's review and consideration of this Stipulation and record.
14. This Stipulation shall not in any way or manner limit or affect the authority of the Department to proceed against Practitioner by initiating a contested-case hearing or by other appropriate means on the basis of any act, conduct, or omission of Practitioner justifying action which occurred after the date of this Stipulation and which is not directly related to specific facts and circumstances set forth herein.
15. Any appropriate federal or state court shall, upon application of the Director, enter an order of enforcement of any or all of the terms of this Stipulation.
16. Practitioner hereby acknowledges that he has read, understood, and agreed to this Stipulation, and has freely and voluntarily signed it. In signing this Stipulation, Practitioner acknowledges that he is fully aware that the Division Director must approve it. The Division Director may either approve the Stipulation as proposed, approve it subject to specific changes, or reject it. If the Division Director approves the Stipulation or makes a change acceptable to the Practitioner, the Division Director will issue the

Order and it will take effect. If the changes are unacceptable to Practitioner, or the Division Director rejects the Stipulation, it will be of no effect, except as specified in paragraph 13, above.

17. Practitioner's violation of this Stipulation will be considered a violation of Minnesota Statutes, § 146A.09, subdivision 1(s); and will constitute grounds for further disciplinary action;
18. Upon this Stipulation, and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Practitioner does hereby consent that until further order of the Division Director, made after notice and hearing or after agreement between the Department and Practitioner, the Division Director may make and enter an Order for the following:
  - A. Practitioner shall take at least eight hours of therapist-client boundaries course(s) from a pre-approved school or sponsor within six months of the effective date of the stipulation. Practitioner shall submit the title, sponsor, or school name, hours of the course(s), syllabus, and a contact name, address and telephone number prior to attending the course(s) to the Department at Health Occupations Program, P.O. Box 64882, St. Paul, MN, 55164-0882, or by faxing it to 651-201-3839. Upon completing the course(s), Practitioner shall notify the Department within 14 days and submit a written letter describing the topics in the course and explaining how the topics relate to Practitioner's practice. Practitioner is responsible for the cost of the course(s).
  - B. Practitioner will pay a civil penalty of \$348.00 representing the costs of

investigations in these proceedings, to date. The payment must be made payable to "State of Minnesota, Treasurer" and mailed to the Health Occupations Program, Minnesota Department of Health, P.O. Box 64882, St. Paul, MN, 55164-0882. Practitioner may pay the civil penalty in three monthly installments. Each payment is due by the fifteenth day of the month except the first installment that must be paid on the effective date of the stipulation. If Practitioner chooses to pay in installments, Practitioner will notify the Department in writing of his intentions. If Practitioner fails to submit the payment(s), the Department will refer the matter for collection to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or another source for collection. MCE is authorized by Minnesota Statutes, § 16D17 to obtain a judgment against Practitioner without further notice or proceedings.

- C. Practitioner shall cooperate fully during the process of the Department's enforcement and monitoring of compliance with this Stipulation and shall respond to the Department's correspondence within the time provided by law or by the deadline of Department staff.
- D. If Practitioner violates Minnesota Statutes, § 146A.08, subd. 1(d) in the future and it is so determined by the Department, Practitioner's right to practice complementary and alternative health care practices in Minnesota may be revoked.

- 19. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this

Stipulation; and

20. Practitioner agrees that service of this Stipulation by regular mail to his attorney, Gregory W. Deckert, Vest & Deckert, P.A., Brookdale Corporate Center, 6160 Summit Drive, Suite 360, Brooklyn Center, MN 55430 shall be due and sufficient service on Practitioner.

Date: 10/8/06, 2006

Dated: 10/13, 2006

James Irving Magee  
James Irving Magee,  
Practitioner

Susan Winkelmann  
SUSAN WINKELMANN, Manager  
Investigations and Enforcement  
Health Occupations Program  
P.O. Box 64882  
St. Paul, MN 55164-0882

Upon consideration of this stipulation and all the files, records, and proceedings herein,  
IT IS HEREBY ORDERED that the terms of this stipulation are adopted and  
implemented by the Division Director this 19<sup>th</sup> day of October, 2006.

MINNESOTA DEPARTMENT OF HEALTH

By: Darcy Miner  
Darcy Miner, Director  
Compliance Monitoring Division