BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS,
P.O. Box 4
Jefferson City, Missouri 65102,
Petitioner,

v.

MICHAEL R. SIMMONS, MD,
1026 N. Hwy 69
Frontenac, KS 66763,
Respondent.

Case No.: ____________

COMPLAINT

COMES NOW Petitioner, the Missouri State Board of Registration for the Healing Arts, and for its
Complaint against Respondent, Michael R. Simmons, MD, states and alleges as follows:

1. Petitioner, the Missouri State Board of Registration for the Healing Arts (the “Board”), is an agency
of the State of Missouri created and established pursuant to section 334.120, RSMo, for the
purpose of executing and enforcing provisions of Chapter 334, RSMo.

2. Respondent, Michael R. Simmons, MD (“Respondent”) is licensed by the Board as a physician
and surgeon, License Number 2003018549, which license was first issued July 30, 2003.
Licensee’s certificate of registration is current, and was current and active at all times relevant
herein.

3. Respondent last known address on file with the Board is 1026 N. Hwy 69, Frontenac, Kansas
66763.

BASIS FOR DISCIPLINE

4. Sections 334.100.2(4), (4)(i), (5), (13) and (14), RSMo state:

2. The board may cause a complaint to be filed with the administrative
hearing commission as provided by chapter 621 against any holder of any
certificate of registration or authority, permit or license required by this
chapter or any person who has failed to renew or has surrendered the
person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

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(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

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(i) Exercising influence within a physician-patient relationship for purposes of engaging a patient in sexual activity;

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(5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession;

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(13) Violation of the drug laws or rules and regulations of this state, including but not limited to any provision of chapter 195, any other state, or the federal government;

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(14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a false statement in any birth, death or other certificate or document executed in connection with the practice of the person's profession;

COUNT I

5. Paragraphs 1 through 4, above, are incorporated by reference as if more fully set forth herein.

7. During the time Respondent and Patient 1 had a physician-patient relationship, Respondent made the following remarks to Patient 1:
   a. Respondent stated to Patient 1 that his ex-wife’s journal contained an entry stating that Patient 1 and Respondent should “have sex.”
   b. Respondent sent various sexually explicit messages to Patient 1, including the following:
      i. Text messages to Patient 1 asking if she “shaved her private parts” and statements that he preferred woman with “shaved private parts.”
      ii. Text messages to Patient 1 stating the type of women he was attracted to and the things he liked to “…do to them.”

8. Respondent, as Patient 1’s physician, was aware that Patient 1 was seeing a psychologist related to issues of abuse she received as a child.

9. Respondent took advantage of Patient 1’s emotional state regarding the above abuse, including making the above comments in an attempt to engage Patient 1 in sexual activity.

10. Respondent’s use of private medical information and making inappropriate sexual comments to a patient, as stated above, constitutes misconduct, unethical conduct and/or unprofessional conduct in the performance of the functions and/or duties of Respondent’s profession.

11. Respondent’s use of private medical information and making inappropriate sexual comments to a patient, as stated above, constitutes conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public.

12. The above constitutes cause to discipline Respondent’s license pursuant to section 334.100.2(4), (4)(i) and (5), RSMo.

   **COUNT II**

13. Paragraphs 1 through 12, above, are incorporated by reference as if more fully set forth herein.

14. Respondent practices at two clinics, one in Frontenac, Kansas, and one in Joplin, Missouri.

15. On February 1, 2013, the Bureau of Narcotics and Dangerous Drugs (“BNDD”) sent Respondent a letter informing him that he was not registered to prescribe controlled substances in Missouri.
16. On February 4, 2013, Respondent was informed by Investigator Adam Boyd with the Board that he was not registered to prescribe controlled substances in Missouri.

17. Sometime in February 2013, Respondent submitted an application for a Missouri Controlled Substances Registration to the BNDD.

18. Respondent's Missouri Controlled Substances Registration was held in pending status by the BNDD due to an ongoing investigation of Respondent relating to unlawful controlled substance activities in Missouri.


20. Adderall is a brand name for a drug product containing amphetamine, which is a Schedule II controlled substance pursuant to section 195.017.4(3)(a), RSMo.

21. Respondent issued the above prescription on a prescription pad containing the address of his Frontenac, Kansas office and his Kansas DEA number.

22. Respondent actually issued the above prescription out of his Joplin, Missouri clinic.

23. Respondent knowingly altered the medical record of Patient 2 so that it falsely stated that he treated Patient 2 at his Frontenac, Kansas office.

24. Respondent also prescribed Adderall and Testosterone to Patient 3 out of his Joplin, Missouri clinic.

25. Testosterone is a Schedule III controlled substance pursuant to section 195.017.6(6)(hhh), RSMo.

26. Respondent also prescribed Xanax to Patient 4 out of his Joplin, Missouri clinic.

27. Xanax is a brand name for a drug product containing alprazolam, which is a Schedule IV controlled substance pursuant to section 195.017.8(2)(a), RSMo.

28. Respondent knowingly altered the medical record of Patient 4 so that it falsely stated that he treated Patient 4 at his Frontenac, Kansas office.

29. Patient medical records are documents executed in connection with the practice of Respondent's profession.

30. Section 195.030.3, RSMo states:
Persons registered by the department of health and senior services pursuant to sections 195.005 to 195.425 to manufacture, distribute, or dispense or conduct research with controlled substances are authorized to possess, manufacture, distribute or dispense such substances, including any such activity in the conduct of research, to the extent authorized by their registration and in conformity with other provisions of sections 195.005 to 195.425.

31. 19 CSR 30-1.017(2) states:

(2) Period of Registration.

(A) Any registration shall be current and effective for twelve (12) months from the date issued or until the expiration date assigned at the time the registration is issued. No person who is required to be registered shall conduct any activity for which registration is required without a current registration. No controlled substance activities shall take place after a registration expires until a new registration has been issued.

32. Respondent's prescribing of the above controlled substances without a valid Missouri Controlled Substances Registration is a violation of section 195.030.3, RSMo and 19 CSR 30-1.017(2).

33. Section 195.070.1, RSMo states:

A physician, podiatrist, dentist, a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, or a physician assistant in accordance with section 334.747 in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substances or he or she may cause the same to be administered or dispensed by an individual as authorized by statute.

34. 19 CSR 30-1.060 states:

When determining if controlled substances are being lawfully prescribed, dispensed and administered by practitioners, the Department of Health shall enforce Chapter 195, RSMo, the Department of Health rules in 19 CSR 30 pertaining to controlled substances, and the federal Controlled Substances Act 21 U.S.C. 801-966, and its regulations, 21 CFR 1300-1399. In determining lawful prescribing, dispensing and administering of controlled substances, the Department of Health also shall consider the provisions of Chapters 330, 332, 334, 335, 336, 338 and 340, RSMo, the rules in 4 CSR 110, 4 CSR 150, 4 CSR 200, 4 CSR 210, 4 CSR 220, 4 CSR 230 and 4 CSR 270, and protocols relating to the respective practitioners established and on file at the respective licensing boards.

35. Respondent prescribed the above controlled substances in bad faith and in a manner not authorized by law in violation of section 195.070.1, RSMo and 19 CSR 30-1.060.
36. Section 195.252.1, RSMo, states:

   It is unlawful for any person:

   (1) Who is subject to the provisions of sections 195.005 to 195.198 to
distribute or dispense a controlled substance in violation of section 195.030;

   (2) Who is a registrant, to manufacture a controlled substance not
authorized by that person's registration, or to distribute or dispense a
controlled substance not authorized by that person's registration to another
registrant or other authorized person;

   (3) To refuse or fail to make, keep or furnish any record, notification, order
form, statement, invoice or information required under section 195.050.

37. Respondent prescribed controlled substances in the absence of a Missouri Controlled Substances
   Registration which was illegal distribution of controlled substances pursuant to sections 195.030.3
   and 195.252.1, RSMo.

38. Respondent's knowingly prescribing of controlled substances without a valid Missouri Controlled
   Substances Registration, on a prescription pad containing the address of his Frontenac, Kansas
   office and his Kansas DEA number, and then altering the medical records of patients so as to
   show that said prescriptions were issued in Kansas constitutes misconduct, fraud,
   misrepresentation, dishonesty, unethical conduct and/or unprofessional conduct in the
   performance of the functions and/or duties of Respondent's profession.

39. Section 195.204.1, RSMo states:

   A person commits the offense of fraudulently attempting to obtain a
controlled substance if he obtains or attempts to obtain a controlled
substance or procures or attempts to procure the administration of the
controlled substance by fraud, deceit, misrepresentation, or subterfuge; or
by the forgery or alteration of a prescription or of any written order; or by
the concealment of a material fact; or by the use of a false name or the
giving of a false address. The crime of fraudulently attempting to obtain a
controlled substance shall include, but shall not be limited to nor be
limited by, the following:

   (1) Knowingly making a false statement in any prescription, order, report,
or record, required by sections 195.005 to 195.425;

   (2) For the purpose of obtaining a controlled substance, falsely assuming
the title of, or representing oneself to be, a manufacturer, wholesaler,
physician, dentist, podiatrist, veterinarian, or other authorized person;

(3) Making or uttering any false or forged prescription or false or forged written order;

(4) Affixing any false or forged label to a package or receptacle containing controlled substances;

(5) Possess a false or forged prescription with intent to obtain a controlled substance.

40. Respondent fraudulently obtained the administration of controlled substances in violation of section 195.204.1, RSMo.

41. Sections 195.030.3, 195.070.1, 195.252.1, and 195.204.1 and 19 CSR 30-1.017(2) and 19 CSR 30-1.060 are drug laws or rules of this state.

42. The above constitutes cause to discipline Respondent’s license pursuant to sections 334.100.2(4), (13) and (14), RSMo.

COUNT III

43. Paragraphs 1 through 42, above, are incorporated by reference as if more fully set forth herein.

44. Respondent orders and receives controlled substances through his Kansas clinic, using his Kansas DEA number, and then transports those controlled substances to his Joplin, Missouri clinic for later use in Missouri.

45. Some of the above controlled substances ordered included syringes filled with testosterone.

46. Respondent would use the above testosterone in treating patients, including Patient 5.

47. In addition to using the testosterone on patients, Respondent also delivered some of the above testosterone to a chiropractor.

48. At the time the above controlled substances were obtained, transported and distributed in Missouri, Respondent did not possess a valid Missouri Controlled Substances Registration.

49. Respondent’s distribution of the above controlled substances without a valid Missouri Controlled Substances Registration is a violation of section 195.030.3, RSMo and 19 CSR 30-1.017(2).
50. Respondent dispensed the above controlled substances in bad faith and in a manner not authorized by law in violation of section 195.070.1, RSMo and 19 CSR 30-1.060.

51. Respondent dispensed the above controlled substances in the absence of a Missouri Controlled Substances Registration which was illegal distribution of controlled substances pursuant to section 195.030.3 and 195.252.1, RSMo.

52. Title 21 CFR 1301.71(a) states:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Administrator shall use the security requirements set forth in Secs. 1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in Secs. 1301.72, 1301.73 and 1301.75 may be used in lieu of the materials and construction described in those sections.

53. 19 CSR 30-1.031(1) states:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032–19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

54. Respondent did not provide adequate controls to prevent the diversion of controlled substances pursuant to Title 21 CFR 1301.71(a) and 19 CSR 30-1.031(1).

55. Respondent's use of his Kansas DEA number to order controlled substances for transport to and use in Missouri constitutes misconduct, fraud, misrepresentation, dishonesty, unethical conduct and/or unprofessional conduct in the performance of the functions and/or duties of Respondent's profession.

56. Respondent fraudulently obtained the administration of controlled substances in violation of section 195.204.1, RSMo.
57. Sections 195.030.3 and 195.070.1, RSMo and 19 CSR 30-1.017(2), 19 CSR 30-1.031(1) and 19 CSR 30-1.060 and are drug laws or rules of this state. Title 21 CFR 1301.71(a) is a drug rule of the federal government.

58. The above constitutes cause to discipline Respondent’s license pursuant to sections 334.100.2(4) and (13), RSMo.

**COUNT IV**

59. Paragraphs 1 through 59, above, are incorporated by reference as if more fully set forth herein.

60. On or about June 12, 2013, Respondent entered into identical collaborative practice agreements with two advanced practice registered nurses ("APRNs").

61. Per the terms of the collaborative practice agreements, Respondent authorized the APRNS to issue controlled substances utilizing Respondent’s Kansas DEA number.

62. The following prescriptions were issued in Missouri, under Respondent’s Kansas DEA number by the APRNS:

<table>
<thead>
<tr>
<th>DATE</th>
<th>PATIENT</th>
<th>PRESCRIPTION</th>
<th>QUANTITY</th>
<th>PHARMACY</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/03/2013</td>
<td>A.D.</td>
<td>Zolpidem, 10 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/02/2013</td>
<td>J.S.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/02/2013</td>
<td>J.P.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/02/2013</td>
<td>S.D.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/02/2013</td>
<td>C.S.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/03/2013</td>
<td>K.Y.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/03/2013</td>
<td>W.N.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/05/2013</td>
<td>A.J.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/05/2013</td>
<td>C.K.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/05/2013</td>
<td>A.P.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/06/2013</td>
<td>C.S.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/07/2013</td>
<td>P.W.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/08/2013</td>
<td>C.E.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/08/2013</td>
<td>J.E.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/09/2013</td>
<td>L.E.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/09/2013</td>
<td>C.R.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/09/2013</td>
<td>C.R. 2</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/09/2013</td>
<td>A.B.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/09/2013</td>
<td>C.P.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/10/2013</td>
<td>J.L.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/11/2013</td>
<td>S.Y.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/11/2013</td>
<td>L.M.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
<tr>
<td>07/12/2013</td>
<td>A.D.</td>
<td>Phentermine, 37.5 mg Tabs</td>
<td>30 Tabs</td>
<td>Target</td>
</tr>
</tbody>
</table>
63. Phentermine is a Schedule IV controlled substance pursuant to section 195.017.8(4)(i), RSMo.

64. Zolpidem is a Schedule IV controlled substance pursuant to section 195.017.8(2)(yy), RSMo.

65. Neither Respondent nor the APRNS possessed valid Missouri Controlled Substances Registrations when the above prescriptions were issued.

66. Respondent's authorization of the APRNS to prescribe the above controlled substances without a valid Missouri Controlled Substances Registration is a violation of section 195.030.3, RSMo and 19 CSR 30-1.017(2).

67. Respondent authorized the prescription of the above controlled substances in bad faith and in a manner not authorized by law in violation of section 195.070.1, RSMo and 19 CSR 30-1.060.

68. Respondent authorized the prescribing of the above controlled substances in the absence of a Missouri Controlled Substances Registration which was illegal distribution of controlled substances pursuant to section 195.030.3 and 195.252.1, RSMo.

69. Respondent's authorization of the use of his Kansas DEA number by the APRNS to prescribe controlled substances in Missouri constitutes misconduct, fraud, misrepresentation, dishonesty, unethical conduct and/or unprofessional conduct in the performance of the functions and/or duties of Respondent's profession.

70. Respondent fraudulently obtained the administration of controlled substances in violation of section 195.204.1, RSMo.

71. Respondent did not provide adequate controls to prevent the diversion of controlled substances pursuant to Title 21 CFR 1301.71(a) and 19 CSR 30-1.031(1).

72. Sections 195.030.3, 195.070.1, 195.204.1, and 195.204.1, RSMo and 19 CSR 30-1.017(2), 19 CSR 30-1.031(1) and 19 CSR 30-1.060 and are drug laws or rules of this state. Title 21 CFR 1301.71(a) is a drug rule of the federal government.
73. The above constitutes cause to discipline Respondent's license pursuant to sections 334.100.2(4) and (13), RSMo.

WHEREFORE, Petitioner prays that the Administrative Hearing Commission conduct a hearing in this case pursuant to Chapter 621, RSMo, and thereafter issue its Findings of Fact and Conclusions of Law so that Petitioner may take disciplinary action against the physician and surgeon license of Respondent, Michael R. Simmons, MD, for violations of Chapter 334, RSMo.

RESPECTFULLY SUBMITTED,

[Signature]
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ATTORNEY FOR PETITIONER