

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

CAB

MAY 01 2009

KS State Board of Healing Arts

In the Matter of)
)
Wasse Zafer, D.C.)
)
Kansas License No. 01-04097)

Docket No.: 09-HA 00184

**EMERGENCY EX PARTE ORDER OF SUSPENSION
AND PROTECTIVE ORDER**

NOW on this 1 day of May 2009, this matter comes before the Presiding Officer upon a Motion for *Ex Parte* Emergency Order of Suspension. Lori D. Dougherty, Associate Litigation Counsel, and Stacy R. Bond, Associate Litigation Counsel, filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings. There are no other appearances.

The Presiding Officer has reviewed the agency file in Kansas State Board of Healing Arts (KSBHA) Docket No. 09-HA 00184. The Presiding Officer finds, concludes and orders as follows:

1. This is a motion for an order pursuant to K.S.A. 65-2838 and 77-536. Under those statutes, the Presiding Officer may issue an order without notice and hearing, and may temporarily limit or suspend a license if the Presiding Officer finds an imminent danger to the public health, safety, or welfare.
2. The Presiding Officer has received and reviewed a Motion for an *Ex Parte* Order suspending Licensee license filed with KBHA on April 30, 2009. The motion requests an emergency suspension of Licensee's license.

3. The motion for an emergency order in the above captioned case alleges that Licensee has violated K.S.A. 65-2836, specifically:
- a. K.S.A. 65-2836(b), in that Licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.
 - b. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(1), in that Licensee engaged in solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.
 - c. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(2), in that Licensee has engaged in repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board
 - d. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(3), in that Licensee has engaged in a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.
 - e. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12), in that Licensee has engaged in conduct likely to deceive, defraud or harm the public.
 - f. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(13), in that Licensee has made a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition or the body or mind.

- g. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(17), in that Licensee engaged in the use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
 - h. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(18), in that Licensee has obtained any fee by fraud, deceit or misrepresentation.
 - i. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24), in that Licensee has engaged in repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
 - j. K.S.A. 65-2836(b), as further defined in K.A.R. 100-22-1, by failing upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient.
4. The motion for an emergency order in the above captioned case includes Exhibits one (1) through six (6).

FINDINGS OF FACT

- 5. Wasse Zafer, D.C.'s ("Licensee") last known mailing address to the Board is: 450 E. Santa Fe, Olathe, Kansas 66061.
- 6. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04097 on approximately

February 8, 1992, and having last renewed such license on approximately January 1, 2009.

7. At all times relevant to the allegations set forth in the Motion, Licensee has held a current and active license to engage in the practice of chiropractic in the State of Kansas.
8. Licensee presently has an active and unrestricted license to practice chiropractic in the state of Kansas.
9. The Presiding Officer finds there are grounds to reasonably believe that:
 - a. Licensee examined Patient #1 on or about October 22, 2008.
 - b. **(Confidential)**
 - c. Licensee examined Patient #3 on or about March 3, 2009.
 - d. **(Confidential)**
 - e. Licensee's acts or conduct caused injury and medically unnecessary pain
(Confidential)
 - f. Licensee's act or conduct caused injury and medically unnecessary pain to Patients #1, 2, and 3.

CONCLUSIONS OF LAW

10. Pursuant to K.S.A. 65-2838(c), the Board has the authority to temporarily suspend Licensee's license to address an imminent threat to the health, safety or welfare of the public.

11. Pursuant to K.S.A. 65-2836, the Board has grounds to revoke, suspend, censure, fine or otherwise limit Licensee's license for violation of the Kansas Healing Arts Act .
12. Pursuant to K.S.A. 77-536, the Board may use emergency proceeding to protect the public from an immediate danger to the public health, safety or welfare.
13. The Presiding Officer finds there are grounds to reasonably believe that Licensee has violated that Licensee has violated K.S.A. 65-2836, in that Licensee has violated K.S.A. 65-2836, specifically:
 - a. K.S.A. 65-2836(b), in that Licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.
 - b. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(1), in that Licensee engaged in solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.
 - c. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(2), in that Licensee has engaged in repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board
 - d. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(3), in that Licensee has engaged in a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice medicine.

- e. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12), in that Licensee has engaged in conduct likely to deceive, defraud or harm the public.
- f. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(13), in that Licensee has made a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment or remedy prescribed by the licensee or at the licensee's direction in the treatment of any disease or other condition or the body or mind.
- g. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(17), in that Licensee engaged in the use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
- h. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(18), in that Licensee has obtained any fee by fraud, deceit or misrepresentation.
- i. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24), in that Licensee has engaged in repeated failure to practice healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances.
- j. K.S.A. 65-2836(b), as further defined in K.A.R. 100-22-1, by failing upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient.

14. The Presiding Officer finds that Licensee's continuation in practice would constitute an immediate danger to the public health, safety or welfare.
15. The Presiding Officer further concludes that Licensee's license to practice of chiropractic should be immediately suspended until such time as an evidentiary hearing can be scheduled.

IT IS THEREFORE, ORDERED that the license of Wasse Zafer, D.C. is hereby immediately suspended.

IT IS FURTHER ORDERED that a Protective Order is hereby entered to protect the identity of patients and their records. Records that identify a patient shall not be disclosed to any third person except as authorized by this order or by further order of the Presiding Officer or the Board. To the extent practicable, patients shall be referred to in arguments, testimony and pleadings by the reference number listed in the Petition. This protective order shall not prohibit a party from disclosing such information to a person who has been engaged as an expert witness, or from otherwise using this information in this case and in any subsequent appeals.

IT IS FURTHER ORDERED that board counsel shall serve this order in the manner provided by law, and shall complete and file a proof of service.

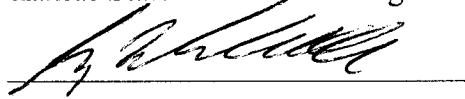
PLEASE TAKE NOTICE that a hearing on this matter will be scheduled as soon as practicable at the Board office, 235 S.W. Topeka Blvd., Topeka, Kansas. The issue to be determined is whether the emergency order of suspension should remain in place, be modified or terminated. A Notice of Hearing will be issued.

PLEASE TAKE NOTICE that this is an emergency order. An emergency order is effective when rendered. A party to an agency proceeding may seek judicial review of an emergency order by filing a petition in the District Court as authorized by K.S.A. 77-601, et seq.

A petition for judicial review is not timely unless filed within 30 days following service of the order. A copy of any petition for judicial review must be served upon Board's Executive Director at 235 S.W. Topeka Blvd., Topeka, Kansas 66603.

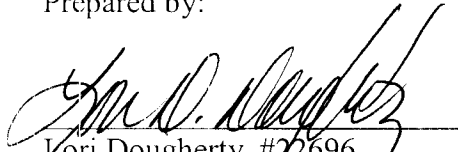
Dated this 1 day of ~~April~~^{May} 2009.

Kansas State Board of Healing Arts

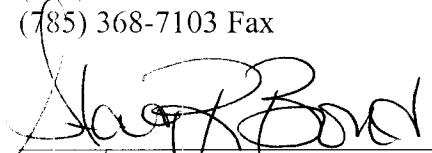


Presiding Officer

Prepared by:



Lori Dougherty, #22696
Associate Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413 Phone
(785) 368-7103 Fax



Stacy R. Bond, #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413 Phone
(785) 368-7103 Fax

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the *Ex Parte* Emergency Order of Suspension by United States mail, postage prepaid, on this 1st day of May, 2009, to the following:

Wasse Zafer, D.C.
Licensee
450 E. Santa Fe
Olathe, Kansas 66061

Terri Z. Austenfeld
Attorney for Licensee
Sanders Warren & Russell
1001 E. Terrace, Suite 170
Kansas City, MO 64131

And a copy was hand-delivered to:

Lori D. Dougherty
Stacy R. Bond
Kansas Board of Healing Arts
235 S Topeka Blvd
Topeka, KS 66603

And the original was hand-delivered for filing with:

Jack Confer
Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

