

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

In the Matter of )
Shawn Joseph Bergman, D.C. ) Docket No. 06-HA-00038
Application for Licensure )

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Kathleen Selzler Lippert, Associate Counsel ("Petitioner"), and Shawn Joseph Bergman, D.C. ("Applicant"), pro se, and move the Board for approval of a Consent Order as a condition to being granted a license to practice chiropractic in the State of Kansas. The Parties stipulate and agree to the following:

- 1. Applicant's last known address to the Board is 815 N. Somerset Terr. 203, Olathe, Kansas, 66062.
2. On or about September 9, 2005, Applicant submitted to the Board an application for licensure in chiropractic.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of chiropractic. K.S.A. 65-2801 et seq. and K.S.A. 65-2871.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

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5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.
6. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. Applicant voluntarily and knowingly waives his right to a hearing. Applicant voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit to rebuttal evidence, and to conduct cross-examination of witnesses. Applicant voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
8. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
9. Applicant admits that he had a personal and intimate relationship with a former patient whom he had treated while he attended Logan College of Chiropractic.
10. Applicant admits that he was disciplined by Logan College of Chiropractic in the form of a suspension for a semester for engaging in unethical and unprofessional behavior.
11. Applicant admits that he represented on his Kansas application for a chiropractic license that he was placed on a semester-long probation.

12. Pursuant to K.S.A. 65-2836 the Board has grounds to deny Applicant's application in that Applicant has violated K.S.A. 65-2837(b)(16), by having an inappropriate relationship with a former patient; K.S.A. 65-2836(s), in that Applicant was suspended by his professional school due to unprofessional conduct and K.S.A. 65-2836(a), in that Applicant misrepresented the nature of the disciplinary action taken by Logan College of Chiropractic in his Application for licensure.
13. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
14. In lieu of conducting formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and limitations as a condition to being granted licensure:

#### **EDUCATION**

- a. Applicant shall attend and successful complete a Board-approved continuing education course for boundary issues, set forth below, on or before September 1, 2006, at his own expense. Applicant shall provide proof to the Board of successful completion by September 15, 2006.
- b. Within thirty (30) days of the approval of the Consent Order, Applicant shall contact either the Vanderbilt Medical Center or PACE Program and enroll in one (1) of their respective boundary programs. Applicant shall provide proof of such enrollment to Board staff within ninety (90) days of approval of the Consent Order. Vanderbilt may be contacted at: 1107 Oxford House, Nashville, TN 37232-4300, Phone: 615-936-0678. PACE

may be contacted at: UCSD PACE Program 200 West Arbor Dr., Mail  
Code: 8204, San Diego, CA 92103-8204, Phone 619-543-6770.

**(Confidential)**

- e. Applicant shall have a female chaperone in the room at all times when he is examining and/or treating female patients. The chaperone must be approved by the Board and/or its designee and such approval will not be unreasonably withheld. The chaperone must speak with a representative of the Board and/or its designee prior to approval. The chaperone is required to create and maintain a daily log identifying all patients seen in the office that day, identifying all female patients seen that day, and certifying their presence for all female patients seen in the office that day. Such daily logs must be submitted to the Board on a monthly basis and

must be received on or before the 15<sup>th</sup> day of the next month. Applicant is responsible for ensuring that the daily logs are submitted to the Board. Applicant is responsible for ensuring the chaperone's timely submission of the report each month.

- f. Applicant shall at all time keep Board staff informed of all his current practice locations.

### **LIMITATIONS**

- g. Applicant is prohibited from engaging in the solo practice of chiropractic. Applicant shall only practice in a group setting or on a contract-for-service basis.
- h. Applicant has a duty to make his employer aware of the terms and conditions in this Consent Order.

### **MONITORING AND LIMITATIONS TIMEFRAME**

- i. For any period(s) of time that Applicant is not actively practicing the healing arts in Kansas, the monitoring provisions of the Consent Order shall be tolled and not be counted in reducing the required timeframe for monitoring.
- j. The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing chiropractic in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

15. Applicant's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.
16. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 et seq., that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.
17. Applicant hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq. arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Applicant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

18. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, Federation of Chiropractic Licensing Board, and any other reporting entities requiring disclosure of the Consent Order.
19. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.
20. Applicant agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Applicant is not present. Applicant further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.
21. Applicant, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceedings on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.
22. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
23. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kathleen Selzler Lippert, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
25. Applicant shall obey all federal, state and local laws and rules governing the practice of chiropractic in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.
26. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.
27. This Consent Order constitutes disciplinary action.
28. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that upon meeting all technical requirements for licensure, Applicant shall be granted a license.

**IT IS FURTHER ORDERED** that:

**EDUCATION**

- a. Applicant shall attend and successful complete a Board-approved continuing education course for boundary issues, set forth below, on or before September 1, 2006, at his own expense. Applicant shall provide proof to the Board of successful completion by September 15, 2006.
- b. Within thirty (30) days of the approval of the Consent Order, Applicant shall contact either the Vanderbilt Medical Center or PACE Program and enroll in one (1) of their respective boundary programs. Applicant shall provide proof of such enrollment to Board staff within sixty (60) days of approval of the Consent Order. Vanderbilt may be contacted at: 1107 Oxford House, Nashville, TN 37232-4300, Phone: 615-936-0678. PACE may be contacted at: UCSD PACE Program 200 West Arbor Dr., Mail Code: 8204, San Diego, CA 92103-8204, Phone 619-543-6770.

**(Confidential)**

c.

- d. **(Confidential)**
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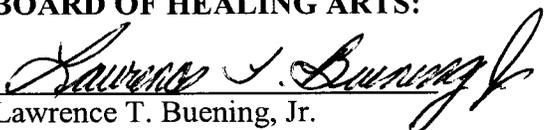
- h. Applicant has a duty to make his employer aware of the terms and conditions in this Consent Order.

**MONITORING AND LIMITATIONS TIMEFRAME**

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**IT IS SO ORDERED** on this 12<sup>th</sup> day of December, 2005.

**FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:**

  
Lawrence T. Buening, Jr.  
Executive Director

December 12, 2005  
Date

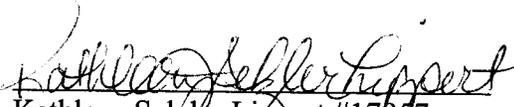
  
Shawn Joseph Bergman, D.C.  
Applicant

11-28-05  
Date

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PREPARED AND APPROVED BY:

  
Kathleen Selzler Lippert #17957

Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 12<sup>th</sup> day of December, 2005, to the following:

Shawn Joseph Bergman, D.C.  
Applicant  
815 N. Somerset Terr. 203  
Olathe, Kansas 66062

And the original was hand-delivered to:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Kathleen Selzler Lippert #17957  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068



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