

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

**FILED
AUG 25 2003
KANSAS STATE BOARD
OF HEALING ARTS**

In the Matter of)
)
MICHAEL E. BRADY, D.C.)
Kansas License No.1-03884)
_____)

Docket No. 03-HA-77

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Stacy L. Cook, Litigation Counsel (“Petitioner”), and Michael E. Brady, D.C. (“Licensee”), and move the Board for approval of a Consent Order affecting Licensee’s licensee to practice chiropractic in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s last known address to the Board is 1232 NW Harrison, Topeka, Kansas 66608.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 1-03884 on January 2, 1988. Licensee last renewed his license on November 13, 2002. Licensee’s license status is active.
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.*; K.S.A. 65-2869.
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.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee 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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On approximately August 11, 2002, Licensee advertised his services in the Topeka Capital-Journal.

10. The advertisement includes the following language: "School Sports Physicals only \$20. Call NOW! Dr. Michael Brady."

11. On or about September 26, 2002, Licensee advertised his services in the

Topeka Capital-Journal. The advertisement did not include any name or profession associated with the ad. The ad included misleading statements and made claims of professional superiority.

12. Licensee committed acts in violation of the Healing Arts Act, K.S.A. 65-2836 and K.S.A. 65-2837, including but not limited to:

- a. K.S.A. 65-2836(b) unprofessional conduct;
- b. K.S.A. 65-2836(b) unprofessional and/or dishonorable conduct in the use of the letters "Dr." without the use of appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license, as required by K.S.A. 65-2885;
- c. K.S.A. 65-2836(d) the licensee has used fraudulent or false advertisements;
- d. K.S.A. 65-2837(b)(1) unprofessional conduct in the solicitation of professional patronage through the use of fraudulent or false advertisements; and
- e. K.S.A. 65-2837(b)(7) advertising professional superiority or the performance of professional services in a superior manner.

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 the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following limitations and disciplinary action with respect to his license to engage in the practice of chiropractic:

- a. Licensee is publicly censured for advertisements that violate the Healing Arts Act in several respects;
- b. Licensee shall pay a fine of \$2,500.00. Such fine is due and payable to the Board on or before September 30, 2003;
- c. Licensee agrees that he shall not advertise his services in violation of the Healing Arts Act.

15. Licensee's failure to comply with the provisions of the Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure 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. 65-4921 *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. Licensee hereby releases the Board, its individual members (in their official and personal capacities), 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 Licensee has claimed to have had at the time of this release or might have had,

either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

18. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, 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. Licensee 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 Licensee is not present. Licensee 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. Licensee, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding 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. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

23. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

25. Licensee 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. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

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 in lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following limitations and disciplinary action with respect to his license to engage in the practice of chiropractic:

PREPARED AND APPROVED BY:

_____/s/_____
Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:

_____/s/_____
Michael E. Brady, D.C. 7/22/03
Licensee

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the **CONSENT ORDER** by United States mail, postage prepaid, on this 25th day of August, 2003 to the following:

Michael E. Brady, D.C.
1232 NW Harrison
Topeka, Kansas 66608

and the original was hand-delivered to:

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

Stacy L. Cook