

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED 

OCT 03 2014

KS State Board of Healing Arts

In the Matter of)	
)	Docket No.: 14-HA00064
Michael E. Brady, D.C.)	OAH No.: 14HA0007
Kansas License No. 01-03884)	

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Board”), by and through Reese H. Hays, Litigation Counsel and Joshana L. Offenbach, Associate Disciplinary Counsel (“Petitioner”) and Michael E. Brady, D.C. (“Licensee”), by and through his counsel, Mark W. Stafford and Megan L. Lewis of Simpson, Logback, Lynch and Norris, P.A. and move the Board for approval of a Consent Order affecting Licensee’s license to practice chiropractic in the State of Kansas. The parties stipulate and agree to the following:

1. Michael E. Brady, D.C.’s (“Licensee”) last known mailing 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. 01-03884 on approximately January 2, 1988, and having last renewed such license on or about December 5, 2013.
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. 77-505 and 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. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. 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.
7. 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.
8. The Board has received information and investigated the same, and a Petition was filed with the Board in this matter on or about November 15, 2013 alleging grounds for disciplinary action under the Kansas Healing Arts Act, K.S.A. 65-

2801, *et seq.* A subsequent Petition was filed on or about June 5, 2014 in Docket No. 14-HA00150 alleging further grounds for disciplinary action under the Kansas Healing Arts Act, K.S.A. 65-2801 *et. seq.* Both of these matters shall be consolidated under Docket No. 14-HA00064.

9. All investigative information, specifically information related to the status of the above-listed administrative action and the other pending administrative action in KSBHA Docket Nos. 14-HA00064 and 14-HA00150, was fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel or their appointed Disciplinary Panel member for this matter. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
10. Licensee denies the allegations in the Petitions; however, Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the allegations contained in both Petitions. Licensee further waives his right to dispute or otherwise contest these allegations in any future proceeding before this Board.
11. This Consent Order incorporates herein by reference the facts and allegations as stated in both the Petition that was filed on November 15, 2013 and the Petition that was filed on June 5, 2014.

12. Petitioner believes Licensee's acts and conduct during the course of treating Patients 1 through 12 in Docket No. 14-HA00064 constitutes acts in violation of the Healing Arts Act as follows:
- a. K.S.A. 65-2836(b), in that Licensee committed an act of unprofessional or dishonorable conduct or professional incompetency, that if continued would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined by K.S.A. 65-2837, and amendments thereto.
 - b. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(1), in that Licensee committed one or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence when he continued to treat patients using the same treatment regardless of their diagnosis or reaction to treatment.
 - c. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(2), in that Licensee committed repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence by using the same treatments and modalities even when patients did not improve or felt worse.
 - d. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(3), in that Licensee engaged in a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts by using the same treatments on each patient regardless of their diagnosis or if there were contraindications.

- e. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12), in that Licensee engaged in conduct likely to deceive, defraud or harm the public when he led the patients to believe they would be reimbursed by their insurance companies and when he led them to believe they would be “pain free.” Further, according to the Department of Health & Human Services, Office of Inspector General Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries, Licensees providing Medicare and Medicaid services can give beneficiaries inexpensive gifts or services (other than cash or cash equivalents), defined as having a retail value of no more than \$10.00 individually, for the maximum of \$50.00 per patient annually. Licensee repeatedly gave patients free services which far exceeded the maximum listed.
- f. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(13), in that Licensee made false or misleading statements 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 of the body or mind when he led patients to believe the treatments he provided, including the supplements and laser therapy, would ensure they were “pain free.”
- g. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(18), obtained a fee by fraud, deceit or misrepresentation when he led patients to believe they would be reimbursed by their insurance companies and that they would live “pain free.”

- h. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24), in that Licensee engaged in repeated failure to practice the 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 when he treated each patient in a same or similar manner regardless of their diagnosis.
- i. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.
- j. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(27), in that Licensee used experimental forms of therapy without proper informed patient consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee or peers.
- k. K.S.A. 65-2836(k), in that Licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board, in that Licensee failed to maintain an adequate medical record for Patients 1 through 12, pursuant to K.A.R. 100-24-1.
- l. K.S.A. 65-2836(aa), in that Licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement when he billed for services that were not medically indicated.

13. Petitioner believes Licensee's acts and conduct with regards to the advertisements listed in Docket No. 14-HA00150 constitutes acts in violation of the Healing Arts Act as follows:

a. K.S.A. 65-2836(b), in that Licensee committed the following acts of unprofessional and/or dishonorable conduct due to his advertisements all of which did not have any evidence or documentation to support the claims:

i. Maintaining an advertisement and/or informational page on www.spine-health.com that stated: "We use cutting edge technology . . . to **cure** or relieve the effects of these conditions." (emphasis added), "He is a BEST SELLING AUTHOR.", ". . . he has helped thousands of people reach extraordinary health and live WITHOUT PAIN."

ii. Placing an advertisement in the Topeka Capital-Journal on or about January 27, 2014 that stated: "BREAKTHROUGH IN RELIEF OF BACK PAIN: FANTASTIC RATE OF SUCCESS AFTER FIRST TREATMENT." and "This Unique Laser Care From Spinal Relief Center of Kansas LLC May Offer Profound Healing Relief From Chronic Pains With the Midwest's Largest SRC Laser Healing System." (Emphasis in original).

iii. Placing an advertisement in the Topeka Capital-Journal on or about June 25, 2012 which stated "WANT TO LIVE *PAIN-FREE?*" (emphasis in original) and "Try the Fantastic SRC LASER."

- iv. Placing an advertisement in the Topeka Capital-Journal on or about January 24, 2010 which referenced a testimonial which stated, “After six months of misery, I was relieved and I am now **pain free!**” (emphasis in original) and including a sticker which stated, “Live Pain FREE! New Clinically Proven NEW LIFE LASER . . .” (Emphasis in original).
- b. K.S.A. 65-2836(d), in that Licensee has used fraudulent and/or false advertisements when he placed the aforementioned advertisements in the newspaper and/or informational page.
- c. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(1), in that Licensee conducted solicitation of professional patronage through the use of fraudulent and/or false advertisements when he placed the aforementioned false and/or fraudulent statements in the newspaper and on his informational page.
- d. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(2), in that licensee represented to a potential patient that a condition or injury could be permanently cured when he maintained an advertisement and/or informational page on www.spine-health.com that stated: “We use cutting edge technology . . . to **cure** or relieve the effects of these conditions.” (Emphasis added).
- e. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(8), in that Licensee advertised to guarantee any professional service and/or to perform any operation painlessly by stating “WANT TO LIVE *PAIN-FREE?*” in the

aforementioned advertisements in the Topeka Capital-Journal. (Emphasis in original).

f. K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12), in that Licensee engaged in conduct likely to deceive, defraud, and/or harm the public by placing the aforementioned false and/or fraudulent advertisements in the newspaper and on his informational page.

g. K.S.A. 65-2836(f), in that Licensee has willfully and/or repeatedly violated this act.

14. If these allegations were proved, pursuant to K.S.A. 65-2836 the Board would have grounds to deny, revoke, suspend, limit, and/or censure Licensee's license. Pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

15. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

16. 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.

17. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas 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 Kansas Healing Arts Act.

18. Licensee 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 Judicial Review Act, 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.
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, including members of the Disciplinary Panel, and the General Counsel, in the consideration of this offer of settlement and agrees not to

seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel 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. Licensee acknowledges and agrees that Licensee's failure to comply with any of the provisions of this Consent Order is a violation of a Board order and grounds for disciplinary action against Licensee's license pursuant to K.S.A. 65-2836(k).
25. 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 Data Bank, Federation of State Medical Boards, and any other entities authorized to receive disclosure of the Consent Order.
26. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery 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.
27. 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.

28. This Consent Order constitutes disciplinary action.
29. The Board may consider all aspects of this Consent Order in any future disciplinary matter regarding Licensee to include any request for reinstatement of his license to practice chiropractic in the State of Kansas.
30. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of chiropractic:

DIVESTITURE

31. Licensee shall expeditiously, not to exceed ninety (90) days from the date of this order, fully divest himself of any and all financial, business, and/or property interests he may have in any chiropractic, weight loss, supplement, nutrition, healthcare-related marketing and/or healthcare-related advertising business(es). This does not preclude his ownership in, and/or receipt of rent from, the real property, and improvements thereon, located at 1232 NW Harrison Street, Topeka, Kansas 66608.
32. After Licensee divests himself of any and all financial, business, and/or property interests he may have in any chiropractic, weight loss, supplement, nutrition, healthcare-related marketing and/or healthcare-related advertising business(es):
 - a. Licensee shall not have any financial interest in or any receive payment from any chiropractic business in the future. This does not preclude him from

owning, or receiving rent from, the real property, and improvements thereon, located at 1232 NW Harrison Street, Topeka, Kansas 66608.

- b. Furthermore, Licensee shall not advise and/or educate chiropractors, medical professionals or laypeople on healthcare, nutrition, weight loss, supplements, healthcare-related advertising, healthcare-related marketing and/or healthcare-related business management.
- c. Licensee shall not be involved in any business related to nutrition, including, but not limited to: advising, or selling diet or nutrition plans.
- d. Licensee shall not be involved in any business related to weight loss, including, but not limited to: recommending methods for weight loss.
- e. Licensee shall not be involved in any business related to supplements, including, but not limited to: any business related to professional food supplements for the cure of disease or wellness.
- f. Licensee shall not be involved in any business related to healthcare-associated marketing.
- g. Licensee shall not be involved in any business related to healthcare-associated advertising.

LIMITATION OF LICENSE

- 33. For a period of ninety (90) days, Licensee's license to practice chiropractic in the State of Kansas shall be limited in that he shall not provide any patient care or advise on any patient care matters. The purpose of this ninety (90) day period is

for Licensee to perform only those tasks necessary to completely divest himself of interests set forth in Paragraphs 31 and 32 of this Consent Order.

Licensee will be required to comply with the following:

- a. During the divestment of Licensee's business(es), Licensee will hire Dr. Travis Oller, D.C. to ensure information given for the purpose of transition that Licensee provides to any person within the business and/or the purchaser(s) of the business is within the appropriate chiropractic standard. Payment to Dr. Oller shall be at Licensee's own expense.
- b. After the period of ninety (90) days from the date the Board approves this Consent Order, Licensee shall surrender his license to practice chiropractic to the Board. Licensee's certificate and wallet card shall be sent to the Compliance Coordinator via certified mail.

SURRENDER OF LICENSE

34. As of Jan 1st, 2015 Licensee hereby **SURRENDERS** his license to practice chiropractic, effective as of the above-listed date. Such surrender of licensure shall occur in exchange for a determination of the Board to cease the pending investigations and administrative actions currently pending in front of the Board pursuant to this public Consent Order which is disciplinary in nature. This will be reported as such to the National Practitioner Data Bank and to other entities to which the Board reports.
35. Licensee agrees that if he applies for reinstatement of his license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-2844. Further, Licensee's application will be governed by Vakas v. The Kansas State Board

of Healing Arts, 248 Kan. 589 (Kan. 1991), and all applicable statutes, laws and rules and regulations regarding the qualifications for licensure and reinstatement;

36. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement; and
37. Licensee agrees that in the event he applies for reinstatement of his license, the allegations contained in this Consent Order will be considered as findings of fact and conclusions of law.
38. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level Suite A, Topeka, Kansas 66612.

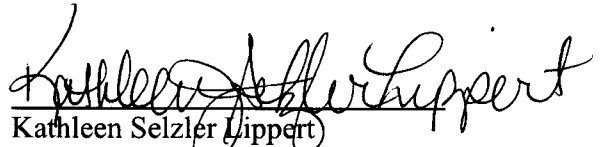
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Licensee's license is limited effective upon the filing of this Consent Order and surrendered as of ^{on Oct. 3, 2014} Jan 1st, 2015

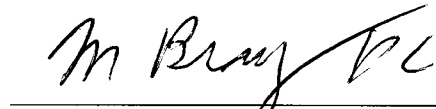
IT IS THEREFORE ORDERED that the Consent Order containing the agreement of the parties contained herein is hereby adopted by the Board as findings of fact and conclusions of law.

IT IS SO ORDERED on this 3rd day of Oct, 2014.

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

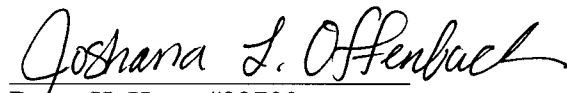

Kathleen Selzler Lippert
Executive Director

Oct. 3, 2014
Date


Michael E. Brady, D.C.
Licensee

9-30-14
Date

PREPARED AND APPROVED BY:


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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 3rd day of ~~September~~ October, 2014, to the following:

Michael E. Brady, D.C.
Licensee
1232 NW Harrison
Topeka, KS 6608

Mark W. Stafford
Megan L. Lewis
Attorneys for Licensee
Simpson, Logback, Lynch and Norris, PA
107 S.W. 6th Ave., Suite 210
Topeka, KS 66603

And the original was hand-delivered for filing with:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, LL Suite A
Topeka, Kansas 66612

And a copy was delivered to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Cathy A. Brown