

FILED 

OCT 24 2012

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of
JOHN W. CARLSTON, D.C.

Kansas License No.: 01-04439

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) KSBHA Docket No.: 11-HA00037
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FINAL ORDER REVOKING LICENSURE AND ASSESSING COSTS

NOW on this 19th day of October 2012, comes before the Kansas State Board of Healing Arts ("Board") the Board's Petition seeking disciplinary action against John W. Carlston, D.C.'s ("Respondent/Licensee") license to practice chiropractic in the State of Kansas. Respondent appears in person and by and through counsel, Eldon L. Boisseau. Stacy R. Bond, Associate Litigation Counsel, appears on behalf of the Petitioner Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501, *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the file, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. John W. Carlston, D.C. ("Respondent/Licensee") maintains a license to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04439 on approximately April 5, 1997.
2. On or about September 23, 2010, a Petition was filed seeking disciplinary action against Respondent's license to practice chiropractic in the State of Kansas for failure to adhere

to the appropriate standard of care to a degree constituting gross negligence and/or ordinary negligence in the treatment of a patient, and for inadequate medical record documentation.

3. A formal hearing on the Petition was held before Presiding Officer Stephen E. Good, of the Office of Administrative Hearings on March 12, 2012, through March 15, 2012, and concluding on March 23, 2012.

4. On or about June 22, 2012, the Presiding Officer issued an Initial Order in this matter making findings of facts and conclusions of law. The Initial Order found that Respondent violated the Kansas Healing Arts Act, as follows:

- (i) Respondent committed professional incompetence by deviating from the standard of care to a degree that constitutes gross negligence and incompetence;
- (ii) Respondent committed unprofessional conduct by making false or misleading statements to a patient;
- (iii) Respondent committed unprofessional conduct by failing to make and maintain accurate medical records of a patient;
- (iv) Respondent committed unprofessional conduct by using experimental forms of therapy without proper consent; and,
- (v) Respondent committed unprofessional conduct by failing to practice chiropractic with that level of care that is recognized by similarly situated practitioners.

5. Based upon these findings, the Presiding Officer ordered the revocation of Respondent's license to practice chiropractic in Kansas. In addition, the Presiding Officer assessed the costs of the hearing against Respondent.

6. Upon having fully reviewed the case file in this matter, having heard the statements and arguments of the parties, having reviewed Petitioner's Statement of Costs, and

being otherwise duly advised in the premises, the Board finds that Respondent did commit each violation of the Kansas Healing Arts Act as set forth in the Initial Order filed by the Presiding Officer in this matter.

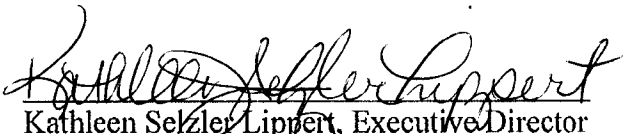
7. The Board accepts, adopts, and incorporates herein by reference, each Finding, Conclusion, and Order contained in the Initial Order filed by the Presiding Officer in this matter.

8. The Board further finds that, upon consideration of all relevant circumstances in this proceeding, the costs of the proceeding in this matter as set forth in Petitioner's Statement of Costs, in the amount of \$19,352.84, are lawful and should be assessed against Licensee pursuant to K.S.A. 65-2846.

IT IS THEREFORE CONSIDERED, ORDERED AND DECREED, BY THE KANSAS STATE BOARD OF HEALING ARTS, that John W. Carlston, D.C.'s license (no. 01-04439) to practice chiropractic in the State of Kansas is hereby REVOKED.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS, that the costs of the hearing in this matter, in the total amount of \$19,352.84, are hereby assessed against Respondent/Licensee, and that such costs are immediately due and owing by Respondent/Licensee and are payable to the Kansas State Board of Healing Arts.

IT IS SO ORDERED THIS 24th DAY OF OCTOBER, 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

Prepared and Approved by:



Randy E. Stookey, #21885
Special General Counsel
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

NOTICE REGARDING UNLAWFUL CORPORATE PRACTICE OF CHIROPRACTIC

PLEASE TAKE NOTICE that your license to practice chiropractic in the State of Kansas has been revoked. As such, you may no longer lawfully hold any ownership interest in a professional business entity organized to provide chiropractic services in the State of Kansas.

NOTICE REGARDING DUTY TO MAINTAIN PATIENT RECORDS

PLEASE TAKE NOTICE that pursuant to K.A.R. 100-24-2, you are required to maintain each of your patients' records for a minimum of 10 years from the last date of service. Because you cannot actively practice, K.A.R. 100-24-3 requires that you notify the Board on or before **November 23, 2012**, of the location of your patients' records, the name of the designated agent to maintain the records, along with the telephone number and mailing address of the agent. If you will be maintaining the records yourself, you shall give your contact information instead. This information will be provided to former patients who contact the Board to inquire as to the location of their records. You should also be aware that if you are unable or refuse to allow patients access to their records, the Board may petition the court for appointment of a custodian of the records pursuant to K.S.A. 65-28,128.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER REVOKING LICENSURE AND ASSESSING COSTS** was served on this 14th day of October 2012 by facsimile, by electronic mail, and by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

John W. Carlston, D.C.
1011 E. 13th Street N. Basement
Wichita, KS 67214
scopedc@hotmail.com
Fax: 316.303.1602

Eldon Boisseau
Law Offices of Eldon L. Boisseau, LLC
200 W. Douglas, Suite 101
Wichita, KS 67202
eldon@boisseau.com
Fax: 316.613.2801

And a copy was hand-delivered to the following:

Stacy R. Bond, Associate Litigation Counsel
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

The original was filed with the office of:

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



Cathy Brown, Executive Assistant