

FILED

CAD

01 27 2011

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

| | | |
|-----------------------------|---|------------------------|
| In the Matter of |) | |
| |) | Docket No. 12-HA 00034 |
| Scott B. Chorny, D.C. |) | |
| Kansas License No. 01-04226 |) | |

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Stacy R. Bond, Associate Litigation Counsel ("Petitioner"), and Scott B. Chorny, D.C. ("Licensee"), by and through his counsel, David R. Nachman, 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. Licensee's last known mailing address to the Board is: PO Box 386, Gardner, Kansas 66030.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04226 on approximately August 13, 1994. Licensee's license is active, having last been renewed on January 1, 2011.
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

Consent Order
Scott B. Chorny, D.C.

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 has reason to believe that there may be grounds pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. Licensee's business name is The Permanent Headache Solution, home of the patent pending "Headaches Gone Forever."

10. Licensee's website is named www.headachesgoneforever.com.
11. The Board claims and Licensee denies that, the Board may have sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the allegations contained in paragraphs nine (9) and ten (10). Licensee further waives his right to dispute or otherwise contest the allegations contained in paragraphs nine (9) and ten (10) in any further proceeding before this Board.
12. The Board claims and Licensee denies that, Licensee's acts, if proven, may constitute unprofessional conduct as set forth in K.S.A. 65-2836.
13. The Board claims and Licensee denies that, Licensee may have violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(2) by representing through advertising (but not to a patient) that a manifestly incurable disease, condition or injury can be permanently cured, by advertising his business as "The Permanent Headache Solution" and advertising "Headaches Gone Forever" on his website.
14. The Board claims and Licensee denies that, Licensee may have violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(1) by solicitation of professional patronage through the use of possibly deceptive advertisements.
15. The Board claims and Licensee denies that, Licensee may have violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(8) by advertising to guarantee any professional service.
16. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

17. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
18. The Board asserts that all pending investigation materials in KSBHA Investigation number 09-00359 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 25 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
19. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of paragraphs 34 through 38 of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice chiropractic in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in paragraphs 34 through 38 of this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

20. 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. 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 Kansas Healing Arts Act.
21. 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.
22. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
23. 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.

24. 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.
25. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and 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.
26. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. 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.
29. 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.

30. 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 Final Order when filed with the office of the Executive Director for the Board and no further Order is required.
31. This Consent Order constitutes non-disciplinary action.
32. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
33. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice of chiropractic:

FINES

34. Licensee is hereby ordered to pay a CIVIL FINE pursuant to K.S.A. 65-2863a in the amount of \$500.00. The total amount of \$500.00 shall be due on or before November 15, 2011.
35. In the alternative, Licensee may make monthly payments of \$100.00 for five (5) months for a total of \$500.00 to be paid over five (5) months. The initial payment is due on or before November 15, 2011, with the remainder of the monthly payments due on or before the fifteenth (15th) day of each month thereafter.
36. In the event that the Board does not receive a payment due and owing, the total amount of the levied FINE still due shall become immediately due and payable in

Consent Order
Scott B. Chorny, D.C.

full upon written notice by the Board to Licensee stating that payment has not been received.

37. Licensee shall make all payments payable to the Kansas State Board of Healing Arts and send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

OTHER

38. Licensee agrees to hereby immediately remove the terms "permanent" and "gone forever" from his business name, website and all advertisements over which he has control.

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

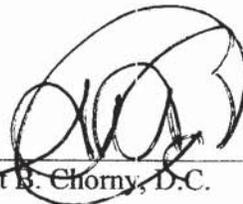
IT IS SO ORDERED on this 27 day of Oct, 2011.

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


Kathleen Selzler Lippert
Executive Director

10-27-11
Date

Consent Order
Scott B. Chorny, D.C.



Scott B. Chorny, D.C.
Licensee

9/12/2011

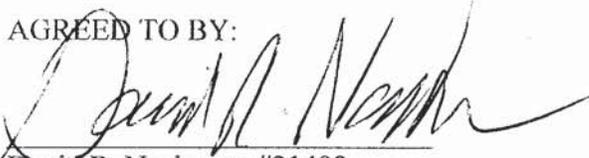
Date

PREPARED AND APPROVED BY:



Stacy R. Bond #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-3268

AGREED TO BY:



David R. Nachman, #21498
Attorney for Licensee
4550 Belleview
Kansas City, MO 64111

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 27th day of October, 2011, to the following:

Scott B. Chorny, D.C.
Licensee
PO Box 386
Gardner, Kansas 66030

David R. Nachman
Attorney for Licensee
4550 Belleview
Kansas City, Missouri 64111

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Stacy R. Bond
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

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

Consent Order
Scott B. Chorny, D.C.

Topeka, Kansas 66612

Cathy A. Brown