

FILED

JUN 16 2014

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 14-HA00057
Melissa A. Cutburth, D.C.,)	
Kansas License No. Pending)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Respondent”), and Melissa A. Cutburth, D.C., (“Applicant”), by and through her counsel, Brian Wright, and move the Board for approval of a Consent Order affecting Applicant’s license to practice chiropractic in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant’s last known mailing address to the Board is: **Confidential**
Clearwater, Kansas 67026.
2. On or about July 25, 2013, Applicant submitted an application for a license to practice chiropractic in the State of Kansas. Such application was deemed complete and filed with the Board on November 6, 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

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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 the case. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Applicant voluntarily and knowingly waives her right to a hearing. Applicant voluntarily and knowingly waives her right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Applicant voluntarily and knowingly agrees to waive all 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. Applicant 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 Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. In her application for licensure, Applicant provided the following answer to page 2, question 8, which asks for all employment/professional activity since

graduation: “Employer: Dopps Chiropractic Job description/Title: Chiropractor[.]” Dopps Chiropractic is located in Park City, Kansas, and Applicant listed the dates of employment as “From 7/23/12 To Present[.]”

10. On August 1, 2013, the Board received a new page 2 of the application in which question 8 was now answered as follows: “Job description/Title: Chiropractic Extern under Rob Dopps & Derin Dopps[.]”
11. In August 2013, Applicant was referred to as “Dr. Melissa Cutburth, D.C.” on the Dopps Family Chiropractic website. Applicant referred to herself on her personal Facebook page as a “chiropractor” in August 2013. The same Facebook page contained the statement “Pain Stops at Dopps!” Applicant’s LinkedIn profile showed that she was a “Doctor of Chiropractic at Dopps Chiropractic” and that she has been a “Doctor of Chiropractic” at Dopps Chiropractic from “July 2012-Present (1 year 4 months)[.]”
12. The Board investigated the manner in which applicant was presented to the public by Dopps Family Chiropractic; in a phone call from a purported patient, the Dopps Family Chiropractic office staff referred to Applicant as a chiropractor who had started right after graduation, stated that Applicant could practice without supervision, and said that Applicant was licensed to practice chiropractic in Kansas. These statements reflected a failure of Applicant to emphasize her non-licensed status with persons communicating with the public on behalf of her employer.

13. On August 26, 2013, the Board sent Applicant a request for information regarding her current job title, her job duties, and her exact dates of employment with Dopps Chiropractic in Park City, Kansas.
14. On August 28, 2013, the Board received Applicant's response to the August 26, 2013, request for information. Applicant stated that her job title was "Chiropractic Extern/Postceptor," that her dates of employment were "July 23rd, 2012 to present," and that her duties were as follows: "Assisting with examination, x[-]rays, treatment and assessing patients for treatment under the oversight of Dr. Derin Dopps and direct supervision of Dr. Rob Dopps. All duties were within the scope of the Doctor of Chiropractic education and at no time were any duties performed without the expressed permission of a state licensed Doctor of Chiropractic."
15. Upon notification of the Board's concerns, Applicant removed the references to her as a "doctor," "D.C.," and "chiropractor" from all websites within her control except for her LinkedIn page, which she had overlooked at the time because she never used it.
16. Applicant did later revise her LinkedIn page to remove any references to "Doctor of Chiropractic at Dopps Chiropractic."
17. Applicant is no longer employed at Dopps Chiropractic. She stopped seeing patients after concerns were raised regarding the manner in which she and clinic personnel referred to herself and her practice.
18. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has

sufficient evidence to prove that Applicant has violated the Kansas Healing Arts Act with respect to the above allegations. Applicant further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

19. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
20. Applicant violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(4), in that Applicant used letters, words, or terms, such as an affix on stationary, in advertisements, or otherwise indicating that such person is entitled to practice a branch of the healing arts for which she was not licensed.
21. Applicant violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), in that Applicant practiced the healing arts while not licensed to engage in the practice of the healing arts; such conduct is likely to deceive, defraud or harm the public.
22. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant'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.
23. 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.
24. All pending investigation materials in KSBHA Investigative Case Number 14-00144 regarding Applicant were fully reviewed and considered by the Board

members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

25. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Applicant's license to practice chiropractic in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Applicant 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.*

26. 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.

27. 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 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 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.
28. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
29. 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.
30. 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.

31. Applicant, 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.
32. Applicant acknowledges that she has read this Consent Order and fully understands the contents.
33. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
34. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to:
- Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson Lower Level-Suite A
Topeka, Kansas 66612
35. 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.
36. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final 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.

37. This Consent Order constitutes disciplinary action.
38. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
39. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on her license to engage in the practice of chiropractic:

CENSURE

Applicant is publicly censured for violating the Kansas Healing Arts Act.

OTHER

40. Applicant shall enroll for the Ethics and Boundaries Examination provided by Ethics and Boundaries Assessment Services, LLC, EBAS-Applications, P.O. Box 336307, Greeley, Colorado 80633, at her own expense, by October 3, 2014.
41. Applicant shall successfully complete the Ethics and Boundaries Examination by December 31, 2014. Applicant shall provide proof of successful completion by February 18, 2015.
42. All costs associated with enrolling in, and successfully completing, the Ethics and Boundaries Examination shall be at Applicant's own expense. Costs may include, but not be limited to, the cost of the examination, any re-take fees, the cost of travel to and from the examination, and the cost of accommodations for the examination.

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.

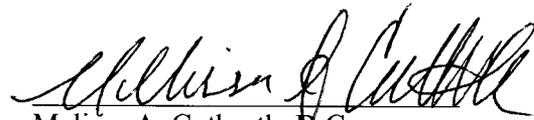
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 13 day of June, 2014.

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

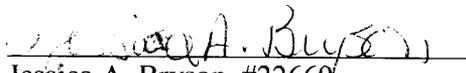

Kathleen Selzer Lippert
Executive Director

6/13/14
Date


Melissa A. Cutburth, D.C.
Applicant

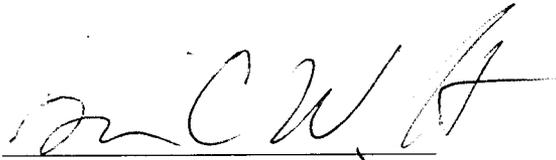
5/26/14
Date

PREPARED AND APPROVED BY:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
Phone: 785-296-8022
Fax: 785-368-8210
Email: jbryson@ksbha.ks.gov

AGREED TO BY:

Consent Order
Melissa A. Cutburth, D.C.



Brian Wright, #12874
Attorney for Applicant
Wright Law Office, Chtd.
4312 10th Street Place
Great Bend, KS 67530
620-793-8900

CERTIFICATE OF SERVICE

Consent Order
Melissa A. Cutburth, D.C.

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 10th day of June, 2014, to the following:

Melissa A. Cutburth, D.C.
Applicant
Confidential
Clearwater, Kansas 67026

Brian Wright
Attorney for Applicant
Wright Law Office, Chtd.
4312 10th Street Place
Great Bend, KS 67530

And the original was hand-filed with:

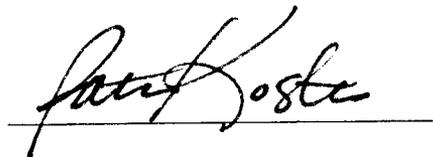
Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

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

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
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