

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of )
KENNETH R. DOWNING, D.C. )
)
Kansas License No. 01-05018 )
\_\_\_\_\_ )

KSBHA Docket No. 13-HA00048

JOURNAL ENTRY OF FINAL ORDER AND SATISFACTION

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through its Executive Director, Kathleen Selzler Lippert, a duly authorized representative of the Board, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq., as amended, and upon due consideration of the agency record and applicable laws and being otherwise duly advised in the premises, makes the following determinations:

- 1. Kenneth R. Downing, D.C. ("Licensee") has, since approximately February 11, 2006, maintained License No. 01-05018 to engage in the chiropractic in the State of Kansas.
2. Licensee's mailing addresses of record to the Board is: 4711 Mission Road, Westwood, Kansas 66205.
3. On or about February 22, 2013, Executive Director Selzler Lippert, in accordance with K.S.A. 77-514, and as authorized by K.S.A. 65-2801, et seq., issued a Summary Order publicly censuring and assessing a civil fine in the amount of \$2,000.00, against Licensee's license to chiropractic in the State of Kansas for violating the Healing Arts Act and regulations promulgated thereunder.
4. Pursuant to K.S.A. 77-542, the Summary Order notified Licensee that if a written request for hearing was not filed within 15 days following service of the Summary Order, the

Summary Order would become effective as a Final Order of the Board upon expiration of the time for requesting a hearing.

5. Pursuant to K.S.A. 77-531, the Summary Order was served upon Licensee by mailing a copy of the Summary Order to Licensee at Licensee's last known mailing address of record, via United States Mail, first-class postage prepaid.

6. Licensee did not request a hearing on the Summary Order.

7. Pursuant to K.S.A. 77-512, 77-526, and 77-530, the Summary Order became effective as a Final Order on March 11, 2013.


8. Licensee remitted payment in full to the Board for the \$2,000.00 fine.

**IT IS THEREFORE ORDERED** that the Summary Order filed in the above-captioned matter on February 22, 2013, became effective as Final Order on March 11, 2013.

**IT IS FURTHER ORDERED** that Licensee's license to practice chiropractic in the State of Kansas is hereby **PUBLICLY CENSURED** and assessed a **CIVIL FINE** of \$2,000.00.

**IT IS FURTHER ORDERED** that Licensee has satisfactorily met his obligation for payment of the fine, and as such, has no further obligation for compliance.

**IT IS SO ENTERED THIS 15<sup>th</sup> DAY OF MAY, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

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

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 16<sup>th</sup> day of May, 2013, a true and correct copy of the above and foregoing **JOURNAL ENTRY OF FINAL ORDER AND SATISFACTION** was deposited in the United States mail, postage prepaid, and addressed to:

Kenneth R. Downing, D.C.  
4711 Mission Road  
Westwood, KS 66205

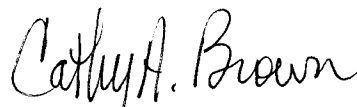
Brian J. Nicewanger  
MCDOWELL, RICE, SMITH & BUCHANAN  
7101 Tower  
7101 College Blvd., Suite 200  
Overland Park, KS 66210-1891

and a copy was hand-delivered to:

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

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

and the original was filed with the office of the Executive Director.



\_\_\_\_\_  
Cathy Brown, Executive Assistant

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OF THE STATE OF KANSAS

FILED  
FEB 22 2013  
KS State Board of Healing Arts

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KENNETH R. DOWNING, D.C. )  
 ) KSBHA Docket No. 13-HA 00048  
Kansas License No. 01-05018 )  
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SUMMARY ORDER

NOW ON THIS 20<sup>th</sup> day of Feb., 2013, this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts (“Board”), in summary proceedings pursuant to K.S.A. 77-537. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law and order are made for and on behalf of the Board:

Findings of Fact

1. Kenneth R. Downing, D.C. (“Licensee”) was originally issued license number 01-05018 to practice as a chiropractor in the State of Kansas on February 11, 2006. Licensee’s license is currently active.
2. Licensee’s last known mailing address as provided to the Board is: 4711 Mission Road, Westwood, Kansas 66205.
3. On or about February 19, 2009, Sharon Schiesser, KSBHA Special Investigator II, (hereinafter Board Investigator) received a business card from Licensee. The business card displayed Licensee’s website as: [www.kansaspainrelief.com](http://www.kansaspainrelief.com).
4. The Board Investigator went to Licensee’s website and observed several

advertising statements, including, but not limited to, language stating the following:

- a. “PERMANENT HEADACHE RELIEF;”
- b. “Permanently Eliminate Neck Pain!;”
- c. “become pain free” and other “pain free” terminology;
- d. “Discover how To Easily Lose 1-2 Pounds of Fat Per Week, 100% Guaranteed!;” and
- e. “The Amazing New Technology That Quickly Eliminates Back Pain. . . Find Out How This Amazing New Technology Can Have You Living Pain Free Within Weeks!”

5. An investigation was opened to obtain Licensee’s response to the investigation of the above statements as well as his plan for correcting any statements that may have been seen as potential violations of the Kansas Healing Arts Act.

6. On or about March 4, 2009, the Board Investigator issued a letter to Licensee, notifying him of the potential violations and requesting that he provide a response.

7. In March 2009, Licensee, through his attorney, provided a response regarding the advertising issues.

- a. Licensee explained that, in 2008, he entered into a contract with a national company, PNZ Management/Chiropractic Marketing Systems and Automated Practice Builder (PNZ).
- b. Licensee stated that PNZ offered to host a website for Licensee and that he was “assured that PNZ was knowledgeable about marketing regulations and that the website would comply with local laws.”
- c. Licensee further stated that he was informed that PNZ had over 400 chiropractic clients in fifty (50) states and “never had a complaint.”

Licenses stated that he “did not do independent research on specific content as he felt he had contracted with an experienced and reputable company to provide that expertise.”

- d. Licensee stated that his business, Westwood Chiropractic, does not offer “guarantees” and that, to avoid confusion, references to “guarantee” had been removed from the website.
- e. Licensee explained that Spinal Decompression Therapy/Lumbar Cervical Decompression/LCD Therapy had been documented in studies to have a success rate and that it had “certainly been successful” for him.
- f. Licensee stated that he regretted that his name appeared on the website without his professional designation and that he addressed the situation so that, throughout the website, his name now appears with his professional designation.
- g. Licensee explained that Westwood Chiropractic offered “complimentary evaluations which include a no charge appointment with [Licensee] to ascertain whether or not the potential patient is a candidate for chiropractic treatment. The evaluation process for each type of condition would involve case history and physical examination as dictated by the individual patient’s condition and history.”
- h. Licensee stated that the testimonials on the website were “generic” and that they had been added to the website by the web host. He stated that he had requested that “all generic testimonials be removed from

the website.”

- i. Licensee stated that the statistics on the website were selected by the web host and that he had requested that all statistics be removed from the site.
- j. Licensee concluded his response by stating that he had attempted to address any issues that the Board believed existed and that they expected all editing issues to be completed within a matter of days.

8. On or about December 6, 2010, the Board Investigator visited Licensee’s website <http://www.kansaspainrelief.com> and found that his website contained the following language:

- a. “My name is Dr. Ken Downing, one of the city’s top chiropractors...”
- b. “...I use chiropractic techniques that will help to correct this misalignment, which can actually eliminate your earaches and prevent future ones as well.”
- c. “...Dr. Ken Downing, can help to alleviate your pain, and in many cases, eliminate it altogether.”
- d. “...and get on the road to being pain-free.”
- e. “...you will soon be pain-free.”
- f. “I am the number one chiropractor in the Westwood area and I can help you.”
- g. “No matter what is causing the bed wetting, it can be handled in my Westwood office...”
- h. “As the number one chiropractor in the Westwood area...”
- i. “You won’t have to live with the chronic pain caused by fibromyalgia any longer when you follow the proper course of treatment, which includes regular visits to my office.”

- j. "...you can live a normal life, relatively free of pain from your condition."
- k. "Remember, Dr. Ken Downing, has a solution for your fibromyalgia pain",  
"...get rid of your pain today."
- l. "These are all symptoms that can disrupt your life, and visiting me at my office in 4711 Mission Rd., 66205 is your first step to becoming symptom-free from your allergies."
- m. "Why settle for just easing your symptoms when I can help to nearly, and in many cases, completely, eliminate your allergy symptoms and help keep you symptom-free for life?"
- n. "I am Dr. Downing, one of the best chiropractors in Westwood, Kansas..."
- o. "...I can show you many exercises that you can do at home between visits that will help to eliminate your pain as well."
- p. "...arrange for a consultation, your first step to becoming pain-free."
- q. "Hello people of Westwood, Kansas, I am the leading chiropractor in the area..."
- r. "The Secret To Back Pain Relief: How To Get Rid Of Nagging Back Pain ... Without Drugs Or Surgery" This report contains the following statement:

Even if you're in severe pain and fed up with not being able to sit, stand, or even sleep without discomfort...maybe you've been suffering this way for months or even years. Forget about those previous crazy promises, weird solutions or diagnosis some doctors, friends or even so called specialists have told you.

You're about to get the "no hype" natural way to back pain relief...without all the glitz and glamour.

Let me introduce myself...my name is Ken Downing, D.C.. I help people that suffer from back pain. As a matter of fact,



most of my day consists of helping people in your exact, painful situation. Many people come to my office each day with back pain, and within a short period of time, become pain free. This doesn't happen with everyone. Sometimes it takes days, even weeks before the pain is totally gone.

- s. "Many people come to my office each day with back pain, and within a short period of time, become pain free. This doesn't happen with everyone. Sometimes it takes days, even weeks before the pain is totally gone."
- t. "It contains what you need to know if you want to get rid of your pain now, and prevent it from getting any worse."
- u. "...YOUR BACK MAY BE ABLE TO FEEL BETTER, AND YOU MAY BE ABLE TO LIVE PAIN FREE, STOP, STOP!!" (emphasis in the original).
- v. "...you'll be blown away at how your body may start to heal itself and as a result which could cause you to become pain free!!"
- w. "The Little Known Secret to *FAST* WRIST PAIN RELIEF! How To Eliminate Carpal Tunnel Syndrome" (emphasis in the original).
- x. "*It truly contains the secret to relieving your wrist pain and Carpal Tunnel Syndrome in a safe, healthy way!*" (emphasis in the original).
- y. "If you're willing to simply take an action step in the right direction, you can be pain free and get your life back fast, but more importantly, avoid any future pain and suffering."
- z. "The Secret To Neck Pain Relief: How To Get Rid Of Nagging Neck Pain ...Without Drugs Or Surgery"
- aa. "*The Amazing New Technology That Quickly Eliminates Back Pain*", "Find

Out How This Amazing New Technology Can Have You Living PAIN FREE Within Weeks!”, “Discover The Amazing New *Spinal Decompression Technology* That Relieves Back Pain Safely & Easily...” (emphasis in the original).

bb. “Sometimes it takes days, even weeks before the pain is totally gone.”

cc. “...I’ve had the training and experience to solve your back problem...”, “...I can offer what most doctors or chiropractors in this area cannot...that’s right. The Amazing New LUMBAR CERVICAL DECOMPRESSION (LCD) Technology! This is the newest most successful technology for severe chronic disc herniations, degenerative or bulging disc, Sciatica and neck pain. Studies have shown a success rate in eliminating these conditions with this new technology.” (emphasis in the original).

dd. “Our patients describe the treatment as a gentle, painless, intermittent pulling of your back.”, “*Imagine living without pain!*”, “*Imagine waking up with zero back pain!*” (emphasis in the original).

ee. “...YOU CAN POSSIBLY BE PAIN FREE, STOP, STOP!!” (emphasis in the original).

ff. “...you’ll start feeling yourself again, pain free living life to the fullest.”

9. Included on Licensee’s website were videos, which included language that a person could live “pain free.”

10. In order to print the pain reports that were on Licensee’s website, the Board Investigator provided her email address when prompted. The Board Investigator then received the following automated emails from Licensee:

a. Email dated 12/17/2010:

i. Subject: "family doctor"

ii. The email stated that its purpose was to notify the recipient that she could still receive a "free [sic] consultation with the all new amazing technology called LCD or Lumbar Cervical Decompression. Remember, it's a painless computerized system that could quite possibly rid you of back pain forever!"

iii. The email also stated:

I wanted to discuss something that 90% of all back pain sufferers discover after it's too late:

The family doctor may not be the best choice to help your back pain. Again, I have nothing against family Doctors. However, when people suffer with an aching back, month after month, sometimes year after year, I get anxious to tell them the reality of the situation: that their doctor, although intentions are good, is not the best choice.

Family doctors are not trained in dealing with back pain. That's why I'm so adamant about having you consider coming into our office for a free [sic] back pain evaluation consultation.

Don't get me wrong, if after our evaluation, we determine that you need a doctor, we of course will make the proper referral.

It may cost you nothing to come see us, but it will be invaluable in getting rid of your back pain.

The fact is, you have an aching back and it doesn't have to be that way. You can feel great and have your back feeling as good as your mind in a very short period of time.

Just go to [link to website] before 12/21/2010 and we'll get you a free [sic] back pain evaluation consultation asap using the newest most exciting technology that people everywhere (that used to have back pain) are raving about, LCD technology!

Say goodbye to your back pain by taking this smart step. Go here now: [link to website].

Thanks,

[Licensee]

- b. Email dated 12/18/2010 with Subject of “back pain gone once and for all”
  - i. Declaration in the body of the email stating, “We deal with back pain sufferers like yourself, every day. It’s our specialty.”
  - ii. Concludes with “Thanks, [Licensee].”
- c. Email dated 12/18/2010 with Subject of “neck pain gone once and for all”
  - i. Declaration in the body of the email stating, “We deal with neck pain sufferers like yourself, every day. It’s our specialty.”
  - ii. Concludes with “Thanks, [Licensee].”
- d. Email dated 12/18/2010 with Subject of “Headache gone once and for all”
  - i. Declaration in the body of the email stating, “We deal with Headache sufferers like yourself, every day. It’s our specialty.”
  - ii. Provides a link referring the reader to a website for a “free [sic] Headache consultation” and to click on the link “to start living pain free[sic].”
  - iii. Concludes with “Thanks, [Licensee].”
- e. Email dated 12/18/2010 with Subject of “wrist pain gone once and for all”
  - i. Declaration in body of email stating, “We deal with Carpal Tunnel pain sufferers like yourself, every day. It’s what we do.”
  - ii. Concludes with “Thanks, [Licensee].”
- f. Email dated 12/18/2010
  - i. Subject heading “Fibromyalgia pain and suffering gone once and for all”
  - ii. Declaration in body of email stating, “We deal with Fibromyalgia pain sufferers like yourself every day. It’s our specialty.”

- iii. Concludes with “Thanks, [Licensee].”
- g. Email dated 12/19/2010
  - i. Subject heading “back surgery is an option”
  - ii. Declaration stating, “The success rate of back surgery is less than 50%.”
  - iii. Declaration stating that the recipient would receive a “free [sic] back pain evaluation consultation and determine what the real cause of your pain is, and chances are, be able to eliminate your pain.”
  - iv. Concludes with “Thanks, [Licensee].”
- h. Email dated 12/19/2010
  - i. Subject heading “neck surgery is an option”
  - ii. Declaration stating, “The success rate of neck surgery is less than 50%.”
  - iii. Declaration stating that the recipient would receive a “free [sic] neck pain evaluation consultation and determine what the real cause of you [sic] pain is, and chances are, be able to eliminate your pain.”
  - iv. Concludes with “Thanks, [Licensee].”
- i. Email dated 12/19/2010
  - i. Subject heading “surgery is an option”
  - ii. The opening sentence states, “We wanted to let you know, although we agree that surgery has a very low success rate for headaches, it may be an option for you...however, before you even think of that, let us make sure you’re not making a big mistake.”
  - iii. Declaration stating, “We hate seeing the high hopes of Headache sufferers that go for the surgery and come out with worse problems than [sic] before.”

- iv. Declaration stating, “The success rate of surgery is less than 50%.”
  - v. Declaration stating that “we’ll give you a free [sic] Headache Evaluation consultation to determine what the real cause of your Headache pain is, and chances are, be able to eliminate your pain very quickly.”
  - vi. The email concludes with “Thanks, [Licensee].”
- j. Email dated 12/19/2010
- i. Subject heading “Carpal Tunnel Syndrome or wrist surgery is an option”
  - ii. Opening statement of “We wanted to let you know, although we agree that Carpal Tunnel Syndrome surgery has a very low success rate, it may be an option for you..[sic] However, before you even think of that, let us make sure you’re not making a big mistake.”
  - iii. Declaration stating, “The success rate of Carpal Tunnel Syndrome surgery is less than 50%.”
  - iv. Concludes with “Thanks, [Licensee].”
- k. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. A statement noting that it has been about a week since the reader had requested a free report about “eliminating your headache pain fast.”
  - iii. A subsequent statement of “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication. We sincerely hope this isn’t the case since medicine will just open you up for a series of other problems.”
  - iv. Declaration that “[s]ome people come to us that were on 5 or 6 pain

medications with zero results” and that “[o]nce they received our special Headache relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly.”

- v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aching head stop you from getting every ounce of happiness in this life.”
  - vi. Referral to website for a free consultation “and start living pain free [sic] now[.]”
  - vii. Concludes with “Thanks, [Licensee].”
- l. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. A statement noting that it has been about a week since the reader had requested a free report, “The Secret To Eliminate neck Pain Fast!”
  - iii. A subsequent statement of “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication. We sincerely hope this isn’t the case since medicine will just open you up for a series of other problems.”
  - iv. Declaration that “[s]ome people come to us that were on 5 or 6 pain medications with zero results” and that “[o]nce they received our special neck pain relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly.”
  - v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aching neck stop you from getting every ounce of happiness in

this life.”

- vi. Concludes with “Thanks, [Licensee]”
- m. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. A statement noting that it has been about a week since the reader had requested a free report, “The Secret To Eliminate Back Pain Fast!”
  - iii. A subsequent statement of “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication. We sincerely hope this isn’t the case since medicine will just open you up for a series of other problems.”
  - iv. Declaration that “[s]ome people come to us that were on 5 or 6 pain medications with zero results” and that “[o]nce they received our special back pain relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly.”
  - v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aching back stop you from getting every ounce of happiness out of life.”
  - vi. Concludes with “Thanks, [Licensee]”
- n. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. A statement noting that it has been about a week since the reader had requested a free report “about the all new ‘space’ technology called Lumbar Cervical Decompression and how it can help you live pain free practically



- overnight.”
- iii. A subsequent statement of “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication. We sincerely hope this isn’t the case since medicine will just open you up for a series of other problems.”
  - iv. Declaration that “[s]ome people come to us that were on 5 or 6 pain medications with zero results” and that “[o]nce they received our special back pain relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly.”
  - v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aching back stop you from getting every ounce of happiness out of life.”
  - vi. Concludes with “Thanks, [Licensee]”
- o. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. A statement noting that it has been about a week since the reader had requested the free report “The Secret To Eliminate Carpal Tunnel Pain Relief Fast!”
  - iii. A subsequent statement of “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication. We sincerely hope this isn’t the case since medicine will just open you up for a series of other problems.”
  - iv. Declaration that “[s]ome people come to us that were on 5 or 6 pain

- medications with zero results” and that “[o]nce they received our special Carpal Tunnel pain relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly.”
- v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aching Carpal Tunnel Syndrome stop you from getting every ounce of happiness in this life.”
  - vi. Concludes with “Thanks, [Licensee]”
- p. Email dated 12/20/2010
- i. Subject heading “we hope this is good news”
  - ii. Notation that it has been about a week “since you requested your free [sic] report.”
  - iii. Statement that “We hope this means you’re feeling better. However, feeling good temporarily could mean that you’re using medication to numb the pain. We sincerely hope this isn’t the case since medicine will just open you up to a series of other problems.”
  - iv. Subsequent statement that “[s]ome people come to us that were on 5 or 6 pain medications with zero results. Once they received our special Fibromyalgia pain relief treatment, they immediately looked forward to getting off their medication completely. Some stopped instantly!”
  - v. Declaration stating, “This can be you: pain free, [sic] enjoying life, and not letting your aches and pains stop you from getting every ounce of happiness in this life.”
  - vi. Concludes with “Thanks, [Licensee]”

### Applicable Law

11. K.S.A. 65-2836 states: “A licensee’s license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions . . . upon a finding of the existence of any of the following grounds: . . .”
12. K.S.A. 65-2836(b) states: “The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion 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 in K.S.A. 65-2837.”
13. K.S.A. 65-2836(d) states: “The licensee has used fraudulent or false advertisements.”
14. K.S.A. 65-2836(f) states: “The licensee has willfully or repeatedly violated this act, the pharmacy act of the state of Kansas or the uniform controlled substances act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the secretary of health and environment which are relevant to the practice of the healing arts.
15. K.S.A. 65-2837 provides a list of definitions.
16. K.S.A. 65-2837(c) defines “False advertisement” as “any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations.
17. K.S.A. 65-2837(d) defines “Advertisement” as “all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services.”
18. K.S.A. 65-2837(b) provides definitions of what may constitute “unprofessional conduct.”
19. K.S.A. 65-2837(b)(1) defines “unprofessional conduct” as “[s]olicitation of professional patronage through the use of fraudulent or false

advertisements, or profiting by the acts of those representing themselves to be agents of the licensee.”

20. K.S.A. 65-2837(b)(2) defines “unprofessional conduct” as “[r]epresenting to a patient that a manifestly incurable disease, condition or injury can be permanently cured.”
21. K.S.A. 65-2837(b)(7) defines “unprofessional conduct” as “[a]dvertising professional superiority or the performance of professional services in a superior manner.”
22. K.S.A. 65-2837(b)(12) defines “unprofessional conduct” as “[c]onduct likely to deceive, defraud or harm the public.”
23. K.S.A. 65-2837(b)(13) defines “unprofessional conduct” as “[m]aking a false or misleading statement 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.”
24. K.S.A. 2863a(a) states: “The state board of healing arts, in addition to any other penalty prescribed under the Kansas healing arts act, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the Kansas healing arts act in an amount not to exceed \$ 5,000 for the first violation, \$ 10,000 for the second violation and \$ 15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

#### **Conclusions of Law**

25. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
26. The Board finds that Licensee’s website <http://www.kansaspainrelief.com> contains false or fraudulent advertisements.
27. The Board finds that automated emails sent by Licensee contain false or fraudulent advertisements.

28. The Board finds that, by claiming to be one of the “best” chiropractors, “one of the city’s top chiropractors”, or “the number one chiropractor in the Westwood area,” Licensee is advertising professional superiority or the performance of professional services in a superior manner.
29. The Board finds that, by advising potential patients to “[f]orget about those previous crazy promises, weird solutions or diagnosis some doctors, friends or even so called specialists have told” them, Licensee is advertising professional superiority or the performance of professional services in a superior manner.
30. The Board finds that advising potential patients to “[f]orget about those previous crazy promises, weird solutions or diagnosis some doctors, friends or even so called specialists have told” them is conduct that is likely to deceive, defraud, or harm the public in that it is advice from a licensed professional to disregard other licensed professionals’ care and treatment of a patient without even seeing the patient first.
31. The Board finds that advising potential patients, who have not yet been seen by Licensee, that he “sincerely hopes” that the person is not using medications “since medicine will just open you up to a series of other problems” is conduct that is likely to deceive, defraud, or harm the public in that it is advising patients to stop taking any medication including medication that may be prescribed by a duly licensed health care provider.
32. The Board finds that advertising that “no matter what is causing the bedwetting, it can be handled in [Licensee’s] office” is making a false or

misleading statement regarding his 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 because this statement does not account for any potential mental health issues that may need to be addressed by mental health specialist such as a psychiatrist or a psychologist.

33. The Board finds that Licensee has committed unprofessional conduct by soliciting professional patronage through the use of false or fraudulent advertising.
34. The Board finds that Licensee has committed unprofessional conduct by representing that he could cure a manifestly incurable condition.
35. The Board finds that Licensee has committed unprofessional conduct by advertising professional superiority or the performance of professional services in a superior manner.
36. The Board finds that Licensee has committed unprofessional conduct by committing conduct likely to deceive, defraud or harm the public.
37. The Board finds that Licensee has committed unprofessional conduct by making 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.
38. That by committing unprofessional conduct, Licensee is in violation of K.S.A. 65-2836(b), as specifically defined by K.S.A. 65-2837(b)(1)-(2),

K.S.A. 65-2837(b)(7), and K.S.A. 65-2837(b)(12)-(13).

42. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of the law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee, Kenneth R. Downing, D.C..

**IT IS, THEREFORE, ORDERED** that Licensee is hereby **PUBLICLY CENSURED** and assessed a **CIVIL FINE** of \$ 2,000.00 due and payable in full within thirty (30) days of the effective date of this Order.


**NOTICE AND OPPORTUNITY FOR HEARING**

**PLEASE TAKE NOTICE** that this is a Summary Order. A party to whom a Summary Order is issued may file a written request for a hearing pursuant to K.S.A. 77-542 within 15 days following service of the Summary Order. Such written request shall also state the legal and/or factual basis upon which the party opposes this Order. If a hearing is not requested, the Summary Order shall become effective as a Final Order of the Board upon expiration of the time for requesting a hearing. A written request for hearing must be addressed and mailed to Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson. Lower Level – Suite A, Topeka, KS 66612.

**PLEASE TAKE NOTICE** that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 20<sup>th</sup> day of Feb, 2013.

Kansas State Board of Healing Arts



Kathleen Selzler Lippert  
Executive Director



**Certificate of Service**

I, Cathy Brown, certify that the foregoing Summary Order was served this 22<sup>nd</sup> day of February, 2013, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Kenneth R. Downing, D.C.  
Licensee  
4711 Mission Road  
Westwood, Kansas 66205

Brian J. Niceswanger  
Attorney for Licensee  
McDowell, Rice, Smith & Buchanan  
7101 Tower  
7101 College Blvd Suite 200  
Overland Park, KS 66210-1891

and a copy was hand-delivered to:

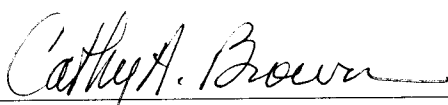
Katy Lenahan  
Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level – Suite A  
Topeka, KS 66612

Melissa Massey  
Compliance Monitor  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level – Suite A  
Topeka, KS 66612

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

and the original was filed with the office of the Executive Director:

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

  
\_\_\_\_\_  
Cathy Brown