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DEC 13 2017
KS State Board of Healing Arts

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

In the Matter of)	
)	Docket No. 18-HA00008
Kenneth R. Downing, D.C.)	OAH No. 18-HA0002 BHA
Kansas License No. 01-05018)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Reese H. Hays, Litigation Counsel, and Phoenix Z. Anshutz, Associate Litigation Counsel, (“Petitioner”), and Kenneth R. Downing, D.C. (“Licensee”), by and through Matthew A. Kentner, Kentner Wyatt, LLC, 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: 4711 Mission Rd., Westwood, Kansas 66205.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-05018 on approximately February 11, 2006, and having last renewed such license on December 12, 2016. Licensee’s license is currently active.
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

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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 the 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 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(b), as further defined by K.S.A. 65-2837(b)(1), K.S.A. 65-2837(b)(8), K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(19), K.S.A. 65-2837(b)(34)(A)-(C), K.S.A. 65-2836(f), K.S.A. 65-2836(r), K.S.A. 65-2836(k), K.A.R. 100-24-2, and K.S.A. 65-2885 to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

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9. This Consent Order incorporates herein by reference the facts as stated in the Petition that was filed on August 15, 2017. Exhibit 1, Petition in the Matter of Kenneth R. Downing, D.C. 18-HA00008.

10. In sum, Licensee became involved in a fee-splitting arrangement involving Groupon, OrangePanda, LLC (“OrangePanda”), Dr. Amelia Rodrock, D.C. (“A.R.”), and Dr. Ryan Nadolski, D.C. (“R.N”), for the purpose of facilitating A.R.’s use of the YOLO Curve laser system. Additionally, the OrangePanda website, www.beautifulyouexpress.com, advertised that the YOLO Curve procedure was conducted under the direction of Licensee, and that the procedure could be performed without the pain associated with surgery. Lastly, Licensee did not fully cooperate with the Board in its investigation when he failed to furnish information legally requested by Board.

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

12. Licensee’s acts, if proven, constitute a violation under K.S.A.65-2836(b), as further defined by 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 the aforementioned false and/or fraudulent statements were placed on www.beautifulyouexpress.com.

13. Licensee's acts, if proven, constitute a violation under K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(8), in that Licensee guaranteed to perform the YOLO Curve procedure without the pain associated with surgery.

14. Licensee's acts, if proven, constitute a violation under K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), in that Licensee engaged in conduct likely to deceive, defraud, and/or harm the public through Licensee's advertisement on www.beautifulyouexpress.com.

15. Licensee's acts, if proven, constitute a violation under K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(19), in that Licensee directly or indirectly gave or received any fee, commission or rebate or other compensation for professional services not actually and personally rendered through Licensee's fee-splitting arrangement with, OrangePanda LLC, Dr. Amelia Rodrock, D.C., Dr. Ryan Nadolski, D.C., and Groupon.

16. Licensee's acts, if proven, constitute a violation of K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(34)(A)-(C), in that Licensee obstructed a board investigation including but not limited to, engaging in one or more of the following acts: (A) Falsifying or concealing a material fact; (B) knowingly making or causing to be made any false or misleading statement or writing; or (C) other acts or conduct likely to deceive or defraud the board, when Licensee failed to produce **all** documents responsive to Subpoena No. 3506, and when Licensee failed to produce **any** documents or explanation in response to Subpoena No. 6854 pertaining to production of patient records of any and all other laser, light-based, and/or radio frequency equipment.

17. Licensee's acts, if proven, constitute a violation of K.S.A. 65-2836(r), in that Licensee failed to furnish the Board, or its investigators or representatives, any information legally requested

by the board as Licensee failed to produce all documents in response to Subpoena Duces Tecum Nos. 3506 and 6854.

18. Licensee's acts, if proven, constitute a violation of K.S.A. 65-2836(f), in that Licensee has willfully and/or repeatedly violated this act.

19. 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.

20. 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.

21. All pending investigation materials in KSBHA Investigative Case Number 14-00115 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 31 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

22. 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 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 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 her own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the

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Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

23. 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.

24. 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.

25. 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.

26. 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.

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27. 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.

28. 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.

29. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

30. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

31. 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.

32. 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. 77-505. 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.

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33. This Consent Order constitutes **public disciplinary action**.

34. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

35. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public disciplinary action against her license to engage in the practice chiropractic:

PUBLIC CENSURE

36. Licensee is **publicly censured** for violating the Kansas Healing Arts Act.

FINE

37. Licensee is hereby ordered to pay a FINE in the amount of **ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS, (\$1,500.00)** for violations of the Kansas Healing Arts Act.

38. Such fine shall be paid in full, to the Board on or before March 1, 2018, in the form of a Cashier's Check or Money Order to the "Kansas State Board of Healing Arts."

39. All monetary payments to the Board relating to this Consent Order shall be mailed to the Board by certified mail addressed to:

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

EDUCATION: RECORD KEEPING COURSE

40. Licensee shall attend and successfully complete, in person, a course, or courses, for a total of at least twelve (12) hours in length, pertaining to recordkeeping.

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- a. Licensee successfully completed the 12-Hour 'Clinical and Practical Documentation of Chiropractic' Course from Got Documentation Seminars in Kansas City, Missouri, on July 15-16, 2017; therefore, the aforementioned twelve hour recordkeeping course has been satisfied.

41. All requirements of the Consent Order will be submitted to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level, Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

ETHICS EXAMINATION

42. Licensee shall enter into, complete, and pass all five (5) topic areas of the Essay Examination that is put on by Ethics and Boundaries Assessment Services, LLC on or before March 1, 2018, unless otherwise approved by the Disciplinary Panel. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. The results shall be sent to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level, Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

43. On or before February 1, 2018, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered with the Ethics and Boundaries Assessment Services, LLC ("EBAS") to take the Essay Examination.

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EDUCATION: ETHICAL ADVERTISING COURSE

44. Licensee shall attend and successfully complete a total of eight (8) hours of board approved continuing education with an emphasis in ethical advertising.

45. On or before December 31, 2017, Licensee must propose a course(s) that will be reviewed and subject to approval by the appointed Disciplinary Panel member prior to taking the course(s).

46. On or before February 1, 2018, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered to attend the approved course(s) pertaining to ethical advertising.

47. Licensee shall attend and successfully complete the course(s) pertaining to ethical advertising by no later than March 1, 2018.

48. Licensee shall provide proof of successful completion of the course(s) to the Compliance Coordinator within thirty (30) days following completion of the course(s).

49. All costs associated with the course(s) pertaining to advertising shall be at Licensee's own expense to include, but not be limited to, the cost of the program, any cost of travel to and from the program, and the cost of accommodations while attending the course(s).

50. These hours shall be in addition to and not count towards those hours required for renewal of licensure.

51. All requirements of the Consent Order will be submitted to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level, Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

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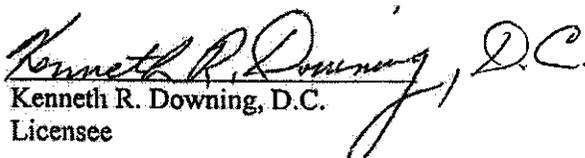
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 12 day of Dec, 2017.

FOR THE KANSAS STATE BOARD OF
HEALING ARTS:


Kathleen Selzler Lippert
Executive Director

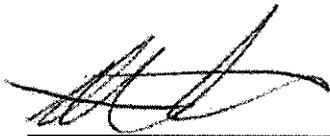
12/12/17
Date


Kenneth R. Downing, D.C.
Licensee

PREPARED AND APPROVED BY:


Reese H. Hays, #22700
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Kansas State Board of Healing Arts
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Matthew A. Kentner
Kentner Wyatt, LLC
435 Nichols Rd., Ste. 200
Kansas City, Missouri 64112
Phone - (816) 527-0010
matt@kentnerwyatt.com
Attorney for Licensee

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 12th day of December, 2017, to the following:

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

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

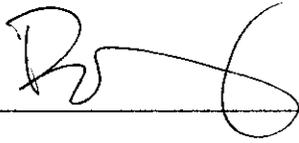
And a copy was delivered to:

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

Matthew A. Kentner

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Kentner Wyatt, LLC
435 Nichols Rd., Ste. 200
Kansas City, Missouri 64112
Phone - (816) 527-0010
matt@kentnerwyatt.com
Attorney for Licensee



A handwritten signature in black ink, appearing to be "R. J.", is written over a horizontal line.

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