

**FILED**

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AUG 19 2009

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

K.S. State Board of Healing Arts

In the Matter of	)	
	)	Docket No. 10-HA <i>00021</i>
Milton E. Dowty, D.C.	)	
Kansas License No. 01-03525	)	

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**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Janith A. Davis, Associate Counsel (“Petitioner”), and Milton E. Dowty, D.C. (“Licensee”), *pro se*, 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: 5205 E. Kellogg Drive, Wichita, Kansas 67218.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-03525 on approximately July 1, 1980. Licensee’s license is 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 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. 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 are grounds to , pursuant to K.S.A. 65-2387(b)(27) to take action with respect to Licensee's license under the Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. In a letter to Board staff, received September 14, 2007, Licensee admitted that he used a resonator device in his chiropractic practice.

10. Licensee admits that the resonator is experimental, as there are currently no scientifically credible studies published in reputable professional journals which support the theory of the resonator. Additionally, use of the resonator is not taught at any accredited chiropractic college.
11. Licensee admits that he did not comply with the statutory requirements of K.S.A. 65-2837(b)(27) in using the experimental resonator device in his practice.
12. Licensee violated K.S.A 65-2836(b), by committing unprofessional and/or dishonorable conduct as further defined by K.S.A. 65-2837(b)(27), using experimental forms of therapy without proper informed consent, without conforming to generally accepted criteria or standard protocols, without keeping detailed legible records or without having periodic analysis of the study and results reviewed by a committee of peers.
13. 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 Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
14. Pursuant to K.S.A. 65-2836 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Healing Arts Act.

15. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
16. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 22 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
17. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary limitations on his license to engage in the practice of chiropractic:
- a. Licensee shall not use the resonator in his practice unless he demonstrates, to the satisfaction of the Board, that there are scientifically reliable studies published in reputable professional journals that support the theories of the resonator and;
  - b. Licensee shall not use the resonator in his practice unless he demonstrates, to the satisfaction of the Board, that he has complied with the requirements set forth in K.S.A 65-2837(b)(27) regarding the use of experimental treatment.
18. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.
19. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints

received under the Risk Management Law, K.S.A. 64-4921 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 Healing Arts Act.

20. 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.
21. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
22. 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.

23. 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.
24. 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.
25. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
26. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
27. 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: Janith A. Davis, Associate Litigation Counsel, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.
28. 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.

29. 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 Order when filed with the office of the Executive Director for the Board and no further Order is required.
30. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

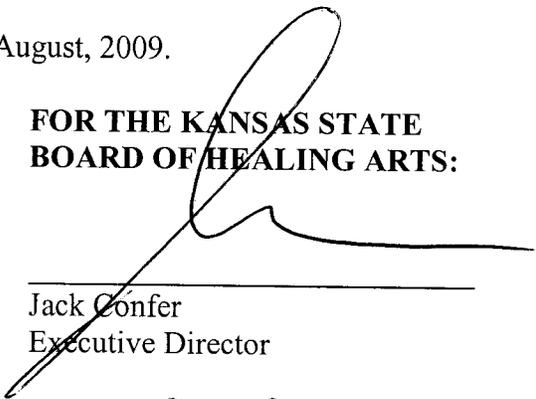
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that:

- a. Licensee shall not use the resonator in his practice unless he demonstrates, to the satisfaction of the Board, that there are scientifically reliable studies published in reputable professional journals that support the theories of the resonator and;
- b. Licensee shall not use the resonator in his practice unless he demonstrates, to the satisfaction of the Board, that he has complied with the requirements set forth in K.S.A 65-2837(b)(27) regarding the use of experimental treatment.

IT IS SO ORDERED on this \_\_\_ day of August, 2009.

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



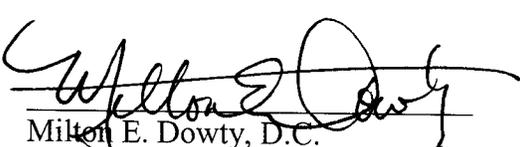
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Jack Confer  
Executive Director

8-18-09

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Date



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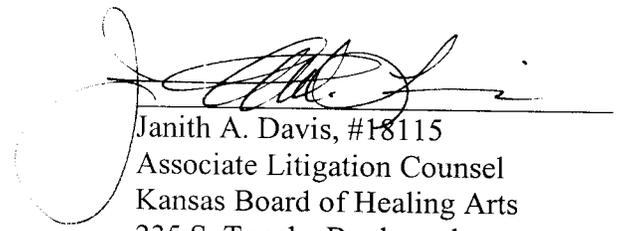
Milton E. Dowty, D.C.  
Licensee

7-16-09

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Date

PREPARED AND APPROVED BY:



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Janith A. Davis, #18115  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

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Milton E. Dowty, D.C.

**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 19<sup>th</sup> day of August, 2009, to the following:

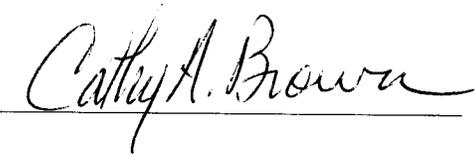
Milton E. Dowty, D.C.  
Licensee  
5205 E. Kellogg Drive  
Wichita, Kansas 67218.

And the original was hand-filed with:

Jack Confer  
Executive Director  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Janith A. Davis, #18115  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

  
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