

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of )
Steven Michael Hamburg, D.C. ) Docket No. 07-HA-54
Applicant for Licensure )

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Kathleen Selzler Lippert, Associate Counsel ("Respondent"), and Steven Michael Hamburg, D.C. ("Applicant"), by and through his counsel, Steve Schwarm, and move the Board for approval of a Consent Order granting Applicant a 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: 110 S. Lily Lake Road, McHenry, Illinois 60051.
2. On or about September 29, 2006, Applicant submitted to the Board an application to practice chiropractic in the State of Kansas. Such application was deemed complete and filed with the Board on January 23, 2007.
3. On or about February 10, 2007, the full Board considered Applicant's application for licensure, statements and arguments of counsel for the parties and determined that material facts were in dispute and converted the matter to a formal proceeding.
4. 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. 65-2869.

5. 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 constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. The Kansas Healing Arts Act is constitutional on its face and as applied in the case.
7. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
8. Applicant voluntarily and knowingly waives his right to a further hearing on the application. Applicant voluntarily and knowingly waives his right to present a further 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 possible substantive and procedural motions and defenses that could be raised if a further administrative hearing were held.
9. 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.
10. The Board has received information and investigated the same, and has reason to believe that grounds exist to deny licensure.

11. Applicant disclosed that his Florida chiropractic license was disciplined by the State of Florida Agency For Health Care Administration (Florida Board).
12. Applicant's Florida chiropractic license was reprimanded and retroactively suspended for two (2) years. Additionally, Applicant's Florida chiropractic license was placed on probation; the specific terms of which would be determined by the Florida Board prior to him commencing practice in the State of Florida.
13. The Florida Board action was finalized on or about July 29, 1998.
14. The discipline by the Florida Board stemmed from Applicant's plea of nolo contendere to two (2) felony counts of grand theft and two (2) felony counts of insurance fraud; crimes which directly related to the practice of chiropractic or to the ability to practice chiropractic.
15. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to deny licensure. Applicant further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
16. Pursuant to K.S.A. 65-2836(j), there are grounds to deny licensure in that Applicant had his license to practice the healing arts disciplined by another jurisdiction.
17. Pursuant to K.S.A. 65-2836(c), there are grounds to deny licensure in that Applicant has been convicted of a felony.
18. Pursuant to K.S.A. 65-2836 the Board has grounds to deny Applicant's licensure.

19. 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.
20. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following limitations as a condition to being granted licensure:

### **LIMITATIONS**

- a. Applicant's license is hereby LIMITED in that Applicant is prohibited from engaging in the solo practice of chiropractic. Applicant shall only practice in Kansas in a supervised, structured environment in which all of Applicant's practice activities are overseen and supervised by a Kansas-licensed chiropractor in a manner which must be pre-approved by the Board or the Board's designee. Applicant's scope of chiropractic procedures is not limited or restricted but is limited only as to the structure of his practice.
- b. Applicant shall not practice chiropractic unless he complies with each of the following:
- i. Applicant shall not engage in solo practice but will associate with a Kansas licensed chiropractor, Joseph Conigliaro, D.C.
  - ii. Applicant may be an independent contractor or a direct employee of Dr. Conigliaro.
  - iii. Applicant will only work in Dr. Conigliaro's office.
  - iv. Applicant will only use Dr. Conigliaro's staff for all billing and coding functions. All billing and coding functions including

submission of invoices and claims to private patients or any third-party payer be under the direct and 100 % control of a person or persons other than Applicant.

- c. Such limitation shall not be modified or lifted with out prior approval by the Board or its designee.
- d. The Board designates Dr. Arnett to review and approve/disapprove any modifications of practice plans.

### **MONITORING**

- e. If the Board approves lifting the prohibition from engaging in the solo practice of chiropractic and condition that Applicant shall only practice in Kansas in a supervised, structured environment in which all of Applicant's practice activities are overseen and supervised by a Kansas-licensed chiropractor then Applicant will be monitored as follows:

- i. Applicant's records shall be subject to a random billing audit and chart review for a two (2) year period.
- ii. A minimum of four (4) and a maximum of six (6) billing audits and chart reviews shall be done each year for two (2) years.
- iii. The billing audit and chart review is to be conducted by an outside reviewer mutually selected by the parties.
- iv. The reviewer shall audit and review 25% of all patients seen by Applicant. A minimum of 25 charts shall be reviewed for each of the random audits. If on the date of a random audit the patient base is less than 25, all charts will be reviewed.

- v. The billing audit shall determine whether services were actually provided and a determination of whether services were billed correctly. The chart review shall determine whether Kansas statutes and regulations, relating to the content of records, are found in the chiropractic records.
- vi. Applicant shall maintain a patient log identifying each patient seen by the Applicant or for whom Applicant has billed services. Such log shall be on a form provided by Board staff to Applicant.
- vii. The reviewer shall review the patient log and determine which charts are to be audited and/or reviewed. The reviewer shall then submit a report to the Board for each random audit/review conducted.
- viii. Such monitoring shall be conducted at Applicant's own expense.
- f. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses.
- g. Applicant shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Applicant shall provide the above information in writing to the Board within ten (10) calendar days of any such change.

#### **MONITORING AND LIMITATION TIMEFRAME**

- h. The above monitoring provisions and limitations are not self-terminating. Applicant may request modification or termination of the provisions. For

any period of time that Licensee is not actively practicing chiropractic in Kansas, the limitations and monitoring provisions will remain in effect but will be tolled.

21. Applicant'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.
22. 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.
23. 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 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 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.

24. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to CIN-BAD, and any other reporting entities authorized to receive disclosure of the Consent Order.
25. 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.
26. 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.
27. 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.
28. Applicant acknowledges that he has read this Consent Order and fully understands the contents.

29. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
30. All correspondence or communication between Applicant 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, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
31. 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.
32. 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.
33. This Consent Order is a non-disciplinary action.
34. 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 Presiding Officer as findings of fact and conclusions of law.

**IT IS FURTHER ORDERED** that the Presiding Officer determines that it is in the best interest of the public's health safety and welfare that a temporary license to practice chiropractic be granted until further review and order by the full Board.

**IT IS FURTHER ORDERED** that upon signature of the Presiding Officer and meeting all technical requirements for licensure, Applicant shall be granted a temporary license. Said temporary license shall be effective immediately pursuant to K.S.A. 77-536.

**IT IS FURTHER ORDERED** that:

#### **LIMITATIONS**

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- c. Such limitation shall not be modified or lifted with out prior approval by the Board or its designee.
- d. The Board designates Dr. Arnett to review and approve/disapprove any modifications of practice plans.

#### **MONITORING**

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- viii. Such monitoring shall be conducted at Applicant's own expense.
- f. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses.
- g. Applicant shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Applicant shall

provide the above information in writing to the Board within ten (10) calendar days of any such change.

**LIMITATION AND MONITORING TIMEFRAME**

- h. The above monitoring provisions and limitations are not self-terminating. Applicant may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing chiropractic in Kansas, the limitations and monitoring provisions will remain in effect but will be tolled.

**PLEASE TAKE FURTHER NOTICE** that the Board will, on its own motion, review this Order at its regularly scheduled meeting August 18, 2007 at 9:00 a.m. or as soon thereafter as the matter can be heard, and at the conclusion of the review issue a Final Order. Upon conducting review, the Board may exercise all of the decision making authority as if it has heard the matter itself. No further notice of hearing will be given.

**IT IS SO ORDERED** on this <sup>29<sup>th</sup></sup> day of June, 2007.

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

*Vinton H. Arnett, D.C.*  
Vinton Arnett, D.C. *by MWS*  
Presiding Officer

*June 29, 2007*  
Date

*Steven Michael Hamburg, D.C.*  
Steven Michael Hamburg, D.C.  
Applicant

*6-28-07*

Date

PREPARED AND APPROVED BY:

Kathleen Selzler Lippert #17957  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

AGREED TO BY:

*Steve A. Schwamm*  
Steve A. Schwamm, #13232  
Attorney for Licensee  
Polsinelli, Shalton, Flanigan & Suetthaus, P.C.  
555 Kansas Avenue, Suite 301  
Topeka, Kansas 66603-3443  
785-233-1446

CERTIFICATE OF SERVICE

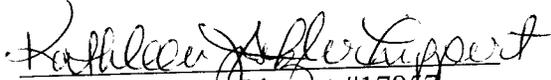
I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this \_\_\_\_ day of June, 2007, to the following:

Consent Order  
Steven Michael Hamburg, D.C.

\_\_\_\_\_  
Steven Michael Hamburg, D.C.  
Applicant

\_\_\_\_\_  
Date

PREPARED AND APPROVED BY:

  
Kathleen Selzler Lippert #17957

Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
785-296-0961

AGREED TO BY:

\_\_\_\_\_  
Steve A. Schwarm, #13232  
Attorney for Licensee  
Polsinelli, Shalton, Flanigan & Suelthaus, P.C.  
555 Kansas Avenue, Suite 301  
Topeka, Kansas 66603-3443  
785-233-1446

### 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 29<sup>th</sup> day of June, 2007, to the following:

\_\_\_\_\_  
Consent Order  
Steven Michael Hamburg, D.C.

Steven Michael Hamburg, D.C.  
Licensee  
110 S. Lily Lake Road  
McHenry, Illinois 60051

Steve A. Schwarm, #13232  
Attorney for Licensee  
Polsinelli, Shalton, Flanigan & Suelthaus, P.C.  
555 Kansas Avenue, Suite 301  
Topeka, Kansas 66603-3443  
785-233-1446

And the original was hand-filed with:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Kathleen Selzler Lippert #17957  
Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

A handwritten signature in cursive script, reading "Sandra Gore", is written over a horizontal line.