

FILED CAB
JUL 18 2012

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

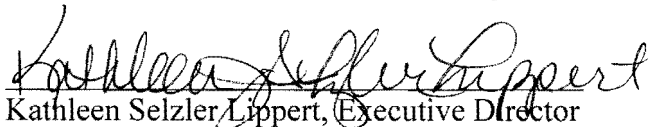
In the Matter of)
BENJAMIN A. HENNING, D.C.)
)
)
Kansas License No. 01-05490)
_____)

KSBHA Docket No. 12-HA00100

JOURNAL ENTRY RATIFYING CONSENT ORDER

Pursuant to the authority granted to the Kansas State Board of Healing Arts ("Board") by K.S.A. 65-7301, *et seq.*; and, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Consent Order filed on June 14, 2012, in the above-captioned matter, is hereby **ACCEPTED** and **RATIFIED**. The Board shall maintain jurisdiction over this matter to issue any order(s) deemed necessary and appropriate.

IT IS SO ORDERED THIS 18th DAY OF JULY, 2012, 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 18th day of July, 2012, a true and correct copy of the above and foregoing **JOURNAL ENTRY RATIFYING CONSENT ORDER** was deposited in the United States Mail, first-class postage prepaid and addressed to:

Benjamin A. Henning, D.C.
C
Kansas City, KS 66102

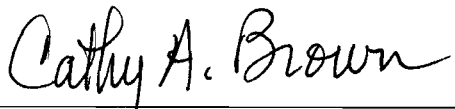
And a copy was hand delivered to:

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

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

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

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



Cathy Brown, Executive Assistant

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FI [handwritten initials]

JUN 14 2012

KS State Board of Healing Arts

In the Matter of)
)
Benjamin A. Henning, D.C.) Docket No. 12-HA 80100
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 ("Petitioner"), and Benjamin A. Henning, D.C. ("Applicant"), *pro se*, and move the Board for approval of a Consent Order affecting Applicant's license to practice chiropractic in the State of Kansas. It should be noted that this Consent Order is non-disciplinary in nature, and it should not be construed as a limitation on Applicant's license. The Parties stipulate and agree to the following:

1. Applicant's last known mailing address to the Board is: C Kansas
O City, Kansas 66102.
2. On or about July 28, 2011, Applicant submitted to the Board an application for licensure in chiropractic. Such application was deemed complete and filed with the Board on June 5, 2012.
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

Consent Order
Benjamin A. Henning, D.C.

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.

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 his right to a hearing. Applicant 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. Applicant 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. 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. 65-2809(e), to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

9. Applicant graduated from Cleveland Chiropractic College with a Doctor of Chiropractic degree in August 2005.
10. Applicant last actively practiced chiropractic in January 2008.
11. Applicant successfully completed the Special Purposes Examination for Chiropractic in April 2012.
12. Due to the length of time Applicant has been absent from active practice, the Board may require additional testing, training or education as the Board may deem necessary to establish that Applicant's present ability to practice with reasonable skill and safety pursuant to K.S.A. 65-2809(e) and/or K.S.A. 65-2838a.
13. Pursuant 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 in order to establish provisions to ensure that Applicant is capable of safely practicing medicine and surgery in Kansas.
14. Applicant waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
15. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license
16. 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.
17. All pending investigation materials in KSBHA Investigation number 12-00118 regarding Applicant, were fully reviewed and considered by the Board members

who serve on the Board's Disciplinary Panel No. 26. Disciplinary Panel No. 26 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

18. 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. Licensee 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.*

19. 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.

20. 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.
21. 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.
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. 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.

24. 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.
25. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
26. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
27. 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, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
28. 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.
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. This Consent Order does not constitute disciplinary action.

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

32. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee, and abiding by the terms of this Consent Order. Applicant further understands that the Temporary License is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent licensure under the terms of this Consent Order.

33. 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, on her license to engage in the practice of chiropractic:

MONITORING

34. Applicant agrees to allow 100% of his practice of chiropractic to be supervised by a preceptor/supervisor for a minimum of thirty (30) days and then to allow 50% of his practice of chiropractic to be supervised by a preceptor/supervisor for a minimum of sixty (60) days following the first thirty days.

35. Applicant agrees to have a Board-approved practice monitor, who is another Kansas-licensed chiropractor, to review 100%, for the first thirty (30) days, then 50% for the following sixty (60) days, of Applicant's practice of chiropractic to ensure compliance with community and ethical standards. Applicant shall bear all expenses associated with the practice monitor.
36. For the first thirty (30) days, the supervisor/preceptor will be responsible for supervising 100% of Applicant's patients' appointments and will review 100% of Applicant's patients' medical records.
37. After the first thirty (30) days, for the following sixty (60) days, the supervisor/preceptor will be responsible for supervising either 50% of Applicant's patients' appointments per week and will review 50% of Applicant's patients' medical records, or, in the alternative, the supervisor will supervise thirty (30) of Applicant's patients' appointments and will review thirty (30) of his patients' medical records per week, whichever is greater.
38. The supervisor/preceptor's supervision will include, but is not limited to, Applicant's appropriate medical record documentation, proper performance of patient examinations, and the proper performance within the standard of care of the chiropractic procedures Applicant performs on the patients in which the supervisor/preceptor is responsible for monitoring.
39. On or before June 22, 2012, Applicant shall submit the curriculum vitae of a proposed practice supervisor/preceptor and a plan of supervised practice for approval to the Board.

40. The practice supervisor/preceptor shall submit monthly reports (July 30th, August 30th, and September 30th) to the Board on a form provided by Board staff. Such reports shall include a summary of whether Applicant is seeing, examining, and treating patients, the number of patients Applicant is seeing each week, documenting appropriately in the medical record, and performing chiropractic procedures within the standard of care. Applicant is responsible for ensuring that the practice supervisor's reports are submitted by the monthly deadlines.
41. The Board designates Terry L. Webb, D.C. to review and approve/disapprove of the proposed practice supervisor/preceptor and plan of supervised practice.
42. Applicant is responsible for ensuring the monitor's timely submission of the report each month. For any period(s) of time that Applicant is not actively practicing the healing arts in Kansas, the monitoring provisions of this Consent Order shall be tolled and not be counted in reducing the required timeframe for monitoring.
43. Applicant will furnish a copy of this Consent Order to each and every state in which he holds licensure or applies for licensure and to an appropriate work site supervisor or personnel.
44. 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) days of any such change.

TIMEFRAME

45. The above monitoring provisions are not self-terminating. After a period of three (3) months, Applicant may request modification or termination of the provisions.

For any period of time that Applicant is not actively practicing chiropractic in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the three (3) month timeframe.

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 14th day of June, 2012.

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

Kathleen Selzler Lippert by ARH
Kathleen Selzler Lippert
Executive Director

6-14-12
Date

Benjamin A. Henning
Benjamin A. Henning, D.C.
Applicant

6-4-12
Date

PREPARED AND APPROVED BY:

Jessica A. Bryson
Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-8022

Consent Order
Benjamin A. Henning, 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 14th day of June, 2012, to the following:

Benjamin Henning, D.C.
Applicant
CO
Kansas ^{NFI}City, KS 66102

And the original was hand-filed with:

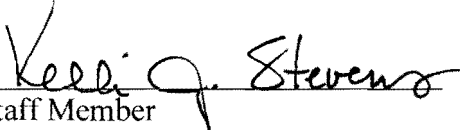
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Staff Member