

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

In the Matter of )  
 )  
**KIRK C. JOHNSON, D.C.** )  
 )  
Kansas License No. 01-05021 )

Docket No. 15-HA 00120

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Seth K. Brackman, Associate Litigation Counsel (“Petitioner”), and Kirk C. Johnson, D.C. (“Licensee”), 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: 12701 Metcalf Avenue, Suite 201, Overland Park, Kansas 66213.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-05021 on or about February 11, 2006. Licensee’s license is active and was last renewed on or about January 1, 2015.
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 constitute the findings of the Board, and this Consent Order shall constitute the Board’s Final Order.

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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), K.S.A. 65-2837(a)(2), K.S.A. 65-2837(a)(3), K.S.A. 65-2836(e), K.S.A. 65-2837(b)(1), K.S.A. 65-2837(b)(7), and K.S.A. 65-2837(b)(12), K.S.A. 65-2837(b)(25), and K.S.A. 65-2837(b)(27), to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. On or about November 21, 2011, the Complainant printed copies of the Groupon being offered for "1, 5, or 10 Hyperbaric Oxygen Therapy Treatments" at Johnson Chiropractic & Acupuncture P.A. and submitted his concerns to the Board for review.

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10. Complainant alleges Licensee is not qualified to provide hyperbaric oxygen therapy and that Licensee is using such therapy for “other than the 13 accepted indications for hyperbaric Oxygen therapy.”
11. Licensee responded to the Board’s request for records and concerns stating that no oxygen is actually pumped into the chamber, rather the chamber increases atmospheric pressure. Licensee states he used such therapy to “decrease the inflammatory reaction that occurs with most injuries and disease processes.”
12. Licensee states he conducts an initial consultation to learn why the patients desire that specific form of therapy, to explain what the therapy entails, to explain the therapy process, and receive the patient’s consent via a Waiver of Liability.
13. The records of five (5) recipients of the alleged “hyperbaric oxygen therapy” treatments do not support Licensee performing a proper evaluation or providing a diagnosis requiring such treatment.
14. The records for all five (5) patients are significantly lacking in documentation. Additionally, some of the most basic standard information forms are missing for these patients, specifically:
  - a) There is no clinical information aside from some medical history and the dates of treatment;
  - b) There is no log of time at depth or exam of the tympanic membrane pre and post hyperbaric exposure to document any barotrauma to the eardrum;
  - c) There are no evaluations indicated and no diagnoses documented by Licensee;
  - d) There is no documentation of the patients’ progress;

- e) There is no indication that the patients received any information other than the Waiver of Liability;
15. Patient 2 and Patient 3, both with diabetes and on cardiac medications, disclosed their conditions to Licensee and still received the “hyperbaric oxygen therapy” treatment even though both are contraindications for its need.
  16. There is no known medical benefit for these patients treated at 1.27 ATA on room air, and there is potential risk of barotrauma to the eardrums and sinuses.
  17. Otoscopic exams and treatment of the complications of barotrauma is outside the scope of Licensee’s license to practice chiropractic in the State of Kansas.
  18. Further, Licensee refers to himself as “Dr. Johnson” on his website without the designation of D.C. on various pages of Johnson Chiropractic & Acupuncture P.A.
  19. Licensee also refers to himself as a “board certified Doctor of Chiropractic”.
  20. After receiving the complaint, Licensee states he stopped the “hyperbaric oxygen therapy” treatments and ultimately was able to sell the Vitaeris<sup>320</sup> hyperbaric chamber on or about February 21, 2014.
  21. Additionally, Licensee states he has joined practices with another chiropractor and updated the website in an attempt to address the concerns regarding his website.
  22. Licensee does not admit or deny the allegations contained in this Consent Order. 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 his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

23. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836:

- a) K.S.A. 65-2836(b), in that Licensee committed an act of unprofessional or dishonorable conduct or professional incompetency, 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 by K.S.A. 65-2837, and amendments thereto;
- b) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(2) in that Licensee committed repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence;
- c) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(3) in that Licensee committed a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts;
- d) K.S.A. 65-2836(e), in that Licensee has used fraudulent or false advertisements;
- e) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(1), for solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by acts of those representing themselves to be agents of the licensee;
- f) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(7), for advertising professional superiority or the performance of professional services in a superior manner;
- g) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), for committing conduct likely to deceive, defraud or harm the public;
- h) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), for failure to keep written medical records which accurately describe the services rendered to the patient,

including patient histories, pertinent findings, examination results and test results;  
and;

- i) K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(27), for 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 or peers.

24. 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.

25. 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.

26. All pending investigation materials in KSBHA Investigative Case Number 13-00115 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

27. 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,

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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 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.*

28. 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.
29. 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.

30. 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.
31. 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.
32. 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.
33. 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.
34. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
35. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

36. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

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

37. 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.

38. 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. 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.

39. This Consent Order constitutes public disciplinary action.

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

41. 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 his license to engage in the practice of chiropractic:

**PUBLIC CENSURE**

42. Licensee is hereby **PUBLICLY CENSURED** for violating the Kansas Healing Arts Act.

## **PROBATION: EDUCATION**

43. Licensee shall attend and successfully complete one of the three following documentation programs on the days listed, unless otherwise approved by Disciplinary Panel #28:

- a) Case Western Reserve University School of Medicine (“Case Western”)
  - i. Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers with Individual Preceptorships
    - 1. June 4-5, 2015, in Beachwood, Ohio (Cleveland)
    - 2. November 5-6, 2015, in Beachwood, Ohio (Cleveland)
  - ii. Must participate in six (6) month post-program feedback.
- b) Physician Assessment and Clinical Education Program (PACE)
  - i. Medical Record Keeping Course
    - 1. April 30-May 1, 2015, in San Diego, California
    - 2. July 30-31, 2015 in San Diego, California
  - ii. Must participate in six (6) month post-program feedback. \*not included in course, but PACE will work with you to create a monitoring program wherein you provide records at 2, 4, & 6 months or at 3 and 6 months for review.
- c) The Center for Personalized Education for Physicians (CPEP)
  - i. Medical Record Keeping Seminar
    - 1. June 5, 2015, in Denver, Colorado
    - 2. September 26, 2015, in Louisville, Kentucky
    - 3. December 4, 2015, in Denver, Colorado

ii. Must participate in the six (6) month Personalized Implementation Program (PIP).

44. All costs associated with such program shall be at Licensee's own expense to include, but not be limited to, the cost of the program, the cost of travel to and from the program, and the cost of accommodations while attending the program.

45. These hours shall be in addition to those continuing education hours required for renewal of licensure.

46. On or before June 30, 2015, Licensee shall notify the Compliance Coordinator in writing of which course date Licensee has registered to attend.

47. Licensee shall provide proof of successful completion of the following to the Compliance Coordinator within thirty (30) calendar days of successfully completing the program:

- a) Certificate of completion of the record keeping course;
- b) Certificate of completion of the post-program feedback or PIP.

48. Proof of completion of the education requirements shall be submitted by sending the same to:

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

**PROBATION: FINE**

49. Licensee agrees to pay a FINE in the amount of TWO THOUSAND DOLLARS AND ZERO CENTS (\$2,000.00) for violations of the Kansas Healing Arts Act.

50. Such fine shall be paid to the "Kansas State Board of Healing Arts" in full on or before June 30, 2016.

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51. All monetary payments, which shall be in the form of cashier's check or money order, relating to this Consent Order shall be mailed to the Board by certified mail addressed to:

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

**PROBATION: ADVERTISING**

52. Licensee shall not use Groupon to solicit patients.

53. Within thirty (30) calendar days from the approval of this Consent Order:

- a) Licensee shall remove the terminology "board certified" from his website.
- b) Licensee shall ensure he is properly identified on his website as a D.C. on all pages and/or forms found on the website.

**TIMEFRAME**

54. The above terms are self-terminating upon proof of successful completion of all requirements being provided to and approved by the Board.

55. All requirements of this Consent Order will be submitted by certified mail, postage pre-paid, to:

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

**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 17 day of June, 2015.

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

Confidential

Kathleen Selzler/Lippert   
Executive Director

11

06/17/15  
Date

  
Kirk C. Johnson, D.C.  
Licensee

3/31/15  
Date

PREPARED AND APPROVED BY:

Confidential

~~Seth K. Brackman, #23726~~  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson Ave, Lower Level Suite A  
Topeka, Kansas 66612  
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[sbrackman@ksbha.ks.gov](mailto:sbrackman@ksbha.ks.gov)

~~Brian J. Niceswanger, # 12531~~  
Attorney for Licensee  
McDowell, Rice, Smith & Buchanan  
605 W. 47<sup>th</sup> Street, Ste. 350  
Kansas City, Missouri 64112  
P: 816-753-5400  
F: 816-753-9996  
[bjn@mcowellrice.com](mailto:bjn@mcowellrice.com)

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**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 17<sup>th</sup> day of June, 2015, to the following:

Kirk C. Johnson, D.C.  
12701 Metcalf Avenue  
Suite 201  
Overland Park, Kansas 66213

And the original was hand-filed with:

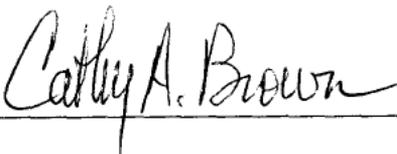
Kathleen Selzler Lippert  
Executive Director  
Kansas Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

And a copy was delivered to:

Seth K. Brackman  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

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

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

  
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