

FILED 

APR 15 2013

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

KS State Board of Healing Arts

In the Matter of)
)
NICHOLAS AARON LOCKROW, D.C.) Docket No. 13-HA00015
Kansas License No. Pending)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Seth K. Brackman, Associate Litigation Counsel (“Petitioner”), and Nicholas Aaron Lockrow, D.C. (“Applicant”), and move the Board for approval of a Consent Order affecting Applicant’s 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: **Confidential**
Lenexa, Kansas 66215.
2. On or about May 3, 2012, Applicant submitted to the Board an application for licensure in chiropractic. Such application was deemed complete and filed with the Board on April 1, 2013.
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 by the Board, these

Consent Order
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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. 65-2836(b) and K.S.A. 65-2836(i) to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. On or about July 24, 2008, Applicant was pulled over by an officer for driving the wrong-way on a one-way street. After the subsequent investigation, Applicant

was arrested for Driving/Operating a Vehicle Under the Influence of Alcohol, Possession of Marijuana, Leaving the Scene of an Accident Involving Property Damage, and Driving the Wrong-Way on a One-Way. These charges were filed in the City of Lawrence Municipal Court in Case No. 2008-TR-0004121-MT.

10. On March 23, 2009, Applicant entered into a Diversion Agreement with the City of Lawrence, wherein, he was ordered to: complete a 12-hour Alcohol/Drug Information School, attend a minimum of eight (8) sobriety support group meetings, attend a presentation of the Victim Impact Panel, remain abstinent from alcohol use throughout the term of court supervision, and subject himself to drug/alcohol screens and monitoring. Applicant successfully completed the diversion and was discharged on April 5, 2010.

11. On or about November 30, 2008, Applicant was arrested and charged with Public Intoxication, an Unclassified Misdemeanor, in the City of Kansas City, Missouri, Municipal Court.

12. On January 27, 2009, Applicant entered a plea of guilty to the charge of Public Intoxication and was sentenced to a fine and court costs.

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15. Applicant entered into a Consent Order with the Board on September 18, 2012 (hereinafter "September Consent Order"). The September Consent Order was signed by Kathleen Selzler Lippert, Executive Director, and subsequently filed with the Board on September 20, 2012.

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19. Applicant violated the September Consent Order Confidential

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of controlled substances, narcotics, and all mind-altering and potentially addicting drugs or medications, unless prescribed by a physician for a medically necessary purpose and taken pursuant to the direction of a physician.”

21. On September 22, 2012, just four (4) days after signing his Consent Order and

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Applicant was arrested and charged for Driving

Under the Influence of Alcohol in Case No. 12-002249 in the City of Mission,

Johnson County, Kansas, Confidential

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22. Confidential

23. This incident occurred at 2:35 a.m. on September 22, 2012, four (4) days after

Applicant signed the September Consent Order and two (2) days after receiving his temporary license to practice chiropractic.

24. Applicant violated the September Consent Order Confidential

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25. The September Consent Order specifically provided in Paragraph 37(g) that

“[Applicant] agrees to immediately notify a Board representative Confidential

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27. Applicant retained counsel, Mark Stafford, to represent his interests before the Kansas State Board of Healing Arts.
28. Counsel Mark Stafford contacted Associate Litigation Counsel on October 4, 2012, informing counsel of the pending DUI charges in the City of Mission, Kansas.
29. Applicant violated the September Consent Order in that he failed to immediately notify a Board representative and **Confidential** as Applicant waited nearly two (2) weeks before notifying the Board of his **Confidential** subsequent DUI charge.
30. The September Consent Order specifically provided in Paragraph 37(i) that “[Applicant] shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offense.”
31. Applicant was arrested and charged with DUI on September 22, 2012.
32. Applicant appeared for his First Appearance at the City of Mission Municipal Court on October 1, 2012.
33. Due to Applicant’s September 2012 arrest for DUI, the Consent Order was not presented to the Board for ratification. The temporary license that had been issued to Applicant as part of the September Consent Order was cancelled.
34. **Confidential**

35. On or about January 22, 2013, Applicant entered a plea of Guilty to Driving Under the Influence–Second Offense, a Class A Misdemeanor. Applicant was sentenced to 180 days in jail suspended to 5 days (2 days jail + 3 days house arrest). Applicant was also placed on 24 months’ probation.

36. **Confidential**

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38. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant has violated the Kansas Healing Arts Act with respect to the above allegations. Applicant further waives his right to

dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

39. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), and K.S.A. 65-4925.

40. Applicant violated K.S.A. 65-2836(b), as more specifically defined by K.S.A. 65-2837(b)(12), by committing conduct likely to deceive, defraud or harm the public.

a. Applicant committed unprofessional conduct when Driving Under the Influence of Alcohol in July 2008 and in September 2012. Such conduct is likely to harm the public because Applicant was operating a motor vehicle **Confidential**

b. Applicant committed unprofessional conduct when he signed the Consent Order in September 2012 and failed to comply with the terms of the Consent Order within days of signing it. Such conduct is likely to deceive, defraud, or harm the public because, had the Board not learned of Applicant's arrest for DUI, his Consent Order would likely have been ratified by the Board at its October 2012 meeting, which would have given Applicant a license to practice chiropractic during a point in time when he was not safe to practice.

41. Applicant violated K.S.A. 65-2836(c) in that Applicant has been convicted of a Class A Misdemeanor on January 22, 2013 for Driving Under the Influence of Alcohol—Second Offense.

42. Applicant violated K.S.A. 65-2836(e) **Confidential**
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43. Applicant violated K.S.A. 65-2836(i) Confidential

Confidential

44. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant'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.

45. 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.

46. All pending investigation materials regarding Applicant were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

47. 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 after being provided notice and due process of law, including but not limited to suspension or revocation of Applicant's license to practice chiropractic in the State of Kansas. 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.*

48. 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.
49. 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.

50. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
51. 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.
52. 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.
53. 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.
54. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
55. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

56. 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.
57. 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.
58. 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.
59. This Consent Order constitutes non-disciplinary action.
60. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
61. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action against him, and limitations as a condition to being granted licensure on his, license to engage in the practice of chiropractic:

MONITORING

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- k. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offense.
- l. 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

63. The above monitoring provisions are not self-terminating. After a period of five (5) years, 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 toward reducing the five (5) year 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 FURTHER ORDERED that upon meeting all technical requirements for licensure. Applicant shall be granted a license, pursuant to the conditions above.

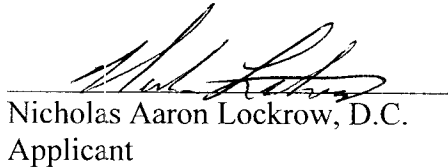
IT IS SO ORDERED on this 15 day of April, 2013.

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


Kathleen Selzler Lippert

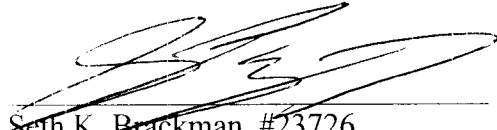
Executive Director

4/15/13
Date


Nicholas Aaron Lockrow, D.C.
Applicant

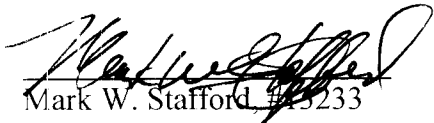
3/29/13
Date

PREPARED AND APPROVED BY:



Seth K. Brackman, #23726
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Lower Level Suite A
Topeka, Kansas 66612

REVIEWED AND APPROVED BY:



Mark W. Stafford, #15233
Attorney for Applicant
Holbrook & Osborn, P.A.
107 SW 6th St. Ste 210
Topeka, KS 66603
785-232-6200

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 15th day of April, 2013, to the following:

Nicholas Lockrow, D.C.
Applicant
Confidential
Lenexa, Kansas 66215

Mark W. Stafford
Attorney for Applicant
Holbrook & Osborn, P.A.
107 SW 6th St. Ste 210
Topeka, KS 66603

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 hand-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



Staff Member

Consent Order
Nicholas Aaron Lockrow, D.C.