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AUG 26 2016

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
)
David Matheny, D.C.) Docket No. 16-HA00018
Kansas License No. 01-03279)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Anne Barker Hall, Associate Litigation Counsel ("Petitioner"), and Dr. David Matheny, D.C. ("Licensee") by and through his counsel Ivery Goldstein of Simpson, Logback, Lynch, Norris, P.A., 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: P.O. Box 517, Gardner, Kansas 66030.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-03279 on approximately June 15, 1973. 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 this 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 may be grounds pursuant to K.S.A. 65-2836, to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. The facts supporting the allegations in this Consent Order are as follows:

- a. Licensee entered into a Consent Order with the Board on April 14, 2014, to resolve an investigation into Licensee's billing practices;
- b. That Consent Order, KSBHA Docket No. 14-HA00125, required Licensee to: attend The Academy of Missouri Chiropractors Continuing Education Seminar; attend a Documentation Seminar at the Center for Personalized Education for Physicians ("CPEP"); and after the completing the education to provide the Board with ten (10) random patient charts for its review;
- c. Licensee completed the requirements of the Consent Order;
- d. The Board reviewed the ten (10) random patient charts and determined that Licensee still has significant issues with his billing, specifically;
 - i. Licensee's documentation fails to support 52.6% of the total \$2,786.00 billed for services and 51.6% of the total sixty-two (62) services billed;
 - ii. Licensee's documentation fails to support 85.7% of the seven (7) CPT Modifiers for services billed;
 - iii. Licensee's documentation fails to support the medical necessity for nine (9) services billed.

10. 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.

11. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
12. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25) by "[failing] to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results."
13. Licensee violated K.S.A. 65-2836(k) for violating any lawful rule and regulation promulgated by the Board as defined in K.A.R. 100-24-1.
14. 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.
15. 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.
16. All pending investigation materials in KSBHA Investigation number 15-00049 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.

17. 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, 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.*
18. 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.
19. 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.

20. 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 this Consent Order.
21. 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.
22. 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.
23. 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.

24. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
25. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
26. 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: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
27. 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.
28. 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 Final Order when filed with the office of the Executive Director for the Board and no further Order is required.
29. This Consent Order constitutes public non-disciplinary action.
30. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

31. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action against his license to engage in the practice of chiropractic:

MONITORING

32. On or before September 1, 2015 Licensee shall enter into and comply with all terms and conditions of a monitoring contract with Affiliated Monitors, Inc. ("AMI") of Boston, Massachusetts, and agrees to follow all recommendations by AMI.
33. Licensee further agrees to immediately notify the Board of any revisions to the contract and to immediately provide a copy of such revised contract to the Board.
34. The provisions of said contract are incorporated herein as if fully restated.
35. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of AMI's proposed monitor.
36. Licensee shall sign a contract with AMI for monitoring for no less than one (1) year and provide a copy of the contract to the Board within fifteen (15) business days of the approval of AMI's monitor.
37. The Monitor shall conduct his first review within thirty (30) calendar days of the approval of AMI's monitor.
38. Monitoring shall include:
- a. Monthly site visits for the term of the Consent Order;
 - b. Review of patient charts and billing with a minimum of ten (10) patient charts for each monitoring visit. Monitor(s) will randomly select charts based on patients seen by Licensee;

- c. Monitor(s) shall submit a written report of the results of each review to the Board on a quarterly basis. The report shall identify any deficiencies in Licensee's practices, which in the professional judgment of the Monitor(s) reasonably warrants corrective action by Licensee. The Monitor(s) shall provide a copy of each report to Licensee and the Board;
- d. Monitoring reports shall be due quarterly to the Board. The first monitoring report due following the Monitor's completion of three (3) monthly visits, and until these monitoring provisions have been terminated by the Board;
- e. Licensee is responsible for ensuring AMI's timely submission of reports to the Board;
- f. Licensee shall take any and all corrective actions which are reasonably necessary to correct any and all deficiencies identified in any of the practice reviews conducted by the Monitor.

39. Licensee expressly agrees that he shall be responsible for all costs and expenses associated with the Practice Monitoring by AMI and that the Board shall bear no responsibility or liability for the costs of those services.

40. All reports required pursuant to this Consent Order shall be submitted to:

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

TIMEFRAME

41. The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Licensee may request modification or termination of the

provisions. For any period of time that Licensee is not actively practicing chiropractic in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) 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 SO ORDERED on this 25 day of August, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Confidential

Kathleen Selzler Lippert
Executive Director

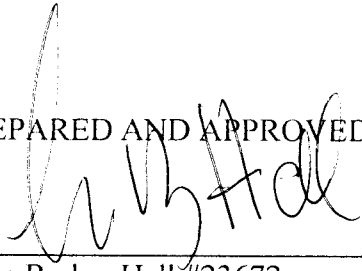
8/24/15
Date

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David Matheny, D.C.
Licensee

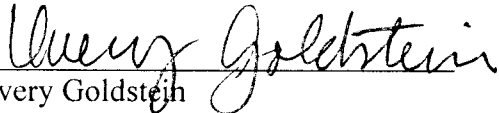
8/24/15
Date

PREPARED AND APPROVED BY:



Anne Barker Hall #23672
Associate Litigation Counsel
Kansas Board of Healing Arts
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Topeka, Kansas 66612
785-296-3268
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APPROVED BY:



Ivery Goldstein
Simpson, Logback, Lynch, Norris, P.A.
107 S.W. 6th Avenue, Suite 210
Topeka, KS 66603
(785) 232-6200

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 26th day of August, 2015, to the following:

David Matheny, D.C.
Licensee
PO Box 517
Gardner, KS 66030

Ivery Goldstein
Simpson, Logback, Lynch, Norris, P.A.
107 S.W. 6th Avenue, Suite 210
Topeka, KS 66603
(785) 232-6200

And the original and one copy 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:

Anne Barker Hall
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A13
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

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Topeka, Kansas 66612

Cathy A. Brown
