

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

SEP 09 2019

KS State Board of Healing Arts

In the Matter of
MATTHEW METCALF, D.C.

Kansas License No. 01-04727

KSBHA Docket No. 19-HA00089

JOURNAL ENTRY RATIFYING CONSENT ORDER

On August 9, 2019, pursuant to the authority granted to the Kansas State Board of Healing Arts ("Board") by K.S.A. 65-2801, *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 5, 2019, in the above-captioned matter, is hereby **ACCEPTED** and **RATIFIED** by the Board. The Board shall maintain jurisdiction over this matter to issue any order(s) deemed necessary and appropriate in the circumstances.

IT IS SO ORDERED this 9th day of September 2019.

KANSAS STATE BOARD OF HEALING ARTS



Kathleen Selzler Lippert
Executive Director

Kansas State Board of Healing Arts

Journal Entry Ratifying Consent Order
Matthew Metcalf, D.C.
KSBHA Docket No. 19-HA00089

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Journal Entry Ratifying Consent Order was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 9th day of Sept., 2019, addressed to:

Matthew Metcalf, D.C.

CONFIDENTIAL

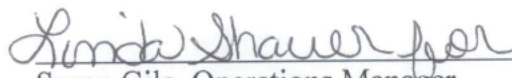
And a copy was hand-delivered to:

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

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

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.


Susan Gile, Operations Manager

FILED

JUN 5 2019

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of
Matthew Metcalf, D.C.
Kansas License No. 01-04727

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Docket No. 19-HA00089

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Matthew Gaus, Associate Litigation Counsel ("Petitioner"), and Matthew Metcalf, D.C. ("Licensee"), *pro se*, and moves 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:

STIPULATION OF FACTS

1. Licensee's last known mailing address to the Board is: [REDACTED]

2. On or about December 5, 2018, Licensee submitted to the Board a renewal Application to change his license status from exempt to active. Such application was deemed complete and filed with the Board on May 17, 2019.

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.

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 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 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(a), 65-2836(c), and 65-2836(r) to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A.65-2801, *et seq.*

9. In completing his renewal application in December 2018, in Addendum 1, Licensee answered "yes" to Attestation Question B, which asks: "In the past 12 months

have you been arrested, charged with or convicted of any felony, misdemeanor or the military equivalent? This includes a diversion or plea to a felony, misdemeanor or the military equivalent.”

10. Licensee was arrested on July 20, 2018 and charged with Violating a Protective order, a Class A person misdemeanor.

11. Licensee was arrested for entering the house and bedroom of his [REDACTED] at approximately 12 a.m., while intoxicated, in an attempt to communicate with her. The [REDACTED] had been granted a temporary Protection From Abuse order, which was in effect at that time.

12. On October 26, 2018 Licensee pled guilty to Violating a Protective Order charge and was sentenced to 12 months’ probation.

13. On or about March 20, 2019, Licensee’s [REDACTED] voluntarily rescinded the “no contact” portion of the Protection From Abuse order.

14. On or about April 29, 2019 Licensee completed his probation approximately six months early due to total compliance.

15. [REDACTED]
[REDACTED]
[REDACTED]

16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. Licensee did not disclose [REDACTED] to the Board, either on this renewal application or any other previous application.

18. Licensee has been [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19. As a condition of his probation, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20. On or about March 12, 2019 Licensee was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21. On or about the week of April 24, 2019 [REDACTED]
[REDACTED]
[REDACTED]

22. 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 violation of the Kansas Healing Arts Act as follows:

a. Licensee violated K.S.A. 65-2836(a) by failing to disclose to the Board his

[REDACTED]

b. Licensee violated K.S.A. 65-2836(c) by pleading guilty to Violating a Protective Order, a Class A person misdemeanor.

c. Licensee violated K.S.A. 65-2836(r) by failing to furnish the Board information on any renewal application regarding his [REDACTED]

[REDACTED]

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. 77-505 and 65-2838 the Board may enter into a stipulation which will be binding on the Board and on Licensee in lieu of a formal disciplinary hearing regarding violations of the Kansas Healing Arts Act.

25. All pending investigation materials in [REDACTED] [REDACTED] regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 34 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

26. 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.*

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

34. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

35. 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.
KSBHA_compliancecoordinator@ks.gov

36. 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.

37. 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.

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

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. Licensee understands that a Temporary License shall be issued based upon Licensee's signing this Consent Order, paying the temporary license fee, and abiding by the terms of this Consent Order. Licensee 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, Licensee shall be issued a permanent license under the terms of this Consent Order.

41. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following conditions to being granted licensure on his license to engage in the practice of chiropractic:

MONITORING

42. Licensee shall contact enter into a Monitoring Agreement with KMS-PHP.

43. Licensee agrees to follow all recommendations by KMS-PHP for Licensee's [REDACTED] monitoring, and support.

44. Licensee further agrees to immediately notify the Board of any revisions to the Monitoring Agreement, and to immediately provide a copy of such revised Monitoring Agreement to the Board.

45. The provisions of the Monitoring Agreement are incorporated herein as if fully restated.

46. Licensee shall include a copy of the Monitoring Agreement to the Board with his signed Consent Order, with all information fully completed, including information currently labelled as "Pending." A Temporary License will not be issued to Licensee until the signed, completed KMS-PHP Monitoring Agreement is received by the Board.

47. Licensee agrees to abstain from the consumption of alcohol and from the use 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.

48. Licensee agrees to immediately surrender his license after appropriate due process has been provided [REDACTED] or fails to comply with the Monitoring Contract in any manner.

49. Licensee specifically agrees to submit to random alcohol and drug screens averaging one to two times per month, at the request of KMS-PHP, representatives of the compan(ies) with which KMS-PHP contracts to perform alcohol and/or drug screenings (the "Contracting Company") or Board staff. The random alcohol and drug screens may be in the form of urinalysis, blood, or other biological specimen tests.

50. Licensee specifically agrees to all additional testing, including but not limited to hair or fingernail testing at the request of KMS-PHP and/or the Contracting Company.

51. Licensee acknowledges that he is responsible for all costs related to any drug and alcohol screenings, and that a failure to pay for such screenings is a violation of this Order.

52. All test results for alcohol and/or other substances conducted by the KMS-PHP or the Contracting Company shall be admissible in any Board proceeding and Licensee shall not object to the admissibility of such test results. Licensee has the affirmative duty not to ingest or inject any substance which will cause a body fluid sample to test positive for controlled or illegal substances or alcohol.

53. Licensee agrees to supply KMS-PHP copies of all his current and future prescriptions. Copies of all prescriptions must come from a licensed health care provider,

informing KMS-PHP of any medications and the purpose/duration for which they will be taken. All prescriptions for controlled substances shall be in writing.

54. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

55. Licensee agrees to attend [REDACTED]

[REDACTED] and to document such attendance in whatever manner KMS-PHP deems appropriate.

56. Licensee specifically agrees to abide by all notice and reporting requirements set by KMS-PHP.

57. Licensee shall provide releases to the Board and KMS-PHP when requested by the Board authorizing any and all records regarding Licensee's [REDACTED] to the Board and to KMS-PHP.

58. Licensee agrees to immediately notify a Board representative and KMS-PHP if he fails to comply in any manner with his monitoring contract.

59. Licensee shall immediately, within five calendar days, notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

60. Licensee shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten days of any such change.

61. Licensee agrees to furnish a copy of this Consent Order to each and every state in which he holds licensure or applies for licensure.

62. Licensee shall ensure all quarterly status letters from KMS-PHP are submitted timely to the Board. All communication to the Board relating to the monitoring contract shall be submitted to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

63. This monitoring provision is not self-terminating. After a period of one year from the date of the execution of this agreement, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing chiropractic, the monitoring provision will remain in effect but will be tolled and not counted towards reducing the one-year timeframe.

64. Licensee agrees that the burden of proof by clear and convincing evidence shall be on Licensee to show a sufficient basis to justify lifting the monitoring of his license to practice chiropractic. If the Disciplinary Panel determines Licensee's monitoring should not be terminated, Licensee has the right to file a request for termination to be heard by the full Board.

65. Any and all requests for termination and/or modification of this Professional Development Plan will be made in writing and submitted to the Board by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Director
800 SW Jackson Lower Level Suite A
Topeka, Kansas 66612
KSBHA_ComplianceCoordinator@ks.gov

PUBLIC CENSURE

66. Licensee is hereby **publicly censured** for violating the Kansas Healing Arts Act. Specifically, Licensee is censured for his failure to disclose [REDACTED] [REDACTED] in violation of K.S.A. 65-2836(a) and 65-2836(r).

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, Licensee shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 5th day of June, 2019.

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


Kathleen Selzler Lippert
Executive Director

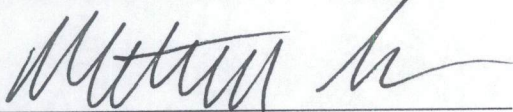
June 5, 2019
Date

Matthew Metcalf, D.C.
Matthew Metcalf, D.C.
Licensee

06/05/2019

Date

PREPARED AND APPROVED BY:


Matthew Gaus, #22609
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-8022

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 5th day of June, 2019, to the following:

Matthew Metcalf, D.C.
Licensee

[REDACTED]
[REDACTED]

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:

Matthew Gaus
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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Susan Lile