

RATIFIED BY BOARD

DATE: 10/15/13

FILED
SEP 13 2013
CAB
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

In the Matter of)	
)	
Michael P. Rodriguez, D.C.,)	Docket No. 14-HA000 38
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 Michael P. Rodriguez, 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. The Parties stipulate and agree to the following:

1. Applicant's last known mailing address to the Board is: **Confidential**
Olathe, Kansas 66061.
2. On or about November 16, 2012, Applicant submitted to the Board an application for licensure in chiropractic. Such application was filed with the Board on September 12 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, 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 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) as further defined by K.S.A. 65-2837(a)(3) to take action with respect to Applicant's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*
9. In his application for licensure, Applicant answered "yes" to disciplinary question 10(a), which asks: "Have you ever been dropped, suspended, expelled,

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fined, placed on probation, allowed to resign, requested to leave temporarily or permanently, or otherwise had action taken against you by an professional training program prior to completing the training?”

10. In response to his “yes” answer, Applicant stated that he was placed on academic probation in 2004

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12. Applicant completed Part I of the NBCE in March 2008, Part II of the NBCE in September 2009, Part III of the NBCE in September 2009, Part IV of the NBCE in May 2011, and Physiotherapy in March 2012.

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13. In response to question 8, which asks Applicant to list all employment/professional activities since graduation, Applicant checked the box next to the statement, “I have not been employed or had professional activity since graduation.”

14. Based on Applicant’s lack of employment and professional activities since his graduation in 2007, Applicant was referred to take the SPEC examination.

15. Applicant successfully completed the SPEC examination in June 2013.

16. 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.
17. Applicant's acts, if proven, constitute unprofessional conduct or professional incompetence as set forth in K.S.A. 65-2836.
18. Applicant violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(a)(3), more specifically, by not having actively practiced chiropractic or participated in any professional activities since graduating from chiropractic college in August 2007 is evidence of other behavior which demonstrates a manifest incompetence to practice the healing arts.
19. Applicant violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), more specifically, by not having actively practiced chiropractic or participated in any professional activities since graduating from chiropractic college in August 2007 is evidence of conduct that is likely to harm the public if Licensee was allowed to practice without a practice monitor for a sufficient enough time to ensure Licensee has the requisite knowledge and skill to practice safely and within the standard of care for a chiropractor licensed by the Board.
20. 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 Kansas Healing Arts Act.

21. 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.
22. All pending investigation materials in KSBHA Investigative Case Number 13-00298 regarding Applicant, 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.
23. 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. Applicant 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.*

24. 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.
25. 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.
26. 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.
27. 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.

28. 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.
29. 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.
30. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
31. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
32. 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.
33. 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.

34. 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.
35. This Consent Order constitutes non-disciplinary action.
36. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
37. 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 license under the terms of this Consent Order.
38. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action as a condition to being granted licensure on his license to engage in the practice of chiropractic:

MONITORING

39. Applicant agrees to have 100% of his practice of chiropractic to be monitored by a practice monitor for a minimum of six (6) months.
40. Applicant agrees to have a Board-approved practice monitor, who is another Kansas-licensed chiropractor, to provide 100% direct supervision of Applicant's practices and procedures to ensure that Applicant is practicing within the standard of care and is in compliance with community and ethical standards. Applicant shall bear any and all expenses associated with the practice monitor.
41. Applicant shall not practice chiropractic without the direct supervision of a Kansas-licensed chiropractor.
42. If Applicant wishes to exercise his ability to obtain a temporary license, then prior to receiving a temporary license, Applicant shall submit the curriculum vitae (CV) of the proposed practice monitor for approval to the Board. If Applicant does not request a temporary license, then within twenty (20) days of acceptance of the Consent Order, Applicant shall submit the CV of a proposed practice monitor for approval to the Board.
43. The practice monitor shall submit monthly reports (November 15th, December 15th, January 15th, February 15th, March 15th, and April 15th) to the Board on a form provided by Board staff. Such reports shall include a summary of whether Applicant is seeing patients, documenting in the patient record, and providing chiropractic care in an appropriate and timely manner. Applicant is responsible for ensuring that the practice supervisor's reports are submitted by the monthly deadlines. Applicant further acknowledges that, until this monitoring provision is

terminated by the Board, he is responsible for ensuring that the practice monitor shall continue to submit monthly reports to the Board on the 15th day of each month.

44. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A., Topeka, Kansas 66612.
45. The Board designates Dr. Gary L. Counselman, D.C. to review and approve/disapprove the proposed practice monitor.
46. 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.
47. 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.
48. 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

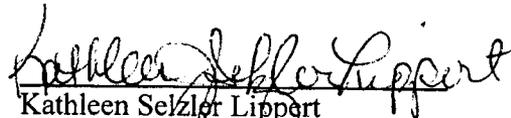
49. The above monitoring provisions are not self-terminating. After a period of six (6) months, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing chiropractic in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the six (6) 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.

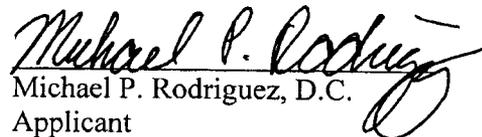
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 13 day of Sept, 2013.

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

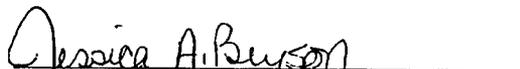

Kathleen Selzler Lippert
Executive Director

9/13/13
Date


Michael P. Rodriguez, D.C.
Applicant

9/4/2013
Date

PREPARED AND APPROVED BY:


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

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **RATIFIED CONSENT ORDER** was served this 15th day of Oct., 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Michael P. Rodriguez, D.C.
Confidential
Olathe, KS 66061

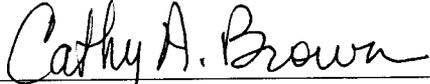
And a copy was hand-delivered to:

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

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

Kelli Stevens, General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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



Cathy Brown, Executive Assistant