

CAB

FILED

DEC 06 2011

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 12-HA00044
Terry A. Shroyer, D.C.)	
Kansas License No. 01-03378)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Stacy R. Bond, Associate Litigation Counsel ("Petitioner"), and Terry A. Shroyer, D.C. ("Licensee"), by and through his counsel, Brian J. Niceswanger, 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: 602 North Jefferson Street, PO Box 821, Junction City, Kansas 66441.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-03378 on approximately January 4, 1977. 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. In 2008, Licensee placed an advertisement in the "pcdpages" and failed to identify which branch of the healing arts he was licensed to practice.

10. The advertisement placed in the "podpages" stated "PAIN RELIEF
BREAKTHROUGH! How two recent discoveries can quickly & easily eliminate
aching, stiffness, burning & numbness. . .even chronic headaches. . .ONCE AND
FOR ALL!"
11. Licensee provided the Board with medical records for fourteen patients. A review
of the medical records found that Licensee failed to properly document in the
medical records. Many treatment notes failed to have a signature on the page,
dates not listed on the records, office name and/or the location of the treatment
were not listed, and exam sheets failed to list which doctor conducted the
examination.
12. Licensee included on the treatment plans when he planned to have repeat x-rays
taken, generally at the next to last visit. Rather than determining when the patient
needed a repeat x-ray, based on on how the patient was reacting to treatment, he
made the decision at the beginning of treatment that repeat x-rays would be taken
at the next to last visit.
13. While not admitting any wrongdoing, 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.

14. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
15. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(8) by advertising to guarantee any professional service.
16. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25) by failing to keep medical records which accurately describe the services rendered to the patient, as defined by K.A.R. 100-24-1.
17. Licensee violated K.S.A. 65-2836(f), by willfully violating K.S.A. 65-2885 by failing to use the appropriate words or letters to identify himself with the particular branch of the healing arts in which he holds a license.
18. 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.
19. 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.
20. All pending investigation materials in KSBHA Investigation number 09-00221 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

21. 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.*
22. 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.
23. 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.

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

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

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

30. 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.

31. 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.

32. 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.

33. This Consent Order constitutes non-disciplinary action.

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

35. 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:

EDUCATION

36. Licensee shall attend and successfully complete, a formal live lecture format, continuing education course for ethical advertising, by April 30, 2012, at his own expense. The course must be pre-approved by the Board or its designee.

Licensee shall provide proof of successful completion by May 30, 2012.

37. Licensee shall attend and successfully complete a formal live lecture format continuing education course in radiologic diagnostics, by April 30, 2012, at his own expense. The course must be pre-approved by the Board or its designee.

Licensee shall provide proof of successful completion by May 30, 2012.

38. Licensee shall attend and successfully complete, a continuing education course for medical record keeping, by April 30, 2012, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion by May 30, 2012.

39. The Board designates Gary Counselman, D.C. to review and approve/disapprove of the proposed continuing education courses.

40. These hours shall be in addition to those hours required for renewal of licensure.

FINES

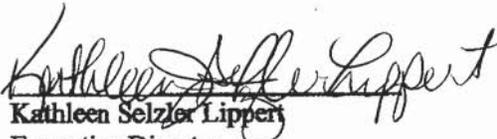
41. Licensee is hereby ordered to pay a CIVIL FINE pursuant to K.S.A. 65-2863a in the amount of \$500:00. The total amount of \$500.00 shall be due on or before November 15, 2011.

42. In the alternative, Licensee may make monthly payments of \$100.00 for five (5) months for a total of \$500.00 to be paid over five (5) months. The initial payment is due on or before November 15, 2011, with the remainder of the monthly payments due on or before the fifteenth (15th) day of each month thereafter.
43. In the event that the Board does not receive a payment due and owing, the total amount of the levied FINE still due shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.
44. Licensee shall make all payments payable to the Kansas State Board of Healing Arts and send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 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 5 day of Dec, 2011.

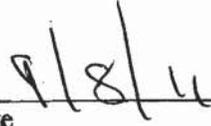
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Kathleen Selzler Lippert
Executive Director

12/5/11
Date

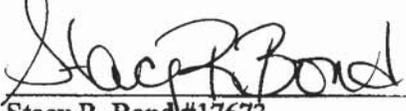


Terry A. Shroyer, D.C.
Licensee



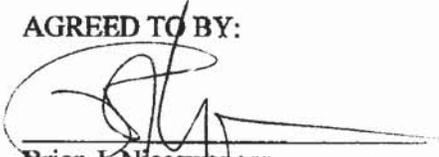
Date

PREPARED AND APPROVED BY:



Stacy R. Bond #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-3268

AGREED TO BY:



Brian J. Niceswanger
Attorney for Licensee
McDowell, Rice, Smith & Buchanan
7101 Tower
7101 College Blvd., Suite 200
Overland Park, Kansas 66210

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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 ~~8~~^{6th} day of ~~Sept~~^{December}, 2011,
to the following:

Terry A. Shroyer, D.C.
Licensee
602 North Jefferson Street
PO Box 821
Junction City, Kansas 66441

Brian J. Niceswanger
Attorney for Licensee
McDowell, Rice, Smith & Buchanan
7101 Tower
7101 College Blvd., Suite 200
Overland Park, Kansas 66210

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:

Stacy R. Bond
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Katy Lenahan



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

Cathy A. Brown

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