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BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
Jesse D. Trombla, D.C.) Docket No. 14-HA00120
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 Jesse D. Trombla, 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 Confidential Overland Park, Kansas 66213.
2. On or about May 20, 2013, Applicant submitted to the Board an application for licensure in chiropractic. Such application was deemed complete and filed with the Board on March 17, 2014.
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 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 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 questions 12(t) and 12(u).

- a. Question 12(t) asks: “Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
 - b. Question 12(u) asks: “Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.
10. In response to his “yes” answers, Applicant disclosed that he was arrested for DWI on or about February 10, 2012. He stated that he pleaded guilty to DWI, received one (1) year probation, attended three (3) AA classes, paid a \$ 618 fine, had his driver’s license revoked for approximately a year, and also had a vehicular Breathalyzer installed on his car. He stated that he successfully completed the terms of his probation in October 2012.

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- b.
- c. Applicant disclosed being arrested for shoplifting one (1) time as a juvenile.
- d. Applicant disclosed having three (3) tickets for being a minor in possession (MIP) of alcohol.
- e. Applicant disclosed “about 9 years ago he had 3 possessions of drugs and paraphernalia.”
- f. Applicant also disclosed his February 2012 DUI.
- g. Confidential
- h.
- i.

13. Confidential

14. Applicant was asked to provide an explanation for why he did not disclose the shoplifting charge, the three (3) MIPs, and the three (3) possessions of drugs and paraphernalia charges. He was also asked to provide details regarding the circumstances surrounding all of the above.
15. On or about January 8, 2014, the Board received a statement from Applicant in response to the Board's request. Applicant stated that he did not include his "juvenile charges on [his] initial paperwork because [he] wrongly assumed [his] juvenile record was uninvolved." He stated that every event was a misdemeanor and that he was not convicted of any charges due to court programs he was offered. He also stated that he did not mean to conceal any facts.
16. In his January 2014 statement, Applicant provided the following information regarding his previous arrests and/or charges:
 - a. October 2002: Possession of marijuana and possession of drug paraphernalia—Applicant stated he was with three friends in a parking lot smoking marijuana when an officer found them and arrested them. Applicant asserts that neither the marijuana nor the pipe was his.
 - b. August 2003: Possession of marijuana and possession of drug paraphernalia—Applicant stated that he and three friends went to a bowling alley to meet others and that an intoxicated friend got out of the car and angered a police officer, who in turn smelled marijuana in the car and found Applicant's marijuana and pipe in the car.
 - c. November 2003: MIP—Applicant stated that, while in high school, he left school over lunch and shared a "few mixed drinks," after which he attended

Chemistry class without issues. He stated that an incident in the hallway led to the school officer detecting alcohol and issuing an MIP.

- d. March 2005: Possession of marijuana—Applicant stated that he and three friends were driving around a neighborhood during the early morning hours when an officer pulled them over and found Applicant’s container of marijuana. Applicant wrote, “I finished an intense diversion program with the Omaha Police Department which definitely set the footsteps for my departure from marijuana. The truth is I rarely used for the next two years and after I was 20, I never tried marijuana again.”
- e. August 2005: Shoplifting—Applicant stated he was with a friend who decided to steal a CD and convinced Applicant to also steal a CD. Applicant stated he was issued a ticket and only paid a fine.
- f. December 2005: MIP—Applicant stated he and his girlfriend dropped another friend (who was over 21) off at the friend’s house. He stated that the friend left a case of beer in the car allegedly unbeknownst to Applicant. Applicant stated he pulled into the girlfriend’s driveway when they noticed a party a few houses down and “drove over to see more.” He stated he was pulled over for driving without his lights, and the officer noticed the beer in the back.
- g. August 2007: MIP—Applicant stated he was at a party with coworkers, and in the early morning hours, he and a friend walked down the street a few houses. He stated that they mistakenly took their beers with them, and after

an officer saw them, they were ticketed for open containers with Applicant being ticketed for being an MIP.

h. February 2012: DUI that was previously disclosed to the Board.

17. Applicant turned 18 years of age on August 26, 2004. Therefore, an arrest or charge occurring after that date would not be part of a juvenile record.

18. Applicant agrees that driving a motor vehicle while impaired by alcohol is conduct that is likely to harm the public.

19. In response to question 8, Applicant disclosed that he had been employed as a Chiropractor at Anderson Physical Medicine in Overland Park, Kansas, from February 2012 to January 2013.

20. Applicant provided the following statement in regard to his practice at Anderson Physical Medicine:

“I graduated from Parker University in December of 2011 with my doctorate and I knew I wanted to move to Kansas to begin a practice. By Kansas law, a bachelor’s is required to become licensed and I had not yet qualified for one. I took an online course at Metropolitan Community College in Omaha, NE during the summer of 2012 for the last class I needed. During this time, I was working as a chiropractor at Anderson Physical Medicine under Dr. Roger Anderson’s license. I understand that there is a statute in Kansas to allow a new graduate 6 months of working under a licensed doctor while obtaining their license. A lawyer had told him this was possible and I was not the first or the last new graduate to work under these conditions in his office. Once 6 months had passed, I was relieved of my duties as a chiropractor since I still had no license and my patients were immediately transferred to Dr. Anderson. From this time (approximately September) until I was let go, I only took radiographs, preformed [sic] physiotherapy modalities, helped the front desk and provided other services that do not require licensing. Meanwhile, I completed the online course, requested my transcripts and applied for a bachelor’s degree. I finally received the degree in January of 2013. Unfortunately, I was also let go from Anderson Physical medicine at the same time since I was becoming a burden without a license.

Additional information is excluded for simplicity, but I will present the board with anything they request.”

21. The Kansas Healing Arts Act does not have a statute that allows a new graduate to practice without a license under a Kansas licensee for six (6) months.
22. 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.
23. 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.
24. Applicant’s acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
25. Applicant violated K.S.A. 65-2836(i) in that Applicant has an inability to practice the healing arts with reasonable skill and safely to patients by **Confidential**
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26. Applicant violated K.S.A. 65-2836, in that Licensee practiced the healing arts while not licensed to engage in the practice of the healing arts contrary to K.S.A. 65-2803(a), 65-2867(a) and/or 65-2836(k).
27. Licensee violated K.S.A. 65-2836(b) as further defined by 65-2837(b)(12), in that Licensee practiced the healing arts while not licensed to engage in the practice of the healing arts; such conduct is likely to deceive, defraud or harm the public.

28. Applicant violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(12), by driving under the influence of alcohol in that driving while under the influence of alcohol is conduct likely to harm the public.
29. 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.
30. 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.
31. All pending investigation materials in KSBHA Investigative Case Number 14-00214 regarding Applicant, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
32. 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.*

33. 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.

34. 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.

35. 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.
36. 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.
37. 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.
38. 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.
39. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
40. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

41. All correspondence or communication between Applicant 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

42. 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.

43. 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.

44. This Consent Order constitutes public disciplinary action.

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

46. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on his license to engage in the practice of chiropractic:

CENSURE

47. Applicant is publicly censured for violating the Kansas Healing Arts Act.

MONITORING

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58. 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 offenses.

59. 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

60. The above monitoring provisions are not self-terminating. After a period of three (3) 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 towards reducing the three (3) 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 11 day of April, 2014.

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

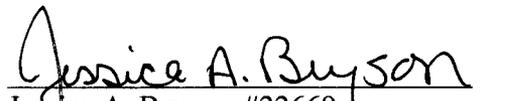

Kathleen Selzlef Lippert
Executive Director

4/11/14
Date


Jesse D. Trombla, D.C.
Applicant

3/14/14
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
Phone: 785-296-8022
Fax: 785-368-8210
Email: jbryson@ksbha.ks.gov

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Jesse D. Trombla, D.C.

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 14th day of April, 2014, to the following:

Jesse D. Trombla, D.C.
Applicant
Confidential
Overland Park, KS 66213

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

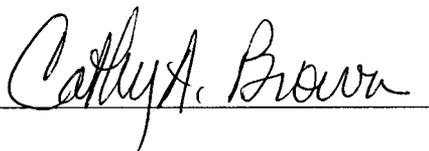
And a copy was delivered to:

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

General Counsel's Office
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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


Cathly A. Brown

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Jesse D. Trombla, D.C.