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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

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Docket No. 12-HA00013

Wasse Zafer, D.C.

Kansas License No. 01-04097

EX PARTE EMERGENCY ORDER OF SUSPENSION

NOW on this 25 day of July, 2011, this matter comes before the Presiding Officer upon a Motion for *Ex Parte* Emergency Order of Suspension. Lori D. Dougherty, Associate Litigation Counsel, and Stacy R. Bond, Associate Litigation Counsel, filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings. There are no other appearances.

The Presiding Officer, upon review of the agency file in Kansas State Board of Healing Arts (KSBHA) Docket No. 12-HA00013, hereby finds, concludes and orders as follows:

1. This is a motion for an order pursuant to K.S.A. 65-2838 and 77-536, under which the Presiding Officer may issue an order without notice and hearing, and may temporarily limit or suspend a license if the Presiding Officer finds that an imminent danger exists to the public health, safety, or welfare.
2. The Presiding Officer has received and reviewed a Motion for an *Ex Parte* Emergency Order of Suspension to suspend Licensee's license to practice chiropractic in the State of Kansas, filed with KSBHA on July 25, 2011. The motion requests an emergency suspension of Licensee's license.
3. The motion for an emergency order in the above-captioned case alleges that Licensee has violated K.S.A. 65-2836, specifically:

- a. K.S.A. 65-2836(k): The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board.
4. The motion for an emergency order in the above-captioned case includes Exhibits one (1) through three (3).

FINDINGS OF FACT

5. Licensee's last known mailing address to the Board is: 450 E. Santa Fe, Olathe, Kansas 66061.
6. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04097 on approximately February 8, 1992, and having last renewed such license on approximately January 13, 2011.
7. At all times relevant to the allegations set forth in Petitioner's Motion, Licensee held a current and active license to engage in the practice of chiropractic in the State of Kansas.
8. Licensee presently has an active license to practice chiropractic in the state of Kansas. Licensee's license is currently under probation under a Consent Order in KSBHA Docket No. 09-HA00184.
9. The Presiding Officer finds there are grounds to reasonably believe that:
 - a. Licensee entered into a Consent Order with the Board on December 3, 2010, filed on December 6, 2010

- b. The Consent Order was entered into in lieu of formal disciplinary proceedings on the allegations alleged in the Petition and Amended Petition in KSBHA Docket No. 09-HA00184.
- c. The Consent Order included provisions for Licensee to enter into a monitoring contract with the Affiliated Monitors, Incorporated (“AMI”). See attached Exhibit 1, Consent Order approved by Board.
- d. Paragraph 21(e)(viii) and paragraph 21(g)(vii) of the Consent Order specifically requires Licensee to enter into a compliance program and monitoring agreement with AMI for a minimum of three (3) years, to wit:
 - i. “Licensee shall obtain an office compliance audit by Affiliated Monitors within ten (10) days of the lifting of the suspension of his license, at the Licensee’s expense.”
 - ii. “Licensee shall engage the services of Affiliated Monitors to serve as the Compliance Monitor to monitor Licensee’s implementation of the Compliance Plan through the three (3) year probation period, and to furnish the Board with written reports concerning Licensee’s progress in implementing the Compliance Plan once every ninety (90) days throughout the probationary licensure period.”
 - iii. “Licensee expressly agrees that he shall be responsible for all costs and expenses associated with the Compliance Audit and Plan by Affiliated Monitors, and that the Board shall bear no responsibility or liability for the costs of those services.”

- iv. “Licensee shall sign a three (3) year contract with Affiliated Monitors for monitoring, prior to the lifting of the suspension of Licensee’s license, and provide a copy of the contract to the Board. Monitoring shall be at Licensee’s expense.”
- v. “Licensee expressly agrees that he shall be responsible for all costs and expenses associated with the Practice Monitoring by Affiliated Monitors, and that the Board shall bear no responsibility or liability for the costs of those services.”
- e. The Consent Order specifically provides in paragraph 22 that “[t]he above monitoring provisions and limitations are not self-terminating. After a period of three (3) years, 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 three (3) year timeframe.”
- f. The Consent Order specifically provides in paragraph 23 that “Licensee must come into and remain in strict compliance with Affiliated Monitors Compliance Program and Monitoring Program as set forth in this Consent Order. That Licensee is hereby advised that any notification from Affiliated Monitors that Licensee is not in compliance constitutes a violation of the Board’s order, which may subject Licensee to disciplinary action as set forth in K.S.A. 65-2836.”

- g. On or about July 21, 2011, the Board was notified by Vin DiCianni, President of Affiliated Monitors, Inc., that it was suspending its monitoring and compliance planning services with Licensee for failure to keep current with his obligations to pay for the costs of the monitoring and compliance planning services furnished by AMI. See attached Exhibit 2.
- h. The Consent Order specifically provides in paragraph 21(i) that “Licensee’s x-rays will be properly marked and reviewed by a Chiropractic Radiologist, to be approved by the Board.”
- i. Dr. Nab provided a monitoring report to the Board on July 6, 2011, with a section entitled, “Recommendations.” See attached Exhibit 3.
- j. In paragraph ten (10) of Recommendations, Dr. Nab states, “Ensure that all x-rays are read and interpreted by a medical radiologist or by a chiropractor who is board-certified in radiology in order to comply with the provisions of Paragraph 21(i) of the Consent Order. Patients should be appropriately shielded during such procedures and decision to use x-rays should be supported by sufficient clinical evidence to show that they are necessary.”
- k. Licensee has violated the Consent Order in that Licensee has failed to have all patient x-rays reviewed by a chiropractic radiologist.
- l. Licensee has violated the Consent Order in that Licensee has failed to comply with all terms and conditions of a monitoring and compliance plan contract with AMI.

CONCLUSIONS OF LAW

10. Pursuant to K.S.A. 65-2838(c), the Board has the authority to temporarily suspend Licensee's license to address an imminent threat to the health, safety or welfare of the public.
11. Pursuant to K.S.A. 65-2836, the Board has grounds to revoke, suspend, censure, fine, or otherwise limit Licensee's license for violation of the Kansas Healing Arts Act.
12. Pursuant to K.S.A. 77-536, the Board may use emergency proceeding to protect the public from an immediate danger to the public health, safety or welfare.
13. The Presiding Officer finds there are grounds to reasonably believe that Licensee has violated that Licensee has violated K.S.A. 65-2836, in that Licensee has violated K.S.A. 65-2836, specifically:
 - a. K.S.A. 65-2836(k): The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board, to wit: Licensee is practicing chiropractic in the State of Kansas without a monitoring or compliance program, in violation of the Consent Order in KSBHA Docket No. 12-HA00013.
 - b. K.S.A. 65-2836(k): The licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board previously entered by the board, to wit: Licensee is

not having all patient x-rays reviewed by a chiropractic radiologist, in violation of the Consent Order in KSBHA Docket No. 12-HA00013.

14. The Presiding Officer finds that Licensee's continuation in practice would constitute an immediate danger to the public health, safety or welfare.

15. The Presiding Officer further concludes that Licensee's license to practice of chiropractic should be immediately suspended until such time as an evidentiary hearing can be scheduled.

IT IS THEREFORE ORDERED that the license of Wasse Zafer, D.C. is hereby **IMMEDIATELY SUSPENDED**.

IT IS FURTHER ORDERED that board counsel shall serve this order in the manner provided by law, and shall complete and file a proof of service.

PLEASE TAKE NOTICE that a hearing on this matter will be scheduled as soon as practicable at the Board office, 800 SW Jackson, Lower Level Suite, A, Topeka, Kansas 66612. The issue to be determined is whether the emergency order of suspension should remain in place, be modified or terminated. A Notice of Hearing will be issued.

PLEASE TAKE NOTICE that this is an emergency order. An emergency order is effective when rendered. A party to an agency proceeding may seek judicial review of an emergency order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* A petition for judicial review is not timely unless filed within 30 days following service of the order. A copy of any petition for judicial review must be served upon Board's Executive Director at 800 SW Jackson, Lower Level Suite, A, Topeka, Kansas 66612.

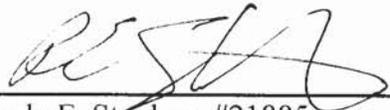
Dated this 25 day of July 2011.

Kansas State Board of Healing Arts



Gary Counselman, D.C.
Presiding Officer

Prepared and Approved by:



Randy E. Stookey, #21885
Associate General Counsel
Kansas State Board of Healing Arts

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the *Ex Parte* Emergency Order of Suspension by United States mail, postage prepaid, on this 25th day of July 2011 to the following:

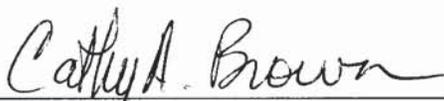
Wasse Zafer, D.C.
Licensee
450 E. Santa Fe
Olathe, Kansas 66061

And a copy was hand-delivered to:

Lori D. Dougherty
Stacy R. Bond
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level Suite A
Topeka, KS 66612

And the original was hand-delivered for filing with:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level Suite A
Topeka, KS 66612



Cathy Brown
Executive Assistant