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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
Wasse Zafer, D.C.**

Kansas License No. 01-04097

KSBHA Docket No. 12-HA00013

**FINAL ORDER ON RECONSIDERATION
REINSTATING REVOCATION OF LICENSURE**

NOW on this 24th day of February 2012, the Final Order Revoking Licensure filed October 27, 2011, comes on for reconsideration before the Kansas State Board of Healing Arts ("Board"). Wasse Zafer, D.C. ("Licensee") appears in person and by and through his attorney, N. Larry Bork of Goodell, Stratton, Edmonds & Palmer, L.L.P. Stacy R. Bond, Associate Litigation Counsel, appears on behalf of Petitioner.

Pursuant to the authority granted to the 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 Board hereby enters this Final Order on Reconsideration in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of counsel, considering the exhibits offered by the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and orders:

I. AGENCY PROCEDURAL HISTORY

1. Licensee is licensed 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 December 30, 2011.

2. On or about August 14, 2006, Licensee entered into a Consent Order in KSBHA Docket No. 06-HA00092 for disciplinary action in the form of a \$5,000.00 fine to resolve allegations of misleading advertising.

3. In 2009, a disciplinary action was commenced against Licensee's license in KSBHA Docket No. 09-HA00184 which alleged multiple violations of K.S.A. 65-2836 and 65-2837 of the Kansas Healing Arts Act. These included multiple instances of practice below the standard of care; making false or misleading statements; obtaining a fee by fraud, deceit or misrepresentation; conduct likely to deceive, defraud or harm the public; and false advertising.

4. On May 1, 2009, Licensee was subject to an emergency suspension based on a Presiding Officer's finding that Licensee's continuation in practice presented an imminent danger to the public health, safety and or welfare. Subsequently, a multi-day hearing was held which included patient testimony. At the conclusion, the Presiding Officer found Licensee had committed multiple Healing Arts Act violations and caused injury and medically unnecessary pain to two (2) patients. The Presiding Officer ordered the temporary suspension to remain in place during the remainder of the proceedings.

5. On or about December 6, 2010, Licensee entered into a Consent Order in KSBHA Docket No. 09-HA00184 in lieu of concluding the formal disciplinary proceedings. The terms of the Consent Order are hereby incorporated by reference in their entirety. The Consent Order suspended Licensee's license for eighteen (18) months, but granted Licensee credit for the time his license was subject to the emergency suspension. The Consent Order also placed Licensee's license on probation.

6. The probationary terms which are pertinent to the matter presently before the Board require Licensee to have his practice monitored by Affiliated Monitors, Inc. (“AMI”) for at least three (3) years; and require Licensee to have his x-rays reviewed by a Chiropractic Radiologist for at least three (3) years.

7. Paragraph 24 of the Consent Order states,

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.

8. Based on the evidence in the agency record, it appears the practice monitoring and x-ray reviews commenced in early 2011.

9. On or about July 25, 2011, Petitioner filed a Petition in this present action alleging that Licensee violated his Consent Order by failing to maintain his monitoring contract with AMI and by failing to have all of his x-rays reviewed by a Chiropractic Radiologist. The Petition alleges that Licensee’s conduct violates K.S.A. 65-2836(k) of the Kansas Healing Arts Act and seeks disciplinary action in the form of revocation of Licensee’s license to practice chiropractic in the State of Kansas.

10. On or about July 25, 2011, Petitioner also filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings. On July 25, 2011, an *Ex Parte* Emergency Order of Suspension was issued against Licensee, on the basis that his continuation in practice would constitute an immediate danger to the public health, safety or welfare.

11. On or about August 10, 2011, Licensee filed an Answer to the Petition. Licensee admitted to failing to maintain his monitoring contract with AMI because he felt the expenses being charged were “unfair.” Licensee further admitted he failed to provide all x-rays for review by a Chiropractic Radiologist on the basis that he did not understand that all x-rays needed to be reviewed.

12. On August 12, 2011, a hearing was held before the Board on the *Ex Parte* Emergency Order of Suspension. The Board found that Licensee had resumed compliance with the requirements of the Consent Order and terminated the emergency suspension. The Board did not hear the merits of the alleged violations in the Petition and the requested sanction of revocation.

13. On or about September 27, 2011, a Notice of a Conference Hearing was sent to Licensee’s address of record with the Board and to Licensee’s attorney of record, informing Licensee that a conference hearing on the Petition was scheduled for October 21, 2011.

14. On or about October 14, 2011, Licensee’s counsel filed a Motion to move the hearing on the Petition from the afternoon to the morning hearing docket on October 21, 2011.

15. On or about October 17, 2011, the parties were notified by Assistant General Counsel for the Board that the motion to move the hearing time to the morning was denied due to scheduling conflicts, but the Board would entertain continuing the matter to December or even February of 2012, if Licensee’s counsel could not be present in the afternoon of October 21, 2011. Assistant General Counsel for the Board spoke with the assistant to Licensee’s Attorney regarding the Board’s denial of his request to move the hearing. The assistant indicated that another attorney might represent Licensee at the hearing.

16. On or about October 21, 2011, Licensee appeared before the Board without counsel. Licensee was asked by the Board if he wanted the matter continued so that his attorney could be present. Licensee advised the Board that he wished to proceed with the hearing on the Petition without his legal counsel.

17. At the hearing on October 21, 2011, Licensee admitted to the allegations set forth in the Petition. Licensee testified and the evidence further reflects that Licensee's noncompliance with AMI's monitoring was the result of a dispute over the fees charged by AMI for their monitoring services. Licensee refused to pay, so AMI ceased monitoring his practice. Licensee also testified that he mistakenly believed only x-rays from personal injury cases had to be reviewed by a Chiropractic Radiologist. Licensee stated that he was currently in compliance with the Consent Order. Licensee provided the Board with a copy of his current monitoring contract with AMI and documentation that he was now sending all x-rays that he takes to a Chiropractic Radiologist.

18. On or about October 27, 2011, the Board issued a Final Order Revoking Licensure based on Licensee's violations of the probationary terms on his license imposed by the Consent Order.

19. On or about October 28, 2011, Licensee filed a timely "Motion for Reconsideration and Motion to Stay Effectiveness of the Initial/Final Order." An Amended Supplemental Motion for Reconsideration and Motion for Stay were filed by Licensee on November 3, 2011.

20. On or about November 15, 2011, Petitioner filed a Response to the Amended Motion for Reconsideration and to the Motion for Stay.

21. On or about November 16, 2011, the Board issued a Journal Entry Granting Request for Reconsideration and Stay of Final Order, which set the matter for further proceedings on February 24, 2012.

22. On February 24, 2012, the Board heard the parties' arguments on reconsideration of the Final Order Revoking Licensure.

23. At the reconsideration hearing on February 24, 2012, Licensee did not dispute the previous findings of noncompliance and both parties agreed that Licensee was now in compliance with the practice monitoring requirements and the x-ray review requirement. The parties presented their arguments on the aggravating and mitigating circumstances to be weighed by the Board in reconsidering the sanction of revocation.

II. ANALYSIS

24. Licensee's Amended Motion for Reconsideration and Motion for Stay raised multiple due process concerns regarding whether Licensee had adequate notice that his license may be revoked at the conference hearing on October 21, 2011, and regarding his appearance without legal counsel. A review of the agency record reflects that Licensee was provided with notice of the disciplinary sanction requested and with an opportunity to continue the hearing in order to allow his counsel to be present. Regardless, these arguments are now immaterial in light of the Board's grant of a stay of revocation and a hearing to reconsider the Final Order Revoking License.

25. As evidence of mitigation, Licensee argues that there have been no patient complaints and notes that the monitoring reports include some positive feedback on Licensee's practice. Licensee characterizes the terms of the Consent Order as remedial in purpose and

questions why the Board would revoke licensure after the practice monitoring and x-ray review process are now functioning within the parameters of the Consent Order. Licensee asserts that to now revoke Licensee's license based on his noncompliance is inconsistent with the Board's earlier termination of the emergency suspension in August of 2011, when it was noted that Licensee had come back into compliance.

26. As evidence of aggravating factors, Petitioner argues that the allegations underlying the Consent Order in Docket No. 09-HA00184 included patient complaints and notes that patients testified about Licensee's care in the hearing on the emergency suspension in that matter. Petitioner asserts that the purpose of the practice monitoring and x-ray review is to ensure proper treatment of patients, and that when monitoring ceased, patients were no longer protected. Additionally, Petitioner points to the agreed provision in the Consent Order which sets forth that revocation may be imposed upon a finding that Licensee has violated its terms.

27. In considering Licensee's arguments, the Board takes note that under K.S.A. 65-2838(c) of the Kansas Healing Arts Act, the standard for a temporary suspension in emergency proceedings requires a showing of imminent danger. Additionally, K.S.A. 77-536(b)(1) of the Kansas Administrative Procedure Act allows the agency to only take action "[t]o prevent or avoid the immediate danger to the public health." The emergency suspension imposed on July 25, 2011, served this purpose. Once Licensee resumed compliance, the immediate danger no longer existed and the Board appropriately terminated the temporary suspension. However, the Petition seeking revocation based on Licensee's conduct of failing to comply with the Consent Order remained subject to adjudication by the Board.

28. The allegations underlying the Consent Order in Docket No. 09-HA00184 asserted serious breaches of the standard of care and professional conduct with patients. A temporary suspension of Licensee's license during the pendency of the proceedings was upheld based on findings resulting, in part, from patient testimony during a multi-day, evidentiary hearing. The Board finds that while many of the terms of the Consent Order are remedial in their contents, the main purpose of the practice monitoring provisions in the Consent Order is to ensure that patients are treated appropriately. Similarly, the x-ray review requirement is intended to assure patients' x-rays are interpreted correctly so that patient treatment based on such interpretation is also appropriate.

29. K.S.A. 65-2801 provides the public policy rationale for regulating the healing arts as follows:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

30. When a licensee is allowed to continue practicing under probationary terms which provide for remedial measures and higher scrutiny, the Board is essentially assuring the public that, with those provisions in place, the licensee is as safe to practice as any other licensee. A licensee's failure to comply with the probationary terms raises critical concern for the Board about the ability to continue providing this assurance. Therefore, the Consent Order put

Licensee on notice that failure to comply could subject his license to revocation. On the surface, this may appear to be an overly harsh sanction considering that Licensee came back into compliance. However, if the Board took a laissez-faire approach to violations of its orders intended to protect the public, or issued only minor sanctions for violations, such orders would be of little consequence in accomplishing their objective.

31. It is of additional significance to the Board that Licensee's curative actions were taken only after his license was emergently suspended. Moreover, it is troubling that Licensee considered his position in the fee dispute with AMI to be of greater importance than the need to ensure his patient care was continuously monitored. When contemplating Licensee's ongoing ability to comply with the Consent Order, Licensee has shown the Board that he is unreliable. The Board considers these to be serious aggravating factors.

32. In mitigation, Licensee suggests that the substantive opinions of his practice monitor are very favorable and should be persuasive to the Board in evaluating whether revocation is an appropriate sanction. Upon review, the Board finds that the opinions regarding Licensee's substantive practice improvements are mixed and that they have little bearing on the specific compliance issues at hand in this matter.

III. CONCLUSIONS

33. The Board looks to the agency's "Guidelines for the Imposition of Disciplinary Actions" for guidance in exercising its discretion to determine the appropriate sanction in this matter. The Board concludes that a violation of a Board order which is intended to safeguard the public constitutes misconduct that is potentially harmful to patients and is disruptive to Board processes. The sanctioning goals for such an offense are to protect the public and punish the

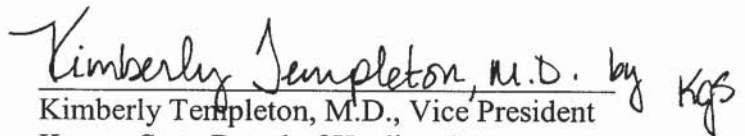
Licensee. The Board takes official notice of the agency record in KSBHA Docket No. 06-HA00092 and 09-HA00184. In light of Licensee's previous disciplinary actions and the aggravating circumstances noted above, the appropriate sanction for Licensee's violation of the Consent Order is revocation of licensure.

IV. ORDERS

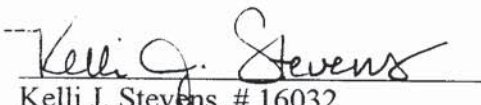
IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that upon reconsideration, the stay of revocation of Licensee's license is hereby lifted.

IT IS FURTHER ORDERED that upon reconsideration, the revocation of Licensee's license to practice chiropractic is hereby reinstated effective upon the filing of this Order.

IT IS SO ORDERED THIS 15th DAY OF MARCH, 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kimberly Templeton, M.D., Vice President
Kansas State Board of Healing Arts

Prepared by:


Kelli J. Stevens, # 16032
General Counsel
Ann Halferty, # 18458
Assistant General Counsel

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson. Lower Level-Suite A, Topeka, KS 66612.

NOTICE REGARDING UNLAWFUL CORPORATE PRACTICE OF CHIROPRACTIC

PLEASE TAKE NOTICE that your license to practice chiropractic in the State of Kansas has been revoked. As such, you may no longer lawfully hold an ownership interest in any professional business entity that provides chiropractic services in the State of Kansas.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **Final Order** was served this 16th day of March, 2012 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

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

N. Larry Bork
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 S. Kansas Avenue
Topeka, KS 66603
Attorney for Licensee

And a copy was hand-delivered to:

Stacy R. Bond, 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

Melissa Massey, Compliance Coordinator
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.

A handwritten signature in cursive script, reading "Kelli G. Stevens", is written over a horizontal line.