

BEFORE THE BOARD OF HEALING ARTS  
 OF THE STATE OF KANSAS

In the Matter of )  
 WASSE ZAFER, D.C. )  
 ) KSBHA Docket No. 12-HA00013  
 Kansas License No. 01-04097 )  
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**FINAL ORDER DENYING MOTION TO ADD TO  
 THE AGENCY RECORD AND DENYING MOTION TO STAY  
 EFFECTIVENESS OF FINAL ORDER PENDING JUDICIAL REVIEW**

NOW on this 22<sup>nd</sup> day of June 2012, comes before the Kansas State Board of Healing Arts (“Board”) the motions of Wasse Zafer, D.C. (“Licensee”) to add to the agency record, and to stay the effectiveness of the Final Order pending judicial review. Licensee appears in person, and by and through his counsel, N. Larry Bork of Goodell, Stratton, Edmonds & Palmer, L.L.P. Stacy R. Bond, Associate Litigation Counsel, appears on behalf of the Respondent Board.

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 in the above-captioned matter. After reviewing the file, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Wasse Zafer, D.C. (“Licensee”), was licensed to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04097 on February 8, 1992.
2. On or about December 6, 2010, Licensee entered into a Consent Order in lieu of conducting formal disciplinary proceedings for alleged violations of K.S.A. 65-2836 and 65-

2837 of the Kansas Healing Arts Act. The terms of the Consent Order are hereby incorporated by reference herein in their entirety.

3. On or about July 25, 2011, Petitioner filed a Petition in this matter alleging that Licensee was in violation of K.S.A. 65-2836(k) of the Kansas Healing Arts Act for violating terms of the Consent Order by failing to maintain a monitoring contract with Affiliated Monitors, Inc. (“AMI”), as required by the Consent Order; and, for failing to provide all x-rays taken by Licensee to a chiropractor who is board-certified in radiology for review and interpretation, as required by the Consent Order. The allegations set forth in the Petition are hereby incorporated by reference herein in their entirety. The Petition sought the revocation of Licensee’s license to practice chiropractic in the State of Kansas.

4. Licensee was served with a copy of the Petition on or about July 25, 2011, by United States Mail, first-class postage prepaid.

5. On or about August 10, 2011, Licensee filed an answer to the Petition seeking dismissal of the petition.

6. A conference hearing on the Petition took place on October 21, 2011, where Licensee admitted to the allegations set forth in the petition, but 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 showing that he was sending all x-rays that he takes to a chiropractor who is board-certified in radiology.

7. On or about October 27, 2011, the Board issued a Final Order revoking the licensure of Wasse Zafer, D.C. to practice chiropractic in the State of Kansas based on Licensee’s violations of a lawful order or directive of the Board.

8. On or about October 28, 2011, Licensee filed a 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.

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

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

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

12. 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.

13. On or about March 15, 2012, the Board issued a Final Order on Reconsideration reinstating the revocation of Licensee's license to practice chiropractic in the State of Kansas.

14. On or about April 12, 2012, Licensee filed with the Board a Motion for Addition to the Official Agency Record maintained by the Board for purposes of judicial review by the District Court. Licensee's motion requests the Board add AMI's Supplemental Monitoring Report, dated April 3, 2012, to the agency record on the grounds that it contains evidence in mitigation.

15. On or about May 21, 2012, Licensee also filed with the Board a Motion and Memorandum in Support to Stay the Effectiveness of the Final Order and its revocation of Licensee's license to practice chiropractic in the State of Kansas pending judicial review by the District Court. Licensee's request is based upon his assertion that there is no public protection concern which would justify denial of a stay.

16. On or about May 31, 2012, Respondent Board filed responses to both of Licensee's motions.

17. On or about June 18, 2012, Licensee filed Replies to both of Respondent's Responses to both of Licensee's Motions.

18. On or about May 30, 2012, 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 Motions was scheduled for June 22, 2012.

19. On June 22, 2012, the Board heard the parties' arguments on both motions filed by Licensee.

20. The Board concludes that denial of Licensee's Motion to Add to the Official Agency Record maintained by the Board is warranted because the letter from AMI was not in existence at the time the agency reconsidered the matter in February of 2012, and therefore is not evidence received or considered by the Board during the reconsideration hearing on February 24, 2012.

21. In evaluating Licensee's Motion to Stay, the Board notes that its previous termination of the emergency suspension in August of 2011, occurred before it considered the full merits of the Petition seeking revocation of licensure. The imposition of the emergency

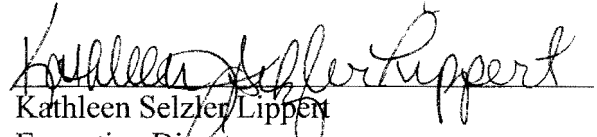
suspension pursuant to K.S.A. 77-536(b)(1) only served to “prevent or avoid immediate danger to the public health” due to the fact that Licensee was not presently being monitored or submitting all x-rays for review. Furthermore, the stay granted in November 2011, pending a hearing on reconsideration, was issued because the Board intended to entirely re-evaluate its decision to revoke Licensee’s license and hear further evidence in mitigation offered by Licensee. However, the Board’s subsequent decision to reinstate the revocation was based on the conclusion that Licensee is unreliable with respect to his ability to maintain compliance with the probationary terms on his license. As such, protection of the public necessitates that Licensee not be allowed to practice chiropractic. Reports indicating that he may have made some improvements in his practice during the time he was actually being monitored do not offset the Board’s concern about Licensee’s ability to consistently comply with the probationary measures imposed to ensure patient safety.

22. The Board concludes that denial of Licensee’s Motion to Stay is warranted as the facts and conclusions underlying the decision to revoke Licensee’s license demonstrate a substantial threat to the public health, safety or welfare and that denial necessary to protect the public from the same.

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Licensee’s Motion for Addition to Agency Record is hereby DENIED.

**IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Licensee’s Motion to Stay Effectiveness of Final Order revoking licensure of Dr. Zafer Pending Judicial Review is hereby DENIED.

IT IS SO ORDERED THIS 18<sup>th</sup> DAY OF JULY, 2012, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

  
Kathleen Selzler Lippert  
Executive Director  
Kansas State Board of Healing Arts

**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. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER DENYING MOTION TO ADD TO THE AGENCY RECORD AND DENYING MOTION TO STAY EFFECTIVENESS OF FINAL ORDER PENDING JUDICIAL REVIEW** was served this 18<sup>th</sup> day of July, 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  
*Licensee*

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

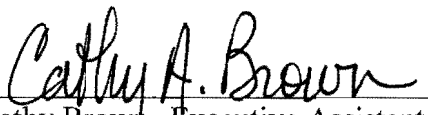
And a copy was hand-delivered to:

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.

  
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Cathy Brown, Executive Assistant