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KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 16-HA0059
Aaron L. Cheney, D.C.	)	
Kansas License No. 01-04880	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Tracy Fredley, Associate Litigation Counsel ("Respondent"), and Aaron L. Cheney, D.C. ("Licensee"), *pro se*, 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: 8237 NW Rochester Road, Topeka, KS 66617.

2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued License No. 01-04880 on approximately December 16, 2004. Licensee most recently renewed his license on December 26, 2015. Licensee's license to practice chiropractic in the State of Kansas is currently inactive.

3. On or about November 22, 2013, Licensee submitted to the Board a renewal application for an active license to practice chiropractic. Such application was deemed complete and filed with the Board on February 3, 2016.

4. 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.

5. 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. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. 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 substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. 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.

9. 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(b), as further defined by K.S.A. 65-2837(a)(3), to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*

10. On or about January 2, 2010, Licensee changed the status of his license from active to exempt. On or about December 31, 2015, Licensee changed the status of his license from exempt to inactive.

11. Licensee stated he has not actively practiced chiropractic since 2010. He was referred to take the National Board of Chiropractic Examiners ("NBCE"), Special Purposes Examination for Chiropractic ("SPEC").

12. Licensee successfully completed the examination in December 2015. Confidential

Confidential The Board received a transcript of Licensee's scores from NBCE on or about December 22, 2015. *See* Exhibit 1: Letter from NBCE with transcript of scores, dated December 16, 2015.

13. 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 a violation under K.S.A. 65-2836. More specifically, Licensee violated K.S.A. 2836(b), as further defined by K.S.A. 65-2837(a)(3), as a result of other behavior that demonstrates a manifest incapacity to practice the healing arts with reasonable skill and safety. The Board has previously found that lack of active practice is evidence of "other behavior". Here, Licensee has not been engaged in the active practice of chiropractic for approximately five (5) years. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license to practice chiropractic.

15. Additionally, K.S.A. 65-2809(f) states that a licensee may be required to complete additional testing, training or education as the Board deems necessary, if the licensee has been exempt for more than two years and has not been in the active practice of the healing arts elsewhere or engaged in a formal education program while in exempt status. K.A.R. 100-10a-5(b)(3) further states that if an exempt licensee "has held the exempt license for more than three years, the applicant *must* complete a program recommended by the Board." (Emphasis added). Because Licensee has held an exempt license since on or about January 2, 2010, to on or about December 31, 2015, Licensee is required to complete a program.

16. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

17. All pending investigation materials in KSBHA Investigative Case Number 14-00342 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

18. 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.*

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

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

27. 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.

28. 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. 77-505. 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.

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

30. This Consent Order is a **public non-disciplinary action.**

31. Licensee understands that a Temporary License shall be issued based upon Licensee's signing this Consent Order, paying the temporary license fee, abiding by the terms of this Consent Order, and upon an authorized Board signature. Licensee further understands that the Temporary License is only effective until a hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Licensee shall be issued a permanent licensure under the terms of this Consent Order.

32. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public non-disciplinary action against his license to practice chiropractic:

EDUCATION

33. Within six (6) months of signing this Consent Order, Licensee shall attend and successfully complete the in-person HIPAA Compliance and Documentation Guidelines course offered by Kansas Chiropractic Association, Phone: (785) 233-0697.

34. Within six (6) months of signing this Consent Order, Licensee shall also attend and successfully complete the in-person X-Ray Safety & Positioning for the Chiropractic Office 12-hour Certification Course offered by Dr. Ben O. Stiles, D.C., D.A.C.B.R. as a provider of continuing education by the Kansas Chiropractic Association; Phone: (816) 795-0300.

35. All costs associated with the above continuing education shall be at Licensee's own expense to include, but is not limited to, the cost of the course(s), the cost of travel to and from the course(s), and the cost of accommodations while attending the course(s).

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

37. Licensee shall provide proof of successful completion of each course to the Compliance Coordinator within thirty (30) days of completion of each course.

38. All requirements of the Consent Order will be submitted to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
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 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 3 day of Feb, 2016.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

2/3/2016
Date

Aaron L. Cheney, D.C.
Licensee

1-27-16
Date

PREPARED AND APPROVED BY:

Tracy Fredley, #25467
Associate Litigation Counsel
Kansas Board of Healing Arts
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Email: tfredley@ksbha.ks.gov

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 31st day of February, 2016, to the following:

Aaron L. Cheney, D.C.
Licensee
8237 NW Rochester Road
Topeka, KS 66617

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:

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

Cathy A. Brown