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DEC 30 2015

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of	)	
	)	Docket No. 15-HA00105
Frank D. Miller, D.C.	)	OAH Docket No. 15HA0014
Kansas License No. 01-04320	)	

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CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Petitioner”), by and through Reese H. Hays, Litigation Counsel, and Anne Barker Hall, Associate Litigation Counsel and Frank D. Miller, D.C. (“Licensee”), by and through his counsel, Robert L. Farmer, Nuss and Farmer, P.A., 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: 204 State Street, Fort Scott, Kansas 66701.
2. Licensee is or has been entitled to engage in the practice of chiropractic in the State of Kansas, having been issued license number 01-04320 on December 8, 1995, and having last renewed such license on January 15, 2015. 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. 65-2869.
3. On or about April 30, 2015, the Board filed a Petition for Discipline against Licensee’s State of Kansas License to practice chiropractic that alleged two (2) counts of violation of the Kansas Healing Arts Act.

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Consent Order  
Frank D. Miller, D.C.

4. On or about May 1, 2015, an Administrative Law Judge from the Office of Administrative Hearings was appointed as the Presiding Officer in this matter to conduct proceedings and issue an Initial Order based upon the Petitioner's petition for discipline. A Prehearing Conference was held in this matter and this matter was set for a formal hearing to occur on January 12-13, 2016 at the Bourbon County Courthouse, 210 S. National Ave., Ft. Scott, Kansas.
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 and 65-2838. 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 possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
8. The terms and conditions of this 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, to take action with respect to Licensee's license to practice chiropractic under the Kansas Healing Arts Act, K.S.A.65-2801, *et seq.*
10. This Consent Order incorporates, herein by reference, the facts as stated in the Petition for discipline that was filed with the Board on April 30, 2015. In addition, the following facts are presented:
  - a. In early 2013, Licensee entered into a romantic relationship with an established patient, Patient 1. The romantic relationship became intimate by March 2013. Licensee did not terminate that physician/patient relationship when his personal relationship evolved into a romantic relationship with Patient 1; but rather, he continued to see Patient 1 and provide her care and treatment until August 2013. Additionally, after the establishment of the physician/patient relationship, between January and August 2013, Licensee and Patient 1 exchanged numerous electronic messages of a sexual, romantic, and personal nature.
  - b. Licensee's patient record documentation was inadequate in relation to the patient records he created for the aforementioned patient. More specifically, Licensee failed to maintain an adequate patient record for Patient 1 that accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results. Furthermore,

Licensee failed to authenticate his alleged entries in Patient 1's medical records until electronically signing the records on or about October 8, 2013, almost one (1) year after the first appointment, resulting in Patient 1's medical records not being deemed a written patient record during her care and treatment pursuant to K.A.R. 100-24-1(e).

11. 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.
12. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2836.
13. Licensee violated K.S.A. 65-2836(b), in that Licensee has committed acts of unprofessional and dishonorable conduct by entering into a romantic relationship with a patient.
14. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(16), in that Licensee has committed acts of unprofessional and dishonorable conduct by committing an act of sexual misconduct which exploited the licensee-patient relationship when he entered into a romantic relationship with a patient.
15. Licensee violated K.S.A. 65-2836(b), as set forth in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records which accurately describe the

services rendered to Patient 1, including patient histories, pertinent findings, examination results and test results.

16. Licensee violated K.S.A. 65-2836(k), in that Licensee has violated any lawful rule and regulation promulgated by the board or violated any lawful order or directive of the board. Specifically, Licensee violated:

a. K.A.R. 100-24-1(a)-(b), in that Licensee failed to maintain an adequate record for Patient 1 to include; but not be limited to, an initial examination or vital signs at each visit.

b. K.A.R. 100-24-1(c), in that Licensee failed to authenticate his alleged entries in Patient 1's medical records until electronically signing the records on or about October 8, 2013, almost one (1) year after the first appointment, resulting in Patient 1's medical records not being deemed a written patient record during her care and treatment pursuant to K.A.R. 100-24-1(e).

17. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee'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.

18. 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.

19. All pending investigation materials in KSBHA Investigative Case Number 13-00647 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 29

authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

20. 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.*
21. 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.
22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
28. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
29. 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.
30. 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.
31. This Consent Order constitutes **public disciplinary** action.
32. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

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

### SUSPENSION

34. Licensee's license to practice as a chiropractor in the State of Kansas shall be suspended for a period of no less than one (1) year. Such suspension will be effective upon approval of this Consent Order by the Board.

35. After serving all or part of the suspension period, Licensee agrees to successfully complete no less than one (1) year probation pursuant to the conditions outlined below.

36. Licensee may motion the Board for a stay of the suspension or termination of the suspension as follows:

- a. A motion for termination of the suspension may only be filed with the Board after Licensee serves at least one (1) year suspension. If granted, Licensee must then successfully complete no less than one (1) year of probation pursuant to the conditions outlined below; OR
- b. A motion for a stay of any portion of the suspension period may not be considered by the Board until Licensee serves at least sixty (60) days of the suspension. If a stay of any portion of the suspension is granted, Licensee must then successfully complete no less than one (1) year of probation pursuant to the conditions outlined below. Licensee may file his motion to stay any portion of the suspension with the Board prior to serving sixty (60) days suspension, but Licensee shall serve at

least sixty (60) days suspension prior to the stay of any remaining portion of the suspension period is considered and granted by the Board.

37. Licensee agrees that the burden of proof by clear and convincing evidence shall be on Licensee to show sufficient rehabilitation to justify lifting the suspension or a stay of the suspension of his license to practice as a chiropractor. Further, Licensee's request will be governed by *Vakas v. The Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement. If the Board determines Licensee's suspension of his license to practice as a chiropractor should not be lifted, Licensee shall not be eligible to reapply for lifting or a stay of the suspension for six (6) months from the effective date of the denial of all or part of any such request.

38. Further, prior to being granted a stay or termination of his suspension, Licensee shall enter into, complete, and pass all five (5) topic areas of the EBAS Essay Examination that is put on by Ethics and Boundaries Assessment Services, LLC. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. Licensee further agrees that any and all results will be presented to the Board at the time of his request to stay or terminate his licensure suspension. The results shall be sent to:

Kansas State Board of Healing Arts  
Attn: Compliance Coordinator  
800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612

39. Licensee agrees that any motion to stay the suspension of his license, terminate the suspension of his license, and terminate the probation of his license shall be in writing and filed with the Board at the following address:

Kansas State Board of Healing Arts  
Attn: Executive Director  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

40. All proceedings conducted by the Board on a request for a stay or termination of the suspension shall be in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et. seq.* and shall be reviewable in accordance with the Kansas Judicial Review Act, K.S.A. 77-601, *et. seq.*

#### **PROBATION: EDUCATION**

41. As a term of **Probation**, Licensee shall attend and successful complete the continuing education course entitled “Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers” put on by the Continuing Medical Education Program, School of Medicine, Case Western Reserve University.
- a. Licensee shall attend and complete the scheduled seminar on or before November 11, 2016, unless otherwise approved by the Board and/or the Appointed Disciplinary Panel Member.
- b. On or before, January 15, 2016, Licensee shall notify the Compliance Coordinator in writing of the course date Licensee has registered to attend the Case Western “Intensive Course in Medical Documentation: Clinical, Legal

and Economic Implications for Healthcare Providers.” Licensee shall provide proof of successful completion for the Case Western seminar to the Compliance Coordinator within thirty (30) calendar days of successfully completing the seminar.

- c. All required notifications to the Compliance Coordinator shall be made in writing and shall be submitted to:

Kansas State Board of Healing Arts  
Attention: Compliance Coordinator  
800 SW Jackson, Lower Level-Suite A.  
Topeka, Kansas 66612

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

**PROBATION: PRACTICE CHAPERONE AND MONITOR**

43. As a term of **Probation**, for a period of at least one (1) year, Licensee shall not practice chiropractic unless he has a chaperone in the room at all times he is consulting, examining, or treating a female patient. Licensee agrees to create a Board-approved chaperone protocol that includes daily log sheets of his patient contact to be filled out by his designated chaperone. The chaperone protocol will be submitted to the Board for approval. The Board designates the Disciplinary Panel’s Appointed Member to approve or disapprove of the chaperone protocol. Licensee shall bear all expenses associated with the patient chaperone.
44. Furthermore, the chaperone shall be required to utilize and maintain the Board’s approved chaperone daily log identifying all female patients seen in the office that day and certifying their presence for all female patients seen in the office that day. Such daily logs must be submitted to the Board and to Licensee’s practice monitor

on a monthly basis and must be received on or before the 15<sup>th</sup> day of the following month. Licensee is responsible for ensuring that the daily logs are submitted to the Board.

45. Within ten (10) days of the approval of the Consent Order, Licensee shall propose a professionally-licensed health professional to serve as his chaperone. Such information shall include the proposed chaperone's name, a description of the proposed chaperone's professional employment history, and a copy of the proposed chaperone's Kansas professional license. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the chaperone. The chaperone must speak with a representative of the Board, or its designee, prior to approval.

46. As a term of **Probation**, for the period of at least one (1) year, Licensee agrees to have a Board-approved practice monitor, who is another Kansas-licensed chiropractor, to review the practices and procedures of Licensee's office to ensure compliance with community and ethical standards. Furthermore, the practice monitor will review all of the chaperone's daily log sheets of patient contact to determine whether Licensee is complying with all community and ethical standards for patient contact. Licensee shall bear all expenses associated with the practice monitor.

47. Within ten (10) days of the approval of the Consent Order, Licensee shall submit the curriculum vitae of a proposed practice monitor for approval of the Board. Licensee shall propose a Kansas licensed chiropractor to serve as his practice

monitor. The Board designates the Disciplinary Panel's Appointed Member to approve or disapprove of the monitoring physician.

48. The practice monitor shall submit quarterly reports (July 15<sup>th</sup>, October 15<sup>th</sup>, January 15<sup>th</sup>, and April 15<sup>th</sup>) to the Board on a form provided by Board staff. Such reports shall include a summary of whether Licensee is seeing patients, documenting in the medical record, treating patients appropriately, and prescribing medications in an appropriate and timely manner. Licensee is responsible for ensuring that the practice monitor's reports are submitted by the quarterly deadlines.

49. All reports required pursuant to this Consent Order shall be submitted to:

Kansas State Board of Healing Arts  
Attention: Compliance Coordinator  
800 SW Jackson, Lower Level-Suite A.  
Topeka, Kansas 66612

#### **PROBATION TIMEFRAME**

50. The above terms of probation are not self-terminating. After a period of one (1) year, Licensee may request modification or termination of the provisions. This request shall be in the form of a written motion of a request for termination that will be filed in this matter and set for a conference hearing to be considered by the full Board at one of their regularly scheduled meetings.

51. All proceedings conducted by the Board on a request for termination of any or all of the terms of probation shall be in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et. seq.* and shall be reviewable in accordance with the Kansas Judicial Review Act, K.S.A. 77-601, *et. seq.*

52. For any period of time that Licensee is not actively practicing chiropractic in Kansas, the terms of probation will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

**COSTS AND FINES**

53. Licensee is hereby ordered to pay the Board's incurred COSTS in conducting these proceedings under the Kansas Administrative Procedure Act in the amount of \$460.50. The total amount of \$460.50 shall be due on or before January 15, 2016.

54. Licensee shall make all payments payable to the Kansas State Board of Healing Arts and send all payments to:

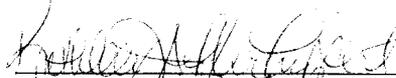
Kansas State Board of Healing Arts  
Attn: Compliance Coordinator, ,  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

**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.

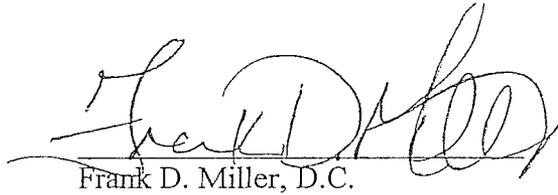
**IT IS FURTHER ORDERED** that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

**IT IS SO ORDERED** on this 22 day of Dec, 2015.

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

  
\_\_\_\_\_  
Kathleen Selzler Lippert  
Executive Director

Dec 22 2015  
\_\_\_\_\_  
Date



Frank D. Miller, D.C.  
Licensee

10-28-15  
Date

PREPARED AND APPROVED BY:

\_\_\_\_\_  
Reese H. Hays, #22700  
Litigation Counsel  
Anne Barker Hall, #23672  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson Ave, Lower Level Ste A  
Topeka, Kansas 66612  
P: (785) 296-0961 (telephone)  
F: (785) 368-8210 (fax)  
[rhays@ksbha.ks.gov](mailto:rhays@ksbha.ks.gov)  
[ahall@ksbha.ks.gov](mailto:ahall@ksbha.ks.gov)

AGREED TO BY:



\_\_\_\_\_  
Robert L. Farmer, # 7459  
Nuss & Farmer, P.A.  
Security Professional Center  
Fourth and Judson  
P.O. Box 630  
Fort Scott, Kansas 66701-0630

**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 30 day of December, 2015, to the following:

Frank D. Miller, D.C.  
Licensee  
204 State Street  
Fort Scott, Kansas 66701

And a courtesy copy was placed in the U.S. mail, postage prepaid, to:

Robert L. Farmer  
Attorney for Licensee  
Nuss & Farmer, P.A.  
Security Professional Center  
Fourth and Judson  
P.O. Box 630  
Fort Scott, Kansas 66701-0630

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

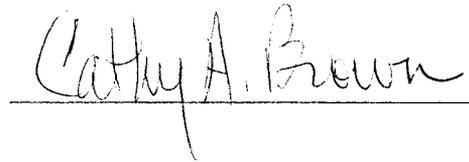
And a copy was hand-delivered to:

Reese H. Hays  
Litigation Counsel  
Anne Barker Hall  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson Ave, Lower Level Ste A  
Topeka, Kansas 66612

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

Compliance Coordinator  
Kansas Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

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

A handwritten signature in cursive script that reads "Cathy A. Brown". The signature is written in black ink and is positioned above a solid horizontal line.