

BEFORE THE NORTH CAROLINA
BOARD OF CHIROPRACTIC
EXAMINERS

North Carolina Board of Chiropractic Examiners, Petitioner, v. John P. Dudley, Respondent.	<u>Informal Settlement Agreement</u>
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This INFORMAL SETTLEMENT AGREEMENT, made between the N.C. Board of Chiropractic Examiners (“Board”), acting through John Hammer, D.C., in his official capacity as Board Secretary, in the above-captioned matter, and John P. Dudley, D.C. (“Respondent”) (collectively, “Parties”). The Parties agree, for the purposes of resolving the contested case pending before the Office of Administrative Hearings in Case 19 BOC 01161, to the following:

WITNESS THAT:

WHEREAS, the Board received a complaint submitted by Rachel Alvarez, dated May 24, 2018, which alleged that while working as an intern and later an employee at Respondent’s place of business, Ms. Alvarez also was a chiropractic patient undergoing treatment performed by Respondent. Ms. Alvarez, therefore, is entitled to the statutory and regulatory protections afforded to any patient. Ms. Alvarez alleged that she was subjected to various acts of lewd or immoral conduct toward her by Respondent. Ms. Alvarez further alleged that Respondent allowed Ms. Alvarez, who is not licensed to practice chiropractic, to perform certain chiropractic treatments and therapies on Respondent;

WHEREAS, on July 12, 2018, the Board notified Respondent of Ms. Alvarez’s complaint and noticed a Probable Cause Hearing, which did in fact occur as scheduled on September 27, 2018;

WHEREAS, the Board’s Review Committee heard from both Respondent and Ms. Alvarez during the Probable Cause Hearing on September 27, 2018, and based on the information and statements presented during such hearing, determined that probable cause existed tending to show that Ms. Alvarez’s allegations against Respondent, if proven, would constitute a violation of the statutes and regulations enforced by the Board and require disciplinary action;

WHEREAS, on February 28, 2019, the Board initiated an action in the Office of Administrative Hearings (“OAH”), styled North Carolina Board of Chiropractic Examiners v.

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John P. Dudley, Case Number 19 BOC 01161. In its Petition, the Board alleged that Ms. Alvarez was both an employee and patient of Respondent when Respondent engaged in alleged lewd or immoral conduct toward her, and that such actions or omissions constituted a lack of good moral character, violating N.C. Gen. Stat. §§ 90-154(b)(8) and (21), respectively. In addition, the Board alleged that Respondent aided and abetted the unlicensed practice of chiropractic by allowing Complainant to perform certain activities that fall within the scope of the practice of chiropractic; and

WHEREAS, the parties wish to resolve and settle this matter without further controversy.

NOW, THEREFORE, pursuant to N.C. Gen. Stat. § 150B-22, which mandates that whenever possible disputes between a regulatory agency and another person that involves the person's rights, duties or privileges to be settled through informal procedure, and pursuant to N.C. Gen. Stat. § 150B-41(c), which authorizes settlement of a contested case by consent, the Parties hereby agree and stipulate as follows:

I. Jurisdiction:

The Board is an occupational licensing board of the State of North Carolina, organized under N.C. Gen. Stat. § 90-139, *et seq.* The Board has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 90-154 *et seq.*, N.C. Gen. Stat. § 150B-1, *et seq.*, and 21 N.C. Admin. Code 10 .0103, *et seq.*

II. Identification of Licensee/Respondent:

Respondent practices at Dudley Chiropractic & Acupuncture, located at 301 S. Broad Street, Mooresville, NC 28115. Respondent holds North Carolina license number 3883, which was first issued on 07/26/2008, and which has an expiration date of 1/07/2020.

III. Waiver of Rights:

In order to resolve this matter by an Informal Settlement Agreement, Respondent agrees that the Board staff and counsel may discuss this Informal Settlement Agreement with Dr. Hammer in his role as Board Secretary and any subcommittee that may be assigned to this matter *ex parte* whether or not the Board accepts this Informal Settlement Agreement as written.

IV. Stipulation to Facts:

The Parties stipulate to the following facts:

A. The Board received a complaint submitted by Rachel Alvarez, dated May 24, 2018, alleging violation of:

1. N.C. Gen. Stat. § 90-154(b)(8) – lewd conduct;
2. N.C. Gen. Stat. § 90-154(b)(7) – not rendering acceptable care;

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3. N.C. Gen. Stat. § 90-154-3

4. N.C. Gen. Stat. § 90-154(6) – allowing unlicensed person to perform chiropractic; and

5. N.C. Gen. Stat. § 90-154(b)(21) – committing an act that shows lack of good moral character.

- B.** The Parties met for a Probable Cause Hearing on September 27, 2018 and both parties called and cross-examined witnesses.
- C.** The Board determined that probable cause existed tending to show that Ms. Alvarez's allegations against Respondent, if proven, would constitute a violation of the statutes and regulations enforced by the Board and require disciplinary action.
- D.** On February 28, 2019, the Board initiated an action in the Office of Administrative Hearings ("OAH"), styled North Carolina Board of Chiropractic Examiners v. John P. Dudley, Case Number 19 BOC 01161.
- E.** The parties engaged in extensive written discovery and motions practice including, but not limited to, the depositions of Rachel Alvarez and Respondent.

V. Stipulated Informal Settlement Agreement:

A. Stipulation to Applicable Sections of Law:

Respondent understands the allegations set forth in Paragraphs IV.A.-E. above, including all subparts, if proven at a hearing, would violate N.C. Gen. Stat. §§ 90-154(b)(4), (6), (7), (8), & (21) and 90-154.3; and, therefore, would constitute grounds for disciplinary action.

B. Stipulation to Sanction

In lieu of proceeding to hearing, the Parties hereby enter into this Informal Settlement Agreement, whereby Respondent and the Board agree to the following terms:

1. Respondent admits the **Stipulation to Facts** above;
2. Respondent shall comply with the statutes and guidelines for the practice of chiropractic care in North Carolina;
3. Respondent shall voluntarily surrender his license to practice chiropractic for a period of at least six (6) months, to commence within 60 days following the execution of this Agreement. If Respondent complies with every term contained within this Agreement and otherwise complies with all applicable statutes and rules enforced by the Board during the six (6) month surrender period, then Respondent's license to practice shall be automatically reinstated at the conclusion of the surrender period;

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4. Following reinstatement of his license to practice chiropractic after the surrender period, Respondent shall be placed on probation for a period of three (3) years, to commence after such time as Respondent has completed his 6-month licensure surrender. Throughout the period of his probation, Respondent shall ensure that a chiropractic assistant or fellow chiropractic doctor licensed by the Board is present for any chiropractic care, treatment, or therapies provided by Respondent to any female patient. The identity of such individual must be disclosed to the Board and such individual must acknowledge and attest to their understanding of this requirement as a precondition of Dr. Dudley's licensure reinstatement following the surrender period. In addition, Dr. Dudley shall make a note in the patient records of all female patients he treats during the probationary period that he has complied with this provision;
5. Respondent shall undergo therapy with Dr. Klosek for at least three (3) years following the execution of this Agreement. Dr. Klosek shall, for the duration of the probationary period, provide written reports to the Board regarding Respondent's progress in therapy at least once every six (6) months and at any other time upon request of the Board. Respondent shall, for the duration of the 3-year period, remain responsible for ensuring that Dr. Klosek provides written reports to the Board regarding Respondent's progress in therapy at least once every six (6) months and at any other time upon request of the Board;
6. Respondent shall, at his expense, successfully complete the Ethics and Boundaries Essay Exam administered by Ethics and Boundaries Assessment Services LLC (<http://www.ebas.org/Files/EBASExamInfoBrochure.pdf>), including the following four components of such exam: Boundary Violations, Fraud, Professional Standards, and Unprofessional Conduct. Successful completion of the Ethics and Boundaries Essay Exam as set forth in this paragraph shall be a precondition of Dr. Dudley's licensure reinstatement following the surrender period;
7. If, during the period of probation, any new, subsequent allegation of lewd or immoral actions toward a patient is found to be substantiated by Board staff following an investigation, Respondent agrees that the Board may automatically and summarily suspend his license to practice chiropractic and notice the matter for a hearing within six (6) weeks of such suspension; and
8. Respondent shall reimburse the Board for a portion of its costs and attorneys' fees in the prosecution of this matter, in the amount of \$25,000, payable as follows: \$3,000 payable upon execution of this Agreement and \$5,500 payable every eight (8) months thereafter, beginning 45 days after the 6-month surrender period is completed.

VII. Effective Date

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The effective date of this Informal Settlement Agreement is the date on which it is signed by the Dr. Hammer, or his designee.

VIII. Public Record

The parties agree that this Informal Settlement Agreement is a public record, as required by N.C. Gen. Stat. § 132-1.3. As such, this agreement is admissible in future disciplinary proceedings. Other related documents that are part of the investigative file and are trial preparation materials are not public records, pursuant to N.C. Gen. Stat. § 132-1.9.

IX. Adverse Action Reporting

The parties agree that this Informal Settlement Agreement is a disciplinary agreement and contains an adverse action, and, therefore, will be reported to the National Practitioners Data Bank.

X. Respondent's Contact Information

Within 21 days of the effective date of this Informal Settlement Agreement, Respondent shall, via electronic and USPS first-class mail, submit to the Board his: 1) current residential address and phone number; 2) primary mailing address, if different from the residential address; and 3) Business address(es) and business phone number(s), if any. Respondent shall notify the Board by certified letter, return receipt, within one week of any changes in Respondent's contact information during the pendency of this Informal Settlement Agreement.

XI. Compliance with Informal Settlement Agreement

- A) This Informal Settlement Agreement and its provisions are effective on the date of signature by the Board's Presiding Officer over this proceeding.
- B) Any modification of this Informal Settlement Agreement must be pre-approved in writing by the Board and signed by the Board Secretary or his or her designee before it may be effective.
- C) Failure by Respondent to meet the terms of this Informal Settlement Agreement, either in substance or in timing, is a violation of N.C. Gen. Stat. § 90-154(a)(6).
- D) If, during the 3-year period of Respondent's probation, any new, subsequent allegation of lewd or immoral actions toward a patient is found to be substantiated by Board staff following an investigation, Respondent agrees that the Board may automatically and summarily suspend his license to practice chiropractic and notice the matter for hearing within six (6) weeks of such suspension.
- E) Should circumstances arise that affect Respondent's ability to remain in compliance, the Respondent shall immediately notify the Board in writing by

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certified mail, fully describing the situation along with any attendant request for Board consideration.

- F) Communications with Respondent regarding compliance with this Informal Settlement Agreement may occur between the Board staff and Respondent.

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WE CONSENT:



John P. Dudley, D.C.
Respondent

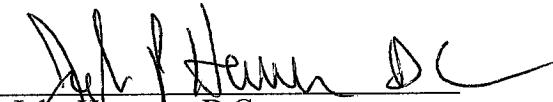
12-11-19
Date



12.11.19

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Date



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12-17-19
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12-17-19
Date