

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA
BOARD OF CHIROPRACTIC
EXAMINERS

N.C. STATE BOARD OF)
CHIROPRACTIC EXAMINERS,)
Petitioner,)
v.)
DAVID NYGAARD, D.C.,)
Respondent,)

CONSENT ORDER

This CONSENT ORDER, made between the N.C. Board of Chiropractic Examiners (“Board”), acting through John Hammer, D.C., in his official capacity as the Board member who presided over the Board’s Disciplinary Review Committee meeting (the “Committee” and “DRC”) on August 11, 2022 and August 25, 2022 of David Nygaard, D.C. (“Respondent”) (collectively “Parties”). The Parties agree, for the purposes of resolving a pending disciplinary action and potential hearing against Respondent to the following:

WITNESS THAT:

WHEREAS, Respondent holds a North Carolina Doctor of Chiropractic License, license number 2285, which was first issued on November 12, 1995, with an expiration date of December 31, 2022, and is currently active;

WHEREAS, Respondent is the Organizer and Registered Agent of Atlas Chiropractic of Asheville, organized and registered to do business under the laws of the State of North Carolina, with its principal place of business at 109 Broadway Street, Asheville, North Carolina;

WHEREAS, the Board received a complaint submitted by Farrah Nash, on March 26, 2022. The complaint alleged the Respondent of unethical conduct. Ms. Nash reported that Respondent often made treatment errors related to chiropractic care. Ms. Nash also reported in the complaint that Respondent had a history of drug use and drug addiction;

WHEREAS, the Board staff investigated Patient’s allegations and compiled its findings into an Investigative Report;

WHEREAS, the Board’s Investigator interviewed Ms. Farrah Nash, following the submission of the complaint and included the following in the Investigative Report:

- A. Ms. Nash reported to the Board Investigator that she was employed at Atlas Chiropractic of Asheville as the Front Desk Receptionist from May 2021, through December 2021.

- B. Ms. Nash reported to the Board Investigator that Respondent administered treatment to a patient by placing the patient on cervical decompression when the patient should have received lumbar decompression.
- C. Ms. Nash reported to the Board Investigator that Respondent would behave in a confrontational manner towards patients and resulted in some patients discontinuing treatment with Respondent.
- D. Ms. Nash reported to the Board Investigator that Respondent has a history of drug use and drug addiction.

WHEREAS, during the DRC on August 11, 2022, Respondent admitted to a romantic, physical relationship with Christy Thomas, who was also being treated by Respondent as a patient of Atlas Chiropractic. Respondent denied the allegations of drug use and use of pornography in the office.

WHEREAS, the Board's Investigator interviewed Christy Thomas, following the conclusion of the DRC Meeting on August 11, 2022, and included the following in the amended version of the Investigative Report:

- A. Ms. Thomas reported to the Board Investigator that she was previously employed at Atlas Chiropractic of Asheville; and
- B. Ms. Thomas reported to the Board Investigator that during her employment at Atlas Chiropractic and on several occasions, she smelled marijuana on Respondent when he came into work when patients were scheduled; and
- C. Ms. Thomas reported to the Board Investigator that she witnessed Respondent smoking marijuana while they were travelling to a chiropractic meeting in Atlanta, Georgia in October 2021; and
- D. Ms. Thomas reported to the Board Investigator that she observed marijuana in Respondent's small office located between exam room and X-ray room at Atlas Chiropractic; and
- E. Ms. Thomas reported to the Board Investigator that Respondent verbally admitted to staff that he had a pot addiction and was a recovering cocaine addict; and
- F. Ms. Thomas confirmed that she corrected mistakes involving Dr. Nygaard positioning a patient for cervical decompression when the patient should have received lumbar decompression; and
- G. Ms. Thomas provided the Board Investigator with the personal journal entries belonging to the Respondent. The journal entries reference Dr. Nygaard's use of

marijuana, feelings of obsession towards Ms. Thomas and various entries of uncontrollable negative interactions with patients.

WHEREAS, during the DRC Meeting on August 25, 2022, Respondent denied marijuana in the workplace, stated that he had not used marijuana within the past four (4) months; and was willing to undergo drug testing to prove his abstinence.

WHEREAS, Dr. Hammer, in his role as the Board member presiding over the DRC in the above-referenced matter, has determined that the allegations contained within Ms. Farrah's complaint against Respondent, if proven at hearing, could constitute one or more violations of the statutes and regulations administered by the Board and, thus, warrant disciplinary action;

WHEREAS, the Parties wish to resolve and settle this matter without a contested case hearing and enter into this Consent Order.

NOW, THEREFORE, 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 Atlas Chiropractic of Asheville, located at 109 Broadway Street, Asheville, North Carolina. Respondent holds North Carolina Doctor of Chiropractic License, license number 2285, which was first issued on November 12, 1995, with an expiration date of December 31, 2022, and is currently active.

III. Waiver of Rights:

In order to resolve this matter by Consent Order, Respondent agrees that the Board staff and counsel may discuss this Consent Order with Dr. Hammer in his role as the Presiding Board Member of this matter and any subcommittee that may be assigned to this matter *ex parte* whether or not the Board accepts this Consent Order as written.

IV. Stipulation to Facts:

The Parties stipulate to the following facts:

- A. On April 4, 2022, the Board received a complaint against the Respondent.
- B. The complaint alleged that Respondent committed actions of unethical conduct. Based on the allegation, Board staff initiated an investigation.

- C. Board Investigator Lisa Hicks-Jones issued an Investigation Report which concluded:
- i. If it is proven that Respondent was deceptive to the DRC during the Meeting, he could be in violation of N.C. Gen. Stat. § 90-154 (b)(19) Concealing information from the Board or failing to respond truthfully and completely to an inquiry from the Board concerning any matter affecting licensure.
 - ii. If it is proven that Respondent has a dependency to marijuana, he could be in violation of N.C. Gen. Stat. § 90- 154 (b)(3) Physical, mental, emotional infirmity, including addiction to or severe dependency upon alcohol or any other drug that impairs the ability to practice safely.

V. Stipulation to Applicable Sections of Law:

Respondent admits the allegations set forth in Paragraph IVA-C above, including all subparts, if proven at hearing, could constitute violations of N.C. Gen. Stat. § 90-154(b)(3) and (19). If proven, these violations could constitute grounds for disciplinary action.

VI. Stipulation to Sanction:

In lieu of proceeding to a hearing, the Parties hereby enter into this Consent Order, whereby Respondent and the Board agree to the following terms:

- A. Respondent admits to the **Stipulation to Facts** above;
- B. Respondent shall comply with the statutes and guidelines for the practice of chiropractic care in North Carolina;
- C. Respondent shall cease and desist from actions that would result in a violation of N.C. Gen. Stat. § 90-154 and 10 NCAC 10 .0504
- D. Respondent shall, at his expense for a period of twelve (12) months from the Effective Date of this Consent Order, submit to random full panel drug screenings, to include alcohol, at an organization approved by the DRC. The results of each random screening will be sent directly to the Board staff. Respondent shall register with Greg Elam, MD, within ten (10) days of the execution of this Consent Order. Any positive results for alcohol or illegal substances, other than valid prescription medication, will be considered a cause for additional disciplinary measures by the Board.
- E. Respondent shall, at his own expense and within forty-five (45) days of the Effective Date of this Consent Order, obtain 2 hours of coaching with Dr. Tony

Hamm on Medicare documentation, billing, and proper documentation of non-covered services. Dr. Tony Hamm's email address is thamm1100@gmail.com.

F. Respondent shall, at his own expense and no later than sixty (60) days after the Effective Date of the Consent Order, complete and pass the following essays offered by Ethics and Boundaries Assessment Services (EBAS):

- a. one (1) essay focusing on the area of Boundary Violations;
- b. one (1) essay focusing on the area of Unprofessional Conduct;
- c. one (1) essay on Substance Abuse;
- d. one (1) essay on Fraud; and
- e. one (1) essay on Professional Standards.

Information on these essays can be found at <http://www.ebas.org>. Respondent shall provide the EBAS administrators of the exam with a copy of this notification prior to the beginning of the exam. Respondent shall also complete all necessary waivers to allow Board staff to communicate directly with EBAS as needed and shall submit proof of satisfactory completion along with a copy of his written report to the Board. On the EBAS application, Respondent shall designate the topic essays set forth above.

G. Respondent shall cease and desist from any future contact with Christy Thomas.

VII. Effective Date:

The Effective Date of this Consent Order is the date on which it is signed by Dr. Hammer, or his designee.

VIII. Public Record:

The parties agree that this Consent Order is a public record, as defined 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.

This Consent Order will not be published on the Board's website unless Respondent is unable to successfully complete and comply with all stipulations described above.

IX. Adverse Action Reporting:

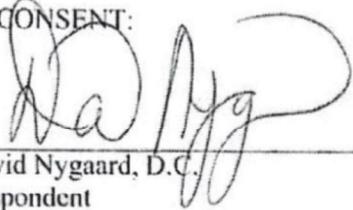
The parties agree that if Respondent successfully completes and complies with all stipulations described above, this Consent Order shall be converted to a non-disciplinary Letter of Caution and will not be reported to the National Practitioners Data Bank ("NPDB"). If, however, Respondent fails to comply with the above, additional disciplinary procedures will be instituted as soon as practical.

X. Compliance with Consent Order:

- A. This Consent Order and its provisions are effective as of the date it is signed by Dr. Hammer or his designee;
- B. Any modification of this Consent Order must be pre-approved in writing by the Board and signed by the Board President or his or her designee prior to taking effect;
- C. Failure by Respondent to meet the terms of this Consent Order, including the Stipulation to Sanction set forth above, either in substance or in timing, is a violation of N.C. Gen. Stat. § 90-154(a)(6);
- D. If during the term of this Consent Order, the Board staff receives evidence that Respondent violated any of the above conditions, the Board staff may schedule a Show Cause Hearing for a determination of the violations;
- E. Communications with Respondent regarding compliance with this Consent Order may occur between Board staff and Respondent.

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WE CONSENT:



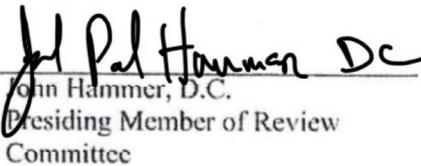
David Nygaard, D.C.
Respondent

11/18/22
Date



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11/18/22
Date



John Hammer, D.C.
Presiding Member of Review
Committee

11-21-22
Date



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11.18.2022
Date