

BEFORE THE NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

N.C. BOARD OF CHIROPRACTIC)
EXAMINERS)
) **CONSENT ORDER**
 v.)
)
BRIAN HEER, D.C.,)
Respondent)

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 December 01, 2022, and Brian Heer, D.C. (“Respondent”) (collectively, “Parties”). The Parties agree, for the purposes of resolving a pending disciplinary action and potential contested case against Respondent, to the following:

WITNESS THAT:

WHEREAS, Respondent holds a North Carolina Doctor of Chiropractic License, license number 2939, which was first issued on April 04, 2001.

WHEREAS, On July 12, 2022, the NC State Board of Chiropractic Examiners (the Board) received an email correspondence from Ashly Smith, D.C., informing the Board of possible impairment conduct of Dr. Brian Heer.

WHEREAS, during the DRC held on December 01, 2022, Respondent was forthcoming about his treatment and sobriety and the desire to maintain his North Carolina Doctor of Chiropractic License.

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 the complaint, if proven, could constitute one or more violations of the statutes and regulations administered by the Board and, thus, warrant disciplinary action; and

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 was first issued a license by the Board on April 04, 2001.

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 July 12, 2002, the Board received an email correspondence from Ashly Smith, D.C., informing the Board of possible impairment conduct of Respondent.
- B. On August 10, 2022, the DRC requested that the Respondent provide details of his history of substance use/abuse and history of treatment/rehabilitation by August 19, 2022. This deadline expired without a response from Respondent.
- C. Board staff were unsuccessful in contacting Respondent, via email on August 19, 2022, September 07, 2022, and September 13, 2022.
- D. Board staff were unsuccessful in contacting Respondent, via phone on September 07, 2022, September 13, 2022, and September 22, 2022.
- E. On November 02, 2022, the Board office received a response to the complaint from Respondent, detailing that he entered in a rehabilitation treatment center in Wilmington, N.C. While at the treatment center Respondent was did not have phone or internet privileges, and Respondent was unaware of the correspondence sent from the Board. Respondent further noted that he wanted to keep his chiropractic license active, although he could not practice locally for five years due to a non-compete clause.
- F. On November 03, 2022, the Board office issued a complaint resolution notice to Respondent, outlining options to put his license in an active retired status. The notice requested the Respondent to complete a Request for NC Doctor of Chiropractic License in Retired Status or Inactive Status document and return to the Board office by November 11, 2022. The Board office did not receive a response from Respondent.
- G. On November 15, 2022, the Board office issued a Disciplinary Review Committee Meeting notice, via fed ex and email, to Respondent to assess any public safety concerns.

- H. During the DRC held on December 01, 2022, Respondent was forthcoming about his treatment and sobriety and the desire to maintain his North Carolina Doctor of Chiropractic License.

V. Stipulation to Applicable Sections of Law Order:

Respondent admits the allegations set forth in Paragraphs IV.A.-H. above, including all subparts, if proven at a hearing, could violate N.C. Gen. Stat. § 90-154(b)(3). If proven, these violations could constitute grounds for disciplinary action.

VI. Stipulation to Sanction

In lieu of proceeding to hearing, the Parties hereby enter into this Consent Order, 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's license to practice chiropractic is suspended for a period of twenty-four (24) months. Such suspension is stayed upon the effective date of this Consent Order if Respondent complies with every term contained within this Consent Order, and otherwise complies with all applicable statutes and rules enforced by the Board;
4. Respondent agrees to put his license in retired/inactive status per the guidelines of the Request for NC Doctor of Chiropractic License in Retired Status or Inactive Status document, which is attached to this Consent Order as Appendix A. The Request for NC Doctor of Chiropractic License in Retired Status or Inactive Status document shall be signed by Respondent in conjunction with this Consent Order, and shall commence upon the Effective Date of Consent Order;
5. Respondent must accept, sign, and return this Consent Order and attached Appendix A within two (2) weeks of receipt. Failure to meet the above stipulations, either in substance or in timing, may result in further disciplinary actions brought against Respondent by this board and possible license suspension/revocation.
6. Respondent shall retain the option to petition for reinstatement of North Carolina chiropractic license, upon a showing of good cause, pursuant to requirements of N.C. Gen. Stat. § 90-155 and 21 NCAC 10.0204(j). In the event of such petition, the Board of Chiropractic Examiners shall offer Respondent the opportunity to appear at a hearing to address said petition within 60 days following the request.

VII. Effective Date

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

VIII. Public Record

The parties agree that this Consent Order 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 Consent Order 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 Consent Order, Respondent shall, via electronic or USPS first-class mail, submit to the Board his: 1) Residential address and residential 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 Consent Order.

XI. 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, 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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Consent Order


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WE CONSENT:



Brian Heer, D.C.
Respondent

12/20/22
Date



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

1/16/23
Date



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1/4/23
Date

Appendix A

Request for NC Doctor of Chiropractic License in Retired Status or Inactive Status

Name (print): Brian Heer, D.C.

The definition of retired status is described in NC GS 90-155, which reads in part:

"If any licensee of the Board retires from active practice, the licensee may renew his or her license annually by paying the license fee and shall not be required to furnish the Board proof of continuing education; however, if at a later time the licensee desires to resume active practice, the licensee shall first appear before the Board and the Board shall determine the licensee's competency to practice."

Licenses placed in Retired Status will be required to renew their license each year by paying the renewal fee and completing the renewal form, plus any pertinent renewal procedures applicable at the time, **but they will NOT be required to demonstrate evidence of completion of the continuing education (CE) requirement.**

Doctors in Retired status may NOT examine, adjust, treat, diagnose, provide therapy, or otherwise practice chiropractic in any way.

If, at a later time, the doctor wishes to remove their Retired status and return to Active status, they will be required to "appear before the Board and the Board shall determine the licensee's competency to practice".

This may take the form of one, or more, or all of the below:

- Interview with members of the NC Board of Chiropractic Examiners
- SPEC exam of the National Chiropractic Board of Examiners
- NC Jurisprudence Exam
- Special exam by the NC Board of Chiropractic Examiners
- OTHER as deemed necessary by the board

Based on my understanding of the above information, I wish to have my license placed on RETIRED STATUS effective immediately.

Or

Based on my understanding of the above information, I do NOT wish to maintain my license and will no longer renew it, nor practice chiropractic in any way in NC. My license will be placed on Inactive Status and I will no longer be responsible for the renewal process or fees.

Signed: 

Date: 12/20/22 NC License Number: 2939