

SETTLEMENT AGREEMENT BETWEEN
MISSOURI STATE BOARD OF CHIROPRACTIC EXAMINERS
AND BRIAN E. WURST, D.C.

BRIAN EDWARD WURST ("Licensee" or "Wurst") and the Missouri State Board of Chiropractic Examiners ("Board") enter into this Settlement Agreement for the purpose of resolving the question of whether Wurst's license as a chiropractor, No. 2002030435, will be subject to discipline. Pursuant to § 536.060, RSMo. 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo. The Board and Licensee jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo. Supp. 2013.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to him by law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Licensee acknowledges that he has received a copy of the complaint filed with the Board, the *investigative report and other documents relied upon by the Board in determining there was cause for discipline*, along with citations to law and/or regulations the Board believes were violated. Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license as a chiropractor, License No. 2002030435, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo., Supp. 2013, and Chapter 331, RSMo., as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either not currently known to the Board or which may be later discovered.

I.

Joint Stipulation of Facts

Based upon the foregoing, the Board and Licensee herein jointly stipulate to the following:

1. At all relevant times herein, Licensee has held a license to practice as a chiropractic physician in the State of Missouri, as issued by the Board pursuant to Chapter 331, RSMo. Licensee

was initially issued a license by the Board in 2002.

2. On January 28, 2015, the Prosecuting Attorney for Stone County, Missouri filed a Felony Information charging Licensee with one count of "Stealing a Controlled Substance" (Class C felony), and one count of "Possession of a Controlled Substance" (Class C felony). *See State of Missouri v. Brian Edward Wurst*, Case No. 14SN-CR01122-01 (Circuit Court of Stone County, Missouri).

3. The Statement of Probable Cause, upon which the Information was based, states that Licensee stole thirteen acetaminophen/hydrocodone tablets from Licensee's patient, R.B., during an appointment that R.B. had scheduled with Licensee. Acetaminophen/hydrocodone is a controlled substance, pursuant to Missouri law, and Licensee appropriated these tablets from patient R.B. without R.B.'s knowledge or consent, prompting R.B. to file a police report through the Branson, Missouri Police Department.

4. On March 16, 2016, Licensee appeared and entered his guilty plea to both counts contained in the Information. Licensee's plea was accepted and he was subsequently sentenced to five (5) years confinement, with suspended imposition (SIS), subject to five (5) years of probation to be supervised by the Missouri Board of Probation and Parole. Licensee was further ordered to perform one hundred (100) hours of community service no later than May 1, 2017. Terms of Licensee's criminal probation include:

[Licensee] shall not use or possess any controlled substance except as specifically prescribed for defendant;

[Licensee] shall complete an assessment for substance abuse and complete treatment programming recommended by such assessment; and

[Licensee] shall submit to alcohol and drug testing at request of law enforcement, probation officer, or prosecuting attorney.

See Sentence and Judgment, Case No. 14SN-CR01122-01.

5. Licensee is currently serving his period of criminal probation, which will, unless extended by the Court, expire on or about March 15, 2021.

Joint Conclusions of Law

1. The Missouri State Board of Chiropractic Examiners is an agency of the State of Missouri created and established pursuant to § 331.090, RSMo. 2000 et seq., for the purpose of executing and enforcing the provisions of Chapter 331, RSMo.

2. Brian E. Wurst, D.C., was at all times relevant herein licensed to practice chiropractic pursuant to Chapter 331, RSMo., holding license No. 2002030435.

3. Section 331.060.2, RSMo. 2000, provides as follows:

"2. The board may cause a complaint to be filed with the administrative hearing commission as provided by Chapter 621, RSMo., against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or the of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of

which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

* * *

4. Licensee's guilty plea to the Class C felonies of Stealing a Controlled Substance, and Possession of a Controlled Substance, constitute a violation of § 331.060.2(2), RSMo.; specifically, these are offenses "reasonably related to the qualifications, functions or duties of [a chiropractor licensed under Chapter 331, RSMo.], and are offenses "an essential element of which is fraud or dishonesty".

5. In view of the above, Licensee's Missouri license to practice chiropractic is subject to discipline based upon the provisions of §§ 331.060.2 (2) and 331.060.3, RSMo.

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §§ 536.060, 621.045.3, and 621.110, RSMo.

1. Probation. Licensee's license as a chiropractor is hereby placed on probation for a period to coincide with the duration of his criminal probation ("probationary period"). Upon expiration of his period of criminal probation, Licensee shall notify the Board which, upon confirming Licensee's adherence to each of the following terms during the probationary period, shall remove the probationary status on Licensee's chiropractic license:

Specific Terms and Requirements

A. Licensee shall comply with all provisions of Chapter 331, RSMo, all regulations of

the Board, and all applicable federal and state laws, rules and regulations, as such may be amended from time to time. State here includes all states and territories of the United States.

B. Licensee shall keep the Board informed as to his residence and practice address. The Board shall be promptly notified of any change of address or change in practice status.

C. Licensee shall adhere to all terms and requirements of probation as ordered by the Court in Case No. 14SN-CR01122-01 (Circuit Court of Stone County, Missouri).

D. Licensee shall authorize the results of any alcohol or drug test(s) performed in accord with the terms of his Court-ordered probation be released to the Board.

E. Licensee shall authorize release of the assessment for substance abuse and treatment programming recommended by such assessment to the Board.

F. Within one hundred-eighty (180) days of the effective date of this Agreement, Licensee shall pass all sections of the Ethics and Boundaries Assessment Examination, as administered by Ethics and Boundaries Assessment Services LLC (EBAS). Licensee understands that all fees and expenses for compliance with this term shall be at his own expense. However, neither preparation for such examination, nor the successful completion of the examination itself, shall constitute credit hours toward meeting Licensee's biennial continuing education (CE) requirements. Licensee shall confirm, in writing to the Board, his successful completion of the Ethics and Boundaries Assessment Examination within ten (10) days of completing the examination and shall authorize release of the examination results to the Board.

G. No additional disciplinary order shall be entered by this Board without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Agreement occurs during the disciplinary

period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action including but not limited to suspension or revocation of Licensee's license. Licensee agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

H. This Agreement does not bind the Board or restrict the remedies available to it concerning any future violation of Chapter 331, RSMo, by Licensee.

I. If Licensee removes himself from the State of Missouri, ceases to be currently licensed under the provisions of Chapter 331, RSMo, or fails to keep the Board advised of his current place of business and residence, then the time of any such unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

General Terms

1. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

2. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

3. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 331, 610, and 620, RSMo., as amended.

4. Licensee, together with his partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo. (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

5. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, he may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101

6. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement shall become effective 15 days after the document is signed by the Executive Director of the Board.

Brian Edward Wurst, D.C.

Missouri State Board of Chiropractic
Examiners



Brian Edward Wurst, D.C.



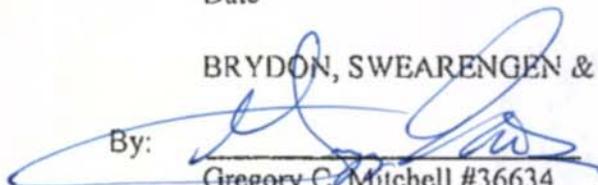
Loree Kessler, Executive Director

9/20/16
Date

9/26/2016
Date

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