

**BEFORE THE WEST VIRGINIA BOARD OF CHIROPRACTIC**

**WEST VIRGINIA BOARD OF CHIROPRACTIC,**

*Complainant,*

v.

**Complaint No. 2022-191**

**JUSTIN MCCARTER,  
License No. 916**

*Respondent.*

**CONSENT DECREE**

Respondent, Justin McCarter (“Respondent”) and the West Virginia Board of Chiropractic (“Board”) enter into the following Consent Decree for the purpose of resolving the above-styled complaint and summary suspension. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact, Conclusions of Law, and disposition of this matter. The Board, having approved such agreement, does hereby Find and Order as follows:

**FINDINGS OF FACT**

1. Respondent is a licensed chiropractor, holding License No. 916.
2. On August 3, 2022, Melanie Ferrell, Respondent’s probation officer at the Marietta Municipal Court, sent the Board an e-mail indicating that on July 12, 2022, Respondent tested positive for methamphetamine and methylenedioxymethamphetamine (MDMA).
3. On August 4, 2022, Respondent sent the Board an e-mail indicating that Respondent’s probation officer, Melanie Ferrell, informed him that the Board had contacted her regarding his positive drug screen. He acknowledges that he had a failed drug screen and indicated that he is taking steps toward his rehabilitation.

4. The drug test report results indicate that Respondent tested positive for the following drugs on July 12, 2022: THC, MDMA, methamphetamines, and amphetamines. Respondent had methamphetamines in his system when he was drug tested on July 15, 2022. On July 20, 2022, Respondent tested negative for drugs in his system.

5. Respondent's license was previously suspended on May 21, 2019, based on allegations that he was in possession of Clonazepam and crystal methamphetamine, and the potential harm that could result from a licensed chiropractor practicing on patients while using these substances. Respondent was not ultimately found to be in possession of Clonazepam and crystal methamphetamine, he was found guilty of driving under the influence of marijuana. Respondent previously entered a consent agreement in Complaint No. 2019-179. The terms of the Consent Agreement required Respondent to enroll in a certified substance abuse treatment program and participate in random drug screens, the terms of which Respondent fulfilled. Respondent's license was reinstated following his completion of the substance abuse treatment program. The Board has continued to receive the results of his drugs screens as a result of this Consent Decree.

6. On August 18, 2022, simultaneously with the issuance of the Summary Suspension Order, the Board initiated Complaint No. 2022-191 against Respondent based on his failed drug test.

7. On September 21, 2022, Respondent, by his attorney, Patrick E. McFarland, Esq., Patrick E. McFarland, PLLC, submitted Respondent's Response to Board-Initiated Complaint and Summary Suspension Order, together with accompanying exhibits in support of his Response. Respondent indicates that "at no time during the period in mid-July 2022 when Respondent tested positive did Respondent ever treat any patients while under the influence of any controlled

substance.” Respondent asserts that his relapse occurred while he was on vacation. He further asserts that the mid-July 2022 incident was the only time that Respondent tested positive for drugs during the past three years. Since testing positive in mid-July 2022, Respondent entered a treatment program and has been committed to his rehabilitation. Respondent asserts that he “is completely sober and adhering to all randomized testing, scheduled programs, spiritual development, and group therapy.”

8. The Board has authorized the proposal of this Consent Decree to informally resolve this matter.

#### CONCLUSIONS OF LAW

1. In circumstances in which the Board determines that a chiropractor’s continuation in practice constitutes an immediate danger to the public, the Board is authorized to temporarily and summarily suspend the chiropractor’s license, prior to a disciplinary hearing, pending institution of proceedings to determine further disciplinary action. *See W. Va. Code § 30-1-8(e)(1)*.

2. The Board is empowered to take disciplinary action against Respondent for testing positive for drugs and in light of the Board’s concern with respect to the 2019 matter that resulted in the entry of Consent Agreement No. 2019-179. *See W. Va. Code § 30-16-11(a)(17)*.

3. Consistent with its authority to informally resolve complaints, W. Va. Code § 30-16-11(d) authorizes the Board to require “professional competency, physical, mental or chemical dependency examinations of any applicant or licensee including withdrawal and laboratory examination of bodily fluids.”

## CONSENT

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that he may pursue this matter through appropriate administrative proceedings and is aware of his legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent acknowledges the Findings of Fact set forth above, admits that there is probable cause to conclude that the violations set forth above in the Conclusions of Law occurred, and consents to the entry of the following Order:

## ORDER

1. Respondent shall undergo and complete his current drug rehabilitation program and must enroll, participate in, and complete the WV Pharmacists Recovery Network Discipline Program, which includes continuing drug rehabilitation as recommended by the WV Pharmacists Recovery Network Discipline Program and weekly, observed drug testing.

2. Upon the Board's receipt of documentation from the WV Pharmacists Recovery Network Discipline Program that: 1) Respondent has agreed to the terms and conditions of the program, and 2) has obtained a negative drug screen, the Board will immediately lift the Summary Suspension of Respondent's license to practice chiropractic in the State of West Virginia.

3. Respondent will remain on probation for a period of time as recommended by the WV Pharmacists Recovery Network Discipline Program. Respondent's period of probation before

the Board will end upon successful completion of the WV Pharmacists Recovery Network Discipline Program. Respondent is required to submit certification of completion of the WV Pharmacists Recovery Network Discipline Program to end his period of probation.

4. Respondent shall bear all costs and expenses associated with his enrollment and participation in the WV Pharmacists Recovery Network Discipline Program.

5. During this period of drug rehabilitation, Respondent will submit to random weekly observed drug screenings. No later than noon every Wednesday, the West Virginia Pharmacy Recovery Network Discipline Program shall submit to the Board via email weekly reports of his progress in the substance abuse treatment program, including, but not limited to, all results from random weekly observed drug screens.

6. Respondent must complete and pass the Ethics and Boundaries Assessment Services Examination (EBAS) to include the following two areas: Substance Abuse and Professional Standards. The EBAS courses must be completed within 6 months of entering into this Consent Decree and Respondent must provide the Board with verification of completion.

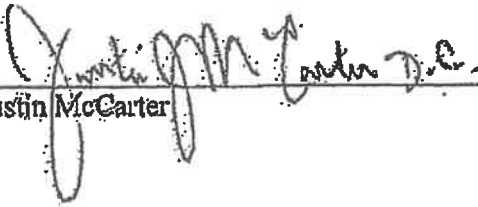
7. Respondent shall reimburse the Board for attorney's fees in the amount of \$1,040.00.


8. Given Respondent's history of substance abuse issues and the potential danger that his substance abuse could have on the public, the Board emphasizes that adherence to the above terms and conditions of this Consent Decree constitute a final opportunity for Respondent to maintain his chiropractic license. If at any time Respondent fails a drug screening, his license will be suspended indefinitely or revoked.

9. For any alleged violation of this Consent Decree, the Board shall immediately notify Respondent of the alleged violation and the summary suspension of Respondent's license.

In the event Respondent contests an alleged violation of this Consent Decree, resulting in the suspension of Respondent's license, Respondent is entitled to a hearing to challenge the alleged violation. Any such hearing shall be scheduled and conducted in accordance with the provisions of W. Va. Code §§ 30-1-8 and 30-16-1 *et seq.* and the rules promulgated by the Board.

CONSENT DECREE AGREED TO BY:

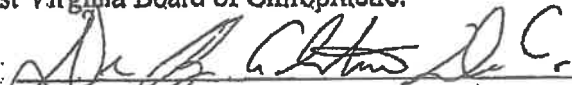
  
Justin McCarter

  
Patrick E. McFarland (4854)  
Counsel for Respondent

ENTERED into the records of the Board of Chiropractic:

11<sup>th</sup> day of October 2022.

West Virginia Board of Chiropractic:

By:   
Barry A. Stowers, D.C.  
Chairman