

JUN 27 2019

BEFORE THE WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS

WEST VIRGINIA BOARD OF CHIROPRACTIC EXAMINERS,

COPY

*Complainant,*

V.

Complaint #2019-179

JUSTIN MCCARTER, D.C.  
License No. 916

*Respondent.*

**CONSENT AGREEMENT**

Respondent, Justin McCarter, D.C. ("Respondent"), and the West Virginia Board of Chiropractic Examiners ("Board") enter into the following Consent Agreement for the purpose of resolving the above-styled complaint. As reflected in this Consent Agreement, 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 this Agreement, does hereby Find and Order as follows:

**Findings of Fact**

1. The Board is the agency of the State of West Virginia responsible for the licensure and professional discipline of all licensed chiropractors in West Virginia. See W.Va. Code §§ 30-16-1 through 22.
2. On March 14, 2019, at approximately 1:37 a.m., Trooper J.D. Ferguson of the Ohio State Highway Patrol initiated a traffic stop of Respondent's vehicle in Marietta, Ohio, after Respondent made an improper turn.

3. According to the narrative drafted and submitted by Trooper Ferguson, Respondent had an outstanding warrant for his arrest.

4. Respondent admitted to smoking marijuana about an hour before driving. After being placed in the patrol car, Respondent fell asleep on the door. Raw marijuana was found in Respondent's vehicle.

5. Trooper Ferguson's probable cause search of Respondent's vehicle also revealed six (6) Clonazepam pills and one (1) gram of crystal methamphetamine.

6. Crystal methamphetamine is highly addictive drug that affects the central nervous system; there is no legal use for it. Crystal methamphetamine can make a user's body temperature rise so high he could pass out or die; may create feelings of confusion, which may lead to mood swings and violence; may cause hallucinations; and may cause the user to hurt himself or others. The danger of its use is compounded when used in conjunction with Clonazepam.

7. Ohio law enforcement transported Respondent to the Washington County Jail and sent the information from the traffic stop and vehicle search to the Washington County Prosecuting Attorney.

8. Possession of Clonazepam and crystal methamphetamine are each felony offenses in the State of Ohio. The State of Ohio generally bifurcates the prosecution of misdemeanor traffic offenses from the prosecution of felonies. Therefore, Respondent has yet to be charged with a crime associated with his alleged possession of Clonazepam and crystal methamphetamine.

9. Based on Respondent's alleged possession of Clonazepam and crystal methamphetamine, the Board found that the health, safety, and welfare of the public is at risk as

long as Respondent continues to possess a license to practice chiropractic in the State of West Virginia, and summarily suspended Respondent's license effective May 21, 2019, pending further disciplinary proceedings.

10. Simultaneously with the issuance of the Summary Suspension Order on May 21, 2019, the Board initiated Complaint #2019-179 against Respondent based on his alleged possession of Clonazepam and crystal methamphetamine.

11. By letter dated May 27, 2019, Respondent responded Complaint #2019-179, and, in relevant part, acknowledged the dangers associated with the use of crystal methamphetamine, but denied that the Clonazepam and crystal methamphetamine belonged to him.

#### 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. Based upon the seriousness of the allegations by the Ohio State Highway Patrol that Respondent 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, the Board was justified in issuing the Summary Suspension Order on May 21, 2019.

3. Additionally, West Virginia Code § 30-16-11 sets forth multiple grounds upon which the Board may discipline a licensee. Possession of crystal methamphetamine and Clonazepam without a valid prescription constitutes a violation of West Virginia Code §§ 30-16-

11(a)(4), (10), (11), and (17), rendering Respondent's license subject to disciplinary action, up to and including revocation of the license.

4. Consistent with its authority to informally resolve complaints, West Virginia Code § 30-16-11(d) authorizes the Board to require "professional competency, physical, mental or chemical dependency examination 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 Agreement 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

On the basis of the foregoing, the Board hereby ORDERS as follows:

1. Respondent shall enroll in a certified substance abuse treatment program of his choice that requires, at a minimum, participants to submit to random drug screens as part of the continued participation in the program.

2. Upon the Board's receipt of documentation from the substance abuse treatment program chosen by Respondent indicating that Respondent has enrolled and has agreed to the terms and conditions of the program, the Board will immediately lift the Summary Suspension of Respondent's license to practice chiropractic in the State of West Virginia.

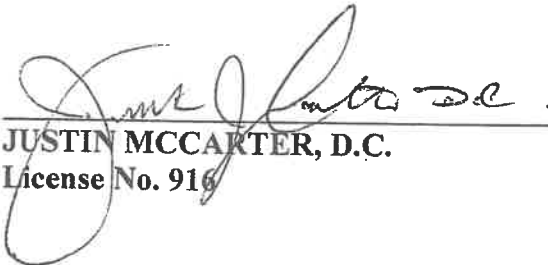
3. Respondent shall bear the costs and expenses associated with his enrollment and participation in substance abuse treatment.

4. No later than noon every Wednesday, Respondent 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 drug screens. Drug screen results showing Respondent as positive for any illegal substance or for any substance for which Respondent does not have valid prescription may result in the immediate suspension of Respondent's license until such time as Respondent submits a negative test result.

5. Upon the Board's receipt of documentation from the substance abuse treatment program indicating that Respondent successfully completed the program, the Board shall dismiss this complaint from its docket of active complaints. However, Respondent's failure to abide by the terms and conditions of the substance abuse treatment program or this Consent Agreement will result in the immediate suspension of the Respondent's license.

6. For any alleged violation of this Consent Agreement, the Board shall immediately notify Respondent of the alleged violation and the summary suspension of Respondent's license. In the event Respondent contests the alleged violation of this Consent Agreement, resulting in the suspension of Respondent's license, Respondent is entitled to a hearing to challenge the alleged violation. Hearings shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-16-1 *et seq.* and any rules promulgated by the Board.


I have read this Consent Agreement and agree to its terms and conditions:

  
\_\_\_\_\_  
JUSTIN MCCARTER, D.C.  
License No. 916

6-26-2019  
\_\_\_\_\_  
Date

ENTERED into the records of the Board of Chiropractic Examiner this:

5<sup>th</sup> day of July, 2019.

  
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Barry A. Stowers, D.C.  
Chairman