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8 **BEFORE THE**
9 **BOARD OF CHIROPRACTIC EXAMINERS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC 2024-2041

12 **BRIAN JAMES VAN AKEN, D.C.**
13 **1150 Murrieta Blvd. #100**
Livermore, CA 94550

ACCUSATION

14 **Chiropractor License No. DC 32400**

15 **and**

16 **ADVANCED HEALTH CHIROPRACTIC,**
17 **BRIAN VAN AKEN, D.C., INC.**
1150 Murrieta Blvd. #100
18 **Livermore, CA 94550**

19 **Corporation Certificate No. COR 4579**

20 Respondents.

21
22
23 **PARTIES**

24 1. Kristin Walker (Complainant) brings this Accusation solely in her official capacity as
25 the Executive Officer of the Board of Chiropractic Examiners (Board), Department of Consumer
26 Affairs.

27 2. On or about August 21, 2012, the Board issued Chiropractor License Number DC
28 32400 to Brian James Van Aken, D.C. (Respondent Van Aken). The Chiropractor License was in

1 full force and effect at all times relevant to the charges brought herein and will expire on April 30,
2 2025, unless renewed.

3 3. On or about November 22, 2022, the Board issued Corporation Certificate Number
4 COR 4579 to Advanced Health Chiropractic, Brian Van Aken, D.C., Inc.; (Respondent AHC).
5 The Corporation Certificate expired on November 30, 2023, and has not been renewed.

6 **JURISDICTION**

7 4. This Accusation is brought before the Board, under the authority of the following
8 sections of the Chiropractic Act (Act).¹

9 5. Section 10 of the Act states, in pertinent part, that the Board may suspend or revoke a
10 license to practice chiropractic or may place the license on probation for violations of the rules
11 and regulations adopted by the Board or for any cause specified in the Act.

12 6. California Code of Regulations, title 16, section 372 states:

13 The suspension, expiration, or forfeiture by operation of law of a license
14 issued by the board, or its suspension, or forfeiture by order of the board or by order
15 of a court of law, or its surrender without the written consent of the board shall not,
16 during any period in which it may be renewed, restored, reissued, or reinstated,
17 deprive the board of its authority to institute or continue a disciplinary proceeding
18 against the licensee upon any ground provided by law or to enter an order
19 suspending or revoking the license or otherwise taking disciplinary action against
20 the licensee on any such ground.

21 7. California Code of Regulations, title 16, section 367.10 states, in pertinent part:

22 (a) A Certificate of Registration shall continue in effect until it is suspended or
23 revoked. Such certificate may be suspended or revoked for any of the grounds
24 permitted by law.

25 ...

26 **STATUTORY AND REGULATORY PROVISIONS**

27 8. California Business and Professions Code (Code) section 2053.5, subdivision (a)
28 states, in relevant part:

¹ The Chiropractic Act, an initiative measure approved by the electors on November 7, 1922, while not included in the Business and Professions Code by the legislature, is set out in West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's California Codes as Appendix I, for convenient reference.

1 Notwithstanding any other provision of law, a person who complies with the
2 requirements of Section 2053.6 shall not be in violation of Section 2051 or 2052
unless that person does any of the following:

3 ...

4 (8) Holds out, states, indicates, advertises, or implies to a client or
5 prospective client that he or she is a physician, a surgeon, or a physician and
surgeon.

6
7 9. Code section 2053.6, subdivision (a) states, in pertinent part:

8 (a) A person who provides services pursuant to Section 2053.5 that are not
9 unlawful under Section 2051 or 2052 shall, prior to providing those services, do the
following:

10 (1) Disclose to the client in a written statement using plain language the
following information:

11
12 (A) That he or she is not a licensed physician.

13 ...

14 (C) That the services to be provided are not licensed by the state.

15 ...

16
17 10. California Code of Regulations, title 16, section 311 states:

18 Constructive educational publicity is encouraged, but the use by any licensee of
19 advertising which contains misstatements, falsehoods, misrepresentations, distorted,
20 sensational or fabulous statements, or which is intended or has a tendency to deceive the
public or impose upon credulous or ignorant persons, constitutes grounds for the imposition
of any of the following disciplinary penalties:

21 (a) Suspension of said licensee's right to practice in this State for a period not
exceeding one (1) year.

22 (b) Placing said licensee upon probation.

23 (c) Taking such other action, excepting the revocation of said licensee's license, in
24 relation to disciplining said licensee as the board in its discretion may deem proper.

25 11. California Code of Regulations, title 16, section 316 provides, in pertinent part:

26 (a) Every licensee is responsible for the conduct of employees or other
27 persons subject to his supervision in his place of practice, and shall insure that all
such conduct in his place of practice conforms to the law and to the regulations
28 herein.

...

12. California Code of Regulation, title 16, section 317 provides, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

(a) Gross negligence;

(b) Repeated negligent acts;

(c) Incompetence;

...

(d) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;

(e) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;

...

(k) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;

(l) Knowingly making or signing any certificate or other document relating to the practice of chiropractic which falsely represents the existence or nonexistence of a state of facts;

(m) Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate any provision or term of the Act or the regulations adopted by the board thereunder;

...

(q) The participation in any act of fraud or misrepresentation;

...

13. California Code of Regulation, title 16, section 319.1 provides:

(a) A licensed doctor of chiropractic shall verbally and in writing inform each patient of the material risks of proposed care. "Material" shall be defined as a procedure inherently involving known risk of serious bodily harm. The chiropractor shall obtain the patient's written informed consent prior to initiating clinical care. The signed written consent shall become part of the patient's record.

1 (b) A violation of this section constitutes unprofessional conduct and may
2 subject the licensee to disciplinary action.

3 **COST RECOVERY**

4 14. California Code of Regulations, title 16, section 317.5, subdivision (a), states, in
5 pertinent part, that the Board may request that the administrative law judge to direct a licensee
6 found to have committed a violation or violations of the Act to pay a sum not to exceed the
7 reasonable costs of the investigation and enforcement of the case.

8 **FACTUAL ALLEGATIONS**

9 15. On or about November 6, 2019, Respondent Van Aken undertook the chiropractic
10 care of patient JP² at Advanced Health Chiropractic (AHC). Respondent Van Aken owns AHC
11 and provides chiropractic treatment to patients at AHC. At JP's first visit to AHC, on November
12 6, 2019, JP was seen by GK³, not by Respondent Van Aken. At this initial visit, JP reported her
13 symptoms as right-sided low back, upper back pain, numbness to hands, chest pain/shortness of
14 breath, and heartburn/indigestion. JP reported she began experiencing symptoms in 2016. She
15 rated her pain an eight on a scale of zero to 10.

16 16. JP was first examined by Respondent Van Aken the following day, November 7,
17 2019. At his November 7, 2019, examination of JP, Respondent Van Aken noted JP had active
18 trigger points, muscle hypertonicity, a positive sciatic nerve test bilaterally, a positive right Kemp's
19 test, and a positive right cervical compression test. Respondent Van Aken diagnosed JP as having
20 segmental and somatic dysfunctions of the cervical, thoracic, and lumbar regions.

21 17. Respondent Van Aken did not obtain JP's written consent before initiating clinical
22 care. Nor did Respondent Van Aken inform JP in writing of any risks associated with her care.

23 18. On November 7, 2019, JP signed a Chiropractic Care Agreement. The Chiropractic
24 Care Agreement stated JP would need 26 treatments over a three-month period. On February 18,
25 2020, JP filled out an Interim Re-Examination Questionnaire form, on which she stated her low
26 back pain was, "occasional 3/10," her upper back pain was, "occasional 2/10," and her heartburn

27 ² JP's full name is abbreviated for privacy and will be released in discovery.

28 ³ GK's full name is abbreviated for privacy and will be released in discovery.

1 was, “frequent 5/10 heartburn.” On March 11, 2020, JP signed a second Chiropractic Care
2 Agreement that stated JP would need another 26 visits over a six-month period.

3 19. In total, JP visited AHC approximately 46 times between November 6, 2019, and
4 September 22, 2020. Respondent Van Aken never conducted a re-examination of JP after the
5 initial November 7, 2019, examination. Respondent Van Aken’s diagnosis of JP never changed.
6 At approximately five of JP’s visits to AHC, the chart notes indicate JP reported flare-ups of her
7 pain and/or symptoms.

8 20. For approximately 24 of JP’s visits to AHC, the narrative portion of the respective
9 chart notes consists of an essentially identical paragraph. That identical paragraph includes
10 information regarding patient complaints, pre-manipulative exam findings, and treatment. For an
11 additional 12 visits, the respective narrative sections of JP’s chart notes consist of the same
12 essentially identical paragraph referenced above, but with three additional, essentially identical
13 sentences included.

14 21. On or about January 14, 2020, June 30, 2020, and/or September 22, 2020, an
15 essentially identical paragraph describing Respondent Van Aken’s assessment and treatment of
16 JP, as described above in paragraph 18, was entered by Respondent Van Aken in JP’s chart notes.
17 However, JP was not assessed or treated by Respondent Van Aken on those three dates. Rather,
18 JP was seen by GK on each of those dates.

19 22. On or about January 14, 2020, June 30, 2020, and/or September 22, 2020, GK owned
20 and/or was affiliated with Advanced Health & Wellness (AHW). AHW is an entity that
21 contracted with AHC to, among other things, provide GK’s services to AHC’s patients. GK was
22 not licensed by the Board as a chiropractor on or about January 14, 2020, June 30, 2020, or
23 September 22, 2020. Nor was GK licensed by the California Board of Naturopathic Medicine
24 (CBNM) on those dates.

25 23. GK recorded his January 14, 2020, June 30, 2020, and September 22, 2020,
26 interactions with JP in the respective chart notes. GK’s entry in each chart note is essentially
27 identical, and states he performed neuromuscular facilitation on JP, as well as prescribed JP
28 treatment consisting of home stretches and core strengthening. However, on at least one

1 occasion, GK placed JP on a treatment table and cracked JP's back. And, on at least one
2 occasion, GK manipulated JP's spine with his hands. GK's manipulations caused JP pain. JP
3 decided to stop receiving care at AHC because of the pain caused by GK's manipulations.

4 24. At her first visit to AHC on November 6, 2019, JP signed a form titled, "Advanced
5 Health and Wellness." The form begins with the following text:

6 I, the undersigned, understand that Dr. [GK] is a Naturopathic Physician and
7 upon my request may perform evaluations and set up programs for the purpose of
8 improving function and vitality. I understand that Dr. [GK] earned his Doctor of
9 Chiropractic degree from Life Chiropractic west in 1990. I understand that Dr.
[GK] received his board certifications from the American Naturopathic Medical
Certification Board and is currently a Naturopathic Physician and Certified
Nutritional Consultant . . .

10
11 The form further states ". . . [GK] is certified by the American Naturopathic Medical
12 Certification Board and not licensed by other boards such as Medical, Psychiatric or Chiropractic
13 . . ." The form later states, "I understand that the nature of services offered by Dr. [GK] is strictly
14 restricted to the non-medical area of health. No medicine or surgery will be provided." The form
15 does not explain that GK's chiropractor license was surrendered through a disciplinary action, or
16 that he is not a licensed chiropractor, doctor, or physician. The form does not explain that the
17 American Naturopathic Medical Certification Board cannot license a person to act as, or refer to
18 themselves as, a naturopathic physician in California. Nor does the form state GK's services are
19 not licensed by the state.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Failure to Obtain Consent and Failure to Inform of Risks)

22 25. Respondents are subject to disciplinary action under section 10 of the Act and/or
23 California Code of Regulations, title 16, section 319.1, in that, as described in paragraph 16,
24 Respondent Van Aken failed to obtain written consent from JP and/or inform JP in writing of any
25 risks of treatment before beginning clinical care.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Excessive Treatment)

3 26. Respondents are subject to disciplinary action under section 10 of the Act and/or
4 California Code of Regulations, title 16, section 317, subdivision (d), in that, as described in
5 paragraphs 14 through 18, Respondent Van Aken administered treatment to JP that, given
6 Respondent Van Aken's diagnosis of JP, was clearly excessive, as determined by local customary
7 practice and standards.

8 **THIRD CAUSE FOR DISCIPLINE**

9 (Repeated Negligent Acts, and/or Conduct Endangering the Public)

10 27. Respondents are subject to disciplinary action under section 10 of the Act and/or
11 California Code of Regulations, title 16, section 317, subdivisions (b) and/or (e) in that, as
12 described in paragraphs 14 through 23, Respondent Van Aken committed repeated negligent acts,
13 and/or engaged in conduct that endangered or was likely to endanger the public, when he failed to
14 conduct any re-examination of JP throughout an approximately 10-month period and despite JP
15 reporting multiple flare-ups of her pain.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Falsifying Patient Records)

18 28. Respondents are subject to disciplinary action under section 10 of the Act and/or
19 California Code of Regulations, title 16, section 317, subdivisions (b), (k), (l), (m), and/or (q), in
20 that, as described in paragraphs 18 through 20, Respondent Van Aken knowingly and repeatedly
21 used cloned, boilerplate, and/or automatically populated statements to falsely record JP's clinical
22 care. In doing so, Respondent Van Aken committed repeated acts of negligence, committed an
23 act of dishonesty, knowingly made or signed documents which falsely represented the existence
24 or nonexistence of facts, violated a term of the Act and/or associated regulations, and/or
25 participated in an act of fraud or misrepresentation.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Gross Negligence, Incompetence, Failure to Ensure Lawful Conduct)

3 29. Respondent are subject to disciplinary action under section 10 of the Act and/or
4 California Code of Regulations, title 16, sections 316, subdivision (a), and/or 317, subdivisions
5 (a) and/or (c) in that, as described in paragraphs 14 through 23, Respondent Van Aken acted with
6 gross negligence, incompetence, and/or failed to ensure his employee's and/or supervisee's
7 conduct was lawful, when Respondent Van Aken did not verify GK's status as an unlicensed
8 naturopath before providing JP with a misleading consent form regarding GK that violated Code
9 sections 2053.5 and 2053.6, and/or before allowing GK to treat JP.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 (Repeated Negligent Acts, Conduct Endangering the Public, Failure to Ensure Lawful Conduct)

12 30. Respondents are subject to disciplinary action under section 10 of the Act and/or
13 California Code of Regulations, title 16, sections 316, subdivision (a), and/or 317, subdivisions
14 (b) and/or (e) in that, as described in paragraphs 14 through 23, Respondent Van Aken committed
15 repeated negligent acts, engaged in conduct that endangered or was likely to endanger the public,
16 and/or failed to ensure his employee's or supervisee's conduct was lawful when GK provided
17 and/or prescribed treatment to JP.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 (Repeated Negligent Acts, Conduct Endangering the Public, Failure to Ensure Lawful Conduct)

20 31. Respondents are subject to disciplinary action under section 10 of the Act and/or
21 California Code of Regulations, title 16, sections 316, subdivision (a), and/or 317, subdivisions
22 (b) and/or (e) in that, as described in paragraphs 14 through 23, Respondent Van Aken committed
23 repeated negligent acts, engaged in conduct that endangered or was likely to endanger the public,
24 and/or failed to ensure his employee's or supervisee's conduct was lawful when GK performed
25 chiropractic adjustments and/or manipulations on JP.

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EIGHTH CAUSE FOR DISCIPLINE

(Advertising Violations)

32. Respondents are subject to disciplinary action under section 10 of the Act and/or California Code of Regulations, title 16, sections 311 and/or 317, subdivision (m), in that Respondent Van Aken used advertising that contained misrepresentations, distorted statements, sensational statements, and/or fabulous statements when on or about April 30, 2024, the AHC website listed seven AHC employees as, “certified spinal technicians.”

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Chiropractic Examiners issue a decision:

1. Revoking or suspending Chiropractor License Number 32400, issued to Brian James Van Aken, D.C.;
2. Revoking or suspending Corporation Certificate Number COR 4579, issued to Advanced Health Chiropractic, Brian Van Aken, D.C., Inc.;
3. Ordering Brian James Van Aken to pay the Board of Chiropractic Examiners the reasonable costs of the investigation and enforcement of this case, pursuant to Title 16, California Code of Regulations, section 317.5 and if placed on probation, the costs of probation monitoring;
- and,
4. Taking such other and further action as deemed necessary and proper.

DATED: 01/02/2025

Signature on File

KRISTIN WALKER
Executive Officer
Board of Chiropractic Examiners
Department of Consumer Affairs
State of California
Complainant

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