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9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13 Complainant,) CONSENT ORDER
14 v.)
15 HEALTHSOURCE CHIROPRACTIC, INC.,)
16 Respondent.)
17)
18)

19 This Consent Order is entered into between the Commissioner of Financial Protection and
20 Innovation (Commissioner), and HealthSource Chiropractic, Inc. (HSC) (collectively, Parties) and
21 is made with respect to the following facts:

22 **I.**
23 **RECITALS**

24 A. The Commissioner is the head of the Department of Financial Protection and
25 Innovation (Department) and is responsible for administering and enforcing the Franchise
26 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
27 in California. To register a franchise, a franchisor must file an application which includes a Uniform
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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
2 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
3 which is intended to provide prospective franchisees with facts upon which to make an informed
4 decision to purchase a franchise, as stated in section 31001.

5 B. At all relevant times, HSC was an Ohio corporation, with a principal place of
6 business located at 36901 American Way, Suite 7, Avon, Ohio 44011. At all relevant times, HSC
7 offers clinics that are business-to-consumer franchises with an operating system that offers physical
8 therapy and chiropractic services together as a solution for pain relief, restoration of function, and
9 wellness care. At all relevant times, HSC filed for franchise registration with the Department on
10 March 22, 2017, and March 22, 2018.

11 C. At all relevant times, Bernard “Bernie” Brozek (Brozek) was an individual currently
12 residing in Austin, Texas. Brozek was formerly employed by HSC from October 2016 to March
13 2020 as chief operating officer for HSC. On April 25, 2012, Brozek filed for voluntary Chapter 7
14 personal bankruptcy in the United States Bankruptcy Court for the Southern District of Ohio, Case
15 Number 1:12-BK-12270, before the Honorable Jeffrey P. Hopkins. Brozek’s bankruptcy was
16 discharged on July 31, 2012, with a final decree dated August 30, 2012 (BK).

17 D. Under section 31200, it is unlawful for any person willfully to make any untrue
18 statement of a material fact in any application, notice or report filed with the Commissioner under
19 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
20 required to be stated therein or fail to notify the Commissioner of any material change as required by
21 section 31123.

22 E. HSC failed to disclose to the Commissioner Brozek’s personal BK action, discharge
23 and final decree in Item 4 of HSC’s FDD in 2017 and in 2018. Bankruptcies of officers or directors
24 are required to be disclosed in HSC’s FDD.

25 F. The Commissioner finds that HSC, in at least two instances, violated
26 section 31200.

27 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
28 forth herein, the Parties agree as follows:

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II.

TERMS AND CONDITIONS

1. Purpose. This Consent Order resolves the issues before the Commissioner [findings in paragraphs C through F above] in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the applicable law.

2. Desist and Refrain Order. Pursuant to Corporations Code sections 31402 and 31406, HealthSource Chiropractic, Inc. is hereby ordered to desist and refrain from the violations set forth herein, in violation of Corporations Code section 31200. The issuance of this order is necessary, in the public interest, for the protection of investors and is consistent with the purposes, policies, and provisions of the Franchise Investment Law.

3. Waiver of Hearing Rights. HSC acknowledges that the Commissioner is ready, willing, and able to proceed with the filing of an administrative enforcement action on the charges contained in this Consent Order. HSC hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of law. HSC further expressly waives any requirement for the filing of an Accusation pursuant to Government Code section 11415.60, subdivision (b). By waiving such rights, HSC effectively consents to this Consent Order becoming final.

4. Failure to Comply with Consent Order. HSC agrees that if it fails to comply with the terms of this Consent Order, the Commissioner may, in addition to all other available remedies it may invoke under the FIL, summarily suspend/revoke its FIL registration (if applicable), summarily and permanently bar HSC from offering and selling franchises in California or deny FIL applications (if applicable). HSC waives any notice and hearing rights to contest such summary actions by the Commissioner which may be afforded under the FIL, the APA, the CCP, or any other provision of law in connection therewith.

5. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked, and the Commissioner may pursue any and all remedies available under law against HSC

1 if the Commissioner discovers that HSC knowingly or willfully withheld or misrepresented
2 information used for and relied upon in this Consent Order.

3 6. Future Actions by Commissioner. If HSC fails to comply with any terms of the
4 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
5 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
6 against HSC, or any of its partners, owners, officers, shareholders, directors, employees or
7 successors for any and all unknown violations of the FIL.

8 7. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
9 ability to assist any other government agency (whether city, county, state, or federal) with any
10 administrative, civil or criminal action brought by that agency against HSC or any other person
11 based upon any of the activities alleged in this matter or otherwise.

12 8. Headings. The headings to the paragraphs of this Consent Order are inserted for
13 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
14 the provisions hereof.

15 9. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
16 interest.

17 10. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
18 Consent Order it has relied solely on the statements set forth herein and the advice of its own
19 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
20 Order it has placed no reliance on any statement, representation, or promise of any other party, or
21 any other person or entity not expressly set forth herein, or upon the failure of any party or any
22 other person or entity to make any statement, representation or disclosure of anything whatsoever.
23 The Parties have included this clause: (1) to preclude any claim that any party was in any way
24 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
25 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

26 11. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
27 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
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1 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
2 other provision. No waiver by either party of any breach of, or of compliance with, any condition
3 or provision of this Consent Order by the other party will be considered a waiver of any other
4 condition or provision or of the same condition or provision at another time.

5 12. Full Integration. This Consent Order is the final written expression and the complete
6 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
7 between the Parties with respect to the subject matter hereof, and supersedes all prior or
8 contemporaneous agreements, negotiations, representations, understandings, and discussions
9 between and among the Parties, their respective representatives, and any other person or entity with
10 respect to the subject matter covered hereby.

11 13. Governing Law. This Consent Order will be governed by and construed in
12 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
13 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
14 forum to the maintenance of such action or proceeding in such court.

15 14. Counterparts. This Consent Order may be executed in one or more separate
16 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
17 together constitute a single document.

18 15. Effect Upon Future Proceedings. If HSC applies for any license, registration,
19 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
20 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
21 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

22 16. Voluntary Order. HSC enters into this Consent Order voluntarily and without
23 coercion and acknowledges that no promises, threats or assurances have been made by the
24 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
25 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
26 without any duress or undue influence of any kind from any source.

27 17. Notice. Any notice required under this Consent Order shall be provided to each
28 party at the following addresses:

