

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

In the Matter of)
)
DENNIS B. ARTHUR, P.T.) Docket No. 05-HA-03
Kansas License No. 11-00768)
_____)

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Petitioner”), by and through Stacy L. Cook and Diane L. Bellquist, and Dennis B. Arthur, P.T. (“Licensee”), by and through Larry Bork, and move the Board for approval of a Consent Order affecting Licensee’s license to practice as a physical therapist in the State of Kansas.

The parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is 5815 Carter Avenue, Merriam, Kansas 66203.

2. Licensee is or has been entitled to engage in the practice of physical therapy, having been issued License No. 11-00768 on approximately September 29, 1979. Licensee has held a current license to engage in the practice of physical therapy in the State of Kansas, having last renewed his license on approximately November 18, 2003. Licensee’s license status is active.

3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of physical therapy.

4. This Consent Order and the filing of such document are in accordance with the applicable law and the Board may enter into an informal settlement of this matter as provided in K.S.A. 77-505, without the necessity of proceeding to a formal hearing.

5. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

6. The Kansas Physical Therapy Act is constitutional on its face and as applied in this case.

7. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

8. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

10. The Board alleges that Licensee inappropriately touched two patients and inappropriately questioned one patient about her nipples during the course of treatment. The specific allegations are set forth in the Petition filed on August 12, 2004. Licensee denies the allegations set forth in the Petition and entering into the Consent Order does not constitute an admission of the allegations. In addition, the Consent Order does not

constitute a finding of any wrongdoing by Licensee. By entering into this Consent Order, the Board agrees to resolve the allegations in the Petition and agrees it will not initiate any further formal proceedings against Licensee based upon the incidents alleged in the Petition with regard to the two patients referenced therein.

11. Pursuant to K.S.A. 65-2912(a), the Board may revoke, suspend, or otherwise limit Licensee's license.

12. According to K.S.A. 77-505, the Board has the authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

13. In lieu of conducting formal proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures and limitations placed on his license to engage in the practice of physical therapy:

- (a) Licensee shall not practice physical therapy unless he has a chaperone in the room at all times when he is evaluating, examining and/or treating female patients. This limitation shall be in effect for at least one (1) year and Licensee must petition the Board for modification or discontinuance of this limitation. The chaperone(s) shall be adults and must be identified by Licensee. Licensee shall create and maintain a daily log identifying all female patients seen by him. The chaperone must certify on the daily patient log his or her presence during the entire evaluation, examination and/or treatment provided by Licensee. Such logs must be submitted to the Board every month. Licensee shall submit to the Board the patient log on or before the tenth day of the

following month. Licensee shall also have a supervisor at each of the facilities and/or locations where he provides physical therapy certify that a chaperone was present at all times when he evaluated, examined and/or treated female patients. The form for such supervisor certification is attached hereto. These forms shall be completed by each supervisor and submitted to the Board every three months, for the following reporting periods: December 15, 2004 – March 15, 2005; March 16, 2005 – June 15, 2005; June 16, 2005 – September 15, 2005; and September 16, 2005 – December 15, 2005. The supervisor forms for the previous reporting period shall be submitted to the Board no later than March 25, 2005; June 25, 2005; September 25, 2005 and December 25, 2005. No later than fourteen days after the effective date of this Consent Order, Licensee shall provide to the Board in writing the identity of the supervisors at each of the facilities and/or locations where he may provide physical therapy, that are willing to serve in such capacity and certify the presence of a chaperone. Licensee shall bear all costs associated with this limitation;

- (b) Licensee shall meet with a licensed physical therapist approved by the Board or its designee regarding boundaries issues. Licensee shall meet with the instructing therapist for at least 4-6 hours. All costs associated with this limitation will be paid by Licensee;

- (c) Licensee agrees to have ten-percent (10%) of his patient records reviewed by a licensed physical therapist approved by the Board or its designee. The review shall be on a monthly basis for at least six (6) months. The reviewer shall choose which patient records to review. Licensee shall ensure that the reviewer submits a report of the review, which is due in or before the 15th day of the next month. The form of the report is attached hereto. Licensee is responsible for ensuring that the reviewer submits the report. Licensee shall bear all costs associated with the reviewer; and
- (d) Licensee shall pay the costs in the amount of one thousand six-hundred fifty-eight dollars & 75/100 (\$1,658.75). Such amount is payable to the “Kansas State Board of Healing Arts” in monthly payments of two-hundred (\$200.00) for eight (8) months and a payment of fifty-eight dollars & 75/100 (\$58.75) due in the ninth month. The initial payment is due on or before January 1, 2005, with the remainder of the monthly payments due on or before the first day of each month thereafter. In the event that the Board does not receive a payment due and owing, the remaining balance shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.

14. Licensee’s failure to comply with this Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

15. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Physical Therapy Act, or to investigate complaints received under the Risk Management law, K.S.A. 65-4921 et seq., that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Physical Therapy Act.

16. Licensee hereby releases the Board, its individual members (in their official and personal capacities), attorneys, employees and agents, (hereinafter collectively referred to as "Releasees"), from any and all claims, including but not limited to, those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et seq., arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims and demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

17. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank and any other reporting entities requiring disclosure of the Consent Order.

18. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent

document executed in the same manner by the parties.

19. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer or settlement.

20. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

21. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

22. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

23. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Diane L. Bellquist, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

24. Licensee shall obey all federal, state and local laws and rules governing the practice of physical therapy in the State of Kansas that may be in place at the time of

execution of the Consent Order or may become effective subsequent to the execution of this document.

25. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. This Consent Order shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

26. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- (a) Licensee shall not practice physical therapy unless he has a chaperone in the room at all times when he is evaluating, examining and/or treating female patients. This limitation shall be in effect for at least one (1) year and Licensee must petition the Board for modification or discontinuance of this limitation. The chaperone(s) shall be adults and must be identified by Licensee. Licensee shall create and maintain a daily log identifying all female patients seen by him. The chaperone must certify on the daily patient log his or her presence during the entire evaluation,

examination and/or treatment provided by Licensee. Such logs must be submitted to the Board every month. Licensee shall submit to the Board the patient log on or before the tenth day of the following month. Licensee shall also have a supervisor at each of the facilities and/or locations where he provides physical therapy certify that a chaperone was present at all times when he evaluated, examined and/or treated female patients. The form for such supervisor certification is attached hereto. These forms shall be completed by each supervisor and submitted to the Board every three months, for the following reporting periods: December 15, 2004 – March 15, 2005; March 16, 2005 – June 15, 2005; June 16, 2005 – September 15, 2005; and September 16, 2005 – December 15, 2005. The supervisor forms for the previous reporting period shall be submitted to the Board no later than March 25, 2005; June 25, 2005; September 25, 2005 and December 25, 2005. No later than fourteen days after the effective date of this Consent Order, Licensee shall provide to the Board in writing the identity of the supervisors at each of the facilities and/or locations where he may provide physical therapy, that are willing to serve in such capacity and certify the presence of a chaperone. Licensee shall bear all costs associated with this limitation;

- (b) Licensee shall meet with a licensed physical therapist approved by the Board or its designee regarding boundaries issues. Licensee

shall meet with the instructing therapist for at least 4-6 hours. All costs associated with this limitation will be paid by Licensee;

- (c) Licensee agrees to have ten-percent (10%) of his patient records reviewed by a licensed physical therapist approved by the Board or its designee. The review shall be on a monthly basis for at least six (6) months. The reviewer shall choose which patient records to review. Licensee shall ensure that the reviewer submits a report of the review, which is due in or before the 15th day of the next month. The form of the report is attached hereto. Licensee is responsible for ensuring that the reviewer submits the report. Licensee shall bear all costs associated with the reviewer; and
- (d) Licensee shall pay the costs in the amount of one thousand six-hundred fifty-eight dollars & 75/100 (\$1,658.75). Such amount is payable to the "Kansas State Board of Healing Arts" in monthly payments of two-hundred (\$200.00) for eight (8) months and a payment of fifty-eight dollars & 75/100 (\$58.75) due in the ninth month. The initial payment is due on or before January 1, 2005, with the remainder of the monthly payments due on or before the first day of each month thereafter. In the event that the Board does not receive a payment due and owing, the remaining balance shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.

IT IS SO ORDERED on this _13TH day of __December____, 2004.

FOR THE KANSAS STATE BOARD
OF HEALING ARTS:

____/s/_____
Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:

____/s/ Diane L. Bellquist_____
Stacy L. Cook #16385
Diane L. Bellquist #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

____/s/_____
Larry Bork #11810
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 S. Kansas Avenue
Topeka, Kansas 66603
(785) 233-0593

AGREED TO BY:

____/s/_____
Dennis B. Arthur, P.T.
Licensee

CERTIFICATE OF SERVICE

I, Diane Bellquist, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served on the 13th day of December, 2004 by United States mail, first-class postage pre-paid and addressed to:

Mr. Larry Bork
Goodell, Stratton, Edmonds & Palmer, L.L.P.
515 S. Kansas Avenue
Topeka, Kansas 66603

And the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

_____/s/ Diane L. Bellquist_____
Stacy L. Cook #16385
Diane L. Bellquist #20969