

FILED

JUN 22 2004

KANSAS STATE BOARD OF HEALING ARTS

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

In the Matter of)
)
Timothy C. Ayers, R.T.)
)
Application for License)
_____)

Docket No. 04-HA- 70

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Timothy C. Ayers, R.T., (“Applicant”), *pro se*, and move the Board for approval of a Consent Order as a condition to being granted a temporary permit to practice respiratory therapy in the State of Kansas. The parties stipulate and agree to the following:

1. Applicant’s mailing address as provided to the Board is confidential
Wichita, Kansas 67218.
2. On or about February 16, 2004, Applicant submitted to the Board an application for licensure as a respiratory therapist and further requested that he be issued a temporary permit until he passes the National Board for Respiratory Care (“NBRC”) examination.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of respiratory therapy, K.S.A 65- 5501 *et seq.*
4. This Consent Order and the filing of such document are in accordance with 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 respiratory therapy act is constitutional on its face and as applied in this case.

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

8. Applicant voluntarily and knowingly waives his right to a hearing under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* Applicant 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. Applicant 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 and 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. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

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11. In his Application, Applicant disclosed that he received two Driving Under the Influence convictions in 1994, and was convicted of misdemeanor possession of drug paraphernalia in 2003, in violation of K.S.A. 65-5510(a)(2), and further defined by K.A.R. 100-55-5(q), as conduct likely to harm the public.

12. In lieu of conducting formal proceedings and/or the making of findings by the Board, Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following conditions to presently being granted a temporary permit and to being granted licensure upon passage of the NBRC examination.

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13. The conditions contained in this Consent Order are not self-terminating and shall remain in effect for at least one (1) year. At the end of one year, Applicant may request the termination of the conditions.

14. Applicant's failure to comply with the provisions of the 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 respiratory 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 respiratory therapy act.

16. Applicant 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 or demands of every kind and nature that Applicant has claimed to have had

at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

17. Applicant further understands and agrees that upon his signing the Consent Order, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this 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. Applicant 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 Applicant is not present. Applicant further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

20. Applicant, by signature to this document, waives any objection to the participation of the Board members 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. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

22. Applicant acknowledges that he has read this Consent Order and fully understands the contents.

23. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Applicant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

25. Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory 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.

26. Upon the filing of this Consent Order and meeting all requirements for issuance of a temporary permit, Applicant shall be granted a temporary permit.

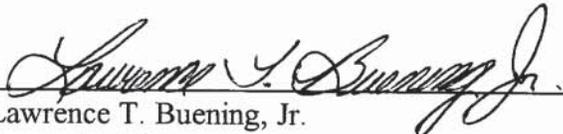
27. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. This Consent Order shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

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

IT IS FURTHER ORDERED that upon meeting all requirements for issuance of a temporary permit, Applicant shall be granted a temporary permit.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

June 22, 2004.
Date


Timothy C. Ayers, R.T.
Applicant

06-10-04
Date

Prepared by:


Kelli J. Benintendi, #16032
Associate Counsel
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603-3068
(785) 296-7413

Attorney for Board