

FILED  
OCT 15 2015

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of )  
)  
) Docket No. 15-HA00130  
)  
TRACI L. BORLAND, O.T. )  
Kansas License No. 17-02574 )

CONSENT ORDER FOR SURRENDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jane E. Weiler, Associate Litigation Counsel ("Petitioner"), and Traci L. Borland, O.T. ("Licensee"), by and through Diane L. Bellquist of Joseph, Hollander and Craft, LLC, and moves the Board for approval of a Consent Order affecting Licensee's license to practice occupational therapy in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is: Confidential Wichita, Kansas 67209.
2. Licensee is or has been entitled to engage in the practice of occupational therapy in the State of Kansas, having been issued License No. 17-02574 on or about July 2, 2009, and having last renewed such license on March 31, 2015.
3. On or about September 25, 2015, Licensee's license was Emergently Suspended pending a hearing on Petitioner's Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings.
4. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of occupational therapy. K.S.A.65-5401 *et seq.*

5. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 77-505. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.
6. The Kansas Occupational Therapy Practice Act is constitutional on its face and as applied in this case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her 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 substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
8. 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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
9. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-5410, to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-5401, *et seq.*

10. On September 25, 2015, Petitioner filed a Second Amended Petition against Licensee's license to practice occupational therapy alleging violations of the Kansas Occupational Therapy Practice Act pursuant to K.S.A. 65-5410. Petitioner incorporates the Second Amended Petition herein by reference in its entirety. In addition, the following facts are presented:

- a. On or about April 15, 2015, Licensee entered into a settlement agreement in the form of a Consent Order *In the Matter of Traci L. Borland, O.T.*, KSBHA Docket No. 15-HA00095 ("2015 Consent Order"). The 2015 Consent Order constituted a lawful order of the Board and constituted a non-disciplinary public action against Licensee's license to practice as an occupational therapist in the State of Kansas.
- b. Additionally, pursuant to the 2015 Consent Order, Licensee is required to comply with all terms and conditions of the Consent Order, which included, in part:

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Confidential

c. Confidential

d. On or about May 12, 2015, Licensee violated the 2015 Consent Order with the Board, in that Licensee:

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e.

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f. Confidential

g.

h. On or about June 30, 2015, Board staff filed a Petition against the occupational license of Licensee.

i. Confidential

j.

k. **Confidential**

l. On or about July 29, 2015, Petitioner filed an Amended Petition that alleged additional allegations of Licensee's continued conduct in the present matter.

m. On or about August 14, 2015, Licensee appeared in person, and *pro se* for the Conference Hearing regarding Petitioner's Amended Petition.

n. Licensee admitted to her wrongful conduct both in her proposed written statement to the Board and during her sworn testimony during the conference hearing on August 14, 2015.

o. Further, during sworn testimony at the aforementioned conference hearing, Licensee acknowledged that she was still bound by the terms and conditions of her 2015 Consent Order.

p. Licensee violated the 2015 Consent Order with the Board, in that on or about September 16, 2015, Licensee:

**Confidential**

11. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Occupational Therapy Practice Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise

contest the allegations contained in the above paragraphs in any further proceeding before this Board.

12. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-5410, and K.S.A. 65-4925.
13. Licensee's acts constitute unprofessional conduct as set forth in K.S.A. 65-5410.
14. Licensee violated K.S.A. 65-5410(a), in that Licensee has committed unprofessional and dishonorable conduct.
15. Licensee has violated K.S.A. 65-5410(a)(4), in that Licensee violated a lawful order of the Board previously entered into by the Board in KSBHA Docket No. 15-HA00095.
16. K.S.A. 65-5410(a)(2); in that, Licensee has committed an act of unprofessional conduct as defined by K.AR. 100-54-5(o), "by committing conduct likely to deceive, defraud or harm the public."
17. Pursuant to K.S.A. 65-5410, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license violations of the Kansas Occupational Therapy Practice Act.
18. According to K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
19. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice occupational therapy in the State of Kansas. Licensee hereby expressly

understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on her own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-5401 *et seq.*

20. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Occupational Therapy Practice 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 Kansas Healing Arts Act.

21. Licensee hereby releases the Board, its individual members (in their official and personal capacity), 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 Judicial Review Act, 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 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.

22. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of this Consent Order.
23. 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.
24. 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 of settlement.
25. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.
26. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. Licensee shall obey all federal, state and local laws and rules governing the practice of occupational 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.
29. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 77-505. This Consent Order shall constitute the Board's Final Order when filed with the office of the Executive Director for the Board and no further Order is required.
30. This Consent Order constitutes public disciplinary action.
31. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
32. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against her license to engage in the practice of occupational therapy:

**SURRENDER TREATED AS REVOCATION**

33. Licensee hereby surrenders her Kansas license to practice occupational therapy. Such surrender shall be treated as a revocation for all purposes including reporting such action.
34. Licensee's agrees that if she applies for reinstatement of her license, such application will be considered by the Board in accordance with the provisions of K.S.A. 65-5412 and K.A.R. 100-54-1. Further, Licensee's application will be governed by *Vakas v. The*

*Kansas Board of Healing Arts*, 248 Kan. 589 (Kan. 1991), and all applicable statutes, law, rules and regulations regarding qualifications for licensure and reinstatement.

35. Licensee shall be required to pay the fee for reinstatement of a revoked license with any application for reinstatement.

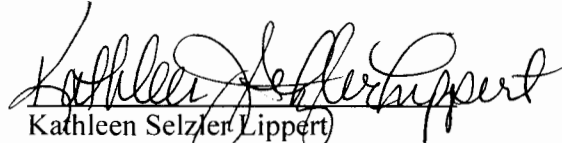
36. Licensee agrees that in the event she applies for reinstatement of her license, the allegations contained in the Second Amended Petition and this Consent Order will be considered as findings of fact and conclusions of law.

**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 as a Final Order of the Board.

**IT IS THEREFORE ORDERED** that Licensee's license is revoked effective upon filing of this Consent Order.

**IT IS SO ORDERED** on this 14 day of Oct, 2015.

**FOR THE KANSAS STATE BOARD OF  
HEALING ARTS:**

  
Kathleen Selzler Lippert  
Executive Director

Oct 14, 2015  
Date

Traci L. Borland, O.T.

Traci L. Borland, O.T.  
Licensee

10/14/2015  
Date

PREPARED AND APPROVED BY:

Jane E. Weiler

Jane E. Weiler, #25276  
Associate Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson Ave  
Lower Level Suite A  
Topeka, Kansas 66612  
(785) 296-1479  
jweiler@ksbha.ks.gov

AGREED TO BY:

Diane Bellquist

Diane Bellquist # 20969  
Attorney for Licensee  
Joseph, Hollander & Craft, LLC  
1508 SW Topeka Boulevard  
Topeka, Kansas 66612  
(785) 234-3272  
dbellquist@josephhollander.com

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order for Surrender by United States mail, postage prepaid, on this 15<sup>th</sup> day of October, 2015, to the following:

Traci L. Borland, O.T.  
*Licensee*  
**Confidential**  
Wichita, Kansas 67209

Diane L. Bellquist  
*Attorney for Licensee*  
Joseph, Hollander & Craft, LLC  
1508 SW Topeka Boulevard  
Topeka, Kansas 66612

And the original was hand-delivered for filing to:

Kathleen Selzler Lippert  
Executive Director  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

And a copy was hand-delivered to:

Katy Lenahan  
Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Compliance Coordinator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

