



FILED

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AUG 18 2011

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts


In the Matter of)
Earl H. Brainard, P.T.A.)
)
Kansas Certificate No. T-03055)
_____)

KSBHA Docket No. 12-HA00002

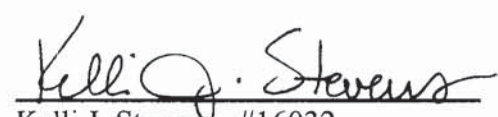
JOURNAL ENTRY RATIFYING CONSENT ORDER

Pursuant to the authority granted to the Kansas State Board of Healing Arts ("Board") by K.S.A. 65-2901 *et seq.* and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Consent Order filed on July 8, 2011, in the above-captioned matter is hereby **ACCEPTED** and **RATIFIED**. The Board shall maintain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

IT IS SO ORDERED THIS 18th DAY OF AUGUST, 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzer Lippert
Executive Director
Kansas State Board of Healing Arts

Prepared and Approved by:


Kelli J. Stevens, #16032
General Counsel
Kansas State Board of Healing Arts

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 18th day of August, 2011, a true and correct copy of the above and foregoing **JOURNAL ENTRY RATIFYING CONSENT ORDER** was deposited in the United States Mail, first-class postage prepaid and addressed to:

Earl H. Brainard, P.T.A.
confidential
Colby, Kansas 67701

And a copy was hand-delivered to:

Stacy R. Bond, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Street, Lower Level- Suite A
Topeka, Kansas 66612

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

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

And the original was filed with the office of:

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



Cathy Brown
Executive Assistant

FILED CAB

JUL 08 2011

K.S. State Board of Healing Arts

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

In the Matter of)
Earl H. Brainard, P.T.A.) Docket No. 12-HA 00002
Kansas Certificate No. Pending)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Stacy R. Bond, Associate Litigation Counsel (“Petitioner”), and Earl H. Brainard, P.T.A. (“Applicant”), *pro se*, and move the Board for approval of a Consent Order affecting Applicant’s certificate to practice as a physical therapy assistant in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant’s last known mailing address to the Board is: **confidential**
Colby, Kansas 67701.
2. On or about August 31, 2010, Applicant submitted to the Board an application for a certificate to practice as a physical therapy assistant. Such application was deemed complete on June 8, 2011.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of physical therapy, physical therapists and physical therapy assistants. K.S.A. 65-2901 *et seq.*
4. 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

Consent Order
Earl H. Brainard, P.T.A.

findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Physical Therapy Act is constitutional on its face and as applied in the case. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Applicant voluntarily and knowingly waives his right to a hearing. 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.
7. 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.
8. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-2912, to take action with respect to Applicant's certificate under the Physical Therapy Act, K.S.A.65-2901, *et seq.*
9. Applicant answered "yes" to disciplinary questions 12t and 12u on his application for certification. Applicant disclosed that he was arrested for DUI in California in

2001 and plead guilty to that offense. In 2006, Applicant was arrested for
confidential and possession of a deadly weapon. He
plead guilty to possession of a deadly weapon, a misdemeanor offense. In 2008,
Applicant was arrested for destruction of property. He plead guilty to that offense
and was required to pay a fine and restitution.

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13. Applicant acknowledges that if formal hearing proceedings were conducted and
Applicant presented no exhibits, witnesses or other evidence, the Board has
sufficient evidence to prove that Applicant has violated the Kansas Physical
Therapy Act with respect to the above allegations. Applicant further waives his
right to dispute or otherwise contest the allegations contained in the above
paragraphs in any further proceeding before this Board.

14. A protective order is hereby entered to protect all confidential information under
confidential

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16. Applicant violated K.S.A. 65-2912(a)(5), by engaging in unprofessional conduct as further defined by K.A.R. 100-29-12(a)(18), in that Applicant has been convicted of DUI, possession of a deadly weapon, and destruction of property; such conduct is likely to deceive, defraud or harm the public.
17. Pursuant to K.S.A. 65-2912, the Board may refuse to grant a license to any physical therapist or a certificate to any physical therapist assistant, or may limit the license of any licensed physical therapist or certificate of any physical therapist assistant, or may censure any physical therapist's license or physical therapist assistant's certificate.
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. All pending investigation materials in KSBHA Investigative Case Number 11-00499 regarding Applicant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 26 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
20. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action as a condition to being granted certification as a physical therapist assistant:

MONITORING

Consent Order
Earl H. Brainard, P.T.A.

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43. Applicant will furnish a copy of this Consent Order to each and every state in which he holds licensure or certification or any state in which Applicant applies for licensure or certification and to an appropriate work site supervisor or other personnel confidential

44. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses.

45. Applicant shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Applicant shall provide the above information in writing to the Board within ten (10) days of any such change.

TIMEFRAME

46. The above monitoring provisions are not self-terminating. After a period of one (1) year, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing as a physical therapist assistant in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

21. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant 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 Applicant's certificate to practice as a physical therapist assistant in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant 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, Applicant retains the right to confront and examine all witnesses, present evidence, testify on his 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 Physical Therapy Act, K.S.A. 65-2901 *et seq.*

22. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Physical 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 Physical Therapy Act.

23. Applicant 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 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.
24. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to any reporting entities authorized to receive disclosure of the Consent Order.
25. 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.
26. 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.

27. Applicant, 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.
28. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
29. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
30. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
31. Applicant shall obey all federal, state and local laws and rules governing the practice of a physical therapist assistant 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.
32. 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.

Consent Order
Earl H. Brainard, P.T.A.

77-505 and 77-526. 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.

33. This Consent Order constitutes non-disciplinary action.
34. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
35. Applicant understands that a temporary certificate shall be issued based upon Applicant's signing this Consent Order, paying the temporary license/certificate fee, and abiding by the terms of this Consent Order. Applicant further understands that the temporary certificate is only effective until a Conference Hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the temporary certificate shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent certificate under the terms of this Consent Order.

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 upon meeting all technical requirements for certification, Applicant shall be granted a certificate.

IT IS FURTHER ORDERED that:

MONITORING

confidential

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43. Applicant will furnish a copy of this Consent Order to each and every state in which he holds licensure or certification or any state in which Applicant applies for licensure or certification and to an appropriate work site supervisor or other personnel

confidential

44. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses.

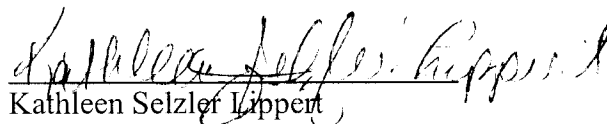
45. Applicant shall at all times keep Board staff informed of all his current practice locations, addresses and telephone numbers. Applicant shall provide the above information in writing to the Board within ten (10) days of any such change.

TIMEFRAME

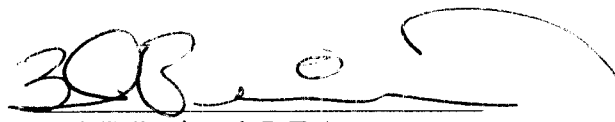
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IT IS SO ORDERED on this 8 day of July, 2011.

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

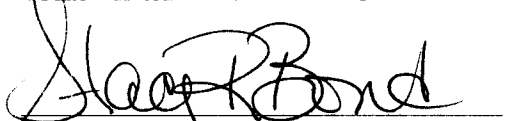

Kathleen Selzler Lippert
Executive Director

7.8.11
Date


Earl H. Brainard, P.T.A.
Applicant

7.5.11
Date

PREPARED AND APPROVED BY:


Stacy R. Bond #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-3268

Consent Order
Earl H. Brainard, P.T.A.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 8th day of July, 2011, to the following:

Earl H. Brainard, P.T.A.
Applicant
confidential
Colby, Kansas 67701

And the original was hand-filed with:

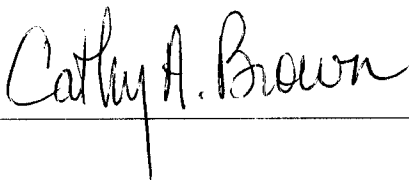
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