

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED**

APR 29 2003

KANSAS STATE BOARD OF  
HEALING ARTS

In the Matter of )  
 )  
**HILARY BROWN, O.T.** )  
Kansas Registration No. 17-01331 )  
Application for Retroactive Reinstatement )  
\_\_\_\_\_ )

Docket No. 03-HA-31

**CONSENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Hilary Brown, O.T., (“Registrant”), and move the Board for approval of a Consent Order granting retroactive reinstatement of registration and affecting Registrant’s registration to practice occupational therapy in the State of Kansas. The parties stipulate and agree to the following:

1. Registrant’s mailing address to the Board is 900 Deer Run Drive, Lawrence, Kansas, 66049.
2. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of occupational therapy. K.S.A 65-5401 *et seq.*
3. 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
4. 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.

5. The Kansas occupational therapy act is constitutional on its face and as applied in this case.

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

7. Registrant voluntarily and knowingly waives her right to a hearing under the Kansas administrative procedure act, K.S.A. 77501 *et seq.* Registrant 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. Registrant voluntarily and knowingly agrees to waive all possible 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. Registrant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about February 15, 1997, Registrant was issued registration number 17-01331 to practice occupational therapy in Kansas. Registrant's registration was canceled for failure to renew on May 1, 2002.

10. On or about May 1, 2002 through July 16, 2002, Registrant engaged in the unregistered practice of occupational therapy at Select Specialty Hospital, Topeka, Kansas.

11. On or about July 16, 2002, Registrant submitted an application for reinstatement and requested that such reinstatement be granted retroactively to May 1, 2002. Registrant was granted reinstatement of her registration on July 31, 2002.

12. Registrant's continuation in practice after her registration lapsed is in violation of K.S.A. 65-5410(a)(5) as further defined by K.S.A. 65-5414.

13. In lieu of conducting formal proceedings and/or the making of findings by the Board, Registrant, by her signature affixed to this Consent Order, hereby voluntarily agrees to pay a fine to the Board in the amount of \$400.00, to be paid in four (4) monthly installments of \$100.00, with the total amount to be paid within one-hundred and twenty (120) days of the filing of this Consent Order.

14. Registrant'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 occupational 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 occupational therapy act.

16. Registrant 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 Registrant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and

Registrant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

17. Registrant further understands and agrees that upon signature by Registrant, 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. Registrant 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 Registrant is not present. Registrant 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. Registrant, 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 Registrant.

22. Registrant acknowledges that she has read this Consent Order and fully understands the contents.

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

24. All correspondence or communication between Registrant 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. Registrant 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.

26. Effective upon the filing of this Consent Order, Registrant's occupational therapy registration shall be retroactively reinstated to May 1, 2002.

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.

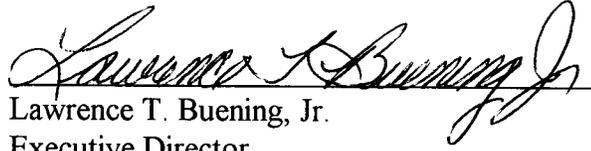
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law and is the Order of the Board.

**IT IS FURTHER ORDERED** that Registrant is ordered to pay a fine in the amount of \$400.00.

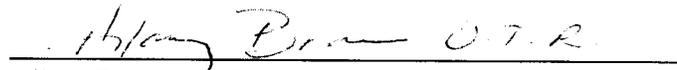
**IT IS FURTHER ORDERED** that Registrant's registration to practice occupational therapy is hereby retroactively reinstated to May 1, 2002.

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

  
Lawrence T. Buening, Jr.  
Executive Director

April 29, 2003  
Date

  
Hilary Brown, O.T.  
Registrant

4/1/03  
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 Petitioner

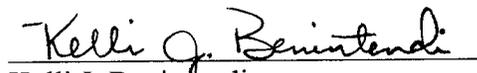
**CERTIFICATE OF SERVICE**

I, Kelli J. Benintendi, Associate Counsel, Kansas State Board of Healing Arts, hereby certify that I served a copy of the above CONSENT ORDER by depositing the same in the U.S. mail, postage prepaid, on this the 29<sup>th</sup> day of April, 2003, addressed to:

Hilary Brown, O.T.  
900 Deer Run Drive  
Lawrence, Kansas 66049

and the original was hand-delivered to:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
235 South Topeka Boulevard  
Topeka, Kansas 66603-3068

  
\_\_\_\_\_  
Kelli J. Benintendi  
Associate Counsel