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MAY 21 2013

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

KS State Board of Healing Arts

In the Matter of)
)
Melanie J. Browne, R.T.)
Kansas License No. Pending)

Docket No. 13-HA 00101

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Melanie J. Browne, R.T. (“Applicant”), *pro se*, and move the Board for approval of a Consent Order affecting Applicant’s license to practice respiratory therapy 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**
Kansas City, Kansas 66112.
2. On or about November 19, 2012, Applicant submitted to the Board an application for licensure in respiratory therapy. Such application was deemed complete and filed with the Board on May 17, 2013.
3. 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 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 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
Melanie J. Browne, R.T.

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

5. The Kansas Respiratory Therapy Practice 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 her right to a hearing. Applicant 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. 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. 65-5510 to take action with respect to Applicant's license under the Kansas Respiratory Therapy Practice Act, K.S.A. 65-5501, *et seq.*
9. Applicant answered "yes" to Disciplinary Questions 12(t) and 21(u).

- a. Disciplinary Question 12(t) asks: “Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
 - b. Disciplinary Question 12(u) asks: “Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
10. In response to her “yes” answers, Applicant wrote, “I was arrested and charged with DUI in 2007, and in 2011.”
 11. Applicant included a copy of a docket sheet showing that she had entered into a diversion with the State of Kansas for receiving a DUI in April 2007, and she submitted paperwork showing that she was discharged from diversion on January 4, 2013.
 12. Applicant also included a copy of her Guilty Plea/Judgment in Jackson County, Missouri, in Case Number 1116-CR03938, showing that she had pleaded guilty to DWI-Alcohol, a Class B misdemeanor, that occurred on August 22, 2011.
 13. **Confidential**

b.

c.

14. 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 Respiratory Therapy Practice Act with respect to the above allegations. Applicant further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
15. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, K.S.A. 65-2836(i), and K.S.A. 65-4925.

16. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-5510(a)(2).
17. Applicant violated K.S.A. 65-5510(a)(2), as set forth in K.A.R. 100-55-5(q) by driving under the influence of alcohol in 2007 and 2011.
18. Pursuant to K.S.A. 65-5510, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license, and pursuant to K.S.A. 65-5510(c), the Board has the authority to impose administrative fines for violations of the Kansas Respiratory Therapy Practice Act.
19. 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.
20. All pending investigation materials in KSBHA Investigative Case Number 13-00355 regarding Applicant, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 27 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
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 license to practice respiratory therapy 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 Respiratory Therapy Practice Act, K.S.A. 65-5501 *et seq.*

22. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Respiratory 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 Respiratory Therapy Practice 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 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 she 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 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.
32. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become a Final Order under K.S.A. 77-505. 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 License shall be issued based upon Applicant's signing this Consent Order, **Confidential**
Confidential paying the temporary license fee, and abiding by the terms of this Consent Order. Applicant further understands that the Temporary License 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 License shall immediately expire at the conclusion such hearing. If

the Board ratifies this Consent Order, Applicant shall be issued a permanent licensure under the terms of this Consent Order.

36. 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 licensure on her license to engage in the practice of respiratory therapy:

MONITORING

Confidential

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Confidential

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45. Applicant will furnish a copy of this Consent Order to each and every state in which she holds licensure or applies for licensure and to an appropriate work site supervisor or personnel **Confidential**
46. Applicant shall immediately notify the Board or its designee of any citation, arrest or charge filed against her or of any conviction for any traffic or criminal offenses.
47. Applicant shall at all times keep Board staff informed of all her 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

48. The above monitoring provisions are not self-terminating. After a period of three (3) years, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing respiratory therapy in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the three (3) years' timeframe.

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.

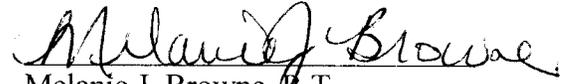
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 21st day of May, 2013.

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

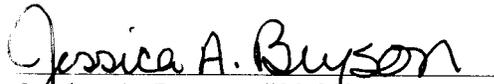

Kathleen Seizler Lippert
Executive Director

5/21/13
Date


Melanie J. Browne, R.T.

Applicant
5/11/13
Date

PREPARED AND APPROVED BY:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-8022

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 21st day of May, 2013, to the following:

Melanie J. Browne, R.T.
Applicant
Confidential
Kansas City, KS 66112

And the original was hand-filed with:

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

And a copy was hand-delivered to:

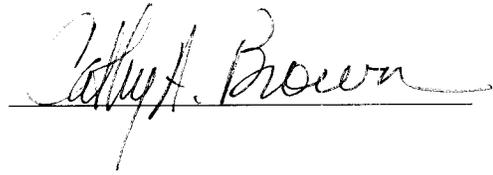
Jessica A. Bryson
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator

Consent Order
Melanie J. Browne, R.T.

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

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

A handwritten signature in cursive script, reading "Kelly A. Brown", is written over a horizontal line.

HAPN

Heart of America Professional Network

6405 Metcalf, Suite 205 ♥ Cloverleaf Bldg #3 ♥ Overland Park, Kansas 66202
voice (913) 236-7575 ♥ fax (913) 236-7779

March 7, 2013

Ms. Lisa L. Leishman, Legal Assistant
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612

RE: Melanie Browne, RT

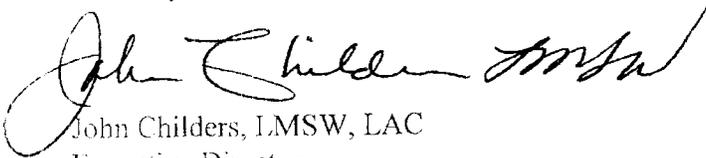
Dear Ms. Leishman:

We are in receipt of the evaluation on Ms. Browne from Mirror, Inc. Based on the evaluation, there is a low probability of having a Substance Dependence Disorder and no recommendation for treatment.

Neither the therapist nor HAPN have any concerns on Ms. Browne's ability to practice without restriction. We have enclosed a copy of her evaluation for your perusal.

Please contact me with any questions. We look forward to your reply.

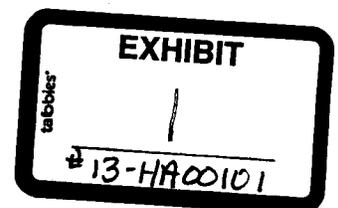
Sincerely,



John Childers, LMSW, LAC
Executive Director
HAPN

Cc: File

Enclosure



Mirror Inc.
1024 Hoel Parkway
Kansas City, KS 66102

 **COPY** MAR 01 2013

Substance Abuse Evaluation Summary

Client Name: Melanie Browne

Assessment Date: 2/19/2013

Age: 38

D.O.B.: 10/15/1974

SS#: 513-78-4307

Race: B

Gender: Female

Client Address: 1910 N 73 Terr Kansas City, KS 66112

Phone#: 913-461-1855

Client Demeanor: Ms. Browne was oriented x3. She displayed good eye contact and a good overall attitude. She answered all questions appropriately.

Precipitating Event: Ms. Browne was referred to complete an assessment by Heart of America Professional Network, after admitting to having a DUI on a job application.

Legal History: Ms. Browne stated that she received a DUI in 2011. She stated that she successfully completed treatment for this at Addiction Stress Center in 2012. Ms. Browne showed proof of completing this treatment. She stated that she was charged with a DUI in 2006, but this charge was thrown out.

Education: Ms. Browne completed high school. She stated that she recently graduated from Concord for Respiratory Therapist.

Employment: Ms. Browne stated that she has been a student for the past two years and has not been employed. She recently began to work through a temporary service, but has only been doing so for a few weeks. Before beginning school client stated that she worked as a receptionist for five years at ABU.

Social Environment: Ms. Browne stated that she has been with her current boyfriend for the past year. She stated that he does not use substances. She stated that she spends the majority of her time with her daughter. She stated that she does have friends that drink socially.

Significant Family History: Ms. Browne denied any significant family history. She stated that neither her mother nor father had any substance abuse issues. She stated that some aunts and uncles may have some substance abuse issues.

Medical/Mental/Developmental History: Ms. Browne denied any medical or mental health issues.



 **COPY**

Alcohol/Drug History: Ms. Browne denied having any substance abuse issues. She stated that when she received the DUI she was a social drinker. She stated that since then she may only have a drink on special occasions. She may drink three glasses of wine in one sitting. Client states that she does not have any withdrawal symptoms, such as hangovers. Ms. Browne denied any use of other substances.

SASSI Assessment: Ms. Browne was given a SASSI 3, which indicated a low probability of having Substance Dependence Disorder.

Counselor's Assessment: Ms. Browne denied any use of substances to the extreme. She stated that her alcohol consumption is very minimal. She did not appear to be defensive when the assessment was given and appeared to be understanding of the necessity of the assessment for employment purposes. She had an elevated DEF score which indicates that she may have been defensive while taking the test. This may be because of the circumstances that client had to take the assessment. Therefore this score could be purely situational.

Recommendations: Based on the SASSI score of low probability of having a Substance Dependence Disorder and the fact that she admitted to very minimal use of alcohol. There is no treatment recommended at this time.

Respectfully Submitted,

Jessica Smith, LAC

Jessica Smith, LAC
Assessor/Counselor