

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

KS State Board of Healing Arts *[Signature]*

In the Matter of )  
 )  
Brittany E. Burkett, O.T.A. )  
Kansas License No. Pending )

Docket No. 13-HA **00047**

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Brittany E. Burkett, O.T.A., (“Applicant”), *pro se*, and move the Board for approval of a Consent Order affecting Applicant’s license to practice as an occupational 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** Topeka, Kansas 66604.
2. On or about January 7, 2013, Applicant submitted to the Board an application for temporary licensure as an occupational therapy assistant. Such application was deemed complete and filed with the Board on February 20, 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 as an occupational therapy assistant. K.S.A.65-5401 *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

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

5. The Kansas Occupational 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. 65-5410 to take action with respect to Applicant's license under the Kansas Occupational Therapy Practice Act, K.S.A. 65-5401, *et seq.*
9. In her application for temporary licensure, Applicant answered "yes" to question 12(u), which 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. Applicant provided the following explanation in response to her “yes” answer:  
“In the State of Kansas, Shawnee County I was charged with a misdemeanor [sic] – minor in possession of liquor October 2009 – This resulted in a fine. Also in the State of Kansas, Shawnee County I was charged with a misdemeanor [sic] theft in 2009 that resulted in a fine, and 6 months unsupervised probation.”
11. Court documentation shows that Applicant pleaded “No Contest” to one count of Theft of Property Under \$1000, a Class A Misdemeanor, and was found “Guilty” on September 10, 2009.
12. Applicant was asked for additional information in regard to the circumstances surrounding the theft conviction. Applicant provided the following explanation:  
“My ex-husband’s mother worked at Wal-Mart. We went through her checkout line, and some items did not get scanned. I consequently got charged with theft. This is not a true reflection of my character. I was young and in the wrong place at the wrong time. All Fines are paid, and the case is closed.”
13. Police records show that Applicant was investigated along with her now-ex-husband for receiving merchandise that was being under charged or not charged at all when her now former-mother-in-law was working as a cashier. Specifically, police records show the following:

- a. On February 19, 2009, Applicant and her ex-husband went through his mother's line and their merchandise was not charged or was charged less than the actual value, totaling \$50.87 less than sale price.
  - b. On March 9, 2009, Applicant went through her former mother-in-law's line and she was not charged for a cell phone valued at \$44.00.
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 Occupational 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. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-5410.
16. Applicant violated K.S.A. 65-5410(a)(2), as set forth in K.A.R. 100-54-5(o), for conduct "likely to deceive, defraud, or harm the public" as she was convicted of theft from Wal-Mart.
17. Pursuant to K.S.A. 65-5410, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license, and pursuant to K.S.A. 65-5410(c), the Board has the authority to impose administrative fines for 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. All pending investigation materials in KSBHA Investigative Case Number 13-00371 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.
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 Occupational Therapy Practice Act.
21. 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.

22. 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.
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. 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.
25. 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.
26. Applicant acknowledges that she has read this Consent Order and fully understands the contents.
27. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

28. 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.
29. Applicant shall obey all federal, state and local laws and rules governing the practice of an occupational 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.
30. 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. 77-526. 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.
31. This Consent Order constitutes disciplinary action.
32. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
33. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, 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's temporary

license shall remain in effect for a period of one (1) year from the date it was issued as defined by K.S.A. 65-5408(c).

34. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on her license to engage in the practice of occupational therapy as an occupational therapy assistant:

**CENSURE**

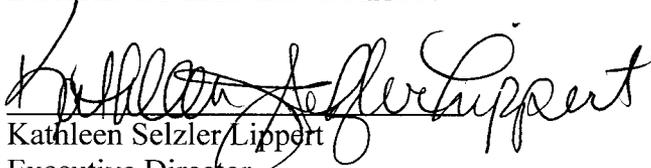
35. Applicant is publicly censured for violating the Kansas Occupational Therapy Practice Act.

**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.

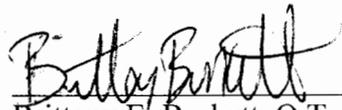
**IT IS FURTHER ORDERED** that upon meeting all technical requirements for licensure, Applicant shall be granted a temporary license pursuant to the conditions above.

**IT IS SO ORDERED** on this 20<sup>th</sup> day of Feb, 2013.

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

  
Kathleen Selzler Lippert  
Executive Director

2/20/13  
Date



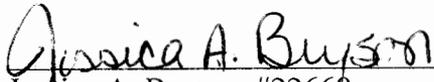
Brittany E. Burkett, O.T.A.

Applicant

2/20/13

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 20th day of February, 2013, to the following:

Brittany E. Burkett, O.T.A.  
Applicant  
**Confidential**  
Topeka, Kansas 66604

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

Melissa Massey  
Compliance Coordinator  
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

