

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

FILED CAB  
SEP 08 2014  
KS State Board of Healing Arts

In the Matter of )  
NICOLETTE E. CAPELL, P.T.A. )  
 )  
Kansas Certificate No. 14-02340 )  
 )  
\_\_\_\_\_ )

KSBHA Docket No. 14-HA00147

FINAL ORDER LIMITING LICENSE

NOW on this 8<sup>th</sup> day of August, 2014, comes on for conference hearing before the Kansas State Board of Healing Arts (“Board”) the Petition for discipline filed against the physical therapist assistant certificate of Nicolette E. Capell, PTA (“Certificant”). Reese H. Hays, Litigation Counsel, appears on behalf of the Petitioner Board. Certificant appears in person and *pro se*.

Pursuant to the authority granted to the Board by the Physical Therapy Practice Act, 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 Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving exhibits into evidence, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Certificant is presently licensed to practice as a physical therapist assistant in the State of Kansas, having been issued Certificate No. 14-02340 on or about May 25, 2012.
2. The Petition alleges that on approximately October 16, 2012, Certificant was arrested for driving under the influence (DUI) in Roeland Park, Kansas, and subsequently convicted on March 16, 2013, in the Municipal Court of Roland Park, Kansas.
3. The Petition also alleges that this was Certificant’s second DUI arrest, with the first DUI arrest occurring in Boone County, Missouri, in 2008, and resulting in a diversion.

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5. Confidential  
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6. The Petition alleges that Certificant violated K.S.A. 65-2912(a)(1), Confidential  
Confidential

7. The Petition also alleges that Certificant violated K.S.A. 65-2912(a)(5), for unprofessional conduct as further defined by K.A.R. 100-29-12(a)(2), for practicing physical therapy without reasonable skill and safety because of ... Confidential  
Confidential that impairs judgment or ability to provide care.

8. The Petition further alleges that Certificant violated K.S.A. 65-2912(a)(5), as further defined by K.A.R. 100-29-12(a)(18), for acts of unprofessional conduct, specifically for committing conduct likely to harm the public by operating a motor vehicle with a breath alcohol content in excess of .08.

9. K.A.R. 100-29-12(a)(18) defines one type of unprofessional conduct as “committing conduct likely to deceive, defraud or harm the public.”

10. The Board’s purpose in regulating the practice of physical therapist assistants is to ensure that the public, as existing and potential patients, are properly protected from unfit individuals and unprofessional conduct committed by its licensees and certificants. The Board concludes that, based on the specific facts of this matter, Certificant’s act of driving under the

influence of alcohol in and of itself is not sufficiently correlated to the violation of conduct likely to harm the public as alleged.

11. The Board concludes there is insufficient evidence **Confidential**  
**Confidential**

12. **Confidential**  
**Confidential**

13. **Confidential**  
**Confidential** is sufficient evidence demonstrating that Certificant has a  
**Confidential** that impairs judgment or ability to provide care as set forth in  
K.A.R. 100-29-12(a)(2)(D).

14. The Board concludes that a licensure limitation **Confidential**  
**Confidential** for three (3) years is warranted in order to ensure Certificant is safe to  
practice as a physical therapist assistant.

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Certificant's certificate to practice as a physical therapist assistant is hereby **LIMITED** for a period of at least three (3) years, during which Certificant shall be required to:

a. **Confidential**  
**Confidential**

b. Confidential  
c. Confidential  
Confidential

d. Confidential  
Confidential

e. Confidential  
Confidential

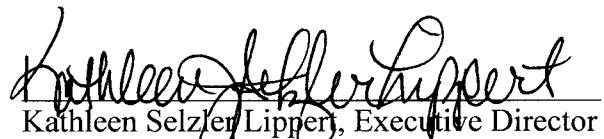
f. Confidential  
Confidential

g. Certificant shall furnish a copy of this Final Order to each and every state licensing agency in states where Certificant is licensed, certified or registered to practice as a physical therapist assistant; and

h. Certificant shall notify the Board's Compliance Coordinator of any criminal arrest, citation or charge filed against her or of any conviction for any traffic or criminal offenses within five (5) days of occurrence.

**IT IS FURTHER ORDERED** that after a period of (3) years, Certificant may request termination of the LIMITATION on her certificate to practice as a physical therapist assistant. For any period of time that Certificant is not actively practicing as a physical therapist assistant in Kansas, the LIMITATION requirements shall remain in effect, but will be tolled and not counted towards reducing the three (3) year timeframe.

**IT IS SO ORDERED THIS 8 DAY OF SEPTEMBER, 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

  
Kathleen Selzler Lippert, Executive Director  
Kansas State Board of Healing Arts

#### **NOTICE OF RIGHTS**

**PLEASE TAKE NOTICE** that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, a party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court, as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within **30 days** following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the above foregoing **FINAL ORDER LIMITING LICENSE** was served this 8<sup>th</sup> day of September, 2014 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

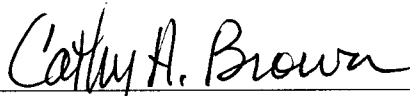
Nicolette E. Capell, PTA  
**Confidential**  
Kansas City, MO 64117

And a copy was hand-delivered to:

Reese H. Hays, Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

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

And the original was filed with the office of the Executive Director.

  
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Cathy Brown, Executive Assistant