

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
AUG 25 2003
KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
Richard D. Folda, P.T.A.)
Kansas Certification No. 14-00984)
Application for Reinstatement)
_____)

Docket No. 04-HA-13

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”) by and through Kelli J. Benintendi, Associate Counsel (“Petitioner”), and Richard D. Folda, (“Applicant”), *pro se*, and move the Board for approval of a Consent Order granting reinstatement of certification and affecting Applicant’s certification to practice as a physical therapy assistant in the State of Kansas. The parties stipulate and agree to the following:

1. Applicant’s mailing address as provided to the Board is 3112 Colleen Court, Augusta, Kansas, 67010.
2. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of physical therapy K.S.A 65- 2901, *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 physical therapy act is constitutional on its face and as applied in this case.

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

7. Applicant voluntarily and knowingly waives his right to a hearing under the Kansas administrative procedure act, K.S.A. 77501 *et seq.* 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.

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. Applicant 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 17, 1996, Applicant was issued certificate number 14-00984 to practice as a physical therapy assistant in Kansas. Applicant's certification was canceled for failure to renew on February 1, 2001.

10. On or about February 1, through October 18, 2001, Applicant engaged in unprofessional conduct pursuant to K.S.A. 65-2912(a)(5), in that Applicant practiced as a physical therapy assistant at Via Christi Regional Medical Center in Wichita, Kansas, after his certification had been canceled.

11. On or about October 2001, Applicant engaged in unprofessional conduct pursuant to K.S.A. 65-2912(a)(5), in that Applicant submitted an altered wallet card to his employer which misrepresented that Applicant's certification was in effect, when in fact such certification had been canceled.

12. On or about March 13, 2003, Applicant submitted an application for reinstatement.

13. In lieu of conducting formal proceedings and/or the making of findings by the Board, Applicant, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his certification as a physical therapy assistant for his acts of unregistered practice and altering a wallet card:

(a) Applicant agrees to be publicly censured; and

(b) Applicant shall pay a fine to the Board in the amount of \$200.00, payable to the Board within fifteen (15) days of the filing of this Consent Order. Applicant's failure to pay the fine will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

14. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the physical 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 physical therapy act.

15. Applicant 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 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.

16. Applicant further understands and agrees that upon his signing the Consent Order, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Consent Order.

17. 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.

18. 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.

19. Applicant, 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.

20. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.

21. Applicant acknowledges that he has read this Consent Order and fully understands the contents.

22. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

23. All correspondence or communication between Applicant 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.

24. Applicant shall obey all federal, state and local laws and rules governing the practice of physical 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.

25. Upon the filing of this Consent Order, Applicant's certification as a physical therapy assistant shall be reinstated.

26. 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 Applicant is hereby publicly censured and ordered to pay a fine in the amount of \$200.00 within fifteen (15) days of the filing of this Consent Order.

IT IS FURTHER ORDERED that Applicant's certification as a physical therapy assistant is hereby reinstated.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

_____/s/_____
Lawrence T. Buening, Jr.
Executive Director

August 23, 2003
Date

_____/s/_____
Richard D. Folda, P.T.A.
Applicant

7/25/03
Date

Prepared and Approved by:

_____/s/_____
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 Board

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 25th day of August, 2003, addressed to:

Richard D. Folda, P.T.A.
3112 Colleen Court,
Augusta, Kansas, 67010

and a copy was hand-delivered to:

Charlene Abbott
Licensing Administrator
Kansas State Board of Healing Arts
235 South Topeka Boulevard
Topeka, Kansas 66603

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

/s/
Kelli J. Benintendi
Associate Counsel