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KS State Board of Healing Arts

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

In the Matter of)	
)	Docket No. 08-HA-42
Dana Sue Gifford, P.T.A.)	
Kansas License No. 14-01066)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Kathleen Selzler Lippert, Associate Counsel (“Petitioner”), and Dana Sue Gifford, P.T.A. (“Licensee”), by and through her counsel, Jason P. Hoffman, and move the Board for approval of a Consent Order affecting Licensee’s license to practice physical therapy in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is: 1621 SW 70th Street, Topeka, Kansas 66619.
2. Licensee is or has been entitled to engage in the practice of physical therapy in the State of Kansas, having been issued License No. 14-01066 on approximately December 7, 1996, and having last renewed such license on approximately December 26, 2006. Licensee’s license is suspended.
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 physical therapy. K.S.A. 65-2901 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 and 65-2838. Upon approval, these stipulations shall

Consent Order
Dana Sue Gifford, P.T.A.

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

5. The Kansas Physical Therapy Act is constitutional on its face and as applied in the case.
6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. Licensee voluntarily and knowingly waives her right to a hearing. Licensee 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. Licensee 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. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.
9. The Board has received information and investigated the same, and has reason to believe there may be grounds pursuant to K.S.A. 65-2912(1), to take action with respect to Licensee's license under the Physical Therapy Act, K.S.A. 65-2901, *et seq.*

10. The Board has received information and investigated the same, and has reason to believe that on or about March 6, 2006, Licensee operated a motor vehicle while under the influence resulting in Shawnee District Court Case 06-CR-617.
11. Licensee entered a no contest plea in November 2006, to Driving Under the Influence 3rd Offense, a felony. Licensee was sentenced for DUI 3rd in January 2007; Shawnee District Court Case 06-CR-617.
12. The Board has received information and investigated the same, and has reason to believe that Licensee submitted misleading, deceptive, untrue or fraudulent information to the Board regarding answers on her 2005 renewal form, in that she failed to report on her 2005 renewal her conviction for DUI 2nd Offense, a class A misdemeanor.
13. Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Physical Therapy Act with respect to the above allegations. Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
14. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-2836(i).
15. Based on the foregoing stipulations by the Licensee, the Board finds Licensee's acts constitute unprofessional conduct as set forth in K.S.A. 65-2912. Specifically, Licensee has violated to following statutes:
 - a. K.S.A. 65-2912(a)(1), in that she is addicted to intoxicating liquors.

- b. K.S.A. 65-2912(a)(2), in that Licensee was convicted of a felony and has not been sufficiently rehabilitated to warrant the public trust.
- c. K.S.A. 65-2912(a)(5), in that Licensee knowingly submitted misleading, deceptive, untrue or fraudulent information to the Board and/or she failed to furnish the Board, or its representatives any information legally requested by the Board and/or her conduct was likely to deceive, defraud, or harm the public by obtaining a renewal license by means of fraud, misrepresentation or concealment of material facts by obtaining a renewal license by means of fraud, misrepresentation or concealment of material facts.
- d. K.S.A. 65-2912(a)(5), as set forth in K.A.R. 100-29-12(a)(2), in that Licensee is unable to practice physical therapy without reasonable skill and safety because of alcoholism or excessive use of drugs, chemicals or any other type of material.

16. Pursuant to K.S.A. 65-2912 the Board has grounds to deny, revoke, suspend, limit, or censure Licensee's license.

17. According to K.S.A.65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

18. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and limitations on her license to engage in the practice of physical therapy:

CENSURE

- a. Licensee is publicly censured for violating the Physical Therapy Act.

SUSPENSION

- b. Licensee's license shall be suspended until she has established a period of recovery which provides for the public health, safety and welfare.

MONITORING

- c. Licensee agrees to comply with all terms and conditions of a monitoring contract with the Heart of America Professional Network (HAPN) monitoring contract executed on September 6, 2007. Further, Licensee agrees to follow all recommendations by HAPN for Licensee's evaluation, treatment, monitoring, and support during the term of her monitoring contract. Licensee further agrees to immediately notify the Board of any revisions to the contract, and to immediately provide a copy of such revised contract to the Board. The provisions of said contract are incorporated herein as if fully restated. Licensee further agrees to immediately notify the Board of any revisions to the HAPN contract, and to immediately provide a copy of such revised contract to the Board. The provisions of said contract are incorporated herein as if fully restated.
- d. Licensee shall attend AA meetings as directed by HAPN.
- e. Licensee agrees to abstain from the consumption of alcohol, including cereal malt beverages, and from the use of controlled substances, narcotics and all mind-altering and potentially addicting drugs or medications, unless prescribed by a physician for a medically necessary purpose and taken pursuant to the direction of a physician.

- f. Licensee agrees to immediately surrender her license if she experiences a relapse or fails to comply with this Consent Order or her HAPN monitoring contract in any manner.
- g. Licensee specifically agrees to submit to random alcohol and drug screens which may be in the form of urinalysis, blood or other biological specimen tests at the request of HAPN or Board staff. All test results for alcohol and/or other substances conducted with the HAPN program shall be admissible in any Board proceeding and Licensee shall not object to the admissibility of such test results. Licensee has the affirmative duty not to ingest any other substances which will cause a body fluid sample to test positive for controlled or illegal substances or alcohol. Licensee shall pay the costs attendant thereto.
- h. Licensee shall provide releases to the Board and HAPN when requested by the Board to authorize all relevant treatment programs to release all records regarding Licensee's treatment and evaluation to the Board and to HAPN.
- i. Licensee agrees to immediately notify a Board representative and HAPN if she experiences a relapse or fails to comply in any manner with her monitoring contract.
- j. Licensee will furnish a copy of this Consent Order to each and every state licensing board in which she holds licensure or applies for licensure.
- k. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against her for traffic or criminal offenses, or of any conviction for traffic or criminal offenses.

- l. Licensee shall at all times keep Board staff informed of all her current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.
- m. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Complaint Coordinator, 235 S.W. Topeka Blvd., Topeka, Kansas 66603-3068.

MONITORING AND LIMITATION TIMEFRAME

- n. The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing physical therapy in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.
19. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Healing Arts Act.
20. 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. 64-4921 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.

21. Licensee 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 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 Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.
22. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to the National Practitioner Databank, and any other reporting 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. Licensee 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 Licensee is not present. Licensee 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. Licensee, 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. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
27. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
28. All correspondence or communication between Licensee 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, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.
29. Licensee 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.

30. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. 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 Licensee.

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

IT IS FURTHER ORDERED that:

CENSURE

- a. Licensee is publicly censured for violating the Physical Therapy Act.

SUSPENSION

- b. Licensee's license shall be suspended until she has established a period of recovery which provides for the public health, safety and welfare.

MONITORING

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revisions to the contract, and to immediately provide a copy of such revised contract to the Board. The provisions of said contract are incorporated herein as if fully restated. Licensee further agrees to immediately notify the Board of any revisions to the HAPN contract, and to immediately provide a copy of such revised contract to the Board. The provisions of said contract are incorporated herein as if fully restated.

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- e. Licensee agrees to abstain from the consumption of alcohol, including cereal malt beverages, and from the use of controlled substances, narcotics and all mind-altering and potentially addicting drugs or medications, unless prescribed by a physician for a medically necessary purpose and taken pursuant to the direction of a physician.
- f. Licensee agrees to immediately surrender her license if she experiences a relapse or fails to comply with this Consent Order or her HAPN monitoring contract in any manner.
- g. Licensee specifically agrees to submit to random alcohol and drug screens which may be in the form of urinalysis, blood or other biological specimen tests at the request of HAPN or Board staff. All test results for alcohol and/or other substances conducted with the HAPN program shall be admissible in any Board proceeding and Licensee shall not object to the admissibility of such test results. Licensee has the affirmative duty not to ingest any other substances which will cause a body fluid sample to test

positive for controlled or illegal substances or alcohol. Licensee shall pay the costs attendant thereto.

- h. Licensee shall provide releases to the Board and HAPN when requested by the Board to authorize all relevant treatment programs to release all records regarding Licensee's treatment and evaluation to the Board and to HAPN.
- i. Licensee agrees to immediately notify a Board representative and HAPN if she experiences a relapse or fails to comply in any manner with her monitoring contract.
- j. Licensee will furnish a copy of this Consent Order to each and every state licensing board in which she holds licensure or applies for licensure.
- k. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against her for traffic or criminal offenses, or of any conviction for traffic or criminal offenses.
- l. Licensee shall at all times keep Board staff informed of all her current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.
- m. All reports required pursuant to this Consent Order shall be submitted to the Board of Healing Arts, Attention: Complaint Coordinator, 235 S.W. Topeka Blvd., Topeka, Kansas 66603-3068.

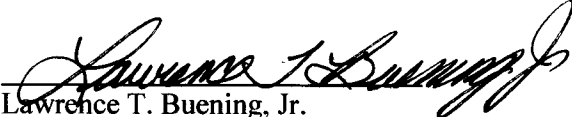
MONITORING AND LIMITATION TIMEFRAME

- n. The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Licensee may request modification or

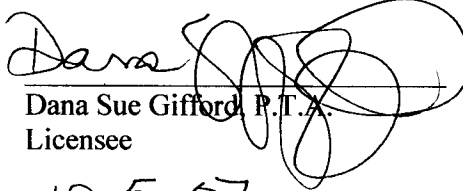
termination of the provisions. For any period of time that Licensee is not actively practicing physical therapy in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

IT IS SO ORDERED on this 10th day of December, 2007.

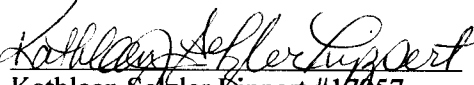
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

December 10, 2007
Date

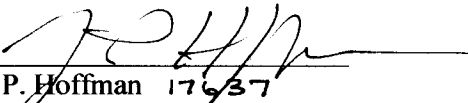

Dana Sue Gifford, P.T.A.
Licensee
12-5-07
Date

PREPARED AND APPROVED BY:


Kathleen Selzler Eppert #17957
Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
785-296-0961

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Dana Sue Gifford, P.T.A.

AGREED TO BY:



Jason P. Hoffman 17937
Attorney for Respondent
Commerce Bank Tower
100 E. 9th Street, 3rd Floor East
Topeka, Kansas 66612

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 10th day of December, 2007, to the following:

Dana Sue Gifford, P.T.A.
Licensee
1621 SW 70th Street
Topeka, Kansas 66619

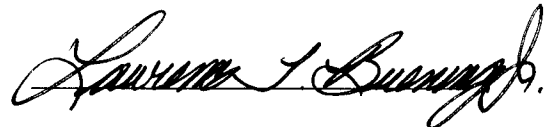
Jason P. Hoffman
Attorney for Respondent Licensee
Commerce Bank Tower
100 E. 9th Street, 3rd Floor East
Topeka, Kansas 66612

And the original was hand-filed with:

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

And a copy was hand-delivered to:

Kathleen Selzler Lippert #17957
Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



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Dana Sue Gifford, P.T.A.