

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

In the Matter of)
the Application for Student Permit)
of)
Leslie Higbee, R.T. Student)
12/13/01 LH)
_____)

Docket No. 02-HA-31

**KANSAS STATE BOARD OF
HEALING ARTS**

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and *12/13/01 LH* Leslie Higbee, R.T. ("Applicant") and stipulate and agree to the following:

1. 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.*

2. Applicant admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.

3. Applicant agrees that the respiratory therapy act is constitutional on its face and as applied in this case.

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

Stipulation and Agreement and Enforcement Order
Leslie Higbee, R.T. Student

5. Pursuant to K.S.A. 65-5510(a), there may be grounds for denial of an application for student permit due to Applicant's prior felony conviction **Confidential**

Confidential

6. Pursuant to K.S.A. 77-505, the Board may enter into an informal settlement of this matter in lieu of denying such application.

7. Applicant voluntarily and knowingly waives her right to a hearing pursuant to K.S.A. 65-5510(b) and under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* 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.

8. The terms and conditions of the Stipulation 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 Stipulation 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 Stipulation on behalf of the Board.

9. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

(a) In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Applicant, by signature affixed to this Stipulation, hereby voluntarily agrees to the following provisions:

MONITORING

(i) Confidential

(ii) Confidential

(iii) Confidential

(b) The provisions of this Stipulation are not self-terminating. Applicant must petition the Board to request termination of this Stipulation.

(c) Applicant's failure to comply with the provisions of this Stipulation may result in the Board initiating disciplinary action to immediately suspend or revoke Applicant's Student Permit pursuant to and in compliance with the Kansas administrative procedure act.

(d) Nothing in this Stipulation shall be construed to deny the Board jurisdiction to investigate alleged violations of the respiratory 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 Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the respiratory therapy practice act.

(e) Applicant hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Stipulation or the content of this Stipulation.

(f) Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to all reporting entities requiring disclosure of this Stipulation.

(g) This Stipulation, 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.

(h) 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.

(i) 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.

(j) Applicant acknowledges that she has read this Stipulation and fully understands the contents.

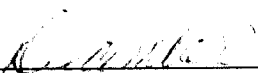
(k) Applicant acknowledges that this Stipulation has been entered into freely and voluntarily.

(l) All correspondence or communication between Applicant and the Board relating to this Stipulation 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.

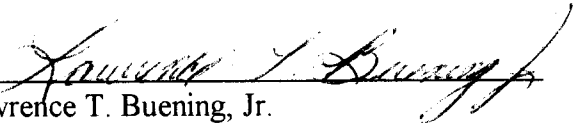
(m) Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory therapy in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-5510(a). This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

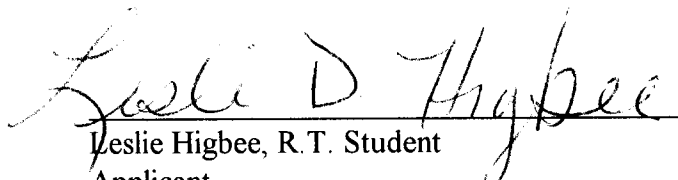
IN WITNESS WHEREOF, the parties have executed this agreement on this 12th day of

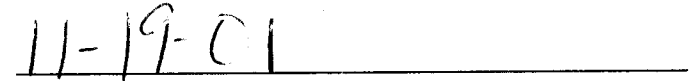
, 2001.

KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director


Date


Leslie Higbee, R.T. Student
Applicant


Date

Prepared By:


Kelli J. Benintendi #16032
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

CERTIFICATE OF SERVICE

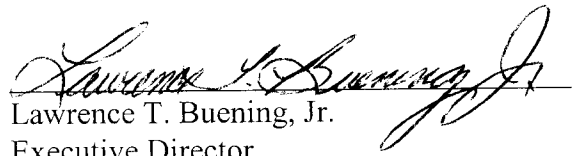
I, Lawrence T. Buening, Jr., Executive Director, Kansas State Board of Healing Arts, do hereby certify that on the 14th day of December, 2001, a true and correct copy of the above and foregoing **Stipulation and Agreement and Enforcement Order** was deposited in the United States mail, postage prepaid, first class to the following:

Lesli Higbee
2618 Washington Avenue
Kansas City, Kansas 66102

and a copy was hand-delivered to the office of:

Kelli J. Benintendi, Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603

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


Lawrence T. Buening, Jr.
Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603
(785) 296-3680

L.T.B.:E