

FILED 

SEP 08 2017

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No. 18-HA 00010
Elaine Isham, A.T.)	
Kansas License No. 24-00739)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Anne Barker Hall, Associate Litigation Counsel (“Respondent”), and Elaine Isham, A.T. (“Applicant/Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice as an Athletic Trainer in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant/Licensee’s last known mailing address to the Board is: 1923 N. Webb Road, Wichita, Kansas 67206.
2. Applicant/Licensee has been entitled to engage to practice as an athletic trainer in the State of Kansas, having been issued License No. 24-00739 on approximately October 8, 2010. On or about January 1, 2017, Applicant/Licensee failed to renew her license and it was cancelled for failure to renew by operation of law. Applicant/Licensee’s license is currently cancelled for failure to renew. On or about June 5, 2017, Applicant/Licensee submitted to the Board a reinstatement application for athletic trainer. Such application was deemed complete and filed with the Board on Sept. 8, 2017
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of athletic training. K.S.A. 65-6901 *et seq.* and K.S.A. 65-6902.

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

5. The Kansas Athletic Trainers Licensure Act is constitutional on its face and as applied in the case. Applicant/Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. Applicant/Licensee voluntarily and knowingly waives her right to a hearing. Applicant/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. Applicant/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.

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/Licensee 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. 65-6903, K.S.A. 65-6911(a)(8), and K.S.A. 65-6911(a)(10) to take action with respect to Applicant/Licensee's license under the Kansas Athletic Trainers Registration Act, K.S.A. 65-6901, *et seq.*

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9. On or about January 1, 2017, Applicant/Licensee failed to renew her Athletic Trainers License which caused it to be canceled for a failure to renew.
10. During the time period in which Applicant/Licensee's Kansas license was cancelled for a failure to renew, she did not hold any other active license to practice as an Athletic Trainer in any other jurisdiction.
11. Applicant/Licensee practiced as an athletic trainer without being properly licensed under her employment at Mid-America Orthopedics on or about January 1, 2017, to on or about May 10, 2017. Applicant/Licensee has been employed as an athletic trainer at Mid-America Orthopedics located in Wichita, Kansas since August 2012.
12. Applicant/Licensee's employer, Mid-America Orthopedics at the time of Applicant/Licensee renewal period had an internal process by which individual licensees are reminded of their renewal date/deadline. It is further Mid-America Orthopedics' internal policy that it is the responsibility of the individual licensee to renew their license through the Board. A calendar reminder triggers communication to Mid-America Orthopedics' administrative office by the licensee confirming that the renewal is being handled in an appropriate and timely fashion.
13. Applicant/Licensee had spoken with the Mid-America Orthopedics office manager on multiple occasions about completing her licensure renewal. At one point, Applicant/Licensee did attempt to complete her application renewal process; however, she was not able to complete the transaction because she had utilized the wrong payment card.
14. During the period in which Applicant/Licensee was not properly licensed to practice as an athletic trainer in the State of Kansas, Applicant/Licensee provided care and treatment for approximately twenty-three (23) athletes. In treating the twenty-three (23)

patients Applicant/Licensee completed athletic treatment records for each athlete in which she signed each treatment record as a "Certified Athletic Trainer."

15. Applicant/Licensee has previously had her State of Kansas license to practice as an athletic trainer publicly disciplined by the Board in the form of an administrative fine in the amount of \$350.00 for practicing without a license on or about October 29, 2010, in KSBHA Docket No. 11-HA00030.

16. Applicant/Licensee acknowledges that if formal hearing proceedings were conducted and Applicant/Licensee presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant/Licensee has violated the Kansas Athletic Trainers Licensure Act with respect to the above allegations. Applicant/Licensee further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

17. Applicant/Licensee's acts, if proven, constitute a violation of K.S.A. 65-6903. In that Applicant/Licensee utilized the words "athletic trainer" as an insignia indicating or implying that she is a properly licensed athletic trainer when she was not properly licensed by the State of Kansas as an athletic trainer.

18. Applicant/Licensee violated K.S.A. 65-6911(a)(8) by negligently or intentionally violating K.S.A. 65-6903 by providing care and treatment to athletes.

19. Applicant/Licensee violated K.S.A. 65-6911(a)(10) by providing care and treatment to athletes when she was not properly licensed as an Athletic Trainer.

20. Pursuant to K.S.A.65-6911, the Board may deny, suspend, limit, refuse to renew, place on probation, reprimand or revoke Applicant/Licensee's license.

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21. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
22. All pending investigation materials in KSBHA Investigative Case Number 18-00050 regarding Applicant/Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 32 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
23. Applicant/Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant/Licensee has failed to comply with any of the terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Applicant/Licensee's license to practice as an athletic trainer in the State of Kansas. Applicant/Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant/Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Applicant/Licensee retains the right to confront and examine all witnesses, present evidence, testify on her own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Athletic Trainers Licensure Act, K.S.A. 65-6901, *et seq.*
24. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Athletic Trainers Licensure 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 Athletic Trainers Licensure Act.

25. Applicant/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 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/Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Applicant/Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

26. Applicant/Licensee further understands and agrees that upon signature by Applicant/Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.

27. 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.

28. Applicant/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 Applicant/Licensee is not present. Applicant/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.

29. Applicant/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.

30. Applicant/Licensee acknowledges that she has read this Consent Order and fully understands the contents.

31. Applicant/Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

32. All correspondence or communication between Applicant/Licensee and the Board relating to the Consent Order shall be addressed to the Kansas State Board of Healing Arts, Attn: Compliance Coordinator, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

33. Applicant/Licensee shall obey all federal, state and local laws and rules governing the practice as an Athletic Trainer 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.

34. 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

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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.

35. This Consent Order constitutes public, disciplinary action.

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

37. Applicant/Licensee understands that a Temporary License shall be issued based upon Applicant/Licensee's signing this Consent Order, paying the temporary license fee, and abiding by the terms of this Consent Order. Applicant/Licensee 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/Licensee shall be issued a permanent licensure under the terms of this Consent Order.

38. In lieu of conducting a formal proceeding, Applicant/Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against her license to engage as an Athletic Trainer in the State of Kansas:

PUBLIC CENSURE

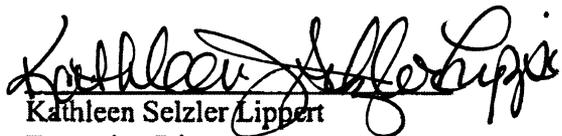
39. Applicant/Licensee is publicly censured for violating the Kansas Athletic Trainer Licensure Act.

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.

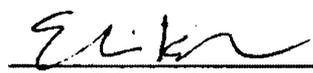
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant/Licensee shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 8 day of Sept, 2017.

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

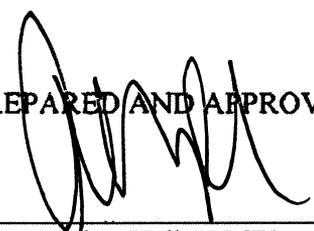

Kathleen Selzler Lippert
Executive Director

9/8/2017
Date


Elaine Isham, A.T.
Applicant/Licensee

9/1/17
Date

PREPARED AND APPROVED BY:



Anne Barker Hall #23672
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-3268
anne.hall@ks.gov

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 8th day of Sept., 2017, to the following:

Elaine Isham, A.T.
Applicant/Licensee
1923 N. Webb Rd.
Wichita, KS 67206

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:

Anne Barker Hall
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

