

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
OCT 18 2004
KANSAS STATE BOARD
OF HEALING ARTS

In the Matter of)
)
DARYLE A. JAGER, R.T.) Docket No. 05-HA-
Kansas License No. 16-02141)
_____)

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts (“Petitioner”), by and through Stacy L. Cook and Diane L. Bellquist, and Daryle A. Jager, R.T. (“Licensee”), pro se, and move the Board for approval of a Consent Order affecting Licensee’s license to practice as a respiratory therapist in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s last known mailing address to the Board is 6021 Long Street, Shawnee, Kansas 66216-1821.
2. Licensee is or has been entitled to engage in the practice of respiratory therapy, having been issued License No. 16-02141 on approximately December 6, 1997. Licensee has held a current license to engage in the practice of respiratory therapy in the State of Kansas, having last renewed his license on approximately March 19, 2004. Licensee’s license status is active.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of respiratory therapy.
4. This Consent Order and the filing of such document are in accordance with the 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.

5. 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.

6. The Kansas Respiratory Therapy Act is constitutional on its face and as applied in this case.

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

8. Licensee voluntarily and knowingly waives his right to a hearing. Licensee 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. 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.

9. The terms and conditions of the Consent Order are entered into between the undersigned parties that 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.

10. On or about December 3, 2002, Licensee was charged in the District Court of Johnson County, Kansas for unlawfully, feloniously and willfully conspiring to commit and assist in the commission of the crime of Committing a Fraudulent Insurance Act, which is presenting or causing to be presented to an insurer, a claim for payment or other benefit of at least \$5,000 but less than \$25,000.00, pursuant to an insurance

policy for personal insurance, which Licensee knew to contain materially false information.

11. On or about December 12, 2003, Licensee pled guilty to committing such charge, which is a nonperson felony.

12. On or about February 12, 2004, the felony conviction became final when Licensee was sentenced to six (6) months jail time, twelve (12) months probation, restitution in the amount of four-hundred ninety-two dollars (\$492.00), and payment of court costs.

13. Such conduct violates K.S.A. 65-5510(a), unprofessional conduct that has endangered or is likely to endanger the health, welfare or safety of the public.

“Unprofessional conduct” is further defined by K.S.A. 65-5510(a)(3), a felony conviction if the Board finds that the felony has a direct bearing on whether such person should be entrusted to serve the public in the capacity of a respiratory therapist.

14. In lieu of conducting formal proceedings, Licensee, by his signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary measures regarding his license as a respiratory therapist:

- (a) Licensee is hereby publicly censured for violation of K.S.A. 65-5510(a)(3);
- (b) Licensee agrees to submit to the Board a copy of the paperwork that he is required to turn into his probation officer each month;
- (c) Licensee agrees to immediately notify the Board if he fails to comply in any manner with his probationary terms and/or if his probation is revoked;

- (d) Alternatively, Licensee agrees to notify the Board upon completion of his probation and he agrees to provide sufficient documentation to the Board of such completion; and
- (e) Licensee agrees to immediately notify the Board if he becomes the subject of any criminal investigations from the date of execution of this Consent Order forward.

15. Licensee's failure to comply with this Consent Order will result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

16. Nothing in this Consent Order 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 Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Respiratory Therapy Act.

17. Licensee 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 and 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.

18. 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 requiring disclosure of the Consent Order.

19. 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.

20. 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 or settlement.

21. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, 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.

22. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

23. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be sent by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Diane L. Bellquist, 235 S. Topeka Boulevard, Topeka, Kansas 66603-3068.

25. Licensee 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 Consent Order or may become effective subsequent to the execution of this document.

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.

27. 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 in lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- (a) Licensee is hereby publicly censured for violation of K.S.A. 65-5510(a)(3);
- (b) Licensee agrees to submit to the Board a copy of the paperwork that he is required to turn into his probation officer each month;
- (c) Licensee agrees to immediately notify the Board if he fails to comply in any manner with his probationary terms and/or if his probation is revoked;
- (d) Alternatively, Licensee agrees to notify the Board if he completes his probation and he agrees to provide documentation to the Board indicating such completion; and
- (e) Licensee agrees to immediately notify the Board if he becomes the subject of any criminal investigations from the date of execution of this Consent Order forward.

IT IS SO ORDERED on this _18TH day of __October____, 2004.

FOR THE KANSAS STATE BOARD
OF HEALING ARTS:

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

PREPARED AND APPROVED BY:

_____/s/ Diane L. Bellquist_____
Stacy L. Cook #16385
Diane L. Bellquist #20969
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

AGREED TO BY:

_____/s/ Daryl Jager_____
Daryle A. Jager, R.T.
Licensee

CERTIFICATE OF SERVICE

I, Diane Bellquist, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served on the 18th day of October, 2004 by United States mail, first-class postage pre-paid and addressed to:

Daryle A. Jager, R.T.
6021 Long Street
Shawnee, Kansas 66216-1821

And the original was hand-delivered to:

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

_____/s/ Diane L. Bellquist_____
Stacy L. Cook #16385
Diane L. Bellquist #20969