

FILED

APR 29 2003

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
SHAWN J. KAVANAUGH, P.T.)
Kansas License No.11-01192)
_____)

Docket No. 03-HA-66

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Shawn J. Kavanaugh, P.T. ("Registrant"), and move the Board for approval of a Consent Order affecting Registrant's registration to practice physical therapy in the State of Kansas. The parties stipulate and agree to the following:

1. Registrant's last known mailing address to the Board is 14311 W. 65th, Shawnee, Kansas 66216.
2. Registrant is or has been entitled to engage in the practice of physical therapy in the State of Kansas, having been issued Registration No. 11-01192 on October 8, 1985. At all times relevant to the allegations set forth below, Registrant has held a current registration to engage in the practice of physical therapy in the State of Kansas, having last renewed his registration on December 13, 2002.
3. 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.*
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. 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 Physical Therapy Act is constitutional on its face and as applied in this case.

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

7. Registrant voluntarily and knowingly waives his right to a hearing. Registrant 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. Registrant 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. Registrant specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. On or about November 8, 1992, Registrant was arrested in Wyandotte County and charged with driving under the influence, transporting an open container of alcohol, and driving without headlights when required.

10. On or about January 22, 1993, Registrant entered into a diversion agreement.

11. On or about April 7, 1996, Registrant was charged in Platte County, Missouri with driving while intoxicated and careless driving.

12. The charges were later amended and Registrant paid a fine.

13. On or about October 22, 2000, Registrant was charged in Johnson County with driving under the influence and speeding.

14. On or about February 14, 2001, Registrant pled guilty to DUI and was placed on probation.

15. Pursuant to K.S.A. 65-2912(a)(5), the Board has authority to revoke, suspend, censure or otherwise limit Registrant's registration.

16. According to K.S.A. 77-505 the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

17. In lieu of the conclusion of formal proceedings, Registrant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following:

- a. Registrant agrees to abstain from the consumption and/or use of alcohol.
- b. **(Confidential)**

(Confidential)

c. (Confidential)

d. (Confidential)

e. The provisions in this Consent Order remain in effect until the Board formally terminates the provision by further order.

18. At this time the Consent Order is not considered a disciplinary action.

However, Registrant's failure to comply with the provisions of the Consent Order and/or (Confidential) may result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act ("KAPA"). The Board reserves the right, to which Respondent will not contest such right,

to proceed under KAPA with disciplinary action for the admissions, stipulations and agreements set forth in this Consent Order and/or for violation of a Board order. The Board and Registrant retain all rights, procedural remedies, and defenses as allowed by law should the Board proceed to hearing and/or propose any settlement based on non-compliance with the HAPN program and/or alleged violation of a Board order.

19. 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.

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

21. Registrant further understands and agrees that upon signature by Registrant, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Consent Order.

22. 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.

23. Registrant 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 Registrant is not present. Registrant 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.

24. Registrant, 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.

25. Registrant acknowledges that he has read this Consent Order and fully understands the contents.

26. Registrant acknowledges that this Consent Order has been entered into freely and voluntarily.

27. All correspondence or communication between Registrant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

28. Registrant 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.

29. 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.

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

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:

- a. Registrant agrees to abstain from the consumption and/or use of alcohol.
- b. **(Confidential)**

(Confidential)

c. (Confidential)

d. (Confidential)

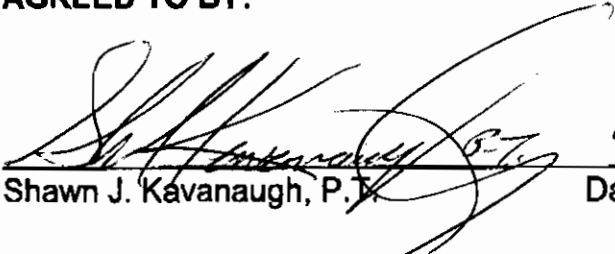
e. The provisions in this Consent Order remain in effect until the Board formally terminates the provision by further order.

IT IS SO ORDERED on this 29th day of April, 2003.

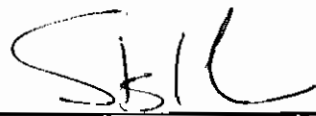
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**

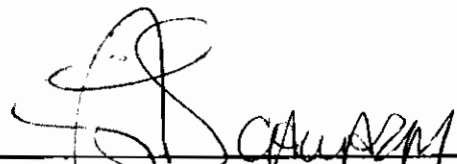

Lawrence T. Buening, Jr.
Executive Director

AGREED TO BY:


Shawn J. Kavanaugh, P.E. 4-15-03
Date

PREPARED AND APPROVED BY:


Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413


Steve A. Schwarm #13232
Polsinelli-Shalton Welte, P.C.
555 S. Kansas Avenue, Suite 301
Topeka, Kansas 66603-3443
(785) 233-1446

CERTIFICATE OF SERVICE

I, Stacy L. Cook, do hereby certify that I served a true and correct copy of the **CONSENT ORDER** by United States mail, postage prepaid, on this 30th day of April, 2003 to the following:

Shawn J. Kavanaugh, P.T.
14311 W. 65th
Shawnee, Kansas 66216.

Steve A. Schwarm
Polsinelli Shalton Welte, P.C.
555 S. Kansas Avenue, Suite 301
Topeka, Kansas 66603-3443

and the original was hand-delivered to:

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



Stacy L. Cook