

FILED

JUN 16 2014

KS State Board of Healing Arts



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

In the Matter of)	
)	Docket No. 14-HA00070
Annette Lewer, O.T.)	
Kansas License No. 17-02695)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Reese H. Hays, Litigation Counsel, and Jane E. Weiler, Associate Litigation Counsel (“Petitioner”), and Annette Lewer, O.T. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice occupational 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: **Confidential**
Kansas City, Missouri 64113.
2. Licensee is or has been entitled to engage in the practice of occupational therapy in the State of Kansas, having been issued License No. 17-02695 on approximately October 20, 2010. Licensee’s license is active, and having last renewed such license on approximately March 31, 2014.
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 occupational therapy. K.S.A. 65-5401 *et seq.* and K.S.A. 65-5402.
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

Consent Order
Annette Lewer, O.T.

- 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 Occupational Therapy Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
 6. 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.
 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. 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. 65-5410(a)(4), to take action with respect to Licensee's license under the Kansas Occupational Therapy Act, K.S.A. 65-5401, *et seq.*

9. On or about April 26, 2013, Licensee submitted a letter to the Board that requested an extension of time to complete her continuing education requirements for the renewal of her Kansas Occupational Therapist License. In that letter, she stated that she was going to be attending a three (3) day ADED conference in August 2013 to fulfill her Continuing Education Units (“CEU”) requirements.
10. Licensee also provided a written explanation of why she needed the extension to obtain her required hours of CEU. She advised that this was her first year of renewing her license in Kansas in which CEU’s were required to be submitted, and she was adjusting to tracking them properly for Kansas.
11. On or about April 30, 2013, Katy Lenahan, Board Licensing Administrator, found Licensee had shown good cause for an extension of time to be granted in this situation and granted Licensee’s five (5) month extension request. This grant of an extension of time gave Licensee until August 31, 2013, to complete and provide proof of her forty (40) hours of CEU.
12. On or about September 10, 2013, Ms. Lenahan sent Licensee a letter informing her that the Board had not received her required proof of completion of her required hours of CEU by her extended completion date of August 31, 2013. In that letter, Ms. Lenahan informed Licensee that the Board must receive proof of completion of forty (40) CEU hours by September 17, 2013.
13. Licensee failed to submit to the Board proof of completion of forty (40) hours of CEU hours by September 17, 2013.
14. 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 Kansas Occupational Therapy Practice 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.

15. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 64-5410.
16. Licensee violated K.S.A. 65-5410(a)(4) by failing to successfully complete and provide proof of completion to the Board of a minimum of forty (40) contact hours of continuing education for a licensed occupational therapist as required by K.A.R. 100-54-7 that was adopted by the Board and relates to the practice of occupational therapy.
17. Licensee also violated K.S.A. 65-5410(a)(2), as further defined in K.A.R. 100-54-5(g) by failing to furnish Ms. Lenahan, a Board representative, the legally requested information in the form of Licensee's proof of completion of the required continuing education for continued licensure as an occupational therapist in the State of Kansas.
18. Pursuant to K.S.A. 65-5410, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-5410(c) the Board has the authority to impose administrative fines for violations of the Kansas Occupational Therapy Act.
19. 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.

20. All of the materials in KSBHA Investigative Case Number 14-00223 and in the matter of 14-HA00070 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
21. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that 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 Licensee's license to practice occupational therapy in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not 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, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his 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 Occupational Therapy Act, K.S.A. 65-5401 *et seq.*
22. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Occupational 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 Kansas Occupational Therapy Act.

23. 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 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.

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

25. 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.

26. 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.

27. 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.
28. Licensee acknowledges that she has read this Consent Order and fully understands the contents.
29. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
30. 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, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.
31. Licensee shall obey all federal, state and local laws and rules governing the practice of occupational 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.
32. 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

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.

33. This Consent Order constitutes a public disciplinary action.
34. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.
35. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public disciplinary action against her license to engage in the practice of occupational therapy:

FINES

36. Licensee is hereby ordered to pay a CIVIL FINE pursuant to K.S.A. 65-5410(c) in the amount of \$500.00. The total amount of \$500.00 shall be due on or before December 31, 2014.
37. In the alternative, Licensee may make two (2) payments in the amount of \$250.00, for a total of \$500.00. The first payment in the amount of \$250.00 is due to the Board on or before September 30, 2014. The second payment is due to the Board on or before December 31, 2014.
38. In the event that the Board does not receive a payment due and owing, the total amount of the levied FINE still due shall become immediately due and payable in full upon written notice by the Board to Licensee stating that payment has not been received.
39. Licensee shall make all payments payable to the Kansas State Board of Healing Arts. All payments shall be in the form of a check or money order, and send all

payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

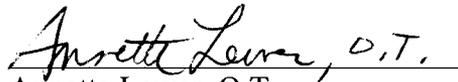
IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 13 day of June, 2014.

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


Kathleen Selzler Lippert
Executive Director

6/13/14
Date


Annette Lewer, O.T.
Licensee

4/23/14
Date

PREPARED AND APPROVED BY:



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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 16th day of June, 2014, to the following:

Annette Lewer, O.T.
Confidential
Kansas City, Missouri 64113

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:

Reese H. Hays, Litigation Counsel
Jane E. Weiler, 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

