

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

In the Matter of )  
 )  
Elizabeth F. Markowitz, O.T. ) Docket No. 17-HA 00019  
Kansas License No. 17-03001 )

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CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Joseph S. Behzadi, Associate Litigation Counsel, ("Petitioner"), and Elizabeth F. Markowitz, O.T. ("Licensee"), by and through her counsel, Mark Stafford, 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: [REDACTED] Street, Prairie Village, Kansas 66208.
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. 17-03001 on approximately July 18, 2014. Licensee's license is currently active, having been last renewed on February 16, 2016.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate 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

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provided by K.S.A. 77-505, 65-5410, 65-5416, 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)(2) and K.A.R. 100-54-5(o), 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 February 3, 2015, at approximately 2345 hours at 89<sup>th</sup> Street and Metcalf area in Overland Park, Kansas a single vehicle, non-injury accident occurred.
10. The accident involved the single vehicle striking a light pole and Licensee was determined to be the driver of that vehicle.
11. Specifically, the vehicle that struck a light pole on Metcalf near 89<sup>th</sup> Street was located behind a Starbucks with part of its front bumper missing.
12. Licensee was located at the scene and was uninjured.
13. Licensee had contact with law enforcement and initially refused to submit to the preliminary breath test; however, later she did submit a Breath Alcohol Test result of 0.229.
14. Licensee was arrested for driving under the influence.
15. On or about March 31, 2015, Licensee stipulated to the commission of the following violations of Overland Park, Kansas Municipal ordinances:
  1. Failure to avoid a collision,
  2. Drive vehicle without driver's license in their possession,
  3. Driving under the influence,
  4. Refusing a Preliminary Breath Test, and
  5. Failure to report an accident.
16. On or about March 31, 2015, Licensee entered into a Diversion Agreement with the City of Overland Park, Kansas.
17. The term of the Diversion Agreement is for twelve (12) months, beginning on March 31, 2015.

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 64-5410.

23. By driving with a B.A.C. of 0.229, over the legal limit of 0.08, Licensee engaged in conduct likely to harm the public, which is unprofessional conduct proscribed at K.S.A. 65-5410(a)(2), as further defined by K.A.R. 100-54-5(o).

24. 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 Practice Act.

25. 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.

26. All of the materials in KSBHA Investigative Case Number 15-00650 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 31 authorized and

directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

27. 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 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 Occupational Therapy Act, K.S.A. 65-5401 *et seq.*
28. 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 Practice Act.
29. 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.

30. 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.
31. 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.
32. 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.
33. 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.

34. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

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

36. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

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

37. 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.

38. 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. 77-526. 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.

39. This Consent Order constitutes public non-disciplinary action.

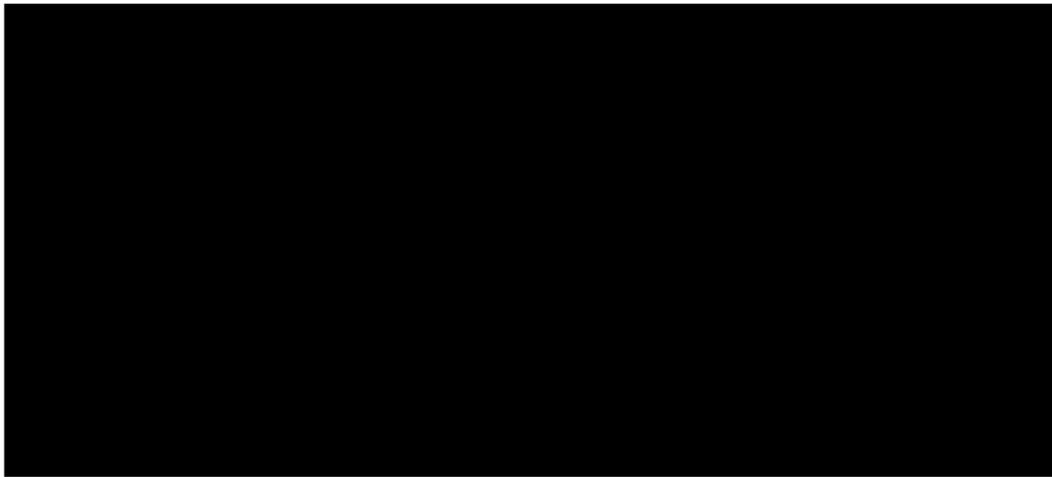
40. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-4925.

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

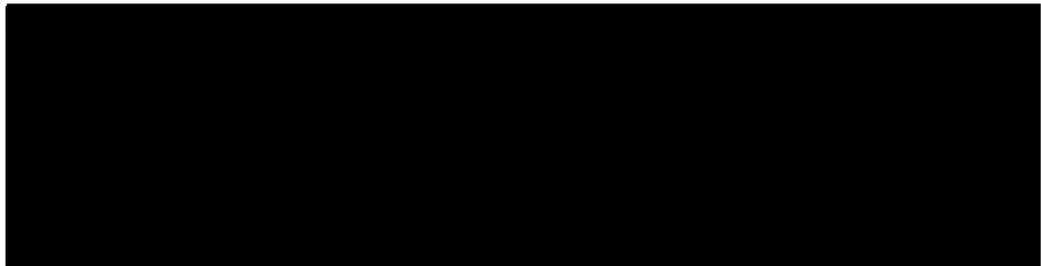
42. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public non-disciplinary action against her license to engage in the practice of occupational therapy:

**MONITORING**

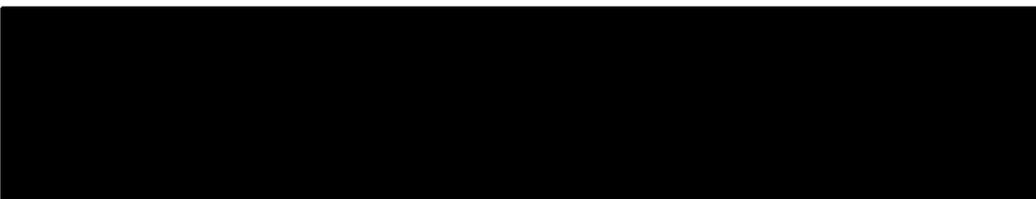
43.



44.



45.



[REDACTED]

46. [REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

50. Licensee will furnish a copy of this Consent Order to each and every state in which she holds licensure or applies for licensure and to an appropriate work site supervisor or personnel [REDACTED]

51. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against her or of any conviction for any traffic or criminal offense excluding speeding and/or parking violations.

52. Licensee shall at all times keep Board staff informed of all her current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.
53. Licensee agrees to pay all of the costs incurred for the performance of her monitoring, [REDACTED]

**TIMEFRAME**

54. The above monitoring provisions are not self-terminating. After a period of one (1) year from the date of the approval of this Consent Order, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing as an occupational therapist in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

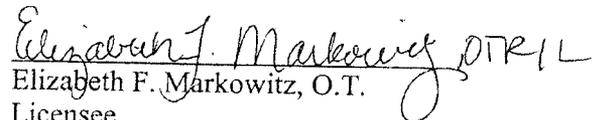
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

**IT IS SO ORDERED** on this 19 day of Oct, 2016.

FOR THE KANSAS STATE  
BOARD OF HEALING ARTS:

  
Kathleen Selzler Lippert  
Executive Director

10/19/16  
Date

  
Elizabeth F. Markowitz, O.T.  
Licensee

9.13.16  
Date

PREPARED AND APPROVED BY:

  
Joseph S. Behzadi, #24065  
Associate Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson Ave, Lower Level Ste A  
Topeka, Kansas 66612  
(785) 296-8022  
(785) 368-8210-fax  
[Joseph.behzadi@ks.gov](mailto:Joseph.behzadi@ks.gov)

  
Mark Stafford #13233  
Attorney for Licensee  
Simpson Logback Lynch Norris P.A.  
107 Southwest 6<sup>th</sup> Avenue, Suite 210  
Topeka, Kansas 66603

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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 20<sup>th</sup> day of October, 2016, to the following:

Mark Stafford  
Attorney for Licensee  
Simpson Logback Lynch Norris P.A.  
107 Southwest 6<sup>th</sup> Avenue, Suite 210  
Topeka, Kansas 66603

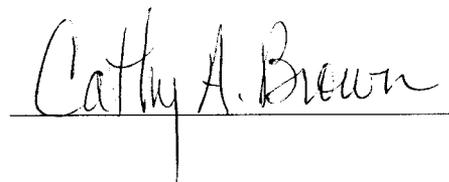
And the original was hand-filed with:

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:

Joseph S. Behzadi, 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

  
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