

JUN 21 2021

KS State Board of Healing Arts

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

In the Matter of

BRANDON M. MARTINO, A.T.
Kansas License No. 24-00919

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KSBHA Docket No.: 21-HA 00082

JOINT CONSENT ORDER FOR INDEFINITE SUSPENSION

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through Tammie L. Mundil, Deputy Litigation Counsel, and Steven M. Lehwald, Associate Litigation Counsel ("Petitioner"), and Brandon Martino, A.T. ("Licensee"), by and through his attorney, Barry Clark, and move the Board for approval of a Consent Order affecting Licensee's license to practice as an athletic trainer in Kansas. The Board and Licensee stipulate and agree to the following:

FACTS

1. Licensee's last known mailing address to the Board is: CONFIDENTIAL
CONFIDENTIAL
2. Licensee's last known email address to the Board is: CONFIDENTIAL
3. Licensee is or has been entitled to engage in the practice as an athletic trainer in the State of Kansas, having been issued License No. 24-00919 on or about December 31, 2013, and last renewing as "Active" on or about October 20, 2020.

Consent Order for Indefinite Suspension
Brandon M. Martino
Kansas License No. 24-00919

4. The Board is the sole exclusive administrative agency in the state of Kansas authorized to regulate the practice of the healing arts, specifically the practice of athletic training. K.S.A. 65-6901 *et seq.*
5. 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 65-6911. Upon approval, these stipulations shall constitute final the Board's Final Order.
6. The Kansas Athletic Trainers Licensure 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.
7. 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 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.
9. This Consent Order is the product of settlement negotiations and the Board has authority to enter into this agreement by way of approving the Consent Order under K.S.A. 77-505 and 65-6911.

10. This Consent Order and any statements of facts or proposed factual findings are the resolution of a disputed claim. This agreement and the contents thereof shall not constitute an admission of fault on the part of licensee, nor the admission of any facts underlying the basis for this Consent Order. This Consent Order is not intended to be nor shall it be construed as an admission by Licensee.

11. If this matter were to proceed to hearing, the Petitioner would present the facts supporting this Consent Order as follows:

- a. On or about **CONFIDENTIAL**, and at all times relevant hereto, Licensee was employed by **CONFIDENTIAL** High School as a licensed athletic trainer. (Exhibit 1.)
- b. On or about **CONFIDENTIAL**, and at all times relevant hereto, Patient 1, was a student at **CONFIDENTIAL** High School. (Exhibit 1 and 2.)
- c. On or about **CONFIDENTIAL**, Patient 1 was less than eighteen (18) years of age. (Exhibit 1 and 2.)
- d. Between approximately **CONFIDENTIAL** through **CONFIDENTIAL**, Patient 1 was being treated by Licensee in his capacity as a licensed athletic trainer. Such treatment took place at **CONFIDENTIAL** High School. (Exhibit 1, 2, and 3.)
- e. Between approximately **CONFIDENTIAL** through **CONFIDENTIAL**, Licensee engaged in and maintained **CONFIDENTIAL** (Exhibit 1, 2 and 3.)
- f. Between approximately **CONFIDENTIAL** through **CONFIDENTIAL**, Licensee sent Patient 1 sexually explicit text messages from his cell phone to Patient 1's cell phone. (Exhibit 1, 2, 3, 4, and 5.)

g. Between approximately **CONFIDENTIAL** through **CONFIDENTIAL** , Licensee used his cell phone to send Patient 1 nude images of himself to Patient 1's cell phone. (Exhibit 1, 2, and 3.)

h. **CONFIDENTIAL**

i. Between approximately **CONFIDENTIAL** through **CONFIDENTIAL** , Licensee used his cell phone to send Patient 1 a video of himself masturbating to Patient 1's cell phone. (Exhibit 1 and 2.)

j. At all times relevant hereto, the Licensee and Patient 1 were in an ongoing athletic trainer-patient relationship. (Exhibit 1, 2, and 3.)

k. On or about January 24, 2021, Licensee made the following statements regarding Patient 1:

- i. "Around **CONFIDENTIAL** . Eventually the **CONFIDENTIAL** of photos occurred..." (Exhibit 3.)
- ii. When asked "Who is the student?" Licensee responded, "[Patient 1]". (*Id.*)
- iii. When asked "How old was [Patient 1] during the time of communication?" Licensee responded, **CONFIDENTIAL**. (*Id.*) [redacted information indicating age under 18]
- iv. When asked "What kind of Photos were **CONFIDENTIAL**?" Licensee responded, "Nudity". (*Id.*)
- v. When asked "Who sent who nude pictures?" Licensee responded, "**CONFIDENTIAL**," (*Id.*)

1. On or about February 4, 2021, Licensee was charged with two counts of Sexual Exploitation of a Child, K.S.A. 21-5510(a)(2), a severity level 5, person felony and two counts of Promoting Obscenity to Minors, K.S.A. 21-6401(b), a class A nonperson misdemeanor. (Exhibit 6.)
12. Licensee presents no evidence in opposition to the above.
13. While admitting no wrongdoing, 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 Healing Arts Act. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

VIOLATIONS OF THE ATHLETIC TRAINERS LICENSURE ACT

14. Under K.S.A. 65-6911 *et seq.*, the Board has grounds to revoke, suspend, censure, place on probation or otherwise limit Licensee's license for violations of the Athletic Trainers Licensure Act.
15. If proven, the Board believes Licensee's acts and conduct during the course of practicing as an athletic trainer in Kansas constitute acts in violation of the Athletic Trainers Licensure Act as follows:
 - a. K.S.A. 65-6911(a)(10), in that Licensee has committed unprofessional conduct as defined by rules and regulations of the Kansas State Board of Healing Arts.
Specifically:
 - i. Licensee violated K.A.R. 100-69-7(a)(10) by committing acts of sexual abuse, misconduct, or other improper sexual contact that exploited the licensee-patient

relationship; to-wit: ~~CONFIDENTIAL~~ sexually explicit communications ~~CONFIDENTIAL~~ one of his minor patients, Patient 1.

ii. Licensee violated K.A.R. 100-69-7(a)(8) by engaging in conduct likely to deceive, defraud, or harm the public; to-wit: violating the public's trust by ~~CONFIDENTIAL~~ sexual explicit communications ~~CONFIDENTIAL~~ one of his minor patients, Patient 1, while employed by a public school district to serve as an athletic trainer for the community's high school students.

- b. K.S.A. 65-6911(a)(5), in that Licensee committed an act of misconduct and/or dishonesty in the performance of the functions or duties of an athletic trainer;
- c. K.S.A. 65-6911(a)(8), in that Licensee committed intentional violations of the provisions of this act or the rules and regulations adopted under this act; and
- d. K.S.A. 65-6911(a)(9), in that Licensee violated the professional trust and/or confidence placed in him by Patient 1 and/or the public at large.

INDEFINITE SUSPENSION

16. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby agrees to an indefinite suspension of licensure to practice as an athletic trainer in the State of Kansas. Licensee agrees that an application for reinstatement of his license will be considered in accordance with the provisions of K.S.A. 65-2844 as well as all other applicable statutes, law, rules, and regulations regarding qualifications for licensure and reinstatement as an athletic trainer in Kansas. Licensee acknowledges and agrees that any future applications

for licensure under the Act will be governed by *Vakas v. the Kansas Board of Healing Arts*, 248 Kan. 589 (1991).

MISCELLANEOUS PROVISIONS

17. A protective order is hereby entered to protect all confidential information under 42 CFR Part II, and K.S.A. 65-4925. In order to protect the minor victim(s) involved, among other considerations, all pleadings and exhibits shall be filed under seal and shall not be released to a non-party without leave of the Court.
18. According to K.S.A. 65-6911 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.
19. 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 revocation of Licensee's license to practice as an athletic trainer 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 Athletic Trainers Licensure Act, K.S.A. 65-6901 *et seq.*

20. 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.
21. 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.
22. 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 this Consent Order.
23. This Consent Order, when signed by both parties and upon approval by the Board, constitutes the entire agreement between the parties and may only be modified or amended by Order of the Board.

24. 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.
25. Licensee, by signature to this document, waives any objection to the participation of any 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.
26. Licensee acknowledges he has read this Consent Order and fully understands the contents.
27. Licensee acknowledges this Consent Order has been entered into freely and voluntarily.
28. All correspondence or communication between Licensee and the Board relating to the provisions of this Consent Order shall be sent 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, KSBHA_ComplianceCoordinator@ks.gov.
29. Licensee shall obey all federal, state and local laws and rules governing the practice of athletic training 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.
30. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent

Order shall constitute the Board's Final Order when filed with the office of the Executive Director for the Board and no further Order is required.


31. This Consent Order constitutes **public disciplinary action**.

32. 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, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 21st day of June, 2021.


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



Tucker Poling
Executive Director

6/21/2021

Date



Brandon M. Martino, A.T.
Licensee

4 MAY 2021

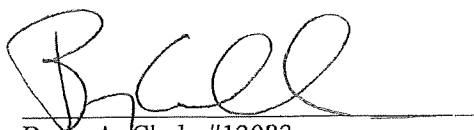
Date

PREPARED AND APPROVED BY:

/s Tammie L. Mundil

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Kansas License No. 24-00919



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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing Consent Order was served this 21st day of June, 2021, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Brandon M. Martino, A.T.
Licensee

CONFIDENTIAL

Barry A. Clark
Clark & Platt, Chtd.
417 Poyntz Avenue
Manhattan, KS 66502
barry@clarkplatt.com
Attorney for Licensee

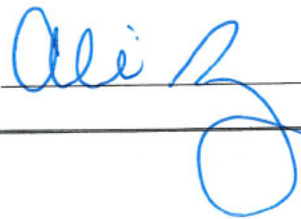
With a copy hand-delivered to:

Tammie L. Mundil, Deputy Litigation Counsel
tammie.l.mundil@ks.gov
Steven M. Lehwald, Associate Litigation Counsel
steven.m.lehwald@ks.gov
800 SW Jackson Lower Level, Suite A
Topeka, KS 66612

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

and the original was filed with the office of the Executive Director:

Tucker Polling
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson Lower Level, Suite A
Topeka, KS 66612



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