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KANSAS STATE BOARD OF
HEALING ARTS

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

IN THE MATTER OF)	
)	Case # 93-00128
JEFFREY C. MATHIS, O.T.)	94-00132
Kansas Registration No. 17-00445)	94-00143

**STIPULATION AND AGREEMENT
AND ENFORCEMENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Kevin K. LaChance, Disciplinary Counsel, and Jeffrey C. Mathis, O.T. ("Registrant") by and through Steve A. Schwarm, Counsel for Registrant, and stipulate and agree as follows:

1. The Board is the sole and exclusive regulatory agency in the State of Kansas regarding the practice of the healing arts, and specifically the registration of occupational therapists. K.S.A. 65-2801, et seq; K.S.A. 65-5401 et seq.

2. Registrant is or has been entitled to use the title "occupational therapist" in the State of Kansas, having been issued registration number 17-00445 on December 9, 1988. At all times relevant to the allegations set forth below, Registrant has held a current registration as an occupational therapist in the State of Kansas, having last renewed his registration on February 23, 1995.

3. Information provided to the Board indicates that Registrant may have committed acts in 1993 which, if proven to be

true, would constitute violations of the Occupational Therapy Practice Act, K.S.A. 65-5401 et seq. The Board contends substantial evidence exists which would tend to show that Registrant's conduct of occupational therapy has included acts of omission and/or commission which would constitute violations of the Occupational Therapy Practice Act. Specifically, there are alleged violations of K.S.A. 65-65-5410(a)(2), as further defined by K.A.R 100-54-5(k), (m), (q), (t), (v), and (w). Registrant denies the allegations, but due to the uncertainty of administrative litigation, agrees to enter into this Stipulation.

4. Such acts or conduct as set forth above could constitute grounds for disciplinary action by the Board pursuant to provisions of the Occupational Therapy Practice Act. Under the provisions of K.S.A. 77-505, the Board has authority to enter into this Stipulation and Agreement ("Stipulation").

5. It is the intent and purpose of this Stipulation to provide for settlement of all issues without the necessity of proceeding to a formal hearing. K.S.A. 65-2538(b). Registrant voluntarily and affirmatively waives his right to a hearing pertaining to any matter under the jurisdiction of the Board regarding his registration as an occupational therapist. Registrant voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, to conduct such cross-examination of witnesses as may be desired and to waive any and all substantive and procedural motions

and defenses that could be raised if an administrative hearing would be held.

The terms and conditions of the Stipulation are entered into between the undersigned parties and is submitted for the purpose of allowing these terms and conditions to become an Order of the Board.

This Stipulation shall not be binding on the Board until an authorized signature is affixed at the end of this document. Upon signature by Registrant to this document, it shall be deemed a unilateral contract and agreement and shall bind Registrant to the terms and conditions set forth in the Stipulation whether or not the Board's signature is affixed to the document. Registrant specifically acknowledges that counsel for the Board is not authorized to sign for nor bind the Board.

6. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

a) The Board is the duly authorized administrative agency of the State of Kansas with appropriate statutory authority to regulate the practice of the healing arts to include the registration of occupational therapists in the State of Kansas.

b) Registrant admits that this Stipulation and the filing of such a document are in accordance with the requirements of law; that the Board has jurisdiction to consider the Stipulation and is lawfully constituted to consider this matter to include consideration of this Stipulation. Registrant further notes that

the Kansas Healing Arts Act and the Occupational Therapy Practice Act are constitutional on their face and as applied in this case. Registrant further acknowledges that the Board, acting in this matter, is not acting beyond the jurisdiction referred to it by any provision of law.

c) In lieu of formal proceedings and/or findings by the Board, Registrant, by signature attached to this Stipulation, hereby voluntarily agrees to the conditions placed on his registration as an occupational therapist in the State of Kansas as follows:

i) Registrant agrees that he will not personally, conduct any pediatric occupational therapy practice until authorized by the Board except that Registrant may conduct pediatric occupational therapy under the direct on-site physical supervision of one of the board approved monitors as addressed in subparagraph (v) below. For purposes of this Stipulation, "pediatric" means the treatment of patients younger than sixteen years of age except in emergency situations when directed by a licensed physician. If such emergency situation occurs Registrant shall notify the Board in writing within 48 hours. Registrant shall be allowed to permit other registered allied health care providers to deliver pediatric occupational therapy through his clinic pursuant to the provisions of the Kansas Occupational Therapy Act. Registrant agrees that he will not request a change to this restriction until or after August 1, 1996.

ii) Registrant agrees that he is responsible for ensuring that he participates in the quality assurance and risk management programs of Memorial Hospital, Manhattan, Kansas, as contemplated under K.S.A. 65-4914 through and including K.S.A. 65-4930, and that he will fully participate and cooperate with those programs. The Board legal staff acknowledges that it has received a letter from Memorial Hospital, Manhattan, Kansas stating that Registrant has complied with quality assurance and risk management programs since 1989.

iii) Registrant agrees that he must have a doctor's specific orders prior to the use of any electro-mechanical treatment device, and that he must have the appropriate specific training in the use of the specific device prior to such utilization in treatment. The term "electro-mechanical treatment device" shall mean a device used to activate muscles to move joints and that it is 1) a device that is physically attached to the body of the patient, and 2) the device provides the sole power source for the movement of the patient's extremities/ body, and such device shall not include any device that is powered by the patient, and 4) by way of illustration, this device shall not include exercise equipment or any physical agent modalities which includes, but it not limited to ultrasounds, whirlpools, heat and cold, or pain control modalities.

iv) Registrant agrees that he will be subject to a billing and record audit every six months commencing from the date

of Board acceptance of this Stipulation for a period of at least two years. The auditors will be subject to Board approval, and the audits will be conducted at Registrant's expense. The audit reports will be submitted to the Board within thirty days of the end of the six-month period reported. The audit relates only to verification that insurance claims form submissions are a true and accurate representation of the level of service and type of service provided to the patient as reflected in the patient's records and charts.

v) Registrant agrees that he will be subject to strict monitoring for a period of at least two years. Registrant shall be monitored by a registered occupational therapist, or an M.D. or D.O, or both, who has a practice emphasis or specialty in the area of rehabilitative medicine, orthopedic surgery and/or practices as a physiatrist, or whose background, experience, and training are acceptable to the Board, to act as a monitor(s) ("Monitor") within Registrant's practice. The Board specifically approves Joane Wyrick, O.T. and James D. Gardner, M.D. as monitors. The Monitor shall review all aspects of Registrant's practice. The Monitor may provide advice to Registrant pertaining to those observations the Monitor has made in conducting his or her review. The Monitor shall provide reports as follows, dating from the date of acceptance of this Stipulation by the Board:

1. Reports twice a month for the first six months, due to the Board within ten days of the end of the first

half of the month and within ten days of the end of the second half of the month; if the results are acceptable to the Board, then

2. Monthly reports for six months after the Board approves the results of #1 above, due to the Board within fourteen days of the end of the monthly period reported; if the results of the monthly reports are acceptable to the Board, then

3. Reports every two months until the requirement is terminated, due to the Board within thirty days of the end of the two month period reported. If two monitors are selected each monitor shall be responsible for an alternating report. By way of illustration the first and third reports may be due from an occupational therapist monitor and the second and fourth reports may be due from a physician. The reports shall include, but are not limited to, analysis of documentation, billing, utilization, supervision of subordinate health care providers, the billing and record audit, and compliance with the standard of practice. The Board reserves the right to determine, in its sole discretion, that the monitoring is not being conducted in an appropriate manner as set forth above. The Board will give notice to Registrant and Monitor of the shortcoming and the cure and afford the Registrant the opportunity to address such to ensure compliance. If the shortcoming is not cured by the next reporting period, the Board may give notice that the monitoring is unacceptable and the Monitor shall be replaced within thirty (30) days. Registrant shall bear all costs, if any, related to the

Monitor. Further, the Monitor shall be performing the monitoring function within fourteen (14) days after written notice of Board acceptance of this Stipulation. Registrant agrees that his registration shall be suspended immediately without hearing upon failure to comply with the Monitor's hiring and performing requirement by the time stated above. Said suspension shall be terminated upon a showing to the Board or its designated representative of compliance with this requirement of the Stipulation. The Board specifically acknowledges the approval of the monitors as set forth in ¶ 6, c, v above. Registrant's agreement to the above terms pertaining to his registration are evidenced by his signature affixed to this document.

e) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate alleged violations of the Occupational Therapy Practice Act or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 et seq, that are unknown and are not covered under the conditions of this Stipulation or subsequent acts which are unknown to the Board or to initiate formal proceedings based upon known or unknown allegations of violations of the Occupational Therapy Practice Act.

f) This Stipulation constitutes the entire agreement between the parties and may only be modified and/or amended by a subsequent document executed in the same manner by the parties.

g) Registrant acknowledges that he has read this Stipulation and fully understands its Contents.

h) Registrant hereby releases the Board, its employees and agents, from all claims to mean those damages, actions, liabilities and causes of actions, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions; K.S.A. 77-601 et seq. This release shall discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Stipulation or the contents of this Stipulation.

i) Registrant acknowledges that this Stipulation has been entered in freely and voluntarily given.

j) Registrant acknowledges that this document shall be deemed a public record upon Registrant's signing this document, whether or not an authorized Board signature appears on same, and shall be reportable to the National Practitioner Databank, Federation of State Medical Boards, and other reporting agencies.

10. Upon execution of this Stipulation by the affixing of a Board authorized signature below, the provisions of this

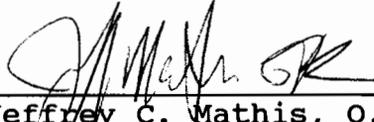
Stipulation shall become an Order of the Board and shall be deemed a proper and lawful Enforcement Order under K.S.A. 65-2838. This Stipulation and Agreement and Enforcement Order shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF, the parties have executed this agreement on the 27 day of February, 1996.

KANSAS STATE BOARD OF HEALING ARTS


Lawrence T. Buening, Jr.
Executive Director

March 1, 1996
Date


Jeffrey C. Mathis, O.T. Registrant

2/27/96
Date

Prepared and Approved As To Form By:

~~_____~~
Kevin K. LaChance, #15058
Disciplinary Counsel
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(913) 233-0593

CERTIFICATE OF SERVICE

I, Kevin K. LaChance, do hereby certify that on this 1st day of March, 1996, a copy of the above and foregoing STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER was deposited in the United States mail, postage prepaid, first class to the following:

Jeffrey C. Mathis
315 N. 14th
Manhattan, Kansas 66502

Steve A. Schwarm
Counsel for Licensee
Goodell, Stratton, Edmonds & Palmer, LLP
515 S. Kansas Ave.
Topeka, Kansas 66603-3999

and the original was hand-delivered to:

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



Kevin K. LaChance
Disciplinary Counsel
Kansas State Board of Healing Arts