

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

In the Matter of)
)
Marcus A. McKenna, P.A.) Docket No. 14-HA 00071
Kansas License No. Pending)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Marcus A. McKenna, P.A. (“Applicant”), *pro se*, and move the Board for approval of a Consent Order affecting Applicant’s license to practice as a Physician Assistant in the State of Kansas. The Parties stipulate and agree to the following:

1. Applicant’s last known mailing address to the Board is: **Confidential**
Lawrence, Kansas 66044.
2. On or about August 14, 2013, Applicant submitted to the Board an application for licensure as a physician assistant. Such application was deemed complete and filed with the Board on December 6, 2013.
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 as a physician assistant. K.S.A. 65-28a01, *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

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findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Physician Assistant Licensure Act is constitutional on its face and as applied in the case. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant 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. Applicant 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. 65-28a05 to take action with respect to Applicant's license under the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a01, *et seq.*
9. In his application for licensure, Applicant answered "yes" to disciplinary questions 12(t) and 12(u).

- a. Question 12(t) asks: “Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
 - b. Question 12(u) asks: “Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
10. Applicant provided the following explanations to his “yes” answers:
- a. “(t) December 2007 Hoxie, KS Arrested for misdemeanor battery after a verbal altercation in which a male involved was struck by another male. Detained for one night in Sheridan County Jail.”
 - b. “(u) January 2008 Hoxie, KS Plead no-contest to misdemeanor battery charge as from above. Paid subsequent fine.”
11. “Battery is: (1) Intentionally or recklessly causing bodily harm to another person; or (2) intentionally causing physical contact with another person when done in a rude, insulting or angry manner.” Kan. Stat. Ann. 21-3412.
12. The police report shows that Applicant, who was with two friends, initiated the altercation by shoving the victim, which was followed by one of Applicant’s friends hitting the victim and the other friend of the Applicant shoving the victim.

13. Applicant was convicted of Battery which is a class B person misdemeanor. In Applicant's situation, in order to support a criminal conviction of battery, required Applicant to engage in more than a mere verbal altercation; but rather, required Applicant to come into physical contact with the victim in order to commit the criminal act of battery against another person.
14. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant has violated the Kansas Physician Assistant Licensure Act with respect to the above allegations. Applicant further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
15. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-28a05(a) as further defined by K.A.R. 100-28a-8(r).
16. Applicant violated K.S.A. 65-28a05(b), in that Applicant's explanation to his "yes" answers misrepresented to the Board his involvement in the fight that led to his conviction of battery.
17. Pursuant to K.S.A. 65-28a05, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license for violations of the Kansas Physician Assistant Licensure Act.
18. 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.
19. All pending investigation materials in KSBHA Investigative Case Number 14-00217 regarding Applicant, were fully reviewed and considered by the Board

members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

20. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant 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 Applicant's license to practice as a physician assistant in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant 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, Applicant 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 Physician Assistant Licensure Act, K.S.A. 65-28a01 *et seq.*
21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Physician Assistant 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 Physician Assistant Licensure Act.

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

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

24. 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.

25. Applicant 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 Applicant is not present. Applicant 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.

26. Applicant, 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.
27. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
28. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
29. All correspondence or communication between Applicant 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.
30. Applicant shall obey all federal, state and local laws and rules governing the practice as a physician assistant 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.
31. 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. 77-505. 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.

32. This Consent Order constitutes non-disciplinary action.
33. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
34. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee, abiding by the terms of this Consent Order, and by meeting the criteria for an active license, which includes providing the Board with a Responsible Physician and Drug Protocol Form. Applicant further understands that the Temporary License is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued an active license under the terms of this Consent Order. The active license shall be subject to the renewal criteria as stated in the Kansas Physician Assistant Licensure Act.
35. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice as a physician assistant:

EDUCATION

36. Licensee shall attend and successfully complete the following continuing education course addressing anger management: UC San Diego PACE Program's Anger Management for Healthcare Professionals Program. Applicant shall

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complete the continuing education course by August 15, 2014, and it shall be at his own expense. Licensee shall provide proof of successful completion of the course by September 1, 2014.

- 37. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.
- 38. These hours shall be in addition to those hours required for renewal of licensure.
- 39. Upon receiving proof of successful completion, this Consent Order shall be terminated.

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 FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 6th day of December, 2013.

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


Kathleen Selzler Lippert
Executive Director

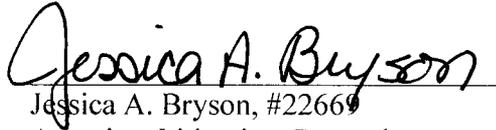
12/6/13
Date


Marcus A. McKenna, P.A.
Applicant

12/04/2013
Date

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PREPARED AND APPROVED BY:



Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
785-296-8022

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 9th day of December, 2013, to the following:

Marcus A. McKenna, P.A.
Applicant
Confidential
Lawrence, KS 66044

And the original and a copy were hand-filed with:

Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

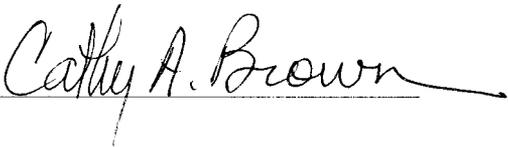
And a copy was electronically-delivered to:

Jessica A. Bryson
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

General Counsel's Office
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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Compliance Coordinator
Kansas Board of Healing Arts
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Topeka, Kansas 66612

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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