

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

DEC 8 2003

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
the Application of)
Janice McKinney, R.T.)
_____)

Docket No. 04-HA-30

CONSENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel ("Petitioner"), and Janice McKinney, R.T. ("Applicant"), *pro se*, and stipulate and agree to the following:

1. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of respiratory therapy. K.S.A 65- 5501 *et seq.*

2. On or about May 22, 2003, Applicant submitted an Application for Licensure as a Respiratory Therapist ("Application"). Applicant previously held a student permit to practice respiratory therapy in Kansas from January 17, 2002, to August 7, 2002.

3. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into this Consent Order, as provided by K.S.A. 77-505, and Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction.

4. The Kansas respiratory therapy practice act is constitutional on its face and as applied in this case.

5. In her Application, Applicant disclosed that on April 12, 2001, she was convicted of identity theft, a level seven, person felony, in the District Court of Johnson County, Kansas.

6. Applicant remains on probation for the conviction due to an outstanding amount of monetary restitution she has been ordered to pay.

7. Pursuant to K.S.A. 65-5510(a)(3), there are grounds to deny Applicant's Application based on Applicant's conviction for a felony which has a direct bearing on whether Applicant should be entrusted to serve the public in the capacity of a respiratory therapist.

8. Pursuant to K.S.A. 77-505, the Board may enter into an informal settlement of this matter in lieu of denying Applicant's Application.

9. Applicant voluntarily and knowingly waives her right to a hearing pursuant to K.S.A. 65-5510(b) and under the Kansas administrative procedure act, K.S.A. 77-501 *et seq.* Applicant 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. 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.

10. 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.

11. In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following provisions as a condition to granting her a license to practice respiratory therapy:

- (a) For the duration of her probation, Applicant shall ensure that bi-annual reports from Applicant's probation officer are received by the Board. Said reports shall state whether Applicant is currently complying with the terms of her criminal probation and shall be on a form provided by the Board. The reports shall be due at the end of

the month in January and July of each year, with the first report being due on June 30, 2004.

- (b) Applicant agrees to immediately notify Kelli J. Benintendi at the Board offices if she fails to comply in any manner with her probationary terms and/or if her probation is revoked.
- (c) Applicant shall keep the Board informed of her current mailing address at all times and shall notify the Board of any new address within fifteen (15) days of a change in address.

12. This Order shall remain in place for the duration of Applicant's criminal probation. Upon completion of and release from her criminal probation, Applicant shall notify the Board and may file a written request to the Board to terminate these provisions.

13. Applicant's failure to comply with the provisions of this Consent Order will result in the Board initiating disciplinary action to immediately suspend or revoke Applicant's license pursuant to and in compliance with the Kansas administrative procedure act.

14. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the respiratory 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 respiratory therapy practice act.

15. Applicant hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, 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 forever discharge the Board 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 Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent Order.

16. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record, and shall be reported to all reporting entities requiring disclosure of this Consent Order.

17. 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.

18. 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.

19. Applicant, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

20. Applicant acknowledges that she has read this Consent Order, fully understands the contents and has freely and voluntarily entered into the same.

21. All correspondence or communication between Applicant and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

22. Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory 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.

23. 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. 65-5510(a). 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.

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 is the Order of the Board.

IT IS FURTHER ORDERED that upon completion of all other requirements for licensure, the Board should grant Applicant a respiratory therapy license without restriction.

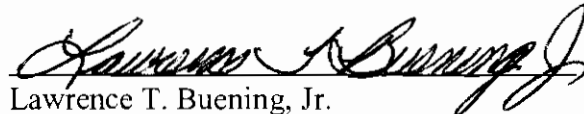
IT IS FURTHER ORDERED that for the duration of her probation, Applicant shall ensure that bi-annual reports from Applicant's probation officer are received by the Board, stating whether Applicant is currently complying with the terms of her criminal probation. The reports, on a form provided by the Board, shall be due at the end of the month in January and July of each year, with the first report being due on June 30, 2004.

IT IS FURTHER ORDERED that Applicant shall immediately notify Kelli J. Benintendi at the Board offices if she fails to comply in any manner with her probationary terms and/or if her probation is revoked, and that Applicant shall keep the Board informed of her current mailing address at all times and notify the Board of any new address within fifteen (15) days of a change in address.

IT IS FURTHER ORDERED that the terms of this Consent Order shall remain in place for the duration of Applicant's criminal probation and that upon completion of and release from her criminal probation, Applicant shall notify the Board and may file a written request to the Board to terminate the provisions contained above in paragraph 11.

IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

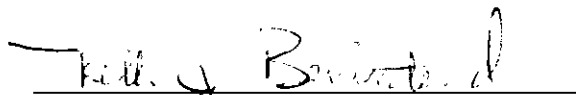

Lawrence T. Buening, Jr.
Executive Director

Dec 8, 2003
Date


Janice McKinney, R.T.
Applicant

11.22.03
Date

Prepared By:



Kelli J. Benintendi #16032
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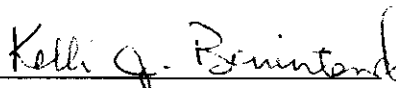
CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **Consent Order** by United States mail, postage prepaid, on this 17th day of December, 2003, to the following:

Janice C. McKinney, R.T.
4004 E. 16th Terrace
Kansas City, MO 64127

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068


Kelli J. Benintendi
Associate Counsel