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JUN 23 2010

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

KS State Board of Healing Arts

In the Matter of)
)
JOHN R. MITCHELL, O.T.)
)
Kansas License No. 17-01967)

Docket No. 10-HA00148

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts (“Board”), by and through Lori D. Dougherty, Associate Litigation Counsel (“Petitioner”), and John R. Mitchell, O.T. (“Licensee”), *pro se*, 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: 1822 West Eighth Street, Coffeyville, Kansas 67337.
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. 17-01967 on approximately July 11, 2001. Licensee’s license is active.
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 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 provided by K.S.A. 77-505 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 Practice 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 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 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.

(confidential)

c.

(confidential)

9. Licensee was terminated by Coffeyville Regional Medical Center (confidential)

(confidential)

10. 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 Occupational Therapy Practice Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

11. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-5410.

12. Licensee violated K.S.A. 65-5410(a)(2), as set forth in K.A.R. 100-54-5(h), which defines unprofessional conduct as being sanctioned or disciplined by a hospital peer review committee or medical care facility for acts that would constitute grounds for denial, refusal to renew, suspension, or revocation, to wit: Licensee was terminated by Coffeyville Regional Medical Center.

13. Licensee violated K.S.A. 65-5410(a)(2), as set forth in K.A.R. 100-54-5(o), which defines unprofessional conduct as committing conduct likely to deceive, defraud, or harm the public,

(confidential)

(confidential)

14. Licensee violated K.S.A. 65-5410(a)(2), as set forth in K.A.R. 100-54-5(r), which defines unprofessional conduct as obtaining any fee by fraud, deceit, or misrepresentation, to wit: Licensee inappropriately billed for services not rendered to Patient 1.
15. Licensee violated K.S.A. 65-5410(a)(2), as set forth in K.A.R. 100-54-5(t), which defines unprofessional conduct as failing to keep written records justifying the course of treatment of the patient, to wit: The treatment of Patient 1 would have been based on Licensee's evaluation.
16. Pursuant to K.S.A. 65-5410, the Board may refuse to renew, revoke, suspend, limit, or publicly censure Licensee's license. Pursuant to K.S.A. 65-5410(c), the Board may a civil fine, after proper notice and an opportunity to be heard, against a licensee for unprofessional conduct in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation.
17. 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.
18. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 24 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
19. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of occupational therapy:

CENSURE

- a. Licensee is publicly censured for violating the Kansas Occupational Therapy Practice Act.

PROBATION: EDUCATION

- b. Licensee shall attend and successfully complete a continuing education course for record-keeping documentation, by September 1, 2010, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion by September 15, 2010.
- c. Licensee shall attend and successfully complete a continuing education course for billing practices, by September 1, 2010, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion by September 15, 2010.
- d. Unless otherwise approved by the Board, said continuing education courses shall consist of a formal live lecture format.
- e. These hours shall be in addition to those hours required for renewal of licensure.
- f. All reports required pursuant to this Consent Order shall be submitted to:

Kansas State Board of Healing Arts
Attention: Compliance Coordinator
235 S.W. Topeka Blvd.
Topeka, Kansas 66603-3068

- g. The Board designates Terry Webb, D.C. to review and approve/disapprove any proposed educational courses required under this Consent Order.

20. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act and Kansas Occupational Therapy Practice Act.
21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Occupational Therapy Practice Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 *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.
22. 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 Act for Judicial Review and Civil Enforcement of Agency Actions, 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.
23. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any reporting 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. 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.
26. 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.
27. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
28. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.
29. All correspondence or communication between Licensee 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, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

30. 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.
31. 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 Order when filed with the office of the Executive Director for the Board and no further Order is required.
32. This Consent Order constitutes disciplinary action.
33. 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 and conclusions of law.

IT IS FURTHER ORDERED that:

CENSURE

- a. Licensee is publicly censured for violating the Kansas Occupational Therapy Practice Act.

PROBATION: EDUCATION

- b. Licensee shall attend and successfully complete a continuing education course for record-keeping documentation, by September 1, 2010, at his own expense. The course must be pre-approved by the Board or its designee. Licensee shall provide proof of successful completion by September 15, 2010.

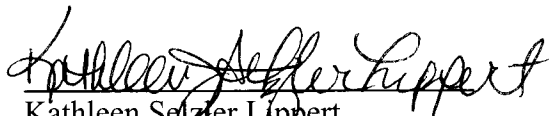
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- d. Unless otherwise approved by the Board, said continuing education courses shall consist of a formal live lecture format.
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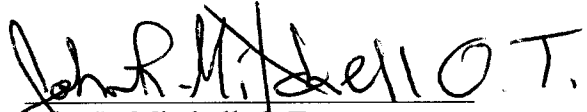
- g. The Board designates Terry Webb, DC to review and approve/disapprove any proposed educational courses required under this Consent Order.

IT IS SO ORDERED on this 22 day of June, 2010.

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


Kathleen Selzer Lippert
~~Acting~~ Executive Director

6/22/10
Date

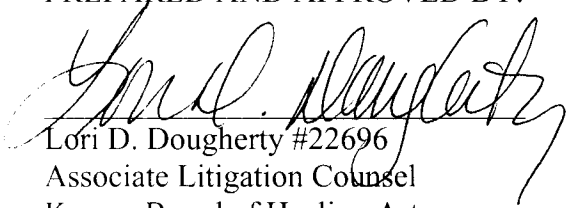
 John R. Mitchell, O.T.

John R. Mitchell, O.T.
Licensee

5/13/10

Date

PREPARED AND APPROVED BY:



Lori D. Dougherty #22696
Associate Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068
785-368-8212

Certificate of Service

I certify that a true copy of the foregoing Consent Order was served this 23rd day of June, 2010, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

John R. Mitchell, O.T.
1822 W. 8th St.
Coffeyville, KS 67337

and a copy was hand-delivered to the office of:

Lori D. Dougherty, Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603

and the original was hand-delivered for filing to the office of the Executive Director.



Cathy A. Brown
Executive Assistant