

FILED
MAR 01 2011
KS State Board of Healing Arts

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

In the Matter of)
)
NICHOLAS NOTARIO, P.T.)
Kansas License No. 11-03492)
_____)

KSBHA Docket No. 11-HA 00068

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Associate Litigation Counsel, Lori D. Dougherty (“Petitioner”), and Licensee-Respondent Nicholas Notario, P.T. (“Licensee”), *pro se*, and move the Board for approval of a Consent Order affecting Licensee’s license to practice physical therapy in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee’s current mailing address as provided to the Board is 8301 W. University, Wichita, Kansas 67209.
2. Licensee is or has been entitled to actively engage in the practice of physical therapy in the State of Kansas, having been issued License No. 11-03492 on approximately April 13, 2005. Licensee holds an active current license, having last renewed his license on or about January 1, 2010.
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 physical therapy. K.S.A. 65-2901 *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 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 Physical Therapy Practice Act is constitutional on its face and as applied in this 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. Licensee waives his right to contest the allegations and consents to a finding that there are grounds for the Board to pursue disciplinary action against his license.
9. At all relevant times hereto, Licensee has held an active current license to practice physical therapy in the State of Kansas.
10. The investigative information and status of the pending action in this matter were fully reviewed and considered by the Board members who served on Disciplinary Panel No. 25. Disciplinary Panel No. 25 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

11. On or about January 9, 2009, Patient #1, a fifty-four-year-old-female, was referred to Licensee for physical therapy by her primary care physician due to pain in the hip area.
12. On or about January 12, 2009, Patient #1 presented to Licensee for physical therapy.
13. Licensee met with Patient #1 to perform an initial assessment and then performed approximately ten minutes of manual therapy on Patient #1.
14. Licensee set up a plan of care for Patient #1's hip pain. While Licensee was setting up the plan of care and printing off instructions for Patient #1, he directed a rehabilitation aide to assist Patient #1 with her exercises.
15. The rehabilitation aide was a new employee and had only started several days prior to Patient #1 presenting to Licensee's physical therapy practice for services.
16. The rehabilitation aide had a bachelor's of science degree in exercise science. She was not a physical therapist, or physical therapy assistant.
17. The rehabilitation aide was not familiar with the exercises assigned to Patient #1. The aide repeatedly had to leave Patient #1 to ask Licensee for further instructions on how to perform the therapies on Patient #1.
18. On or about January 13, 2009, Patient #1 again presented to Licensee for physical therapy. Patient #1 had exercises that day with the same rehabilitation aide from the previous day. The rehabilitation aide was again unfamiliar with the exercises prescribed by Licensee.
19. Licensee has committed acts in violation of the Physical Therapy Practice Act, including but not limited to:
 - a. K.S.A. 65-2912(a)(5), Unprofessional conduct as further defined by K.A.R. 100-29-12(a)(D)(6): Failure to provide adequate supervision to a physical therapy

assistant or other person who performs services pursuant to delegation by a physical therapist.

20. Pursuant to K.S.A. 65-2912, the Board may revoke, suspend, censure, or otherwise limit Licensee's license for violations of the Physical Therapy Practice Act.
21. As set forth in K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.
22. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action and limitations on his license to engage in the practice of physical therapy:

EDUCATION

- a. Licensee agrees to attend and successfully complete the Intermediate Independent Leadership Project Registration and Leading Others: Adaptive & Transformational Leadership in Physical Therapy; Licensee agrees to provide proof of successful completion to the Board on or before September 30, 2011;
 - b. All correspondence to the Board regarding the above education course will be provided to Compliance Coordinator: 800 SW Jackson, Lower Level Suite A, Topeka, Kansas 66612.
23. 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.
 24. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Physical Therapy Practice 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 Physical Therapy Practice Act.

25. Licensee 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 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 Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent Order.
26. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported by the Board to any reporting entities authorized to receive disclosure of this Consent Order.
27. 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.
28. 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.

29. Licensee by signature to this document, waives any objection to the participation of the Board members, or 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 proceeding 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.
30. Licensee acknowledges that he has read this Consent Order and fully understands the contents.
31. All correspondence or communication between Licensee and the Board relating to the terms contained in this Consent Order shall be by certified mail addressed to the Kansas Board of Healing Arts, Attn: COMPLIANCE COORDINATOR, 800 SW Jackson, Lower Level Suite A, Topeka, Kansas 66612.
32. Licensee shall obey all federal, state, and local laws and rules governing the practice of physical 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. Any violation will also be considered a violation of this Consent Order and may subject Licensee to further disciplinary action by the Board.
33. 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.

34. 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, and is the Order of the Board.

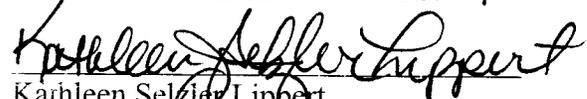
IT IS FURTHER ORDER that:

EDUCATION

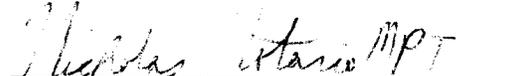
- a. Licensee agrees to attend and successfully complete the Intermediate Independent Leadership Project Registration and Leading Others: Adaptive & Transformational Leadership in Physical Therapy; Licensee agrees to provide proof of successful completion to the Board on or before September 30, 2011;
- b. All correspondence to the Board regarding the above education course will be provided to Compliance Coordinator: 800 SW Jackson, Lower Level Suite A, Topeka, Kansas 66612.

IT IS SO ORDERED on the 28 day of Feb, 2011:

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

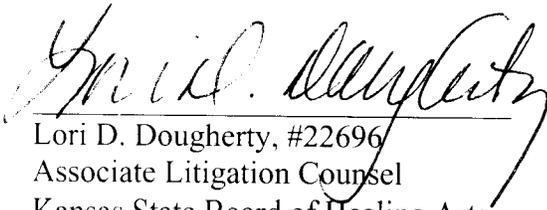

Kathleen Selzer Lippert
Executive Director

2-28-11
Date


Nicholas Notario, P.T.
Licensee

1-24-11
Date

PREPARED AND APPROVED BY:



Lori D. Dougherty, #22696
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level Suite A
Topeka, Kansas 66612
(785) 368-8212

1/28/11

Date

CERTIFICATE OF SERVICE

I, Cathy A. Brown, hereby certify that a true and correct copy of the foregoing **CONSENT ORDER** was served this 1st day of March, 2011, via United States mail, first-class, postage prepaid, and addressed to the following:

Nicholas Notario, P.T.
8301 W. University
Wichita, Kansas 67209

and a copy was hand-delivered to:

Lori D. Dougherty, #22696
Associate Litigation Counsel
Melissa Massey
Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson
Lower Level Suite A
Topeka, Kansas 66612

and the original was hand-delivered for filing to:

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

Cathy A. Brown
~~Notary Public~~
Signature