

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

In the Matter of )  
 )  
**TERRY J. SMITH, P.T.A.** )  
Kansas Registration #14-00748 )  
\_\_\_\_\_ )

Case No. 96-00174

**FILED**

**AUG 24 1998**

**KANSAS STATE BOARD OF  
HEALING ARTS**

**ORDER TERMINATING STIPULATION  
AND AGREEMENT AND ENFORCEMENT ORDER**

NOW ON THIS 15th day of August, 1998, comes for conference hearing before the Board of Healing Arts ("Board") the request of Terry J. Smith, P.T.A. (hereafter "Licensee") that the **Stipulation and Agreement and Enforcement Order**, filed on March 25, 1998, be terminated. Stacy L. Cook appeared for the Board. Mr. Smith appeared in person.


After examining the files, hearing statements of the parties and being otherwise duly advised in the premises, the Board finds as follows:

- 1) A **Stipulation and Agreement and Enforcement Order** was entered into between Licensee and the Board on March 25, 1998.
- 2) That after hearing statements of the parties, the Board is satisfied that Licensee has been in compliance with the conditions and limitations placed upon his license.
- 3) The **Stipulation and Agreement and Enforcement Order**, filed on March 25, 1998 should be terminated.

**NOW, THEREFORE**, it is ordered by the Board that the findings hereinabove made be and the same are hereby made the order of the Board; that the **Stipulation and Agreement and Enforcement Order**, filed on March 25, 1998 is hereby terminated.

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**

  
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LAWRENCE T. BUENING, JR. #0128  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, KS 66603  
(785) 296-3680


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ORDER TERMINATING STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** was served on the 24<sup>th</sup> day of August, 1998, by depositing same in the United States mail, first-class postage prepaid and addressed to:

Terry J. Smith  
4367 S. 76th Road  
Bolivar, MO 65613

and a copy hand-delivered to:

Stacy L. Cook, Associate Counsel  
Kansas Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, KS 66603

  
\_\_\_\_\_

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

**FILED**

**MAR 25 1998**

In the Matter of )  
Terry Joseph Smith, P.T.A. )  
Kansas Registration No. 14-00748 )  
\_\_\_\_\_ )

Case No. 96-00174

KANSAS STATE BOARD OF  
HEALING ARTS

**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**

COMES NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Associate Counsel, who has been designated to pursue this matter on behalf of Kevin K. LaChance, Disciplinary Counsel ("Petitioner"), and Terry Joseph Smith, P.T.A. ("Registrant") and stipulate and agree as follows:

1. The Board is the sole and exclusive administration agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of physical therapy. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2901.

2. Registrant admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.

3. Registrant agrees that the Kansas Physical Therapy Act is constitutional on its face and as applied in this case.

4. Registrant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

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**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**  
**Terry Joseph Smith, P.T.A.**

5. Registrant was issued registration number 14-00748 on October 9, 1992. At all times relevant to the allegations set forth below, Registrant has held a current registration as a Physical Therapist Assistant in the State of Kansas, having last renewed his registration on January 22, 1998.

6. The Board has received information, has investigated such information, and has reasonable cause to believe that Registrant has committed certain acts that violate the Physical Therapy Act, K.S.A. 65-2901 *et seq*; K.S.A. 65-2912. Specifically, Registrant was terminated from his employment at St. Francis Hospital on August 9, 1995 for sexual misconduct with a patient. Such conduct constitutes a violation of K.S.A. 65-2912 (a)(5), unprofessional conduct, which includes but is not limited to, unprofessional conduct which is further defined by K.A.R. 100-37-2(b), in that Registrant failed to be guided at all times by concern for the dignity and welfare of those patients entrusted to that assistant's care.

7. Under the provisions of K.S.A. 65-2912(a), the Board has jurisdiction to impose appropriate discipline if a Registrant to the Board has engaged in any commissions or omissions to bring Registrant within the purview of K.S.A. 65-2912. Pursuant to K.S.A. 65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

8. Registrant voluntarily and knowingly waives his right to a hearing concerning any matter within the jurisdiction of the Board regarding his registration as a physical therapist assistant. Registrant 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. Registrant voluntarily and knowingly agrees to waive all possible substantive and procedural motions

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

9. The terms and conditions of the Stipulation 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 Stipulation shall not be binding on the Board until an authorized signature is affixed at the end of this document. When the Registrant signs this document, the document shall be deemed a unilateral contract and agreement and shall bind Registrant to the terms and conditions set forth herein regardless of whether the Board's signature is affixed to the document. Registrant specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

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

(a) In lieu of the commencement of formal proceedings and/or the making of findings by the Board, Registrant, by signature affixed to this Stipulation, hereby voluntarily agrees to the following disciplinary measures placed on his physical therapy assistant registration in the State of Kansas:

(i) Registrant shall not treat any patients or assist in the application of physical therapy to any person in the State of Kansas until Registrant has demonstrated to the Board that he has attended a seminar or course on the subject of proper patient boundaries, which has been approved by the Board or its designee. Registrant must submit details of all proposed courses to Associate Counsel for approval of the Board or its designee.

(ii) Registrant shall appear personally before the Board for the consideration of his

request to terminate the Stipulation.

(b) Upon Registrant's completion of the terms and conditions of this Stipulation to the satisfaction of the Board, he will be deemed to have complied with the Board's suggestions and recommendations and no further action shall be taken with regard to Case No. 96-00174. However, nothing in this subsection is intended to prevent this disposition from being used as evidence in a disciplinary action, in conjunction with any future violations of Registrant.

(c) Registrant's failure to comply with the provisions of the Stipulation may result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this agreement shall be construed to deny the Board jurisdiction to investigate other alleged violations of the Physical Therapy Act, to initiate formal proceedings based upon known or unknown allegations of violations of the Physical Therapy Act, or to investigate complaints received under the Kansas Risk Management Law, K.S.A. 65-4921 *et seq.* that are known or unknown to the Board at the present time.

(e) Registrant 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 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 content of this Stipulation.

(f) Registrant further understands and agrees that upon signature by Registrant, this document shall be deemed a public record, and shall be reported to any reporting entities requiring disclosure of this Stipulation.

(g) This Stipulation, 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.

(h) Registrant 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 Registrant is not present. Registrant 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.

(i) Registrant, 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 which otherwise may not be admissible or admitted as evidence.

(j) Registrant acknowledges that he has read this Stipulation and fully understands the contents.

(k) Registrant acknowledges that this Stipulation has been entered into freely and

voluntarily.

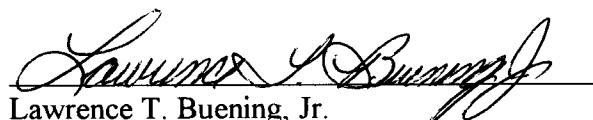
(l) All correspondence or communication between Registrant and the Board regarding this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Office of the Disciplinary Counsel, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(m) Registrant 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 Stipulation or may become effective subsequent to the execution of this document.

(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation 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 this 25<sup>th</sup>  
day of March, 1998.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director



March 25, 1998.  
Date

Terry Joseph Smith, P.T.A.  
Terry Joseph Smith, P.T.A.

3/19/98  
Date

Prepared By:

Stacy L. Cook  
Stacy L. Cook, #16385  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065  
(913) 296-7413

### **CERTIFICATE OF SERVICE**

I, Stacy L. Cook, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 25<sup>th</sup> day of March, 1998, to the following:

Terry Joseph Smith, P.T.A.  
4367 S. 76 Road  
Bolivar, Missouri 65613

and the original was hand-delivered to:

**STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER**  
**Terry Joseph Smith, P.T.A.**

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

  
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Stacy L. Cook