FILED

APR 15 2015

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	**Docket No. 15-HA** 00095
TRACI L. BORLAND, O.T.	)	
Kansas License No. 17-02574	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel, ("Petitioner"), and Traci L. Borland, 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: Confidential

   Confidential Wichita, Kansas 67901.

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. 17-02574 on approximately July 2, 2009. Licensee's license is active, and having last renewed such license on approximately March 31, 2014.

3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate 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, 65-5410, 65-5416, 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 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 her right to a hearing. Licensee 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. 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. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-5410(a)(2), K.A.R. 100-54-5(c), and K.A.R. 100-54-5(o), to take action with respect to Licensee's license under the Kansas Occupational Therapy Act, K.S.A. 65-5401, *et seq.*
9. On or about June 29, 2013, Licensee was involved in an automobile accident in Butler County, Kansas.

10. On or about June 29, 2013, Butler County Sheriff's Deputy Travis Elder was dispatched to the scene of an automobile accident at approximately 2217 hours.
11. Upon arrival at the scene Deputy Elder observed a vehicle with visible damage to the passenger's side of the vehicle, and noticed that the airbags had been deployed. Licensee was standing outside of the driver's side door.
12. Upon approaching the vehicle, Licensee began yelling at Deputy Elder to speak with her friend on the phone. Licensee was slurring her words and yelling. As Deputy Elder got closer to the vehicle, he could smell a strong odor of alcohol.
13. Licensee reported to Deputy Elder that her back was injured. Deputy Elder told Licensee he would have emergency medical services come and look at her. Licensee told him "no" she did not want that to be done. Licensee just wanted her friend to come pick her up.
14. Deputy Elder observed the vehicle was still in drive, and that there was an open twelve pack of beer, as well as a Crown Royal box on the floor board of the front passenger's side.
15. When Emergency Medical Services ("EMS") arrived on the scene, Licensee became argumentative and refused to be evaluated. Licensee stated she would "sue everyone." Licensee eventually agreed to be evaluated and EMS transported her to Susan B. Anthony Hospital for an evaluation.
16. On or about October 21, 2013, Licensee pled guilty to count one, driving under the influence of alcohol and drugs, a class A nonperson misdemeanor.

17. Licensee was ordered to serve 12 months in Butler County Jail, but had her sentence reduced to serve 48 hours in Butler County Jail, followed by 10 days of house arrest with SCRAM and GPS.

18. Licensee was also ordered to pay a monetary fine of $1,250.00, court costs of $96.00 and a probation fee of $60.00.

19. Licensee was placed on 12 months reporting probation with court services followed by all standard conditions of probation, attend a DUI Victim Panel and shall not drive unless legally licensed and insured and vehicle is properly registered.

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27. Licensee's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 64-5410.

28. Licensee violated K.S.A. 65-5410(a)(2) for committing acts of unprofessional conduct for driving while under the influence of alcohol.

29. Licensee further violated K.S.A. 65-5410(a)(2) as further defined by K.A.R. 100-54-5(c), for practicing occupational therapy without reasonable skill and safety because of illness; disability, excessive use of alcohol or drugs; illegal use of

controlled substances, chemicals, or any other type of material; or as a result of any mental or physical condition.

30. Licensee further violated K.S.A. 65-5410(a)(2) as further defined by K.A.R. 100-54-5(o), for committing conduct likely harm the public.

31. Pursuant to K.S.A. 65-5410, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-5410(c) the Board has the authority to impose administrative fines for violations of the Kansas Occupational Therapy Act.

32. 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.

33. All of the materials in KSBHA Investigative Case Number14-00364 regarding Licensee, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

34. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee 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 Licensee's license to practice occupational therapy in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee 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, Licensee 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 Occupational Therapy Act, K.S.A. 65-5401 *et seq.*

35. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Occupational 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 Kansas Occupational Therapy Act.

36. 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 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 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.

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

38. 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.

39. 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.

40. 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.

41. Licensee acknowledges that she has read this Consent Order and fully understands the contents.

42. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

43. 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, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

44. 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.

45. 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. 77-526. 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.

46. This Consent Order constitutes public non-disciplinary action.

47. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-4925.

48. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

49. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public non-disciplinary action against her license to engage in the practice of occupational therapy:

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58. Licensee shall immediately notify the Board or its designee of any citation, arrest or charge filed against her or of any conviction for any traffic or criminal offenses.

59. Licensee shall at all times keep Board staff informed of all her current practice locations, addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

60. Licensee agrees to pay all of the costs incurred for the performance of her monitoring, evaluation, and treatment.

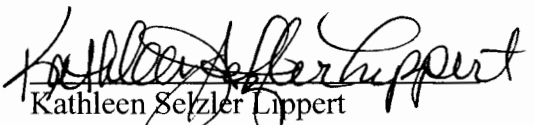
TIMEFRAME

61. The above monitoring provisions are not self-terminating. After a period of three (3) years from the date of the approval of this Consent Order, Licensee may request modification or termination of the provisions. For any period of time that Licensee is not actively practicing as an occupational therapy assistant in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the three (3) year timeframe.

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 SO ORDERED on this 15 day of April, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:



Kathleen Selzler Lippert
Executive Director

4/15/15
Date

Traci L. Borland, O.T.
Licensee

3/13/2015
Date

PREPARED AND APPROVED BY:

Reese H. Hays, #22700
Litigation Counsel
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Topeka, Kansas 66612
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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 15th day of April, 2015, to the following:

Traci L. Borland
Confidential

Wichita, Kansas 67209

And the original was 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 hand-delivered to:

Reese H. Hays, Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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