

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

In the Matter of)
)
Jay Dee Brumbaugh, P.T.) Docket No. 14-HA *00112*
Kansas License No. Pending)

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, (“Board”), by and through Jessica A. Bryson, Associate Litigation Counsel (“Petitioner”), and Jay Dee Brumbaugh, P.T. (“Applicant”), *pro se*, and move the Board for approval of a Consent Order affecting Applicant’s license to practice physical therapy in the State of Kansas.

The Parties stipulate and agree to the following:

1. Applicant’s last known mailing address to the Board is: **Confidential**
Owasso, Oklahoma 74055.
2. On or about November 18, 2013, Applicant submitted to the Board an application for licensure in physical therapy. Such application was deemed complete and filed with the Board on *March 11*, 2014.
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. 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 the case. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Applicant voluntarily and knowingly waives his right to a hearing. Applicant 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. Applicant voluntarily and knowingly agrees to waive all 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. Applicant 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. 65-2912, to take action with respect to Applicant's license under the Kansas Physical Therapy Practice Act, K.S.A. 65-2901, *et seq.*
9. In his application for licensure, Applicant answered "yes" to disciplinary questions 12(h), 12(i), 12(j), 12(k), 12(s), 12(t), 12(u), 12(x), and 12(y).

- a. Question 12(h) asks: “Has any licensing authority ever limited, restricted, suspended, revoked, censured or placed on probation or had any other disciplinary action taken against any professional license you have held?”
- b. Question 12(i) asks: “Have you ever been notified or requested to appear before a licensing or disciplinary agency?”
- c. Question 12(j) asks: “To your knowledge, have any complaints (regardless of status) ever been filed against you with any licensing agency, professional association, hospital, nursing home, clinic or other health care facility?”
- d. Question 12(k) asks: “Has any professional association imposed any disciplinary action against you?”
- e. Question 12(s) asks: “Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?”
- f. Question 12(t) asks: “Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”
- g. Question 12(u) asks: “Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.”

- h. Question 12(x) asks: “Have you ever been denied provider participation in any State Medicaid or Federal Medicare Programs or in a private insurance company?”
 - i. Question 12(y) asks: “Have you ever been terminated, sanctioned, penalized, or had to repay money to any State Medicaid or Federal Medicaid Programs or private insurance company?”
10. Applicant provided the following information in response to his “yes” answers:
- a. Applicant stated that all of his responses were related to improper claims that were filed by his business “In Home Therapy” because “of poor oversight of billing practices on [his] part which allowed claims to be billed to the Oklahoma Medicaid program as well as private insurances when only the private insurance should have been billed first.”
 - b. Applicant stated that, after learning he was being investigated, he performed an internal audit of his records and “found where the billing errors occurred and refunded the money to the Oklahoma Medicaid program.”
 - c. In May 2005, Applicant was arrested and charged with felony Medicaid fraud.
 - d. In June 2005, the charge was amended to misdemeanor Medicaid fraud to which Applicant pleaded no contest and received six (6) months’ probation on a deferred sentence.
 - e. In December 2005, the Tulsa County District Court determined that he had adhered to the provisions of his sentence and allowed him to withdraw his plea of no contest and expunged the case.

- f. In January 2006, Applicant appeared before the Oklahoma State Board of Licensure and Supervision (Oklahoma Board).
- g. The Oklahoma Board placed Applicant on probation for a period of three (3) years. Applicant's probation ended on January 26, 2009.
- h. In August 2005, the U.S. Department of Health and Human Services (DHHS) excluded Applicant from eligibility to participate in Medicare, Medicaid, and all Federal health care programs for a period of five (5) years as a result of his no contest plea.
- i. In November 2005, Applicant stated that he was granted a waiver from DHHS to participate in Medicare, Medicaid, and all Federal health care programs because he was the sole source provider of essential specialized services for certain counties in Oklahoma.
- j. In May 2006, Applicant stated that he received notice from Blue Cross and Blue Shield of Oklahoma that his participation in Blue Traditional, Blue Choice PPO, Blue Preferred, and Blue Plan65 select networks had been cancelled due to his Medicare/Medicaid sanctions.
- k. In June 2006, Applicant accepted a position at a non-profit organization, and he stated that his DHHS waiver from exclusion ended.
- l. In September 2010, Applicant stated he applied for reinstatement with DHHS and was approved, and therefore no longer excluded, in February 2011.
- m. Applicant stated that he voluntarily paid back \$ 12,476.06, and he stated that he had to pay a penalty (\$ 2,000.00) and costs (\$ 1,500.00) to the Oklahoma Attorney General in June 2005.

11. In January 2006, the Oklahoma Board issued a Voluntary Submittal to Jurisdiction in Case No. 05-07-2968. The decision contained the following information:

- a. In May 2005, Applicant was arrested and charged with felony Medicaid fraud for submitting claims for physical therapy services rendered to both Medicaid and private insurance companies totaling \$ 12,476.06.
- b. Applicant made full restitution in June 2004, which was prior to any charges being filed, but after he learned he was being investigated by the Medicaid Fraud Unit of the Attorney General's Office.
- c. In June 2005, the charge was amended to misdemeanor Medicaid fraud to which Applicant pleaded no contest and was required to pay restitution of \$ 3,500.
- d. Applicant completed probation in December 2005.
- e. The Oklahoma Board found Applicant guilty of unprofessional conduct and placed him on probation for three (3) years.
- f. The terms of probation required him, in relevant part, (1) to arrange for an external audit of his books and records at least one time per year; (2) to perform an internal audit of his books and records; (3) to allow the Board and representatives of the Medicaid Fraud Unit to audit his books and records immediately upon request; and (4) upon the request of the Oklahoma Board, to request all places at which he practices to furnish a written statement monitoring his practice.

12. In August 2005, DHHS did exclude Applicant from participation in the Medicare, Medicaid, and Federal healthcare programs, but in November 2005, it waived his exclusion upon request of the State of Oklahoma.
13. In February 2011, DHHS reinstated Applicant as a provider of items and services under the Medicare program.
14. Applicant acknowledges that if formal hearing proceedings were conducted and Applicant presented no exhibits, witnesses or other evidence, the Board has sufficient evidence to prove that Applicant has violated the Kansas Physical Therapy Practice Act with respect to the above allegations. Applicant further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
15. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-2912.
16. Applicant violated K.S.A. 65-2912(a)(5), as set forth in K.A.R. 100-29-12(a)(3), by having his Oklahoma Physical Therapy License placed on probation by the Oklahoma Board for a period of three (3) years between January 2006 and January 2009.
17. Applicant violated K.S.A. 65-2912(a)(5), as set forth in K.A.R. 100-29-12(a)(18), by not properly overseeing his business' billing practices such that billing impropriety occurred.
18. Pursuant to K.S.A. 65-2912, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license, and pursuant to K.S.A.

65-2916(c), the Board has the authority to impose administrative fines for violations of the Kansas Physical Therapy Practice Act.

19. 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.

20. All pending investigation materials in KSBHA Investigative Case Number 14-00325 regarding Applicant, were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

21. Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Applicant 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 Applicant's license to practice physical therapy in the State of Kansas. Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Applicant 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, Applicant 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 Physical Therapy Practice Act, K.S.A. 65-2901, *et seq.*

22. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas 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 Kansas Physical Therapy Practice Act.
23. Applicant 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 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 Releasees.
24. Applicant further understands and agrees that upon signature by Applicant, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
25. 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.

26. 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.
27. Applicant, 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.
28. Applicant acknowledges that he has read this Consent Order and fully understands the contents.
29. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
30. All correspondence or communication between Applicant and the Board relating to the Consent Order shall be by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

31. Applicant 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.
32. 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. 77-505. 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.
33. This Consent Order constitutes non-disciplinary action.
34. The Board may consider all aspects of this Consent Order in any future matter regarding Applicant.
35. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee, and abiding by the terms of this Consent Order. Applicant further understands that the Temporary License is only effective until a conference hearing is held by the Board on ratification of this Consent Order and that if the Board fails to ratify this Consent Order, the Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this Consent Order, Applicant shall be issued a permanent licensure under the terms of this Consent Order.
36. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary action on his license to engage in the practice of physical therapy:

EDUCATION

37. Applicant shall attend and successfully complete a continuing education course for billing and coding provided by Coding and Compliance Initiatives, Inc., 11409 S. Gander Street, Olathe, Kansas 66061, by September 1, 2014, at his own expense. Applicant shall provide proof of successful completion by September 15, 2014.
38. If Applicant does not wish to attend the billing and coding continuing education course provided by Coding and Compliance Initiatives, Inc., then Applicant shall propose an alternative billing and coding course to the Board and provide the Board with documentation regarding the course's curriculum. This information shall be presented to the Board at least fourteen (14) days prior to the hearing before the Board in which this Consent Order is to be considered by the Board for approval or non-approval. If Applicant identifies a course after the Board meeting, then the Board appoints a member of Disciplinary Panel #28 to review and approve or disapprove of the proposed course. Any alternative course must be pre-approved by either the Board or by the appointed Disciplinary Panel member, and it shall be completed at his own expense. Applicant shall complete the course by September 1, 2014, and he shall provide proof of completion to the Board by September 15, 2014.
39. Unless otherwise approved by the Board, said continuing education course(s) shall consist of a formal live lecture format.
40. These hours shall be in addition to those hours required for renewal of licensure.

41. Upon receiving proof of attendance and successful completion of the course, this Consent Order shall be terminated.

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.

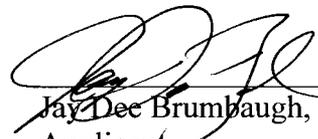
IT IS FURTHER ORDERED that upon meeting all technical requirements for licensure, Applicant shall be granted a license, pursuant to the conditions above.

IT IS SO ORDERED on this 11 day of April, 2014.

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

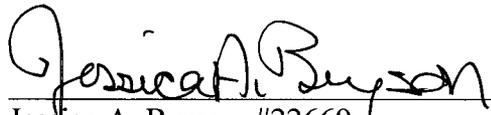

Kathleen Selzler Lippert
Executive Director

4/11/14
Date


Jay Dee Brumbaugh, P.T.
Applicant

4-11-14
Date

PREPARED AND APPROVED BY:



Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson Ave, Lower Level Ste A
Topeka, Kansas 66612
Phone: 785-296-8022
Fax: 785-368-8210
Email: jbryson@ksbha.ks.gov

Ivery A. Goldstein
Carol Ruth Bonebrake
Attorneys for Applicant
Holbrook & Osborn, P.A.
107 SW 6th St. Ste 210
Topeka, KS 66603


KS #22621

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 14th day of April, 2014, to the following:

Jay Dee Brumbaugh, P.T.
Applicant
Confidential
Owasso, OK 74055

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 delivered to:

Jessica A. Bryson
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

General Counsel's Office
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
Topeka, Kansas 66612

Katy Lenahan
Licensing Administrator
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Consent Order
Jay Dee Brumbaugh, P.T.