FILED

FEB 28 2011

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 11-HA 00065
Mallorey Castaneda,R.T.	)	
Kansas License No. Pending	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Stacy R. Bond, Associate Litigation Counsel ("Petitioner"), and Mallorey Castaneda, R.T. ("Applicant"), *pro se*, and move the Board for approval of a Consent Order affecting Applicant's license to practice respiratory 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 Wichita, Kansas 67204.
2. On or about October 19, 2010, Applicant submitted to the Board an application for temporary licensure in respiratory therapy. Such application was deemed complete on February 4, 2011.
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 respiratory therapy. K.S.A. 65-5501 et seq. and K.S.A. 65-5502.
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 Respiratory 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 her right to a hearing. Applicant 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. Applicant 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. 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. K.A.R. 100-55-55-5(d), to take action with respect to Applicant's license under the Respiratory Therapy Practice Act, K.S.A. 65-5501, *et seq.*

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13. 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 Respiratory Therapy Practice Act with respect to the above allegations. Applicant further waives her right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.
14. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-2836(i).
15. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-5510.
16. Pursuant to K.S.A. 65-5510, the Board may deny, refuse to renew, suspend, revoke, limit or publically censure Applicant's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Respiratory Therapy Practice Act.

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 Applicant were fully reviewed and considered by the Board member(s) who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 25 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, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following as a condition to being granted temporary licensure to engage in the practice of respiratory therapy:

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i. Applicant 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.

TIMEFRAME

j. The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing respiratory therapy in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

20. 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 respiratory therapist in the State of Kansas. Licensee 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 Respiratory Therapy Practice Act, K.S.A. 65-5501 *et seq.*

21. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Respiratory 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 Respiratory Therapy Practice Act.

22. 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 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 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.

23. Applicant further understands and agrees that upon signature by Applicant, 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. 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.
26. 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.
27. Applicant acknowledges that she has read this Consent Order and fully understands the contents.
28. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

29. All correspondence or communication between Applicant 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. Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory 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 non-disciplinary action.

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

34. Applicant understands that a temporary 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 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 Temporary License shall immediately expire at the conclusion such hearing. If the Board ratifies this

Consent Order, Licensee shall be issued a temporary licensure pursuant to K.S.A. 65-5508(d) under the terms of this Consent Order.

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 upon meeting all technical requirements for licensure, Applicant shall be granted a temporary license pursuant to K.S.A. 65-5508(d).

IT IS FURTHER ORDERED that:

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i. Applicant 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.

TIMEFRAME

The above monitoring provisions and limitations are not self-terminating. After a period of one (1) year, Applicant may request modification or termination of the provisions. For any period of time that Applicant is not actively practicing respiratory therapy in Kansas, the monitoring provisions and limitations will remain in effect but will be tolled and not counted towards reducing the one (1) year timeframe.

IT IS SO ORDERED on this 28 day of Feb, 2011.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

2-28-11
Date

Mallorey Castaneda, R.T.
Applicant

2·16·11
Date

PREPARED AND APPROVED BY:

Stacy R. Bond #17673
Associate Litigation Counsel
Kansas Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
785-296-3268

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 28th day of February, 2011, to the following:

Mallorey Castaneda, R.T.
Applicant
Confidential
Wichita, Kansas 67204

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:

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

Melissa Massey
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

Cathy A. Brown