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KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA00098
Janet Dameron Gengler, R.T.	)	
Kansas License No. 16-01336	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jessica A. Bryson, Associate Litigation Counsel ("Respondent"), and Janet Dameron Gengler, 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

   Beloit, Kansas 67420.

2. On or about June 12, 1992, Applicant was issued Kansas license 16-01336 to practice respiratory therapy in Kansas. Applicant's license was cancelled on May 1, 1999, for failing to renew it.

3. On or about July 2, 2014, Applicant submitted to the Board an application for reinstatement of licensure in respiratory therapy. Such application was deemed complete and filed with the Board on April 20, 2015.

4. 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.*

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5. 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.
6. 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.
7. 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 substantive and procedural motions and defenses that could be raised if an administrative hearing were held.
8. 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.
9. The Board has received information and investigated the same, and has reason to believe that there may be grounds pursuant to K.S.A. 65-5510(a)(2) to take action

with respect to Applicant's license under the Kansas Respiratory Therapy Practice Act, K.S.A. 65-5501 *et seq.*

10. Applicant has not actively practiced respiratory therapy since May 1, 1999.
11. Applicant has practiced as a paramedic since 2001.
12. Applicant successfully completed the Certification Examination for Entry Level Respiratory Therapists (CRT) on August 27, 2014.
13. Applicant completed thirteen (13) hours of continuing education for respiratory therapy in 2014.
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 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.
15. Applicant's acts, if proven, constitute unprofessional conduct as set forth in K.S.A. 65-5510(a)(2), as further defined by K.A.R. 100-55-5(k), in that, by not actively practicing respiratory therapy for more than five (5) years, Applicant has committed other behavior that demonstrates a manifest incapacity or incompetence to practice respiratory therapy with reasonable skill and safety as defined in K.S.A. 65-2837(a)(3).
16. Pursuant to K.S.A. 65-5510, the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant's license, and pursuant to K.S.A. 65-

5510(c), the Board has the authority to impose administrative fines for violations of the Kansas 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 in KSBHA Case Number 15-00403 regarding Applicant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 29. Disciplinary Panel No. 29 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

19. 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 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 Respiratory Therapy Practice Act, K.S.A. 65-5501 *et seq.*

20. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Respiratory 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 Respiratory Therapy Practice Act.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.
26. Applicant acknowledges that she has read this Consent Order and fully understands the contents.
27. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.
28. 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

29. 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.

30. 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.

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

32. Applicant understands that a Temporary License shall be issued based upon Applicant's signing this Consent Order, paying the temporary license fee, abiding by the terms of this Consent Order, and upon an authorized Board signature. Applicant further understands that the Temporary License is only effective until a 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 an active license under the terms of this Consent Order.

33. In lieu of conducting a formal proceeding, Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public action on her license to engage in the practice of respiratory therapy:

PRACTICE MONITORING AND SUPERVISION

34. Applicant agrees to have a Board-approved practice monitor, who is another Kansas-licensed respiratory therapist or who is a licensee under the Kansas Healing Arts Act, who has no pending Board complaints, investigations, and/or disciplinary matters, to review Applicant's practice of respiratory therapy to ensure compliance with community and ethical standards. Applicant shall bear all expenses associated with the practice monitor. The practice monitor must be pre-approved by the Board, the Disciplinary Panel, or the Disciplinary Panel's designee. Applicant shall submit a Curriculum Vitae (CV) of her proposed practice monitor for approval by the Board, the Disciplinary Panel, or the Disciplinary Panel's designee.
35. The practice monitor shall directly supervise 100% of Applicant's practice of respiratory therapy for at least six (6) months.
36. "Direct supervision" shall be defined as the practice monitor being physically present with Applicant and the patient during the respiratory therapist/patient encounter.
37. Applicant shall cause and ensure the practice monitor to submit monthly reports (July, August, September, October, November, December) due on the 15th day of each month to the Board on a form provided by Board staff. Such reports shall include a summary of whether Applicant is seeing patients, documenting in the patient record, and practicing respiratory therapy in an appropriate and timely manner. Applicant is responsible for ensuring that the practice monitor's reports are submitted by the monthly deadlines.

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

39. Should Applicant need to change her practice monitor, then she must submit a CV of the new proposed practice monitor to the Board for approval by an appointed member of Disciplinary Panel No. 29 prior to being monitored by the new practice monitor. Any proposed subsequent practice monitor(s) shall meet or exceed the aforementioned requirements of the initial monitor. Licensee shall not practice respiratory therapy until a new practice monitor has been approved.

TIMEFRAME

40. The above monitoring provisions are not self-terminating. After a period of at least six (6) months, 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 will remain in effect but will be tolled and not counted towards reducing the six (6) month 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 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 30 day of April, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert
Executive Director

4/30/15
Date

Janet Dameron Gengler, R.T.
Applicant

4/14/2015
Date

PREPARED AND APPROVED BY:

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

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 30th day of April, 2015, to the following:

Janet Dameron Gengler, R.T.
Applicant
Confidential

Beloit, Kansas 67420.

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

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
Staff Member