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JUL 15 2015
KS State Board of Healing Arts

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BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	Docket No. 15-HA 00127
Samantha Graber, O.T.A.	)	
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 ("Respondent"), and Samantha Graber, O.T.A. ("Applicant"), *pro se*, and move the Board for approval of a Consent Order affecting Applicant's license to practice as an occupational therapy assistant 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 Scott City, Kansas 67871.
2. On or about March 25, 2015, Applicant submitted to the Board an application for licensure to practice as an occupational therapy assistant. Such application was deemed complete and filed with the Board on June 29, 2015.
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 occupational therapy assistants. K.S.A. 65-5401 *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 Occupational 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 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. 65-5510(a)(5) and K.S.A. 65-5514(a) to take action with respect to Applicant's license under the Kansas Occupational Therapy Practice Act, K.S.A. 65-5401, *et seq.*
9. In her application for licensure, Applicant initially asserted that she had been unemployed from June 2013 to March 2015 because she was finishing her degree.

10. However, Applicant was employed, and practicing as, an occupational therapy assistant at Scott County Hospital in Scott City, Kansas, from March 5, 2015, to March 20, 2015.

11. 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 Occupational 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.

12. Applicant violated K.S.A. 65-5410(a)(5), as further defined by K.A.R. 100-54-5(a), by representing herself as an occupational therapy assistant during a period of time when she did not have a license to practice as an occupational therapy assistant. Such conduct is likely to deceive, defraud, or harm the public.

13. Pursuant to K.S.A. 65-5410(a), the Board may revoke, suspend, limit, censure or place under probationary conditions Applicant'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 Practice Act.

14. 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.

15. All pending investigation materials in KSBHA Investigative Case Number 15-00662 regarding Applicant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 30. Disciplinary Panel

No. 30 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

16. 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 as an occupational therapy assistant 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 Occupational Therapy Practice Act, K.S.A. 65-5401 *et seq.*

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

18. 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.

19. 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.
20. 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.
21. 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.
22. 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.

23. Applicant acknowledges that she has read this Consent Order and fully understands the contents.

24. Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

25. 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

26. Applicant shall obey all federal, state and local laws and rules governing the practice of occupational therapy assistants 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.

27. 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.

28. This Consent Order constitutes public disciplinary action.

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

30. 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 a permanent licensure under the terms of this Consent Order.

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

FINES

32. Applicant is hereby ordered to pay a CIVIL FINE pursuant to K.S.A. 65-5410(c) in the amount of $ 150.00. The total amount of $ 150.00 shall be due on or before October 30, 2015.

33. In the event that the Board does not receive a payment due and owing, the total amount of the levied CIVIL FINE still due shall become immediately due and payable in full upon written notice by the Board to Applicant stating that payment has not been received.

34. Applicant shall make all payments payable to the Kansas State Board of Healing Arts and send all payments to the attention of:

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

35. Applicant agrees that this CIVIL FINE is based upon a violation of the Kansas Occupational Therapy Practice Act that is directly connected to the delivery of healthcare.

ESSAY

36. Applicant is hereby ordered to write an essay to the Board for public dissemination.
37. The essay shall address the following information:
    a. A discussion regarding the importance of regulating the profession of occupational therapy assistants through licensure;
    b. A discussion regarding the importance of knowing what a profession's scope of practice allows; and a
    c. A discussion regarding the consequences of practicing without a license.
38. The essay must be at least 500 words, type-written, 12-point font, and double-spaced.
39. Licensee shall properly cite throughout her paper using either the APA or MLA formats, include a "Works Cited" or "References" page, and provide all supporting documentation (e.g. articles, websites, etc.) with her essay.
40. Such essay will be subject to review by the Disciplinary Panel or the Disciplinary Panel's designee for acceptance.

41. The essay must be submitted on or before October 30, 2015, and mailed to:

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

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 15 day of July, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Confidential

Kathleen Selzler Lippert
Executive Director

7/15/15
Date

Confidential

Samantha Graber, O.T.A.
Applicant

7/1/15
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

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 July, 2015, to the following:

Samantha Graber, O.T.A.
Applicant
Confidential
Scott City, Kansas 67871

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:

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