

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of )  
 )  
KATHLEEN MCVAY, P.T.A. )  
Kansas License No. 14-00950 )

Docket No. 16-HA 00074

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Reese H. Hays, Litigation Counsel, ("Petitioner"), and Kathleen McVay, P.T.A., ("Certificant"), *pro se*, and move the Board for approval of a Consent Order affecting Certificant's certificate to practice as a physical therapy assistant in the State of Kansas.

The Parties stipulate and agree to the following:

1. Certificant's last known mailing address to the Board is: **Confidential**  
Lawrence, Kansas 66044.
2. Certificant is or has been entitled to engage in practice as a physical therapy assistant in the State of Kansas, having been issued Certificate No. 14-00950 on approximately October 14, 1995. Certificant's certificate is active, and having last renewed such certificate on approximately November 20, 2015.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of physical therapy assistants. K.S.A. 65-2901 *et seq.* and K.S.A. 65-2919.
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 Physical Therapy Practice Act is constitutional on its face and as applied in the case. Certificant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
6. Certificant voluntarily and knowingly waives her right to a hearing. Certificant 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. Certificant 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. Certificant 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(a)(1), K.S.A. 65-2912(a)(5), and K.A.R. 100-29-12(a)(2)(B), to take action with respect to Certificant's certificate under the Kansas Physical Therapy Practice Act, K.S.A. 65-2901, *et seq.*

9. On or about July 10, 2014, Certificant was involved in an incident in which she fled the scene of an automobile accident in Lawrence, Kansas.
10. On or about July 10, 2014, Lawrence Police Officer, Robert Egidy, was dispatched to the area of West 9<sup>th</sup> Street and Indiana Street in Lawrence, Kansas, following a report of an individual leaving the scene of an accident.
11. Officer Egidy was given a description of the fleeing vehicle, as well as the driver.
12. Officer Egidy observed Certificant's vehicle and pulled her over. Upon approaching the vehicle, Officer Egidy observed Certificant hiding something behind the seat of her vehicle as she came to a stop.
13. Upon approaching the vehicle, Officer Egidy observed a bottle of Vodka on the back floorboard of Certificant's vehicle. Officer Egidy noted a strong odor of alcohol as he approached the vehicle. He also noted that Certificant's eyes were bloodshot.
14. Upon questioning Certificant regarding her consumption of alcohol that day, she denied having any alcohol to drink that day.
15. Certificant reported to Officer Egidy that she may have "tapped" another vehicle on 9<sup>th</sup> Street, but did not think of it as an accident.
16. Certificant was asked to submit to a standard field sobriety test. Certificant's results indicated that she was driving while impaired.
17. Certificant submitted to a breathalyzer test which showed Certificant's breath alcohol content at that time was .169 grams of alcohol per 210 liters of breath. Anything over .08 grams of alcohol per 210 liters of breath is prima facie evidence of being impaired.

18. Certificant was placed under arrest and charged with operating a vehicle under the influence of alcohol or drugs, failing to report an accident, and leaving the scene of an accident.
19. On or about July 29, 2014, Certificant pled guilty to Driving Under the Influence 2<sup>nd</sup> Conviction, a class A, nonperson misdemeanor.
20. Certificant was ordered to serve one hundred eighty (180) days in jail, and pay court costs and fees of \$1,682.06. Certificant's sentence was reduced to two (2) days in jail, and six (6) days of house arrest.
21. Certificant was placed on two (2) years-probation, ordered to complete a substance abuse evaluation, complete a DUI Victim Impact Panel, and ordered to not use alcohol or illegal drugs.

22. Confidential

23. Confidential

24. Certificant's acts, if proven, constitute violations of the Kansas Physical Therapy Practice Act as set forth in K.S.A. 65-2912.

25. Certificant violated K.S.A. 65-2912(a)(1), **Confidential**  
**Confidential**
26. Certificant further violated K.S.A. 65-2912(a)(5) as further defined by K.A.R. 100-29-12(a)(2)(B), for practicing as a physical therapy assistant without reasonable skill and safety **Confidential**
27. Pursuant to K.S.A. 65-2912, the Board may refuse, revoke, suspend, limit, or censure Certificant's certificate.
28. 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.
29. All of the materials in KSBHA Investigative Case Number 15-00413 regarding Certificant were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. Disciplinary Panel No. 30 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.
30. Certificant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Certificant 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 Certificant's certificate to practice as a physical therapy assistant in the State of Kansas. Certificant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Certificant 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, Certificant retains the right to

confront and examine all witnesses, present evidence, testify on her 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.*

31. 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.

32. Certificant 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 Certificant has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Certificant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

33. Certificant further understands and agrees that upon signature by Certificant, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.
34. 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.
35. Certificant 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 Certificant is not present. Certificant 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.
36. Certificant, 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.
37. Certificant acknowledges that she has read this Consent Order and fully understands the contents.
38. Certificant acknowledges that this Consent Order has been entered into freely and voluntarily.

39. Certificant shall obey all federal, state and local laws and rules governing the practice as a physical therapy assistant 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.
40. 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.
41. This Consent Order constitutes public non-disciplinary action.
42. A protective order is hereby entered to protect all confidential information under 42 CFR Part II and K.S.A. 65-4925.
43. The Board may consider all aspects of this Consent Order in any future matter regarding Certificant.
44. In lieu of conducting a formal proceeding, Certificant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following public non-disciplinary action against her certificate to engage in the practice as a physical therapy assistant.

#### **MONITORING**

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53. Certificant will furnish a copy of this Consent Order to each and every state in which she holds licensure or applies for licensure and to an appropriate work site supervisor or personnel Confidential

54. Certificant 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.

55. Certificant shall immediately, within five (5) calendar days, notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

56. Certificant 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.
57. Certificant agrees to pay all of the costs incurred for the performance of her monitoring, **Confidential**

#### **TIMEFRAME**

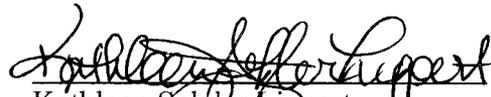
58. The above monitoring provision are not self-terminating. After a period of two (2) years from the date of the approval of this Consent Order, Certificant may request modification or termination of the provisions.
59. For any period of time that Certificant is not actively practicing as a physical therapy assistant in Kansas, the monitoring provisions will remain in effect but will be tolled and not counted towards reducing the two (2) year timeframe.
60. Any and all requests for termination and/or modification of this Consent Order will be made in writing and submitted to the Board by certified mail addressed to:

Kansas State Board of Healing Arts  
Attn: Executive Director  
800 SW Jackson Lower Level Suite A  
Topeka, Kansas 66612

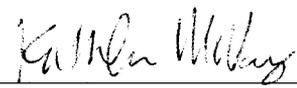
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 7 day of March, 2016.

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

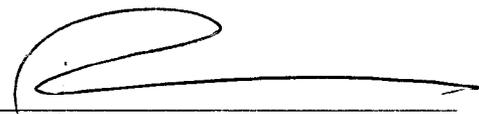
  
Kathleen Selzler Lippert  
Executive Director

3/7/2016  
Date

  
Kathleen McVay, P.T.A.  
Certificant

2/22/16  
Date

**PREPARED AND APPROVED BY:**

  
Reese H. Hays, #22700  
Litigation Counsel  
Kansas Board of Healing Arts  
800 SW Jackson Ave, Lower Level Ste A  
Topeka, Kansas 66612  
(785) 296-0961  
(785) 368-8210-fax  
rhays@ksbha.ks.gov

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Consent Order  
Kathleen McVay, P.T.A.

**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 7<sup>th</sup> day of March, 2016, to the following:

Kathleen McVay, P.T.A.  
**Confidential**  
Lawrence, Kansas 66044

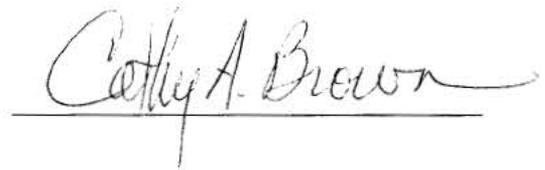
And the original was hand-filed with:

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  
Topeka, Kansas 66612



Catelyn A. Brown