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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 Nos. 16-HA00013
Brandy J. (Alexander) Palacios, P.T.A., P.T.	)	16-HA00015
Kansas P.T.A. Certificate No. 14-02098	)	
Kansas P.T. License No. Pending	)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Susan R. Gering, Associate Litigation Counsel ("Petitioner"), and Brandy J. (Alexander) Palacios, P.T.A., P.T. ("Certificant/Applicant"), by and through her attorney Patrick R. Barnes of Scott, Quinlan, Willard, Barnes & Keeshan, L.L.C., and move the Board for approval of a Consent Order affecting Certificant/Applicant's certificate to practice as a Physical Therapist Assistant and license to practice as a Physical Therapist in the State of Kansas. The Parties stipulate and agree to the following:

1. Certificant/Applicant's last known mailing address to the Board is: Confidential Kansas City, Kansas 66112.
2. Certificant/Applicant is, or has been entitled to, be engaged in practice as a Physical Therapist Assistant in the State of Kansas, having been issued Certificate No. 14-02098 on approximately October 14, 2009. Certificant/Applicant's certificate is currently active.
3. On or about March 11, 2015, Certificant/Applicant submitted to the Board an application for a license to practice physical therapy in the State of Kansas. Such application was deemed complete and filed with the Board on August 18, 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 physical therapy assistant and physical therapy. K.S.A. 65-2901 *et seq.* and K.S.A. 65-2919.
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 Physical Therapy Practice Act is constitutional on its face and as applied in this case. Certificant/Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
7. Certificant/Applicant voluntarily and knowingly waives her right to a hearing. Certificant/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. Certificant/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.
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 a Final 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/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. 65-2912 to take action with respect to Certificant/Applicant's certificate and license under the Kansas Physical Therapy Act, K.S.A. 65-2901, *et seq.*
10. This Consent Order incorporates herein by reference the facts as stated in the Petition filed on and the Response in Opposition to Application for License to Practice Physical Therapy ("Response in Opposition") filed on September 4, 2015. Exhibit 1, Petition in the Matter of Brandy Alexander-Palacios, P.T.A. 15-HA00013; Exhibit 2, Response in Opposition 15-HA00015.
11. Certificant/Applicant violated K.S.A. 65-2912(a)(3) in that Certificant/Applicant attempted to obtain licensure by fraud or deception.
12. Certificant/Applicant violated K.S.A. 65-2912(a)(5), as further defined by K.A.R. 100-29-12(a)(18) in that Certificant/Applicant committed conduct that was likely to deceive, defraud, or harm the public.
13. Certificant/Applicant violated K.S.A. 65-2912(a)(5) as further defined in K.A.R. 100-29-12(a)(21) in that Certificant/Applicant obtained a fee by fraud, deceit, or misrepresentation.
14. Certificant/Applicant violated K.S.A. 65-2912(a)(5) as further defined in K.A.R. 100-29-12(a)(22) in that Certificant/Applicant failed to maintain adequate written records detailing the course of treatment of the patient or client.
15. Certificant/Applicant violated K.S.A. 65-2912(a)(5) as further defined in K.A.R. 100-29-12(a)(26), in that Certificant/Applicant violated regulations adopted by the board relating to the practice of physical therapy.

16. Certificant/Applicant violated K.S.A. 65-2912(a)(9) in that Certificant/Applicant knowingly submitted any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement.

17. Pursuant to K.S.A. 65-2912, the Board may revoke, suspend, limit, censure or place under probationary conditions Certificant/Applicant's certificate to practice as a physical therapy assistant and license to practice physical therapy for violations of the Kansas Physical Therapy Practice Act.

18. 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.

19. All pending investigation materials in KSBHA Docket Nos. 16-HA00013 and 16-HA00015 regarding Certificant/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.

20. Certificant/Applicant further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Certificant/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 Certificant/Applicant's certificate to practice as a physical therapy assistant in the State of Kansas or Certificant/Applicant's license to practice as a physical therapist in the State of Kansas. Certificant/Applicant hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Certificant/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, Certificant/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.

21. 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.

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

23. Certificant/Applicant further understands and agrees that upon signature by Certificant/Applicant, this document shall be deemed a public record and shall be reported to any 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. Certificant/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 Certificant/Applicant is not present. Certificant/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. Certificant/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. Certificant/Applicant acknowledges that she has read this Consent Order and fully understands the contents.
28. Certificant/Applicant acknowledges that this Consent Order has been entered into freely and voluntarily.

29. All correspondence or communication between Certificant/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

30. Certificant/Applicant shall obey all federal, state, and local laws and rules governing the practice of physical therapy assistants and physical therapists 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 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.

32. This Consent Order constitutes **public, disciplinary action**.

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

34. Certificant/Applicant understands that a Temporary License shall be issued based upon Certificant/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. Certificant/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, Certificant/Applicant shall be issued a permanent licensure under the terms of this Consent Order.

35. In lieu of conducting a formal proceeding, Certificant/Applicant, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action on her certificate to engage in practice as a physical therapy assistant and license to engage in practice as a physical therapist:

PUBLIC CENSURE

36. Certificant/Applicant is hereby Publicly Censured for violations of the Kansas Physical Therapy Practice Act, as set forth in K.S.A. 65-2912.

REHABILITATIVE EDUCATION

37. Certificant/Applicant shall enter into, complete, and pass all five (5) topic areas of the EBAS Essay Examination that is put on by Ethics and Boundaries Assessment Services, LLC. The score report of any and all examination attempts by Certificant/Applicant, regardless of Certificant/Applicant receiving a passing or failing score, shall be provided to the Board by Certificant/Applicant within ten (10) business days of Certificant/Applicant receiving the test result. Certificant/Applicant further agrees that any and all results will be presented to the Board at the time of her request to modify or terminate her licensure monitoring. The results shall be sent to:

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

38. Within ten (10) days of the approval of the Consent Order, Certificant/Applicant shall contact EBAS, 901 54th Avenue, Greeley, Colorado 80634, (970) 352-9050, to schedule the Ethics and Boundaries Essay Examination at the earliest dates available to both EBAS and Certificant/Applicant.

39. These hours shall be in addition to those hours required for renewal of licensure.

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 30th day of December, 2015.

FOR THE KANSAS STATE BOARD OF HEALING ARTS:

Kathleen Selzler Lippert by KGS
Kathleen Selzler Lippert
Executive Director

12/30/15
Date

Brandy (Alexander) Palacios, P.T.A., P.T.
Certificant/Applicant

12/20/15
Date

PREPARED AND APPROVED BY:

Susan R. Gering, #25582
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APPROVED BY:

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Topeka, Kansas 66611
pat@sqwblaw.com

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 December, 2015, to the following:

Brandy Alexander-Palacios, P.T.A., P.T.
Certificant/Applicant
Confidential

Kansas City, Kansas 66112

Patrick R. Barnes
Attorney for Certificant/Applicant
Scott, Quinlan, Willard, Barnes & Keeshan, L.L.C.
3301 SW Van Buren
Topeka, Kansas 66611

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:

Susan R. Gering
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