

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

OCT 1 9 1998

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
Kimberly Dawn Hotujec)
Application for Registration)

Case No. 99-00147

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Stacy L. Cook, Litigation Counsel, ("Petitioner"), and Kimberly Dawn Hotujec, ("Applicant"). Petitioner and Applicant hereby stipulate and agree as follows:

1. The Board is the sole and exclusive administration 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.*

2. Applicant admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.

3. Applicant agrees that the Respiratory Therapy Practices Act is constitutional on its face and as applied in this case.

4. Applicant agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

5. Applicant has applied for registration in respiratory therapy by completing an

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Application for Registration in Respiratory Therapy on August 3, 1998.

6. Question number 6 on the Application states:

Have you ever been convicted for violation of any federal, military, state or local laws (Excluding minor traffic violations)?

7. Applicant marked "yes" to question number 6, and provided information relating to a conviction of one count conspiracy to commit insurance fraud in Johnson County, Kansas. As a result of her plea of no contest, Applicant was placed on probation for two years.

8. Applicant was convicted of a level 9 non-person felony. Pursuant to K.S.A. 65-5510, the Board may deny registration for respiratory therapy when the applicant has been guilty of unprofessional conduct. Unprofessional conduct includes being convicted of a felony if the acts for which such person was convicted are found by the Board to have a direct bearing on whether such person should be entrusted to serve the public in the capacity of a respiratory therapist. K.S.A. 65-5510 (a)(3).

9. It is the intent and purpose of this Stipulation to provide for settlement of all issues relating to Applicant's application for registration without the necessity of proceeding to a formal disciplinary hearing. According to K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

10. In seeking registration, Applicant agrees to the conditions and terms set forth herein.

11. Applicant voluntarily and knowingly waives her right to a hearing concerning the presentation of this Stipulation to the Board for the Board's approval. Applicant voluntarily and

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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 in the presentation of this Stipulation to the Board for its approval. In the presentation of this Stipulation to the Board for its approval, 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.

12. The terms and conditions of the Stipulation 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 Stipulation shall not be binding on the Board until an authorized signature is affixed at the end of this document. When the Applicant signs this document, the document shall be deemed a unilateral contract and agreement and shall bind Applicant to the terms and conditions set forth herein regardless of whether the Board's signature is affixed to the document. Applicant specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

13. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

(a) In lieu of the commencement of formal proceedings and/or the making of findings by the Board, Applicant, by signature affixed to this Stipulation, hereby voluntarily agrees to the following:

(i) Applicant shall provide to Stacy L. Cook, at the Board offices, monthly reports from her parole officer until the end of probation. The reports shall state whether Applicant is in compliance with the terms of her probation. It is Applicant's responsibility to

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ensure that the reports are provided. The reports shall be due fifteen (15) days after the end of each month. Applicant must provide to her parole officer a copy of this Stipulation and Agreement and Enforcement Order.

(ii) Applicant may request termination of the terms of this Stipulation after her probation has ended.

(b) This Stipulation and Agreement and Enforcement Order constitutes a limitation on Applicant's registration for respiratory therapy in the State of Kansas.

(c) Applicant's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this Stipulation is intended nor shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts 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 Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

(e) Applicant hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board 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

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Applicant shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Board, its employees or agents, arising out of acts leading to the execution of this Stipulation or the content of this Stipulation.

(f) 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 requiring disclosure of this Stipulation.

(g) This Stipulation, 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.

(h) 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.

(i) Applicant, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

(j) Applicant acknowledges that she has read this Stipulation and fully understands the contents.

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(k) Applicant acknowledges that this Stipulation has been entered into freely and voluntarily.

(l) All correspondence or communication between Applicant and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

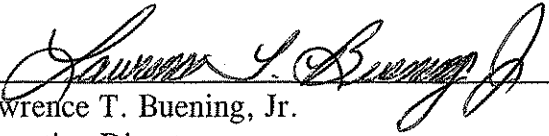
(m) Applicant shall obey all federal, state and local laws and rules governing the practice of respiratory therapy in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF, the parties have executed this agreement on this 19th
day of October 1998.

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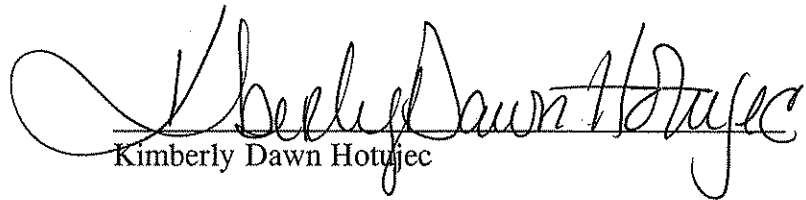
KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director

^{ALB}
10-19-98

Date

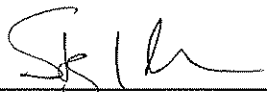


Kimberly Dawn Hotujec

10-17-98

Date

Prepared By:



Stacy L. Cook, #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(913) 296-7413

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CERTIFICATE OF SERVICE

I, Stacy L. Cook, Litigation Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 19th day of October 1998, to the following:

Kimberly D. Hotujec
12126 Leavenworth Road
Kansas City, Kansas 66109

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



Stacy L. Cook

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