

**CONSENT AGREEMENT
BETWEEN
BRIANNA KELLY SMITH, M.T.
AND
THE STATE MEDICAL BOARD OF OHIO
09 CRF 112**

This Consent Agreement is entered into by and between Brianna Kelly Smith, M.T. [Ms. Smith], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Ms. Smith enters into this Consent Agreement being fully informed of her rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a violation of Section 4731.22(B)(10), Ohio Revised Code, for “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” to wit: Section 4731.41, Ohio Revised Code, Practicing Medicine (or any of its Branches) Without Certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, a violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.
- B. On or about September 9, 2009, the Board issued to Ms. Smith a Notice of Opportunity for Hearing (“September 2009 Notice”), a copy of which is attached hereto and fully incorporated herein.
- C. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violation of Section 4731.22(B)(10), Ohio Revised Code, as set forth in the September 9, 2009 Notice of Opportunity for Hearing, attached and incorporated herein as Exhibit A, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- D. Ms. Smith is seeking restoration of her certificate to practice massage therapy, license number 33.013150, which expired in August 2005.
- E. Ms. Smith states that she is not licensed to practice in any other state or jurisdiction.

- F. Ms. Smith admits to the factual and legal allegations as set forth in the September 2009 Notice of Opportunity for a Hearing.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Ms. Smith's application for restoration of her certificate to practice massage therapy in Ohio is GRANTED, provided she otherwise meets all statutory and regulatory requirements. Upon restoration, Ms. Smith's certificate shall be SUSPENDED immediately for a definite period of 60 days. Further, Ms. Smith knowingly and voluntarily agrees with the Board that upon expiration of the 60 day definite suspension, that Ms. Smith's certificate shall be subject to the following PROBATIONARY terms, conditions and limitations for a period of at least two years:

1. Ms. Smith shall obey all federal, state, and local laws and rules governing the practice of massage therapy in Ohio.
2. Ms. Smith shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective, or as otherwise requested by the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Ms. Smith shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Consent Agreement becomes effective, or as otherwise directed by the Board. Ms. Smith shall also appear every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled
4. In the event Ms. Smith is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.
5. Ms. Smith shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

REQUIRED REPORTING BY LICENSEE

6. Within thirty days of the effective date of this Consent Agreement, Ms. Smith shall provide a copy of this Consent Agreement to all employers or entities with which she is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he/she has privileges or appointments. For massage therapists, the term “health care center” includes but is not limited to entities that may be referred to as a wellness center, exercise center, health club, spa, salon, or gymnasium. Further, Ms. Smith shall promptly provide a copy of this Consent Agreement to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. In the event that Ms. Smith provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Ms. Smith shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Ms. Smith shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

7. Within thirty days of the effective date of this Consent Agreement, Ms. Smith shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which she currently holds any license or certificate. Ms. Smith further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license. Further, Ms. Smith shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the

Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

DURATION/MODIFICATION OF TERMS

Ms. Smith shall not request termination of this Consent Agreement for a minimum of two years. In addition, Ms. Smith shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year, except that Ms. Smith may make such request with the mutual approval and joint recommendation of the Secretary and Supervising Member. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

In the event that the Board initiates future formal proceedings against Ms. Smith, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

In the event that any term, limitation, or condition contained in this Consent Agreement is determined to be invalid by a court of competent jurisdiction, Ms. Smith and the Board agree that all other terms, limitations, and conditions contained in this Consent Agreement shall be unaffected.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Ms. Smith appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Ms. Smith has violated any term, condition or limitation of this Consent Agreement, Ms. Smith agrees that the violation, as alleged, also constitutes clear and convincing evidence that her continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Ms. Smith acknowledges that she has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

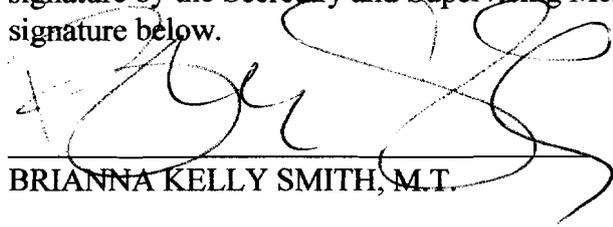
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

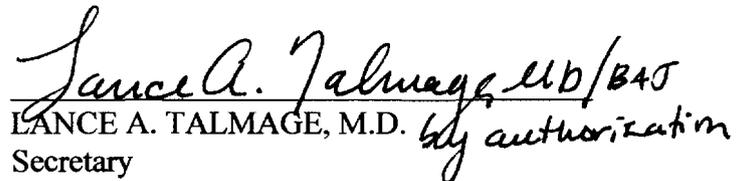
Ms. Smith hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Ms. Smith acknowledges that his/her social security number will be used if this information is so reported and agrees to provide his/her social security number to the Board for such purposes.

EFFECTIVE DATE

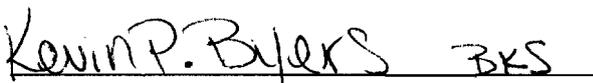
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

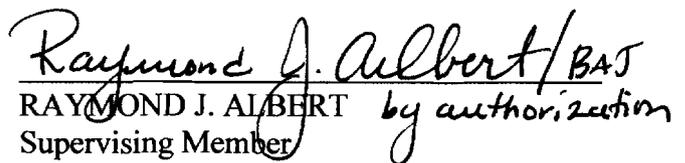

BRIANNA KELLY SMITH, M.T.


LANCE A. TALMAGE, M.D. *by authorization*
Secretary

March 6, 2010
DATE

March 10, 2010
DATE


KEVIN P. BYERS *BKS*
Attorney for Ms. Smith


RAYMOND J. ALBERT *by authorization*
Supervising Member

March 6, 2010
DATE

March 10, 2010
DATE


MELINDA SNYDER OSGOOD
Assistant Attorney General

3/9/10
DATE



State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

September 9, 2009

Case number: 09-CRF- *112*

Brianna Kelly Smith, M.T.
412 E. Mulberry Street
Lancaster, Ohio 43130

Dear Ms. Smith:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) In or about May 2009, you caused to be submitted to the Board an Application for Massage Therapy Restoration, which is currently pending. Your certificate to practice massage therapy expired on or about August 31, 2005.
- (2) Despite the expiration of your certificate to practice massage therapy, you practiced massage therapy, as that term is defined by Rule 4731-1-05, Ohio Administrative Code, from on or about August 31, 2005, to at least August 13, 2009. Although you admitted that you were aware on or about January 26, 2009, that your certificate to practice massage therapy had expired, you nevertheless continued to practice massage therapy to at least August 13, 2009.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practicing Medicine (or any of its Branches) Without Certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must

Mailed 9-10-09

Brianna Kelly Smith, M.T.

Page 2

be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

LAT/DSZ/fib
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3070 3124
RETURN RECEIPT REQUESTED