

OCT 12 2023

**Kentucky Board of
Physical Therapy**

**Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. C2022-13**

**Commonwealth of Kentucky,
Board of Physical Therapy**

Complainant

Order

**Nancy Durban, PT
(Compact Privilege CP011502T)**

Respondent


* * * * *

Kentucky Board of Physical Therapy, having met on September 21, 2023, and having voted on the above-styled case, hereby adopts and incorporates the attached Settlement Agreement.

It is so ordered.

Dated this 21st day of September, 2023

Kentucky Board of Physical Therapy

By: 
Peggy Block, PT
Chair

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Order and Settlement Agreement was mailed, first-class postage prepaid this ~~12th~~ ^{17th} day of ~~September~~ ^{October}, 2023 to:

Nancy Durban, PT
302 Ludlow Avenue, 3rd Floor
Cincinnati, OH 45220
Respondent

M. Keith Poynter, ESQ
1154 South Third Street
Louisville, KY 40203
Counsel for the Board



Stephen Curley, Executive Director

OCT 12 2023

**Kentucky Board of
Physical Therapy**

**Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. C2022-13**

**Commonwealth of Kentucky,
Board of Physical Therapy**

Complainant

Settlement Agreement

**Nancy Durban, PT
Compact Privilege CP011502T**

Respondent

* * * * *

Whereas, the Kentucky Board of Physical Therapy ("Board") having voted to file a Notice of Administrative Hearing and Order, based on an initiating complaint and an investigation completed by the Board regarding Nancy Durban, PT, with an address of; 302 Ludlow Avenue, 3rd Floor, Cincinnati, OH 45220 ("Respondent"), and;

For the purposes of this Settlement Agreement, the Respondent admits the Board would be able to prove by a preponderance of the evidence at an administrative hearing before the Board, the following:

At least one (1) count of a violation of KRS 327.020 "Practicing physical therapy without a license" when Mrs. Durban, on numerous occasions (7), saw patients via telehealth in late 2021 after the expiration of the Executive Emergency Order which allowed her to do so.

Whereas, the parties mutually desire to settle the issues in an expeditious manner, without the need for a formal hearing;

It is hereby stipulated and agreed between the undersigned parties this matter shall be settled and resolved upon the following terms:

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Settlement Agreement. The Respondent has freely and voluntarily entered into this Settlement Agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms. The Respondent waives the right to challenge any agreed upon term or condition of this Settlement Agreement notwithstanding any other statutory provision of KRS Chapter 327, and the Respondent expressly agrees those agreed upon terms and conditions contained therein are exclusively a matter of private right.

The Respondent is fully aware of the rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on charges contained in any Notice of Administrative Hearing, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of a Notice of Administrative Hearing, the right to obtain judicial review of the Board's decision, and the right to appeal any Final Order of the Board to the Franklin Circuit Court as otherwise allowed by KRS 327.075(4). All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

Jurisdiction

The Respondent acknowledges the Board has jurisdiction over the Respondent and the conduct which has precipitated this Settlement Agreement. The Respondent also acknowledges the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's credentials to work as a Physical Therapist in Kentucky. The Respondent maintains, and the Board acknowledges, that the Respondent is not admitting any wrongdoing, but understands that sufficient evidence exists that the Board may prevail at a hearing of this matter, and as such, the Respondent wishes to enter into this Settlement Agreement.

The Respondent acknowledges the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

Publication of Settlement Agreement

The Respondent acknowledges, once adopted by the Board, this Settlement Agreement is considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands the Board is free to make any use it deems appropriate of the contents of this Settlement Agreement, which shall include the Board's ability to share the content of this Settlement Agreement with any governmental or professional Board or organization, publication of a summary in the Board's newsletter and availability via the Board's website, and reporting under federal law.

Terms of Disciplinary Action

The parties agree to the following as the agreed upon disciplinary action:

- 1) The Respondent is officially reprimanded, with this Settlement Agreement constituting the Reprimand; and
- 2) the Respondent shall pay the amount of the actual costs of the investigation totaling \$1,200.00
 - a. by certified check/cashier's check or money order;
 - b. with the Respondent's name and "Case Expense – Agency Case No. C2022-13" written on the check or money order;
 - c. mailed or delivered to the Board at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, and;
- 3) The Respondent agrees to pay a fine in the amount of \$250.00 which shall be paid:
 - a. By certified check/cashier's check or money order;
 - b. With the Respondent's name and "Agency Case No C2022-13" written on the check or money order;
 - c. Mailed to the "Kentucky Board of Physical Therapy" and mailed or delivered to 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222; and
 - d. On or before November 1, 2023.
- 4) The Respondent must complete six (6) hours of ethics continuing education courses, approved by the Board.
- 5) The Respondent acknowledges that this matter may be reviewed in the event of future disciplinary actions taken against her by the Board.
- 6) The Respondent further acknowledges that this Settlement Agreement may be grounds for enhanced penalties upon a finding of any future violations of KRS 327 or the associated administrative regulations.

Duty to Cooperate with the Board

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees, to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement.

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement shall constitute a violation of KRS 327.070(2)(k) for failing or refusing to obey any lawful order of the board, for which the Board may impose additional penalties available under law after notice and opportunity to be heard. The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

Resolution of Pending Charges

The Notice of Administrative Hearing and Order is hereby resolved pending only a majority vote of the Board adopting this Settlement Agreement as an Order of the Board.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Physical Therapy, and the Kentucky Attorney General and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this Settlement Agreement, or its administration.

Acceptance by the Board

It is hereby agreed between the parties this Settlement Agreement shall be presented to the Kentucky Board of Physical Therapy at the next regularly-scheduled meeting of the Board.

The Respondent understands the Board is free to accept or reject this Settlement Agreement, and if rejected by the Board, a formal disciplinary hearing against the Respondent may be scheduled thereafter with the Hearing Officer and counsel. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Settlement Agreement, to hear the disciplinary charges if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the Settlement Agreement will not be regarded as evidence against the Respondent at the subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Settlement Agreement.

The Settlement Agreement will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent. The Settlement Agreement shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

Complete Agreement

This Settlement Agreement consists of eight (8) pages and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, withdraw, or request to modify this Settlement Agreement prior to or during its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

Have Seen, Understood, and Approved:

Kentucky Board of Physical Therapy

Nancy Durban PT, MS, DPT
Mrs. Nancy Durban P.T.
302 Ludlow Avenue, 3rd Floor
Cincinnati, OH 45220
Respondent

M. Keith Poynter
M. Keith Poynter, ESQ
1154 South Third Street
Louisville, KY 40203
Counsel for the Board

Date: September 14, 2023

Date: 09/21/2023