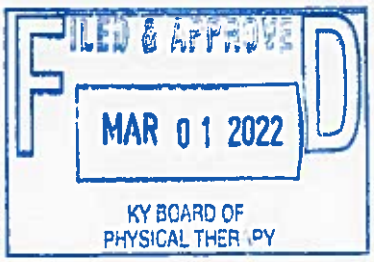

Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. BIC2019-112

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

Order

Luke Carver, PTA
(Certificate No. A03443) — **Respondent**

* * * * * * * * *

Kentucky Board of Physical Therapy, having met on January 20, 2022, and having voted on the above-styled case, hereby adopts and incorporates the attached Settlement Agreement.

It is so ordered.

Dated this 1st day of March 2022

Kentucky Board of Physical Therapy

By: Karen Thompson

Karen Thompson, PT
Chair

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Order and Settlement Agreement was mailed, by both certified return receipt requested and first-class postage prepaid this 15th day of March 2022 to:

Luke Carver, PTA
Apartment B Upstairs
1819 Vinton Ave.
Portsmouth, OH 45662
Respondent

M. Keith Poynter, ESQ
THE SAMPSON LAW FIRM
1154 South Third Street, 4th Floor
Louisville, KY 40203
General Counsel for the Board

Stephen Curley, Executive Director

FILED & APPROVED
MAR 01 2022
KY BOARD OF
PHYSICAL THERAPY

Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. BIC2019-112

Commonwealth of Kentucky,
Board of Physical Therapy

Complainant

Settlement Agreement

Luke Carver, PTA
Certificate No. PTA-A03443

Respondent

* * * * * * * * *

Whereas, the Kentucky Board of Physical Therapy ("Board") based on an initiating complaint and an investigation completed by the Board regarding Luke Carver, PTA, 1819 Vinton Ave Apartment B Upstairs, Portsmouth, OH, 45662 ("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:

1) Multiple counts of a violation of KRS 327.070(2)(k) related to 201 KAR 22:053 Section 3(1) "Provide services only under the supervision and direction of a physical therapist."
2) Multiple counts of a violation of KRS 327.070(2)(k) related to 201 KAR 22:053 Section 3(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(4) of this administrative regulation and inform the supervising physical therapist.

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

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 certificate to work as a physical therapist assistant 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 Settlement Agreement

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

1) The Respondent is hereby reprimanded with this Settlement Agreement constituting the reprimand and;

2) the Respondent shall pay to the "Kentucky Board of Physical Therapy" and mailed or delivered to 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, a fine in the amount of $750.00 pursuant to KRS 327.070(1)(g), which amount shall be paid by certified/cashier's check or money order, and;

3) The Respondent's entire practice of physical therapy, including documentation, shall be monitored for one (1) year:
    a. by a Board-appointed monitor who is a licensed physical therapist or certified physical therapist assistant to determine substantial compliance with KRS Chapter 327 and the administrative regulations thereunder;

    b. beginning within approximately sixty (60) days of the date of written notice to the Respondent of the appointment of the monitor, and thereafter approximately once every ninety (90) days, during the following one (1) year, or as soon thereafter as may be completed by the parties;

    c. with the responsibility of the Respondent to notify the Board and its monitor of the Respondent's current work schedule and work location, as well as to contact the monitor so the monitor may arrange for monitoring in compliance with these terms and conditions; however, nothing herein shall restrict the ability of the monitor to conduct an unannounced monitoring visit otherwise in compliance with the frequency of monitoring mandated by this Settlement Agreement, and;

    d. with the intent of the parties in this monitoring agreement that the physical therapy records of the Respondent and the Respondent's practice of physical therapy are the direct subject of review by the Board-appointed monitor; any failure to meet the substantial requirements of KRS Chapter 327 that may be observed by the Board-appointed monitor to have occurred by any other credential holder of the Board shall solely be reported to the Board in accord with 201 KAR 22:052 Section 2(1)(c) for appropriate Board response, if any;

4) the Respondent shall pay the amount of the actual costs of each monitoring visit, not to exceed $600.00 per monitoring visit:
    a. by certified check/cashier's check or money order;

    b. with the Respondent's name and "monitoring visit – Agency Case No. BIC2019-112" written on the check or money order;

c. mailed or delivered to the Board at 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, and;

d. within twenty (20) days of the date of a Board invoice for each monitoring visit, which shall be mailed by the Board to the Respondent.

5) the Respondent shall file as soon as practical, but not later than five (5) calendar days, a copy of this Settlement Agreement with the Respondent's current employer, and with any future employer prior to starting employment in physical therapy or in health care during the above period of probation, and shall file contemporaneous proof with the Board of its filing with the Respondent's employer, for so long as the Respondent is on probation, and;

6) the Respondent shall complete a documentation continued competency course approved by the Board and proof of completion shall be filed with the Board within ten (10) days of its completion; said continuing education course work shall be in addition to the continued competency hours otherwise required by 201 KAR 22:045.

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

Luke Carver, PTA
Apartment B Upstairs
1819 Vinton Ave
Portsmouth, OH 45662
Respondent

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

Date: 02/14/2022

Date: 02/25/2022