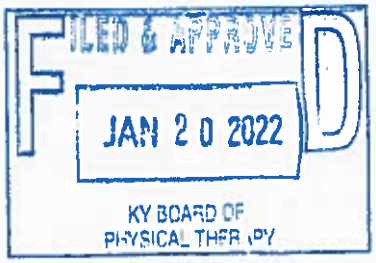


Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. CE2021-144

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

Order

Michele Ritchey Smiley, PT
(License No. 003216) — **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 of Voluntary Surrender of License.

It is so ordered.

Dated this 20th day of January 2022

Kentucky Board of Physical Therapy

By: Karen Thompson

Karen Thompson, PT
Chair

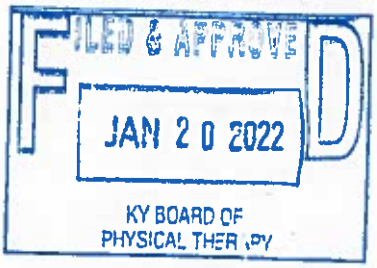
Certificate of Service

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 24 day of January 2022 to:

Michele Ritchey Smiley, PT
3705 Rochester Court
Lexington, KY 40509
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



Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. CE2021-144

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

Settlement Agreement of Voluntary Surrender of License

Michele Ritchey Smiley, PT
(License No. 003216) — **Respondent**

* * * * * * * * *

Whereas, the Kentucky Board of Physical Therapy ("Board") has opened an investigation of Michele Ritchey Smiley, PT, 3705 Rochester Court, Lexington, KY 40509 ("Respondent") for possible violations of 201 KAR 22:045 *by failing to provide proof of the necessary hours of continued competency for the biennium beginning April 1, 2019 and ending March 31, 2021. At the deadline for submitting such proof, Respondent was deficient with respect to the Jurisprudence Exam (an equivalent of 2 hours) and 28 hours of continued competency.*

Whereas, Respondent desires to voluntarily surrender her license to practice as a physical therapist in the Commonwealth of Kentucky;

It is hereby stipulated and agreed between the undersigned parties 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 Agreement. The Respondent freely and voluntarily enters into this Agreement, motivated only by a desire to resolve the issues addressed herein.

The Respondent has executed this 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 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 Agreement.

Jurisdiction

The Respondent acknowledges the Board has jurisdiction over the Respondent and the conduct which has precipitated this Agreement. The Respondent also acknowledges the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's license to practice as a physical therapist in the Commonwealth of Kentucky.

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

Publication of Settlement Agreement

The Respondent acknowledges, once adopted by the Board, this 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 Agreement, which shall include the Board's ability to share the content of this 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.

Effect upon License Status:
Voluntary Surrender of License

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

1. The Respondent's license to practice as a physical therapist in the Commonwealth of Kentucky shall be voluntarily surrendered as if suspended upon a filing of an Order of the Board adopting this Agreement.

Reinstatement Provision

The Respondent may apply in writing for administrative reinstatement of her license pursuant to the provisions of KRS 327.075 and 201 KAR 22:040, Section 4, with the following terms:

A. The Respondent's license to practice as a physical therapist in the Commonwealth of Kentucky shall be publicly reprimanded.

B. The Respondent shall pay a fine in the amount of $2,100.00.

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 Agreement.

The Respondent expressly understands that failure to comply with and complete all terms of this 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.

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 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 Agreement, to hear the disciplinary charges if, after review by the Board, this Agreement is rejected.

If the Agreement is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the 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 Agreement.

The 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 Agreement consists of six (6) pages and embodies the entire agreement between the Board and the Respondent. This 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 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:

Michele Ritchey Smiley

Michele Ritchey Smiley, PT
License - 003216
3705 Rochester Court
Lexington, KY 40509
Respondent

Date: 12/28/2021

M. Keith Poynter
THE SAMPSON LAW FIRM
1154 South Third Street, 4th Floor
Louisville, Kentucky 40203
Telephone: (502) 584-5050
Facsimile: (502) 584-5055
General Counsel, Kentucky Board of Physical Therapy

Date: 1/21/2022