STATE BOARD OF REGISTRATION FOR THE HEALING ARTS Board, v. THERESE A. MARKS 9601 Mark Trail Fairview Heights, IL 62208 Licensee.	)	No. 2002-003410

SETTLEMENT AGREEMENT

Comes now Therese Marks ("Licensee") and the State Board of Registration for the Healing Arts ("the Board") and enter into this Agreement for the purpose of resolving the question of whether Licensee's license as a physical therapist assistant will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo 2000.

1. Licensee acknowledges that she understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and

voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that she may, at the time this Agreement is effective or within fifteen (15) days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that she has been informed of her right to consult legal counsel in this matter.

4. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

5. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("Board") is an agency of the State of Missouri created and established pursuant to §334.120, RSMo 2000, to execute and enforce the provisions of chapter 334, RSMo.

2. Respondent is licensed by the Board as a physical therapist assistant, license number 115709. This license was first issued on June 25, 1998. This license is current and active and was so at all times relevant herein.

3. Pursuant to §334.507, RSMo 2000, each licensee is required to meet the continuing education hours established by the Board in order to renew his or her license.

4. In order for Respondent to renew her license for the period of 2002 through 2004, Respondent was required to obtain thirty (30) hours of continuing education for the period of January 1, 2000 through December 31, 2001, in accordance with §334.507, RSMo 2000, and 4 CSR 150-3.201.

5. Section 334.507, states, in pertinent part:

> Each person licensed pursuant to sections 334.500 to 334.685 shall accumulate thirty hours of continuing education every two years to be eligible for relicensure, as follows:
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> . . . .
>
> (3) Adherence to the continuing education requirement shall be reviewed for licensure renewal in each even-numbered year and shall include all approved continuing education courses taken during the previous two years.

6. 4 CSR 150-3.201, states, in pertinent part:

> (1) All licensed physical therapists and physical therapist assistants shall biennially, on even-numbered years, complete and report at least thirty (30) hours of acceptable continuing education as specified in rule 4 CSR 150-3.203. The renewal of a license which has lapsed shall not be issued unless and until the licensee submits documentation confirming completion of all continuing education hours as would have been necessary and applicable during the period the license was not current. The continuing education hours must

qualify as acceptable continuing education activity as specified in rule 4 CSR 150-3.203.

. . . .

(4) All licensed physical therapists and physical therapist assistants shall retain records documenting attendance and completion of the required thirty (30) hours of continuing education for a minimum of four (4) years after the reporting period in which the continuing education was obtained. The records shall document the titles of the continuing education activity completed including the date, location and course sponsors and number of hours earned. The board may conduct an audit of licenses to verify compliance with the continuing education requirement. Licensees shall assist in this audit by providing timely and complete responses upon board request for such information and documentation.

(5) Violation of any provision of this rule shall constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions and duties of a physical therapist and/or physical therapist assistant. In addition, a licensee who fails to complete and report in a timely fashion the required thirty (30) hours of continuing education and engages in active practice as a physical therapist and/or physical therapist assistant without the expressed written authority of the board shall be deemed to have engaged in the unauthorized practice of physical therapy and/or unauthorized practice as a physical therapist assistant consistent with the provisions of sections 334.510, 334.610 and 334.650, RSMo; furthermore such action may be deemed grounds for disciplinary action pursuant to section 334.100, RSMo.

7. On the 2002-2004 renewal application, Respondent indicated that she had satisfied the continuing education requirements.

8. On May 15, 2002, the Board notified Respondent that it was conducting a random audit to verify physical therapist or physical therapist assistant continuing education compliance for the period January 1, 2000 through December 31, 2001.

9. On June 20, 2002, the Board mailed a letter, by certified mail, return receipt

requested, to Respondent at 9601 Mark Trail, Fairview Heights, IL 62208.

10. The June 20, 2002 letter from the Board to Respondent was received and signed for by Therese A. Marks, on July 5, 2002. The letter advised Respondent that she had fifteen (15) days from the date of receipt to submit documentation evidencing completion of the thirty (30) hours of continuing education.

11. Respondent failed to submit any of the required documentation evidencing completion of the required thirty (30) hours of continuing education.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Based on the foregoing, Licensee's license is subject to disciplinary action pursuant to §334.100.2(6), RSMo 2000, which provides:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:
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> . . . .
>
> (6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;
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> . . . .

2. Licensee's conduct, as established by the foregoing facts, falls within the intendments of §334.100.2(6), RSMo 2000.

3. Cause exists for Board to take disciplinary action against Licensee's license under Section 334.100.2(6), RSMo 2000.

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of Section 621.110, RSMo 2000. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement

1. The physical therapist assistant license, No. 115709, issued to Licensee is hereby VOLUNTARILY SURRENDERED, in lieu of discipline. Licensee shall immediately return her physical therapist assistant license, wall-hanging certificate, pocket card, and all other indicia of licensure to the State Board of Registration for the Healing Arts. Licensee understands that this Agreement will be reported to the National Practioner's Databank.

B. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

C. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

Therese A. Marks 2/23/2003
Therese A. Marks date

BOARD

T. Steinman 2/27/03
Tina Steinman date
Executive Director

JEREMIAH W. (JAY) NIXON
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Attorneys for Board

EFFECTIVE THIS 27 DAY OF February, 2003.