

Commonwealth of Kentucky  
Kentucky Board of Physical Therapy  
Agency Case No. C2018-13  
Administrative Action No. 18-KBPT-



Commonwealth of Kentucky,  
Board of Physical Therapy

Complainant

**Order**

Keith Dwyer, PTA  
(Certificate No. A03673)

Respondent

\* \* \* \* \*

Kentucky Board of Physical Therapy, having met on November 15, 2018, and having voted on the above-styled case, hereby adopts and incorporates the attached Settlement Agreement.

It is so ordered.

Dated this 15 date of November, 2018

Kentucky Board of Physical Therapy

By:  PT  
Talia Weinberg, 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 16<sup>th</sup> day of November, 2018 to:

Keith Dwyer, PTA  
729 Rossllyn Dale  
Lexington, KY 40514  
*Respondent*

Louis D. Kelly  
40 West Pike Street  
Covington, KY 41011  
*Counsel for the Board*



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Scott D. Majors, Executive Director

Commonwealth of Kentucky  
Kentucky Board of Physical Therapy  
Agency Case No. C2018-13  
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Commonwealth of Kentucky,  
Board of Physical Therapy

Complainant

**Settlement Agreement**

Keith Dwyer, PTA  
(Certificate No. A03673)

Respondent

\* \* \* \* \*

Whereas, the Kentucky Board of Physical Therapy ("Board") having completed an investigation based on an initiating complaint regarding Keith Dwyer, 729 Rossllyn Dale, Lexington, KY 40514 ("Respondent");

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) Failing or refusing to obey an administrative regulation of the Board in violation of KRS 327.070(2)(k);
- 2) Providing physical therapy services without supervision and direction from a physical therapist in violation of 201 KAR 22:053, Section 3(1);
- 3) Initiating treatment to a patient without an evaluation from a physical therapist in violation of 201 KAR 22:053, Section 3(3); and
- 4) Providing physical therapy services outside of a patient's plan of care in violation of 201 KAR 22:053, Section 3(6).

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

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 freely and voluntarily enters 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 practice as a physical therapist assistant in Kentucky.

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. The terms of this Agreement shall be reported to the National Practitioners Database.

### **Terms of Disciplinary Action**

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

1. The Respondent's certificate shall be suspended for a period of seven (7) consecutive days beginning December 2, 2018 and ending December 8, 2018. Respondent shall have an additional eighty three (83) days suspension probated for a period of two (2) years from the date this Settlement Agreement is approved by the Board.
2. The Respondent shall complete an ethics course approved by the Board and provide proof of completion to the Board on or before December 31, 2018.
3. The Respondent shall complete the Board's Jurisprudence Exam and provide proof of completion to the Board on or before December 31, 2018.
4. The Board will impose a fine of \$500.00. Respondent shall pay to the "Kentucky Board of Physical Therapy" and mailed or delivered to 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222 the full amount on or before December 31, 2018.
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.
6. If the Board determines after a due process hearing that Respondent has violated any of the terms of this Settlement Agreement or KRS Chapter 327 and the administrative regulations thereunder, it may, in its discretion, impose additional disciplinary action against Respondent's certificate to practice, up to and including the revocation of his certificate.

In the event the Respondent should leave Kentucky to reside or practice outside of Kentucky or for any reason should the Respondent stop practicing physical therapy in Kentucky, the Respondent shall notify the Board in writing within ten (10) days of the dates of departure and return or the dates of non-practice within Kentucky.

Non-practice shall be defined as any period of time exceeding thirty (30) days in which the Respondent is not engaging in activities defined in KRS 327.010(1). Periods of temporary or permanent residency outside of Kentucky or practice of physical therapy outside Kentucky or of non-practice within Kentucky shall not apply to the reduction of the probationary period.

#### **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**

This matter 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 each of their/its members, agents, staff, 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 for consideration.

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 seven (7) 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:

 PTA

Keith Dwyer, PTA  
729 Rosslins Dale  
Lexington, KY 40514

Respondent

Date: 10/17/18



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40 West Pike Street  
Covington, KY 41011  
859.394.6200  
859.392.7263 - Fax  
[lkelly@aswdlaw.com](mailto:lkelly@aswdlaw.com)

General Counsel,  
Kentucky Board of Physical Therapy

Date: 10-19-18

Date sus. Dec 3rd week