

EFFECTIVE AS A FINAL ORDER

DATE: 12/6/18

FILED
NOV 16 2018
POV

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of

Karen M. Ackerman, D.P.M.
Kansas License No. 12-00286

Docket No. 19-HA 00043

SUMMARY ORDER

NOW ON THIS 16th day of November 2018, this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A. 77-537.

Pursuant to K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within 15 days of service. Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Karen M. Ackerman, D.P.M. ("Licensee") was issued License No. 12-00286 on June 28, 1997 and has been entitled to engage in the practice of podiatry in Kansas, having last renewed such license as Exempt on October 30, 2018.
2. Licensee's last known mailing address to the Board is: 2300 N. 14th Ave., Ste. 100A, Dodge City, Kansas 67801.
3. Licensee's license to practice podiatry in Kansas is currently Exempt; however, Licensee accidentally applied for an Exempt license instead of an Active. On or about October 31, 2018,

Licensee submitted an Application for Change of Designation/Type, requesting her license be changed to Active.

4. During all times relevant to the facts set forth in this Summary Order, Licensee held an Active license to practice podiatry in Kansas.

5. On or about September 19, 2018, information was provided to Board staff that Licensee had last been in compliance with the Kansas Health Care Stabilization Fund (“KHCSF”) on June 22, 2015. The KHCSF was alerted to Licensee’s noncompliance after an inquiry was made by Blue Cross and Blue Shield of Kansas (“BCBS”) as Licensee was terminated from BCBS network for inability to provide them with current professional liability insurance.

6. Information from BCBS showed that Licensee’s professional liability insurance policy with the Podiatry Insurance Company of America (“PICA”) expired on June 22, 2015.

7. Since 2015, Licensee has submitted renewals with the Board for her license providing information she had Insurance Policy Number 12-1PD-0049242. Licensee was the listed “Renewer” on all the renewal applications relevant to this matter. Specifically:

a. On or about September 23, 2014, Licensee submitted her 2015 renewal application listing the above insurance policy with an expiration date listed as November 13, 2014;

b. On or about October 3, 2015, Licensee submitted her 2016 renewal application listing the above insurance policy with an expiration date listed as November 12, 2015;

c. On or about October 2, 2016, Licensee submitted her 2017 renewal application listing the above insurance policy with an expiration date listed as November 12, 2016; and

d. On or about October 2, 2017, Licensee submitted her 2018 renewal application with an expiration date listed as November 12, 2018.

8. Further on or about October 2, 2017, Licensee's 2018 renewal stated, "as a condition of providing professional services in Kansas, whether or not physically located in Kansas, each person with an active license must pay the annual surcharge to the Kansas Health Care Stabilization Fund (KHCSF)." (emphasis in original). Licensee was asked, "have you paid the annual surcharge to the KHCSF?" to which she answered "yes."

9. On or about September 19, 2018, and on or about November 2, 2018, a search of the KHCSF showed Licensee was not in compliance.

10. However, on or about October 18, 2018, Preferred Professional Insurance Company ("PPIC") a Coverys Company provided a letter of intent that as of October 25, 2018, or on the date Licensee's Kansas license was approved, whichever was later that she would be enrolled in the KHCSF and provide professional insurance policy.

11. Prior to the October 18, 2018, letter, Licensee had failed to provide the Board proof of compliance with KHCSF and has not been compliant since on or before June 22, 2015. Further, Licensee failed to maintain a policy of professional liability insurance and has not had insurance since June 22, 2015, despite continuing to hold an Active license and renew such license. Both a policy of professional liability insurance and KHCSF compliance are required by K.S.A. 65-2005(d) for an Active license to practice podiatry.

12. On or about October 26, 2018, Licensee provided a response to the current Board investigation admitting she did not have proof of professional liability insurance from November 12, 2015 to current as she was "not able to afford the professional liability insurance."

13. Licensee's response further described her current practice as a self-employed podiatrist in Southwest Kansas, her current financial situation, and the fact that she did not have a surgical practice, but instead treated a majority of Medicare insurance patients.

Applicable Law

14. Under the Kansas Podiatry Act, K.S.A. 65-2005(d),

The board, prior to renewal of a license, shall require the licensee, if in the active practice of podiatry within Kansas, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402 and amendments thereto and has paid the annual premium surcharge as required by K.S.A. 40-3404 and amendments thereto.

15. K.S.A. 40-3402(a) states:

A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per claim, subject to not less than a \$600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition of active licensure or other statutory authorization to render professional service as a health care provider in this state, unless such health care provider is a self-insurer. . .

16. Under K.S.A. 65-2006(a) The board, upon hearing, may revoke, suspend or limit any license or permit to practice podiatry, may deny issuance or renewal of any such license or permit, or may publicly or privately censure a licensee or permittee, if the person holding or applying for such license or permit is found by the board to:

- (1) Have committed fraud in securing the license or permit;
- (2) have engaged in unprofessional or dishonorable conduct or professional incompetency;
- (6) have willfully or repeatedly violated the podiatry act. . . ;
- (12) have violated any rules and regulations of the board or any lawful order or directive of the board. . . .

17. Further, K.S.A. 65-2006(c) states, “[a]s used in this section, ‘professional incompetency’ and ‘unprofessional conduct’ shall have the meanings ascribed thereto by K.S.A. 65-2837, and amendments thereto.”

18. Pursuant to K.S.A. 65-2837(b) “unprofessional conduct” means:

(12) Conduct likely to deceive, defraud or harm the public.

Conclusions of Law

19. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

20. The Board finds Licensee violated K.S.A. 65-2006(a)(1), in that Licensee committed fraud in securing her active license when she continued to renew her Active license despite lack of KHCSF compliance since June 22, 2015, and her failure to maintain a policy of professional liability insurance since on or before November 12, 2015.

21. The Board finds Licensee violated K.S.A. 65-2006(a)(2) generally alleged, in that Licensee committed unprofessional and/or dishonorable conduct in her failure to maintain a policy of professional liability insurance and her failure to meet the requirements for KHCSF compliance in her renewals, as set forth in K.S.A. 65-2005(d).

22. The Board finds Licensee violated K.S.A. 65-2006(a)(2) as further defined in K.S.A. 65-2837(b)(12), in that Licensee deceived the Board by failing to maintain a policy of professional liability insurance and KHCSF compliance as required by K.S.A. 40-3402, 40-3403a or K.S.A. 40-3404 and amendments thereto, and as further required by K.S.A. 65-2005(d); deceived the Board for repeatedly reporting on her renewals that she maintained professional liability insurance

and KHCSF compliance; and deceived the Board for continuing to hold an Active license without meeting the statutory requirements.

23. The Board finds that Licensee violated K.S.A. 65-2006(a)(6) in that Licensee willfully or repeatedly violated the podiatry act by failing to maintain a policy of professional liability insurance and KHCSF compliance as required by K.S.A. 40-3402, 40-3403a or K.S.A. 40-3404 and amendments thereto, and as further required by K.S.A. 65-2005(d); repeatedly reporting on her renewals that she maintained a policy of professional liability insurance and was compliant with KHCSF; and for continuing to hold an Active license without meeting the statutory requirements.

24. The Board finds Licensee violated K.S.A. 65-2006(a)(12) in that Licensee violated any rules and regulations of the board by failing to comply with the requirements of K.S.A. 65-2005(d).

25. Based on the facts and circumstances set forth herein, the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law, and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee.

IT IS ORDERED that Licensee upon the initial filing of this Summary Order shall have her Application for Change of Designation/Type granted changing her license from Exempt to Active without necessitating the need for this Summary Order to become final so long as Licensee has malpractice insurance and is compliant with the Health Care Stabilization Fund.

IT IS FURTHER HEREBY ORDERED that Licensee is **PUBLICLY CENSURED** for the above violations of the Kansas Podiatry Act.

IT IS FURTHER HEREBY ORDERED that Licensee successfully pass all subject areas of the the **EBAS Essay Examination** put on by the Ethics and Boundaries Assessment Services, LLC, ("EBAS") within ninety (90) days of the original filing date of this Order. Information regarding EBAS can be found at: <http://www.ebas.org/>.

IT IS FURTHER HEREBY ORDERED that Licensee shall provide proof of her successfully passing all subject areas of the EBAS essay examination to the Board via certified mail or via email and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 16th day of November 2018.

**KANSAS STATE BOARD
OF HEALING ARTS**

for  #23266
Kathleen Selzler Lippert
Executive Director

FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

