

EFFECTIVE AS A FINAL ORDER

DATE: 7.17.19

FILED

JUN 24 2019

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of
Jay L. Allen, M.D.
Kansas License No. 04-25875

KSBHA Docket No. 19 -HA 00106

SUMMARY ORDER

NOW ON THIS 24th day of June 2019, 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 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (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. Jay L. Allen, M.D. ("Licensee") was originally issued license number 04-25875 to practice medicine and surgery in the State of Kansas on or about October 14, 1995. Licensee's current license designation is Active, and such license was last renewed on or about July 3, 2018.

2. Licensee's last known mailing address as provided to the Board is: [REDACTED]

3. On or about July 3, 2018 Licensee applied for renewal of his license to practice surgery in the State of Kansas. In his July 3, 2018 renewal, he listed his primary business address as 302 North 1st, Mound City, KS 66056, and provided the Board with an email address of [REDACTED]

4. Further, on or about July 3, 2018, Licensee certified on his renewal form that he supervises non-licensed individuals performing the duties of radiologic technicians; that these individuals had been trained on the applicable radiologic equipment; and that these individuals have or will obtain the continuing education required by Board regulation.

5. As part of the Board's audit process concerning supervision of non-licensed radiologic technologists, Licensee was randomly selected to provide to the Board proof of completion of the continuing education required by the non-licensed individuals performing the duties of radiologic technicians he supervised.

6. On or about November 19, 2018, Board staff sent an email to Licensee requesting Licensee answer a questionnaire asking for the names of his supervisees, the nature of their duties, the nature of their equipment training, and the status of their continuing medical education. The email specifically asked for a copy of proof of that continuing education and cited the statutes and regulations pertaining the legally requested information. Licensee was given a deadline of November 30, 2018 to respond.

7. Licensee responded to this email on or about November 27, 2018. He provided a list of three non-licensed individuals performing the duties of radiologic technicians supervised by him, stated that all three completed 12.25 hours of continuing education, listed the names of three courses supposedly taken by those supervisees, and stated that as of December 31, 2018 he would no longer be supervising non-licensed radiologic technicians.

8. Despite the Board's request, Licensee did not provide proof of completion of continuing education.

9. On May 29, 2019, approximately six months after the deadline to submit the requested proof of continuing education, Board counsel sent a letter to Applicant at the mailing address

provided to the Board and sent a copy of that letter via email at the provided email address on that same day.

10. Applicant was informed in this letter he had still not complied with the statutory and regulatory requirement to provide the Board with proof of his supervisees' continuing education. He was given a date certain of June 14, 2019 to provide the required proof. He was further informed that failure to do so by the date given would result in a public censure and a \$500 fine.

11. Applicant did not provide the required proof of education by June 14, 2019. In fact, he did not respond to the May 29, 2019 letter at all.

Applicable Law

1. K.S.A. 65-7304(f) of the Kansas Radiologic Technicians Practice Act states allows for an exception to the general rule that individuals performing the duties of radiologic technologists must be licensed by the Board where such an individual is "working under the supervision of a licensed practitioner . . . and who has been trained on the proper use of equipment for the purpose of performing radiologic technology procedures" The statute further states that the board shall adopt rules and regulations to assure that persons exempted from licensure under this subsection receive continuing education consistent with their practice"

2. K.A.R. 100-73-9 requires "[e]ach person who performs any radiologic technology procedures and who is exempt from the licensure requirement pursuant to K.S.A. 65-7304(f) . . . shall obtain 12 credits of continuing education each calendar year. The continuing education shall meet the criteria for continuing education specified in K.A.R. 100-73-7 and shall include subjects for training of x-ray equipment operators specified in K.A.R. 28-35-256."

3. K.A.R. 100-73-7(a) requires the 12 credits of continuing education to be completed during the 12-month period immediately preceding the license expiration date for radiologic

technologists.

4. K.A.R. 100-73-7(d) states "each person who certifies completion of continuing education shall, for at least three years following the date of certification, maintain documentation of completion"

5. K.A.R. 100-73-7(e) requires "[w]ithin 30 days following a written request by the board to a licensee, the licensee shall provide the board with proof of completion of continuing education as specified in this regulation."

6. Kansas Board of Healing Arts Policy Statement 08-05 states:

If a practitioner of the healing arts delegates the performance of radiologic technology procedures for the purpose of diagnostic or therapeutic purposes to an unlicensed individual who has not obtained the required twelve (12) hours of continuing education, such practitioner could be disciplined under the Healing Arts Act for delegating professional responsibilities to an individual who is not qualified by training to perform. K.S.A. 65-2837(26) and K.S.A. 65-2837(b)(30). Additionally, a healing arts practitioner shall, (3) "direct, supervise, order, refer, enter into a practice protocol with, or delegate to such persons only those acts and functions which the responsible licensee knows or has reason to believe such person is competent and authorized by law to perform " K.S.A. 65-28,127(a). An unlicensed individual who has not achieved the required continuing education would not qualify for the exemption to the licensure requirements under the Radiologic Technology Practice Act; therefore, the individual would not be authorized by law to perform the radiologic technology procedures.

7. K.S.A. 65-2836 of the Kansas Healing Arts Act states in pertinent part that:

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

(a) The licensee has committed fraud or misrepresentation in applying for or securing an original, renewal or reinstated license. (b) The licensee has committed an act of unprofessional or dishonorable conduct

* * *

(r) The licensee has failed to furnish the board, or its investigators or representatives, any information legally requested by the board.

8. K.S.A. 65-2837(b) defines unprofessional conduct in pertinent part as:

(26) Delegating professional responsibilities to a person when the licensee knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

* * *

(30) Failing to properly supervise, direct or delegate acts that constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

9. K.S.A. 65-2863a of the Kansas Healing Arts Act states in pertinent part that:

The state board of healing arts, in addition to any other penalty prescribed under the Kansas healing arts act, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the Kansas healing arts act in an amount not to exceed \$5,000 for the first violation. . . .

Conclusions of Law

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

11. The Board finds that Licensee violated K.S.A. 65-2836(a), in that Licensee committed fraud or misrepresentation in securing a renewal license when he certified that the unlicensed individuals performing the duties of radiologic technologists under his supervision had obtained the continuing education required by K.A.R. 100-73-9.

12. The Board finds that Licensee violated K.S.A. 65-2836(b), in that Licensee committed acts of unprofessional conduct. Specifically, Licensee delegated professional responsibilities to a person when he knew that such person was not qualified by training, experience or licensure to perform them; and Licensee failed to properly supervise, direct or delegate acts that constitute the healing arts to persons who perform professional services pursuant to such licensee's direction, supervision, order, referral, delegation or practice protocols.

13. The Board finds that Licensee violated K.S.A. 65-2836(r) in that Licensee failed to provide the Board with legally requested information regarding the continuing education of the unlicensed individuals performing the duties of radiologic technologists under his supervision.

14. Based on the facts and circumstances set forth herein, it appears that 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, Jay L. Allen, M.D.

IT IS THEREFORE ORDERED that Licensee is **PUBLICLY CENSURED** for Licensee's violations of the Kansas Healing Arts Act.

IT IS FURTHER ORDERED that the licensee is hereby assessed a **CIVIL FINE** in the amount of \$500.00 for violation of the Kansas Healing Arts Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before August 31, 2019.

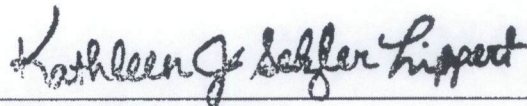
15. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

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 24th day of June, 2019.

KANSAS STATE BOARD OF HEALING ARTS

A handwritten signature in black ink, reading "Kathleen Selzler Lippert", written over a horizontal line.

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.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 17th day of July, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jay L. Allen, MD
[REDACTED]
[REDACTED]

Licensee

And a copy was hand-delivered to:

Matthew Gaus, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.

Susan Gile
Susan Gile, Operations Manager