

**EFFECTIVE AS A
FINAL ORDER**

DATE: 9/30/13

FILED

AUG 30 2013

CAB

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of
Henry Michael Borra, M.D.)
Kansas License No. 04-24115)
Application to Change)
Licensure Status from Exempt)
To Federal Active)
_____)

KSBHA Docket No. 13-HA00059

**PROPOSED DEFAULT ORDER AND INITIAL ORDER DENYING APPLICATION TO
CHANGE LICENSURE STATUS FROM EXEMPT TO FEDERAL ACTIVE**

NOW on this 19th day of August, 2013, comes on for hearing before the Presiding Officer (P.O.) Kimberly Templeton, M.D., Kansas State Board of Healing Arts ("Board") the Application to Change Licensure Status from Exempt to Federal Active of Henry Borra, M.D. ("Licensee"). Jessica Bryson, Associate Litigation Counsel, appears on behalf of the Respondent Board. Licensee fails to appear.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *et seq.* and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Board hereby enters this Proposed Default Order in the above-captioned matter.

Having the agency record before it, the Board finds, concludes and orders as follows:

1. On or about October 4, 2012, Henry M. Borra, M.D. ("Licensee") submitted to the Board an application to change licensure status from exempt to federal active status. Such application was filed with the Board on March 15, 2013.

2. Licensee's mailing address as provided to the Board is: **Confidential** Colorado Springs, Colorado 80904.

3. Licensee obtained his original Kansas Active License to practice medicine and surgery on or about August 15, 1992. Prior to obtaining an active license, he obtained a

postgraduate permit in 1991. Licensee changed his Kansas licensure status to Exempt in 2008 and last renewed such license on approximately June 18, 2012.

4. Licensee failed to renew his Exempt license during the regular renewal cycle ending June 30, 2013 and failed to renew during the late renewal cycle ending July 31, 2013. Licensee's license was cancelled by operation of law on August 1, 2013.

5. At all times relevant to the allegations in the Petition for Discipline, Licensee held an exempt license to engage in the practice of medicine and surgery in the State of Kansas.

6. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the privilege and practice of the healing arts, specifically the practice of medicine and surgery. The Board has the sole and exclusive jurisdiction over the privilege to practice medicine and surgery in Kansas. K.S.A. 65-2801 *et seq.* and K.S.A. 65-2869.

PROCEDURAL HISTORY

7. A telephone Status Conference on the Petition for Discipline was noticed for 1:30 p.m. CDT on Monday, April 22, 2013 at the offices of the Kansas State Board of Healing Arts.

8. Pursuant to K.S.A. 2012 Supp. 77-531, Licensee was served with a Notice of telephone Status Conference Hearing to Licensee's mailing address of record with the agency via United States Mail, first-class postage prepaid, on or about April 4, 2013.

9. Licensee did not initially appear by telephone for the April 22, 2013 Status Conference. However, after calling him to verify if he would attend, Licensee did call into the April 22, 2013 telephone Status Conference.

10. Licensee explained that he had been traveling and not read his mail at his regular mailing address; therefore, was previously unaware of the Status Conference Hearing.

11. During the telephone Status Conference, pursuant to Licensee's request for an August date, a Conference hearing was scheduled for August 19, 2013.

12. A letter memorandum and order providing a deadline to exchange discovery and notice of conference hearing to be held on August 19, 2013 at 1:30 pm was mailed to all parties on July 12, 2013. The letter memorandum and order was mailed to Licensee's last known mailing address he provided to the Board.

13. Licensee faxed a request for continuance on August, 19, 2013 for the Conference Hearing scheduled later the same day. In the continuance request, Licensee asserted "that the hearing was 'unexpected'", that he had "not secured representation", that he had "focused too much time on matters of ID theft or fraudulent profiling", and other issues. Additionally, Licensee indicated that he "considered surrender of his licensure" but asserted that "some content was inaccurate or conjecture". Further, Licensee indicated that he "had no intention to engage the material as written". Licensee's faxed request was concluded with a signature block which included a telephone number (316-650-1805).

14. Board staff called the telephone number Licensee provided in his faxed continuance request and advised Licensee that the Presiding Officer was not available prior to the scheduled hearing to consider the request for continuance; therefore, he should consider that the hearing would be held as previously scheduled.

15. A conference hearing on the Petition for Discipline was held on August 19, 2013 at 1:30 p.m.

16. Licensee failed to appear at the Conference Hearing held on August 19, 2013 at 1:30 p.m. Board staff advised the Presiding Officer that Licensee had called and stated he was running about 15 minutes late. The Presiding Officer recessed from 1:30 p.m. until 1:45 p.m.

17. Licensee did not appear at 1:45 p.m. Board staff called the number Licensee provided on his faxed request for continuance to ascertain whether he was still in route and / or his expected estimated time of arrival. However, the call was not answered and Board staff left a voice mail message for Licensee.

18. Presiding Officer called the cases scheduled and asked for appearances, heard the argument of Petitioner, admitted Petitioner's exhibit 1 and 2, and took notice of the agency record.

19. Licensee still had not appeared when the hearing concluded at 2:12 p.m.

FINDINGS AND CONCLUSIONS

20. The statutory responsibility of the agency is public protection which is effectuated through licensure and discipline. K.S.A. 65-2801 *et seq.*

21. Licensee failed to appear at the Conference Hearing held on August 19, 2013.

22. A Response in Opposition to Application to Change Licensure Status from Exempt to Federal Active includes statutory grounds to deny the application.

23. The Presiding Officer finds that Licensee's failure to appear and advance his Application To Change Licensure Status from Exempt to Federal Active is deemed abandonment of his application.

24. The Presiding Officer concludes that the application is rendered moot based on the Revocation Order in KSBHA Docket No. 13-HA00061; therefore, Licensee's application to change licensure status from Exempt to Federal Active should be denied.

25. Pursuant to K.S.A. 2012 Supp. 77-520, Licensee was in default for his failure to appear at the conference hearing on August 19, 2013. Upon review of the agency record and after being fully advised, the Board found and concluded that the facts and allegations set forth

in the Response in Opposition to Application to Change Licensure Status from Exempt to Federal Active were deemed undisputed.

IT IS THEREFORE ORDERED, that Licensee is hereby held in DEFAULT pursuant to K.S.A. 2012 Supp. 77-520.

IT IS FURTHER ORDERED that Licensee's Application for Change in Status is hereby **DENIED**.

IT IS SO ORDERED THIS 29th DAY OF August, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

Kimberly Templeton, M.D. By:
Kimberly Templeton, M.D. *Kathleen Selzler Lippert*
Presiding Officer
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Proposed Default Order. Pursuant to K.S.A. 2012 Supp. K.S.A. 77-520, this order will become effective as an Initial Order of the Board ten (10) calendar days (7 days plus 3 days for mailing) following service of this order, as indicated in the attached Certificate of Service, unless within that ten (10) day period Licensee files a written request to vacate this order and states the grounds relied upon, subject to P.O. granting the request. Any such request shall be sent to the attention of Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612, and must be received by the close of business on the tenth (10th) day.

PLEASE TAKE NOTICE that once this order becomes effective as an Initial Order, either party may request review by the full Board pursuant to K.S.A. 2012 Supp. 77-527. A petition for review must be filed within 18 days from the date this order becomes effective as an **Proposed Default Order And Initial Order Denying Application To Change Licensure Status from Exempt to Federal Active** Henry Borra, M.D.
KSBHA Docket No. 13-HA00059

Initial order (15 days plus 3 days for mailing). If neither party timely requests a review, this Initial Order shall become effective as a Final Order.

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, the Board's Executive Director, at 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 **PROPOSED DEFAULT ORDER** was served this 30th day of August, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:


Henry Borra, M.D.
Confidential
Colorado Springs, CO 80904

And a copy was hand-delivered to the office of:

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

Katy Lenahan, Licensing Administrator
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.



Cathy Brown
Executive Assistant

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 DENYING APPLICATION TO CHANGE LICENSURE STATUS FROM EXEMPT TO FEDERAL ACTIVE** was served this 1st day of Oct., 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Henry Borra, M.D.
Confidential

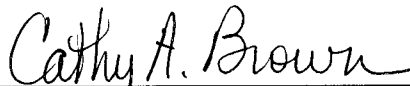
Colorado Springs, CO 80904

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Cathy Brown, Executive Assistant