

JUL 07 2021

KS State Board of Healing Arts 

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

In the Matter of Edward S. Brewer, M.D. Kansas License No. 04-35161)))))	KSBHA Docket No. 21-HA00014
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AMENDED FINAL ORDER

This matter comes before the Kansas State Board of Healing Arts (“Board”), on a Motion to Substitute Summary Order (“Motion”), filed on September 18, 2020, by J. Todd Hiatt, Litigation Counsel (“Petitioner”). Under the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, (“KAPA”), K.S.A. 77-501 *et seq.*, the Board enters this Amended Final Order. After reviewing the agency record and being duly advised in the premises, the Board makes the following findings, conclusions, and orders.

PROCEDURAL HISTORY

On August 6, 2020, a Summary Order was filed in this matter alleging Edward S. Brewer, M.D. (“Licensee”) had violated K.S.A. 65-2836(z), in that Licensee failed to pay the premium surcharges as required by K.S.A. 40-3404 while holding an Active license to practice medicine and surgery in Kansas and issued \$500 civil fine. Licensee did not request a hearing on the Summary Order. The Summary Order became a Final Order August 25, 2020. On September 18, 2020, Petitioner filed the Motion currently before the Board.¹ Licensee did not file a response to the Motion.

FINDINGS OF FACT

1. Edward S. Brewer, M.D. (“Licensee”) was issued License No. 04-35161 to practice medicine and surgery on June 28, 2011. On or about June 27, 2019, Licensee renewed his license status as Active.
2. Licensee’s last known mailing address to the Board is: CONFIDENTIAL
3. During all times relevant to the facts set forth in this Amended Final Order, Licensee held an Active license to practice medicine and surgery in Kansas.

¹ ¶3 of the Motion indicates on Sept. 8, 2020, Licensee had requested an amendment to the Final Order, as its aversion that Licensee had not replied to the September 16, 2019 audit letter was factually incorrect.

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4. The factual basis for this Order is as follows:
- a. On or about June 27, 2019, Licensee renewed his license online as Active. Licensee's renewal application stated that "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 Healthcare Stabilization Fund (KHCSF)." (emphasis in original). Licensee was asked "Have you paid the annual surcharge to the KHCSF?" to which he answered "Yes."
 - b. After renewing his license as Active, a search of the KHCSF showed Licensee had been out of compliance with the KHCSF from on or about December 2, 2018, up to and until at least March 31, 2019.
 - c. On September 16, 2019, and October 18, 2019, the Board requested Licensee to provide proof of compliance with the KHCSF, as required by K.S.A. 40-3404. The Board included instructions on how to contact KHCSF and warned that a failure to provide proof of compliance may result in a fine or suspension of Licensee's license to practice medicine in Kansas.
 - d. On or about September 17, 2019, the Board received an email from an agent of Licensee wherein the agent provided a copy of the "Kansas Health Care Provider Insurance Availability Act Form" along with a print-out of payments made to the KHCSF, and a receipt from the KHCSF dated June 26, 2019. Nothing in this communication included the requested proof of KHCSF coverage from on or about December 2, 2018, up to and until at least March 31, 2019.
 - e. On or about September 19, 2019, Licensee sent an e-mail to the Board in response to the September 16, 2019, audit letter. In his e-mail, Licensee provided a KHCSF Surcharge Online Payment receipt with a transaction date of June 26, 2019, as well as a copy of his liability insurance. Nothing in this communication included the requested proof of KHCSF coverage from on or about December 2, 2018, up to and until at least March 31, 2019.
 - f. On or about October 8, 2019, the Board sent Licensee an e-mail notifying him that they had reviewed the documents submitted per the audit and found that he had not been in compliance with the KHCSF since approximately December 1, 2018. In response to that e-mail, Licensee again provided a copy of the KHCSF Surcharge Online Payment receipt with a transaction date of June 29, 2019. He advised in his e-mail that he believed the attached document shows he is compliance.

- g. On or about October 22, 2019, after receiving several responses from Licensee, but no proof of compliance with the KHCSF for the period of December 2, 2018, to March 31, 2019, the matter was referred to the Litigation Department.
- h. Licensee was out of compliance with the KHCSF between on or about December 1, 2018, up to and until at least March 31, 2019, while holding an Active license to practice medicine and surgery in Kansas.

APPLICABLE LAW

Under the Kansas Healing Arts Act, K.S.A. 65-2809(c),

The board, prior to renewal of a license, shall require an active licensee to submit to the board evidence satisfactory to the board that licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402, and amendments there to, and has paid the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

K.S.A. 40-3402 states:

(a) 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. . .

(b) A nonresident health care provider shall not be licensed to actively render professional service as a health care provider in this state unless such health care provider maintains continuous coverage in effect as prescribed by subsection (a), except such coverage may be provided by a non-admitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.

(1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the board of governors and shall furnish to the board of governors the information required in subsection (a)(1). . .

K.S.A. 40-3404 states:

(a) Except for any health care provider whose participation in the fund has been terminated pursuant to subsection (i) of K.S.A. 40-3403, and amendments thereto, the board of governors shall levy an annual premium surcharge on each health care provider who has obtained basic coverage and upon each self-insurer for each year.

(b) In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222, and amendments thereto, until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be paid upon submitting documentation of compliance with K.S.A. 40-3402, and amendments thereto.

Under K.S.A. 65-2836, a license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, upon a finding of the existence of any of the following grounds:

(z) The licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404.

CONCLUSIONS OF LAW

The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest. The Board finds that Licensee violated K.S.A. 65-2836(z), in that Licensee has failed to pay the premium surcharges as required by K.S.A. 40-3404 while holding an Active license to practice medicine and surgery in Kansas.

ORDER

Considering this additional information, only the Findings of Fact are amended in this Amended Final Order. The civil fine remains unaltered.

IT IS HEREBY ORDERED that Licensee is assessed a **CIVIL FINE** in the amount of five-hundred dollars (**\$500.00**) for violations of the Kansas Healing Arts Act, due within thirty (30) days after service of this Amended Order. Such fine shall be paid to the “Kansas State Board of Healing Arts,” in full. All monetary payments, which shall be in the form of check or money order, relating to this Amended Final 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
KSBHA_ComplianceCoordinator@ks.gov

IT IS SO ORDERED this 7th day of July 2021.

KANSAS STATE BOARD OF HEALING ARTS



Tucker L. Poling, Executive Director

NOTICE OF APPEAL RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Under K.S.A. 77-529, parties may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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 Tucker L. Poling, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing Amended Final Order was served this 7th day of July, 2021, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Edward S. Brewer, M.D.
CONFIDENTIAL

Licensee

and copies were delivered to:

J. Todd Hiatt
Litigation Counsel
Matthew Gaus
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

Compliance Coordinator
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 Acting Executive Director:

Tucker L. Poling
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612


Staff signature

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