FILED
DEC 19 2019
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	
Richard B. Clausing, Jr., P.A.	)	**KSBHA Docket No. 20-HA00024**
Kansas License No. 15-00338	)	
	)	

JOURNAL ENTRY OF SATISFACTION

The Kansas State Board of Healing Arts ("Board"), by its Interim Executive Director, Tucker L. Poling, a duly authorized representative of the Board, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, as amended, and upon due consideration of the agency record, the applicable statutes and regulations, and being otherwise duly advised in the premises, makes the following determinations:

1. On October 7, 2019, a Summary Order became effective as a Final Order against Richard B. Clausing, Jr., P.A. ("Licensee"), imposing requirements therein.
2. Licensee has satisfactorily met all requirements of the Final Order and has no further obligations for compliance with the Final Order.

IT IS SO ORDERED this 19th day of December 2019.

KANSAS STATE BOARD OF HEALING ARTS

Tucker L. Poling
Interim Executive Director

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **Journal Entry of Satisfaction**, by depositing the same in the United States mail, first class postage prepaid, on this 19th day of December 2019, addressed and emailed to:

Richard B. Clausing, Jr., P.A.
CONFIDENTIAL

Licensee

And a copy hand delivered to:

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

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

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

and the original was filed with:

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

Jennifer Cook
Paralegal

EFFECTIVE AS A FINAL ORDER

DATE: 10/7/2019

FILED
SEP 16 2019
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of **Richard B. Clausing, Jr., P.A.** **Kansas License No. 15-00338**	**Docket No. 20-HA** 00024

SUMMARY ORDER

NOW ON THIS 16 day of Sept. 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 77-537 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. Richard B. Clausing, Jr., P.A. ("Licensee") was issued License No. 15-00338 on February 8, 1992, and is and has been entitled to engage in practice as a Physician Assistant in Kansas, having last renewed his license as Active on December 19, 2018.

2. Licensee's last known mailing address to the Board is: CONFIDENTIAL . Licensee's mailing address was reported on his last renewal as both his residence and primary business address.

3. Licensee's license to practice as a Physician Assistant in Kansas is currently Active.

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

5. On or about December 19, 2018, 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 Health Care Stabilization Fund ("KHCSF")." (emphasis in original). Licensee was asked "Have you paid the annual surcharge to the KHCSF?" to which he answered "yes".

6. Additionally, Licensee in response to his Continuing Medical Education ("CME") Year of 2019 answered "yes" to Continuing Education Questions that indicated he had completed either:

(1) At least 50 total hours of continuing education with a minimum of 20 Category I hours and a maximum of 30 Category II hours from 01-01-18 through 12-31-18, or that he was currently in good standing with National Commission on Certification of Physician Assistants ("NCCPA"); or

(2) At least 100 hours of continuing education with a minimum of 40 Category I hours and a maximum of 30 Category II hours from 01-01-17 through 12-31-18, or that he was currently in good standing with NCCPA.

7. After renewing his license as Active, on or about January 1, 2019, Licensee's insurance was canceled based on the insured's request.

8. On May 15, 2019, and June 14, 2019, the Board requested Licensee provide proof of compliance with the required continuing education hours and the Kansas Health Care Stabilization Fund ("KHCSF"), as required by K.S.A. 40-3404. The Board included instructions on how to

contact KHCSF. Licensee was also requested to provide proof of CME requirements. Licensee was warned failure to provide proof of compliance may result in a fine or suspension of Licensee's license to practice as a Physician Assistant in Kansas.

9. On or about July 15, 2019, after receiving no response to the May 15, 2019, and June 14, 2019 letters, the matter was referred to the Litigation Department.

10. On or about July 30, 2019, another search of the KHCSF showed Licensee was still not compliant with the KHCSF.

11. On or about August 1, 2019, Board Litigation Counsel, Susan Gering, again requested Licensee to provide proof of compliance with KHCSF, with instructions on how to submit the proper forms for compliance, and requested proof of compliance with Licensee's CME. The deadline to submit the requested information was August 15, 2019.

12. The August 1, 2019, correspondence was sent to Licensee's mailing address of record with the Board as well as to the Board listed email address: CONFIDENTIAL.

13. On or about August 8, 2019, the Board received the August 1, 2019, correspondence sent to Licensee's mailing address back with the message "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

14. Licensee has not responded to Board inquiries and has not updated his mailing address or email address.

15. Licensee's has been out of compliance with the KHCSF since July 1, 2019.

Applicable Law

16. Under the Kansas Physician Assistant Licensure Act, K.S.A. 65-28a03(b):

The request for renewal shall be on a form provided by the board and shall be accompanied

by the renewal fee established pursuant to this section, which shall be paid not later than the renewal date of the license. The board, prior to renewal of an active license, shall require the licensee 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 premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

17. 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) Unless a nonresident health care provider is a self-insurer, such health care provider shall not render professional service as a health care provider in this state unless such health care provider maintains coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted 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). . .

18. K.S.A. 40-3404(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.

19. Under K.S.A. 65-28a05, a license may be revoked, suspended or limited, or the licensee may be publicly censured, upon a finding of the existence of any of the following grounds:

(a) The licensee has committed an act of unprofessional as defined in by rules and regulations adopted by the board;

(e) the licensee has violated any provision of this act, and amendments thereto.

20. K.S.A. 65-28a15:

(a) It shall be the duty of each licensee to notify the board in writing within 30 days of any changes in the licensee's home mailing address or primary practice mailing address.

(b) In addition to any other penalty prescribed under the physician assistant licensure act, the board may assess a civil fine for a violation of subsection (a) in an amount not to exceed $100 for a first violation and $150 for each subsequent violations. . .

21. K.A.R. 100-28a-5(a) requires:

Each physician assistant shall submit with the renewal application one of the following:

(1) evidence of satisfactory completion of at least 50 continuing education credit hours during the preceding year. At least 20 continuing education credit hours shall be acquired from category I if 50 hours are submitted with the renewal application;

(2) evidence of satisfactory completion of at least 100 continuing education credit hours during the preceding two-year period. At least 40 continuing education credit hours shall be acquired from category I if 100 continuing education credit hours are submitted with the renewal application; or

(3) evidence verifying satisfactory completion of continuing education credit hours equivalent, in number and category, to those hours required by paragraph (a)(1) or (2), issued by a national, state, or local organization with continuing education standards that are at least as stringent as the board's standards.

22. K.A.R. 100-28a-8 defines "unprofessional conduct" as:

(m) failing to furnish the board, or its investigators or representatives, with any information legally requested by the board.

Conclusions of Law

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

24. The Board finds Licensee violated K.S.A. 65-28a05(a), in that Licensee has committed unprofessional conduct in his failure to meet the requirements for KHCSF compliance for licensure renewal, as set forth in K.S.A. 65-28a03(b).

25. The Board finds Licensee has violated K.S.A. 65-28a05(e), in that Licensee has violated any provision of this act, and amendments thereto by failing to comply with K.S.A. 65-28a03, and K.A.R. 100-28a-5(a).

26. The Board finds Licensee has violated K.S.A. 65-28a05 as further defined by K.A.R. 100-28a-8 in that Licensee has failed to respond to Board audit requests in failing to provide KHCSF proof of coverage, and Licensee has failed to provide satisfactory proof of compliance with continuing education requirements for licensure renewal.

27. 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 HEREBY ORDERED that Licensee is **INDEFINITELY SUSPENDED** until (1) Licensee submits proof of continuing education as requested **and** (2) either Licensee changes his status from Active to Inactive or Exempt, or until such time he provides proof of payment of premium surcharges required under K.S.A. 40-3404.

IT IS FURTHER HEREBY ORDERED that Licensee is assessed a **CIVIL FINE** in the amount of $100.00 for violations of the Kansas Physician Assistant Practice Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before **October 15, 2019**. 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 16 **day of** Sept. **2019.**

KANSAS STATE BOARD
OF HEALING ARTS

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 7th day of Oct., 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Richard B. Clausing., Jr., P.A.
CONFIDENTIAL

Licensee

And a copy was hand-delivered to:

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.

Linda Shaver for
Susan Gile, Operations Manager