

EFFECTIVE AS A FINAL ORDER

DATE: 5/6/19

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

FILED
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KS State Board of Healing Arts

In the Matter of

Liberty A. Eberly, D.O.
Kansas License No. 05-41198

Docket No. 19-HA 00067

SUMMARY ORDER

NOW ON THIS 21st day of March 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. Liberty A. Eberly, D.O. ("Licensee") was issued License No. 05-41198 on July 5, 2018 and is and has been entitled to engage in the practice of osteopathic medicine in Kansas, having last renewed such license on August 15, 2018.
2. Licensee's last known mailing address to the Board is: [REDACTED] Tipp City, Ohio 45371.
3. Licensee's license to practice osteopathic medicine 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 osteopathic medicine in Kansas.

5. On August 15, 2018, Licensee renewed her license online as Active. Licensee's renewal application 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"
6. After renewing her license as Active, a search of the KHCSF showed Licensee was not in compliance.
7. On December 7, 2018 and January 11, 2019, the Board requested Licensee provide proof of compliance with the Kansas Health Care Stabilization Fund ("KHCSF"), as required by 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 osteopathic medicine in Kansas.
8. On or about February 18, 2019, a search of the KHCSF showed Licensee was not in compliance.
9. On or about February 20, 2019, Associate Litigation Counsel sent a letter to both of Licensee's addresses of record and email, providing Licensee with all of the prior correspondence sent to her and giving her a deadline of March 6, 2019 to come into compliance with the KHCSF and pay the annual premium charges due.
10. On March 5, 2019, Board counsel received a receipt via email of a surcharge online payment for Licensee to the KHCSF.
11. On March 6, 2019, the Director of Compliance at the KHCSF confirmed Licensee had paid the surcharge and was in compliance for the policy period of March 1, 2019 to March 1, 2020.

12. Licensee was not in compliance from July 5, 2018 through March 1, 2019, a period of approximately eight (8) months.

Applicable Law

13. 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.

14. 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). . .

15. 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.

16. 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:

(b) The licensee has committed an act of unprofessional or dishonorable conduct . . . as defined in K.S.A. 65-2837, and amendments thereto.

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

Conclusions of Law

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

18. The Board finds that Licensee violated K.S.A. 65-2836(b), in that Licensee has committed unprofessional and/or dishonorable conduct in her failure to meet the requirements for KHCSF compliance in her initial licensure and renewal, as set forth in K.S.A. 65-2809.

19. The Board finds that Licensee violated K.S.A. 65-2836(z), in that Licensee failed to pay the premium surcharges as required by K.S.A. 40-3404, and further required by K.S.A. 65-2809 for a period of eight (8) months.

20. 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 assessed a **CIVIL FINE** in the amount of **\$500.00** for violations of the Kansas Healing Arts Act. Such fine shall be paid to the “Kansas State Board of Healing Arts”, in full, on or before **June 30, 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 21st day of March 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 6th day of May 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Liberty A. Eberly, DO
[REDACTED]
Tipp City, OH 45371
Licensee

Libery A. Eberly, DO
900 State Street, Suite 203B
Erie, PA 16501
Licensee

And a copy was hand-delivered to:

M. Katie Baylie, 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.



Beth Visocsky, Operations Manager