

BEFORE THE KANSAS STATE BOARD  
OF HEALING ARTS

In the Matter of  
Bradley Eck, D.C.,

Kansas License No. 01-04269

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Docket No. 10-HA-00059

**FILED**

MAY 04 2010

KS State Board of Healing Arts

JOURNAL ENTRY

Now this 4<sup>th</sup> day of May, 2010 the above captioned matter comes before the Board of Healing Arts (Board) on David W. Steed's Motion to Intervene. After review of the Motion to Intervene and the petitioner's Response thereto, the Board rules as follows:

I. FINDINGS OF FACT

1. Bradley Eck, D.C., and the Board entered into a Consent Order in *In the Matter of Bradley Eck*, 07-HA-00095.

2. Bradley Eck failed to follow the terms of the Consent Order in *In the Matter of Bradley Eck*, Docket No. 07-HA00095.

3. The Board brought the above captioned matter, *In the Matter of Bradley Eck*, 10-HA00059, based on the fact Bradley Eck had reneged on his agreement, through a Consent Order, with the Board.

4. On September 30, 2009, David Steed's law firm filed a Petition for Bankruptcy on behalf of Bradley Eck. See *In Re: Bradley Eck, Debtor*, Case No. 09-13234. Statement of David Steed before the Board on December 4, 2009.

5. David Steed entered an appearance on behalf of Bradley Eck, D.C. on November 6, 2009.

6. On November 24, 2009, Bradley Eck, through his attorney, moved to voluntarily dismiss the respondent's Petition for Bankruptcy.

7. On November 30, 2009, the United States Bankruptcy Court voluntarily dismissed the respondent's Petition for Bankruptcy.

8. On December 4, 2009 the respondent and David W. Steed appeared before the Board where Steed made the following statement:

"Doctor Eck also was involved in the filing of a Chapter 13 bankruptcy through my office on September the 30<sup>th</sup> of 2009 and that pleading brings up information about what his financial abilities are and are not, and his abilities to comply with things." Tr. Page 15, lines 8-14

9. On December 4, 2009, neither the respondent, as principal, or David Steed, as the respondent's agent, told the Board that Bradley Eck had voluntarily moved the Bankruptcy court to dismiss Bradley Eck's bankruptcy petition. See *In Re: Bradley Eck, Debtor*, Case No. 09-13234.

10. The Board relied on the statements of David W. Steed, the silence of Bradley Eck and what it trusted to be the pending Bankruptcy Petition in Docket No. 09-13234 in believing the Board was prohibited from reviewing and deciding Bradley Eck's non-compliance with the terms of his consent order for Eck's failure to pay his fine to the Board and Eck's failure to pay restitution to the victims of his scheme.

11. Based on the statements of David Steed and the silence of Bradley Eck, at the December 4, 2009 Board meeting, the Board reserved ruling on issues involving the respondent's failure to pay the agreed to fine and restitution until the Board could legally rule on those issues without violating the orders of the United States Bankruptcy Court *In the Matter of Bradley Eck*, Docket No. 09-13234.

12. The Board learned on December 7, 2009 that Bradley Eck, D.C. had moved the bankruptcy court to voluntarily dismiss his bankruptcy.

13. On December 7, 2009, the Board learned that Bradley Eck's motion to voluntarily dismiss Docket No. 09-13234 had been granted by the United States Bankruptcy Court on November 30, 2009.

14. The petitioner moved the Board for Reconsideration of the Board's Final Order on December 18, 2009. The petitioner requested reconsideration of the fact Bradley Eck failed to pay his fine and restitution to the victims of his schemes. The petitioner requested Eck be disciplined for his failure to abide by the Consent Agreement in Docket No. 07-HA-00095, specifically for failing to pay his fine and restitution to his victims.

15. The Board granted the Motion for Reconsideration and heard the matter at its February 19, 2010 meeting.

16. On February 19, 2010 David Steed withdrew as the attorney for the respondent.

17. David Steed did not appear before the Board as the attorney for the respondent at the February 19, 2010 Board meeting.

18. Bradley Eck, D.C. was represented by the Law Office of Carol Ruth Bonebrake at the Board of Healing Arts meeting on February 19, 2010.

19. On February 26, 2010 the Board entered its Amended Final Order in the above captioned matter. The Board fined the respondent, Bradley Eck, D.C., \$500 for failure to timely pay a fine and restitution *In the Matter of Bradley Eck*, Docket No. 07-HA00095.

20. An aggravating factor in the Board's decision to fine Bradley Eck, D.C., \$500 was the fact Bradley Eck failed to inform the Board that his bankruptcy petition had been voluntarily dismissed.

21. An aggravating factor in the Board's decision was the statement David Steed, as Bradley Eck's attorney and agent, made to the Board on December 4, 2009. See paragraph 8 above.

22. The Amended Final Order of the Board dated February 26, 2010 is directed to Bradley Eck, D.C.

23. Bradley Eck, D.C. did not file a petition for reconsideration pursuant to K.S.A. (2009 Supp.) 77-529 of the Board's Amended Final Order dated February 26, 2010.

24. David Steed, the attorney and agent for Bradley Eck, did not file a petition for reconsideration pursuant to K.S.A. (2009 Supp.) 77-529 of the Board's Amended Final Order dated February 26, 2010.

25. On March 29, 2010, David W. Steed, the former attorney for the respondent, Bradley Eck, D.C., moved the Board to intervene in the above captioned matter without giving a factual basis for his intervention.

26. On March 29, 2010 the respondent, Bradley Eck, D.C., and David W. Steed filed a Petition for Judicial Review in the Shawnee County District Court entitled *Bradley Eck, et al. v. the Kansas State Board of Healing Arts*, Docket No. 10-C-490.

27. David Steed is not and was not a party to the administrative action entitled *In the Matter of Bradley Eck*. Docket No. 07-HA000059.

28. David Steed is not and was not a party to the administrative action entitled *In the Matter of Bradley Eck*, Docket No. 10-HA-00059.

29. Bradley Eck filed a motion for the Board to stay the effectiveness of the Amended Final Order pursuant to K.S.A. 77-528. The Board denied the motion at its April 16, 2010 Board meeting.

30. Bradley Eck moved the Board to stay the effectiveness of the Amended Final Order pursuant to K.S.A. 77-616. The Board denied the motion at its April 16, 2010 Board meeting.

## II. CONCLUSIONS OF LAW

### A. Standing

31. In 312 *Education Association v. U.S.D. 312*, at 882-883 the Kansas Supreme Court stated:

"Standing is a question of whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of jurisdiction and to justify exercise of the court's remedial powers on his behalf. *Warth v. Seldin*, 422 U.S. at 498-99 [95 S.Ct. 2197]. 'Standing to sue' means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. *Dutoit v. Board of Johnson County Comm'rs*, 233 Kan. 995, 1003, 667 P.2d 879 (1983).

32. The Amended Order dated February 26, 2010 is directed toward Bradley Eck, D.C.

33. The Amended Order dated February 26, 2010 is not directed to David Steed.

34. David Steed withdrew as counsel for Bradley Eck, D.C. on February 19, 2010.

35. David Steed is not, and has never been, a party to *In the Matter of Bradley Eck, D.C.*, Docket No. 10-HA-00059.

36. David Steed does not have "a personal stake in the outcome of [*In the Matter of Bradley Eck, D.C.*, Docket No. 10-HA-00059] as to warrant his invocation of jurisdiction and to justify exercise of the court's remedial powers on [Steed's] behalf."

37. David Steed does not have standing to become a party to *In the Matter of Bradley Eck*, 10-HA000059.

#### B. Subject Matter Jurisdiction

38. "A final order is effective upon service." K.S.A. 77-530(a).

39. The Board issued its Amended Final Order on February 26, 2010.

40. A petition for judicial review of an agency action is jurisdictional. *Kingsley v. Kansas Department of Revenue*, 288 Kan. 390, 397, 204 P.3d 562 (2009).

41. Bradley Eck did not file a Motion for Reconsideration of the February 26, 2010 Amended Final Order.

42. Bradley Eck, D.C. and David Steed have filed a Petition for Judicial Review of an Agency action in Shawnee County District Court. See *Bradley Eck, et al. v. the Kansas State Board of Healing Arts*, Docket No. 10-C-490.

43. "If there are multiple parties to an agency adjudication and one party files a petition for judicial review, the agency retains jurisdiction to act on a timely petition for reconsideration filed by another party." K.S.A. 77-529(c).

44. Bradley Eck is the only party to *In the Matter of Bradley Eck*, Docket No. 10-HA-00059.

45. Bradley Eck did not file a petition for reconsideration.

46. The Amended Final Order had been entered and the respondent did not file a motion for reconsideration. By clear implication of K.S.A. 77-529(c), the Board does not have jurisdiction over *In the Matter of Bradley Eck*, Docket No. 10-HA-00059 because of the petition for judicial review filed by Bradley Eck and David Steed in the Shawnee County District Court.

47. "Kansas administrative agencies have no common-law powers. Any authority claimed by an agency or board must be conferred in the authorizing statutes either expressly or by clear implication from the express powers granted." *Fort Hays State University v. Fort Hays State University* Chapter 2010 WL 1610110, 7 (Kan.)(Kan.,2010).

48. The Kansas Administrative Procedures Act, the Kansas Judicial Review Act or the Kansas Healing Arts Act does not give the Board of Healing Arts the power to allow a person to intervene in a proceeding once a petition for judicial review has been filed with the courts.

49. The Board of Healing Arts does not have jurisdiction to allow David Steed to intervene in a case where the Amended Final Order has been issued and a petition for judicial review has been filed with the District Court.

#### C. Intervention pursuant to K.S.A. 77-521

50. David Steed has moved to intervene in the above captioned matter *after* the Amended Final Order has been made.

51. **77-521. Intervention** (a) The presiding officer shall grant a petition for intervention if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least three business days before the hearing;

(2) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and

(3) the presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(b) The presiding officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

52. The hearing in this matter was on February 19, 2010. The petition for intervention was filed on March 29, 2010. The petition for intervention was not made "at least three business days before the hearing" and violates K.S.A. 77-521(a)(1).

53. The movant did not state facts demonstrating "legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law" and violates K.S.A. 77-521(a)(2).

54. An Amended Final Order has been issued and a petition for judicial review has been filed in the District Court. Orderly and prompt conduct in these proceedings will be impaired by allowing intervention and violate K.S.A. 77-521(a)(3).

55. The interests of justice will not be served by allowing the attorney for the respondent to intervene in a matter which has been appealed to the courts. A grant to allow intervention would only delay the appeal of this matter to the District Court and is in violation of K.S.A. 77-521(b).

56. The movant is denied intervention pursuant to the Kansas Administrative Procedures Act, specifically K.S.A. 77-521(a) and (b).

WHEREUPON, the motion of David Steed to intervene in the above captioned matter is DENIED for reasons stated in this Journal Entry



IT IS SO ORDERED.

Dated May 4, 2010.

  
Kathleen Selzler Lippert  
Acting Executive Director

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May 2010, a copy of the above and foregoing Journal Entry was mailed and properly **addressed to:**

Jennifer Bazin Conklin  
Law Office of Carol Ruth Bonebrake, PA  
107 SW 6<sup>th</sup>, Suite 210  
Topeka, KS 66603

And a copy was hand-delivered to:

Stacy Bond  
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Kansas State Board of Healing Arts  
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And the original was filed with

Kathleen Selzler-Lippert  
Acting Executive Director  
Kansas State Board of Healing Arts  
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