

FILED

DEC 17 2002

**KANSAS STATE BOARD OF
HEALING ARTS**

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

In the Matter of)
)
SAM ELASHKAR, D.C.,)
Applicant for Kansas License)
_____)

Docket No. 02-HA-22

FINAL ORDER

NOW ON THIS 14th Day of December 2002, this matter comes before the Board to review an Initial Order that granted the application for a license to practice chiropractic by Applicant Sam Elashkar, D.C. Applicant appears in person and through William J. Pauzauskie, Attorney at Law. Kelli J. Benintendi, Associate Counsel, appears for the Board in opposition to the application.

Having heard the statements of the parties, and having the agency record before it, the Board finds, concludes and orders as follows:

The Board adopts the Presiding Officer's finding of fact number 1, which states as follows:

1. In April 1999 Applicant was charged with a class A misdemeanor in Johnson County, Kansas. The complaint alleged the unlawful use of a credit card in violation of K.S.A. 21-3729 and K.S.A. 21-4502(1)(a). Following this complaint, Applicant entered into a diversion agreement. Applicant complied with the terms of the diversion agreement, and the complaint was dismissed in October 2000.

The Board modifies the Presiding Officer's finding of fact number 2 to reflect that Applicant did not have permission to use the financial card that was issued to another person. The Board finds as follows:

2. Another criminal complaint was filed October 19, 1999 in Johnson County District Court alleging Applicant attempted to use a financial card without the consent of the person to whom the

card was issued, in violation of K.S.A. 21-3729 and 21-4502. A plea of guilty was entered, and Applicant was sentenced to twelve months' probation.

The Board adopts the Presiding Officer's findings of fact number 3-5, which state as follows:

3. Applicant was subsequently arrested for shoplifting. This resulted in revocation of the probation, and Applicant was ordered to serve six months in jail. Applicant has completed this sentence.

4. Applicant was placed on probation, which ended on August 9, 2002.

5. **(Confidential)**

(Confidential)

The Board modifies the Presiding Officer's finding of fact number 6, which stated that Applicant is sufficiently rehabilitated to warrant the public trust, as follows:

6. The evidence that Applicant is rehabilitated is not uncontroverted. **(Confidential)**

(Confidential)

(Confidential)

(Confidential)

The Board finds that Applicant is not sufficiently rehabilitated to warrant the public trust in Applicant's capacity as a practitioner of the healing arts.

The Board finds further as follows:

7. The first instance of Applicant's unauthorized use of another person's credit card involved the purchase of "Super Libido" vitamins. These vitamins were delivered to Applicant's residence in Johnson County, Kansas. This occurred while Applicant was enrolled at Cleveland Chiropractic College. The credit card that he used belonged to a fellow classmate at Cleveland.

8. The second instance of Applicant's unauthorized use of another person's credit card involved the purchase of vitamins, an air purifier and a men's fashion catalogue. This occurred approximately ten months after the first instance. The credit card used in the second instance belonged to another fellow classmate at Cleveland Chiropractic College.

9. Applicant's arrest for shoplifting did not result in additional criminal charges. However, it did result in revocation of probation. The Board cannot find, as Applicant suggests, that the shoplifting incident was immediately resolved when Applicant produced a receipt for the item that was allegedly stolen, and that the probation revocation was automatic merely because an arrest had taken place. The Board concludes that a person who is on probation has minimal due process rights, including notice and an opportunity to be heard. The Board further concludes that probation is not automatically revoked on the basis of a mistaken arrest that is quickly cleared up.

10. The Board does not adopt the Presiding Officer's Initial Order that the application of Sam Elashkar, D.C. be granted.

11. The Board further adopts the Presiding Officer's previous finding, conclusion and order that it is appropriate for Applicant to pay the costs of this proceeding, as allowed by K.S.A.

65-2846. That order remains in effect.

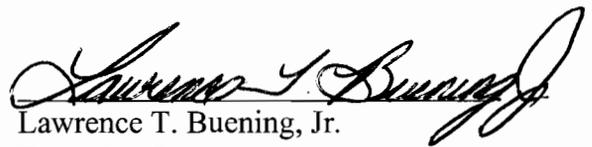
IT IS, THEREFORE, ORDERED that the application of Sam Elashkar, D.C. for a license to practice chiropractic is denied.

IT IS FURTHER ORDERED that the costs of this proceeding are assessed against Applicant. Board counsel is authorized to submit a statement of costs to the Board for further consideration.

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. 77-610, et seq. Reconsideration of the Final Order may be requested, but such request 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 the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

Dated this 17th Day of December 2002.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 17th day of December 2002 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Sam Elashkar, D.C.
4714 Booth Avenue
Westwood, Kansas 66205

William J. Pauzauskie
Attorney at Law
216 SW 7th Street
Topeka, KS 66603

and a copy was hand-delivered to:

Kelli J. Benintendi
Associate Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

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