

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

**In the Matter of
Derek S. Ens, LRT**

Kansas License No. 22-03909

KSBHA Docket No. 12-HA00011

FINAL ORDER ON RECONSIDERATION

NOW on this 2nd day of December 2011, this matter comes on for hearing before the Kansas State Board of Healing Arts ("Board") the reconsideration of the Final Order Revoking Licensure. Derek S. Ens, L.R.T. ("Licensee") appears through his counsel, Mike Francis. Stacy R. Bond, Associate Litigation Counsel, appears on behalf of the Respondent Board.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *et seq.* and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order on Reconsideration in the above-captioned matter. After reviewing the file, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

I. FACTUAL BACKGROUND

1. Licensee is licensed to engage in the practice of radiologic technology in the State of Kansas, License No. 22-03909, and has been so licensed since approximately April 15, 2011.

2. On or about April 19, 2011, a Consent Order was entered between Licensee and the Board as a condition to granting licensure in order to resolve concerns regarding Licensee's safety to practice.

confidential

confidential

4. Under the terms of the Consent Order, the Board granted Licensee a license to practice radiologic technology in the State of Kansas, but required Licensee to enter into and comply with all terms and conditions of a monitoring contract confidential for at least one (1) year.

5. Under the terms of the Consent Order, Licensee agreed that if the Board found Licensee had failed to comply with any of the terms of the Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice radiologic technology in the State of Kansas.

confidential

8. On or about July 18, 2011, Board counsel filed a disciplinary Petition seeking revocation of Licensee's license due to his failure to comply with the terms of the Consent Order.

9. A conference hearing on the disciplinary Petition was held before the full Board on August 12, 2011.

10. On or about August 29, 2011, a Final Order Revoking Licensure was issued by the Board, finding that Licensee knowingly agreed to the terms of the Consent Order as a condition of being granted a license; confidential and failed to comply with the other provisions of the Consent Order. The Board determined that Licensee had violated K.S.A. 65-7313(a)(1) for being guilty of fraud or deceit in the procurement of a license, and that as such, there were adequate grounds to revoke Licensee's license.

11. On or about September 26, 2011, Licensee filed a Petition for Judicial Review in the Shawnee County District Court.

12. On or about October 17, 2011, Licensee filed a Petition for Reconsideration of Final Order with the Board.

13. On or about October 25, 2011, Licensee filed a Motion to Dismiss Petition without Prejudice, in Shawnee County District Court, and subsequently, an Order dismissing the Petition for Judicial Review without prejudice was filed on October 31, 2011.

14. On November 7, 2011, the Board granted reconsideration of the Final Order Revoking Licensure and set the matter for further proceedings. A conference hearing to reconsider the Final Order Revoking Licensure was held before the full Board on December 2, 2011.

II. ANALYSIS

15. In support of his Petition for Reconsideration, Licensee offered evidence that there was a clerical mistake confidential confidential services when, in fact, Licensee had not made such a report. Licensee further argues that certain

statements made by one Board member during the conference hearing demonstrate that the Board was basing its decision to revoke his license on the assumption that Licensee had a confidential

16. In opposition, Board counsel asserts that Licensee voluntarily entered into the Consent Order and had the opportunity for a hearing on his application if he did not wish to agree to the Consent Order's terms. confidential

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Documentary evidence

was also offered which shows that shortly before the Board's acceptance of the Consent Order, the parties agreed upon accommodations confidential

confidential

to be performed under the Consent Order's requirements in order to allay Licensee's concerns confidential

17. The Kansas State Board of Healing Arts' statutory duty is to protect the public health, safety and welfare. Inherent to this duty is necessity for the Board to ensure that all licensees comply with Board orders issued for the purpose of ensuring patient safety. The Board must also take commensurate disciplinary action when such orders are not obeyed.

18. While the Board has not specifically determined that Licensee has a confidential the Board finds that Licensee did voluntarily and knowingly entered into the Consent Order in lieu of a hearing in order to resolve the Board's concerns confidential Licensee then failed to comply with the Consent Order's provisions that he enter into a monitoring contract confidential confidential

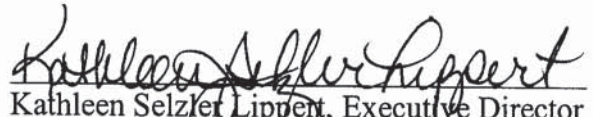
III. CONCLUSIONS

19. The Board concludes that Licensee's actions and conduct violates K.S.A. 65-7313(a)(1), in that Licensee is guilty of fraud or deceit in the procurement of a license.

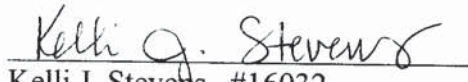
20. Because the Consent Order granting licensure to Licensee contained requirements which were intended to protect the public by assuring that Licensee was safe to practice, the Board further concludes that Licensee's failure to comply is particularly egregious conduct warranting revocation of licensure.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee's license to practice radiologic technology is hereby REVOKED.

IT IS SO ORDERED THIS 30th DAY OF DECEMBER, 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

Prepared by:


Kelli J. Stevens, #16032
General Counsel

NOTICE OF 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. 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, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing **Final Order on Reconsideration** was served this 30th day of December, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Derek Ens, LRT
3312 Homestead
Hutchinson, Kansas 67502

Mike Francis
434 SW Topeka Blvd.
Topeka, KS 66603
Attorney for Licensee

And a copy was hand-delivered to:

Stacy R. Bond, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Melissa Massey, 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:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Cathy Brown
Executive Assistant