

APR 23 2012

KS State Board of Healing Arts

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

In the Matter of)
Jacob R. Gardner, D.C.)
)
Kansas License No. 01-05385 (Revoked))
_____)

KSBHA Docket No. 12-HA00042

**FINAL ORDER DENYING RECONSIDERATION
OF FINAL ORDER REVOKING LICENSURE**

NOW on this 23rd day of April, 2012, the Kansas State Board of Healing Arts (“Board”), by and through its Executive Director, Kathleen Selzler Lippert, 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.*, and upon due consideration of the file and applicable statutes, and being otherwise duly advised in the premises makes the following determination upon Petitioner’s Petition for Reconsideration pursuant to K.S.A. 77-529:

I. Factual Background

Petitioner was previously licensed to practice chiropractic in the State of Kansas under License No. 01-05385, having voluntarily entered into a Consent Order with the Board on or about December 16, 2010, as a condition of being granted licensure. The Consent Order was entered to address concerns regarding Petitioner’s ability to practice with reasonable skill and safety

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On or about November 16, 2011, a disciplinary Petition was filed with the Board alleging Petitioner violated Healing Arts Act in his failure to comply with the terms set forth in the Consent Order filed in KSBHA Docket No. 11-HA00049. A conference hearing was held before the full Board on February 24, 2012. On March 21, 2012, the Board entered a Final Order revoking Petitioner's license to practice chiropractic in the State of Kansas.

The Board found that Petitioner knowingly agreed to the terms of the Consent Order as a condition of being granted licensure in State of Kansas. The Board explained the purpose of the Consent Order is to protect the public by ensuring that Petitioner is safe to practice. The Board found that Petitioner violated the Consent Order

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The Board's 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. Consequently, the Board must also take commensurate disciplinary action when licensees do not comply with such orders.

The Board concluded that, because the Consent Order granting licensure to Petitioner contained requirements which were intended to protect the public by ensuring that Petitioner was safe to practice, Petitioner's failure to comply constitutes egregious conduct that is an exceptionally aggravating circumstance.

The Board further concluded that violation of a Board order, which is intended to safeguard the public, constitutes misconduct that is potentially harmful to patients and is disruptive to Board processes. Based upon the agency's "Guidelines for the Imposition of Disciplinary Actions" for guidance in determining the appropriate sanction, the Board concluded that the sanctioning goals for such an offense are to protect the public and punish the Petitioner. The Board determined the appropriate sanction was revocation of licensure.

On April 9, 2012, Petitioner filed a Petition for Reconsideration of the Final Order. Petitioner agreed the terms of the Consent Order were designed to safeguard the public by ensuring Petitioner was safe to practice.

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Finally, Petitioner further indicates that he takes full responsibility for the actions that lead to the revocation of his license and proclaims to surrender his license if he is found to be practicing

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II. Analysis

In his Petition for Reconsideration, Petitioner asserts the same arguments and information that he provided at the February 24, 2012 conference hearing. In both the Petition and at the conference hearing, Petitioner did not dispute the fact that he plainly violated the Healing Arts Act by failing to comply with the terms of the Consent Order; he did not dispute that the terms of the Consent Order were designed to safeguard the public by ensuring he was safe to practice; he did not dispute the terms of the Consent Order

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Petitioner suggested that, should revocation of his license be reconsidered, he would agree to undergo any confidential or monitoring necessary to ensure that he is safe to practice and deserving of the public's trust. The Board concludes that this was already the intention of the Consent Order that granted him licensure. At the time Petitioner signed the Consent Order, he verified that he understood and agreed to the Consent Order's terms and purpose.

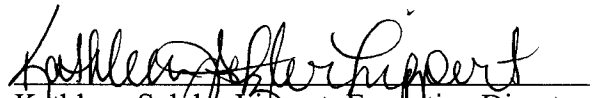
The Board finds that all information provided in the Petitioner's Petition for Reconsideration is merely duplicative of what was presented and considered at the February 24, 2012 conference hearing. Petitioner has failed to demonstrate adequate grounds to support reconsideration of the revocation of Petitioner's chiropractic license.

III. Conclusion

The Board finds that reconsideration should be denied as the grounds for relief asserted by Petitioner are inadequate.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that Petitioner's Petition for Reconsideration is hereby DENIED.

IT IS SO ORDERED THIS 23rd DAY OF APRIL, 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


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

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.* 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 State 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 **ORDER DENYING RECONSIDERATION** was served this 23rd day of April, 2012 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

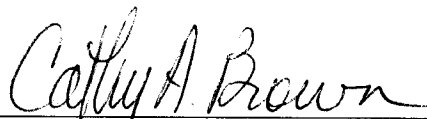
Jacob Gardner, DC
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Lincoln, KS 67455

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

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