

BEFORE THE BOARD OF HEALING ARTS OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)	
)	
Dana Sue Gifford, P.T.A.)	Docket No.: 08-HA- 42
Kansas License No. 14-01066)	OAH No.: 08-HA-

EMERGENCY EX PARTE ORDER OF SUSPENSION

NOW on this 27th day of September 2007, this matter comes before the Presiding Officer upon a Motion for *Ex Parte* Emergency Order of Suspension. Kathleen Selzler Lippert, Associate Counsel filed a Motion for *Ex Parte* Emergency Order of Suspension. There are no other appearances.

The Presiding Officer has reviewed the agency file in Kansas Board of Healing Arts (KBHA) Docket No. 08-HA- 42. The Presiding Officer finds, concludes and orders as follows:

1. This is a motion for an order pursuant to K.S.A. 65-2838 and/or 77-536. Under those statutes, the Presiding Officer may issue an order without notice and hearing, and may temporarily limit or suspend a license if the Presiding Officer finds an imminent danger to the public health, safety, or welfare.
2. The Presiding Officer has received and reviewed a Motion for an *Ex Parte* Order suspending Licensee license filed with KBHA on September 27, 2007. The motion requests an emergency suspension of Licensee's license.

Ex Parte Emergency Order of Suspension
Dana Sue Gifford, P.T.A.

3. The motion for an emergency order in the above captioned case alleges that:
- a. Licensee presently has an active and unrestricted license to practice physical therapy in the State of Kansas.
 - b. On or about February 25, 2004, Licensee was arrested for DUI 1st offense. Licensee was convicted for DUI 1st in April 2005; she was sentenced for DUI 1st in June 2005.
 - c. On or about September 24, 2004, Licensee was arrested for DUI 2nd offense. Licensee was convicted for DUI 2nd in October 2004; she was sentenced for DUI 2nd in June 2005.
 - d. On or about March 6, 2006, Licensee was arrested for DUI 3rd offense. Licensee was convicted for DUI 3rd, a felony, in November 2006; she was sentenced for DUI 3rd in January 2007, Shawnee District Court case 06-CR-617.
 - e. Licensee was placed on probation for the felony DUI 3rd conviction. The terms of the probation prohibit Licensee from consumption of alcoholic beverages, including cereal malt beverages.
 - f. Confidential
 - g. Confidential

4. The motion for an emergency order in the above captioned case includes:
 - a. Exhibit 1, Criminal complaint for Topeka Municipal Court Case No. 2004-26657, filed on October 4, 2004;
 - b. Exhibit 2, Abstract of conviction for Topeka Municipal Court Case No. 2004-26657 and Order of Probation;
 - c. Exhibit 3, Criminal complaint for Shawnee District Court Case No. 06-CR-617, filed on April 3, 2006;
 - d. Exhibit 4, Court docket notes for 06-CR-617;
 - e. Exhibit 5, Kansas Sentencing Guidelines Journal Entry of Judgment for 06-CR617;
 - f. Exhibit 6, **Confidential**
Confidential
 - g. Exhibit 7, **Confidential**
Confidential

FINDINGS OF FACT

5. Dana Sue Gifford, P.T.A.'s ("Licensee") last known mailing address to the Board is: 1621 SW 70th Street, Topeka, Kansas 66619.
6. Licensee is or has been entitled to engage in the practice of physical therapy in the State of Kansas, having been issued License No. 14-01066 on approximately December 7, 1996, and having last renewed such license on approximately December 26, 2006.

7. At all times relevant to the allegations set forth in the Motion, Licensee has held a current and active license to engage in the practice of physical therapy in the State of Kansas.
8. Licensee presently has an active and unrestricted license to practice physical therapy in the state of Kansas.
9. The Presiding Officer finds that:
 - a. Licensee has been arrested and convicted of multiple DUI offenses. The last DUI offense was a felony.
 - b. Licensee has been court ordered to abstain from alcohol consumption as least since January 2007.
 - c. Confidential
 - d. Confidential
 - e. Licensee is unable to practice physical therapy with reasonable skill and safety Confidential
 - f. Licensee has been convicted of a felony and has not been Confidential to warrant the public trust.
 - g. Licensee's continuation in practice would constitute an immediate danger to the public health, safety or welfare.

CONCLUSIONS OF LAW

10. Pursuant to K.S.A. 65-2838(c) and 77-536(a)(1), the Board has the authority to temporarily suspend Licensee's license to address an imminent threat to the health, safety or welfare of the public.
11. Pursuant to K.S.A. 65-2912, the Board has grounds to revoke, suspend, censure, fine or otherwise limit Licensee's license for violation of the Kansas Physical Therapy Act.
12. Pursuant to K.S.A. 77-536, the Board may use emergency proceeding to protect the public from an immediate danger to the public health, safety or welfare.
13. The Presiding Officer finds that Licensee has violated:
 - a. K.S.A. 65-2912(a)(1), **Confidential**
Confidential
 - b. K.S.A. 65-2912(a)(2), in that evidence demonstrates she has been convicted of a felony and has not been **Confidential** to warrant the public trust;
 - c. K.S.A. 2912(a)(5), unprofessional conduct as further defined in K.A.R. 100-29-12(a)(2), in that evidence demonstrates she is practicing physical therapy without reasonable skill and safety
Confidential

14. The Presiding Officer finds that Licensee's continuation in practice would constitute an immediate danger to the public health, safety or welfare.

15. The Presiding Officer further concludes that Licensee's license to practice physical therapy should be immediately suspended until such time as an evidentiary hearing can be scheduled.

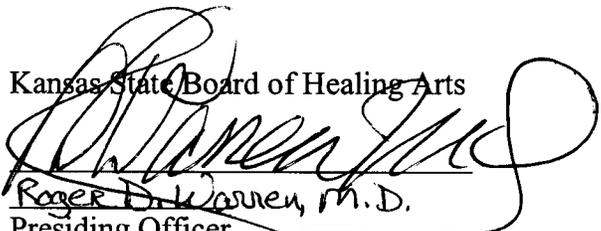
IT IS THEREFORE, ORDERED that the license of Dana Sue Gifford, P.T.A. is hereby immediately suspended.

IT IS FURTHER ORDERED that board counsel shall serve this order in the manner provided by law, and shall complete and file a proof of service.

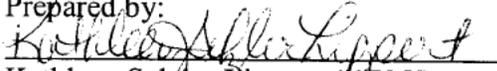
PLEASE TAKE NOTICE that a hearing on this matter will be scheduled as soon as practicable at the Board office, 235 S.W. Topeka Blvd., Topeka, Kansas. The issue to be determined is whether the emergency order of suspension should remain in place, be modified or terminated. A Notice of Hearing will be issued.

PLEASE TAKE NOTICE that this is an emergency order. An emergency order is effective when rendered. A party to an agency proceeding may seek judicial review of an emergency 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 order. A copy of any petition for judicial review must be served upon Board's Executive Director at 235 S.W. Topeka Blvd., Topeka, Kansas 66603.

Dated this 27 day of September 2007.

Kansas State Board of Healing Arts

Roger D. Warren, M.D.
Presiding Officer

Prepared by:



Kathleen Selzler Lippert, #Y7957

Associate Counsel

Kansas Board of Healing Arts

235 South Topeka Blvd.

Topeka, Kansas 66603

(785) 296-0961

CERTIFICATION OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the EMERGENCY *EX PARTE* ORDER OF SUSPENSION by United States mail, postage prepaid, on this 22nd day of September, 2007, to the following:

Dana Sue Gifford, P.T.A.

Licensee

Confidential

Topeka, Kansas 66619

Jason P. Hoffman

Attorney for Licensee

Commerce Bank Tower

100 E. 9th Street – Third Floor East

Topeka, Kansas 66612

And the original was hand-filed with:

Lawrence T. Buening, Jr.

Executive Director

Kansas Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3068

And a copy was hand-delivered to:

Kathleen Selzler Lippert,

Associate Counsel

Kansas Board of Healing Arts

235 S. Topeka Boulevard

Topeka, Kansas 66603-3068

(785) 296-0961



Ex Parte Emergency Order of Suspension

Dana Sue Gifford, P.T.A.