

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

In the Matter of)
LINDSEY HERBIG, R.T.)
) **KSBHA Docket No. 13-HA00054**
Application for Licensure)
_____)

FINAL ORDER DENYING LICENSURE

NOW on this 9th day of August, 2013, comes before the Kansas State Board of Healing Arts (“Board”) the application of Lindsey Herbig, R.T. (“Applicant”) for a license to practice respiratory therapy in the State of Kansas. Licensee appears in person and *pro se*. Jessica Bryson, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-5501 *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 in the above-captioned matter. After reviewing the agency record, 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:

1. On or about November 7, 2012, Applicant submitted an application to practice respiratory therapy in the State of Kansas. Such application was deemed complete and filed with the Board on March 15, 2013.
2. Applicant currently holds an active respiratory therapy license in Missouri.
3. In her application, Applicant disclosed that she was terminated from her employment at St. Louis Children’s Hospital on July 16, 2011; was arrested in October 1999 for misdemeanor shoplifting which resulted in a suspended execution of sentence; and was arrested for a DWI in Phelps County, Missouri, in which the charges were later dropped.

4. Board Associate Litigation Counsel alleges that Applicant has violated the following provisions of the Respiratory Therapy Act:

- a. K.S.A. 65-5510(a) which states that the Board “ may deny . . . or limit a license or the licensee may be publicly or privately censured where the . . . applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public.
- b. K.S.A. 65-5510(a)(1) which states that Applicant’s application may be denied if the Board finds that Applicant attempted to obtain a license “by means of fraud, misrepresentation or concealment of material facts[s].”
- c. K.S.A. 65-5510(a)(2), as more specifically defined by K.A.R. 100-55-5(i), which states there are grounds to deny Applicant’s application if the Board finds that Applicant was sanctioned or disciplined by a “peer review committee or medical care facility for acts or conduct that would constitute grounds for denial. . . .”
- d. K.S.A. 65-5510(a)(2), as more specifically defined by K.A.R. 100-55-5(9), which states there are grounds to deny Applicant’ application if the Board finds that Applicant committed conduct likely to deceive, defraud, or harm the public.

5. Board Associate Litigation Counsel presented evidence from St. Louis Children’s Hospital showing that Applicant was counseled on at least five (5) previous occasions while employed at St. Louis Children’s Hospital.

6. The counseling and warnings occurred as a result of (1) leaving the Critical Intensive Care Unit (CICU) without a Respiratory Therapist while an High Frequency

Oscillating Ventilator (HFOV) was on a patient; (2) failing to timely renew her Missouri license; (3) loud, abrupt behavior; (4) combative behavior, i.e., stating she was going to kick a nurse's ass, and vulgar language, i.e., stating that she "fucking forgot" to provide a report on two patients when asked about it and (5) aggressive behavior toward a physician and nursing staff.

7. Applicant was terminated from St. Louis Children's Hospital on the sixth incident, **CONFIDENTIAL**

8. **CONFIDENTIAL**

9. At its June 2013 Board meeting, the Board concluded that it had insufficient evidence to make a determination on Applicant's application and the Response in Opposition. The Board continued the conference hearing to the next regularly scheduled Board meeting on August 9, 2013.

10. In the Order of Continuance, the Board recommended that Applicant complete a healthcare professional ethics or boundaries program to provide the Board with evidence regarding Applicant's professionalism.

11. Due to the lack of availability of a specific program, it was subsequently recommended that Applicant write and present an essay to the Board at its August Board meeting on the topic of professionalism in the workplace and its effect on patient care.

12. Applicant appeared in person at the August Board meeting and provided the Board with a copy of the essay she had written.

13. The Board finds that Applicant's behavior rises to the level of "unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public." In addition, the Board finds that Applicant was sanctioned or disciplined by a "peer review committee or medical care facility for acts or conduct that would constitute grounds for denial" when Applicant was warned or counseled on five (5) occasions and terminated from her position as a Respiratory Therapist at St. Louis Children's Hospital. The Board further finds that Applicant committed conduct "likely to deceive, defraud, or harm the public" in that her acts of unprofessional conduct could have a negative effect on patient care.

14. The Board did not find that Applicant attempted to obtain a license "by means of fraud, misrepresentation or concealment of material facts[.]"

15. There are grounds to deny Applicant's application pursuant to the following: (1) K.S.A. 65-5510(a) which states that the Board " may deny . . . or limit a license or the licensee may be publicly or privately censured where the . . . applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public"; (2) K.S.A. 65-5510(a)(2), as more specifically defined by K.A.R. 100-55-5(i), which states there are grounds to deny Applicant's application if the Board finds that Applicant was sanctioned or disciplined by a "peer review committee or medical care facility for acts or conduct that would constitute grounds for denial. . . ." and (3) K.S.A. 65-5510(a)(2), as

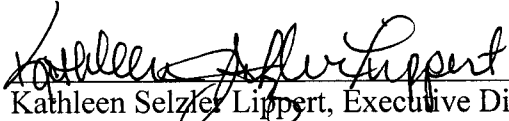
more specifically defined by K.A.R. 100-55-5(9), which states there are grounds to deny Applicant' application if the Board finds that Applicant committed conduct likely to deceive, defraud, or harm the public.

16. Applicant's unprofessional conduct could have an adverse effect on patient care warranting denial of licensure.

17. The Board concludes that Applicant's essay is not sufficient mitigating evidence of remediation to warrant granting licensure. The Board may consider a future application from Applicant and recommends Applicant provide additional evidence that would mitigate her past unprofessional conduct.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant's application for a license to practice respiratory therapy in the State of Kansas is hereby DENIED.

IT IS SO ORDERED THIS 22nd DAY OF AUGUST 2013 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. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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, Executive Director, Kansas 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 and correct copy of the above foregoing **FINAL ORDER DENYING LICENSURE** was served this 22nd day of August, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

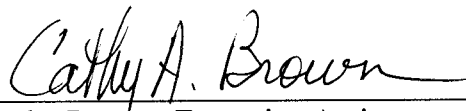
Lindsey Herbig, R.T.
CONFIDENTIAL
St. Ann, MO 63074

And a copy was hand-delivered to:

Jessica Bryson, 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

And the original was filed with the office of the Executive Director.



Cathy Brown, Executive Assistant