

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

FILED
JUN 03 2020
KS State Board of Healing Arts

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| In the Matter of |) | |
| Brittany D. Johnson, RT |) | |
| Application for License to Practice |) | KSBHA Docket No. 20-HA00060 |
| Respiratory Therapy |) | |

FINAL ORDER

On May 5, 2020, this matter came before the Kansas State Board of Healing Arts ("Board"), through its appointed Presiding Officer, for a Conference Hearing on Brittany Johnson's, R.T. ("Applicant") application for a respiratory therapy license. Applicant appeared in person, *pro se*. Matthew Gaus, Associate Litigation Counsel, appeared to present the position of the Disciplinary Panel of the Board. Dr. Balderston, Dr. Hutchins, and Mr. Kelly were recused.

Under the authority granted to the Board by the Kansas Respiratory Therapy Practice Act, K.S.A. 65-5501 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, ("KAPA"), K.S.A. 77-501 *et seq.*, the Board, through the appointed Presiding Officer, enters this Final Order. After reviewing the agency record, hearing the arguments of the parties, and being duly advised in the premises, the Board, through the appointed Presiding Officer, makes the following findings, conclusions, and orders.

PROCEDURAL HISTORY

On or about December 2, 2019, Applicant submitted an application to practice as a respiratory therapist in Kansas. That application was deemed complete and filed with the Board on February 25, 2020. A Response was filed on behalf of the disciplinary panel of the Board on March 11, 2020.

On April 21, 2020, Dr. Jerry DeGrado, D.C., was appointed Presiding Officer by the Board to conduct proceedings and issue an Order in this matter pursuant to the KAPA, K.S.A. 77-501 *et seq.* A Notice of Hearing was filed and served on April 24, 2020, setting a Conference Hearing regarding Applicant's application for licensure. No objection to the Notice of Hearing was filed.¹

The Conference Hearing in this matter was held before the Presiding Officer on May 5, 2020. After oral argument from both parties, and testimony from the Applicant, the Board, through

¹ In advance of the oral arguments, the Presiding Officer was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Presiding Officer in rendering the decision.

the appointed Presiding Officer, verbally issued its order **GRANTING** Applicant a temporary license to practice respiratory therapy, with a written Final Order to follow in 30 days.

FINDINGS OF FACT

1. On or about June 23, 2016, Applicant completed her practical nursing education at Brown Mackie College.
2. In June 2016, she submitted an application for a license as a Licensed Practical Nurse to the Missouri State Board of Nursing ("Missouri Board").
3. She was then hired by John Knox Village in Lee's Summit, Missouri, on August 23, 2016, as a Graduate Nurse, pending her NCLEX-PN results.
4. In Missouri, she was allowed to practice prior to full licensure, "pending the results of the first licensing examination or ninety days after graduation, whichever occurs first." Mo. Rev. Stat. 335.081(6)(b).
5. Applicant took the NCLEX-PN exam on September 23, 2016 – 90 days after graduation, and failed.
6. Despite failing and receiving a letter from the Missouri Board stating she could not practice, she continued her work at John Knox.
7. She failed the NCLEX-PN examination again on November 28, 2016.
8. The Missouri Board sent her another letter stating she cannot practice, but she continued her work as a nurse at John Knox.
9. On January 5, 2017, the Missouri Board received a complaint from Applicant's employer. It stated they learned she had not received her Missouri LPN license, and they had terminated her, as she had practiced without a license for a total of 218.15 hours.
10. On November 28, 2017, the Missouri Board issued an Order denying her nursing license.
11. Applicant graduated from Kansas City Community College's ("KCCC") Respiratory Therapy program in May 2019.
12. To date, she has not passed the National Board for Respiratory Care ("NBRC") examination.
13. On or about December 2, 2019, Applicant submitted an application for licensure in Kansas as a respiratory therapist, including a temporary license.

Final Order

In the Matter of Brittany D. Johnson, R.T.;
KSBHA Docket No. 20-HA00060

14. On her application, she answered “yes” to the following attestation questions:
- (b) Have you ever had any application for any professional license refused or denied by any licensing authority;
 - (c) Have you ever been refused or denied the privileges of taking an examination required for any professional licensure;
 - (d) Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, suspended, revoked or placed on probation, or have you ever involuntarily or voluntarily (to avoid disciplinary action or investigation) resigned or withdrawn from any licensed hospital, nursing home, clinic or other health care facility in which you have trained, including but not limited to residency or postgraduate training programs, or otherwise been a staff member, been a partner or held privileges?
 - (f) Have you ever been requested to resign, withdraw or otherwise terminate your position with a partnership, professional association, corporation or other practice organization, either public or private?
 - (h) Has any licensing authority ever limited, restricted, suspended, revoked, censured or placed on probation or had any other disciplinary action taken against any professional license you have held?
 - (i) Have you ever been notified or requested to appear before a licensing agency?
 - (s) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?
15. Applicant provided a brief statement in her application regarding her “yes” answers and attached the Response in Opposition filed in her previous application.

CONCLUSIONS OF LAW

I. Applicable Law

Temporary License

The Board may issue a temporary license to an applicant for licensure as a RT who:

1. Meets the requirements for licensure; or
2. Meets the requirements for licensure except [NBRC] examination. K.S.A. 65-5508(d).

A temporary license expires 6 months from the date of issuance or on the date the Board approves the application for licensure, whichever occurs first. *Id.* No more than 1 temporary license is permitted to any one person. *Id.*

Final Order

In the Matter of Brittany D. Johnson, R.T.;

KSBHA Docket No. 20-HA00060

License to Practice Respiratory Therapy in Kansas

Under K.S.A. 65-5506(a), an applicant applying for licensure as a RT must meet the following requirements:

- (1) Education: Present evidence of having completed an educational program in respiratory therapy approved by the Board;
- (2) Examination: Applicant shall pass the [NBRC] examination; and
- (3) Fees: Applicant shall pay the Board all applicable fees.

Grounds for Disciplinary Action

K.S.A. 65-5510(a) provides the Board may deny an applicant who has been “guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public.” Unprofessional conduct is:

- (2) Being guilty of unprofessional conduct as defined by rules and regulations.

K.A.R. 100-55-5 further defined unprofessional conduct as:

- (q) Committing conduct likely to deceive, defraud, or harm the public.

II. Conclusions of Law

- A. Applicant qualifies for a temporary license to practice respiratory therapy in Kansas.

Applicant qualifies for a temporary license to practice respiratory therapy in Kansas as she meets all licensure requirements except examination. Specifically, she completed KCCC’s respiratory therapy program and has paid the temporary license fee. She has not passed the NBRC examination. *See* K.S.A. 65-5508(d); K.S.A. 65-5506(a).

The Board is the state agency tasked with the duty to license, regulate, and discipline respiratory therapists in Kansas. K.S.A. 65-5501, *et seq.* Under all the circumstances of this case, and considering Applicant’s honesty in her application, the Board, through its appointed Presiding Officer, concludes Applicant shall be granted a temporary license to practice as a respiratory therapist in Kansas.

- B. Currently, Applicant does not qualify for a full, active license to practice respiratory therapy in Kansas.

Final Order

In the Matter of Brittany D. Johnson, R.T.;

KSBHA Docket No. 20-HA00060

Applicant does not currently qualify for a full, active license to practice respiratory therapy in Kansas because she has not passed the NBRC examination. But Applicant has completed all other requirements for licensure as she completed KCCC's respiratory therapy program and has paid the full license fee. *See* K.S.A. 65-5506(a).

Under all the circumstances of this case, and in light of the statutory requirements for respiratory therapy licensure in Kansas, the Board, through its appointed Presiding Officer, concludes Applicant cannot be granted a full license to practice as a respiratory therapist at this time. But, the Board, through its appointed Presiding Officer, concludes if Applicant passes the NBRC examination while she has her temporary license to practice as a respiratory therapist in Kansas, Applicant will be granted a full, active license to practice as a respiratory therapist in Kansas.

- C. Applicant violated K.S.A. 65-5510(a)(2), as further defined by K.A.R. 100-55-5(q), in that she committed conduct likely to deceive, defraud, or harm the public.

Applicant has committed unprofessional conduct in violation of K.S.A. 65-5510(a)(2), as further defined by K.A.R. 100-55-5(q), in that she committed conduct likely to deceive, defraud, or harm the public. Specifically, she practiced nursing in Missouri without a license, resulting in employment termination, and the Missouri Board denying her nursing license.

ORDER

IT IS THEREFORE ORDERED, Applicant be **GRANTED** a temporary license to practice as a respiratory therapist in Kansas.

Provisions

While holding a temporary license to practice as a respiratory therapist in Kansas, Applicant must notify the Board each time she is scheduled to take the NBRC examination. Such notification must be provided to the Board at least 10 days prior to the examination.

While holding a temporary license to practice as a respiratory therapist in Kansas, Applicant must notify the Board of her NBRC examination results each time, within 30 days of completion of examination.

If Applicant successfully passes the NBRC examination while holding a temporary license to practice as a respiratory therapist in Kansas, Applicant will be issued a full, active license to practice as a respiratory therapist in Kansas.

All costs associated with complying with this Final Order shall be the Applicant's.

Final Order

In the Matter of Brittany D. Johnson, R.T.;
KSBHA Docket No. 20-HA00060

All correspondence associated with this Final Order, including but not limited to notification of scheduled NRBC examination and examination results, shall be submitted to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612
KSBHA_compliancecoordinator@ks.gov

IT IS SO ORDERED this 3rd day of June 2020.

KANSAS STATE BOARD OF HEALING ARTS



Tucker L. Poling, Acting Executive Director

NOTICE OF APPEAL 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. Under K.S.A. 77-529, parties 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 Tucker L. Poling, Acting 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 I served a true and correct copy of the above and foregoing **FINAL ORDER**, by depositing the same in the United States mail, postage prepaid, on this 3rd of June 2020, addressed and emailed to:

Brittany Johnson, RT
CONFIDENTIAL

And a copy was hand delivered to:

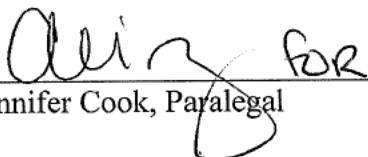
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and the original was filed with:

Tucker L. Poling, Acting Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level - Suite A
Topeka, Kansas 66612



Jennifer Cook, Paralegal

Final Order
In the Matter of Brittany D. Johnson, R.T.;
KSBHA Docket No. 20-HA00060