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JUL 14 2005

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

KS State Board of Healing Arts

In the Matter of)
)
KIMBERLEY KELLOGG)
Applicant for a License to)
Practice Respiratory Therapy)
_____)

Docket No. 05-HA-10

FINAL ORDER

NOW ON THIS 11th Day of June 2005, this matter comes before the Board to review the Initial Order issued May 10, 2005. Kelli J. Benintendi, Associate Counsel, appears for the Board. There are no other appearances.

Having the agency record before it, the Board adopts the Initial Order as its Final Order, and finds, concludes and orders as follows:

1. The issue before the Presiding Officer was whether Applicant's conduct constitutes grounds to deny the application. Applicant requested that the Presiding Officer allow her to withdraw her application, indicating that she hopes to reapply in the future. Board counsel indicated that she opposes the request until she has an opportunity to discuss the issue with the Board's Disciplinary Panel.

2. The Board finds that Applicant was previously licensed to practice law in the State of Kansas, and that the Kansas Supreme Court ultimately revoked that license. The grounds for the Kansas Supreme Court's disciplinary action are stated in two published opinions. The Board finds and concludes that Applicant engaged in multiple acts of dishonesty in her professional legal practice.

3. The Board finds that in December 2002, Applicant was convicted of the crime of making a false writing, a non-person felony. She has completed her probation. Making a false writing is a crime of dishonesty, and is relevant to determining whether Applicant should be granted the public's trust as a licensed respiratory therapist.

4. The response opposing the application argues that Applicant misrepresented or concealed material facts. Applicant argues that she did not misrepresent the facts, and that the Board's objection must be limited to the issue of misrepresentation. However, the Board's response also alleges as fact that Applicant was convicted of a felony, and that she was disbarred by the Supreme Court. The Board concludes as a matter of law that technical rules of pleading do not apply in administrative cases. When a fact is alleged, the party is on notice of all violations that might arise out of those facts. The Board concludes that it is proper to consider all of the issues in determining whether Applicant should be granted a license.

5. The parties argued at length whether Applicant misrepresented the facts by leaving one question unanswered on the application form. The Board concludes that merely leaving the answer to the question blank does not, by itself, constitute misrepresentation or fraud. The parties also argued whether applicant would have had to answer the question in the affirmative or negative in order to be truthful. Applicant argues that the question applies only to conduct related to the practice of respiratory therapy. Board counsel argues that the question is not so limited. The Board concludes that the question is not ambiguous, and is not limited to conduct occurring in the practice of respiratory therapy. If that were the case, the question would be meaningless for the many persons applying for a license who have never practiced respiratory therapy. The Board also finds that Applicant did act to conceal information from the Board. In making this finding, the Board considers the application in its entirety. Applicant did not

disclose her activity as an attorney or divulge in her application that she ever had a professional license to practice law, thus concealing the fact that the license was revoked and concealing the grounds for revocation. The Board finds and concludes that no reasonable person could believe that a history of disciplinary actions such as those in Applicant's past would be immaterial to the decision of whether a respiratory therapy license should be granted.

6. In light of the findings of fact stated above, the Board finds and concludes that there are substantial grounds to deny the application. Denial of Applicant's request for a license is discretionary.

7. In determining the extent to which Applicant is rehabilitated, the Presiding Officer allowed Applicant time to seek a psychological evaluation and to supplement the agency record with an evaluation report. The opinion was to be from a person who is licensed by the State of Kansas to render a psychological diagnosis. Applicant indicated a desire to provide that addition to the agency record. Applicant does not indicate as part of her request to withdraw the application whether the evaluation has been completed. The Board finds that without the supplemental information, there is a likelihood that the application for a license would be denied.

8. The Board believes that it is appropriate to grant the request to withdraw the application. In the event that Applicant submits an application in the future, the Board will expect an evaluation report from a person who is licensed by the State of Kansas to render a psychological diagnosis.

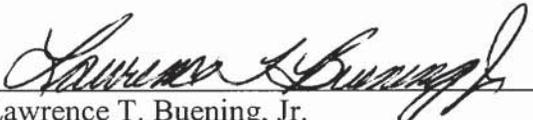
IT IS, THEREFORE, ORDERED that Applicant's request to withdraw her application is hereby granted.

PLEASE TAKE NOTICE that this is a final order. A final order is effective upon service. 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 the Board's Executive Director at 235 SW. Topeka Blvd., Topeka, KS 66603.

Dated this 14th Day of July 2005.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing order was served this 14th Day of July 2005 by depositing the same in the United States Mail, First-Class postage prepaid, and addressed to:

Gregory W. Vleisides
Catherine Donnelly
4006 Central -- Second Floor
P.O. Box 10084
Kansas City, MO 64171-0084

and by hand-delivery to the office of:

Kelli J. Benintendi
Associate Counsel
235 S. Topeka Blvd.
Topeka, KS 66603

