

EFFECTIVE AS A FINAL ORDER

DATE: 01/25/2019

FILED  
JAN 14 2019  
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

In the Matter of )  
 )  
DANIEL KILGORE, R.T. ) Docket No. 19-HA00018  
Application for License )  
To Practice Respiratory Therapy )

**PROPOSED DEFAULT ORDER DENYING APPLICATION FOR LICENSURE**

On the 14th day of December, 2018, the Application for License to Practice Respiratory Therapy of Daniel Kilgore, R.T. (Applicant) came on for hearing before the Kansas State Board of Healing Arts (Board). Susan Gering, Deputy Litigation Counsel, appeared on behalf of the Respondent Board. Applicant failed to appear.

Pursuant to the authority granted to the Board by 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 Proposed Default Order in the above-captioned matter. After reviewing the agency record, the evidence presented, and 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. Applicant submitted an application for a license to practice respiratory therapy on or about September 27, 2016.

2. Applicant's answers to questions regarding his criminal history on the licensure application prompted further background review. The Board received police reports from the [REDACTED] and were not reported on the Application. The incidents included Applicant being listed as [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

4. [REDACTED]

[REDACTED]

5. Litigation counsel for the Board filed a Response in Opposition to Application for License to Practice Respiratory Therapy (Response) on September 11, 2018. The Response alleged Applicant violated the Respiratory Therapy Act and regulations by failing to fully disclose his complete criminal history in violation of K.S.A. 65-5510(a)(1) and (2), K.A.R. 100-55-1(a)(5), and K.A.R. 100-55-5(h) and (q). The Response requested the Board deny the application.

6. In an Order of Continuance issued October 19, 2018, the Board continued the Conference Hearing scheduled for October 12, 2018 at Deputy Litigation Counsel's request to allow additional time to affect notice of the hearing to Applicant. A Notice of Hearing for a Conference Hearing during the December 14, 2018 Board meeting was sent to Applicant's known addresses on November 19, 2018.

7. Pursuant to K.S.A. 2013 Supp. 77-531, Licensee was served with a Notice of Conference Hearing to Licensee's mailing address via United States Mail, first-class postage prepared on or about November 19, 2018.

8. The Notice of Conference Hearing provided Licensee notice that any party who fails to attend or participate in the Conference Hearing or other state of a proceeding may be held in default.

9. Licensee failed to appear at the Conference Hearing held on December 14, 2018.

10. Pursuant to K.S.A. 77-516 and K.S.A. 2013 Supp. 77-520, Licensee is in default for his failure to appear at the conference hearing on December 14, 2018.

11. At the Conference Hearing, Deputy Litigation Counsel submitted an Affidavit of Non-Military Service stating that Applicant is not an active member of the military pursuant to the Servicemembers' Civil Relief Act of 2003.

12. Upon review of the agency record and after being fully advised in the premises, the Board finds and concludes that the facts and allegations set forth in the Board's Response in Opposition are undisputed and incorporated herein by reference.

13. In summary, the Response provides that Applicant's failure to disclose multiple criminal charges as requested on the application violated K.S.A. 65-5510(a)(1) in that he attempted to obtain a license by means of fraud, misrepresentation or concealment of material facts, and violated K.S.A. 65-5510(a)(2), as further defined by K.A.R. 100-55-5(h), in that he committed unprofessional conduct that is likely to deceive, defraud or harm the public. The Response also provided Applicant violated K.S.A. 65-5510(a)(2), as further defined in K.A.R. 100-55-5(q), as Applicant failed to furnish the Board, or to its investigators or representatives, any information legally requested by the Board.

14. K.S.A. 65-5510(a)(2) permits the Board to deny an application for license to practice respiratory therapy where the applicant for licensure has been guilty of unprofessional conduct, further defined by regulations adopted by the Board, which has endangered or is likely

to endanger the health, welfare or safety of the public.

15. The Board concludes that Applicant's failure to disclose his full criminal history on his application for licensure violates K.S.A. 65-5510(a) and K.A.R. 100-55-5(h) and (q), having committed an act or acts of unprofessional conduct and/or dishonorable conduct, having committed conduct likely to deceive, defraud, or harm the public, and having failed to furnish the Board, or to its investigators or representatives, any information legally requested by the Board.

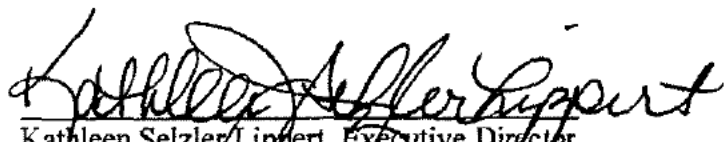
16. Based on the undisputed allegations set forth in the Response and evidence in the agency record, the Board concludes that denial of Applicant's application for a respiratory therapy license is warranted in the circumstances.

**IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS** that Applicant is in DEFAULT pursuant to K.S.A. 77-520.

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

**IT IS SO ORDERED THIS 14 DAY OF JANUARY, 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

**KANSAS STATE BOARD OF HEALING ARTS**

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

### **FINAL ORDER NOTICE OF RIGHTS**

**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 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 copy of the foregoing **FINAL ORDER DENYING APPLICATION FOR LICENSURE** was served this 25<sup>th</sup> day of January, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Daniel Kilgore, RT  
[REDACTED]

Garden City, KS 67846  
[REDACTED]

Daniel Kilgore, RT  
1709 Muriel NE  
Albuquerque, NM 87112

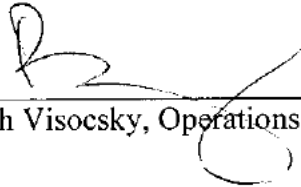
And a copy was hand-delivered to:

Susan Gering, Deputy Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Tucker Poling, General 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 the Executive Director.

  
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Beth Visocsky, Operations Manager