EFFECTIVE AS A FINAL ORDER

DATE: 10/7/2019

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED
SEP 16 2019
KS State Board of Healing Arts

In the Matter of

Kenneth D. Kinnan, P.A.
Kansas License No. 15-00968

Docket No. 20-HA 00025

SUMMARY ORDER

NOW ON THIS 16 day of Sept. 2019, this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A. 77-537.

Pursuant to K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within 15 days of service. Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Kenneth D. Kinnan, P.A. ("Licensee") was issued License No. 15-00968 on June 19, 2004, and has been entitled to engage in practice as a Physician Assistant in Kansas, having last renewed his license as Active on November 16, 2018.

2. Licensee's last known mailing address to the Board is: CONFIDENTIAL, CONFIDENTIAL. Licensee's e-mail address as provided to the Board is CONFIDENTIAL.

3. Licensee's license to practice as a Physician Assistant in Kansas is currently Active.

4. During all times relevant to the facts set forth in this Summary Order, Licensee held an Active license to practice as a Physician Assistant in Kansas.

5. On or about November 16, 2018, Licensee renewed his license online as Active. Licensee's renewal application stated that "As a condition of providing professional services in Kansas, whether or not physically located in Kansas, each person with an active license must pay the annual surcharge to the Kansas Health Care Stabilization Fund (KHCSF)." (emphasis in original). Licensee was asked "Have you paid the annual surcharge to the KHCSF?" to which he answered "yes".

6. Additionally, Licensee in response to his Continuing Education Year of 2018 answered "Yes" to Continuing Education Questions that indicated he had completed:

> At least 50 total hours of continuing education with a minimum of 20 Category I hours and a maximum of 30 Category II hours from 01-01-18 through 12-31-18, or that he was currently in good standing with National Commission on Certification of Physician Assistants ("NCCPA").

7. On May 15, 2019, and June 14, 2019, the Board requested Licensee to provide proof of compliance with required continuing education hours and the Kansas Health Care Stabilization Fund ("KHCSF"), as required by K.S.A. 40-3404. The Board included instructions on how to contact KHCSF. Licensee was also requested to provide proof of Continuing Medical Education ("CME") requirements. Licensee was warned failure to provide proof of compliance may result in a fine or suspension of Licensee's license to practice as a Physician Assistant in Kansas.

8. On or about July 15, 2019, after receiving no response to the May 15, 2019, and June 14, 2019 letters, the matter was referred to the Board's Litigation Department.

9. On or about July 30, 2019, another search of the KHCSF showed Licensee was still not fund compliant.

10. On or about August 1, 2019, Board Litigation Counsel, Susan Gering, again requested Licensee provide proof of compliance with KHCSF, with instructions on how to submit the proper forms for compliance and requested proof of compliance with Licensee's continuing medical education. The deadline to submit the requested information was August 15, 2019.

11. The August 1, 2019, correspondence was sent to Licensee's mailing address of record with the Board as well as to his Board listed email address.

12. On or about August 8, 2019, the Board received an email from Licensee stating, "I no longer work in Kansas. My last day of work in Kansas was December 27, 2018. I now work only in Missouri. I started working for Rockhill Orthopaedics on January 7, 2019. . . ." The e-mail from Licensee was sent from the e-mail address of CONFIDENTIAL.

13. In his August 8th email, Licensee also provide proof of his NCCPA certification transcript showing his compliance with the CME audit.

14. On or about August 14, 2019, Board staff emailed Licensee letting him know that while he was in compliance with the required CME audit, his Active license in Kansas still required him to have KHCSF coverage. He was again asked to provide proof of KHCSF compliance, or his license could be subject to an indefinite suspension and fine.

15. Licensee has not responded to Board inquiries regarding his KHCSF compliance, nor has he changed his licensure status to Inactive or Exempt.

16. Licensee has maintained an Active license to practice as a Physician Assistant despite his insurance coverage and fund compliance terminating on January 1, 2019.

17. Licensee is still not in compliance with the KHCSF despite continuing to hold an Active license to practice in Kansas.

Applicable Law

18. Under the Kansas Physician Assistant Act, K.S.A. 65-28a03(b),

> The request for renewal shall be on a form provided by the board and shall be accompanied by the renewal fee established pursuant to this section, which shall be paid not later than the renewal date of the license. The board, prior to renewal of an active license, shall require the licensee to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance as required by K.S.A. 40-3402, and amendments thereto, and has paid the premium surcharges as required by K.S.A. 40-3404, and amendments thereto.

19. K.S.A. 40-3402 states:

> (a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than $200,000 per claim, subject to not less than a $600,000 annual aggregate for all claims made during the policy period, shall be maintained in effect by each resident health care provider as a condition of active licensure or other statutory authorization to render professional service as a health care provider in this state, unless such health care provider is a self-insurer. . .
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> (b) Unless a nonresident health care provider is a self-insurer, such health care provider shall not render professional service as a health care provider in this state unless such health care provider maintains coverage in effect as prescribed by subsection (a), except such coverage may be provided by a nonadmitted insurer who has filed the form required by subsection (b)(1). This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on and after July 1, 1995.
>
> > (1) Every insurance company authorized to transact business in this state, that is authorized to issue professional liability insurance in any jurisdiction, shall file with the commissioner, as a condition of its continued transaction of business within this state, a form prescribed by the commissioner declaring that its professional liability insurance policies, wherever issued, shall be deemed to provide at least the insurance required by this subsection when the insured is rendering professional services as a nonresident health care provider in this state. Any nonadmitted insurer may file such a form.
> >
> > (2) Every nonresident health care provider who is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to subsection (a) of K.S.A. 40-3404 and amendments thereto directly to the board of governors and shall furnish to

the board of governors the information required in subsection (a)(1). . .

20. K.S.A. 40-3404(b):

In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222, and amendments thereto, until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be paid upon submitting documentation of compliance with K.S.A. 40-3402, and amendments thereto.

21. Under K.S.A. 65-28a05, a license may be revoked, suspended or limited, or the licensee may be publicly censured, upon a finding of the existence of any of the following grounds:

(a) The licensee has committed an act of unprofessional as defined in by rules and regulations adopted by the board;

(e) the licensee has violated any provision of this act, and amendments thereto.

22. K.S.A. 65-28a15:

(a) It shall be the duty of each licensee to notify the board in writing within 30 days of any changes in the licensee's home mailing address or primary practice mailing address.

(b) In addition to any other penalty prescribed under the physician assistant licensure act, the board may assess a civil fine for a violation of subsection (a) in an amount not to exceed $100 for a first violation and $150 for each subsequent violations. . .

23. K.A.R. 100-28a-5(a) requires:

Each physician assistant shall submit with the renewal application one of the following:

(1) Evidence of satisfactory completion of at least 50 continuing education credit hours during the preceding year. At least 20 continuing education credit hours shall be acquired from category I if 50 hours are submitted with the renewal application;

(2) evidence of satisfactory completion of at least 100 continuing education credit hours during the preceding two-year period. At least 40 continuing education credit hours shall be acquired from category I if 100 continuing education credit hours are submitted with the renewal application; or

(3) evidence verifying satisfactory completion of continuing education credit hours equivalent, in number and category, to those hours required by paragraph (a)(1) or (2), issued by a national, state, or local organization with continuing education standards that are at least as stringent as the board's standards.

24. K.A.R. 100-28a-8 defines unprofessional conduct as:

(m) failing to furnish the board, or its investigators or representatives, with any information legally requested by the board.

Conclusions of Law

25. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

26. The Board finds that Licensee violated K.S.A. 65-28a05(a), in that Licensee has committed unprofessional conduct in his failure to meet the requirements for KHCSF compliance in renewal, as set forth in K.S.A. 65-28a03(b).

27. The Board finds that Licensee has violated K.S.A. 65-28a05(e), in that Licensee has violated any provision of this act, and amendments thereto by failing to comply with K.S.A. 65-28a03, and K.A.R. 100-28a-5(a).

28. The Board finds Licensee has violated K.S.A. 65-28a05, as further defined by K.A.R. 100-28a-8, in that Licensee has failed to respond to Board audit requests in failing to provide KHCSF proof of coverage.

29. Based on the facts and circumstances set forth herein, the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law, and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee.

IT IS HEREBY ORDERED that Licensee is **INDEFINITELY SUSPENDED** until Licensee changes his status from Active to Inactive or Exempt, or until such time he provides proof of payment of premium surcharges required under K.S.A. 40-3404.

IT IS FURTHER HEREBY ORDERED that Licensee is assessed a **CIVIL FINE** in the amount of $100.00 for violations of the Kansas Healing Arts Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before October 15, 2019. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 16 **day of** Sept **2019.**

KANSAS STATE BOARD
OF HEALING ARTS

Kathleen Selzler Lippert
Executive Director

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** was served this 7th day of October, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Kenneth D. Kinnan, P.A.
CONFIDENTIAL

Kenneth D. Kinnan, P.A.
CONFIDENTIAL

Licensee

And a copy was hand-delivered to:

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

Office of the 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.

Susan Gile, Operations Manager