

**EFFECTIVE AS A
FINAL ORDER**

DATE: 5/13/14

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

FILED 
APR 29 2014
KS State Board of Healing Arts

In the Matter of)
TERRENCE LEE LAKIN, D.O.)
Application for License)
_____)

KSBHA Docket No. 12-HA00029

PROPOSED DEFAULT ORDER DENYING APPLICATION FOR LICENSURE

NOW, on this 11th day of April, 2014, comes on for conference hearing before the Kansas State Board of Healing Arts (“Board”), the application for license of Terrence Lee Lakin, D.O. (“Applicant”). Applicant fails to appear. Applicant’s counsel, Christopher Kalberg, appears in person and acknowledges that Applicant is in default. Reese Hays, Litigation Counsel, and Anne Baker Hall, Associate Litigation Counsel, appear on behalf of the Respondent Board.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *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.

Having the agency record before it, and considering the evidence admitted and the arguments of counsel, the Board finds, concludes and orders as follows:

Background Facts and Procedural History

1. On or about June 6, 2011, Applicant submitted an application for a license to practice osteopathic medicine and surgery in the State of Kansas. Such application was complete and filed with the Board on September 21, 2011.

2. On September 21, 2011, Associate Litigation Counsel filed a Response in Opposition to Applicant’s application for a license.

3. Applicant, a former Lieutenant Colonel, was previously employed as a physician in the United States Army.

4. In his application for a license, Applicant disclosed in his application that he was subject to a general court-martial in December of 2010, and convicted of one (1) Article 87 violation for missing movement, and three (3) specifications of an Article 92 violation for failing to obey a lawful order. Consequently, Applicant was sentenced to six (6) months confinement and dismissed from service in the United States Army.

5. Applicant's convictions stem from his refusal to deploy and his disobedience of orders to deploy to Afghanistan in order to support Operation Enduring Freedom by rendering medical services to military troops.

6. Board counsel filed a Response in Opposition to Applicant's application alleging Applicant had a felony conviction in violation of K.S.A. 65-2836(c) and that Applicant had committed unprofessional conduct in violation of K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12) for conduct likely to deceive, defraud or harm the public.

7. A conference hearing on Applicant's application and the Response in Opposition was scheduled for October 21, 2011, and a timely Notice of Conference Hearing was served upon Applicant.

8. A conference hearing was held before the full Board on October 21, 2011, in which Applicant appeared *pro se*. On November 21, 2011, the Board entered a Final Order Denying Application for Licensure ("Final Order"). The basis for denial in the Final Order was dishonorable conduct pursuant to K.S.A. 65-2836(b).

9. On December 7, 2011, Applicant filed a Petition for Reconsideration with the Board.

10. On December 22, 2011, The Board issued an Order Granting Reconsideration in Part and Modifying Final Order Denying Application for Licensure, and Denying Reconsideration in Part.

11. On January 18, 2012, Applicant filed a Petition for Judicial Review of Final Agency Action in Shawnee County District Court, appealing the denial of his application for licensure. Applicant asserted, in part, that the Board had failed to give proper notice that dishonorable conduct pursuant to K.S.A. 65-2836(b) was a basis for denial that the Board would consider with respect to his application.

12. On January 9, 2013, Shawnee County District Court Judge Frank J. Yeoman, Jr. issued a Memorandum Decision and Order denying in part and granting in part Applicant's Petition for Judicial Review. The Court found the Board did not give Applicant proper notice that dishonorable conduct would be disciplinary grounds for denial that the Board would consider. The Court remanded the matter to the Board for further proceedings on Applicant's application for licensure.

13. Following the Court's remand to the Board, a conference hearing was scheduled for February 8, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. The Notice of Conference Hearing notified Applicant that "dishonorable conduct" pursuant to K.S.A. 65-2836(b) was one of the disciplinary grounds for denial of licensure that the Board would consider.

14. On February 4, 2013, Applicant requested a continuance of the conference hearing which was granted by the Board that same day.

15. A conference hearing was scheduled for April 12, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. On April 8, 2013, Applicant requested a continuance of the conference hearing which was granted by the Board on April 10, 2013.

16. A conference hearing was scheduled for June 14, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. A continuance was subsequently granted on June 11, 2013.

17. A conference hearing was scheduled for August 9, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. On July 12, 2013, the parties jointly requested postponement of the conference hearing. An Order of Postponement was issued July 18, 2013.

18. A conference hearing was scheduled for October 11, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. On October 7, 2013, Applicant requested a continuance of the conference hearing which was granted by the Board on October 9, 2013.

19. A conference hearing was scheduled for December 13, 2013, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record. On December 2, 2013, Applicant requested a continuance of the conference hearing which was granted by the Board on December 4, 2013.

20. A conference hearing was scheduled for February 14, 2014, and a timely Notice of Conference Hearing was served upon Applicant and his counsel of record.

21. During the February 14, 2014 conference hearing before the Board, multiple exhibits of significant volume were offered and objected to by Board counsel. The Board determined that the proceedings should be continued in order for the parties to exchange exhibits and file written objections thereto. The conference hearing was continued to April 11, 2014.

22. A conference hearing was scheduled for April 11, 2014, at 3:30 p.m. and a timely Notice of Hearing was served upon Applicant and his counsel of record on March 18, 2014.

23. Applicant failed to appear at the conference hearing on April 11, 2014. Applicant's counsel appeared and stated that he had no objection to the Board holding Applicant in default. Applicant's counsel further stated that Applicant "would stand on his record."

Findings and Conclusions

24. The Board finds that Applicant is in default pursuant to K.S.A. 77-520. As such, the allegations against Applicant are deemed undisputed.

25. Applicant's refusal to deploy to Afghanistan to provide medical care to military troops constitutes dishonorable conduct pursuant to K.S.A. 65-2836(b) and is grounds for denial of licensure.

26. The Board finds that Applicant was provided with notice in the Notice of Conference Hearing served March 18, 2014, that dishonorable conduct would be a disciplinary grounds the Board would consider with respect to his application. Additionally, Applicant was provided further notice of dishonorable conduct as alleged disciplinary grounds in the Brief of Respondent filed March 10, 2014.

27. Applicant's refusal to deploy and disobedience of orders to deploy were based on Applicant's personal beliefs which questioned the validity of the President of the United States' citizenship and consequential right to hold office and issue valid military orders.

28. The Board concludes that Applicant's personal beliefs about the President of the United States have no relevancy to the issues in this matter. Rather, it is Applicant's actions underlying his conviction that bear on whether or not he is fit for licensure as an osteopathic physician in Kansas.

29. As evidence in support of his application, Applicant pointed to his unrestricted medical license in Colorado. Additionally, Applicant submitted letters from his prior military defense attorneys in support of his arguments that his conviction was for a uniquely military offense with no civilian equivalent. Applicant also submitted a June 2010 Officer Evaluation Report as evidence which stated that Applicant provided "excellent patient care."

30. Applicant urges the Board to consider his unblemished medical career and the purely military nature of his court martial conviction as mitigating factors. However, the Board does not view Applicant's conviction in a vacuum, but rather in light of the fact that Applicant's underlying conduct involved a failure to care for patients that he was charged with treating. The egregiousness of Applicant's conduct is not outweighed by his otherwise unblemished practice history or the uniqueness of his conviction.

31. It is noteworthy that while the June 2010 Officer Evaluation Report submitted by Applicant commended his clinical care, it also stated that "[h]is failure to follow orders represented a significant problem to the deploying unit and this Command."

32. Additionally, during Applicant's court martial proceedings, Major Craig Richard Dobson, the physician who replaced Applicant in deploying to Afghanistan, testified about the consequences of Applicant's refusal to deploy. Major Dobson testified that he had to deploy later than the rest of the medical officers, missed training in preparation for the deployment, and

had to deal with a “mass casualty” situation the second day after he arrived at the unit in Afghanistan.

33. Applicant’s arguments as to why the convictions should not bear on his fitness to hold licensure, and all other evidence offered in support of Applicant’s application were fully considered by the Board. The Board also fully considered the nature of the convictions, the real and potential effects of Applicant’s underlying conduct on his deploying unit, along with the inherent professional and ethical obligations of a physician in arriving at its decision.

34. Applicant’s refusal to deploy to Afghanistan to provide medical services in support of Operation Enduring Freedom due to his own personal beliefs represents a disregard for his professional duties and undermines the integrity of the medical profession. Of even more significance, Applicant’s actions jeopardized the health, safety and welfare of the military troops for which Applicant was charged with providing medical care.

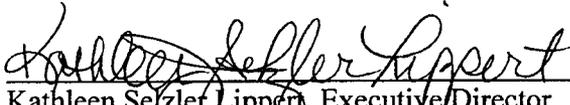
35. Denial of Applicant’s application for licensure is warranted due to the egregiousness of Applicant’s conduct underlying his court martial. Applicant’s conduct in this matter is not unlike an emergency physician called to the emergency room to see a patient, who refuses to come based on a belief that the call is inappropriate. While there may be substitute coverage available, the physician still has a professional and ethical obligation to see the patient. An individual’s personal convictions must not interfere with fulfillment of that fiduciary duty.

IT IS THEREFORE ORDERED that Applicant is in default pursuant to K.S.A. 77-520.

IT IS FURTHER ORDERED that Applicant’s application for licensure is hereby **DENIED**.

IT IS SO ORDERED THIS 28th DAY OF APRIL 2014, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert, Executive Director

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Proposed Default Order. Pursuant to K.S.A. 77-520, a party against whom a proposed default order is issued may file a written motion to vacate the order. A motion to vacate the proposed default order must be timely filed within seven (7) days following service of the proposed default order. If no timely motion to vacate the proposed default order is received and granted, the proposed default order becomes effective as a final order without further proceedings. Pursuant to K.S.A. 77-531, if served by mail, three (3) days are added to the time limits set forth above. Any such motion must be filed with the Board to the attention of Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

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 13th day of May, 2014 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Terrence Lakin, DO
5622 River View Lane
Pueblo, CO 81004

Christopher L. Kalberg
11184 Antioch, Ste. 355
Overland Park, KS 66210

Thomas Dawson
2300 S. 4th Street
Leavenworth, KS 66048

And a copy was hand-delivered to:

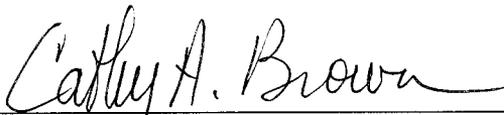
Reese Hays, Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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Anne Baker Hall, Associate Litigation Counsel
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Katy Lenahan, Licensing Administrator
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Kelli Stevens, General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
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And the original was filed with the office of the Executive Director.



Cathy Brown, Executive Assistant