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KS State Board of Healing Arts

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

In the Matter of)
Terrence Lee Lakin, D.O.,)
)
Application for Licensure)
_____)

KSBHA Docket No.12-HA00029

**ORDER GRANTING RECONSIDERATION IN PART AND MODIFYING FINAL
ORDER DENYING APPLICATION FOR LICENSURE, AND DENYING
RECONSIDERATION IN PART**

NOW on this 21st day of December, 2011, the Kansas State Board of Healing Arts (“Board”), by and through its Executive Director, Kathleen Selzler Lippert, a duly authorized Representative of the Board, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, and upon due consideration of the file and applicable statutes, and being otherwise duly advised in the premises makes the following determination upon Petitioner’s Petition for Reconsideration Pursuant to K.S.A. 77-529(a)(1):

I. Factual Background

Petitioner, a former Lieutenant Colonel, 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, Petitioner was sentenced to six (6) months confinement and dismissed from service in the United States Army. 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.

On approximately June 6, 2011, Petitioner submitted an application for a license to practice osteopathic medicine and surgery in the State of Kansas. Such application was deemed complete and filed with the Board on September 21, 2011. A conference hearing was held

before the full Board on October 21, 2011, in which Petitioner appeared *pro se*. On November 21, 2011, the Board entered a Final Order Denying Application for Licensure (“Final Order”).

On page 3 of its Final Order, the Board stated:

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 potentially jeopardized the health, safety and welfare of the military troops for which Applicant was employed to provide medical care.

The Board concluded that there was no dispute of material facts by the parties in this matter. The Board also found that Petitioner’s actions and conduct underlying his court-martial convictions constituted dishonorable conduct and that denial of his application for licensure was warranted due to the egregiousness of his conduct.

On December 7, 2011, Petitioner filed a Petition For Reconsideration Pursuant To K.S.A. 77-529(a)(1), claiming he was denied due process because he did not have notice that “dishonorable conduct” was an issue and because he was not allowed to present evidence regarding material facts in dispute. Petitioner also claims the Board’s decision was based upon erroneous factual conclusions and that the Board failed to adequately scrutinize whether Petitioner’s conduct was dishonorable in arriving at the decision to deny his application for licensure.

II. Analysis

In his Petition for Reconsideration, Petitioner specifically argues that paragraph four (4) of the Board’s Final Order contained an erroneous finding that Petitioner had been convicted of a fourth (4th) specification of an Article 92 violation, when Petitioner had only been convicted of three (3) such specifications. In support of his argument, Petitioner submitted new evidence in

the form of his Court Martial Order dated November 1, 2011, as Exhibit 1 to Petitioner's Petition for Reconsideration.

The Court Martial Order dated November 1, 2011, was not offered by Petitioner at the time of the conference hearing in this matter, nor was it likely in existence. The inclusion of a fourth (4th) specification was based upon official documentation of Applicant's convictions dated April 1, 2011, which was provided by Petitioner with his application. (See p. 42 of Application for Licensure) Upon review of the Court Martial Order dated November 1, 2011, contained in Exhibit 1 to Petitioner's Petition for Reconsideration, it is evident Applicant's final convictions consist of one (1) Article 87 violation and only three (3) specifications of Article 92 violations. The findings of paragraph four (4) of the Final Order should be modified to reflect that Petitioner was only convicted of three (3) specifications of Article 92 violations.

Petitioner further maintains that he was denied due process at his October 21, 2011, conference hearing. Petitioner first contends that Board counsel's Response In Opposition To Application For License To Practice Osteopathic Medicine and Surgery ("Response") did not include dishonorable conduct as grounds for the denial of his medical license, thereby, failing to provide him notice that dishonorable conduct was at issue in the matter. However, the statute cited in the Board's Response, K.S.A. 65-2836(b), is the very statute containing dishonorable conduct as grounds for denial of an application for licensure. As such, Petitioner received adequate notice.

Additionally, Petitioner claims that there were material facts in dispute and that he was not permitted to fully present evidence on the same. It is noteworthy that prior to the hearing, Petitioner received notice that his application would be heard in a conference hearing. Furthermore, Petitioner did not dispute his military convictions. Petitioner additionally takes

issue with his brother not being permitted to “testify” during the conference hearing. However, Petitioner’s brother sought to act as his legal representative, without adequate Kansas licensure as an attorney to appear before the Board.

In the course of the conference hearing, Petitioner presented arguments disputing those of Board counsel about the nature and significance of his conduct underlying his convictions. Petitioner presented oral argument in support of his contention that such convictions should not bear on his fitness to hold licensure in Kansas. Petitioner’s application included verification of his unrestricted medical license in Colorado. Petitioner provided letters from his prior military defense attorneys in support of his arguments. Petitioner also submitted an Officer Evaluation Report as evidence which stated that he provided “excellent patient care,” but “His failure to follow orders represented a significant problem to the deploying unit and this Command.” Petitioner’s arguments as to why the convictions should not bear on his fitness to hold licensure, and all other evidence offered in support of Petitioner’s application were fully considered by the Board. The Board also fully considered the nature of the convictions, the real and potential effects of Petitioner’s underlying conduct on his deploying unit, along with the inherent professional and ethical obligations of a physician in arriving at its decision.

Petitioner also disputed the language used by the United States Army Medical Command when his military convictions were reported by the Army to a third party, the National Practitioner Databank. Petitioner presented argument about the implications of the language in the report and his pending attempts to have the wording amended. However, Petitioner’s tangential argument on this point was not found to be relevant to the Board in its evaluation of the undisputed convictions and the underlying conduct involved. While the Board did not find

merit Petitioner's arguments, that does not equate to a denial of due process, nor is it indicative of a dispute of material facts.

Finally, Petitioner argues that the Board did not perform adequate consideration before determining that Petitioner's dishonorable conduct was adequate grounds to deny his application for licensure. The Board finds this argument is without merit. The Board's Final Order set forth its policy rationale in determining that Petitioner's dishonorable conduct underlying his convictions warranted denial of licensure. Petitioner'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. One's personal convictions must not interfere with fulfillment of that duty. Reconsideration is unwarranted on this issue.

III. Conclusion

Based on the new evidence presented by Petitioner in Exhibit 1 to his Petition for Reconsideration, the Board reconsiders paragraph four (4) of the Final Order and finds that it should be modified to accurately reflect Petitioner's convictions. Furthermore, the Board finds that reconsideration should be denied as to the remainder of the Final Order because Petitioner had adequate notice and opportunity to be heard, and Petitioner's other arguments do not have sufficient merit to warrant reconsideration.

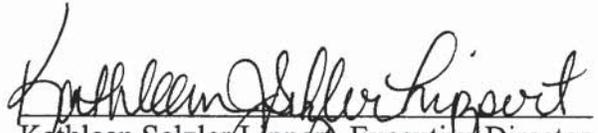
IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that Petitioner's Petition for Reconsideration is hereby **GRANTED IN PART** regarding the Board's finding contained in paragraph four (4) of the Final Order Denying Application for Reconsideration.

IT IS FURTHER ORDERED that paragraph four (4) of the Final Order Denying Application for Licensure is hereby **MODIFIED** as follows:

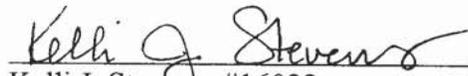
4. Applicant was subject to a general court-martial in December of 2010, and was convicted of one (1) specification of missing movement, and three (3) specifications of failing to obey a lawful order.

IT IS FURTHER ORDERED that Petitioner's Petition for Reconsideration is hereby **DENIED IN PART** regarding the remainder of the findings, conclusions and order contained in the Board's Final Order Denying Application for Licensure.

IT IS SO ORDERED THIS 21st DAY OF DECEMBER, 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


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

Prepared by:


Kelli J. Stevens, #16032
General Counsel

NOTICE OF 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. 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, the Board's Executive Director, at 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 **ORDER GRANTING RECONSIDERATION IN PART AND MODIFYING FINAL ORDER DENYING APPLICATION FOR LICENSURE, AND DENYING RECONSIDERATION IN PART** was served this 22nd day of December, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Terrence Lee Lakin, D.O.
confidential
Woodbine, MD 21797-7542

And a copy was hand-delivered to:

Stacy R. Bond, Associate Litigation 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:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Cathy Brown
Executive Assistant