FILED
AUG 29 2019
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	**Docket No.: 19-HA00103**
Emali K. McGee, O.T.A.	)	
Kansas License No. 18-01282	)	

FINAL ORDER

On August 9, 2019, the Kansas State Board of Healing Arts ("Board") held the conference hearing on the Petition for discipline filed against the occupational therapy assistant license of Emali K. McGee, O.T.A. (Licensee). Susan Gering appeared as litigation counsel on behalf of the Board. Licensee appeared in person, pro se.

A **PROTECTIVE ORDER** is hereby entered for all information confidential under 42 C.F.R. Part II, K.S.A. 65-2839a(d), K.S.A. 65-4915, K.A.R. 100-54-5(c), and K.S.A. 65-2898a.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, *et seq.*, the Kansas Occupational Therapy Practice Act, K.S.A. 65-5401, *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, the Board enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the arguments of the parties, and being duly advised in the premises, the Board makes the following findings, conclusions and orders.

FINDINGS OF FACT

On November 8, 2017, the Board received a complaint from a nursing home alleging Licensee falsified documentation for 10 patients on October 22, 2017. An internal investigation utilizing video footage determined Licensee's documentation and billing did not reflect the services provided. As a result, Licensee was terminated from employment on October 25, 2017.

On October 22, 2017 Licensee reported to the nursing home to see approximately 10 patients and provide occupational therapy services. Licensee documented and billed for occupational therapy services performed by her for the 10 patients. On October 23, 2017, a co-worker of Licensee at the nursing home was told by two patients without cognitive deficit that Licensee did not provide occupational therapy services. Based on discussions with the two patients, the co-worked reported the patient discussions and an internal investigation was initiated by the nursing home.

Video footage demonstrated Licensee did not see two patients at all, saw three patients for one minute or less, and the remainder were seen between 6 and 27 minutes. Despite this, Licensee documented care was provided to each patient, and patients were billed back to back for Licensee's

entire six-hour shift for up to 42 mins of care. Additionally, video footage showed Licensee leaving the nursing home three times, yet Licensee documented occupational therapy services were provided during this time and remained clocked in on her mobile documentation device.

Each patient who was to receive services from Licensee had Medicare Part A. As such, they were billed per minute of service (the nursing home removed these charges after concluding the investigation).

Licensee testified that she was ashamed, exhibited remorse, and did not deny any of the allegations against her. She stated she was under a lot of pressure from her employer to document minutes, but she now understood that pressure from her employers is preferable to being called before the Board. When asked what steps she has taken to correct her practice, she stated she now documents exactly what she does even if she can't provide all the minutes, and that she documents "refused" if the patient does not want services.

CONCLUSIONS

The Board has reviewed the entire agency record and considered comments of the parties at the hearing. The Board bases its conclusions on the agency record and the facts, law, and policy described above and below.

Licensee violated the Kansas Occupational Therapy Act as follows.

- Licensee committed unprofessional conduct in violation of K.S.A. 65-5410(a)(2) as further defined by K.A.R. 100-54-5(h) in that she was sanctioned or disciplined by a peer review committee or medical care facility for acts that would constitute grounds for discipline. As further explained below, documenting and billing for services not rendered constitutes grounds for discipline. Licensee was terminated by her employer for her actions.
- Licensee committed unprofessional conduct in violation of K.S.A. 65-5410(a)(2) as further defined by K.A.R. 100-54-5(o) in that Licensee's conduct likely to deceive, defraud, or harm the public when she failed to provide services to patients and billed for services not actually provided. Licensee's falsification of records deceives and defrauds the public by charging patients and insurance for occupational therapy services that were not provided. Licensee's conduct harms the public because patients did not receive occupational therapy care.
- Licensee committed unprofessional conduct in violation of K.S.A. 65-5410(a)(2) as further defined by K.A.R. 100-54-5(s) and K.A.R. 100-54-5(r) in that Licensee charged an excessive fee for services rendered and obtained a fee by fraud, deceit, or misrepresentation. By falsifying the amount of time she provided occupational therapy services to patients, Licensee provided documentation indicating compensation was due when it was not.

- K.S.A. 65-5410(a)(4) in that Licensee violated a lawful order or rule and regulation of the board.
- K.S.A. 65-5410(a)(5) in that Licensee violated a provision of the Kansas Occupational Therapy Practice Act.

SANCTIONS

In determining the appropriate sanctions, the Board considers the facts and circumstances unique to each case. Based on the agency record, the findings described above, the policy mandate given to the Board by the Kansas legislature to protect patient safety, and the aggravating and mitigating factors described below, the Board concludes that the appropriate sanctions are as described below. The Board, after considering the agency record in light of potential mitigating or aggravating factors, finds the following mitigating factors in this case:

- Licensee admitted to the allegations and made no attempts to explain away her misconduct.
- Licensee appeared genuinely remorseful and stated as much.
- At the time, Licensee was relatively new to practice.
- Licensee has no history of disciplinary action and has had no further complaints against her practice.
- Licensee has reformed her practice and now documents the services actually provided.

The Board determines the appropriate sanction against Licensee's license to engage in the practice of occupational therapy is as follows:

PUBLIC CENSURE

Licensee is hereby **publicly censured** for violating the Occupational Therapy Practice Act.

ETHICS EDUCATION/EXAMINATION

By September 30, 2019, Licensee shall successfully complete "Ethics and Jurisprudence: A Practical Application for OT Professionals 2018," course number 158, located at www.otcourses.com.

By October 31, 2019, Licensee shall successfully complete "Documenting Occupational Therapy Practice (3rd ed.)," course number 850a, located at www.otcourses.com.

Licensee shall send documentation of the successful completion of each require courses within 15 days of completion to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A,
Topeka, Kansas 66612
KSBHAcompliancecoordinator@ks.gov

Any hours earned towards continuing education shall be in addition to the continuing education hours required for renewal of licensure. Licensee shall be responsible for all expenses related to completing the require courses.

ESSAY

Following completion of the required courses, but not later than November 30, 2019, Licensee shall write and submit to the Board a 500-word essay related to the content of the courses, how they relate to her violations of the Occupational Therapy Practice Act, and how she will implement what she has learned into her practice. The essay will be subject to review by the Board. In the event the Board does not approve Licensee's submitted essay, the reasons will be outlined for Licensee. Licensee shall then submit an amended essay within 30 days.

ORDERS

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Emali K. McGee, O.T.A., license No. 18-01282, is: (1) **PUBLICLY CENSURED**; (2) ordered to complete the courses described above; and (3) ordered to submit an essay to the Board as described above.

IT IS SO ORDERED this 29 day of August, 2019.

KANSAS STATE BOARD OF HEALING ARTS

Kathleen Selzler Lippert, Executive Director

NOTICE OF APPEAL 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. Pursuant to K.S.A. 77-529, Respondent may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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 State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Order was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 29th day of August, 2019, addressed to:

Emali K. McGee, O.T.A.
CONFIDENTIAL

And delivered to:

Susan Gering, Litigation Counsel
Kansas 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.

Linda Shaner for
Susan Gile
Operations Manager