

FILED

JUL 14 2011

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of )  
SARAH ELIZABETH MCMILLAN, O.T.A. )  
 )  
Kansas License No. 18-00550 )  
 )

Docket No. 11-HA-00092

**FINAL ORDER ASSESSING CIVIL FINE**

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through its Executive Director, Kathleen Selzler Lippert ("Executive Director"), a duly authorized representative of the Board, in accordance with K.S.A 2010 Supp. 77-514, to conduct summary proceedings pursuant to K.S.A 2010 Supp. 77-537, pursuant to the authority in 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.*, hereby enters the following findings of fact, conclusions of law, and Final Order in the above-captioned matter:

**I. Findings of Fact**

1. Sarah Elizabeth McMillan, O.T.A. ("Licensee") was originally issued license number 18-00550 to practice as an occupational therapy assistant in the State of Kansas on September 4, 2001. Licensee's license is currently active.

2. Licensee's last known mailing address provided to the Board is: confidential  
confidential Holcomb, Kansas 67851.

3. On May 11, 2011, the Executive Director, in accordance with K.S.A. 2010 Supp. 77-514, and as authorized by K.S.A. 2010 Supp. 65-5410, issued a Summary Order against Licensee assessing a civil fine of \$350.00 for violation of the Occupational Therapy Practice Act. The Summary Order ordered Licensee to remit the assessed civil fine, in full, to the Board within thirty (30) days following the effective date of the Summary Order.

4. All facts set forth in the Summary Order filed in this matter on May 11, 2011 are hereby adopted by reference herein.

5. Pursuant to K.S.A. 77-542, the Summary Order notified Licensee that if a written request for a hearing was not filed within fifteen (15) days following service of the Summary Order, the Summary Order would become effective as a Final Order of the Board, without further notice, upon the expiration of the time for requesting a hearing. The Summary Order required any written request for hearing to be mailed to Kathleen Selzler Lippert, at 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

6. Pursuant to K.S.A. 2010 Supp. 77-531, the Summary Order was served upon Licensee by mailing a copy of the Summary Order to Licensee at Licensee's last known address of record with the Board, via United States Mail, first-class postage prepaid.

7. No written request for hearing was received by the Executive Director within fifteen (15) days following service of the Summary Order.

8. Pursuant to K.S.A. 77-530, the Summary Order became effective as a Final Order without further notice on May 30, 2011.

9. As of the date of this Final Order, Licensee has not remitted payment in the amount of \$350.00 to the Board for the civil fine assessed by the Summary Order.

## **II. Applicable Law**

1. Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*
2. Occupational Therapy Practice Act, K.S.A. 65-5401, *et seq.*
3. K.A.R. 100-54-5(o) defines "unprofessional conduct" as conduct likely to deceive, defraud, or harm the public.

4. K.S.A. 2010 Supp. 65-5410(a) states, in pertinent part:

The board may deny, refuse to renew, suspend, revoke or limit a license or the licensee may be publicly or privately censured where the licensee or applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct includes:

- (1) Obtaining a license by means of fraud, misrepresentation or concealment of material facts;
- (2) being guilty of unprofessional conduct as defined by rules and regulations adopted by the board ...

5. K.S.A. 2010 Supp. 65-5410(c) states, in pertinent part:

The board, in addition to any other penalty prescribed in subsection (a), may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for unprofessional conduct in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation. ...

### **III. Conclusions of Law**

1. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding.

2. The Summary Order filed in this matter on May 11, 2011 became effective as a Final Order without further notice on May 30, 2011.

3. The Board finds that Licensee engaged in the practice of occupational therapy assistance without being licensed from May 1, 2009 through April 22, 2010, and from August 1, 2010 through October 14, 2010.

4. By engaging in the practice of occupational therapy assistance without benefit of a proper license, Licensee engaged in conduct that could deceive, defraud or harm the public, in violation of K.A.R. 100-54-5(o).

5. Licensee has not remitted payment in the amount of \$350.00 to the Board for the fine assessed in the Summary Order.




#### **IV. Order**

**IT IS THEREFORE ORDERED** that the Summary Order filed in the above-captioned matter has become a Final Order.


**IT IS FURTHER ORDERED** that the \$350.00 civil fine assessed against Licensee in the Summary Order in this matter, for violations of the Occupational Therapy Practice Act, is hereby **immediately due and owing** to the Board. Payment in the form of a money order, or a check made out to "Kansas State Board of Healing Arts," shall be sent to the following: **Attention: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.**

**IT IS FURTHER ORDERED** that the Board shall maintain jurisdiction over this matter to issue any future order(s) deemed necessary and appropriate.

**IT IS SO ORDERED THIS 14<sup>th</sup> DAY OF JULY, 2011, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**

  
Kathleen Selzler Lippert  
Executive Director  
Kansas State Board of Healing Arts

Prepared and Approved by:

  
Randy E. Stookey, #21885  
Assistant General Counsel  
Kansas State Board of Healing Arts

### **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. Pursuant to K.S.A. 77-529, Licensee 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, 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 **Final Order Assessing Civil Fine** was served this 14<sup>th</sup> day of July, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Sarah Elizabeth McMillan, O.T.A.  
confidential

Holcomb, Kansas 67851

and a copy was hand-delivered to:

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

Melissa Massey, Compliance Monitor  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Stacy R. Bond, Associate Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

and an electronic courtesy copy was sent to:

Office of the General Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, KS 66612  
[mowens@ksbha.ks.gov](mailto:mowens@ksbha.ks.gov)

and the original was filed with the office of the Executive Director:

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

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MAY 11 2011

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

In the Matter of )  
SARAH ELIZABETH MCMILLAN, O.T.A. )  
 )  
Kansas License No. 18-00550 )  
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Docket No. 11-HA 00092

SUMMARY ORDER

NOW ON THIS 10<sup>th</sup> day of May, 2011, 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. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

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. Sarah Elizabeth McMillan, O.T.A. ("Licensee") was originally issued license number 18-00550 to practice as an occupational therapy assistant in the State of Kansas on September 4, 2001. Licensee's license is currently active.
2. Licensee's last known mailing address as provided to the Board at the time of her application for reinstatement is confidential Holcomb, Kansas 67851.
3. On or about October 18, 2010, the Board received an application from Licensee for reinstatement of her occupational therapy assistant license. Licensee's license had been cancelled for



failure to renew on May 1, 2009.

4. In her application, Licensee lists all professional activities since the cancellation of her license. Licensee states that she is employed by Summit Care, Inc. which is located in Garden City, Kansas. Licensee stated that she practiced as an Occupational Therapy Assistant in Kansas while her license was cancelled from May 1, 2009 through April 22, 2010 and from August 1, 2010 through October 14, 2010.

5. Also in Licensee's application is an explanation regarding her failure to renew. Licensee states that she became aware that her license was cancelled on October 14, 2010 and stopped working at that time.

6. Licensee's license was reinstated on December 16, 2010. Licensee practiced in Kansas from May 1, 2009 through April 22, 2010 and from August 1, 2010 through October 14, 2010 as an occupational therapy assistant without being properly licensed.

#### **Applicable Law**

7. K.S.A. 65-5410 states, in pertinent part: (a) The Board may deny, refuse to renew, suspend, revoke or limit a license or the licensee may be publicly or privately censured where the licensee or applicant for licensure has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Unprofessional conduct includes:

(2) being guilty of unprofessional conduct as defined by rules and regulations adopted by the board;

(c) The board, in addition to any other penalty prescribed in subsection (a), may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for unprofessional conduct in an amount not to exceed \$5000 for the first violation. . . .

8. K.A.R. 100-54-5. Unprofessional conduct; defined. "Unprofessional



conduct” means any of the following: (o) committing conduct likely to deceive, defraud or harm the public.

### **Conclusions of Law**

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

10. The Board finds that Licensee practiced as an occupational therapy assistant without being licensed from May 1, 2009 through April 22, 2010 and from August 1, 2010 through October 14, 2010.

11. The Board finds that by practicing as an occupational therapy assistant without being properly licensed, Licensee engaged in conduct that could deceive, defraud or harm the public.

12. That by continuing to engage in the practice of occupational therapy assistance from May 1, 2009 through April 22, 2010 and from August 1, 2010 through October 14, 2010, without being properly licensed, Licensee was in violation of K.S.A. 65-5410(a)(2) and K.A.R. 100-54-5 (o).

13. Based on the facts and circumstances set forth herein, it appears that 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 the 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, Sarah Elizabeth McMillan, O.T.A.

**IT IS, THEREFORE, ORDERED** that Licensee is hereby assessed a civil fine of \$350 due and payable within thirty days of the effective date of this Order.


### **NOTICE AND OPPORTUNITY FOR HEARING**

**PLEASE TAKE NOTICE** that this is a Summary Order. A party to whom a Summary Order is issued may file a written request for a hearing pursuant to K.S.A. 77-542 within 15 days following service of the Summary Order. Such written request shall also state the legal and/or factual basis upon which the party opposes this Order. If a hearing is not requested, the Summary Order shall become effective as a Final Order of the Board upon expiration of the time for requesting a hearing. A written request for hearing must be addressed and mailed to Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 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 10<sup>th</sup> day of May 2011.

Kansas State Board of Healing Arts

  
Kathleen Selzler Lippert  
Executive Director

**Certificate of Service**

I certify that the foregoing Summary Order was served this 11<sup>th</sup> day of May, 2011, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Sarah Elizabeth McMillan, O.T.A.  
confidential  
Holcomb, Kansas 67851

and a copy was hand-delivered to:

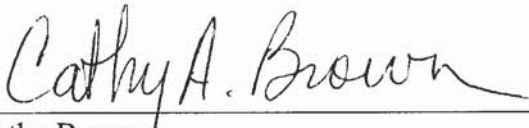
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Stacy R. Bond  
Associate Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

and the original was filed with the office of the Executive Director:

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