

FILED *CHD*

OCT 02 2009

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

KS State Board of Healing Arts

In the Matter of)
)
Michael Charles Nickell, RT)
License No. 16-02430)
_____)

Docket Number: *10-HA00037*

SUMMARY ORDER

NOW ON THIS *2nd* day of *October* ~~September~~, 2009, this matter comes before Jack Confer, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A. 77-537.

After reviewing 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:

1. Michael Charles Nickell, RT ("Licensee") was originally issued license number 16-02430 to practice as a respiratory therapist in the State of Kansas on July 1, 1999.
2. On or about April 30, 2009, Licensee submitted an application for renewal of their license.
3. Pursuant to K.S.A. 65-5512 and K.A.R. 100-55-7 each Licensee desiring to renew a respiratory therapy license must have completed at least 12 credits of continuing education and to provide proof of completion to the Board upon request
4. As part of the renewal process, Licensee certified that the rules regarding continuing education had been read, that compliance had been achieved, and that documentation of the continuing education would be maintained for a three-year period and produced to the Board upon request.

5. Licensee was randomly selected to provide verification of compliance with the continuing education requirements and on June 16, 2009, a letter was mailed to Licensee requesting that Licensee provide no later than July 20, 2009, the records relied upon when Licensee certified achievement of the required continuing education.

6. A second letter requesting proof of continuing education by August 7, 2009 was sent to licensee on July 21, 2009 by certified mail through the United States Postal Service.

7. The second request letter was signed for by the licensee on July 27, 2009.

8. Licensee failed to provide documented evidence of continuing education by the due date.

9. By failing to provide documented evidence of his continuing education, Licensee has violated K.S.A. 65-5510(a)(4), violating any lawful order or rule and regulation of the board, specifically K.A.R. 100-55-5(h) failing to furnish to the Board, or to its investigators or representatives, any information legally requested by the Board.

10. In addition to any other penalty prescribed under the Respiratory Therapy Practice Act, K.S.A. 65-5510 authorizes the Board to assess an administrative fine in an amount not exceeding \$5,000 for the first violation of the Respiratory Therapy Practice Act.

IT IS, THEREFORE, ORDERED Licensee is hereby fined \$100 for failure to respond to the Board's legal request for information. The fine is due within thirty days of the effective date of this order.

IT IS FURTHER ORDERED that licensee shall submit proof of the continuing education requirements for the previous year to the Board with fifteen days following service of this summary order.

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 within 15 days following service of the summary 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 request for a hearing must be addressed to Jack Confer, Executive Director, 235 South Topeka Boulevard, Topeka, Kansas 66603.

DATED this 2nd day of October, 2009.

KANSAS STATE BOARD OF HEALING ARTS



Jack Confer
Executive Director

CERTIFICATE OF SERVICE

I, do hereby certify that on the 2nd day of October, 2009, a true and correct copy of the above and foregoing was deposited in the United States mail, first class postage prepaid to the following:

Michael Charles Nickell, RT
305 Santa Fe Ave
Holcomb, KS 67851

and a copy hand delivered to the office of:

Kathleen Selzler Lippert
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 6603-3068

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

and the original filed with the office of the Executive Director.


Cathy Brown
Executive Assistant

FILED
AUG 12 2009
CAB

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

KS State Board of Healing Arts

In the Matter of)
)
Michael Charles Nickell, R.T.)
Kansas License No. 16-02460)
_____)

Docket No. 10-HA00001

**JOURNAL ENTRY OF SATISFACTION
OF REQUIREMENTS OF FINAL ORDER**

NOW on this 11th day of ~~March~~ ^{August}, 2009, this matter comes before John (Jack) Confer,

Executive Director, Kansas Board of Healing Arts ("Board"), concerning Licensee's satisfaction of all requirements contained in the Final Order which was filed on March 2, 2009. Wherefore, the Board finds as follows:

1. On or about August 5, 2009, the Board issued a Final Order regarding the license of Michael Charles Nickell, R.T. ("Licensee") to practice as a respiratory therapist in the state of Kansas. The Summary Order contained a provision suspending Licensee license to practice until such time as the application fee of \$80 and the return check fee of \$30 were paid. The Summary Order became effective as a Final Order on June 27, 2009.

2. Licensee paid the \$80 application fee and the \$30 return check fee on August 6, 2009.

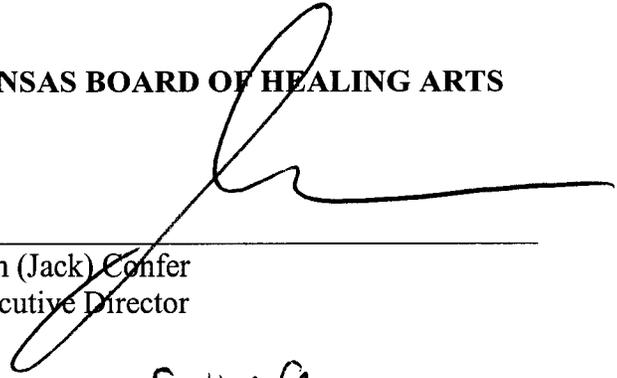
3. Licensee has satisfied all requirements of the Final Order and has no further obligation for compliance.

IT IS THEREFORE ORDERED that Licensee is hereby discharged from the requirements of the Final Order filed on August 5, 2009.

IT IS THEREFORE ORDERED that the suspension of Licensee's license which became effective on June 27, 2009 is hereby lifted effective August 6, 2009.

IT IS SO ORDERED.

KANSAS BOARD OF HEALING ARTS



John (Jack) Confer
Executive Director

8-11-09

Date

CERTIFICATE OF SERVICE

I, hereby certify that a true and correct copy of the foregoing **Journal Entry of Satisfaction** was served on the 12th day of August, 2009 by United States mail, first-class postage pre-paid and addressed to:

Michael Charles Nickell, R.T.
305 Santa Fe Ave.
Holcomb, KS 67851

and a copy was hand-delivered to:

Stacy R. Bond
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065

and the original was hand-delivered for filing with the office of the Executive Director:

Jack Confer
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Cathy A. Brown

Cathy Brown
Executive Assistant

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED *CAB*

AUG 05 2009

KS State Board of Healing Arts

In the Matter of)
Michael Charles Nickell, R.T.)
)
Kansas License No. 16-02430) Docket No. 10-HA00001
_____)

FINAL ORDER

NOW ON THIS 5th day of August, 2009, the above-entitled matter comes on before John (Jack) Confer, Executive Director of the Kansas State Board of Healing Arts. After reviewing the file and being duly advised in the premises, the Executive Director makes the following determinations.

1. On July 7, 2009, the Executive Director issued a Summary Order regarding the license of Michael Charles Nickell, R.T. ("Licensee") to practice as a respiratory therapist in the State of Kansas. The Summary Order contained a provision suspending his license until such time as the application fee of \$80 and the return check fee of \$30 are paid.

2. The Summary Order contained a notice that a written request for hearing could be filed within 15 days following service, but if no hearing is requested, the Summary Order would be come effective as a final order of the Board upon expiration of the time for requesting a hearing.

3. No hearing has been requested by any party nor has Licensee paid the application fee of \$80 and the return check fee of \$30; therefore the Summary Order became effective as a Final Order on July 27, 2009.

IT IS SO ORDERED.

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. Pursuant to K.S.A. 77-601 *et. seq.* a party to whom a Final Order is issued may petition for judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order. In the event a petition for judicial review is filed pursuant to K.S.A 77-613(e), the Agency Officer to be served on behalf of the Kansas State Board of Healing Arts is Jack Confer, Executive Director, Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, Kansas 66603.

Dated this 5th day of August 2009.

Kansas State Board of Healing Arts

John (Jack) Confer
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 5th day of August 2009, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Michael Charles Nickell
350 Santa Fe Ave.
Holcomb, KS 67851

and a copy was hand-delivered to:

Stacy R. Bond
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

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

John (Jack) Confer
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603



Cathy Brown
Executive Assistant

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED 

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KS State Board of Healing Arts

In the Matter of)
Michael Charles Nickell, R.T.)
)
Kansas License No. 16-02430)
_____)

Docket No. 10-HA00001

SUMMARY ORDER

NOW ON THIS 7th day of July, 2009, this matter comes before John (Jack) Confer, 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. Michael Charles Nickell, R.T. (“Licensee”) was originally issued license number 16-02430 to practice respiratory therapy in the state of Kansas on July 1, 1999. Licensee’s license is currently active.
2. Licensee’s last known mailing address as provided to the Board at the time of his application is 305 Santa Fe Ave., Holcomb, KS 67851.
3. On or about April 30, 2009, the Board received an application for renewal from Licensee for a respiratory therapist license.

4. As a part of the application package, Licensee submitted check number 1099 dated April 27, 2009, drawn on Bank of America, for the renewal fee of \$80.00.

5. As a result of the check Licensee submitted for the renewal fee, his application for renewal was approved and his license was renewed on April 30, 2009.

6. On May 8, 2009, the check submitted by Licensee for the \$80.00 renewal fee was returned to the Board for "Not Sufficient Funds".

7. On June 2, 2009, a letter was sent to Licensee as his mailing address of 350 Santa Fe Ave., Holcomb, Kansas requesting that Licensee remit the \$80.00 licensing fee and a \$30 returned check charge for a total of \$110.00. Further, more the letter requested that this payment be made by Cashiers Check or Money Order no later than June 30, 2009. No response from Licensee was received.

8. On June 16, 2009, a second notice was sent to Licensee, at all of his listed addresses, advising him that his check had been returned for insufficient funds and that he needed to remit a cashiers check or money order for \$110.00 by June 30, 2009 to cover the licensing fee and the returned check charge. This letter was sent by certified mail and was signed for by Licensee on June 19, 2009.

9. As of July 2, 2009, Licensee has not remitted his application fee or the return check charge.

Applicable Law

10. K.S.A. 65-5506 states, in pertinent part: (a) An applicant applying for licensure as a respiratory therapist shall file a written application on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(3) Fees: The applicants shall pay to the board all applicable fees established under K.S.A. 65-5509 and amendments thereto.

11. K.S.A. 65-5509 states, in pertinent part: (a) The board shall charge and collect in advance fees provided for in this act as fixed by the board by rules and regulations, subject to the following limitations:

Application fee, not more than \$80

12. K.S.A. 65-5510 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 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;
- (4) Violating any lawful order or rule and regulation of the board
- (5) Violating any provision of this act.

Conclusions of Law

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

14. The Board finds that Licensee violated K.S.A. 65-5510 by failing to pay the application fee as provided for in K.S.A. 65-5506 and K.S.A. 65-5509.

15. 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, Michael Charles Nickell, R.T.

IT IS, THEREFORE, ORDERED that: Licensee's license is hereby

SUSPENDED until such time as the application fee of \$80 and the return check fee of \$30 are paid. Such payment shall be made by cashiers check or money order only.

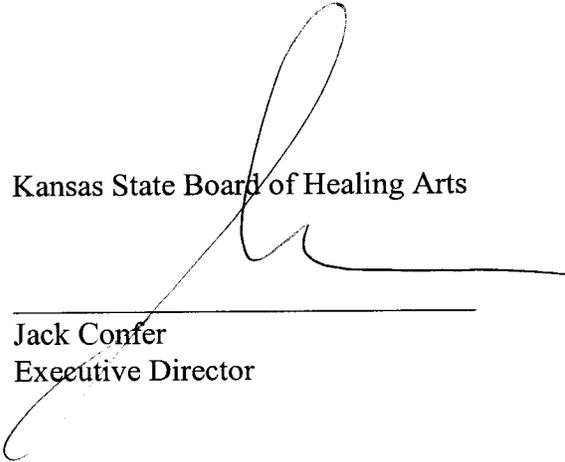
NOTICE AND OPPORTUNITY FOR HEARING

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 Jack Confer, Executive Director, Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, KS 66603.

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 7th day of July 2009.

Kansas State Board of Healing Arts



Jack Confer
Executive Director

Certificate of Service

I certify that the foregoing Summary Order was served this 7th day of July, 2009, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Michael Charles Nickell
350 Santa Fe Ave.

Holcomb, KS 67851

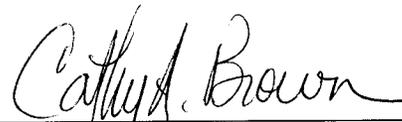
and a copy was hand-delivered to:

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Licensing Administrator
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Topeka, Kansas 66603

Stacy R. Bond
Associate Counsel
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Executive Director
Kansas State Board of Healing Arts
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Topeka, Kansas 66603



Cathy Brown
Executive Assistant