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APR 30 2013

KS State Board of Healing Arts

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

In the Matter of)
RICHARD PRESTON, M.D.)
)
Kansas License No. 04-14476)
_____)

Docket No. 13-HA00016

FINAL ORDER REVOKING LICENSURE

NOW on this the 30th day of April, 2013, the Kansas State Board of Healing Arts (“Board”), by and through its Executive Director, Kathleen Selzler Lippert, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, as amended, and upon due consideration of the agency record and the applicable statutes and otherwise being duly advised in the premises, makes the following determinations:

1. Licensee is licensed to practice medicine and surgery in the State of Kansas and presently holds an “exempt” license designation.
2. Licensee’s last known mailing address as provided to the Board is: **Confidential**
Confidential Great Bend, KS 67530.

PROCEDURAL HISTORY

3. On or about September 24, 2012, Petitioner filed a Motion **Confidential**
Confidential
4. At the time the Motion **Confidential** was filed, the evidence presented by Petitioner demonstrated that Licensee was actively engaged in the practice of medicine within the scope of his exempt license.
5. A conference hearing on the Motion **Confidential**
Confidential was scheduled for October 19, 2012, at which Licensee failed to appear and failed to

notify the Board prior to the conference hearing that he would be unable to attend, and was therefore held in default.

6. On or about October 24, 2012, the Board issued a Proposed Default Order **Confidential** which became effective as final Order on November 5, 2012, for Licensee's failure to file a motion to vacate the Default Order.

7. On or about October 19, 2012, *Ex Parte* Emergency Order of Suspension was issued in this matter by the Presiding Officer which emergently and temporarily suspended the exempt license of Licensee's based on the Board's finding that Licensee's continuation in practice presented an imminent danger to the public health, safety or welfare, **Confidential**

Confidential

8. A conference hearing on the *Ex Parte* Emergency Temporary Suspension was scheduled for December 19, 2012, at which Licensee failed to appear and failed to notify the Board prior to the conference hearing that he would be unable to attend, , and was therefore held in default.

9. On or about January 3, 2013, the Board issued a Proposed Default Order Continuing Emergency Suspension of License and Granting Leave to File Disciplinary Petition.

10. On January 4, 2013, a Petition was filed against Licensee's license seeking disciplinary action.

11. A conference hearing on the Petition was scheduled to take place in this matter on February 8, 2013, and a Notice of Hearing was sent to Licensee's last known mailing address on January 18, 2013.

12. Licensee failed to appear at the conference hearing on February 8, 2013, and failed to notify the Board prior to the conference hearing that he would not be able to attend.

13. Pursuant to K.S.A. 77-516 and K.S.A. 77-520, Licensee was held in default for his failure to appear at the conference hearing on February 8, 2013. As such, upon review of the agency record and after being fully advised regarding the matter, the Board found and concluded that the allegations against Licensee, as stated in the Petition, were deemed undisputed. The Board further found and concluded that there are grounds to revoke Dr. Preston's license to practice medicine and surgery in the State of Kansas pursuant to K.S.A. 65-2836(a), (r), and (k).

14. On February 20, 2013, the Board issued a Proposed Default Order against Licensee and copies of the Proposed Default Order were mailed to Licensee's last known address by United States Mail, first-class postage prepaid.

15. Pursuant to K.S.A. 77-520, the Proposed Default Order notified Licensee that the order would become effective as a Final Order of the Board seven (7) calendar days following service of the order, unless within that seven (7) day period Licensee filed a written motion with the Board requesting that the proposed default order be vacated.

16. Licensee failed to file a Motion to Vacate the Proposed Default Order within the seven (7) day period following service of the order.

FINDINGS, CONCLUSIONS AND ORDER

17. Upon review of the evidence during the conference hearing, the Board accepts the facts alleged in the Petition and adopts and incorporates such facts herein by reference.

18. Upon review of the evidence during the conference hearing, the Board concludes that Licensee's **Confidential** renders him unable to practice the healing arts with reasonable skill and safety to patients in violation of K.S.A. 65-2836(i).

19. Upon review of the evidence during the conference hearing, the Board concludes that Licensee failed to furnish the Board, its investigators or representatives with information legally requested by the Board, specifically an authorization which Board staff requested in order to obtain **Confidential** in violation of K.S.A. 65-2836(r).

20. Upon review of the evidence during the conference hearing, the Board concludes that Licensee violated a lawful order previously entered by the Board, **Confidential** **Confidential** in violation of K.S.A. 65-2836(k).

21. Upon review of the evidence during the conference hearing on the Petition, the Board finds that the facts do not support a conclusion that Licensee committed fraud or misrepresentation in securing a renewal license in violation of K.S.A. 65-2836(a), based on Licensee's explanation for his "no" answer to the renewal application question **Confidential** **Confidential**

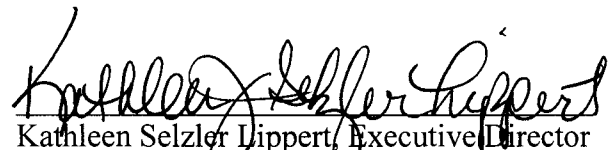
22. The Board finds the following aggravating circumstances are present in this case: Licensee's failure to cooperate with the Board's request **Confidential** Licensee's failure to comply with a Board order **Confidential** the potential for harm to patients; and the Board's inability to put remedial or protective measures in place due to the nature of Licensee's illness.

23. As a mitigating factor, the Board finds that Licensee has no fault **Confidential** and that **Confidential** may have contributed to the violations found herein. However, the Board concludes that the aggravating factors, most important of which is the need to protect patients, outweigh the mitigating circumstances in this matter.

24. The Board looks to the “Guidelines for the Imposition of Disciplinary Sanctions” for guidance in exercising its discretionary authority to determine the appropriate sanction in this matter. The Board concludes that evaluation of Licensee’s conduct under Category 7A of the sanctioning grid, when the aggravating and mitigating factors are considered, supports revocation of Licensee’s license.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee’s license to practice medicine and surgery in the State of Kansas is hereby **REVOKED**.

IT IS SO ORDERED THIS ^{30th}~~29th~~ **DAY OF** April, 2013, **IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**


Kathleen Selzler Lippert, Executive Director
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. 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 and correct copy of the above and foregoing **FINAL ORDER REVOKING LICENSURE** was served this 30th day of April, 2013, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Richard Preston, MD
Confidential
Great Bend, KS 67530

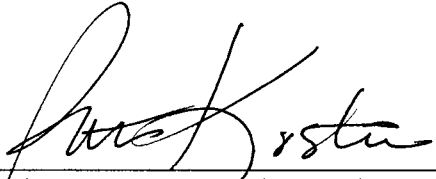
And a copy was hand-delivered to:

Seth Brackman, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Katy Lenahan, Licensing Administrator
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

for 
Cathy Brown, Executive Assistant