

FILED *ASile*
JUL 15 2019

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
)
MICHAEL D. RILEY, D.C.)
)
Kansas License No. 01-04728)

Docket No.: 19-HA00076

FINAL ORDER

On June 14, 2019, the Kansas State Board of Healing Arts (“Board”) held the conference hearing on the Petition for discipline filed against the chiropractic license of Michael D. Riley, D.C. (“Licensee”). Katie Baylie appeared as litigation counsel on behalf of the Respondent Board. Licensee appeared in person, pro se.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801, *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

The Board notes too that the filings in this case include a Petition and Amended Petition filed on behalf of the disciplinary panel of the Board, including exhibits 1-10 attached thereto.¹ Licensee did not file a response to the Petition or the Amended Petition, and did not present any exhibits or briefs for consideration by the Board.

The Board adopts and incorporates the following facts here by reference:

- Paragraphs 1-4 on page 1 of the Amended Petition;
- Paragraphs 2-11 on pages 2-5 of the Amended Petition.

¹ The Amended Petition and all exhibits thereto were accepted for filing and admitted without objection.

CONCLUSIONS

The Board has reviewed the entire agency record and considered the briefs, oral arguments, and 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.

Based on the findings of fact described above and agency record including but not limited to the statements made at the June 14, 2019 hearing, Licensee violated the Kansas Healing Arts Act as follows.

- Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(1) and K.S.A. 65-2837(c), in that Licensee solicited professional patronage through the use of fraudulent or false advertisements. The Board notes that the Healing Arts Act defines “false advertisement” as inclusive of advertisement that is found to be misleading in some respect. K.S.A. 65-2837(c). The Act directs that “[i]n determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations made.” *Id.* Under the facts of this case, including but not limited to the contextual background of Licensee’s prior Board actions referenced in the facts incorporated above and described in Exhibits 8 and 9 to the Petition, the Board finds that the advertisements were misleading. The Board notes that Licensee had been warned and sanctioned on prior occasions for failing to provide appropriate disclosure of material facts in his advertising under similar circumstances in the past, including but not limited to failing to identify himself and his profession, which the Board notes, for example, was again omitted from the advertisement contained in Exhibit 5 of this case.
- Licensee violated K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(13), in that Licensee made a false or misleading statement regarding his skill or the efficacy or value of the treatment or remedy prescribed by licensee. Again, given Licensee’s history of Board actions relating to improper advertising of “pain free” treatment outcomes, the Board finds the advertisement in this case to be misleading when considered in full context in regard to “pain free” treatment outcomes.
- Licensee violated K.S.A. 65-2836(b), as defined by K.S.A. 65-2837(b)(12) in that Licensee has committed conduct that is likely to deceive, defraud, or harm the public. For the reasons described and incorporated above, Licensee’s conduct under the particular facts and circumstances of this case was likely to deceive the public.

SANCTIONS

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 aggravating and mitigating factors in this case:

- Licensee's history of similar misconduct and his failure to ensure his advertising provides appropriate disclosures and avoids material that is likely to mislead patients as to the nature of the treatment, the identity and profession of the provider, and/or the treatment outcomes to be expected, indicates a concerning pattern of repeated failure to conform his conduct to known regulatory requirements and expectations of candor for professional advertising by those licensed to practice the healing arts in Kansas. This also suggests that prior sanctions have been insufficient to motivate rehabilitation and compliance. This is a significant aggravating factor in this case and outweighs the mitigating factor described below.

- Licensee was generally cooperative when confronted by the investigator in this case and agreed to make modifications to his advertising to make appropriate disclosures and revisions. However, under the circumstances of this case, this provides only slight mitigation and is outweighed by the aggravating factor described above due to Licensee's pattern of failure to conform to advertising requirements.

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

SUSPENSION

Licensee's License is **SUSPENDED** for a period of 90 days for violations of the Kansas Healing Arts Act.

FINE

Licensee is hereby ordered to pay a FINE in the amount of **SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)** for violations of the Kansas Healing Arts Act.

Such fine shall be paid in full, to the Board on or before December 31, 2019. Licensee shall make all payments payable to the "Kansas State Board of Healing Arts" and send all payments to the attention of:

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

ETHICS EDUCATION/EXAMINATION

Licensee shall enter into, complete, and pass all five (5) topic areas of the Essay Examination of Ethics and Boundaries Assessment Services, LLC on or before October 31, 2019, unless otherwise approved by the Board. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. The results shall be sent to:

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

On or before September 1, 2019, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered with the Ethics and Boundaries Assessment Services, LLC (“EBAS”) to take the Essay Examination.

ORDERS

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Michael D. Riley, D.C., license No. 01-04728, is: (1) **SUSPENDED** for a period of 90 days beginning on July 18, 2019; (2) **FINED** in the amount of \$7,500.00; and (3) ordered to complete the ethics education/examination described above.

IT IS SO ORDERED THIS 15 DAY OF JULY, 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

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 15th day of July, 2019, addressed to:

Michael D. Riley, DC



Licensee

And delivered to:

M. Katie Baylie, Associate Litigation Counsel
Attorney for Petitioner
Kansas 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.



Susan Gile
Operations Manager