

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of)
)
JOHN ERASMO SENA, D.C.)
Kansas License No. 01-04346)
_____)

Docket No. 03-HA-46

FINAL ORDER

NOW ON THIS Seventh Day of June 2003, this matter comes on for review of the Initial Order issued by Ms. Betty McBride, Presiding Officer. Shelly R. Wakeman, Disciplinary Counsel, appears for Petitioner. Respondent John Erasmo Sena, D.C. does not appear.

Having the agency record before it, the Board adopts the findings of fact and conclusions of law in the Initial Order, and makes additional findings of fact and conclusions of law numbers 10-11. The Board modifies the Initial Order, adding a fine in the amount of \$2000 and extending the suspension from 30 to 90 days. The findings of fact, conclusions of law and order of the Board are as follows:

1. This matter arose out of Respondent's request to change his license designation from exempt to active, and out of the Board's Petition and Answer opposing the request.
2. The material facts are not in dispute. A conference proceeding is appropriate when the material facts are not in dispute.
3. Respondent was initially granted a license to practice chiropractic in February 1996. His license has been designated as exempt since January 17, 2002. As provided at K.S.A. 65-2809(f), the exempt license designation grants all of the privileges

of licensure, but does not allow the licensee to regularly engage in the practice of a branch of the healing arts, and does not allow the licensee publicly to represent that the licensee does regularly engage in professional practice. In his request for exempt status, Respondent identified his anticipated professional activities as providing patient care as a charitable health care provider.

4. Respondent engaged in regular professional practice while in the exempt status. He saw patients on twenty-two days between the dates of February 21, 2002 and September 26, 2002 in the office of James T. Brady, D.C. in Lawrence, Kansas. Dr. Brady was not present on the dates that Respondent saw patients in Dr. Brady's office. Respondent saw patients while in the employment of H.L. Lane, D.C., who does business as Traveling Chiropractors International (TCI), an unincorporated business. H.L. Lane is not licensed to practice chiropractic in Kansas, and TCI is not authorized to do business in Kansas. Dr. Brady had entered into a contract with TCI for temporary staffing.

5. Respondent willfully exceeded the scope of his exempt license by providing services in Dr. Brady's office. This constitutes grounds for disciplinary action as provided by K.S.A. 65-2836(f). Additionally, K.A.R. 100-10a-6(a) prohibits a holder of an exempt license from engaging in professional activities that are not disclosed to the Board. Breach of this rule is unprofessional conduct, as defined at K.S.A. 65-2836(k), and in violation of K.S.A. 65-2836(c).

6. During the time that Respondent provided professional services while his license was in the exempt status, Respondent did not maintain professional liability insurance or participate in the health care stabilization fund, as required by K.S.A. 40-3402. The Presiding Officer concludes that Respondent violated K.S.A. 65-28236(y).

7. Respondent applied for a position with the University of Health Sciences in Kansas City, Missouri. As part of his effort to seek employment, he submitted curriculum vitae that indicated he had obtained the Doctor of Osteopathy degree in 1991 from the College of Osteopathic Medicine in Des Moines, Iowa. Respondent had attended that school, but did not obtain a degree.

8. Respondent's act of falsely stating his credentials violates the healing arts act in several respects. Respondent is deemed to have engaged in the practice of osteopathic medicine and surgery by representing his degree, as provided by K.S.A. 65-2870(a) and thus has engaged in a branch of the healing arts for which he is not licensed, in violation of K.S.A. 65-2836(g). This was a false, fraudulent or deceptive statement in a document connected with the practice of the healing arts, and constituted unprofessional conduct, which is grounds for discipline under K.S.A. 65-2836(b), as defined at K.S.A. 65-2836(b)(17).

8. Respondent's actions were not the result of ordinary neglect, but rather were willful.

9. There is no dispute that, other than the twenty-two days on which he performed professional services in Dr. Brady's office, Respondent has been out of professional practice since January 2002. There is a bona fide question as to his current ability to practice chiropractic with reasonable skill and safety. In order to protect the public, Respondent should take and pass the special purpose examination in chiropractic, commonly referred to as SPEC, prior to his license being changed to the active designation.

10. Costs in this matter should be assessed against Respondent in the amount of \$443.40.

11. The Board notes that this matter was initiated January 24, 2003. At that time, Respondent had an exempt license that was current. Respondent's license expired on December 31, 2002, but by operation of statute he was given a grace period of 30 days. He failed to submit an application for renewal, and his license was canceled February 1, 2003. The Board concludes that because jurisdiction was obtained prior to the cancellation of the license, jurisdiction continued throughout the proceeding. The Board further concludes that this order will take effect upon reinstatement of Respondent's license.

IT IS, THEREFORE, ORDERED that following reinstatement of Respondent's license and upon proof of successful completion of the SPEC, Respondent's license shall be changed from exempt to active.

IT IS FURTHER ORDERED that for the violations of the healing arts act occurring while Respondent possessed a license designated as exempt, Respondent is hereby censured, and Respondent's license is suspended for 90 days, commencing on the date that he is granted a license designated as active. Additionally, Respondent is fined \$2000, to be paid within one year following the date Respondent's license is reinstated.

IT IS FURTHER ORDERED that costs in this matter are assessed against Respondent in the amount of \$443.40. The costs are to be paid within 30 days following the date Respondent's license is reinstated.

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

