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CAB

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
Kyle M. Sheahon, D.C.)
)
Kansas License No. 01-05701) Docket No. 16-HA00096
)
_____)

FINAL ORDER SUSPENDING LICENSE

NOW on this 10th day of June 2016, comes on for conference hearing, before the Kansas State Board of Healing Arts, the Petition requesting discipline against the chiropractic license of Kyle M. Sheahon, D.C. (“Licensee”) and the *Ex Parte* Emergency Order of Suspension issued April 22, 2016. Jane Weiler, Associate Litigation Counsel appears on behalf of the Board’s Disciplinary Panel (“Petitioner”) Licensee appears in person and by and through counsel, Diane L. Belquist, of Joseph & Hollander, P.A. Licensee waives the participation of Board member, Mr. Macias, who served as the Presiding Officer that issued the *Ex Parte* Emergency Order of Suspension. Licensee also waives the participation of the Board members serving on the Disciplinary Panel for this case, Dr. Leinwetter, Dr. Settich, Dr. Templeton, and Dr. Webb.

Pursuant to the authority granted to the Board by the 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 hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, receiving evidence, hearing the testimony of Licensee, the arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

Findings of Fact

1. On February 10, 2015, Licensee entered into a Consent Order (“2015 Consent Order”) with the Board in KSBHA Docket No. 15-HA00063, as a condition to being granted a license to practice chiropractic in Kansas. The 2015 Consent Order was entered to resolve impairment concerns **Confidential**

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paragraph 20 of the 2015 Consent Order, Licensee specifically agreed that “[he] violated K.S.A. 65-2836(i), in that, without monitoring, [he] has the inability to practice the healing arts with reasonable skill and safety to patients by reason of use of alcohol, drugs or controlled substances.”

2. **Confidential**

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3. On January 21, 2016, an Amended Petition requesting disciplinary action was filed against Licensee’s license in KSBHA Docket No. 16-HA000047. The Amended Petition alleged that Licensee had failed to comply **Confidential**

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9. On April 8, 2016, Licensee appeared before the Board for approval of a new Consent Order (“2016 Consent Order”) in KSBHA Docket No. 16-HA00047 to resolve the allegations of noncompliance in the Amended Petition.

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11. During the presentation of the 2016 Consent Order to the Board on April 8, 2016, Licensee testified under oath that **Confidential** Licensee further assured the Board that he was “taking it seriously and that maybe I didn’t as much as I should have in the past.”

12. The Board approved the 2016 Consent Order which imposed a fourteen (14) day suspension of Licensee’s chiropractic license. The 2016 Consent Order also requires **Confidential** **Confidential** and completion of a professional ethics course within one (1) year from the date the Consent Order is approved.

13. **Confidential**
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14. On April 21, 2016, Associate Litigation Counsel filed a new Petition for discipline against Licensee’s license and a Motion for an *Ex Parte* Emergency Order of Suspension of Licensee’s license, which are the subject of this Final Order. Both the Petition and Motion allege that Licensee violated a lawful order of the Board, namely the 2015 Consent Order which was still in effect at the time of **Confidential** Additionally, both allege that Licensee committed conduct likely to deceive, defraud or harm the public by failing to be honest with the Board during his testimony on April 8, 2016, **Confidential** and by failing to comply with the 2015 Consent Order which was intended to protect the public. The Motion alleges that Licensee’s continuation in practice constitutes an immediate danger to the public and requested an emergency suspension of Licensee’s license.

15. On April 22, 2016, Board Presiding Officer, Richard Macias, granted the Motion and issued an *Ex Parte* Order of Emergency Suspension and Order for Emergency Proceedings.

16. A conference hearing before the full Board on the Petition and on the issue of whether the *Ex Parte* Suspension should remain in effect was held on June 10, 2016.

Discussion

17. The material facts regarding Licensee’s failure to comply with the 2015 Consent Order and Licensee’s misrepresentation to the Board about **Confidential** are not disputed. The contested issues in this matter revolve around the discipline to be imposed based on Licensee’s conduct.

18. Associate Litigation Counsel argues that Licensee’s conduct is dishonorable and without integrity, and that it undermines the public’s perception of the profession. Additionally, Associate Litigation Counsel asserts that Licensee’s behavior in attempting to deceive the Board about **Confidential** is particularly egregious given the Board’s mission to protect the public.

19. At the conference hearing, Licensee testified that his actual **Confidential** **Confidential** and he admitted that he lied during his testimony before the Board on April 8, 2016. Licensee further testified that the questions posed to him by the Board at the Board meeting on April 8, 2016, provided him with a “wake up call.” He also admitted to making “an immature and irresponsible decision to violate.”

20. **Confidential**
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Licensee entered into the 2015 Consent Order to assure the Board and public of his safety to practice, he was bound to meet those terms.

21. Licensee's counsel offers evidence in the form of affidavits from Licensee's father and one of Licensee's patients, and written statements from the chiropractor with whom Licensee shares office space, and Licensee's girlfriend. Generally, the affiants and other individuals express their confidence in Licensee's abilities, their lack of observation of any concerning behavior by Licensee, and their positive opinions about Licensee's commitment to his profession. While noting the general nature of the statements and that they were not subject to cross-examination due to the nature of conference hearing proceedings, the Board considers the affidavits and statements to be mitigating evidence which, in part, may support a sanction less than revocation of licensure.

22. When the Board enters into an agreed order with a licensee requiring Confidential and monitoring, the Board warrants to the public that, with those provisions in place, that the licensee is as safe to practice as any other. The Board's ability to adequately safeguard the public from impaired practitioners is grounded in compliance with and enforcement of Board orders. Noncompliance with such orders undermines the Board's assurance to the public it serves and puts the public at risk for being subject to impaired practice. Licensee's misrepresentation to the Board under oath about Confidential further compounds the situation because the Board detrimentally relied on Licensee's statements in its decision to approve the 2016 Consent Order.

23. Licensee's repeated noncompliance, coupled with his misrepresentation to the Board about **Confidential** may be indicative of a larger problem **Confidential**. For this reason, Licensee's violations do not represent conduct which is isolated from **Confidential**. The appropriate discipline for Licensee's violations must factor in that the purpose of the 2015 Consent Order was to address **Confidential**. Violating his **Confidential** requirement and lying to the Board about **Confidential** warrant disciplinary measures that are not only punitive in nature, but also continue to protect the public. Additionally, if the Board does not fully revoke Licensee's license, it must impose further remedial measures to ensure that Licensee will be safe to practice.

Conclusions of Law

24. Pursuant to K.S.A. 77-524(f)(2), the Board takes official notice of the agency record in KSBHA Docket No. 15-HA00063 and Docket No. 16-HA00047.

25. The Board concludes that Licensee violated a lawful order of the Board previously entered by the Board in violation of K.S.A. 65-2836(k), **Confidential**, **Confidential** thus violating his 2015 Consent Order in KSBHA Docket No. 15-HA00063.

26. The Board concludes that Licensee committed conduct likely to deceive, defraud or harm the public which constitutes unprofessional conduct in violation of K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(b)(12), by his failure to adhere to the terms of his 2015 Consent Order which were imposed to protect the public from possible impaired practice and by his misrepresentation to the Board on April 8, 2016, about his actual **Confidential**.

27. The Board concludes that the nature and gravity of Licensee's violations, Licensee's past disciplinary action, abuse of trust, and impact on the public's perception of protection are aggravating factors in this matter. The Board further concludes that the fact that Licensee is relatively young, naïve and new to the chiropractic profession, coupled with the positive expressions of confidence in his professionalism and support from others, are mitigating factors, in that they suggest a potential for rehabilitation.

28. In evaluating this matter under the Board's 2008 "Guidelines for the Imposition of Disciplinary Sanctions," the Board concludes that Licensee's offenses fall under category 2A in the sanctioning grid. Licensee's actions are misconduct that is potentially harmful to patients and has misled the Board and been disruptive to Board processes. The Board's disciplinary goal is to punish Licensee and further protect the public. In light of Licensee's past Board action and the aggravating circumstances set forth above, the presumed level of discipline would be revocation. However, the Board gives significant weight to the mitigating factors present in this matter. Additionally, Licensee's testimony during the conference hearing indicates that he may be capable of overcoming his past impulsive and immature decisions so that he may continue to hold the privilege of being a licensed chiropractor in Kansas. Therefore, the Board concludes that a suspension of licensure for at least ninety (90) days is appropriate, coupled with additional remedial provisions aimed at furthering Licensee's rehabilitation from his past misconduct and ensuring public safety.

29. The Board further concludes that, given the suspension imposed by this Final Order, consideration of whether the emergency suspension should remain in place is no longer necessary.

IT IS THEREFORE ORDERED that Licensee's license to practice chiropractic in the State of Kansas is hereby SUSPENDED for a period of at least ninety (90) days, commencing June 10, 2016.

IT IS FURTHER ORDERED that this Final Order shall supersede the *Ex Parte* Order of Emergency Suspension, which shall no longer be in effect.

IT IS FURTHER ORDERED that consideration by the Board of any motion by Licensee to terminate the suspension of his license the Board shall include evidence of:

a. **Confidential**

b. Completion of a professional ethics course which is pre-approved by Board member designee, David Laha, D.P.M. A request by Licensee for approval of professional ethics course shall be filed with the Board with a copy sent to the attention of David Laha, D.P.M. in care of General Counsel for the Board. The Board member designee has the discretion to consider approval of one of the two courses listed in paragraph 56 of the 2016 Consent Order that Licensee has the choice of completing; and

c. Licensee's continuous adherence and compliance with **Confidential** dated January 15, 2016.

IT IS FURTHER ORDERED that if the Board grants a request to terminate the suspension of Licensee's license, the Board may impose additional requirements as terms of probation on Licensee's license as are determined to be warranted in the circumstances.

IT IS FURTHER ORDERED that the terms of the 2016 Consent Order shall continue to remain in force and effect.

IT IS SO ORDERED THIS 18 DAY OF JULY, 2016, 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, 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, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

18th I, the undersigned, hereby certify that I served a true and correct copy of the foregoing this day of July, 2016, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Kyle M. Sheahon, D.C.
Confidential
Salina, Kansas 67401

Diane L. Bellquist
Joseph, Hollander & Craft, LLC
1508 Topeka Blvd.
Topeka, KS 66612

and a copy was delivered to:

Jane Weiler, Associate Litigation Counsel
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:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level, Ste. A
Topeka, Kansas 66612


