

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

FILED *File*
SEP 06 2019
KS State Board of Healing Arts

**In the Matter of
KEZIA SHINE, D.C.**

Kansas License No.: 01-05327

KSBHA Docket No. 16-HA00031

FINAL ORDER

On August 9, 2019, this matter came before the Kansas State Board of Healing Arts ("Board") for a Conference Hearing to determine the terms of probation on the license of Kezia Shine, D.C. ("Licensee") to practice Chiropractic that should be entered by the Board pursuant to the April 11, 2019 and June 19, 2019 Orders of the district court in case no. 18CV2797. Susan Gering, Litigation Counsel, appeared to present the position of the disciplinary panel. Dr. Balderston, Dr. Hutchins, and Mr. Kelly were recused.

Under 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, ("KAPA"), K.S.A. 77-501 *et seq.*, the Board enters this Final Order. 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.¹

PROCEDURAL HISTORY

Kezia Shine, D.C. (Appellee) is a Doctor of Chiropractic in Kansas whose practice focuses on pregnant women. On November 17, 2015, a Petition for disciplinary action was filed with the Kansas State Board of Healing Arts (Appellant) against Dr. Shine's license to practice chiropractic. The five (5) day formal evidentiary hearing before an Administrative Law Judge ("ALJ") appointed by the Office of Administrative Hearings ("OAH") was held in 2017. On January 22, 2018, the ALJ issued her Initial Order, finding multiple violations of the Healing Arts Act and recommending suspension of Appellee's license, \$5,000 fine, probation to be determined by the Board upon completion of suspension, and assessing costs against Dr. Shine.

Both parties sought de novo review of the Initial Order by the Board of Healing Arts pursuant to K.S.A. 77-527. The Board conducted a review of the Initial Order. Following briefing by both parties, oral arguments on the Board's review of the Initial Order were held on April 13, 2018. After examining the agency record and hearing the arguments of the parties, the Board issued its Final Order Revoking Licensure and Assessing Costs ("Final Order") on May 10, 2018. The

¹ In advance of the oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Board in rendering its decision.

Board's Final Order found Dr. Shine's treatment of three pregnant patients 1) demonstrated a pattern of manifest professional incompetency through multiple instances of gross and ordinary negligence; and 2) demonstrated that she had engaged in unprofessional conduct by willfully and repeatedly failing to comply with Board rules and regulations regarding record keeping, willfully and repeatedly practicing in violation of the standard of care of a chiropractor and outside the authorized scope of chiropractic practice, and engaging in conduct likely to deceive, defraud, or harm the public. See K.S.A. 65-2836(b), (f) and (k); K.S.A. 65-2837(a)(1), (a)(2), (a)(3), (b)(12), (b)(24), (b)(25), and K.A.R. 100-24-1.

On May 17, 2018, Dr. Shine filed a Petition for Judicial Review of the Final Order in the district court. On April 11, 2019, the district court issued Findings of Facts and Conclusions of Law, in which it ruled on Dr. Shine's Petition for Judicial Review. The district court found that "[t]here is a myriad of evidence to support the . . . conclusion of misconduct, professional incompetency, and gross negligence" and the court upheld all core findings of fact and legal conclusions found in the Final Order. However, the court ruled that suspension was more a more appropriate sanction than revocation in this case. The district court "reinstated"² the ALJ's 89-day suspension, probation, \$5,000 fine, costs to be assessed as of January 22, 2018 (\$93,324.65), and probation to be determined by the Board.

On April 19, 2019, the Board filed a Motion in the district court pursuant to K.S.A. 60-259(f) to clarify, alter, or amend the district court's April 11, 2019 order, to procedurally clarify the directions of the April 11, 2019 order (see, e.g., footnote 2, below). Dr. Shine responded by filing a motion to reconsider the district court's April 11, 2019 order. On June 19, 2019, the district court issued an Order on the pending motions. Of relevance here, the court ruled that Dr. Shine had completed her 89-day suspension and re-iterated that Dr. Shine remains subject to probation to be determined by the Board.

Although the Board objected to the court's April 11, 2019 and June 19, 2019 orders and continues to object to the same, the Board proceeded to obey the court's order to determine conditions of probation. The Board chose to allow the parties to brief the issue and make oral arguments regarding the terms of probation that should be entered by the Board. Therefore, on July 3, 2019, the Board issued a notice of hearing, advising all parties that a hearing would be held on August 9, 2019 and that the issue for hearing was the terms of probation that should be entered by the Board pursuant to the April 11, 2019 and June 19, 2019 orders of the district court. The notice advised all parties that briefs must be submitted on or before July 18, 2019. **The notice further advised the parties that any objection to the matter proceeding as a conference**

² The district court's April 11, 2019 order appeared to reflect confusion about the nature of the January 22, 2018 Initial Order of the ALJ. The ALJ's January 22, 2018 order was only an initial order, which never became an effective administrative order. An Initial Order remains merely a proposed order with no legal effect or competence unless and until it becomes an effective order pursuant to K.S.A. 77-530(b). Therefore, there was no jurisdictionally competent order to reinstate – the only legally cognizable administrative order issued in the case was the Board's May 10, 2018 Final Order.

hearing as noticed or any other objection to proceeding as noticed should be filed within 10 days of the service of the notice of hearing.

Dr. Shine never filed any objection to proceeding with the hearing as noticed. Both parties submitted briefs on the issue noticed for hearing. Therefore, the hearing was held by the Board on August 9, 2019 as noticed.

FINDINGS AND CONCLUSIONS

Based on the agency record, the findings of fact and conclusions of law³ contained in the Initial Order and incorporated in the Final Order, the briefs submitted in advance of the August 9, 2019 hearing, the statements and arguments of the parties at the hearing, and being duly advised in the premises, the Board makes the following findings, conclusions, and orders.

Dr. Shine's untimely and unclear objection to the hearing is overruled.

Dr. Shine's counsel articulated what could be construed as an objection to the August 9, 2019 hearing to determine the probationary terms, stating "I don't think we're even properly here today since the Board has perfected an appeal that's pending." The Board would be required to speculate to determine the legal grounds for this apparent objection because counsel did not specify the nature of the objection or any legal grounds for an objection. What is clear is that Dr. Shine waived any objection to the hearing when her counsel failed to timely raise any such objection as required by the July 3, 2019 notice of hearing. Further, Dr. Shine never raised any objection to the hearing in her brief. The Board concludes that the objection was abandoned and waived when Dr. Shine failed to timely raise it as required by the notice. Further, Dr. Shine failed to meet her burden to support this objection by failing to identify any legal basis for the objection at the hearing after failing to either file a timely objection or raise the unspecified issue in her brief.

Probationary conditions.

All arrangements necessary to secure and execute compliance with the probationary conditions of licensure described below shall be the sole responsibility of Licensee. Licensee shall be solely responsible for all expenses necessary to meet the conditions described below. Based on the findings of fact and conclusions of law⁴ described in the Final Order, as supplemented by the briefs and arguments presented for the purposes of the August 9, 2019 hearing, and consistent with

³ To be clear, this does not include the ultimate discretionary determination in the Final Order that revocation was the appropriate sanction based on the findings of fact and conclusions of law contained in the Final Order. Although the Board continues to object to the order of the district court and continues to assert that the district court committed legal error and abused its limited discretion under Kansas law, the Board understands that the district court has overruled the revocation of Licensee's license and has ordered the Board to determine probationary conditions. The Board herein follows the court's order, as it is required to do, under objection.

⁴ See FN 3.

the April 11, 2019 and June 19, 2019 orders of the district court⁵, the Board finds that the following conditions of probation are appropriate, and orders:

1. AMI monitoring for a period of two years.

Licensee shall be monitored for a period of two years by Affiliated Monitoring, Inc. ("AMI"), or another professional monitoring program determined by the Board to be equivalent in substance and approved in advance by the Board. Licensee shall cause monthly monitoring reports to be submitted to the Board Compliance Coordinator at the address listed below. On or before **October 15, 2019**, Licensee shall enter into a compliance contract with AMI or another professional monitoring program determined by the Board to be equivalent in substance and approved in advance by the Board. On or before **October 15, 2019**, Licensee shall notify the Compliance Coordinator (address below) in writing, that Licensee has entered into such contract.

2. Practice chaperone for a period of one year to be present during treatment of pregnant patients.

A practice chaperone licensed to practice chiropractic shall be physically present with Licensee at all times during all treatment rendered by Licensee to pregnant patients for a period of one year. The chaperone shall be approved in advance by Board member Jerry Degrado, D.C. Licensee shall not treat any pregnant patient unless the approved chaperone is present. On or before **October 1, 2019**, Licensee shall submit the name and qualifications of the chaperone for approval by Dr. Degrado to: tucker.poling@ks.gov.

3. PROBE ethics course.

Licensee shall successfully complete the PROBE ethics course offered by the Center for Personalized Education for Professionals, or another course determined by the Board to be equivalent in substance and approved in advance by the Board.

4. EBAS test.

Licensee shall complete and pass all five (5) topic areas of the Essay Examination of Ethics and Boundaries Assessment Services, LLC (EBAS) on or before December 31, 2019. 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

⁵ To which the Board continues to object.

KSBHacompliancecoordinator@ks.gov

On or before **October 15, 2019**, Licensee shall notify the Compliance Coordinator in writing, that Licensee has registered with the EBAS to take the Essay Examination.

Miscellaneous Provisions

Unless otherwise specified, Licensee shall provide proof of successful completion of any requirement of this order within 30 days of completing the requirement.

All costs associated with complying with this Final Order shall be the Licensee's.

Any continuing education hours completed to comply with this Final Order shall be in addition to those required for renewal of licensure.

Unless otherwise specific in this Order, proof of successful completion and all documentation and correspondence associated with this Final Order's requirements shall be submitted by to:

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

IT IS SO ORDERED this 6th day of September 2019.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert, Executive Director

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **FINAL ORDER** was served this 17th day of September 2019 by depositing the same in the United States Mail, first-class postage prepaid, and emailed, and addressed to:

Kezia Shine, D.C.

CONFIDENTIAL

Brian Niceswanger
Stephanie Pruet
82 Corporate Woods, Suite 900
10851 Mastin Boulevard
Overland Park, KS 66210
bniceswanger@evans-dixon.com

And a copy was hand-delivered to the office of:

Susan Gering, Litigation Counsel
Kansas Board of Healing Arts
800 S.W. Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Susan Gile
Susan Gile, Operations Manager