

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

FILED

AUG 29 2019



KS State Board of Healing Arts

**In the Matter of
LANE DALTON SMITH, D.C.**

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KSBHA Docket No. 19-HA00114

**Application for Reinstatement of License to
Practice Chiropractic**

FINAL ORDER DENYING REINSTATEMENT

On August 9, 2019, this matter came before the Kansas State Board of Healing Arts (“Board”) for a Conference Hearing on Lane Dalton Smith, D.C.’s (“Applicant”) application for reinstatement to practice chiropractic in Kansas. Applicant appeared in person, *pro se*. Matthew Gaus, Associate Litigation Counsel, appeared to present the position of the disciplinary panel of the Board. Dr. Balderston, Dr. Hutchins, Dr. DeGrado, 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.

PROCEDURAL HISTORY

On or about February 21, 2019, Applicant submitted a reinstatement application to the Board to practice chiropractic in Kansas. That application was deemed complete and filed with the Board on June 25, 2019. A Response in Opposition was filed on behalf of the disciplinary panel of the Board on July 9, 2019.

A Notice of Hearing was filed and served on July 12, 2019, and July 30, 2019, setting a Conference Hearing regarding Applicant’s reinstatement application for licensure. No objection to the Notice of Hearing was filed.¹

On July 30, 2019, the disciplinary panel of the Board, through Associate Litigation Counsel Matthew Gaus, Motioned for Leave to Amend the Response in Opposition, and included the Amended Response in Opposition. Prior to the Conference Hearing, and at the Conference

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.

Hearing, Applicant did not object to the Motion for Leave. The Motion for Leave is **SUSTAINED**, and the First Amended Response in Opposition is accepted for consideration.

FINDINGS OF FACT

1. Applicant's chiropractic license expired on January 1, 2019. Since that time, his license has been Cancelled – Failure to Renew.

2. While his license was Cancelled – Failure to Renew, Applicant treated 62 patients.

3. Applicant applied for reinstatement. On his application, he answered "yes" to the following attestation questions:

(j) To your knowledge have any complaints (regardless of status) ever been filed against you with any licensing agency, professional association, hospital, nursing home, clinic or other health care facility?

(s) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?

(t) Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.

(u) Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including those that have been set aside, dismissed or expunged or where a stay of execution has been issued.

4. In explanation, to questions (j) and (s), Applicant stated it had been brought to his knowledge that, "*someone had complained that I had been arrested.*" (emphasis added).

5. In response to questions (t) and (u), Applicant disclosed he was arrested on December 22, 2018, stating the charges were "false," and again arrested on January 31, [2019] for allegedly violating a [protection from stalking order], which he denied.

6. On February 12, 2017, Applicant was arrested for domestic battery against his pregnant girlfriend, Victim 1, and her daughter. [REDACTED]

7. [REDACTED]
[REDACTED]
[REDACTED]

8. Applicant failed to disclose the arrest [REDACTED]
[REDACTED] on his reinstatement application.

9. On September 18, 2018, Victim 1 sought a Petition for Protection from Stalking or Sexual Assault ("PFS") Order from the Court against Applicant. In this petition, Victim 1 stated she lives in constant fear that Applicant will kill her.

10. The same day, the Court granted a Temporary Restraining Order/PFS.

11. [REDACTED]
[REDACTED]
[REDACTED]

12. On November 5, 2018, Applicant was arrested by the McPherson Police Department on an outstanding warrant from Marion County, Kansas, for violating the PFS. Applicant failed to disclose this arrest on his reinstatement application.

13. On December 22, 2018, Applicant was arrested by the Marion County Sheriff's Office for aggravated sexual battery and aggravated endanger[ment] of a child. For this arrest, Victim 2 reported Applicant pinned her down, fondled her, touched her vagina through her clothes, and prevented her from leaving. She also stated he physically assaulted her in front of her 2-year-old child and threw his toddler bed – which her son confirmed. The police suspected Applicant was intoxicated, and he resisted arrest.

14. Applicant disclosed this arrest on his reinstatement application, and stated, "these charges are false and will go nowhere. I have not done anything wrong that warrants this."

15. On January 10, 2019, in the District Court of Marion County, Kansas, Applicant was charged with: Aggravated Sexual Battery, a Level 5 person felony; Aggravated Endangering a Child, a Level 9 person felony; Criminal Restraint, a Class A person misdemeanor; Domestic Battery, a Class B person misdemeanor; and Criminal Damage to Property, a Class B misdemeanor. This case pertains to Victim 2. *See State of Kansas v. Lane Dalton Smith*, Case No. 2019-CR0008.

16. To the Board's knowledge, this criminal case is still pending.

17. On January 30, 2019, Applicant was charged in the District Court of McPherson County, Kansas, with one count of Violation of a Protection Order, a Class A misdemeanor. This case

pertains to Victim 1. *See State of Kansas v. Lane Dalton Smith*, Case No. 19-CR000032, In the Ninth Judicial District, District Court of McPherson County, Kansas.

18. In his application for reinstatement, Applicant disclosed the arrest and charge associated with *State of Kansas v. Lane Dalton Smith*, Case No. 19-CR000032.

19. To the Board's knowledge, this criminal case is still pending.

20. Applicant was again arrested in Marion County, Kansas on April 26, 2019, for Violation of a Protection Order.

21. On July 25, 2019, Applicant contacted a Board staff member in the Licensing Department requesting a status of his reinstatement application. The Board staff member indicated Applicant was slurring his words, cursing, required repeating of statements, and sounded intoxicated.

22. On the same day, Applicant contacted a second Board staff member, this time in the Compliance and Regulatory Department. This Board staff member stated Applicant was slurring his words, cursing, had delayed responses, and sounded intoxicated.

23. Since Applicant's license has been Cancelled – Failure to Renew, and at least up until July 30, 2019, Applicant continued to hold himself out as a chiropractor and solicit appointments from the general public.

24. Specifically, as of July 30, 2019, Applicant's clinic website, www.smith-chiro.com contained solicitations for appointments, indicated Applicant was presently a chiropractor serving Marion County, Kansas, and surrounding areas, and that his office was open five days a week.

CONCLUSIONS OF LAW

I. Applicable Law & Relevant Professional Code of Ethics

Under K.S.A. 65-2836, an application for a license or reinstatement may be denied upon the existence of any of the following grounds:

- (a) Committed fraud or misrepresentation in applying for a license.
- (b) Committed an act of unprofessional or dishonorable conduct.

K.S.A. 65-2803(a) provides it is unlawful for any person who does not have a license to engage in the practice of any profession regulated by the board...

Although not binding, the Board finds the following provisions of the American Chiropractic Association ("ACA") Code of Ethics relevant to the discussion and analysis of issues in this case:

(II) Doctors of chiropractic should maintain the highest standards of professional and personal conduct, and should comply with all governmental jurisdictional rules and regulations.

(XI) Doctors of chiropractic should exercise utmost care that advertising is truthful and accurate in representing the doctor's professional qualifications and degree of competence. Advertising should not exploit the vulnerability of patients, should not be misleading and should conform to all governmental jurisdictional rules and regulations in connection with professional advertising.

II. Case Law

The case law most relevant to this case includes the following:

"[T]he [Healing Arts Act] is entitled to broad and liberal construction." *Patel v. Kansas State Board of Healing Arts*, 22 KanApp.2d 712, 716 (1996). The Kansas Supreme Court held, in reviewing the Kansas Healing Arts Act, that consideration must be given to the entire act and that the legislatures "enumerating certain acts and classifying them as unprofessional conduct" did not serve to "exclude all other acts or conduct in the practice of the healing arts" that, by "common understanding" could be considered unprofessional conduct. *Kansas State Bd. of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968). The Court went on to identify the impracticality of listing "each and every specific act or course of conduct which might constitute such unprofessional conduct of a disqualifying nature." *Id.* Finally, the Court concluded that "The determination whether by common judgment certain conduct is disqualifying is left to the sound discretion of the board." *Id.*, at 454.

The Kansas Healing Arts Act does not require a finding of actual harm to a patient for a licensee's acts and/or conduct to be grounds for disciplinary action under the provisions of the act. *Fieser v. Kansas State Bd. of Healing Arts*, 281 Kan. 268, 130, P.3d 555 (2006).

III. Conclusions of Law

A. Applicant has violated K.S.A. 65-2836(a), in that he has committed fraud or misrepresentation on his application for reinstatement.

The Board finds Applicant has violated K.S.A. 65-2836(a), in that he committed fraud or misrepresentation on his application for reinstatement. Specifically, the Board finds on his application for reinstatement, Applicant failed to disclose his:

1. February 2017 arrest [REDACTED];
2. November 5, 2018, arrest; and
3. Applicant failed to update his reinstatement application with his April 26, 2019, arrest.

At the very least, the Board finds his failure to disclose these arrests [REDACTED] is a misrepresentation on his application for reinstatement; at most it is fraudulent. The Board is well within its statutory authority to deny reinstatement of licensure on this finding alone. *See* K.S.A. 65-2836.

- B. Applicant has violated K.S.A. 65-2836(b), in that he has committed an act of unprofessional or dishonorable conduct.

The Board finds Applicant has violated K.S.A. 65-2836(b), in that he has committed an act of unprofessional or dishonorable conduct, generally. There is substantial evidence in the agency record showing Applicant has been repeatedly arrested, and charged, largely for violent conduct, and violation of lawful orders, specifically the PFS. He [REDACTED] has pending felony and misdemeanor charges related to violent behavior. His violent behavior has clearly continued despite previous government intervention. In the process of seeking professional licensure with the Board, he has not been forthcoming regarding these matters. He has also shown lack of appropriate regard for the law relating to unlicensed practice, as described below. Under all the circumstances of this case, it is clear that Applicant has committed acts of unprofessional or dishonorable conduct.

- C. Applicant has violated K.S.A. 65-2803(a), as he treated patients while not holding a valid license.

The Board finds Applicant has violated K.S.A. 65-2803(a), as he treated patients while not holding a valid license. Specifically, Applicant's license to practice chiropractic in Kansas expired on January 30, 2019. At that point, his license was cancelled. While his license was cancelled, Applicant treated 62 patients.

ORDER

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS, Applicant's application for reinstatement to practice chiropractic in Kansas, is **DENIED.**

IT IS FURTHER ORDERED, Applicant remove from his website, and any other advertisements, solicitation for patient appointments or any indication he is entitled to engage in the practice of the healing arts in Kansas.

IT IS SO ORDERED this 29 day of August 2019.

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. Under K.S.A. 77-529, parties 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 **FINAL ORDER DENYING REINSTATEMENT** was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 29th day of August, 2019, addressed to:

Lane Dalton Smith, D.C.

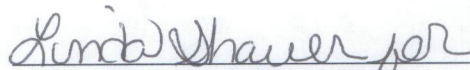
CONFIDENTIAL

And hand-delivered to:

Matthew Gaus, Associate Litigation Counsel
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 the Executive Director:

Kathleen Selzler Lippert
Executive Director
Kansas Board of Healing Arts
800 S.W. Jackson, Lower Level-Suite A
Topeka, Kansas 66612


Susan Gile, Operations Manager