



MAR 14 2022

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of
ERIC D. THOMAS, M.D.

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KSBHA Docket No. 22-HA00023

Application for Licensure to
Practice Medicine and Surgery

FINAL ORDER

On February 11, 2022, this matter came before the Kansas State Board of Healing Arts (“Board”) for a Conference Hearing on Dr. Eric D. Thomas, M.D.’s (“Applicant”) application for licensure to practice medicine and surgery in Kansas. Applicant appeared via video conference, *pro se*. The Board’s disciplinary panel appeared through Matthew Gaus, Associate Litigation Counsel. Dr. Durrett, Dr. Gould, Dr. Black, and Dr. Kelly, Ph.D. 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 May 25, 2021, Applicant submitted an application to the Board to practice medicine and surgery in Kansas. That application was deemed complete and filed with the Board on January 5, 2022. The Board submitted a Response in Opposition to Application, filed on January 11, 2022. A Notice of Hearing was filed and served on January 18, 2022, and February 1, 2022, setting a Conference Hearing regarding Applicant’s application for licensure. No objection to the Notice of Hearing was filed.¹

FINDINGS OF FACT

1. On or about May 20, 2015, the Enforcement Bureau of the New Jersey Division of Consumer Affairs conducted an inspection of Applicant’s clinic and found:

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. Applicant submitted exhibits at the beginning of the hearing with no objection from the Board’s disciplinary panel. The entire agency record was considered by the Board in rendering its decision.

Through the course of the investigation, it was determined [sic] that [Applicant] had been prescribing CDS² without legitimate medical purpose, notably highly addictive narcotics, to his patients and had knowingly prescribed CDS to known drug addicts, known felons and patients testing positive for suboxone and illegal street drugs.... [Applicant] having been advised that he may consult legal counsel. . . admits to the conduct alleged and has expressed his consent to the temporary suspension of his NJ CDS registration pending further findings of the director.

2. On or about May 21, 2015, Applicant's license to dispense controlled substances in New Jersey was suspended indefinitely by the New Jersey Drug Control Unit. The suspension was based on information received by the New Jersey Board of Medical Examiners ("New Jersey Board") that Applicant was engaged in the prescribing of controlled dangerous substances in the course of his professional practice without a legitimate medical purpose.
3. On May 21, 2015, Applicant voluntarily and permanently surrendered his DEA controlled substances license. On or about November 25, 2015, following a hearing, Applicant's license to practice medicine in New Jersey was temporarily indefinitely suspended by the New Jersey Board. The New Jersey Board made the following preliminary findings:
 - a. Applicant repeatedly initiated opiate therapy on a patient's first office visit, without simultaneously ordering diagnostic imaging studies and without securing prior treatment records;
 - b. He twice recommended opiate therapy without addressing significant contraindications in self-completed patient histories;
 - c. He repeatedly continued to treat his patients for complaints of pain with long-term opiate prescribing, without documenting any periodic review to evaluate whether his continued long-term prescribing of opiates was efficacious or otherwise improving a patient's functionality, without ordering diagnostic tests or imaging studies to substantiate pain syndromes, and without making reasonable efforts to pursue non-narcotic treatment modalities;
 - d. Applicant "failed to enter written controlled substance agreements with five of the six patients" considered by the New Jersey Board in its investigation;
 - e. Applicant "routinely continued to prescribe opiates after securing information from the [electronic prescription monitoring system] that revealed his patients were obtaining prescriptions from multiple providers, to include prescriptions for the same opiates [Applicant] prescribed";
 - f. Applicant "routinely continued to prescribe opiates after conducting urine screens that returned 'positives' for illegal drugs, 'positives' for drugs not prescribed by [Applicant] and/or 'negatives' for the opiates [Applicant] prescribed";

² Controlled dangerous substances ("CDS").

- g. Applicant "consistently continued to prescribe opiates after patients ignored or failed to comply with referrals that he would make to pain management, and when patients failed to secure ordered imaging studies"; and
 - h. Applicant's conduct regarding patient L.K. - to include doubling her dose of Oxycodone on initiation of treatment without recording any basis to have done so; failing to secure prior treatment records and/or contact prior treating physicians; failing to order any imaging studies or to ensure that L.K. provided a claimed prior MRI, and continuing to prescribe even when L.K. consistently failed to provide requested urine screens – manifestly demonstrates the clear and imminent danger of his continued practice.
4. On or about February 22, 2018, Applicant entered into a Consent Order with the New Jersey Board. The Consent Order allowed Applicant to retire, with such retirement being considered a permanent suspension. Applicant agreed to pay \$20,000 in costs and to never apply for medical licensure in New Jersey again.
 5. As a result of the February 22, 2018 suspension, the Office of the Special Counsel-Medicaid Fraud Division permanently excluded Applicant from participation in the New Jersey Medicaid program.
 6. On or about September 28, 2021, Applicant's application for a medical license was denied by the Nebraska Department of Health and Human Services ("Nebraska Board"). The Nebraska Board found that the New Jersey suspension of his license, the surrender of his DEA controlled substances license, and his exclusion from the New Jersey Medicaid program demonstrated "lack of good character" and was grounds for denial.
 7. On or about October 6, 2021, Applicant was granted a license to practice by the Kentucky Board of Medical Licensure ("Kentucky Board") via an Agreed Order. The terms of the Order stated Applicant shall not prescribe, dispense, or otherwise professionally utilize controlled substances. Additionally, Applicant agreed to never request, and the Kentucky Board shall never consider, a request to terminate that term/condition.
 8. Applicant has received licenses to practice medicine in Idaho, Montana, Pennsylvania, and Utah.
 9. Applicant submitted a statement to the Board providing his explanation of the New Jersey Board actions. Applicant explained that there was concern that some of his patients were misusing prescriptions provided for pain control. Applicant said none of the misuse was anticipated by him when he was providing care.
 10. Applicant said in order to "respect the accusations that had been made", he voluntarily suspended his DEA license. He strongly felt there was no firm basis for the accusations. Additionally, he alleged the State did not provide complete records for their medical expert to

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review, which resulted in an inaccurate report. Applicant said he retained his own expert who reviewed the complete clinical records and concluded that he “followed the appropriate safeguards, policies and procedures in his judicious and conservative use of medications.”

11. Applicant said due to a prolonged legal process, through no fault of his own, the parties agreed to a Consent Order. Applicant said there were four main points to the order:
 - i. He denied any and all wrongdoing.
 - ii. The New Jersey Board took no position with respect to any application by Applicant for DEA credentialing/privileges in any other state.
 - iii. The New Jersey Board stayed all civil penalties.
 - iv. The contents of the agreement were solely within the boundaries of the state of New Jersey.
12. During the legal process in New Jersey, Applicant stated he was able to receive a full and unrestricted license in Montana in June 2016. After the Consent Order was signed, Montana again confirmed he had a full and unrestricted license. Since 2017, he has been practicing medicine in Montana and continues to assist and treat individuals with medical ailments in private practice and public. He indicated he has been active in caring for patients within the high demand area for health care professionals and serving in the state’s correctional facilities.
13. At the February 11, 2022, Conference Hearing, Applicant testified substantially similar to his statements in his letter to the Board.
14. Applicant advised he is in internal medicine and focuses on diabetes, hypertension, obesity, and non-opioid pain management.
15. Counsel for the Board’s disciplinary panel requested the application be denied due to the action by the New Jersey Board, the action by the Office of Special Counsel-Medicaid Fraud Division, the surrender of his DEA controlled substance license, the denial by the Nebraska Board, and the limitation imposed by the Kentucky Board.

APPLICABLE LAW

Under K.S.A. 65-2836, a licensee’s license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions, or an application for a license may be denied upon the existence of any of the following grounds:

- (j) the licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken...by the proper licensure authority of another state...;

- (s) Sanctions or disciplinary actions have been taken against the licensee by a peer review committee, healthcare facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.
- (u) The licensee has surrendered a license or authorization to practice the healing arts in another state or jurisdiction, has surrendered the authority to utilize controlled substances issued by any state or federal agency, has agreed to a limitation to or restriction of privileges at any medical care facility or has surrendered the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this section.

CONCLUSION

There are grounds to deny the application or limit, and/or condition Applicant's licensure under K.S.A. 65-2836(j), K.S.A. 65-2836(s), and K.S.A. 65-2836(u). The Board had the opportunity to hear Applicant's testimony, review evidence, and consider the entire agency record as a whole. The conduct alleged in New Jersey showed concerning prescribing behavior. Additionally, Applicant had an application denied in Nebraska.

However, there are other considerations the Board took into account in making its decision. One is that Applicant received a license to practice in Idaho, Montana, Pennsylvania, and Utah. Additionally, Applicant was granted a limited license in Kentucky wherein he agreed not to prescribe, dispense, or otherwise professionally utilize controlled substances and testified he would be willing to be under the same conditions in Kansas. A majority of the Board feels a limitation with controlled substances allows Applicant to practice medicine in Kansas while minimizing public safety concerns associated with the allegations in New Jersey. The Board grants the application for a license to practice medicine and surgery with the following limiting conditions:

- **Applicant/Licensee SHALL NOT prescribe, dispense, or otherwise professionally use controlled substances;**
- This limitation is not self-terminating. The limitation will remain in place indefinitely, and until applicant seeks, and secures Board approval for modification or removal. Applicant cannot request modification or termination of this provision until at least one year has passed since issuance of this Final Order.
- For any period of time Applicant is not actively practicing medicine in Kansas, the limitation provision will remain in effect, but will be tolled.

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IT IS SO ORDERED that the application to practice medicine and surgery in Kansas is **GRANTED** with a **LIMITATION** this 14th day of March, 2022.

KANSAS STATE BOARD OF HEALING ARTS

Susan Gile

Susan Gile, Acting Executive Director

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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 Susan Gile, Acting 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** was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 14th day of March, 2022, addressed to:

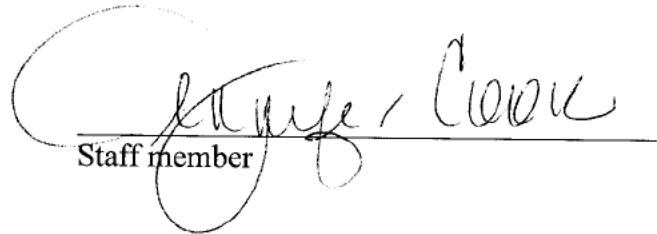
Eric David Thomas, M.D.
CONFIDENTIAL

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

Licensing Administrator
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.


Staff member