

# EFFECTIVE AS A FINAL ORDER

DATE: 9/3/19

FILED *File*

AUG 14 2019

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

KS State Board of Healing Arts

In the Matter of )

Visionworks of America, Inc. )

Kansas Registration Nos. 75-00019, )

75-00020, 75-00016, 75-00015, )

and Pending )

KSBHA Docket No. 20-HA 00010

### SUMMARY ORDER

NOW ON THIS 14 day of Aug, 2019 this matter comes before Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A 77-537. Pursuant to K.S.A 77-537, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (15) days of service.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

### **Findings of Fact**

1. Visionworks of America, Inc. ("Applicant") is an entity based in San Antonio, Texas, which owns and operates five locations which distribute contact lenses in Kansas. Four of the five locations have been registered to distribute contact lenses at some time in the past. Specifically:

- a. Visionworks #117, located at 7700 E. Kellogg, Wichita, KS 67207, was first registered to distribute contact lenses in Kansas on or about March 30, 2016 and issued registration number 75-00019. This registration expired on March 31, 2018, for failure to renew.
- b. Visionworks #118, located at 4600 W. Kellogg, Wichita, KS 67209, has never been registered to distribute contact lenses in Kansas.



- c. Visionworks #149, located at 1703 Village West Pkwy., Ste. 104, Kansas City, Kansas 66111, was first registered to distribute contact lenses in Kansas on or about March 30, 2016 and issued registration number 75-00020. This registration expired on March 31, 2018, for failure to renew.
  - d. Visionworks #152, located at 11383 W. 95<sup>th</sup> St., Overland Park, Kansas 66214, was first registered to distribute contact lenses in Kansas on or about October 16, 2014, and issued registration number 75-00019. This registration expired on March 31, 2018, for failure to renew.
  - e. Visionworks #226, located at 5746 Antioch Rd, Merriam, KS 66202, was first granted a license to distribute contact lenses in Kansas on or about October 16, 2014, and issued registration number 75-00015. This registration expired on March 31, 2018, for failure to renew.
- 2. The last known mailing address for all five locations is: 175 E. Houston St., San Antonio, Texas, 78205.
  - 3. On or about May 28, 2019 a representative of Applicant submitted applications for each of the five locations Applicant operates in Kansas to have their respective registrations to distribute contact lenses in Kansas reinstated.
  - 4. Applicant's representative admitted that all five locations have continued to distribute contact lenses despite not being registered, as required by statute.

#### **Applicable Law**

- 5. K.S.A. 65-4967(a) of the Kansas Contact Lens-Dispensing Act defines an entity dispensing contact lenses as:

...a person or entity not licensed under K.S.A. 65-1505, and amendments thereto, or license to practice medicine and surgery in



Kansas who mails or delivers, using commercial courier or overnight or other delivery services, contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine.

6. K.S.A. 65-4967(b) of the Kansas Contact Lens-Dispensing Act further states:

No person dispensing contact lenses as defined under subsection (a) may dispense contact lenses to Kansas residents unless they meet the requirements of this section, is registered under this section and pays the annual registration fee set by the state board of healing arts.

7. K.S.A. 65-4968(b)(1) states:

Upon a finding of any violation of the patient's contact lens prescription release act, in lieu of or in addition to any other action, ... the state board of healing arts for persons subject to the provisions of K.S.A. 65-4967, and amendments thereto, registered under K.S.A. 65-4967, and amendments thereto, or licensed by the state board of healing arts to practice medicine and surgery may assess a civil fine not in excess of \$10,000 against such person dispensing contact lenses under this act.

#### **Conclusions of Law**

8. The Board has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

9. The Board finds Applicant is subject to the provisions of K.S.A. 65-4937(a) in that it is an entity dispensing contact lenses.

10. The Board finds Applicant violated K.S.A. 65-4967(b) in that Applicant dispensed contact lenses to Kansas residents without meeting the requirements of the section, because the locations operated by Applicant have not been registered under the Kansas Contact Lens-Dispensing Act since at least April 1, 2018 and have not paid the annual registration fee set by the state board.

11. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the



protection of the public interest does not require the Board to give notice and opportunity to participate to persons or entities other than Applicant, Visionworks of America, Inc.

**IT IS, THEREFORE, ORDERED** that Applicant is assessed a **CIVIL FINE** in the amount of **ten thousand dollars (\$10,000.00)** for Applicant's violations of the Kansas Contact Lens Dispensing Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before **September 15, 2019**. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

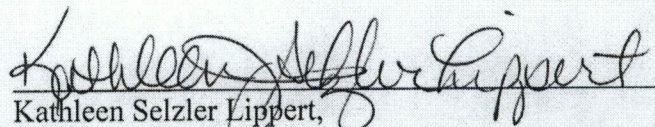
Compliance Coordinator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level – Suite A  
Topeka, Kansas 66612

**IT IS FURTHER ORDERED** that all Kansas locations operated by Applicant shall be granted Active registrations immediately upon the date this order becomes effective as a Final Order.

**PLEASE TAKE NOTICE** that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 14 day of Aug, 2019.

**KANSAS STATE BOARD OF HEALING ARTS**

  
Kathleen Selzler Lippert,  
Executive Director



**FINAL ORDER NOTICE OF RIGHTS**

**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 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 Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.



**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 3 day of Sept, 2019 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Visionworks of America, Inc.  
c/o CT Corporation  
112 SW 7<sup>th</sup> St. Ste. C  
Topeka, KS 66603

And a copy was 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.

Susan Gile  
Susan Gile, Operations Manager