

**EFFECTIVE AS A
FINAL ORDER**

DATE: 12/23/13

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

FILED

DEC 03 2013

CMB

KS State Board of Healing Arts

In the Matter of
KYLE B. WELK, P.T.

Kansas License No. 11-03452

Docket No. 14-HA 00069

SUMMARY ORDER

NOW ON THIS 3rd day of December, 2013, 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. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for hearing is made, pursuant to K.S.A. 77-542.

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. Kyle B. Welk, P.T. ("Licensee") was originally issued license number 11-03452 to practice as a physical therapist in the state of Kansas on October 15, 2004. Licensee's license is currently active.
2. Licensee's last known mailing address as provided to the Board at the time of his application for renewal is **Confidential** Wichita, Kansas 67228.
3. On or about September 22, 2011, an advertisement was placed in the Wichita Eagle titled "30 minutes in our office could be the Solution To Your Lumbar Herniated Discs." The advertisement was placed by Licensee and another physical therapist.

4. The advertisement further stated, "We have already helped hundreds of men and women eliminate their back pain."

5. The advertisement further stated, "We use the latest in back pain technology to help men and women get rid of their pain once and for all."

6. Furthermore, the advertisement stated, "We will provide you with a thorough analysis of your exam findings so we can start mapping out your plan to being pain free."

7. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. The Disciplinary Panel authorized and directed the issuance of this Summary Order and the specific disciplinary sanctions.

Applicable Law

8. K.S.A. 65-2912 states in pertinent part: The board may refuse to grant a license to any physical therapist, or may suspend or revoke the license of any licensed physical therapist, or may limit the license of any licensed physical therapist or may censure a licensed physical therapist for any of the following grounds:

(5) unprofessional conduct as defined by rules and regulations adopted by the board. . . .

9. K.A.R. 100-29-12 states in pertinent part:

(a) "Unprofessional conduct" means any of the following:

(13) Representing to a patient or client that a manifestly incurable disease, condition, or injury can be permanently cured.

(16) Advertising a guarantee of any professional service relating to physical therapy.

(17) Using any advertisement that is false, misleading, or deceptive in any material respect.

- (18) Committing conduct likely to deceive, defraud, or harm the public.
10. K.S.A. 65-2916(c) states: The board, in addition to any other penalty prescribed under the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto, may assess a civil fine, after proper notice and an opportunity to be heard, against a licensee for a violation of the provisions of article 29 of chapter 65 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof or supplemental thereto in an amount not to exceed \$5,000 for the first violation, \$10,000 for the second violation and \$15,000 for the third violation and for each subsequent violation.

Conclusions of Law

17. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
18. Pursuant to K.S.A 65-2912, Licensee is deemed to have committed unprofessional conduct as defined by rules and regulations adopted by the board.
19. That Licensee committed unprofessional conduct by representing to a patient or client that a manifestly incurable disease, condition, or injury could be permanently cured, a violation of K.S.A. 65-2912 in combination with K.A.R. 100-29-12.
20. That Licensee committed unprofessional conduct by advertising a guarantee of any professional service relating to physical therapy, a violation of K.S.A. 65-2912 in combination with K.A.R. 100-29-12.
21. That Licensee committed unprofessional conduct by using any advertisement that is false, misleading, or deceptive in any material respect, a violation of K.S.A. 65-2912 in combination with K.A.R. 100-29-12.
22. That Licensee committed unprofessional conduct by committing conduct likely to

deceive, defraud, or harm the public, a violation of K.S.A. 65-2912 in combination with K.A.R. 100-29-12.

23. 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 the law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons other than Licensee, Kyle B. Welk, P.T.

IT IS, THEREFORE, ORDERED that Licensee is hereby **FINED** \$250 for violating the Physical Therapy Practice Act such fine is due and payable within thirty days of the effective date of this Order.


NOTICE AND OPPORTUNITY FOR HEARING

PLEASE TAKE NOTICE that this is a Summary Order. A party to whom a Summary Order is issued may file a written request for a hearing pursuant to K.S.A. 77-542 within 15 days following service of the Summary Order. Such written request shall also state the legal and/or factual basis upon which the party opposes this Order. If a hearing is not requested, the Summary Order shall become effective as a Final Order of the Board upon expiration of the time for requesting a hearing. A written request for hearing must be addressed and mailed to Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level Suite A, Topeka, Kansas 66612.

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 3rd day of December, 2013

Kansas State Board of Healing Arts

 ^{for KSL}

Kathleen Selzler Lippert
Executive Director

Certificate of Service

I certify that the foregoing Summary Order was served this 3rd day of December, 2013 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Kyle B. Welk, P.T.
Confidential
Wichita, Kansas 67228

David Dahl
Kennedy, Dahl & Willis
P.O. Box 800
Wichita, Kansas 67201

and a copy was hand-delivered to:

Kelli J. Stevens
General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

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

Katy Lenahan
Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A

Topeka, Kansas 66612

Stacy R. Bond
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 State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Cathy Brown
Executive Assistant

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 23rd day of Dec, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

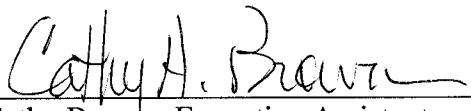
Kyle B. Welk, PT
Confidential
Wichita, KS 67228

And a copy was hand-delivered to:

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General 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.



Cathy Brown, Executive Assistant