

**EFFECTIVE AS AN
INITIAL ORDER**

DATE: 8/16/13

FILED
AUG 06 2013

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

KS State Board of Healing Arts

IN THE MATTER OF
Jaclyn R. West, A.T.
Kansas License No. 24-00354

KSBHA Docket No. 13-HA00086

OAH Docket No. 13HA0004

PROPOSED DEFAULT ORDER

and

INITIAL ORDER

Statement of the Case

Jaclyn R. West, A.T., the Respondent, appeals from the Board's Summary Order dated April 26, 2013. The Summary Order publicly censured Respondent for practicing as an Athletic Trainer and representing herself as an Athletic Trainer between January 1, 2013, and February 4, 2013, without being properly licensed.

Proceedings conducted by the Board are governed by the Kansas Administrative Procedure Act at K.S.A. 77-501, *et seq.* See also K.S.A. 65-6911(b).

The Board appointed a Presiding Officer from the Office of Administrative Hearings, which assigned Stephen E. Good.

A prehearing conference was scheduled for August 6, 2013, at 1:15 p.m. at the Office of Administrative Hearings, 1020 South Kansas Avenue, Topeka, Kansas 66612. Although Ms. West was given notice of the hearing by mailing a copy to the address she provided, Ms. West did not appear on August 6, 2013. Pursuant to paragraph 7 of the July 10, 2013, Amended Notice of Prehearing Conference, a party who fails to attend or participate in a prehearing conference can be held in default. Because Ms. West has failed to attend or participate in the prehearing conference, she is in default.

On June 28, 2013, counsel for the Board filed a Prehearing Questionnaire, outlining the theory of the Board's case. In her July 8, 2013, request for a continuance, Ms. West admitted to practicing as an athletic trainer without a license. On August 6, 2013, counsel for the Board proffered evidence that would have been presented during a hearing had the proceedings in the case gone forward. The proffered evidence is supported by the Board's exhibit. The allegations in the April 26, 2013, Summary Order are supported by the evidence.

Findings of Fact

1. Jaclyn Rae West, A.T. ("Respondent") was originally issued license number 24-00354 to practice as an Athletic Trainer in the State of Kansas on February 21, 2002. Respondent's license is currently active.

2. Respondent's last known mailing address as provided to the Board is: **Confidential**
Confidential Manhattan, Kansas 66503.
3. On or about January 22, 2013, the Board received an application from Respondent seeking reinstatement of her athletic trainer license. Respondent's license had been cancelled for "failure to renew" on January 1, 2013.
4. In her application for reinstatement, Respondent lists all professional activities since the cancellation of her license. Respondent states that she has been employed as an Athletic Trainer for the basketball and wrestling teams at Atchison High School in Atchison, Kansas, and for the wrestling teams at Easton Public Schools in Easton, Kansas, from "1/4/13 To Present."
5. Respondent's license was reinstated on February 5, 2013. Respondent practiced in Kansas from January 1, 2013, through February 4, 2013, as an Athletic Trainer without being properly licensed.
6. In her July 8, 2013, request for a continuance, Ms. West admitted to practicing as an athletic trainer without a license.

Applicable Law

7. K.S.A. 65-6902(b) states: "Athletic training' means the practice of injury prevention, physical evaluation, emergency care and referral or physical reconditioning relating to athletic activity."
8. K.S.A. 65-6903(a) states: "It shall be unlawful for any person who is not licensed under this act as an athletic trainer or whose license has been suspended or revoked to use, in connection with such person's name or place of business, the words: 'Athletic trainer' or 'athletic trainer licensed' or 'licensed athletic trainer' or 'certified athletic trainer' or the letters 'A.T.' or 'A.T.L.' or 'L.A.T.' or 'ATC,' or any other words, letters, abbreviations, or insignia indicating or implying that such person is an athletic trainer, or who in any way orally, or in writing, in print or by sign, directly or by implication represents oneself as an athletic trainer."
9. K.S.A. 65-6909(b) states: "Licenses issued pursuant to this act shall expire on the date established by rules and regulations of the board unless revoked prior to that time. A license shall be renewed in the manner prescribed by the board."
10. K.S.A 65-6909(c) states: "At least 60 days before the expiration of the license of an athletic trainer, the board shall notify the licensee of the expiration by mail, addressed to the licensee's last mailing address, as noted upon the board's records. If the licensee fails to pay the renewal fee

and submit an application at least 30 days prior to the date of expiration of the license, the licensee shall be given a second notice that the licensee's license will expire and the license may be renewed only if an additional renewal fee is received by the board within the 30-day period following the date of expiration and that if both fees are not received by the date of expiration the license shall be canceled for failure to renew and shall be reissued only after the athletic trainer has been reinstated under subsection (d)."

11. K.A.R. 100-69-6 states, "The license of each athletic trainer shall expire on December 31 of each year."
12. K.S.A. 65-6911(a)(5) allows the Board to deny, suspend, limit, refuse to renew, place on probation, reprimand, or revoke any license granted under the athletic trainers licensure act or take other disciplinary action as the Board may deem appropriate if it finds that the licensee has committed misconduct in the performance of the functions or duties of an athletic trainer.
13. K.S.A. 65-6911(a)(8) allows the Board to deny, suspend, limit, refuse to renew, place on probation, reprimand, or revoke any license granted under the athletic trainers licensure act or take other disciplinary action as the Board may deem appropriate if it finds that the licensee has committed a negligent or intentional violation of the provisions of this act or the rules and regulations adopted under this act.
14. Under the Kansas Administrative Procedure Act, one can be held in default for failing to participate in the adjudicatory process. K.S.A. 77-520.

Conclusions of Law

15. The Board has jurisdiction over Respondent as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
16. The Presiding Officer finds that Respondent practiced as an Athletic Trainer without being licensed from January 1, 2013, through February 4, 2013.
17. The Presiding Officer finds that Respondent has represented herself as an Athletic Trainer without being licensed from January 1, 2013, through February 4, 2013.
18. The Presiding Officer finds that by practicing as an Athletic Trainer without being properly licensed, Respondent committed a negligent or intentional violation of the provisions of the Athletic Trainers Licensure

Act pursuant to K.S.A. 65-6911(a)(8).

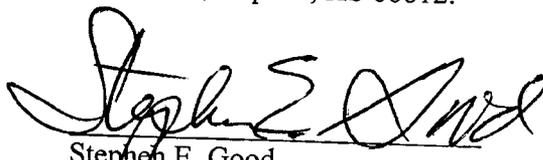
19. Additionally, the Presiding Officer finds that by practicing as an Athletic Trainer without being properly licensed, Respondent committed misconduct in violation of the provisions of the Athletic Trainers Licensure Act pursuant to K.S.A. 65-6911(a)(5).
20. Furthermore, that by continuing to engage in the practice of an athletic trainer as well as representing herself as an Athletic Trainer from January 1, 2013, through February 4, 2013, without being properly licensed, Respondent was in violation of K.S.A. 65-6903(a).

IT IS, THEREFORE, ORDERED that Respondent is hereby **PUBLICLY CENSURED** for practicing as an Athletic Trainer and representing herself as an Athletic Trainer between January 1, 2013, and February 4, 2013, without being properly licensed.

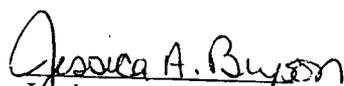
IT IS FURTHER ORDERED that the **COSTS** of the proceedings are assessed Respondent. The amount of the costs has yet to be determined.

Appeal Rights

Pursuant to K.S.A. 77-527, either party may appeal this initial order. A petition for review must be filed within 15 days from date of this initial order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this initial order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level, Suite A, Topeka, KS 66612.


Stephen E. Good
Administrative Law Judge/Presiding Officer

Prepared by:


Jessica A. Bryson, #22669
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson Ave Lower Level Suite A
Topeka, KS 66605
Phone: 785-296-8022
Fax: 785-368-8210
Email: jbryson@ksbha.ks.gov

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **INITIAL ORDER** was served this 26 day of Aug., 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jaclyn R. West, A.T.
Licensee
Confidential
Manhattan, KS 66503

And a copy was hand-delivered to:

Jessica Bryson, 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.



Cathy Brown, Executive Assistant

FILED

CAB

OCT 23 2013

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

KS State Board of Healing Arts

In the Matter of)
Jaclyn R. West, A.T.)
)
Kansas License No. 24-00354)
_____)

Docket No. 13-HA00086

FINAL ORDER OF PUBLIC CENSURE AND ASSESSMENT OF COSTS

NOW on this 11th day of October 2013, the above-captioned matter comes before the Kansas State Board of Healing Arts (“Board”) on the Board’s own motion to review the Initial Order of the Presiding Officer filed August 6, 2013. Jessica Bryson, Associate Litigation Counsel, appears for the Respondent Board. Licensee fails to appear.

Pursuant to the authority granted to Board by K.S.A. 65-6901 *et seq.* and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions and order:

1. The Board accepts the Findings of Fact numbered 1 through 14 set forth in the INITIAL ORDER and adopts the same as the Board’s Findings of Fact in this FINAL ORDER. The Findings of Fact numbered 1 through 14 as set forth in the INITIAL ORDER are incorporated herein by reference.

3. Based on the agency record, the Board finds and concludes there is clear and convincing evidence that Licensee practiced and represented herself as an Athletic Trainer between January 1, 2013 and February 4, 2013.

4. The Board accepts the Presiding Officer’s Conclusions of Law numbered 15 through 20 as set forth in the INITIAL ORDER and adopts the same as the Board’s Conclusions

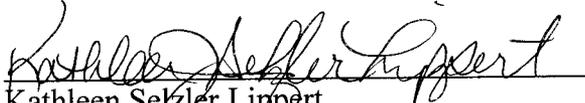
of Law in this FINAL ORDER. The Conclusions of Law numbered 15 through 20 as set forth in the INITIAL ORDER are incorporated herein by reference.

IT IS THEREFORE ORDERED that Licensee is hereby **PUBLICLY CENSURED** for violating K.S.A. 65-6911(a)(5) and (8) by practicing as an Athletic Trainer and representing herself as an Athletic Trainer between January 1, 2013 and February 4, 2013, without being properly licensed.

IT IS FURTHER ORDERED that the Board's incurred **COSTS** for conducting these proceedings are assessed to Applicant. Applicant is hereby ordered to pay such **COSTS** in the amount of \$374.80 on or before November 30, 2013. Licensee shall make payment of the **COSTS** payable to "Kansas State Board of Healing Arts" and remit such payment to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

IT IS FURTHER ORDERED that the Board shall maintain jurisdiction over this matter to issue any future order(s) deemed necessary and appropriate in the circumstances.

IT IS SO ORDERED THIS 23 DAY OF OCTOBER, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts

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 State 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 October, 2013 by depositing the same in the United States

Mail, first-class, postage prepaid, and addressed to:

Jaclyn West, A.T.
Confidential
Manhattan, KS 66503

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

Jessica Bryson, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612

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



Cathy Brown
Executive Assistant