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

OCT 30 2007

KS State Board of Healing Arts

In the Matter of)
Dennis Whitson, PT)
)
Kansas License No. 11-02234)
_____)

Docket No. 07-HA00074

FINAL ORDER

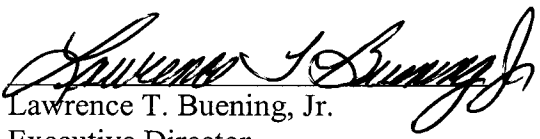
NOW ON THIS 20th day of October, 2007, this matter comes before the Board to review the Initial Order issued by Presiding Officer Tracy T. Diel, Office of Administrative Hearings. Respondent Dennis Whitson does not appear. Kathleen Lippert, Associate Counsel appears for the Board.

Having the agency record before it, the Board adopts the findings of fact, conclusions of law and order as stated in the Initial Order.

IT IS, THEREFORE, ORDERED that the licensed of Dennis Whitson, R.T. is hereby revoked.

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 the Board's Executive Director at 235 SW. Topeka Blvd., Topeka, KS 66603.

Dated this 30th day of October, 2007.

Kansas State Board of Healing Arts

Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing Final Order was served this 31st day of October, 2007, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Dennis Whitson, P.T.
805 S. Edgemere Dr.
Olathe, KS 66061

And a copy was hand-delivered to the office of

Kathleen Lippert
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603

A handwritten signature in black ink, appearing to read "Lawrence J. Burroughs". The signature is written in a cursive style and is positioned above a horizontal line.

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KS State Board of Healing Arts

BEFORE THE KANSAS BOARD OF HEALING ARTS

IN THE MATTER)
)
Of)
)
Dennis Whitson, PT)
Kansas License No. 11-02234)
_____)

Docket No. 07 HA00074

OAH No. 07HA0006

INITIAL ORDER

The above-captioned matter comes on for decision by Tracy T. Diel, designated by the Board as the Presiding Officer in this hearing on the Petition filed by the Agency (Petitioner). The Petition was filed with the Kansas Board of Healing Arts on March 28, 2007. The hearing on this Petition was held on August 10, 2007 at 9:30 a.m. at the Kansas Board of Healing Arts located at 235 S. Topeka Blvd., Topeka, Kansas. The hearing on the Petition was conducted pursuant to K.S.A. 77-501 et. seq., K.S.A. 65-2912 and K.S.A. 65-2851a.

Based on the evidence presented at the hearing on the Petition, the Presiding Officer finds that the Petitioner has met its burden of establishing that during the period of March to May, 2006 the Respondent had committed acts in violation of the Physical Therapy Act, which ultimately led to his conviction In Johnson County, Kansas District Court on March 28, 2007 for Attempted Aggravated Indecent Liberties with a Child, a severity level 5 person felony, in violation of K.S.A. 21-3301 and K.S.A. 21-3504.

Previously, an Emergency Order of Suspension was issued by the Presiding Officer on April 3, 2007, pursuant to Petitioner's motion seeking an Ex Parte Emergency Order of Suspension, and served by mail on the Respondent the same date. A pre-hearing

conference was held via telephone on April 6, 2007 to establish a schedule for holding a hearing on the emergency suspension. The Respondent was present and Kathleen Selzler Lippert appeared for the Petitioner at the pre-hearing conference. A Notice of Hearing was issued from that pre-hearing conference. The hearing in the matter of emergency suspension was set by agreement of the parties for April 26, 2007. That hearing was held from 1:30 p.m. – 5:15 p.m. at the Kansas Board of Healing Arts, 235 SW Topeka Blvd., Topeka, Kansas.

Subsequently, a pre-hearing conference for the hearing on the Petition was held on June 29, 2007. The hearing on the Petition was set by agreement of the parties for August 10, 2007. That hearing was held from 9:30 - 10:30 a.m. at the Kansas Board of Healing Arts, 235 SW Topeka Blvd., Topeka, Kansas.

At all times pertinent to the proceedings in the Emergency Suspension and the hearing on the Agency's Petition, Respondent appeared in person, pro se. The Petitioner appeared by and through Kathleen Selzler Lippert, Associate Counsel.

EXHIBITS

Exhibits 1-23 were offered by Petitioner during the hearing on August 10, 2007. Exhibits A – C were offered by the Respondent during the hearing on August 10, 2007. All exhibits offered by the parties were admitted into evidence. Below is a description/explanation of the exhibits.

Exhibit No. 1 is the Respondent's 2007 Renewal Application.

Exhibit No. 2 is the criminal complaint in Johnson County District Court State v. Dennis Linn Whitson, Case No. 06-CR-1317 and court computer notes.

Exhibit No. 3 is a letter from the Johnson County District Attorney's Office.

Exhibit No. 4 is a listing of internet acronyms, internet lingo and chat abbreviations.

Exhibit No. 5 is the internet chat transcript from March 9, 2006.

Exhibit No. 6 is the internet chat transcript from March 10, 2006.

Exhibit No. 7 is the internet chat transcript from March 13, 2006.
Exhibit No. 8 is the internet chat transcript from March 27, 2006.
Exhibit No. 9 is the internet chat transcript from March 28, 2006.
Exhibit No. 10 is the internet chat transcript from March 29, 2006.
Exhibit No. 11 is the internet chat transcript from March 30, 2006.
Exhibit No. 12 is the internet chat transcript from April 25, 2006.
Exhibit No. 13 is the internet chat transcript from April 26, 2006.
Exhibit No. 14 is the internet chat transcript from April 28, 2006.
Exhibit No. 15 is the internet chat transcript from May 2, 2006.
Exhibit No. 16 is the internet chat transcript from May 3, 2006.
Exhibit No. 17 is the internet chat transcript from May 10, 2006.
Exhibit No. 18 is a library receipt and address note.
Exhibit No. 19 is the internet chat transcript with "dana_da_princess".
Exhibit No. 20 is a letter from Detective Marcus Fizer, Overland Park, Kansas Police Department.
Exhibit No. 21 is an internet profile for "Ally_is_a_sweetheart".
Exhibit No. 22 is a VCR tape of interview with the Respondent.
Exhibit No. 23 is the transcript of the Emergency Hearing held on April 26, 2007.

Exhibit A is the autobiography of Respondent, Dennis L. Whitson.
Exhibit B is a letter from Billie Lerner, the Family Conservancy on behalf of the Respondent.
Exhibit C is a letter from Michael Halfhill on behalf of the Respondent.

Findings of Fact

1. Respondent is licensed by the Kansas Board of Healing Arts to practice as a physical therapist in Kansas, having been issued License No. 11-02234 on approximately October 14, 1995, and having last renewed such license on approximately December 31, 2006.
2. Physical therapy is a branch of the healing arts.
3. On or about May 11, 2006, Licensee was charged in Johnson County, Kansas, District Court with Aggravated Indecent Liberties with a Child, a Level 5 Person Felony, Johnson County District Court Case No. 06-CR-1317.
4. The charge of Aggravated Indecent Liberties stemmed from Licensee's arrest after he solicited sexual acts from a child through on-line chat communications.
5. Licensee engaged in sexually explicit on-line chat communications with a person identified to the Licensee as a 13-year old female.

6. Detective Marcus Fizer, a Johnson County law enforcement officer, used an on-line screen identity of "ally_is_a_sweetheart". Detective Fizer would describe himself as a 13-year old girl named "Ally", for on-line communications or chats.
7. Licensee began communicating with "Ally" while on-line utilizing a screen identity of Jim Dalton and used the screen name of "tiny_jim_2000".
8. Licensee's date of birth is January 2, 1960; he was actually 46 years of age when engaging in on-line chat communications with "Ally".
9. On or about March 9, 2006, Licensee began chatting on-line with "Ally". Licensee engaged "Ally" in sexually explicit conversation. Licensee repeatedly indicated that he would like to teach "Ally" to do assorted sex acts.
10. Licensee engaged "Ally" in sexually explicit conversation on March 10, 2006, March 27, 2006, March 28, 2006, March 29, 2006, April 25, 2006 and May 3, 2006.
11. On May 10, 2006, Licensee made arrangements to meet "Ally" in person. Licensee indicated that he would bring condoms and they could do things that they had previously talked about while chatting on-line.
12. On or about March 28, 2007, Licensee entered a plea and was found guilty of Attempted Aggravated Indecent Liberties with a Child, a Level 5 Person Felony, in Johnson County District Court Case No. 06-CR-1317.
13. Licensee is a physical therapist, a profession which involves intimate contact with and the touching of patients, including children.
14. Licensee has engaged in conduct in violation of K.S.A. 65-2912(a)(2), in that Licensee has been convicted of a felony and he has not been sufficiently

- rehabilitated to warrant the public trust.
15. Licensee has engaged in conduct in violation of K.S.A. 65-2912(a) (5), in that Licensee's acts of repeatedly soliciting sex and/or sex acts from a 13-year old girl constitute unprofessional conduct.
 16. On March 28, 2007, the Petitioner filed with Kansas Board of Healing Arts a Motion for Ex Parte Emergency Order of Suspension and For Emergency Proceedings.
 17. On April 3, 2007, the Presiding Officer signed an Emergency Ex Parte Order of Suspension and said Order was served on the Respondent by mail the same day.
 18. A hearing on the Emergency Order, with the Respondent and counsel for the Petitioner being present, was held by the Presiding Officer on April 26, 2007.
 19. A Corrected Initial Order Regarding Emergency Suspension was issued by the Presiding Officer on May 24, 2007 sustaining the emergency suspension of the Respondent.
 20. A Final Order adopting the findings of fact, conclusions of law and order of emergency suspension set forth in the Corrected Initial Order Regarding Emergency Suspension was issued by the Kansas Board of Healing Arts on June 28, 2007.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Kansas Board of Healing Arts and is, therefore, subject to the jurisdiction of the Board.

2. This matter involves a licensee of the Board and the practice of the healing arts in Kansas and is, therefore, subject to the jurisdiction of the Board.
3. Tracy T. Diel has been designated by the Kansas Board of Health Arts to be the Presiding Officer in this matter.
4. In accordance with K.S.A. 65-2912, the authority exists to censure, limit, suspend or revoke the license of the Respondent.
5. The April 26, 2007 hearing before the Presiding Officer was to provide the Respondent a post-deprivation hearing on the *ex parte* emergency suspension of his license to practice physical therapy in Kansas. It offered the Respondent the ability to challenge, in a contested hearing, the emergency order issued by the Presiding Officer on April 3, 2007.
6. The hearing on the Agency's Petition on August 10, 2007 was held in accordance with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

DISCUSSION

K.S.A. 65-2912(a)(2) provides that the Board may suspend or revoke the license of a physical therapist based on receiving a felony conviction and a determination that the licensee has not been sufficiently rehabilitated. In reviewing the matter at hand, the evidence presented establishes that the Respondent entered a plea of guilty and was convicted of Attempted Aggravated Indecent Liberties with a Child, a Level 5 Person Felony, in Johnson County District Court on March 28, 2007. The Board filed its motion for an emergency suspension in accordance with K.S.A. 77-536 on March 28, 2007 and

was granted an Emergency Ex Parte Order of Suspension on April 3, 2007. A post-deprivation hearing was held on April 26, 2007 to determine whether the emergency suspension should remain in effect. As a result of that hearing, an Initial Order was issued by the Presiding Officer sustaining the Emergency Order of Suspension on May 24, 2007. The Kansas Board of Healing Arts issued a Final Order adopting the Presiding Officer's findings of fact, conclusions of law and order of emergency suspension on June 28, 2007.

The issue to be determined by the Presiding Officer in regards to the Agency's present petition is whether the Respondent has been sufficiently rehabilitated to permit him to continue to hold his license or in the alternative should he be censured, the license be limited or should the license be suspended or revoked. Based upon the evidence presented by the Petitioner at the hearing on August 10, 2007, it is the Presiding Officer's determination that the Respondent has not been rehabilitated to the extent that would permit him to continue to engage in the profession of being a physical therapist.

In addition to the proof of conviction, Petitioner's evidence outlined a pattern of conduct by the Respondent which was inappropriate, unprofessional and ultimately criminal in nature. The Respondent's demeanor when testifying and his answers to specific questions during this hearing presented a change from his previous hearing held in April 2007. However, the level of change is not significant enough to show a level of rehabilitation which could give rise to permitting the Respondent to continue to be a licensed physical therapist. The Respondent through his plea to the criminal charge and his continued efforts to engage in counseling are steps towards rehabilitation. However, despite his admissions and despite the evidence being shown to him, the Respondent is still not able to completely accept what he has done, the danger to society and the public

which his actions have created, as well as the effect it has on his profession as a physical therapist. His conviction and the underlying conduct are in violation of K.S.A. 65-2912 (a) (2) and (5) and are subject to discipline by the Kansas Board of Healing Arts.

The Kansas Board of Healing Arts has broad authority over the healing arts. It is tasked with protecting the public from “unprofessional, improper, unauthorized and unqualified practice of the healing arts.” Being convicted of a felony is something which should raise concern and be the subject of action to be taken against the Licensee. However, of more concern are the underlying facts and circumstances which gave rise to the conviction. The fact it involved a minor and the lengths to which the Respondent went to engage in the illegal conduct is disturbing and unprofessional, and speaks directly to the breach of trust the licensee has engaged in as a member of the profession.

ORDERS


IT IS THEREFORE ORDERED that the license of Dennis Whitson, PT, is hereby revoked.

IT IS FURTHER ORDERED that a protective order is hereby entered to prevent the disclosure of any information contrary to 42 CFR Part II and K.S.A. 65-2836(i), 65-4924, and 65-2839a(d) and (e).

IT IS FURTHER ORDERED that a protective order is hereby entered to prevent the disclosure of any patient-identifying information contained in these proceedings.

IT IS FURTHER ORDERED that a protective order should be in place to prevent the disclosure of private information until such time as a final order is issued.

PLEASE TAKE NOTICE that this is an Initial Order. A party to an agency proceeding may seek review of this Initial Order by the full Board by filing a petition for review within fifteen (15) days following the service of this Initial Order. Any such petition must be filed with Larry T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, 235 S. Topeka Blvd., Topeka, KS 66603.



Tracy T. Diel
Presiding Officer

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing INITIAL ORDER was served by depositing the same in the United States mail, first-class postage prepaid, this 7th day of September, 2007, addressed to:

Dennis Whitson, PT
Confidential

Olathe, KS 66061
Respondent

Kathleen Selzler Lippert
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
Telephone: 785-296-4502
Attorney for the Petitioner

The original was hand-delivered for filing to:

Lawrence T. Buening, Jr., Executive Director
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
Telephone: 785-296-4502



Staff Person