

EFFECTIVE AS A FINAL ORDER

DATE: 3/8/16

FILED *JAB*

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

FEB 23 2016

KS State Board of Healing Arts

In the Matter of)
)
SEAN BENNINGTON, D.C.)
)
Kansas License No. 01-05204)

Docket No. 16-HA00045

**PROPOSED DEFAULT ORDER DENYING CONTINUANCE, DENYING
WITHDRAWAL OF APPLICATION, AND DENYING APPLICATION
FOR REINSTATEMENT OF LICENSE**

Now on this 12th day of February 2016, comes on for conference hearing before the Kansas State Board of Healing Arts (“Board”) the Application for Reinstatement of License filed by Sean Bennington, D.C. (“Applicant”). The Board also considers Applicant’s February 10, 2016 email request for a continuance and subsequent notification on the same date of his withdrawal of his Application for Reinstatement. Tracy Fredley, Associate Litigation Counsel, appears on behalf of the Respondent agency. Applicant does not appear.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *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 proposed Default Order in the above-captioned matter.

After reviewing the agency record and the evidence received, and hearing the arguments of Associate Litigation Counsel, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions, and order:

PROCEDURAL HISTORY

1. Applicant was originally issued license 01-05204 to practice chiropractic in the state of Kansas on June 23, 2008. Applicant’s Kansas chiropractic license was cancelled for failure to renew on February 1, 2015.

2. Applicant submitted an Application for Reinstatement (“Application”) on or about May 22, 2015. Such Application was complete and filed with the Board on December 29, 2015.

3. On January 5, 2016, Associate Litigation Counsel filed a Response in Opposition to Application for Reinstatement of License to Practice Chiropractic (“Response”).

4. Pursuant to K.S.A. 77-518, a Notice of Conference Hearing was sent to the Applicant’s address of record informing him that a conference hearing on his Application and the corresponding Response was set for 10:30 a.m. on February 12, 2016, at the Kansas State Board of Healing Arts in Topeka, Kansas.

5. On February 10, 2016, at 9:34 a.m., Applicant sent an email to the Executive Director of the Board, Kathleen Selzler-Lippert, in which he requested a continuance of the hearing. In the email, Applicant acknowledged the hearing set for Friday, February 12, 2016 at 10:30 a.m. The reason provided by Applicant for the request included financial difficulty and illness of a family member. Applicant also indicated that he had not received the Response due to his ex-fiancee having control of the Post Office box to which the Response had been mailed. Ms. Selzler-Lippert responded within an hour and requested Applicant provide more information regarding Applicant’s family member’s illness and suggested he contact Associate Litigation Counsel to get another copy of the Response and other relevant documents. In a subsequent email on the same date, Applicant stated that he decided to withdraw his application based on the advice of his attorney.

6. On February 11, 2011, the Board received a letter by hand-delivery from an attorney on behalf of Applicant. The letter indicated that the attorney’s representation of

Applicant was conditioned upon the conference hearing being continued. The letter also stated that Applicant would be appearing at the conference hearing and asking to withdraw his application or for a stay pending resolution of criminal charges Applicant faced in Sedgwick County, Kansas.

7. Applicant did not appear at the conference hearing regarding his Application for Reinstatement held on February 12, 2016.

8. At the conference hearing, Associate Litigation Counsel requested that the Board hold Applicant in default pursuant to K.S.A. 77-520 and issue a proposed default order denying Applicant's Application.

FINDINGS

9. Applicant failed to appear at the conference hearing in this matter and did not provide the requested information supporting his request for a continuance.

10. In his Application submitted May 22, 2015, Applicant answered "no" to the following disciplinary questions:

10(t): "Have you ever been arrested? Do not include minor traffic or parking violations or citations except those related to a DUI, DWI or a similar charge. You must include all arrests including those that have been set aside, dismissed or expunged or where a stay of execution has been issued."

10(u): "Have you ever been charged with a crime, indicted, convicted of a crime, imprisoned, or placed on probation (a crime includes both Class A misdemeanors and felonies)? You must include all convictions including that that have been set aside, dismissed or expunged or where a stay of execution has been issued."

11. Applicant's "no" answers to disciplinary questions 10(t) and 10(u) were untruthful.

12. Applicant was arrested on May 15, 2014, in Sedgwick County, Kansas and charged with Driving on a Suspended License, Driving without a Valid Driver's License, Driving without Liability Insurance, and, Possession of a Suspended License.

13. Additionally, on May 28, 2015, Applicant was charged with Possession of Certain Drug Precursors (Felony Drug Level 3) and Attempted Possession of Paraphernalia to Distribute or Manufacture (Class A misdemeanor). On June 3, 2015, Applicant made his first court appearance on the May 28, 2015 drug charges.

14. On June 10, 2015, Applicant responded by email to a Board staff's inquiry about why he had not disclosed his May 15, 2014 arrest. Applicant stated that he "misunderstood that question because the warrant was due to a speeding ticket that [he] forgot to pay because it occurred during the time of [his] move". He further stated he was "arrested for a traffic violation. It was a suspended license because [he] forgot to pay a speeding ticket".

15. Applicant's May 28, 2015 arrest for drug charges occurred six (6) days after he submitted his Application. Applicant's email correspondence with Board staff about his failure to disclose his May 15, 2014 arrest occurred approximately seven (7) days after his arrest and appearance on the May 28, 2015 drug charges. However, Applicant did not ever disclose his May 28, 2015 drug charges to Board staff.

16. The Application for Reinstatement completed by Applicant specifically informs Applicants of their duty to supplement information in their applications as follows:

All candidates for licensure or renewal have an obligation to update and supplement the information on this application if they change. Failure to supplement the information and responses provided on this application may result in denial or other appropriate action. All information provided must be accurate.

APPLICABLE LAW

17. Pursuant to K.S.A. 65-2836(a), there are grounds to deny Applicant's application for "fraud or misrepresentation in applying for or securing an original, renewal or reinstated license."

CONCLUSIONS

18. In light of the seriousness of the allegations in this matter and Applicant's failure to provide more information supporting his request, a continuance of the conference hearing is unwarranted.

19. Additionally, granting Applicant's withdrawal of his Application pending the Board's consideration of serious allegations of misrepresentation would permit Applicant to avoid having publicly available negative findings with respect to the misrepresentations in his Application. Other state licensing bodies could be precluded from considering such findings in the event Applicant applied for licensure in another state. The Board concludes that denial of Applicant's withdrawal of his Application is warranted in the circumstances.

20. Pursuant to K.S.A. 77-520, Applicant is in default due to his failure to attend the conference hearing.

21. Applicant committed fraud or misrepresentation in his attempt to reinstate his license in violation of K.S.A. 65-2836(a), by answering “no” to disciplinary questions 10(t) and (u) in his Application. Applicant’s “no” answers were dishonest because Applicant had in fact been arrested and charged with crimes prior to the time he submitted the Application.

22. Applicant also committed fraud or misrepresentation in his attempt to reinstate his license by failing to disclose that he had been charged with additional crimes while his Application was pending. The provision in the Application informing applicants of their duty to supplement information made Applicant aware that he was required to inform the Board of the subsequent criminal charges. Additionally, when Applicant corresponded with Board staff about his failure to disclose his past criminal charges, he should have been even more keenly aware of his obligation to disclose the charges for which he had been arrested seven (7) days prior.

23. Truthfully answering questions asked on a licensing application is of the utmost importance because the Board depends on the integrity and honor of applicants. Any lapse in this fundamental element of the process is a basic threat to the physician licensure system in Kansas which is intended to protect the public. By falsely answering the questions and failing to supplement the criminal information in his Application as required, Applicant hid from the Board that he had twice been arrested and charged with crimes, and that one of the arrests was for a serious felony drug charge. Applicant’s deception potentially deprived the Board of the opportunity to review his record and determine whether he is fit to practice in Kansas.

24. The drug charges which Applicant attempted to hide from the Board allege conduct which may bear on Applicant's fitness to hold licensure in Kansas. Applicant's omission of this information after corresponding with Board staff about his other criminal charges is particularly egregious and indicates that denial of the application is warranted.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant's Request for Continuance is DENIED.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant's withdrawal of his Application for Reinstatement is DENIED.

IT IS FURTHER ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant's Application for Reinstatement of Licensure is DENIED.

IT IS SO ORDERED THIS 22 DAY OF FEBRUARY, 2016, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzer 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 DENYING CONTINUANCE, DENYING WITHDRAWAL OF APPLICATION, AND DENYING APPLICATION FOR REINSTATEMENT OF LICENSE** was served this 8th day of March, 2016 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Sean Bennington, DC
PO Box 548
Andover, KS 67002

and a courtesy copy was mailed to:

Peter John Orsi
Law Offices of Madden & Orsi
300 West Douglas, Suite, 1000
Wichita, KS 67202

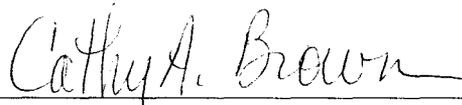
And a copy was hand-delivered to:

Tracy Fredley, Associate Litigation Counsel
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

Kelli Stevens, 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