FILED
AUG 26 2015
KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
MELANIE BROWNE, R.T.	)	
	)	**KSBHA Docket No. 16-HA00001**
Kansas License No. 16-04364	)	
	)	

FINAL ORDER INDEFINITELY SUSPENDING LICENSE

NOW on this 14th day of August, 2015, comes on for conference hearing before the Kansas State Board of Healing Arts ("Board") the Petition for discipline filed against the respiratory therapy license of Melanie Browne, R.T. ("Licensee"). Jane Weiler, Associate Litigation Counsel, appears on behalf of the Petitioner Board. Licensee appears in person and *pro se.*

Pursuant to the authority granted to the Board by the Healing Arts Act, K.S.A. 65-5501 *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, receiving exhibits into evidence, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. Licensee is presently entitled to engage in the practice of respiratory therapy in the State of Kansas, having been issued License No. 16-04364 on approximately June 14, 2013.

2. On or about May 21, 2013, Licensee entered into a Consent Order with the Board in KSBHA Docket No. 13-HA00101. This Consent Order constituted a lawful order of the Board and constituted non-disciplinary action against Licensee's license to practice respiratory therapy in the State of Kansas.

3. On or about October 3, 2013, Licensee advised Board staff that she was no longer practicing respiratory therapy in Kansas. Subsequently, on or about May 13, 2015, Licensee contacted Board staff and stated that she would resume practicing respiratory therapy in the State of Kansas beginning the week of May 25, 2015.

4. On or about May 29, 2015, pursuant to the terms of her Consent Order, Licensee Confidential

5. On or about June 17, 2015, Confidential Confidential

6. On or about May 2, 2014, the Missouri State Patrol received a report that a motor vehicle was being operated in a careless manner. The Missouri State Patrol encountered Licensee in her vehicle in which she was found unconscious in the driver's seat of the vehicle, while the vehicle was running. Once awakened, Licensee advised that she was on her way to work. Licensee was subsequently arrested for driving while intoxicated. Licensee submitted to a breath test which showed her breath alcohol concentration to be 0.259.

7. On approximately February 23, 2015, Licensee plead guilty to driving while intoxicated, a class A misdemeanor, as a result of this incident.

8. On or about May 8, 2014, Licensee submitted her annual respiratory therapy license renewal application. The renewal application asks, "In the past 12 months have you been

arrested, charged with or convicted of any felony or class A misdemeanor? This includes a diversion or plea to a felony or class A misdemeanor." Licensee answered "no" to this question, even though she had just been arrested on May 2, 2014, for driving while intoxicated, a class A misdemeanor.

9. On or about March 31, 2015, Licensee submitted her annual respiratory therapy license renewal application to the Board. The application asks, "In the past 12 months have you been arrested, charged with or convicted of any felony or class A misdemeanor? This includes a diversion or plea to a felony or class A misdemeanor." Licensee answered "no" to this question even though she just plead guilty to driving while intoxicated on February 23, 2015, a class A misdemeanor.

10. Confidential

Confidential Licensee further states that she did not report her 2014 arrest or her 2015 conviction because she was not working in Kansas and did not believe that she needed to report these incidents.

11. The Board concludes that there is sufficient evidence to find that Licensee violated K.S.A. 65-5510(a)(4) in that Licensee violated a lawful order of the Board previously entered by the Board in KSBHA Docket No. 13-HA00101, to-wit: Licensee failed to follow the terms and conditions of her Consent Order in KSBHA Docket No. 13-HA00101; Confidential Confidential

12. The Board concludes that there is insufficient evidence to find that Licensee violated K.S.A. 65-5510(a)(2), as further defined by K.A.R. 100-55-5(q).

13. The Board concludes there is sufficient evidence to find Licensee violated K.S.A. 65-5510(a)(1), in that Licensee obtained a licensee by means of fraud, misrepresentation or concealment of material facts when she failed to disclose her 2014 arrest for driving while intoxicated, a class A misdemeanor, on the 2014 application for license renewal and her 2015 conviction for driving while intoxicated, a class A misdemeanor, on her 2015 application for license renewal.

14. The Board concludes there is sufficient evidence to find Licensee violated K.S.A. 65-5510(a), unprofessional conduct, in that Licensee was arrested for driving while intoxicated, to include Licensee's behavior before, during and after her arrest.

15. The Board concludes that pursuant to the terms and conditions of the Consent Order that from the date of October 3, 2013, through May 25, 2015, the terms and conditions of the Consent Order were tolled and did not count toward the reducing the three (3) year timeframe referenced in paragraph 48 of the Consent Order.

16. In contemplating the appropriate measure of discipline for Licensee's violations of the Respiratory Therapy Practice Act, the Board considers its public protection purpose to be of paramount importance. Punishing Licensee for her actions is also a necessary action due to the severity of Licensee's actions.

17. The Board concludes that Licensee's violations warrant an indefinite suspension of her license. However, after a minimum of 90 days, Licensee may petition the Board to terminate her suspension. Such suspension shall be effective upon service of this order.

18. The Board further concludes that upon any request by Licensee for termination of the suspension, Licensee shall have the burden to demonstrate sufficient evidence of rehabilitation to a degree where she is able to practice with reasonable skill and safety and

warrant the public trust. Confidential

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In exercising its discretion to determine whether or not to terminate the suspension, the Board may consider the factors set forth in *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991).

19. In the event Licensee is found to be sufficiently rehabilitated to warrant termination of the suspension, the Board may impose additional public protection sanctions for a reasonable period of time necessary to ensure Licensee's safety to practice.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Licensee's license to practice respiratory therapy is hereby **INDEFINITELY SUSPENDED** for a minimum of 90 days, whereupon Licensee may request termination of the suspension.

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

IT IS SO ORDERED THIS 24 DAY OF AUGUST 2015, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

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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, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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 and correct copy of the above foregoing **FINAL ORDER INDEFINITELY SUSPENDING LICENSE** was served this 26th day of August 2015 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Melanie Browne, RT
Confidential

Kansas City, KS 66109

Melanie Browne, RT
Confidential

Kansas City, KS 66112

And a copy was hand-delivered to:

Jane Weiler, 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

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

Cathy A. Brown

Cathy Brown, Executive Assistant