

FILED

OCT 03 2023

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

KS State Board of Healing Arts

In the Matter of)	
)	Docket No.: 24-HA00008
Biagio D. Mazza, P.T.)	
Kansas License No. 11-03060)	

**JOURNAL ENTRY DENYING MOTION TO RESCIND THE EMERGENCY ORDER
OF SUSPENSION AND
LIFTING THE EMERGENCY SUSPENSION WITH CONDITIONS**

On the 19th day of September 2023, the above captioned matter came before the Presiding Officer for a hearing on: (1) Biagio D. Mazza, P.T.’s (“Licensee”) Motion to Rescind the Emergency Order of Suspension and Issue a Retroactive Emergency Order Limiting Respondent’s License (“Motion to Rescind the Emergency Order”), filed Sept. 15, 2023; and (2) whether the temporary emergency order suspending Licensee’s license should remain in effect pending the formal hearing on the Petition.

The hearing was conducted in person, at the Kansas State Board of Healing Arts, 800 SW Jackson, Lower-Level Suite A, Topeka, KS 66612. Licensee appeared in person and through counsel, Kelli J. Stevens, of Stevens Law, LLC. Sebastian T. Orosco, Associate Litigation Counsel, appeared on behalf of Disciplinary Panel #35. The Presiding Officer of the Board was Dr. Mark Balderston, D.C., a member of the agency had appointed pursuant to K.S.A. 77-514(g), who appeared with General Counsel for the Board, Courtney Cyzman, and Assistant General Counsel, Cody Bebout. All offered exhibits by both parties were admitted into the agency record

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without objection. Oral argument and testimony from witnesses, including the Licensee, was heard and considered by the Presiding Officer.

I. Licensee’s Motion to Rescind the Emergency Order and Issue a Retroactive Emergency Order Limiting Respondent’s License is DENIED.

On September 15, 2023, Licensee, through counsel filed a Motion to Rescind the Emergency Order of Suspension and Issue a Retroactive Emergency Order Limiting Respondent’s License (“Motion to Rescind the Emergency Order”). In summary, Licensee requested the Presiding Officer rescind the Emergency Order of Suspension, and instead issue a retroactive emergency order that imposed a limitation prohibiting the Licensee from engaging in the clinical practice and supervision of the clinical practice of physical therapy. His reasoning for the specific relief requested was because his suspension would have collateral consequences for him, including potential termination of participation in Medicare and other third-party payor contracts.

On September 18, 2023, Disciplinary Panel #35, through counsel, submitted a Response to Licensee’s Motion to Rescind the Emergency Order of Suspension, requesting the Motion to be denied. Disciplinary Panel #35 argued that the emergency order of suspension was objectively remedial in nature and was necessary to protect the public regardless of the effect it has on the licensee.

Both parties agreed to brief oral arguments on the pending Motion to Rescind the Emergency Order prior to proceeding to the hearing on whether the temporary emergency suspension of Licensee’s license should remain in effect. The Presiding Officer heard and considered oral arguments from both parties.

After consideration of the agency record, briefing, hearing oral arguments from both parties, and being duly advised in the premises, the Presiding Officer **DENIES** Licensee's Motion to Rescind the Emergency Order and Issue a Retroactive Emergency Order Limiting [Licensee's] License. While the Presiding Officer understands the collateral consequences any licensee may face when issued a lawful emergency order of suspension or limitation, the mission and duty of the Board to protect the public must come first.

Licensee clarified during oral arguments that the *basis* for the request is that the Board has the legal authority to emergently suspend *or* limit a licensee's license, and the specific retroactive limitation licensee now seeks would be the least restrictive measure, and the *reason* the Presiding Officer should consider this is because of the effects it will have on the licensee. The Licensee conceded that the emergency suspension and the retroactive limitation on clinical practice and supervision he now seeks essentially achieve the same result, the difference being one of semantics, but because of the collateral consequences for *him*, the Presiding Officer should alter its original lawful order.

A Shawnee County District Court in the Third Judicial District of Kansas explained:

The Board's first duty is to ensure the public's safety and to make sure that any individual licensed by the board is competent and fit to practice. When presented with a [licensee] who poses a possible threat to his patients, the Board must act in accordance with the interest of the public before the interests of the [licensee]. Therefore, the Board's responsibility is not to weigh the benefit and harm of this agency action as it pertains to [a licensee] and his personal life, but to the benefit and harm to the public and the public's perception of the Board as a regulatory agency. If the Board is to perform its regulatory function, the public must perceive the Board as acting in the public's best interest, rather than catering its decisions to the benefit of the [licensees] it is tasked with regulating.

Zoeller v. State Board of Healing Arts, No. 12-CV50, slip op. at 12 (Kan. D. Shawnee County, July 2, 2012). Such is the case here. Again, the Presiding Officer is cognizant of collateral consequences of any decision, including imposing an emergency order of suspension or limitation on any licensee, but the Board cannot, and should not, cater its lawful decisions to best benefit the licensee.

II. Licensee's temporary emergency suspension is LIFTED.

On the evidence and testimony received at the hearing, the Presiding Officer finds, pursuant to K.S.A. 65-2838(c) and K.S.A. 77-536, action short of emergency suspension is available to avoid immediate danger to the public during the pendency of the Petition for discipline. Therefore, the emergency temporary suspension is lifted.

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IT IS THEREFORE ORDERED that Licensee's temporary emergency suspension is
LIFTED, CONFIDENTIAL

IT IS SO ORDERED this 3rd day of October 2023.

KANSAS STATE BOARD OF HEALING ARTS

/s/ Courtney Cyzman, KS #27787, for
Mark Balderston, D.C.
Presiding Officer

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing **Journal Entry Denying Motion to Rescind the Emergency Order of Suspension and Lifting the Emergency Suspension with Conditions** was served this 3rd day of October 2023, by depositing the same in the United States Mail, first-class postage prepaid, and via email addressed to:

Biagio D. Mazza, P.T.

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Licensee

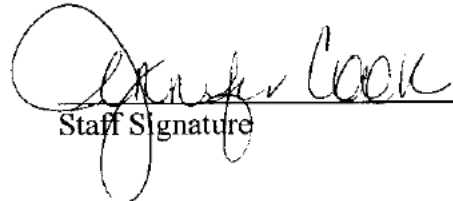
Kelli Stevens
Stevens Law, LLC
15621 W. 87th Parkway, #157
Lenexa, KS 66219
kstevens@stevenslawllc.com
Attorney for Licensee

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

C. Sebastian Orosco, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612
Sebastian.orosco@ks.gov

Licensing Administrator
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.



Staff Signature

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