

KANSAS

KATHLEEN SEBELIUS, GOVERNOR

BEFORE THE KANSAS BOARD OF EXAMINERS IN OPTOMETRY

In The Matter Of)

Michael D. Liebau, O.D.)
License No. 1156-2)
_____)

File No. 3032-02b

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FINAL AGENCY ORDER

On April 14, 2005, a hearing was held before the Kansas Board of Examiners in Optometry (the "Board") on the Board's Order denying the petition of Micheal D. Liebau, O.D. ("Liebau") seeking reinstatement of his license to practice optometry in Kansas. After considering the evidence admitted at the hearing as well as the proposed finding of fact, conclusions of law and arguments submitted by counsel, the Board enters the following final agency order.

FINDINGS OF FACT

1. The Board previously issued to Liebau license number 1156-2, which entitled him to practice optometry in the State of Kansas.
2. In 2002 the Board issued an Agreed Order denying Liebau's then pending application to renew his optometry license on the basis that Liebau had failed to comply with the continuing education requirements set out in K.A.S. 65-1509a. Liebau's license was cancelled at that time.
3. The 2002 Agreed Order also provided that "[w]hat, if any effect Dr. Liebau's criminal conviction in Sedgwick County District Court, may have on his ability to be licensed by the Board to practice optometry in Kansas shall not be determined at this time." (Agreed Order, ¶ 1-3).

4. On April 25, 2003, the Kansas Court of Appeals issued its decision in Liebau's appeal from convictions in Sedgwick County District Court for eavesdropping and sexual exploitation of a child, a copy of which decision is attached hereto. In doing so, the Court of Appeals referred to several findings of fact made by the trial judge which were the basis for Liebau's convictions. The Court affirmed the conviction for eavesdropping and reversed the conviction for sexual exploitation of a child for legal reasons referred to in the decision. The findings that were incorporated from the trial court included the following:

- a. In December 1999, Liebau's then wife found a videotape in Liebau's bedroom showing her daughter (his step-daughter) in the bathroom undressing. She then discovered a video camera hidden in the wall of the children's bathroom and removed the camera from the wall. When she confronted Liebau about the video camera, he told her that all guys like to look at young girls and that it was a natural thing since it was not his daughter. Liebau apologized to Jamie and assured her that he would never do it again.
- b. Less than 6 months later, Liebau's then wife found another videotape showing her daughter naked in the bathroom and another video camera in the bathroom wall. She removed the video camera from the wall and took the videotape and the camera to her office. Later, Liebau's wife took the videotape and the two video cameras she had confiscated to the police station.
- c. In its opinion, the Court of Appeals held that Liebau failed to establish a good faith basis that was objectively reasonable for entering his step-daughter's bathroom. "Although Liebau testified he was concerned that J.H. was using drugs, the trier of fact did not find Liebau's stated purpose to be credible."
(Hearing Exhibit 1).

5. Liebau offered an affidavit from his ex-wife, indicating that while Liebau owes her back child support and "a job would help", she believes that the actions of Liebau were "not for immoral or inappropriate reasons...". (Affidavit of Jamie Liebau, attached to Petitioners Exhibit #2). Liebau is not currently employed, and has not been in the last two years. (Hearing Transcript at 36, l. 22-25; at 37, l. 1-3). Liebau estimates he is about a year behind in paying his child support. (Hearing Tr. At 37, l. 7-15).

6. Liebau offered his ex-wife's affidavit as part of an exhibit of his decision from the Missouri Administrative Hearing Commission reactivating his certificate to practice optometry in the State of Missouri. (Petitioner's Exhibit #2).

7. There is sufficient reason to conclude that Liebau committed the acts, and for the reasons, determined by the trial judge in Sedgwick County.

II. CONCLUSIONS OF LAW AND FACT

1. To be licensed to practice optometry in the State of Kansas, a person must be of good moral character. K.S.A. 65-1505. While Dr. Liebau's ex-wife has indicated she now believes his reasons for committing these acts were not inappropriate, the factual findings made by the trial judge in Sedgwick County would indicate

Liebau does not demonstrate the good moral character necessary to hold a license to practice optometry in the State of Kansas. The Board chooses to adopt the findings made by the trial judge over the evidence offered by Liebau.

2. The Board can deny an application to grant or renew a license for unprofessional conduct. K.S.A. 65-1517(b). The factual findings made by the trial judge in Sedgwick County would indicate Liebau has committed acts of unprofessional conduct. While Dr. Liebau's ex-wife has indicated she now believes his reasons for committing these acts were not inappropriate, the Board adopts the trial court's findings and determines Liebau's actions constituted unprofessional conduct under K.S.A. 65-1517(b)(3), and the Board's inherent authority to determine unprofessional conduct. See Kansas State Bd. of Healing Arts v. Foote, 200 Kan. 447, 453-44, 436 P.2d 828 (1968).

III. ORDER

Based upon the foregoing, the request of Liebau for consideration of reinstatement of his license to practice optometry in the State of Kansas is denied. The Board makes no findings regarding whether Liebau has met the other requirements to obtain a reinstatement of his license.

IV. NOTICES

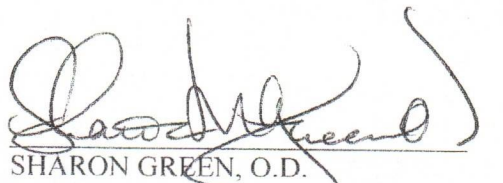
Liebau is hereby notified as follows:

1. Within fifteen (15) days after entry of a final agency order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.
2. Within the time limits established in K.S.A. 77-613, either party may seek judicial review of a final agency order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Penny Bowie
Executive Officer
Kansas Board of Examiners in Optometry
3109 W. 6th, Suite B
Lawrence, KS 66049

IT IS SO ORDERED.

May 25, 2005
Date


SHARON GREEN, O.D.
President
Kansas Board of Examiners in Optometry


CERTIFICATE OF SERVICE

I hereby certify that I did, on the 25th day of May 2005, deposit in the United States mail, postage prepaid, certified return receipt requested, a copy of the foregoing FINAL AGENCY ORDER, properly addressed to the following:

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Penny Bowie
Executive Officer
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