



BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

OCT 17 2000

KANSAS STATE BOARD OF
HEALING ARTS

In the Matter of)
)
GEORGE B. HOWELL, M.D.)
Kansas License No. 4-13471)
_____)

Docket No. 00-HA-22

FINAL ORDER

NOW ON THIS Fourteenth Day of October, 2000, this matter comes before the Board upon the Board's own motion to review the Initial Order dated June 26, 2000. Stacy L. Cook, Litigation Counsel to the Board, appears for Petitioner. Respondent appears in person and through Steve A. Schwarm of Goodell, Stratton, Edmonds and Palmer, LLP.

Having heard the arguments of counsel, and based upon the agency record, the Board finds, concludes and orders as follows:

1. Respondent is licensed by the Board to practice medicine and surgery. His license initially was issued in 1966, and has continued to the present.

2. Respondent is also licensed to practice medicine and surgery in the state of Montana, though his license is currently in an inactive status. He practiced in Montana at least in 1985 and 1986, but his license was inactivated in 1989.

3. Respondent applied for a medical license in the state of Texas in November, 1990. He initially was found to be ineligible for licensure by a committee of the Texas Board of Medical Examiners. Respondent requested a hearing. A hearing was held before an administrative law judge in which Respondent participated both in person and with counsel.

4. The issues in the administrative hearing involved Respondent's medical practice

in Montana. The administrative law judge found that Respondent had engaged in various practices that constituted grounds to deny the application and recommended that the application be denied.

5. On review, the Texas Board of Medical Examiners adopted some but not all of the administrative law judge's findings of fact and conclusions of law. In summary, the Texas board found that Respondent had engaged in professional practice below the standard of care with regard to patients S.W. and P.C. and that Respondent had performed breast and pelvic examinations on female junior high and high school students without adequate indication. The Texas board did not adopt the administrative law judge's findings and conclusions regarding patient A.H. The Texas board denied Respondent's application as indicated in the August 18, 1995 Final Order.

6. The Board finds and concludes in the instant case that Respondent's application to the Texas board was denied for reasons that would constitute grounds for disciplinary action under the Kansas Healing Arts Act.

7. Respondent applied to the North Carolina Medical Board for a license. By way of a letter dated July 24, 1998, he was notified that the application was denied. This denial was not the product of a hearing, but Respondent was offered an opportunity to request a hearing. The agency record in the present case does not disclose whether a hearing was requested.

8. The letter order from the North Carolina board indicates that Respondent's application was denied based upon the action by the Texas board. Though this letter order also incorrectly relies upon the Texas administrative law judge's findings regarding Respondent's care of patient A.H., which were not adopted by the Texas board, the Board finds and concludes

in the instant case that Respondent's application to the North Carolina board was denied for reasons that would constitute grounds for disciplinary action under the Kansas Healing Arts Act.

9. Respondent applied for a medical license in the state of Michigan in April, 1998. The application was granted. An administrative complaint was filed in May, 1999, in summary alleging that Respondent failed to disclose the Texas board action on the application, that he failed to notify the Michigan board of the North Carolina board action within 30 days after that action, and that the findings of the Texas board evidence lack of good moral character. The Michigan board summarily suspended Respondent's license on May 25, 1999. He did not file a written response to the allegations, and the Michigan board revoked the license as stated in the Final Order dated July 28, 1999. The final order was served upon Respondent August 2, 1999.

10. The Board received an application from Respondent on June 13, 1996 to renew his license for the period beginning July 1, 1996 and ending June 30, 1997. That application form required disclosure of disciplinary action taken by another state licensing agency in calendar year 1994 or between the time of the prior renewal and the date of applying for the new renewal. Thus, Respondent was required to disclose disciplinary actions initiated or taken between the time period beginning January 1, 1994 and concluding June 13, 1996. Respondent indicated that there had been no disciplinary action by other agencies.

11. The Board received an application from Respondent on May 25, 1999 to renew his license for the period beginning July 1, 1999 and ending June 30, 2000. That application form required disclosure of disciplinary action taken by another state licensing agency between May 1, 1998 and the time of application. Respondent indicated that there had been no disciplinary action by other agencies.

12. Respondent appeared before the Board's Disciplinary Panel on July 14, 1999. The Board notes that this panel is a committee of the Board appointed to perform investigatory functions. The purpose for the July 14 appearance was to discuss the action taken by the Texas and North Carolina boards. In a letter authored by Litigation Counsel for the Board to Respondent dated July 16, 1999, Respondent was advised that the panel recommended no disciplinary action at that time. Respondent was cautioned that he was required to report any adverse actions by other state agencies.

13. Respondent did not advise the Disciplinary Panel of the action initiated on May 25, 1999 or of the action taken on July 28, 1999 by the Michigan board. The Board became aware of that action on August 17, 1999 through the Federation of State Medical Boards' action report.

14. The Board is authorized to revoke, limit, or suspend, a license, or to censure or fine a licensee, upon a finding that the licensee has engaged in conduct described at K.S.A. 1999 Supp. 65-2836.

15. As provided by K.S.A. 1999 Supp. 65-2836(j), the Board may order discipline upon the finding that the licensee has had a license to practice the healing arts revoked, suspended, limited, or denied. The actions by the Texas, North Carolina and Michigan boards may result in discipline by the Board.

16. As provided by K.S.A. 1999 Supp. 65-2836(t), the Board may order discipline upon a finding that a licensee has failed to report to the Board any adverse action taken against the licensee by another state or licensing jurisdiction if the grounds for that adverse action would constitute grounds for disciplinary action under that statute. The statute does not specify a time

period within which a report of adverse action must be made. This subsection must be construed to accomplish the purpose of the Healing Arts Act, and in a manner that gives fair notice to those who are required to comply with the statute. The Board concludes that a licensee must make the disclosure required under this subsection when applying for an original or renewal of a license, and when otherwise directed by the Board.

17. In the present case, the actions by the Texas and North Carolina boards were adverse actions within the meaning of K.S.A. 1999 Supp. 65-2836(t). A reasonable person should understand that, when completing the renewal application form, these actions were disciplinary actions and should have been reported when making application for renewal. The Board concludes that when submitting the applications for renewal, Respondent failed to report the actions by the Texas and North Carolina boards as required, and thus engaged in conduct constituting grounds for disciplinary action under K.S.A. 1999 Supp. 65-2836(t).

18. Respondent's conduct is aggravated by his failure to report the Michigan board action. The agency record does not disclose whether he has applied for renewal of his current license, and if so whether he reported the Michigan action, or whether he reported the Michigan board action in any other manner. The Board concludes that a reasonable person in Respondent's position would have reported the action when appearing before the Disciplinary Panel or upon receiving the letter from the Board in which he is cautioned that he must report any such action.

19. The Initial Order censured Respondent for the disciplinary action by other states and for failing to report those actions to the Board. The Board's decision to revoke, suspend or limit a license, or to censure a licensee, is discretionary. In light of the ongoing nature of Respondent's conduct, and the importance of providing truthful information to the Board during

the licensing process, the Board believes that a suspension for ninety days is a more appropriate remedy than is a censure.

IT IS, THEREFORE, ORDERED that, based upon the disciplinary action by other states for conduct that would constitute grounds for disciplinary action by the Board, and for failing to report the actions by the other licensing boards, Respondent is hereby suspended for a period of ninety days.

IT IS FURTHER ORDERED that, based upon the failure to report the actions by the other licensing boards, Respondent is hereby fined in the amount of \$2000.

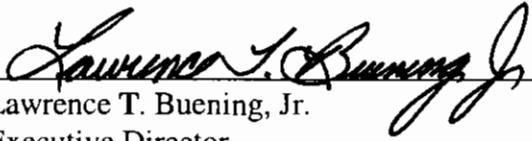
IT IS FURTHER ORDERED that, in light of the finding by the Texas board that Respondent performed pelvic and breast examinations without adequate indication, it is necessary to protect the public health safety and welfare from this type of conduct. Respondent is hereby prohibited from performing a breast or pelvic examination upon any female unless done in the presence of another adult female. This prohibition is intended to be a limitation upon Respondent's license.

PLEASE TAKE NOTICE that this is a Final Order. A party may seek judicial review of a Final Order by filing a petition with the District Court. A copy of any petition for review must be served upon the office of the executive director, 235 S. Topeka Blvd., Topeka, Kansas 66603. A petition for judicial review is not timely unless filed within 30 days following service

of the Final Order. Reconsideration of the Final Order is not a prerequisite to judicial review.

DATED this 17th day of October, 2000.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing order was served this 17th day of October, 2000, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

George B. Howell, M.D.
P.O. Box 20630
Wichita, Kansas 67208

Steve A. Schwarm
Goodell, Stratton, Edmonds & Palmer, LLP
515 S. Kansas Ave.
Topeka, Kansas 66603
Counsel for Respondent

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

Stacy L. Cook
235 S. Topeka
Topeka, Kansas 66603
Counsel for Petitioner

