

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

In the Matter of)
)
ERNEST L. LOUK, D.P.M.) **Docket No. 03-HA-52**
Kansas License No. 12-00228)
_____)

FINAL ORDER

NOW ON THIS Seventh Day of June 2003, this matter comes on for review of the Initial Order issued by Presiding Officer Sue Ice. Respondent Ernest L. Louk, D.P.M. appears in person and without counsel. Stacy L. Cook, Litigation Counsel, appears for Petitioner.

After hearing the arguments of the parties, and having the agency record before it, the Board adopts the findings, conclusions and orders of the Presiding Officer as the Final Order of the Board, and makes the additional findings, conclusions and orders as follows:

Findings and conclusions of the Presiding Officer

Cancellation of License

1. Respondent is licensed by the Board to engage in the practice of podiatry. His license was originally issued in 1988. He was continuously licensed until the year 2001. The license was cancelled for a short period of time in November of that year, but was reinstated, and Respondent has been continuously licensed since that time.

2. Respondent filed a timely application to renew his license for the licensure period beginning October 2000. As provided by K.A.R. 100-49-5, that license was to expire September 30, 2001. The Board gave notice of this expiration date in early August 2001. The Board gave

a

second notice dated October 1, 2001, stating that the license had expired, but that it could be renewed by payment of a late fee. The application for late renewal had to be received or postmarked by October 30, 2001. The Presiding Officer finds that this notice was proper under K.S.A. 65-2005(b), and actually gave an additional benefit to Respondent by allowing the renewal application to be received later than the statutory period if it were postmarked by the end of the statutory period.

3. The Board did not receive the renewal application by October 30, nor did it receive an application that was post-marked by that date. By operation of law, his license was cancelled as of November 1, 2001. Respondent placed his renewal in the mail November 3, 2001. The application was received November 6, 2001, and the license was reinstated on November 6.

4. Respondent practiced podiatry in Kansas on November 3, 2001. The Presiding Officer finds that this conduct was willful and not accidental.

5. The Presiding Officer finds and concludes that Respondent's license to practice podiatry in the State of Kansas was cancelled on November 1 through November 5, 2001, and that Respondent had no authority to practice podiatry on those dates. By willfully practicing podiatry on November 3, 2001 without a license, Respondent engaged in conduct that constitutes grounds for disciplinary action under K.S.A. 65-2002(a)(6).

Investigation No. 99-00399

6. Sharon Dirks, Special Investigator for the Board, attempted to contact Respondent by letter dated November 8, 2000 regarding a complaint from Patient J.C. The letter requested a written response, and included a subpoena for the patient's medical records. The subpoena required production of the records on or before November 17, 2000. Service was by certified mail, which Respondent signed for.

7. These records were not received by the November 2000 date. Ms. Dirks contacted Respondent in July 2001 to follow up on the subpoena. In a telephone conversation on July 27, 2001, Ms. Dirks informed Respondent that she expected the medical records to be produced the following week. She sent a copy of the November 8 letter and subpoena to Respondent by fax on July 30, 2001.

8. Ms. Dirks sent a letter dated August 16, 2001 and addressed to Respondent. This letter was mailed by certified mail. In a telephone conversation on August 23, 2001, Ms. Dirks asked Respondent if he had received the letter, to which he responded that he had not. The postal service returned the letter to the Board on August 29, 2001 indicating that the addressee did not claim the letter.

9. On December 3, 2001, Board Disciplinary Counsel Shelly Wakeman mailed a letter to Respondent explaining that he had not complied with the subpoena, and that he must comply by December 17, 2001 to avoid disciplinary action for failing to comply. The Board received the records described in the subpoena by fax on December 18, 2001.

Investigation No. 02-145

10. When Respondent submitted his 2001 renewal application, he disclosed that he had entered into a settlement agreement resulting from a professional liability claim. This claim involved a patient R.M. Ms. Dirks was assigned to investigate the claim. Ms. Dirks attempted to call Respondent by telephone on November 19, 2001 to discuss the investigation. Respondent answered the telephone, but when Ms. Dirks identified herself, Respondent hung up.

11. Ms. Dirks sent a subpoena to Respondent on November 19, 2001. This subpoena was sent by certified mail, but was not claimed. The Presiding Officer finds that this subpoena was not served upon Respondent.

12. Ms. Dirks sent a letter to Respondent on December 3, 2001, asking for specific information relating to the patient R.M. The letter was sent by regular mail. The Board received no indication that the mail was undeliverable. The Presiding Officer finds that Respondent received this letter, and concludes that he had an obligation to provide information to the Board investigator as a result of that letter.

13. Ms. Dirks sent another letter to Respondent dated December 19, 2001, asking that he provide a written response regarding his care and treatment of patient R.M. She included with the letter a subpoena for R.M.'s patient records. The records were to be produced by January

9,

2002. Respondent did not comply with the subpoena.

14. Ms. Dirks telephoned Respondent on January 17, 2002. During that conversation,

Respondent told Ms. Dirks that he had not received the December 19, 2001 letter. Respondent also asked to have Ms. Wakeman call him regarding the release of Board records to him. Ms. Dirks faxed a copy of the December letter to Respondent on that same day.

15. On January 29, 2002, Ms. Dirks called Respondent and asked him if he intended to supply the records and information demanded in the December 19, 2001 letter. Respondent told Ms. Dirks that he would provide these by the following Monday.

16. Ms. Dirks sent a letter dated January 29, 2002 to Respondent requesting additional information. This letter also contained a subpoena for records. The deadline for complying with that subpoena was February 4, 2002. Respondent did not comply with the demand.

17. Ms. Dirks referred the matter to Board counsel so that the subpoenas could be enforced. Ultimately, Ms. Cook sent a subpoena to Respondent, commanding his presence at the Board office on November 22, 2002. Respondent did comply with the subpoena, and brought with him the records that he had been ordered to produce.

Patient records of R.M.

18. Records created by patient R.M. disclose that x-rays of R.M.'s feet were taken

December 14, 1996. Respondent then performed surgery on R.M.'s feet in his office January 10, 1997. Respondent did not create a patient record for that date. These records also show that R.M. visited Respondent's office other dates on which Respondent did not create a patient record.

19. Respondent's medical records of his care and treatment of patient R.M. were inadequate because he failed to document his interpretation of the x-rays, he failed to document the surgery, and he failed to document patient encounters on multiple other occasions.

Findings and conclusions regarding violations

20. Respondent failed to produce records that Board investigative staff lawfully and properly demanded on multiple occasions relating to two separate investigations. These demands were in the form of written letters and subpoenas. K.S.A. 65-2006(a)(12) states that the Board may revoke, suspend or limit any license to practice podiatry, or may censure a licensee, upon a finding that the licensee has violated a lawful order or directive of the Board. K.S.A. 65-2839a authorizes the Board to issue a subpoena in connection with an investigation, and states that the Board or its agents shall have access to documents and records of any person being investigated. The Presiding Officer concludes that a subpoena is a lawful order or directive of the Board. The Presiding Officer further concludes that a written demand for access to records or documents information is also a directive of the Board.

21. Respondent willfully practiced podiatry in Kansas at a time when his license was

expired. K.S.A. 65-2006(a)(6) states that the Board may revoke, suspend or limit any license to practice podiatry, or may censure a licensee, upon a finding that the licensee willfully or repeatedly violated the podiatry act. The Presiding Officer concludes that, as provided by K.S.A.

65-2002, it is a violation of the podiatry act to practice podiatry without a license.

22. Respondent failed to maintain adequate patient records for patient R.M. K.S.A. 65-2006(a)(2) states that the Board may revoke, suspend or limit any license to practice podiatry, or may censure a licensee, upon a finding that the licensee has engaged in unprofessional conduct. Under subsection (c) of that same statute, unprofessional conduct is defined as having the meaning ascribed at K.S.A. 65-2837. K.S.A. 65-2837(b)(25) defines unprofessional conduct to include the failure to keep written medical records accurately describing the services rendered, patient histories, pertinent findings, examination results and test results.

23. In addition to the Board's authority to revoke, suspend or limit any license to practice podiatry, or to censure a licensee, the Board may assess a civil fine against a licensee, as provided by K.S.A. 65-2015. The amount of the fine is established by statute as \$5000 for the first violation, \$10,000 for the second violation, and \$15,000 for the third and each subsequent violation.

24. The Presiding Officer notes that Respondent had a remedy for seeking modification or revoking a subpoena, but chose not to pursue that remedy. The Presiding Officer does not find any mitigating factors for Respondent's conduct. Respondent's failure to produce records as required is aggravated by repeating the misconduct.

25. The Presiding Officer finds and concludes that it is appropriate to suspend the license of Respondent for a period of thirty days for the failure to produce records that Board investigative staff lawfully and properly demanded through written letters and subpoenas, and to assess a fine of \$2500, payable within 30 days following the effective date of this order. Because this conduct was not a one-time occurrence, the Respondent additionally should be publicly censured.

26. The Presiding Officer finds and concludes that it is appropriate to assess a civil fine against Respondent in the amount of \$2500, payable within 30 days following the effective date of this order, for practicing podiatry after his license had been cancelled.

27. The Presiding Officer finds and concludes that if Respondent does not successfully complete a Board-approved educational course on creating patient records within 90 days following the effective date of this order, it is appropriate to indefinitely suspend Respondent's license until such time as the Board makes a finding that he has completed such course. Respondent is encouraged to propose an appropriate course to the Board at the time this

Initial Order is reviewed by the Board.

28. Respondent provided a statement following the conclusion of the hearing indicating that he had enrolled in an educational course entitled “The Patient Care Documentation Seminar offered by the Center for Personalized Education for Physicians, located in Colorado. The Colorado Medical Society has approved this seminar for 11 continuing education hours. The course consists of a pre-program submission of 3 patient charts that are to include specific elements, interactive learning through faculty presentations and workshops, and an optional post-program evaluation of patient charts at one-, three- and six-month intervals. The Presiding Officer finds that completion of this program, including the optional post-program evaluation, meets the requirements for an approved educational course.

Additional findings and conclusions following review

29. -----(Confidential)-----

30. -----(Confidential)-----

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31. -----Confidential)-----

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IT IS, THEREFORE, ORDERED that Respondent is publicly censured, that Respondent is assessed a civil fine in the amount of \$5000, and that unless Respondent completes a Board-approved course on creating patient records within 90 days following the effective date of this order, Respondent’s license is indefinitely suspended beginning at the conclusion of that 90-day period.

IT IS FURTHER ORDERED that the Patient Care Documentation Seminar, with the Post-Program evaluation, offered by the Center for Personalized Education for Physicians is approved as a course that will satisfy this order. Respondent shall provide sufficient consent to CPEP to allow CPEP to report to the Board compliance with this order.

IT IS FURTHER ORDERED that Respondent’s license is suspended indefinitely

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. 77-610, et seq. Reconsideration of the 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 the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

Dated this 12th day of June 2003.

Kansas State Board of Healing Arts

_____/s/_____
Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 13th day of June 2003 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Ernest L. Louk, D.P.M.
5990 S.W. 28th Street, Ste. E
Topeka, KS 66614-2535

and a copy was hand-delivered to:

Stacy L. Cook
Litigation Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

Snyder _____

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