

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

In the Matter of)
FERNANDO ABARZUA CABEZAS, M.D.)
)
Application for Licensure)
_____)

KSBHA Docket No. 13-HA00095

FINAL ORDER DENYING LICENSURE

NOW on this 14th day of June, 2013, comes before the Kansas State Board of Healing Arts (“Board”) the application of Fernando Abarzua Cabezas, M.D. (“Applicant”) for a license to practice medicine and surgery in the State of Kansas. Applicant appears in person and through counsel, Mark Stafford of Holbrook & Osborn, P.A. Seth Brackman, Associate Litigation Counsel, appears on behalf of the Board.

Pursuant to the authority granted to the Board by the Kansas Healing Arts Act, K.S.A. 65-2801 *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 evidence admitted, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings, conclusions and order:

1. On or about February 23, 2012, Applicant submitted an application to practice medicine and surgery in the State of Kansas, along with a letter requesting licensure by endorsement. Such application was complete and filed with the Board on May 13, 2013.
2. In his application materials, Applicant stated that he intended to practice Urology in Liberal, Kansas.

3. At the time Applicant submitted his application, he held a medical license in South Carolina and was practicing medicine in a fellowship program.

4. Since submitting his application to the Board, Applicant's South Carolina license has lapsed.

5. In 2012, Applicant was granted a training license to practice medicine and surgery in Florida. A training license does not meet the requirements for licensure by endorsement pursuant to K.S.A. 65-2833.

6. At present, Applicant does not have a full, active license to practice medicine and surgery in any state.

7. Due to the lack of licensure by any other qualifying licensing authority, the Board concludes that Applicant does not meet the requirements of K.S.A. 65-2833 in order to be granted a license by endorsement to practice medicine and surgery in the State of Kansas.

8. Applicant received his medical degree from the National University of Asuncion in the country of Paraguay. Applicant's medical school is not an accredited healing arts school.

9. In Applicant's Memorandum In Support of Application For Licensure dated May 29, 2013, Applicant asserts that Applicant's postgraduate education meets the requirements of K.A.R. 100-6-2(b), and therefore, a license by examination.

10. At the conference hearing on this matter, Applicant's counsel further affirmed that Applicant's application should be considered as an application for a license by examination.

11. K.S.A. 65-2873(b) requires that applicants for licensure "present proof that such [applicant] has completed acceptable postgraduate study as may be required by the board by regulations."

12. K.A.R. 100-6-2(b) states that “[an applicant] who is a graduate of an unaccredited school of medicine shall present to the board proof of completion of a postgraduate training or residency training program that is at least two years in length. This program shall have been approved by the council of education of the American medical association or its equivalent in the year in which the training took place.”

13. The Accreditation Council for Graduate Medical Education (“ACGME”) is an organization that accredits postgraduate training programs and has been determined by the Board to be equivalent to the American Medical Association Council on Medical Education.

14. In February of 2001, Applicant successfully completed a five-year residency in urology at the University Hospital – University of Asuncion in Asuncion, Paraguay. No evidence was offered to indicate that this residency program was accredited.

15. From 2001 to 2011, Applicant was engaged in research and practiced in a fellowship at the University Hospital – Okayama University in Okayama, Japan. The fellowship was not accredited by the ACGME.

16. In June of 2012, Applicant successfully completed a one-year fellowship in Urologic Oncology at the Medical University of South Carolina in Charleston, South Carolina. The fellowship was accredited by the ACGME.

17. In June of 2013, Applicant completed a one-year fellowship in Urological Oncology at the Moffitt Cancer Center which was affiliated with the University of South Florida in Tampa, Florida. This fellowship was not accredited by the ACGME.

18. Applicant presented evidence that the Medical University of South Carolina requires completion of ACGME approved postgraduate training in Urology or the equivalent in order to be accepted in their Urologic Oncology fellowship program. Applicant suggested that

since he was accepted into the program, the Board should find that his prior postgraduate training is equivalent to ACGME accredited training. However, no evidence was presented as to the criteria specifically weighed by the Medical University of South Carolina to determine such equivalence for Applicant. Additionally, the Board's scrutiny of an applicant's training in order to qualify for licensure is for the purpose of protecting the public. Consequently, the Board cannot rely on Applicant's acceptance into the Urologic Oncology fellowship program at the Medical University of South Carolina as the basis to make its independent determination of equivalence.

19. Applicant further offered evidence that the Urological Oncology fellowship program at the Moffitt Cancer Center was accredited by the Society of Urologic Oncology ("SUO") and that the SUO also accredited the University of Kansas Medical Center. Applicant argued that the SUO-accredited Moffitt Cancer Center program should therefore be "deemed equivalent" and found acceptable to the Board to meet the requirement of K.A.R. 100-6-2(b).

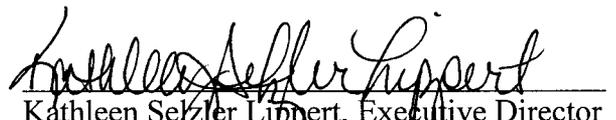
20. Upon review of Applicant's application materials, the Board finds that Applicant stated that his fellowship at the Moffitt Cancer Center was not accredited by any organization. (Uniform Application for Physician State Licensure, p. 4, ¶6). Further, the Postgraduate Training Verification completed for Applicant's fellowship at Moffitt Cancer Center states that the program was a "non-SUO fellowship in urologic oncology." (Uniform Application for Physician State Licensure, p. 18, Section 3).

21. Lastly, no evidence was presented demonstrating that SUO accreditation is equivalent to that of the ACGME.

22. Since Applicant only has one year of ACGME-accredited postgraduate training, the Board concludes that Applicant does not meet the requirements of K.A.R. 100-6-2(b) to qualify for a license by examination.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant's application for a license to practice medicine and surgery in the State of Kansas is hereby DENIED.

IT IS SO ORDERED THIS 12th DAY OF JULY 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


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 DENYING LICENSURE** was served this 12th day of July, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Fernando Abarzua Cabezas M.D.
Confidential
Tampa, FL 33647

Mark Stafford
107 SW 6th Ave. Suite 210
Topeka, KS 66603
Attorney for Applicant

And a copy was hand-delivered to:

Seth Brackman, 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 Brown, Executive Assistant