

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

FEB 23 2010

KS State Board of Healing Arts
AW

In the Matter of)

Ethan E. Bickelhaupt, M.D.)
Kansas License No. 04-18225)

Docket No.: 10-HA00112

EMERGENCY EX PARTE ORDER OF SUSPENSION
AND PROTECTIVE ORDER

NOW on this 23rd day of February 2010, this matter comes before the Presiding Officer upon a Motion for *Ex Parte* Emergency Order of Suspension. Stacy R. Bond, Associate Litigation Counsel, filed a Motion for *Ex Parte* Emergency Order of Suspension and for Emergency Proceedings. There are no other appearances.

The Presiding Officer has reviewed the agency file in Kansas State Board of Healing Arts (KSBHA) Docket No. 10-HA00112. The Presiding Officer finds, concludes and orders as follows:

1. This is a motion for an order pursuant to K.S.A. 65-2838 and 77-536. Under those statutes, the Presiding Officer may issue an order without notice and hearing, and may temporarily limit or suspend a license if the Presiding Officer finds an imminent danger to the public health, safety, or welfare.
2. The Presiding Officer has received and reviewed a Motion for an *Ex Parte* Order suspending Licensee license filed with KBHA on February 23, 2010. The motion requests an emergency suspension of Licensee's license.
3. The motion for an emergency order in the above captioned case alleges that Licensee has violated K.S.A. 65-2836, specifically:

- a. K.S.A. 65-2836(b), in that Licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.
 - b. K.S.A. 65-2836(c), in that Licensee has been convicted of a felony, whether or not related to the practice of the healing arts.
 - c. K.S.A. 65-2836(p), in that Licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.
4. The motion for an emergency order in the above captioned case includes Exhibit one (1).

FINDINGS OF FACT

5. Ethan E. Bickelhaupt, M.D.'s ("Licensee") last known mailing address to the Board is: (confidential) His last known residential address to the Board is: (confidential)
(confidential)
6. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-18225 on approximately July 2, 1979, and having last renewed such license on approximately July 1, 2009.
7. Licensee presently has an active and unrestricted license to practice medicine and surgery in the state of Kansas.
8. The Presiding Officer finds there are grounds to reasonably believe that:
- a. Licensee was charged In The United States District Court for the District of Kansas with a violation of Title 21, United States Code, § 841(a)(1) &

(b)(1)(C), and 18 United States Code, Section 2, that is, Distributing, Dispensing or Possession with Intent to Distribute or Dispense Controlled Substances by a Practitioner, and with a violation of Title 21, United States Code, § 843(a)(3) & (d), and 18 United States Code, Section 2, that is, Acquiring or Obtaining a Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge.

- b. The felony charges stemmed from Licensee issuing prescription orders to individuals who were not bona fide patients, and had the named individuals fill the prescriptions at pharmacies in Topeka and Lawrence, Kansas. After filling the prescriptions, the individuals gave the controlled substances to the Licensee for his personal consumption. On occasions, Licensee would compensate the individuals with cash or some of the controlled substance.
- c. Licensee would write prescriptions for controlled substances for purposes other than legitimate medical purposes including prescribing Adderall and Tylenol #3 to individuals for use during parties at the Licensee's house. Adderall was used to stay up late, and Tylenol #3 was used for hangovers and to ease the withdrawal after cocaine use.
- d. Licensee wrote prescriptions for controlled substances for purposes other than legitimate medical purposes including writing prescriptions for Adderall to help an individual stay awake while studying.
- e. Licensee entered into a Petition to Enter Plea of Guilty and Order Entering Plea and a Plea Agreement in the United States District Court for the

District of Kansas in Case No. 09-40070-RDR on February 22, 2010. Licensee entered a guilty plea to one count Distributing, Dispensing or Possessing with Intent to Distribute or Dispense Controlled Substances by a Practitioner and one count of Acquiring or Obtaining a Controlled Substance by Misrepresentation, Fraud, Forgery, Deception or Subterfuge, both felony offenses.

CONCLUSIONS OF LAW

9. Pursuant to K.S.A. 65-2838(c), the Board has the authority to temporarily suspend Licensee's license to address an imminent threat to the health, safety or welfare of the public.
10. Pursuant to K.S.A. 65-2836, the Board has grounds to revoke, suspend, censure, fine or otherwise limit Licensee's license for violation of the Kansas Healing Arts Act .
11. Pursuant to K.S.A. 77-536, the Board may use emergency proceeding to protect the public from an immediate danger to the public health, safety or welfare.
12. The Presiding Officer finds there are grounds to reasonably believe that Licensee has violated that Licensee has violated K.S.A. 65-2836, in that Licensee has violated K.S.A. 65-2836, specifically:
 - a. K.S.A. 65-2836(b), in that Licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.
 - b. K.S.A. 65-2836(c), in that Licensee has been convicted of a felony, whether or not related to the practice of the healing arts.

c. K.S.A. 65-2836(p), in that Licensee has prescribed, sold, administered, distributed or given a controlled substance to any person for other than medically accepted or lawful purposes.

13. The Presiding Officer finds that Licensee's continuation in practice would constitute an immediate danger to the public health, safety or welfare.

14. The Presiding Officer further concludes that Licensee's license to practice medicine and surgery should be immediately suspended until such time as an evidentiary hearing can be scheduled.

IT IS THEREFORE, ORDERED that the license of Ethan E. Bickelhaupt, M.D. is hereby immediately suspended.

IT IS FURTHER ORDERED that a Protective Order is hereby entered to protect the identity of patients and their records. Records that identify a patient shall not be disclosed to any third person except as authorized by this order or by further order of the Presiding Officer or the Board. To the extent practicable, patients shall be referred to in arguments, testimony and pleadings by the reference number listed in the Petition. This protective order shall not prohibit a party from disclosing such information to a person who has been engaged as an expert witness, or from otherwise using this information in this case and in any subsequent appeals.

IT IS FURTHER ORDERED that board counsel shall serve this order in the manner provided by law, and shall complete and file a proof of service.

PLEASE TAKE NOTICE that a hearing on this matter will be scheduled as soon as practicable at the Board office, 235 S.W. Topeka Blvd., Topeka, Kansas. The issue to be determined is whether the emergency order of suspension should remain in place, be modified or terminated. A Notice of Hearing will be issued.

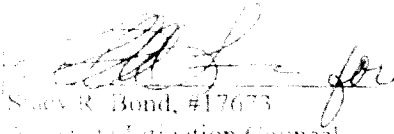
PLEASE TAKE NOTICE that this is an emergency order. An emergency order is effective when rendered. A party to an agency proceeding may seek judicial review of an emergency order by filing a petition in the District Court as authorized by K.S.A. 77-601, et seq. A petition for judicial review is not timely unless filed within 30 days following service of the order. A copy of any petition for judicial review must be served upon Board's Executive Director at 2315 W. Topeka Blvd., Topeka, Kansas 66603.

Dated this 23rd day of February 2010.

Kansas State Board of Healing Arts

Carolina M. Forester, DC
Presiding Officer

Prepared by:


Stacy R. Bond, #17673

Associate Litigation Counsel
Kansas Board of Healing Arts
2315 W. Topeka Boulevard
Topeka, Kansas 66603-3068
785-396-3268 Phone
785-396-57103 Fax

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the *Ex Parte* Emergency Order of Suspension by United States mail, postage prepaid, on this 23rd day of February, 2010, to the following:

Ethan E. Bickelhaupt, M.D.

(confidential)

Ethan E. Bickelhaupt, M.D.
2909 N. Sheridan Rd., Ste. 1512
Chicago, Illinois 60657

And a copy was hand-delivered to:

Stacy R. Bond
Kansas Board of Healing Arts
235 S Topeka Blvd
Topeka, KS 66603

And the original was hand-delivered for filing with:

Kathleen Selzler Lippert
Acting Executive Director
Kansas Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

