

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS



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AUG 20 2013

KS State Board of Healing Arts

In the Matter of)
Richard L. Brown, M.D.)
)
Kansas License No. 04-29701)
_____)

Docket No. 13-HA00020

FINAL ORDER

NOW on this 9th day of August 2013, the above-captioned matter comes before the Kansas State Board of Healing Arts (“Board”) on the Board’s own motion to review the Initial Order of the Presiding Officer filed June 21, 2013. Dr. Richard L. Brown, M.D. (“Licensee”) appears by and through his counsel of record, Carol R. Bonebrake of Holbrook & Osborn, P.A. Jessica Bryson, Associate Litigation Counsel, appears for the Respondent Board.

Pursuant to the authority granted to Board by 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 agency record, hearing the statements and arguments of the parties, and being otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions and order:

1. The Board accepts the Findings of Fact made by the Presiding Officer in the INITIAL ORDER and adopts the same as the Board’s Findings of Fact in this FINAL ORDER. The Findings of Fact in the INITIAL ORDER are incorporated herein by reference.

2. In reviewing the INITIAL ORDER, the Board has given due regard to the Presiding Officer’s opportunity to observe the witnesses and to determine the credibility of the witnesses that testified during the formal hearing.

3. Based on the agency record, the Board finds and concludes there is clear and convincing evidence that Licensee will not pose a threat to the public in his capacity as a licensed medical doctor and has been sufficiently rehabilitated to warrant the public trust.

4. The Board accepts the Presiding Officer's Conclusions of Law numbered 1 through 25 as set forth in the INITIAL ORDER and adopts the same as the Board's Conclusions of Law in this FINAL ORDER. The Conclusions of Law numbered 1 through 25 as set forth in the INITIAL ORDER are incorporated herein by reference.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that the Presiding Officer's Findings of Fact and the Presiding Officer's Conclusions of Law numbered 1 through 25 as set forth in the Initial Order are hereby **ADOPTED**.

IT IS FURTHER ORDERED that Licensee's medical license is hereby **PUBLICLY CENSURED** due to Licensee's violation of K.S.A. 65-2836(c).

IT IS FURTHER ORDERED that Licensee's medical license shall be subject to non-disciplinary **MONITORING** as follows:

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- g. Licensee shall immediately notify the Board of any criminal citation, arrest or charge filed against him and of any conviction for a criminal or traffic offense.
- h. These non-disciplinary monitoring provisions are not self-terminating. On or after December 5, 2016, the Board may consider terminating one or more of the monitoring provisions based on evidence of good cause.

IT IS FURTHER ORDERED that the Board's incurred **COSTS** for conducting these proceedings are assessed to Applicant. Applicant is hereby ordered to pay such **COSTS** in the amount of \$3,813.85. The total amount of \$3,813.85 shall be due on or before September 30, 2013.

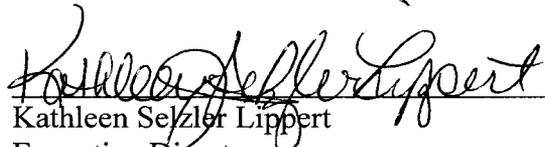
In the alternative, Licensee may make monthly payments of \$500.00 for seven (7) months with an eighth (8th) and final monthly payment of \$318.85. The first monthly payment is due on or before September 15, 2013, with the remainder of the monthly payments due on or before the 15th day of each month thereafter.

In the event that the Board does not receive a monthly payment due and owing, the total amount of the assessed COSTS still owed shall become immediately due and payable in full upon the Board providing written notice to Licensee that a monthly payment has not been received.

Licensee shall make all payments payable to: Kansas State Board of Healing Arts. Licensee shall send all payments to the attention of: Compliance Coordinator, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, Kansas 66612.

IT IS FURTHER ORDERED that the Board shall maintain jurisdiction over this matter to issue any future order(s) deemed necessary and appropriate in the circumstances.

IT IS SO ORDERED THIS 30th DAY OF AUGUST, 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Seizler 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. 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 State 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 copy of the foregoing **FINAL ORDER** was served this 20th day of August, 2013 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Richard L. Brown, MD
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Shawnee, KS 66216

Carol R. Bonebrake
Holbrook & Osborn, P.A.
107 S.W. 6th Avenue, Ste. 210
Topeka, KS 66603

And a copy was hand delivered to the office of:

Jessica Bryson, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612

And the original was filed with the office of the Executive Director.



Cathy Brown
Executive Assistant



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JUN 21 2013

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

KS State Board of Healing Arts

In the Matter of

Richard L. Brown, M.D.
Kansas License No. 04-29701

Docket No. 13-HA00020

OAH No. 13HA0002

INITIAL ORDER

The above-captioned matter comes on for decision by Michele L. Tunnell, Administrative Law Judge, Office of Administrative Hearings, designated by the Kansas State Board of Healing Arts (Board) as the presiding officer in this formal hearing on the Petition filed by the Board.

The hearing in this matter was held on April 15, 2013. Jessica A. Bryson, Associate Litigation Counsel, appeared on behalf of the Board. Richard L. Brown, M.D. appeared in person and with counsel, Carol Ruth Bonebrake.

The Board and Dr. Brown presented witnesses and exhibits.

At the conclusion of the hearing, the parties were given until May 14, 2013 to submit their proposed findings of fact and conclusions of law. On May 14, 2013, the Board timely submitted its proposed findings of fact and conclusions of law. Dr. Brown requested an extension to May 24, 2013 to submit his proposed findings of fact and conclusions of law, which were then timely submitted.

Prior to the hearing, Dr. Brown had filed a motion to dismiss Count II of the Petition to which the Board responded. Given the proposed findings of fact and law submitted by Dr. Brown, the presiding officer finds that the arguments presented in the motion to dismiss have been abandoned by Dr. Brown. The motion is, therefore, denied as moot.

FINDINGS OF FACT

1. Dr. Brown was originally issued License No. 04-29701 on or about August 17, 2002, and renewed such license on or about July 8, 2012.
2. Dr. Brown has maintained a current and active license to practice medicine and surgery in the State of Kansas since on or about August 17, 2002.

3. In 1995, Dr. Brown was charged with Driving Under the Influence of Alcohol (DUI), Improper Driving on Lane Roadway, and Refusal to Take Field Breath Test in Case No. 95TR8062 in Wyandotte County, Kansas.
4. Dr. Brown entered into, completed, and was successfully discharged from the diversion program in Case No. 95TR8062.
5. In June 2000, Dr. Brown was charged and convicted of a second DUI in Case No. 00TR504 in Miami County, Kansas. This conviction constituted a Class A misdemeanor.
6. In Case No. 00TR504, the second count of the Complaint, Refusal of Preliminary Breath Test, was dismissed.
7. In March 2009, Dr. Brown was arrested for a third DUI in Saline County, Arkansas.
8. Even though Dr. Brown had two prior DUIs, Arkansas charged him with a first offense DUI in Case No. C-2009-3763.
9. Dr. Brown pleaded guilty to the Arkansas DUI on August 9, 2009.
10. Confidential
11. In March 2011, Dr. Brown was arrested for his fourth DUI in Johnson County, Kansas.
12. On or about March 19, 2011, Dr. Brown was charged in Case No. 11CR593 with Felony Driving Under the Influence of Alcohol – Fourth Offense (K.S.A. 8-1567), and Refusal of a Preliminary Breath Test (K.S.A. 8-1012).
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49. In January 2012, Dr. Brown joined the medical staff at Horton Community Hospital. Dr. Brown currently has unrestricted clinical privileges to practice medicine at Horton Community Hospital and has had unrestricted clinical privileges since his employment at the hospital.

50. On or about March 23, 2012, Dr. Brown pleaded guilty in Case No. 11CR593, in Johnson County to Felony Driving Under the Influence of Alcohol – Fourth Offense (K.S.A. 8-1567), and Refusal of a Preliminary Breath Test (K.S.A. 8-1012).

51. On or about September 14, 2012, Dr. Brown was sentenced to be incarcerated for a period of 360 days with a comment that he was to serve “10 days shock time followed by 80 days house arrest.” He received a sentence commensurate with receiving a third DUI. He successfully completed serving his sentence.

52. Dr. Brown’s conviction for the 2011 DUI in Johnson County is on appeal with the Kansas Court of Appeals. The Docketing Notice from the Clerk of the Appellate Courts was file stamped by the Johnson County Court Clerk on March 22, 2013.

53. Dr. Brown has an interlock device in his car for a four year period.

54. On September 24, 2012, the Kansas State Board of Healing Arts filed a two count Petition.
55. Count I alleges that “[p]ursuant to K.S.A. 65-2836(c), the Board ‘shall revoke a licensee’s license following conviction of a felony occurring after July 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person’s capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.’”
56. Count II alleges that Dr. Brown “violated K.S.A. 65-2836(e) in that
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CONCLUSIONS OF LAW
AND
DISCUSSION

Count I

1. K.S.A. 65-2836(c) provides “[t]he board shall revoke a licensee’s license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that the licensee will not pose a threat to the public in such person’s capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.”
2. In regard to Count I of the Petition, Dr. Brown was convicted of a felony offense when he pleaded guilty to violating K.S.A. 8-1567 on or about March 23, 2012.
3. In determining if Dr. Brown has established the above-referenced requirements by clear and convincing evidence, the aggravating factors are as follows:
 - a. Dr. Brown has received four DUIs, three of which he has been convicted and one of which was disposed of with a diversion;
 - b. **Confidential**

c. After receiving his fourth DUI in March 2011, Dr. Brown drove on a suspended license.

4. The mitigating factors are as follows:

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- n. Confidential
- o. Dr. Brown is currently employed at Horton Community Hospital, Horton, Kansas;
- p. Dr. Brown has been employed at Horton Community Hospital since January 2012;
- q. During the interview process with Horton Community Hospital, Dr. Brown was open and honest with the interim CEOs, Terry Nichols and L. Sue Kidd, and Chief of Staff, Galen Seymour, M.D., about his legal problems surrounding his fourth DUI and Confidential
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- r. Confidential
- s. Dr. Seymour, who currently works with Dr. Brown, testified that Dr. Brown is a “very competent physician;”
- t. Mr. Nichols received several compliments from patients regarding Dr. Brown;
- u. Confidential
- v.

5. Dr. Brown testified that he joined a gym and practices yoga. He runs and rides his bike, weather permitting. He watches his nutrition by eating healthy snacks. He also practices meditation.
6. Dr. Brown testified that he is in contact with his children who live in Louisville, Kentucky. They are with him during most school breaks and most of the summer. He also has time with his children during spring break, Christmas and Thanksgiving holidays, and occasional weekends.
7. Dr. Brown testified that his relationship with his ex-wife is cordial and cooperative.

8. Confidential

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10. At the conclusion of his testimony, Dr. Brown stated:

I'm embarrassed. I have regrets. I don't think that I'm a bad person. I think I am a good physician, a good human being. I've learned my lesson. I'm a changed person. I'm going to make good decisions regardless of what I do. I like to practice medicine, I enjoy it and I'd like to keep doing it.

11. The testimony of Dr. Brown was credible and sincere.
12. After hearing all the evidence and carefully considering the aggravating and mitigating factors, there is clear and convincing evidence to show that Dr. Brown will not pose a threat to the public in his capacity as a licensee and that Dr. Brown has been sufficiently rehabilitated to warrant the public trust.
13. Accordingly, revocation of Dr. Brown's license to practice medicine and surgery in Kansas is not warranted.
14. However, Dr. Brown has been convicted of a felony offense and his conduct of driving while under the influence of alcohol has placed the

public in harm's way. Therefore, disciplinary action against Dr. Brown's license to practice medicine and surgery is appropriate.

15. Under the Board's Guidelines for the Imposition of Disciplinary Actions (Sanctioning Guidelines), the presumed sanction when modified by aggravating and mitigating factors ranges from revocation at the highest level to censure at the lowest level.
16. The presiding officer finds that appropriate sanction of Dr. Brown would be public censure.

Count II

17. Confidential
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19. The presiding officer finds that K.S.A. 65-2836(e) is not in violation of the Americans with Disabilities Act (ADA).
20. Confidential
- 21.
22. "The whole purpose and tenor of the Healing Arts Act is the protection of the public against unprofessional, improper, unauthorized and unqualified practice of the healing arts. The goal is to secure to the people the services of competent, trustworthy practitioners." *Kansas State Bd. of Healing Arts v. Foote*, 200 Kan. 447, 453, 436 P.2d 828, 833 (1968).
23. Confidential
24. Confidential

25. Confidential

CONCLUSION

In summary, due to Dr. Brown's violation of the Kansas Healing Arts Act, specifically K.S.A. 65-2836(c), Dr. Brown should be **PUBLICLY CENSURED**.

Due to Dr. Brown's violation of the Kansas Healing Arts Act, specifically K.S.A. 65-2836(e), non-disciplinary action for this violation should be assessed against Dr. Brown's license requiring Dr. Brown to do the following:

a. Confidential

b.

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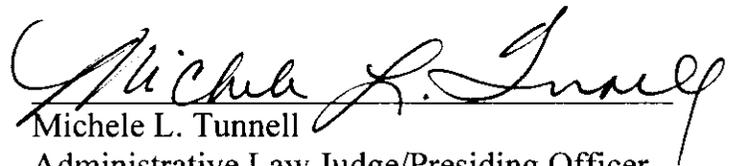
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Lastly, the costs of this proceeding should be assessed against Dr. Brown in an amount to be determined after issuance of the Initial Order and after the Board files a Statement of Costs.

IT IS SO ORDERED.

Pursuant to K.S.A. 77-527, either party may request a review of this initial order by filing a petition for review with the Kansas State Board of Healing Arts. A petition for review must be filed within 15 days from the date this initial order was mailed. Failure to timely request a review by the Kansas State Board of Healing Arts may preclude further judicial review. If neither party requests a review by the Kansas State Board of Healing Arts, then pursuant to K.S.A. 77-530, this initial order becomes final and binding on both parties on the 30th day following its mailing. The petition for review shall be mailed or personally delivered to: Kathleen Selzler Lippert, Executive Director, Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level, Suite A, Topeka, Kansas 66612.



Michele L. Tunnell
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Ave.
Topeka, KS 66612

CERTIFICATE OF SERVICE

On June 20, 2013, I mailed a copy of this document
to:

Richard L. Brown, M.D.

Confidential

Shawnee, KS 66216

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Mark W. Stafford

Holbrook & Osborn, PA

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