

AUG 29 2019



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

KS State Board of Healing Arts

**In the Matter of  
BYRON F. CONNER, M.D.**

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**KSBHA Docket No. 20-HA00006**

**Application for Licensure**

**FINAL ORDER**

On August 9, 2019, this matter came before the Kansas State Board of Healing Arts ("Board") for a Conference Hearing on Dr. Byron F. Conner, M.D.'s ("Applicant") application for licensure to practice medicine and surgery in Kansas. Applicant appeared in person, *pro se*. The Board appeared through Matthew Gaus, Associate Litigation Counsel. Dr. Balderston, Dr. Hutchins, and Mr. Kelly were recused.

Under 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, ("KAPA"), K.S.A. 77-501 *et seq.*, the Board enters this Final Order. After reviewing the agency record, hearing the arguments of the parties, and being duly advised in the premises, the Board makes the following findings, conclusions, and orders.

**PROCEDURAL HISTORY**

On or about March 6, 2019, Applicant submitted an application to the Board to practice medicine and surgery in Kansas. That application was deemed complete and filed with the Board on July 30, 2019. The Board submitted a Response to Applicant's application, filed on July 31, 2019.

A Notice of Hearing was filed and served on August 2, 2019, setting a Conference Hearing regarding Applicant's application for licensure. No objection to the Notice of Hearing was filed.<sup>1</sup>

**FINDINGS OF FACT**

1. On or about May 3, 2016, Applicant was charged with one felony count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 1349 (18 U.S.C. § 1347), and two felony counts of Aiding and Abetting Health Care Fraud in violation of 18 U.S.C. §§ 1347 and 2, in

<sup>1</sup> In advance of the oral arguments, the Board was provided the entire agency record to facilitate a comprehensive understanding of the underlying matter, including all exhibits, briefs, and motions filed by the parties in advance of oral arguments. The entire agency record was considered by the Board in rendering its decision.

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the United States District Court Northern District of Texas Dallas Division. The grand jury indictment specifically alleged Applicant:

Knowingly and willfully signed CMS-485s on behalf of beneficiaries who were not homebound, not in need of skilled nursing services and not otherwise eligible to receive Medicare-covered home care. [Applicant] signed CMS-485s that contained false information and knew they would be used by [a co-defendant] to support and justify claims [the co-defendant] submitted to Medicare.

2. As a result of the criminal charges, on or about February 1, 2017, the Texas Medical Board indefinitely suspended Applicant's license to practice medicine and surgery.
3. On or about February 8, 2017, Applicant surrendered his DEA license.
4. Reciprocally, on or about March 24, 2017, the Virginia Department of Health Professions indefinitely suspended Applicant's license to practice medicine and surgery.
5. On October 20, 2017, Applicant agreed to revocation of his Texas medical license.
6. On or about July 24, 2018, Applicant pled guilty to one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 371 (18 U.S.C. § 1347), a felony, in the United States District Court Northern District of Texas Dallas Division. The remaining charges were dismissed.
7. On that same day, the Texas Health & Human Services Commission entered an order barring Applicant from participation in the state Medicare and Medicaid programs.
8. On November 20, 2018, the HHS Office of the Inspector General issued an order indefinitely suspending Applicant from all federal medical programs.
9. Applicant cooperated with the federal prosecution of other co-defendants, and was sentenced to five years' probation, and required to pay over \$600,000 in restitution.
10. Applicant submitted an application to practice medicine and surgery in Kansas. Included with his application was a Letter of Intent from Grisell Memorial Hospital, in Ransom, Kansas.
11. Applicant submitted a statement to the Board providing context to the criminal case, and evidence of rehabilitation. This letter states in part:

The circumstances under which I came to be prosecuted in the first place are instructive – and were important in the analysis of my punishment. In the simplest of terms, I signed documents for patients I did not see...To my knowledge every patient that I did not see personally was seen by a mid-level provider...Although I did not personally see some of these patients, I reviewed every mid-level note and

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treatment plan developed for these patients. I did not ask, nor did I seek, compensation from the government for my work in this regard. Home Health companies bill the government...for services performed in the care of Home Health Patients. Two of the Home Health companies that were selected to take care of my patients fraudulently added a V-code to their bill, meaning they were paid as if I had seen the patients, rather than a mid-level provider...This situation has shown me I need to be more careful of who I trust...

I have complied with every court demand and have assisted in other trials of which I was not an involved party. I have done my best to remain active in my community and my church, and I have received a scholarship to seminary where I am receiving a counseling degree...I am the only defendant paying the Federal Government restitution based on the Home Health's false billing, not false collections. My goal is to continue to pay restitution until cleared. I know my part in this situation, and acknowledge the areas where I could have made an impact to prevent fraud. I just recently spent time with U.S. Congressman Michael Burgess, former Chairman of the Subcommittee on Health. We discussed ways to identify fraudulent activity earlier, improve feedback from DHHS about billing practices to Home Health companies and medical providers and ways to educate doctors and facilities...

I pray that I will never jeopardize the public if granted the opportunity to practice medicine in Kansas...I will not be performing my own billing. The position I have sought...is a staff physician position and a salaried position...I will submit to any audit required by the Kansas Board of Healing Arts...My clinical care and devotion to patients has never been questioned. I will do my best to be a solid and skilled clinician for the patient population in Ransom...I am a former US Navy veteran, husband, father and loyal US citizen who wants nothing more than a second chance to serve people in need with my chosen profession and gifts...I pray that you consider my willingness to continue restitution, my humility to acknowledge my part in my case, the necessary education to prevent future occurrences, and the steps taken to make amends for the damages I brought on the public trust. I have undergone rehabilitation to the best of my ability to ensure that I am never party to any type of fraud again, and I will never intentionally danger the public trust for any reason...

12. At the August 9, 2019, Conference Hearing, Applicant testified substantially similar to his statements in his letter to the Board.
13. While Applicant has not practiced on patients in the United States since his medical license(s) were initially suspended, he testified he has continued as a physician-advisor to other physicians on a weekly basis, stayed current with his continuing medical education, and has periodically practiced medicine over-seas, particularly by volunteering in third world countries.

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14. Based on the Board's opportunity to observe and consider Applicant's testimony, including extensive questioning by the Board, the Board finds Applicant to be highly credible and a convincing witness. The Board finds Applicant's testimony to be accurate and trustworthy.
15. Under the conditions described in this Final Order, Applicant does not pose a threat to the public in his capacity as a physician.
16. Applicant has been sufficiently rehabilitated to warrant the public's trust.

## **CONCLUSIONS OF LAW AND POLICY**

### **I. Statutory Standard**

Under K.S.A. 65-2836(c):

In the case of a person who has been convicted of a felony or convicted in a general court-martial and who applies for an original license or to reinstate a canceled license, the application for license shall be denied unless a 2/3 majority of the board members present and voting on such application determine by clear and convincing evidence that such person 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.

### **II. Discussion**

This is a case in which a physician applying for Kansas licensure, has been convicted of a federal felony, specifically Conspiracy to Commit Health Care Fraud, for which it is appropriate that he face serious consequences. However, denial of licensure is not the legally or practically appropriate consequence under the facts of this case. An ethics course, billing course, limitation on supervising mid-level health care providers off-site, and a practice monitor, are the appropriate measures to affect the goals of the Healing Arts Act, consistent with K.S.A. 65-2836(c). Under K.S.A. 65-2836(c), the core findings that rebut the presumption of denial of licensure in this case are: (1) Applicant will not pose a threat to the public in his capacity as a doctor; and (2) Applicant's rehabilitation is sufficient to warrant public trust.

***Under the conditions of this Final Order, Applicant will not pose a threat to the public.***

Based on the facts of this case, and rationale described in this Final Order, the Board unanimously agrees and finds by clear and convincing evidence, that Applicant will not pose a threat to the public under the conditions ordered. Here, public protection is served by requiring an ethics and billing course, a limitation of mid-level supervision, and a practice monitor.

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The ethics and billing course will particularly address and provide remediation for the issues underlying his conviction. Currently, he remains subject to federal probation. Also, as his supervision was an issue which led to the conviction, the limitation on supervising mid-levels off-site will alleviate the need for the concern that those issues may arise in the future. Furthermore, the practice monitor will ensure Applicant's skill set is sufficient and address any deficiencies identified. Lastly, by granting licensure subject to these conditions, he will be able to be employed, and pay the restitution owed.

***Applicant has been sufficiently rehabilitated to warrant the public's trust.***

The testimony at the hearing, and evidence submitted showed Applicant signed off on CMS-485s on behalf of beneficiaries who were not homebound, and he has accepted responsibility for his actions. However, the evidence shows Applicant may have been too trusting, and perhaps lackadaisical in his supervisory capacity, of mid-levels he was working with. Ultimately, it was the Home Health agency who submitted the billing for his services. Regardless, at the Conference Hearing in particular, Applicant showed a comprehensive understanding on how this situation developed, largely due to lack of oversight, and he also demonstrated sincere remorse.

Further, the following are all factors relevant to the Applicant's rehabilitation from his bad acts: (1) Applicant cooperated with the federal prosecution of the other co-defendants; (2) Applicant testified he has maintained his continuing medical education hours and has practiced medicine overseas, particularly volunteering his time in third-world countries; (3) Applicant appeared sincere in his desire to pay restitution; and (4) Applicant appeared willing to accept any conditions from the Board if granted licensure.

In determining whether Applicant is sufficiently rehabilitated from his actions to warrant public trust, the Board considered whether Applicant appreciated the wrongfulness of his actions, whether he is committed to never repeating such actions, and whether there is a significant danger that he will repeat similar actions. The Board found by clear and convincing evidence, that Applicant understands the wrongfulness of his actions, has rehabilitated himself, and there is very little danger that he will ever commit any similar bad acts as a member of the medical profession again. Further, the conditions ordered provide additional safeguards to ensure Applicant remains a competent and ethical member of the medical profession.

**CONCLUSION**

Applicant violated K.S.A 65-2836(c), in that he was convicted of a felony. Accordingly, there is a presumption of denial of licensure. However, in this case, Applicant has overcome that presumption. On August 9, 2019, at the Conference Hearing on Applicant's application to practice medicine and surgery in Kansas, 2/3 majority of the Board members present and voting found Applicant had proven, by clear and convincing evidence, that he does not pose a threat to the public in his capacity as a doctor and he has been sufficiently rehabilitated to warrant the public trust.

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Therefore, the Board grants applicant's license to practice medicine and surgery in Kansas, under the conditions of this Final Order.

### **ORDERS**

#### ***Ethics Course***

Applicant shall attend, and successfully complete the PROBE Ethics & Boundaries Course given by Center for Personalized Education for Physicians ("CPEP"), **on or before January 31, 2020**, unless otherwise approved by the Board.

#### ***Billing Course***

Applicant shall attend, and successfully complete eight hours of continuing medical education hours, focused on proper billing practices, **on or before January 31, 2020**, unless otherwise approved by the Board.

#### ***Supervision of Mid-Levels***

**Applicant is prohibited from supervising mid-level practitioners off-site.**

This limitation is not self-terminating. The limitation will remain in place indefinitely, and until applicant seeks, and secures, Board approval for modification or removal. Applicant cannot request modification or termination of this provision until at least six months have passed since issuance of this Final Order. For any period of time Applicant is not actively practicing medicine in Kansas, the limitation provision will remain in effect, but will be tolled.

#### ***Practice Monitor***

Applicant is required to have a **Practice Monitor for a term of at least six months**. The Practice Monitor must be approved by the Board designee, Dr. Minns. Specifically, within 20 days of issuance of this Final Order, Applicant must submit a proposed Practice Monitor for approval.

The Practice Monitor shall submit monthly reports to the Board on the last day of each month. In these reports, the Practice Monitor must discuss Applicant's skill level and any recommendations for improvement. In the event the Practice Monitor recommends an area of improvement regarding Applicant's skill set, Applicant must timely follow those recommendations.

The Practice Monitor provision is not self-terminating. After a period of six months of monitoring, Applicant may request modification or termination of this provision. For any period of time Applicant is not actively practicing medicine in Kansas, the monitoring provision will remain in effect, but will be tolled and not counted towards reducing the six-month time frame.

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***Miscellaneous Provisions***

Unless otherwise specified, Applicant shall provide proof of successful completion of any requirement of this order within 30 days of completing the requirement.

All costs associated with complying with this Final Order shall be the Applicant's.

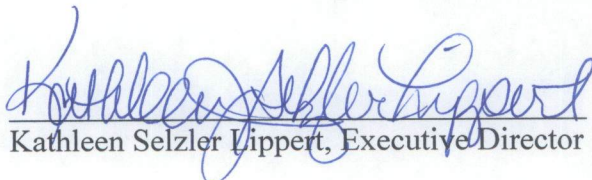
Any continuing education hours completed to comply with this Final Order shall be in addition to those required for renewal of licensure.

Proof of successful completion and all documentation and correspondence associated with this Final Order's requirements shall be submitted by to:

Kansas State Board of Healing Arts  
Attn: Compliance Coordinator  
800 SW Jackson, Lower Level - Suite A  
Topeka, Kansas 66612  
KSBHA\_compliancecoordinator@ks.gov

IT IS SO ORDERED this 29 day of August 2019.

**KANSAS STATE BOARD OF HEALING ARTS**

  
Kathleen Selzler Lippert, Executive Director

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### **NOTICE OF APPEAL 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. Under K.S.A. 77-529, parties 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 State Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **FINAL ORDER** was served, by depositing the same in the United States mail, postage prepaid, and emailed on this 29th day of August, 2019, addressed to:

Byron F. Connor, M.D.

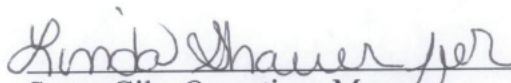
**CONFIDENTIAL**

And hand-delivered to:

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

Compliance Coordinator  
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.

  
Susan Gile, Operations Manager

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