

BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS

**FILED**

DEC 09 1996

KANSAS STATE BOARD OF  
HEALING ARTS

In the Matter of )

MERLE J. FIESER, M.D. )

Kansas License #04-18324 )

Case # 96-00251

97-00096

**EMERGENCY ORDER**

COMES NOW, this 7th day of December, 1996, the Kansas State Board of Healing Arts ("Board") sitting in *ex parte* emergency hearing on the oral motion of Disciplinary Counsel Kevin K. LaChance ("Petitioner") to suspend on an emergent basis the license of Merle J. Fieser, M.D. ("Licensee"), Kansas license #04-18324, on the grounds that her continued practice of medicine and surgery presents an immediate and/or imminent danger to the public health and safety under the provisions of K.S.A. 65-2838(c) and K.S.A. 77-536.

Having the agency record before it and hearing the arguments and presentation of proposed evidence from Petitioner, the Board makes the following findings of fact, conclusions of law, and orders:

1. Petitioner will offer evidence which appears to support the allegation that Licensee has violated the Stipulation and Agreement and Enforcement Order ("Stipulation") filed June 26, 1995. Specifically, the evidence to be offered may reasonably show Licensee has practiced obstetrics on at least one patient in violation of paragraph 6(d)(i) of the Stipulation. The Stipulation is a Board order, and limits Licensee from practicing obstetrics in the State of Kansas due to her practice of obstetrics in the past.

2. That evidence to be offered appears to support the allegation that Licensee has performed patient care deviating from the standard of care to a degree constituting gross negligence in the care of patient BJ. Based on Licensee's previous case with the Board and evidence elicited in the course of investigation, Petitioner questions the truthfulness of Licensee's records of the medical care provided. Further, Licensee's diagnosis, care, and treatment of BJ did not comport with the clinical presentation of the patient.

3. That, as a matter of law, it is necessary to protect the public health and safety from the incompetent practice of the Board's licensees, and to that end is found that the continued practice of Licensee presents an immediate and/or imminent danger to the public health and safety of the citizens of Kansas.

4. That Licensee's license to practice medicine and surgery in the State of Kansas is hereby suspended on an emergency basis under the provisions of K.S.A. 65-2838(c) and 77-536.

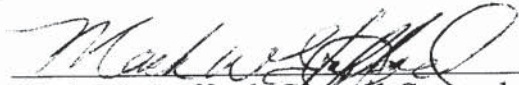
5. NOTICE OF HEARING: Please take notice that a post-deprivation emergency hearing shall commence Wednesday, December 11, 1996 at 10:00 A.M. at the offices of the State Board of Healing Arts, 235 S. Topeka Boulevard, Topeka, Kansas. The issue to be determined is whether sufficient evidence exists to support such an emergent action. Mr. Lawrence T. Buening, Jr., the Executive Director of the Board, is hereby appointed Presiding Officer of said post-deprivation emergency hearing, and is authorized to make determinations of sufficiency of evidence and to enter subsequent orders as may be necessary and proper in this matter. Kevin K. LaChance, Disciplinary Counsel, will appear on behalf of the Board. Failure of a party to attend may result in a finding of default, and an order may be entered against a defaulting party.

6. Notice regarding relief: This is an Emergency Order under K.S.A. 77-536. It is effective upon issuance. Service of the order constitutes notice for the purpose of the

Kansas Act for Judicial Review of Agency Action. An aggrieved party may file a petition for judicial review.

**IT IS SO ORDERED.**

**KANSAS STATE BOARD OF HEALING ARTS**



Mark W. Stafford, General Counsel, for  
Howard D. Ellis, President  
Kansas State Board of Healing Arts  
235 S. Topeka Blvd.  
Topeka, Kansas 66603-3068  
(913) 296-7413

Prepared By:



Kevin K. LaChance, SC # 15058  
Disciplinary Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
(913)296-2075

Approved By:



Mark W. Stafford, SC # 13233  
General Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068  
(913)296-8066



## CERTIFICATE OF SERVICE

I, Mark W. Stafford, General Counsel, Kansas State Board of Healing Arts, do hereby certify that on this 9th day of December, 1996, a true and correct copy of the above **EMERGENCY ORDER** was sent by telefax and U.S. mail, first class postage prepaid to the following:

Mr. Eldon Boisseau  
Counsel for Licensee  
Turner & Boisseau  
825 N. Waco  
Wichita, Kansas 67203  
FAX # (316) 263-0495

Mr. Brian Wright  
Counsel for Licensee  
Turner & Boisseau  
3900 Broadway  
Great Bend, Kansas 67530  
FAX # (316) 792-1869

Dr. Merle J. Fieser, M.D.  
3720 10th Street  
Great Bend, Kansas 67530  
FAX # (316) 792-2924

and a copy was hand-delivered to:

Mr. Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

Mr. Kevin K. LaChance  
Disciplinary Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

  
Mark W. Stafford



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1 BEFORE THE KANSAS STATE BOARD OF HEALING ARTS  
2 OF THE STATE OF KANSAS

3  
4 IN THE MATTER OF }  
5 DR. MERLE FIESER, M.D. } Case Nos. 96-00251  
6 License No. 04-18324 } and 97-00096

7  
8  
9 TRANSCRIPT OF PROCEEDINGS,  
10 taken on the 7th day of December, 1996, beginning at  
11 1:30 p.m., at the Kansas State Board of Healing Arts,  
12 235 S. Topeka Boulevard, in the City of Topeka, County  
13 of Shawnee, and State of Kansas, before Dr. Howard  
14 Ellis, President of the Board.

15  
16 A-P-P-E-A-R-A-N-C-E-S  
17 Dr. Merle Fieser did not appear.  
18 The Kansas State Board of Healing Arts appeared by  
19 and through its counsel, Mr. Kevin K. LaChance,  
20 Disciplinary Counsel, Kansas State Board of Healing  
21 Arts, 235 S. Topeka Boulevard, Topeka, Kansas, 66603.

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24  
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1 Present for the Board were Dr. Ronald Zoeller,  
2 D.C.; Dr. John P. Gravino, D.O.; Ms. Emily Taylor;  
3 Dr. R.L. Frayser, D.O.; Dr. John P. White, D.O.;  
4 Dr. Donald Bletz, M.D.; Dr. Lance Malmstrom, D.C.;  
5 Dr. Edward Fitzgerald, M.D.; Mr. Laurel Rickard;  
6 Dr. Christopher Rodgers M.D.; Mr. C.J. Conrady, Jr.;  
7 Dr. Harold Sauder, D.P.M., Mr. Mark Stafford, General  
8 Counsel, and Mr. Larry Buening, Executive Director.

9  
10  
11 MR. LACHANCE: We had a meeting with  
12 Disciplinary Panel Number 7 this morning. Disciplinary  
13 Panel 7 reviewed some information pertaining to a  
14 doctor who we have had problems with in the past and at  
15 this time, I believe I want to make an oral motion for  
16 emergency suspension of licensure under provision  
17 65-2838(c) and K.S.A. 77-536, Dr. Merle Fieser, license  
18 number 04-18324. This would be in Case Numbers  
19 96-00251 and 97-00096. Case number 96-00251 has been  
20 reviewed by the Medicine and Surgery Review Committee.  
21 Their recommendation is that Dr. Fieser is a dangerous  
22 doctor and that emergency action should be taken as  
23 soon as possible to take, to suspend her license from  
24 practicing medicine and surgery. This was based on a  
25 review of a case in which she diagnosed pneumonia and

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1 the child involved actually had a very bad appendix.  
2 In fact, the day after she did her pneumonia  
3 evaluation, the child was rushed into the hospital.  
4 The appendix was perforated, it was gangrenous.  
5 PRESIDENT ELLIS: Who was the Board  
6 member that brought this to you?  
7 MR. LACHANCE: Pardon me?  
8 PRESIDENT ELLIS: Who was the Board  
9 member that brought this to you? I thought I read here  
10 you said considering a board member is, considering a  
11 Board member is involved.  
12 MR. LACHANCE: I'm going to, I'm referring to  
13 the 97-00096 case.  
14 DR. GRAVINO: That's what we're talking  
15 about.  
16 MR. LACHANCE: I'm looking at 96-00251.  
17 DR. GRAVINO: Okay. We're ahead of you.  
18 MR. LACHANCE: I'll get there.  
19 PRESIDENT ELLIS: Got you.  
20 MR. LACHANCE: Dr. Fieser's notes indicate  
21 that she was looking at an appendix issue except that  
22 she had a chest x-ray ordered on April 11 of 1996 which  
23 her husband read and he said that it was pneumonia just  
24 like she said. The parents of the child have been  
25 interviewed and they say at no time was appendicitis,

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1 acute appendicitis mentioned to them. The child did  
2 not die. The child was returned then the next day with  
3 a high temperature. A consulting doctor said this  
4 child has a hot appendix, we're going to have to go to  
5 work. That child was full of -- they discovered the  
6 perforated gangrenous appendix. The child had to be  
7 flushed out inside. There was purulent matter all  
8 throughout her abdominal cavity. When the child was  
9 discharged, Dr. Fieser told the parents to bring her  
10 back in a week and we'll see about that pneumonia.  
11 Another x-ray was taken because the surgeon said, What  
12 pneumonia? There has never been any signs of  
13 pneumonia. They took an x-ray and it was negative for  
14 pneumonia.

15 MS. TAYLOR: Reason why the original doctor  
16 didn't order an x-ray?  
17 MR. LACHANCE: Dr. Fieser ordered an x-ray.  
18 She did a chest x-ray and supposedly she has in her  
19 notes, she says that she suspected appendicitis.  
20 MS. TAYLOR: Did she find evidence, any  
21 evidence of pneumonia?  
22 MR. LACHANCE: Her husband did the x-ray. He  
23 says yes, in the right lower lobe, there was evidence  
24 that would indicate pneumonia. However --  
25 DR. FRAYSER: Her husband is a Board

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1 certified radiologist.  
2 MS. TAYLOR: And he said she had pneumonia?  
3 MR. LACHANCE: Right. His reports are on  
4 different reports than we've been able to find used in  
5 other places where he's given radiological reports.  
6 Reports that he gives are on his wife's letterhead and  
7 not on the Western Radiology Alliance forms that he and  
8 his partners usually use.  
9 The second case involved a case where the patient  
10 presented to the emergency room asking for a VBAC. She  
11 was not, the hospital was not, does not do VBAC. She  
12 ultimately had a Cesarean section. In going back in  
13 that case, the doctor after the delivery, the doctor  
14 who delivered the baby requested the medical records  
15 from Dr. Fieser's office and his request was returned  
16 to him which had written on it, "This patient intends  
17 to return to my practice and has decided not to release  
18 her records to you." We have requested Dr. Fieser's  
19 records in this case and have discovered that in June  
20 of this year, she ordered obstetrical ultrasound on  
21 this patient. The patient delivered in September.  
22 Ultrasound indicated a 28-month, 28-week -- the child  
23 was in its 28th week of gestation so it should have  
24 been fairly obvious to the practitioner, Dr. Fieser,  
25 that this was an obstetrics patient; that Dr. Fieser is

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1 not authorized to perform obstetrics. She has signed a  
2 Stipulation and Agreement and Enforcement Order with  
3 the Board of Healing Arts that she'll not practice  
4 obstetrics based on her last case with us in which we  
5 discovered that not only did she falsify medical  
6 records in the care and treatment of a patient but she  
7 also suborned that patient to lie about her medical  
8 care and, in the course of that care, provided false  
9 answers on her hospital documentation for which  
10 Dr. Fieser was fined \$20,000.00, ordered to pay the  
11 costs of the hearing and agreed she would not perform  
12 obstetrical care and postpartum care until the treating  
13 physician said that the neonate was a well baby and was  
14 cleared for care by Dr. Fieser. In other words, she  
15 has violated the Board order.  
16 We have some evidence to indicate at least one  
17 other case pertaining to Dr. Fieser regarding  
18 obstetrical care. That case has not been fully  
19 pursued; we are working on it. In that, Dr. Fieser is  
20 violating a Board order and it would appear she is  
21 performing obstetrics in violation of Board order, and  
22 considering the care that she provided to the patient  
23 with the appendicitis in which she decided that the  
24 symptoms presented were pneumonia and then, according  
25 the patient's family, the parents were never told of



1 INVOICE Page 13  
2 INVOICE NO. 14,913 A  
3 (Please include invoice No.  
4 on check or draft.)  
5 TO: Ms. Pat Sidebottom  
6 Kansas State Board of Healing Arts  
7 235 S. Topeka Boulevard  
8 Topeka, Kansas 66603  
9 DATE: December 12, 1996  
10  
11 Re: In the Matter of Merle Fieser (KEVIN LACHANCE)  
12 Case Nos. 96-00251 and 97-00096  
13  
14 Transcript of the proceedings  
15 held on December 7, 1996:  
16 12 pages at \$1.00 (original cy) \$12.00  
17  
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25

1 INVOICE Page 14  
2 INVOICE NO. 14,913  
3 (Please include invoice No.  
4 on check or draft.)  
5 TO: Ms. Pat Sidebottom  
6 Kansas State Board of Healing Arts  
7 235 S. Topeka Boulevard  
8 Topeka, Kansas 66603  
9 DATE: December 12, 1996  
10  
11 IN RE: Appearance fee for the December Board Meeting  
12 held December 6 & 7, 1996:  
13  
14 175 pages at \$1.00 (untranscribed rate) \$175.00  
15 Appearance fee (10 hrs. at \$12.50 per hour) \$125.00  
16 (5 hours on Friday, 5 hours on Saturday)  
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18 TOTAL AMOUNT DUE \$300.00  
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