

FILED CAB

JUN 23 2010

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of	}	
	}	Docket No.: 10-HA-00067
Don Fishman,	}	
Application for a License to	}	
Practice Medicine and Surgery	}	
_____	}	

FINAL ORDER

NOW this 18th day of June, 2010 the above captioned matter comes before the Kansas State Board of Healing Arts (Board) on the motions to review the Initial Order of the Presiding Officer made by the petitioner, the respondent and the Board itself. The applicant is represented by Carol Ruth Bonebrake. The Board's Disciplinary Panel, appears in person and through its attorney, Associate Litigation Counsel Stacy Bond. There are no other appearances.

WHEREUPON, the Board after hearing the statements of Counsel, after review of the record, review of the Initial Order, hearing statements from the applicant and being duly apprised of the premises finds and concludes as follows:

1. The Board accepts the Findings of Fact made by the Presiding Officer in the INITIAL ORDER and adopts those Findings of Fact as the Findings of Fact for the FINAL ORDER. The INITIAL ORDER is incorporated by reference and is part of the FINAL ORDER

2. The Board accepts the Presiding Officer's Conclusions of Law and adopts the Conclusions of Laws as stated in the INITIAL ORDER as the Conclusions of Law for the FINAL ORDER by reference.

3. The Board accepts the remedies made by the Presiding Officer and adopts the Presiding Officer's remedies for the Final Order by reference.

4. The Board finds the applicant, Don Fishman, shall be issued a LIMITED LICENSE to practice medicine and surgery consistent with the terms of this INITIAL ORDER:

A. Don Fishman, M.D., shall only practice medicine and surgery within the parameters of a medical practice group.

B. Don Fishman, M.D., shall be monitored on each surgical operation that he performs by a member of a monitoring group that is chosen by the medical practice group to which Dr. Fishman belongs to and is approved by the Board prior to Dr. Fishman performing any surgery.

C. The group monitoring Dr. Fishman's medicine and surgery practice shall provide reports directly to the Board beginning two months after their appointment and continuing every two months thereafter or until further order by the Board.

D. The reports provided to the Board will describe:

1. each operation that Dr. Fishman performs;
2. the outcome of the operation Dr. Fishman performs; and
3. a statement critiquing Dr. Fishman's performance in the operation.

E. The monitoring of Dr. Fishman's practice of medicine and surgery will last for six months from the date of approval by the Board of Dr. Fishman's monitoring group.

F. The monitoring of Dr. Fishman's license is not self-terminating. Dr. Fishman will be required to petition and prove to the Board by a preponderance of the

evidence that he has adequate practice skills to receive an unlimited license to practice medicine and surgery from the Board.

5. The Board then took up the issue of costs pursuant to K.S.A. 65-2846. The Board notes that both the applicant and the Board's Disciplinary Panel have moved the Board for costs. Whereupon, the Board made the following findings of fact and conclusions of law:

A. The applicant applied to the Board for an unrestricted, unlimited license to practice medicine and surgery in Kansas.

B. The applicant was the subject of numerous medical malpractice lawsuits in the State of Illinois.

C. The applicant was denied a license to practice medicine by the Commonwealth of Pennsylvania.

D. K.S.A. 65-2836 delegates to the Board the authority to grant a limited license to applicants who are the subject of numerous medical malpractice lawsuits (K.S.A. 65-2836(w)) and who have been denied a license by a sister state (K.S.A. 65-2836(j)).

E. The Board granted the applicant a limited license to practice medicine and surgery under the conditions outlined in this Final Order.

F. The Board's order is adverse to the applicant.

G. The Board is the prevailing party in this matter.

H. The Board incurred costs and expenses as contemplated by K.S.A. 65-2846 in the amount of \$1400.20.

I. The applicant stipulates to the fact the Board incurred costs and expenses as contemplated by K.S.A. 65-2846 in the amount of \$1400.20.

J. The applicant agrees to pay costs in the amount of \$1400.20 within 60 days of the date this Final Order is served upon the parties.

6. The terms of this FINAL ORDER are not self-executing.

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, the Board's Executive Director, at 235 SW Topeka Blvd., Topeka, KS 66603.

IT IS SO ORDERED.

DATED: June 22, 2010.


Kathleen Selzler Lippert
Executive Director

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Initial Order and Notice of Hearing was served by depositing the same in the United States mail, first-class postage prepaid, this 23rd day of June, 2010 addressed to:

Don Fishman
10340 S. Mansfield Avenue
Unit 305
Oak Lawn, IL 60453

Carol Ruth Bonebrake
Law Office of Carol Ruth Bonebrake, P.A.
107 SW 6th, Suite 210
Topeka, KS 66603

And a copy was hand-delivered to

Stacy Bond
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603

Melissa Massey
Compliance Officer
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603

And the original was filed with:

Kathleen Selzler-Lippert
Executive Director
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603



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BEFORE THE BOARD OF HEALING ARTS
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In the Matter of:)
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Don Fishman, M.D.)
Application for License to)
Practice Medicine and Surgery)
_____)

Docket No. 10-HA-00067

ORDER APPROVING MEDICAL PRACTICE GROUP

NOW ON THIS 18th day of June, 2010, the above captioned matter comes before the Kansas State Board of Healing Arts (Board) Dr. Don Fishman's request for Board approval of the medical practice group required by the Initial Order issued May 14, 2010. Upon consideration of the Motion for Approval of Medical Practice Group filed by Dr. Fishman and the Initial Order filed herein, the Board grants the Motion for Approval of the Medical Practice Group as follows:

1. On May 14, 2010 the Presiding Officer, Dr. Michael Beezley issued an Initial Order granting Dr. Fishman a limited license to practice medicine and surgery.
2. The Initial Order requires Dr. Fishman to practice within the parameters of a medical practice group and to obtain approval of the practice group from the Board before performing surgery.
3. Dr. Fishman requested approval of the group of physicians consisting of the seven surgeons who take trauma call at Overland Park Regional Medical Center. These are the surgeons will be involved with monitoring Dr. Fishman medicine and surgery practice. They are:

Lee Ludwig, M.D.
Steve Lowry M.D.
Jason Wiltshire M.D.

Robert Pruitt M.D.
Lee Nigro M.D.
Steve Behrends M.D.
Leslie Landau D.O.

4. Drs. Ludwig, Lowry, and Wiltshire will be the primary monitors and shall monitor each surgical operation that Dr. Fishman performs. If one of these three monitors is unavailable, one of the other four members of the practice group shall monitor the surgical operation performed by Dr. Fishman.

5. Dr. Fishman is authorized to perform surgery upon the appointment of the monitoring physicians.

6. This Order constitutes the appointment of the medical practice group and shall be filed of record.

7. The monitoring physician will prepare a report that describes the operation, the outcome, and a statement critiquing Dr. Fishman's performance during surgery as required by paragraph D of the Initial Order (page 9).

8. Dr. John Romito, Chief Medical Officer at Overland Park Regional Medical Center, will collect and review each monitoring report. Dr. Romito will submit the reports to the Board on the following schedule as required by paragraph E of the Initial Order (page 9):

- a. Two months (60 days) after the Board files an order appointing the monitors;
- b. Four months (120 days) after the Board files an order appointing the monitors; and
- c. Six months (180 days) after the Board files an order appointing the monitors.

9. At the conclusion of the six month monitoring period, Dr. Fishman may submit a petition to remove the limitation from his license to practice medicine and surgery in Kansas.

IT IS SO ORDERED.

DATED: June 22, 2010


Michael Beezley, M.D.
For the Board

Prepared by:

Carol Ruth Bonebrake, Esq. - #12672
Attorney for Dr. Don Fishman

Approved by:

Stacy Bond, Esq. - #17673
Associate Litigation Counsel
Kansas State Board of Healing Arts

In the Matter of Don Fishman, M.D.
Order Approving Medical Practice Group

CERTIFICATE OF SERVICE

This is to certify that on June ____, 2010, a true and correct copy of the above and foregoing Order Approving Medical Practice Group was served by U.S. Mail, postage prepaid to the following:

Don Fishman, M.D.
10340 S. Mansfield Ave., Unit 305
Oak Lawn, Illinois 60453

And

Carol Ruth Bonebrake, Esq. - #12672
Law Office of Carol Ruth Bonebrake, PA
107 SW 6th Ave., Ste. 210
Topeka, KS 66603

And a copy was hand-delivered to:

Stacy R. Bond
Associate Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

And

Melissa Massey
Compliance Officer
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603

And the original was filed with the office of:

Kathleen Selzler Lippert
Interim Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603



Cathy A. Brown

In the Matter of Don Fishman, M.D.
Order Approving Medical Practice Group