

FILED 

MAY 10 2011

KS State Board of Healing Arts

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

In the Matter of)
Don Ross Fishman, M.D.)
)
Kansas License No.: 04-34512)
_____)

KSBHA Docket No.10-HA00067

FINAL ORDER TERMINATING LIMITATION
(Pursuant to K.S.A. 77-501 *et seq.*)

NOW on this 15th day of April 2011, comes before the Kansas State Board of Healing Arts (“Board”) the Petition filed by Don Ross Fishman, M.D. (“Licensee”) to terminate the limitation requiring practice monitoring as contained in the Final Order entered by the Board on June 23, 2010. Licensee appears in person, and also through his counsel, Carol Ruth Bonebrake of Holbrook & Osborn, P.A. Stacy Bond, Associate Litigation Counsel, appears on behalf of 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 file, hearing the statements and arguments of Ms. Bond and Ms. Bonebrake, hearing the testimony of Licensee, and being otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions and order:

1. Licensee submitted an Application for a license to practice medicine and surgery in Kansas which was filed with the Board on or about November 5, 2009.
2. On or about November 9, 2009, a Response in Opposition was filed on behalf of the Board.

3. A formal hearing was conducted by Presiding Officer Michael Beezley, M.D. and an Initial Order was entered on May 14, 2010.

4. The Board entered a Final Order on June 23, 2010, essentially adopting the Initial Order. The Final Order found and concluded that Licensee had been the subject of numerous medical malpractice lawsuits in the State of Illinois, seven (7) of which resulted in settlements, and that Licensee was also denied a medical license by the Commonwealth of Pennsylvania.

5. The Final Order granted Licensee a limited license and required him to pay costs of the Board proceedings in the amount of \$1,400.20. Licensee was limited to only practicing in a medical group setting with a group approved by the Board. Licensee was also required to have monitoring of all the surgeries he performed for a period of at least six (6) months by a Board-approved monitor.

6. Licensee has paid the full amount of costs.


7. Licensee has been practicing in a Board-approved group. Additionally, Licensee has been monitored for all forty-one (41) surgeries he has performed, commencing October 31, 2010 through April 12, 2011.

8. The evidence, presented in the form of monitoring reports, indicates that there has not been any quality of care concerns noted during the above timeframe.

9. The Board finds that Licensee has proven by a preponderance of the evidence that he has adequate practice skills to warrant removal of the limitation and the included monitoring requirements on his license.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that the limitation and included monitoring requirements on Licensee's license are hereby terminated.

IT IS SO ORDERED THIS 10th DAY OF May, 2011, IN THE
CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler 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, the Board's Executive Director, at 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 Terminating Limitation** was served this 10th day of May, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Don Fishman, M.D.
confidential
Overland Park, Kansas 66209

Carol R. Bonebrake
Holbrook & Osborn, PA
107 SW Sixth Street, Suite 210
Topeka, Kansas 66603

And a copy was hand-delivered to the following:

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

Katy Lenahan, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Melissa Massey, Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

The original was filed with the office of:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612



Cathy Brown
Executive Assistant