

FILED *CAJ*
NOV 26 2012
KS State Board of Healing Arts

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

In the Matter of)
)
Vergil J. Guillory, D.O.) **KSBHA Docket No. 13-HA00004**
Application for License)
)
_____)

FINAL ORDER DENYING APPLICATION FOR LICENSE

NOW on this 23rd day of October 2012, comes on for hearing before the Presiding Officer, Dr. Kimberly J. Templeton, M.D., the application for license to practice osteopathic medicine and surgery of Vergil J. Guillory, D.O., (“Applicant”). Applicant appears in person and *pro se*. Jessica A. Bryson, Litigation Counsel, appears on behalf of the Respondent Board.

Pursuant to the authority granted to the Board by the Healing Arts Act, 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 Presiding Officer hereby enters this Final Order Denying Application for License in the above-captioned matter. After reviewing the agency record, hearing the statements of the parties, and being otherwise duly advised in the premises, the Presiding Officer makes the following finding, conclusions, and order:

Procedural History

1. On or about March 27, 2012, Applicant submitted an application for license by endorsement to practice osteopathic medicine and surgery in the State of Kansas.
2. Applicant’s application for licensure was filed with the Board on July 16, 2012.

3. Applicant currently holds an “active” license to practice osteopathic medicine and surgery in the State of Missouri, and no disciplinary actions have been taken against the Applicant’s Missouri license.

4. Because Applicant has not actively practiced medicine since June 2000, he submitted a proposed “Re-Entry to Clinical Practice Plan” with his application that described a plan to transition to active practice where he has been offered a position at Shawnee County Health Agency in Topeka, Kansas. Applicant’s plan provides for three (3) months of supervised practice, with gradually decreasing oversight.

5. K.S.A. 65-2833 states:

Endorsement licenses; requirements. The board, without examination, may issue a license to a person who has been in the active practice of a branch of the healing arts in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, that the applicant’s license has never been limited, suspended or revoked, that the licensee has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

- (a) That the state, territory, District of Columbia or country in which the applicant last practiced has and maintains standards at least equal to those maintained by Kansas.
- (b) That the applicant’s original license was based upon an examination at least equal in quality to the examination required in this state and that the passing grade required to obtain such original license was comparable to that required in this state.
- (c) Of the date of the applicant’s original and any and all endorsed licenses and the date and place from which any license was attained.
- (d) That the applicant has been actively engaged in practice under such license or licenses since issued, and if not, fix the time when and reason why the applicant was out of practice.

- (e) That the applicant has a reasonable ability to communicate in English. An applicant for endorsement registration shall not be licensed unless the applicant's individual qualifications meet the Kansas legal requirements.

In lieu of any other requirement prescribed by law for satisfactory passage of any examination in any branch of the healing arts the board may accept evidence satisfactory to it that the applicant or licensee has satisfactorily passed an equivalent examination given by a national board of examiners in chiropractic, osteopathic medicine and surgery or medicine and surgery as now required by Kansas statutes for endorsement from other states.

6. Due to Applicant's extended absence from active practice, the Board's Disciplinary Panel recommended that Applicant submit to a clinical skills assessment at the Center for Personalized Education for Physicians ("CPEP") which is designed for physicians re-entering practice as a form of additional testing to determine Applicant's current clinical competency.

7. Applicant elected not to submit to a CPEP clinical skills assessment.

8. On behalf of the Disciplinary Panel, Associate Litigation Counsel filed a Response to Application on July 20, 2012.

9. A conference hearing on Applicant's application and Associate Litigation Counsel's Response was held by the Board on August 17, 2012.

10. At his August 17, 2012, conference hearing, Applicant submitted a letter from a professional colleague which described Applicant's clinical shadowing activity for two months. Applicant also testified about his proposed "Re-Entry to Clinical Practice Plan."

11. Subsequent to the conference hearing, the Board issued an Order Granting Leave to Amend Response, Order of Continuance and Order Appointing Presiding Officer.

12. In the Order, the Board concluded that the letter submitted by Applicant did not provide sufficient information to fully determine Applicant's current clinical competency.

13. The Board additionally concluded that K.S.A. 65-2833 does allow for licensure by endorsement when an Applicant has been in the active practice of the healing arts in another state, and does not bar licensure where an applicant has not been in active practice immediately preceding his or her application for licensure by endorsement in Kansas. The language of K.S.A. 65-2833(d) contemplates that the Board will consider the circumstances surrounding any absence from active practice.

14. The Board further concluded that Applicant's absence from active practice is significant and may rise to the level of constituting "[a] pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts," as set forth in K.S.A. 65-2837(a)(3), which is grounds for denial of licensure or for the Board to impose terms of probation or limitation as a condition to granting licensure. As such, Associate Litigation Counsel was granted leave to expeditiously amend her Response to include such grounds.

15. The Board stated that additional information regarding the re-entry plan submitted by Applicant and his current level of clinical competency was required in order to determine the appropriate measures to address Applicant's absence from active practice.

16. The Board continued the hearing on the Application and Associate Litigation Counsel's Response to Application so that Board counsel could amend her Response.

17. Board counsel subsequently amended her Response to include K.S.A. 65-2837(a)(3) as ground for denial of licensure.

18. In order to expedite the proceedings on this matter and issue a Final Order on Applicant's application, the Board appointed Dr. Kimberly J. Templeton, M.D., to serve as the presiding officer with authority to issue a final order.

19. A conference hearing was held on October 23, 2012, before this Presiding Officer.

Findings

20. Applicant previously held medical licenses in South Carolina and Florida.

21. Applicant disclosed in his application that he has not actively practiced medicine at all since June 2000.

22. From approximately 1987 through June of 2000, Applicant actively practiced medicine in various facilities in Florida, South Carolina, and Missouri, but has not actively practiced medicine on a full-time basis since approximately 1995.

23. From January 1995 to May 1997, Applicant was a Resident at the University of South Carolina School of Medicine, spending 50% of his time working on his Master of Public Health (MPH), 30% of his time training, and 20% of his time performing clinical work.

24. According to his application, Applicant reports that from June 1996 to May 1997, Applicant was Chief Resident at the University of South Carolina School of Medicine, spending 50% of his time working on his MPH, 20% of his time training, and 20% of his time performing clinical work.

25. From June 1996 to May 1997, Applicant was the Health Officer/Medical Director at Waccamaw Regional Health District, spending 100% of his time performing administrative duties one-half to one day per week during his residency.

26. From June 1997 to May 2010, Applicant was the Chair of the Preventive Medicine Department at the Kansas City University Medicine and Biosciences, spending 70% of his time performing administrative duties, 20% of his time performing research, and 10% of his time teaching.

27. From May 1998 to June 2000, Applicant was a physician/Medical Director at the Clay County Missouri Health Department spending 100% of his time performing clinical work, but only on a part-time basis.

28. From May 1999 to April 2008, Applicant was an Associate Dean of Research at Kansas City University of Medicine and Biosciences, spending 70% of his time performing administrative duties, 25% of his time performing research, and 5% of his time teaching.

29. Between January 2003 to present, Applicant spent 5% of his time in a teaching position at the University of Kansas Medical Center's Department of Preventive Medicine.

30. From May 2008 to June 2010, Applicant was the Vice President of Research at Kansas City University of Medicine and Biosciences, spending 75% of his time performing administrative duties, 25% of time in research, and 5% of his time teaching.

31. From August 2010 to present, Applicant was a Professor of Public Health at A.T. Still University, spending 10% of his time performing administrative duties and 90% of his time teaching.

32. Applicant has not practiced medicine or surgery in a clinical setting for twelve (12) years.

33. Applicant admits that his clinical skills and knowledge level needs to be renewed and reinforced.

34. Applicant is requesting that he have his clinical skills assessed locally. Applicant states that he has spoken to individuals at the Shawnee County Community Health Center who would like to hire him and has also spoken to physicians at the Kansas City Free Clinic where he has been volunteering time under the supervision of physicians. Applicant proposes that these individuals assess his clinical knowledge and diagnostic and treatment acumen.

35. Applicant continues to choose not to submit to a CPEP clinical skills assessment.

36. Applicant further requests that the Board work with him and the Shawnee County Health Agency to develop an alternative plan that would allow Applicant to begin his clinical practice. Applicant states that he wants the Board to tell the Shawnee County Health Agency what “would be acceptable in terms of patient numbers and time.”

Conclusions

37. The Presiding Officer concludes that pursuant to K.S.A. 65-2836(b), an application to practice the healing arts may be denied upon a finding that the applicant has committed an act or acts of professional incompetency.

38. The Presiding Officer further concludes that, as defined by K.S.A. 65-2837(a)(3), professional incompetency means behavior that demonstrates a manifest incapacity or incompetence to practice medicine.

39. The Presiding Officer finds and concludes that Applicant's absence from the active practice of medicine for twelve (12) years is significant and represents a prima facie violation of K.S.A. 65-2836(b), as further defined by K.S.A. 65-2837(a)(3).

40. At the hearing, Applicant failed to present sufficient evidence to overcome the presumption of clinical incompetence raised by his extensive absence from active practice.

41. Relying in part upon her personal expertise as a medical doctor practicing in a setting in which physicians are trained, the Presiding Officer concludes that the evidence presented demonstrates that Applicant would not be clinically competent to treat patients with a broad spectrum of diseases at the Shawnee County Health Agency, nor would Applicant's supervisors at the Health Agency be able to evaluate Applicant's clinical skills and clinical knowledge to the same depth and degree that Applicant would potentially receive through a CPEP re-entry evaluation, Physician Assessment and Clinical Education (PACE) Program, or a similar organization which is highly specialized in assessing physician competence.

42. The Presiding Officer further concludes that Licensee has not presented any evidence demonstrating that the Shawnee County Health Agency and the Kansas City Free Clinic are particularly qualified to evaluate physician re-entry after an extended absence from clinical practice or qualified to design individualized remediation programs.

43. The Board has knowledge of and experience with CPEP, PACE, and other organizations which are highly specialized in evaluating physician clinical competence and structuring specific remedial education and training activities tailored to address a physician's particular needs. The Presiding Officer concludes that the Board would first need an assessment of Applicant's clinical skills in order to determine what requirements would be appropriate to address Licensee's clinical deficiencies in a re-entry plan.

44. The Presiding Officer concludes that Applicant is not presently professionally competent to engage in the active practice of medicine and surgery.

45. The Presiding Officer concludes that Applicant's application for license to practice osteopathic medicine and surgery should be denied.

46. The Presiding Officer further concludes that if Applicant chooses to reapply for a license in Kansas, he must demonstrate evidence of his current clinical competence to practice medicine. One acceptable method is through a clinical skills assessment performed by an organization such as CPEP, PACE, or another organization which is specialized in evaluating physician clinical competence and structuring specific remedial education and training.

47. **IT IS THEREFORE ORDERED** that Applicant's application to practice osteopathic medicine and surgery is **DENIED**.

IT IS SO ORDERED THIS 26th DAY OF November 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

Kimberly J. Templeton by
Kimberly J. Templeton, M.D.
Presiding Officer
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NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. Service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee 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, the undersigned, hereby certify that a true copy of the foregoing **Final Order Denying Application For Licensure** was served this 26th day of November 2012, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Vergil Guillory, D.O.
13131 Edwardsville Drive
P.O. Box 13545
Edwardsville, KS 66113

and a copy was hand-delivered to:

Jessica A. Bryson
Associate Litigation Counsel
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