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MAR 18 2011
KS State Board of Healing Arts

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

In the Matter of)
Mac-Elder Hilaire, MD)
)
Applicant for Kansas License)
_____)

Docket No. 11-HA00044

FINAL ORDER FOLLOWING CONFERENCE HEARING
(Pursuant to K.S.A. 77-501 et seq.)

NOW on this 25th day of February 2011, comes before the Kansas State Board of Healing Arts ("Board") the application of Mac-Elder Hilaire, M.D. ("Applicant") for an institutional license to practice medicine and surgery in the State of Kansas, and for licensure by endorsement. Applicant appears by and through his counsel of record, Judy A. Pope. Janith Lewis, Associate Litigation Counsel, appears for the Board. Members of the Board serving on the Disciplinary Panel for this matter were recused from participation.

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. Lewis and Ms. Pope, and being otherwise duly advised in the premises, the Board makes the following findings of fact, conclusions and order:

I. Findings of Fact

The Board has been shown the following facts:

1. On or about September 1, 2010, Applicant submitted to the Board an application for an institutional license to practice medicine and surgery in the State of Kansas and licensure by endorsement. Such application was deemed complete on November 9, 2010.

2. Applicant's mailing address as provided to the Board is: 500 State Hospital Drive, Osawatomie, Kansas 66064.
3. Applicant graduated from Faculte de Medecine et Pharmacie, located in Port-au-Prince, Haiti, in July of 1978. Applicant is unable to obtain verification of graduation from his medical school due to the earthquake in Haiti which occurred in January 2010. Applicant has provided a sworn statement to this effect.
4. Applicant completed an internship at the Harlem Hospital Center in Harlem, New York, from July 1989 to June 1990.
5. Applicant completed an internship and residency at the Bronx Lebanon Hospital Center from July 1992 to June 1995.
6. Applicant holds an active license to practice in the United States territory of Puerto Rico and has held such license since January of 2007. As of November 2, 2010, Applicant had no disciplinary action against his license in Puerto Rico.
7. Since June 1995, Applicant has only had sporadic and short-term employment/active practice as a Medical Doctor.
8. Applicant most recently practiced medicine from August 2009 to September 2009, at the Ute Mountain Ute Health Center in Towaoc, Colorado which is a federal health facility on the Ute Mountain Indian Reservation.
9. Applicant alleges that Applicant's sporadic and short-term practice history represents a pattern of practice which demonstrates a manifestation of professional competence to practice the healing arts.
10. Applicant took the ECFMG Examination on or about July, 27, 1983, and received a score of 75.

11. Upon approval of licensure, Applicant intends to practice at the Osawatomie State Hospital, Osawatomie, Kansas. Osawatomie State Hospital is an institution within the Kansas Department of Social and Rehabilitation Services.

II. Applicable Law

- a. K.S.A. 77-501 et seq. – Kansas Administrative Procedure Act
- b. K.S.A. 65-2801 et seq. – Kansas Healing Arts Act
- c. K.S.A. 65-2836 – Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied
- d. K.S.A. 65-2837 – Definitions
- e. K.S.A. 65-2895 – Institutional license; qualifications; rights and restrictions; term of license

III. Policy Statement

The public policy of regulating the practice of healing arts in the State of Kansas is set forth in K.S.A. 65-2801:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

IV. Conclusions

Based upon the Findings of Fact enumerated in Paragraph Nos. 1 through 10, the Applicable Law, and the Policy Statement set forth above the Board hereby concludes as follows:

12. The Board finds Applicant's records illustrate Applicant is duly licensed in the United States territory of Puerto Rico. Furthermore, Applicant has never been limited, suspended or revoked, been censured or had other disciplinary action taken against her.

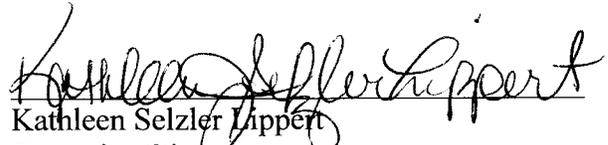
13. The Board finds Applicant has completed at least two (2) years in a postgraduate training program in the United States approved by the Board.
14. The Board finds Applicant has met his burden to show good cause to receive a waiver of verification of graduation from medical school pursuant to Board Policy No. 05-05.
15. The Board finds Applicant has met his burden of proof to meet the technical requirements for licensure by endorsement pursuant to K.S.A. 65-2833.
16. However, the Board also finds the Respondent has met its burden to show a lack of a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice the healing arts, pursuant to K.S.A. 65-2837(a)(3), to prevent Applicant from receiving an institutional license to practice medicine and surgery in the State of Kansas. Applicant's sporadic and short-term practice of the healing arts over the past several years does not adequately demonstrate that level of professional competency requisite to receiving licensure.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS:

17. Applicant's application for institutional license to practice medicine and surgery in the State of Kansas is hereby **GRANTED** upon the presentation of a satisfactory evaluation of clinical competency from the Center for Personalized Education for Physicians (CPEP) or an equivalent assessment and certification body which may be approved by the Board's designee, Board Member Michael Beezley, M.D. Applicant shall complete any necessary waiver/release so that the Board may receive a copy of such an Assessment Report for review and consideration.

18. If Applicant does not receive a satisfactory evaluation of clinical competency from CPEP or an approved equivalent assessment and certification, the Applicant may petition the Board to set this matter for hearing at the next available Board Hearing to present further evidence of competence to practice the healing arts or to request further consideration of licensure by the Board.
19. The Board shall maintain jurisdiction over this matter to issue any future order(s) deemed necessary and appropriate.

IT IS SO ORDERED THIS 18 DAY OF March, 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, hereby certify that a true copy of the foregoing Final Order was served this 18th day of March, 2011 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Judy A. Pope
11115 Ash Street
Leawood Executive Offices
Leawood, KS 66211

Mac-Elder Hilarie
500 State Hospital Drive
Osawatomie, Kansas 66066

Mac-Elder Hilarie
66046 Old Highgate Dr.
Elkridge, MD 21075

And a copy was hand delivered to the office of:

Janith Lewis, 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

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