

r I L E D

AUG 28 1996

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

**KANSAS STATE BOARD OF
HEALING ARTS**

IN THE MATTER OF)
)
WILBUR D. HILST, M.D.)
Kansas License No. 4-12627)
_____)

Case Nos. 94-00032
96-00001

ORDER

NOW, on this 28th day of August, 1996, comes on for hearing before the Kansas State Board of Healing Arts (hereafter "Board"), Edward J. Fitzgerald, M.D. and Laurel H. Rickard presiding, the motion of Wilbur D. Hilst, M.D. (hereafter "Licensee") filed June 10, 1996 for termination of the emergency suspension issued against his license July 13, 1995. Kevin K. LaChance, Disciplinary Counsel, appears for and on behalf of the Board. Applicant appears in person and through his attorney, Brian Wright of Turner & Boisseau, Great Bend, Kansas.

Thereupon, as indicated in the notice of hearing, presiding officer takes official notice of the record of the formal proceedings, including transcripts, exhibits and pleadings, held before Presiding Officer Floyd Gehrt. The findings of Presiding Officer Gehrt as stated in the Initial Order dated August 8, 1996 are not, by themselves, given preclusive effect.

Based upon the record before it, and after hearing arguments of counsel, the Presiding Officer enters the following:

FINDINGS OF FACT

1. On or about June 14, 1993, Licensee submitted an Application for Reinstatement of License to practice medicine and surgery in the State of Kansas.

ORDER
Wilbur D. Hilst, M.D.

2. On March 14, 1994, Licensee and the Board entered into a Stipulation and Agreement and Enforcement Order ("Stipulation") in which Licensee was granted a limited license to practice medicine and surgery in the State of Kansas under specific terms and conditions. One such term was Licensee's agreement to (Confidential)

3. Licensee violated the terms and conditions of the aforementioned Stipulation on June 24 and 25 when, by his own admission, he (Confidential) Licensee was alleged to have (Confidential) and alleged to have provided medical care (Confidential) to twenty patients on those dates. Licensee's conduct was alleged to pose an immediate or imminent danger to the public health and safety. An Ex Parte Order suspending Licensee's license on an emergency basis was issued on July 7, 1995, followed by and Emergency Order of Suspension issued on July 13, 1995.

4. A Petition to Revoke, Suspend, or Otherwise Limit Licensee's license was filed. Presiding Officer Gehrt was appointed and a formal hearing commenced.

5. On June 10, 1996, Licensee filed a Request for Termination of the Emergency Suspension. The matter was set for conference hearing at the June 22, 1996 Board meeting. Licensee did not appear and did not waive the statutory period for notice of hearing. The matter was continued to the August 17, 1996 Board meeting, at which time the Board determined the matter would most appropriately be heard by the Presiding Officer who rendered the Emergency Order. Hearing was scheduled for August 28, 1996.

6. On August 8, 1996, the Initial Order in the Formal Proceeding was issued by Presiding Officer Gehrt. Presiding Officer Gehrt found that Licensee consumed alcohol on June 24 and 25, 1995 in violation of the Stipulation, that Licensee failed to submit the lawfully requested urinalysis on June 30, July 3 and July 4, 1995 in violation of the Stipulation and in violation of a lawful Board order within the meaning of K.S.A. 65-2836(k). (Confidential)

July 7, 1995 in violation of the Stipulation. However, Presiding Officer Gehrt found that said violations of the Stipulation did not violate K.S.A. 65-2836(i) and there was insufficient evidence to prove that Licensee's conduct affected his ability to practice the healing arts with reasonable skill and safety to patients.

7. A Petition for Review and Stay of the Initial Order was filed by Disciplinary Counsel. Notice of Hearing to Exercise Review of Initial Order was filed by the Board on August 21, 1996. Such review is scheduled to take place at the office of the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, Kansas, at 9:30 a.m., Saturday, October 19, 1996.

8. There is no evidence of that Licensee has (Confidential) since June 27, 1995.

CONCLUSIONS OF LAW

9. The Board may take official notice of the record of other proceedings before the Board, including the proceedings resulting in the Emergency Order issued July 13, 1995 and the Initial Order issued August 8, 1996 by Presiding Officer Floyd Gehrt and the transcript thereto, in accordance with K.S.A. 77-524(f).

10. The Board may temporarily suspend a license if there is cause to believe that grounds exist for disciplinary action under the healing arts act and that the continuation in practice would constitute an imminent danger to the public health and safety. K.S.A. 65-2838(c).

11. The Board may take only such action as is necessary to prevent immediate danger to the public health, safety or welfare. K.S.A. 77-536(b)(1).

12. There is insufficient evidence to indicate that at this time Licensee's practice of medicine and surgery would constitute an imminent danger to the public health and safety.

IT IS THEREFORE BY THE BOARD ORDERED as follows:

The Emergency Order suspending Licensee's license is terminated. However, Licensee's license remains subject to the terms and conditions of the March 14, 1994 Stipulation Agreement.

IT IS SO ORDERED.

DATED this 29th day of August, 1996.

KANSAS STATE BOARD OF HEALING ARTS


LAWRENCE T. BUENING, JR. #9125

Executive Director

for

Edward J. Fitzgerald, M.D.

Laurel H. Rickard

Presiding Officer

ORDER

Wilbur D. Hilst, M.D.

**NOTICE REGARDING RELIEF
FROM THIS ORDER**

This order is issued following completion of an emergency hearing. It is effective when rendered. An aggrieved party may seek review by interlocutory review of non-final agency action pursuant to K.S.A. 77-608.

CERTIFICATE OF SERVICE

I do hereby certify that on the 29th day of August, 1996, a true and correct copy of the above and foregoing Order was deposited in the United States mail, postage prepaid, first class to the following:

Brian Wright
Lee Turner
Turner & Boisseau
3900 Broadway
Great Bend, Kansas 67530
Counsel for Licensee

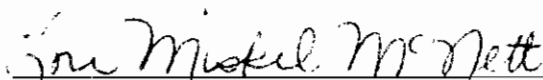
and a copy was hand-delivered to:

Wilbur D. Hilst, M.D.
at the office of the Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068

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

and the original was hand-delivered to:

Office of the Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068



Lori Miskel McNett, #17223
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603-3068