

FILED

MAR 04 1997

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
YOLANDA M. HUET-VAUGHN, M.D.)
Kansas License No. 04-19814)
_____)

Case No. 97-000120

FINAL ORDER

NOW ON THIS Fifteenth Day of February, 1997, comes on for hearing before the State Board of Healing Arts the Petition to Revoke, Suspend or Otherwise Limit Licensure.

Appointed as Presiding Officer to issue a Final Order are Board members Ms. Emily Taylor, Ph.D.; Dr. Lance Malmstrom, D.C.; Dr. James D. Edwards, D.C.; Dr. Robert L. Frayser, D.O.; Dr. Harold J. Sauder, D.P.M.; and Dr. Roger D. Warren, M.D., Presiding Officer Chairman.

Kevin K. LaChance, Disciplinary Counsel, appears for Petitioner. Respondent appears in person and through counsel, Donald G. Strole and Sally G. Kelsey, Attorneys at Law.

The Presiding Officer takes official notice of the agency record in the prior proceeding against Respondent, case number 92-00142.

After hearing the arguments of counsel and the sworn testimony of Dr. Huet-Vaughn, and having the agency record before it, the Board makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. Respondent is licensed by the State Board of Healing Arts to engage in the practice of medicine and surgery pursuant to K.S.A. 65-2801, *et seq.*

2. Respondent joined the United States Army Reserve as a captain in the Medical Corps in June, 1990. In December, 1990, Respondent and other medical personnel from her

reserve unit were ordered to active duty. Respondent was reassigned to the 410th Evacuation Hospital which had mobilized at Fort Riley, Kansas pending deployment to Southwest Asia in support of Operation Desert Shield. Respondent left Fort Riley without authorization December 31, 1990 to avoid deployment to the military conflict. The 410th Evacuation Hospital deployed to Southwest Asia without Respondent on January 27th, 1991. She remained absent until she surrendered to military authorities February 2, 1991. Respondent was placed in confinement at Fort Leonard Wood, Missouri pending court martial, and did not join her assigned unit which was then located in Saudi Arabia.

3. On August 5, 1991, Respondent was found guilty by general court martial of desertion with intent to avoid hazardous duty and shirk important service, in violation of Article 85, Uniform Code of Military Justice, 10 U.S.C. § 885 (1988). Following exhaustion of appellate remedies, the conviction is now final.

4. Respondent was initially sentenced to total forfeiture, dismissal from service, and confinement for 30 months. Confinement was reduced to 15 months. Respondent's sentence was served at Fort Leavenworth, Kansas. Subsequently, the Secretary of the Army remitted 7 months of confinement after Respondent had served 240 days of her sentence.

CONCLUSIONS OF LAW

5. A license to practice the healing arts may be revoked, suspended or limited, or a licensee may be publicly or privately censured as provided by K.S.A. 65-2836. In addition, pursuant to K.S.A. 65-2863a, a licensee may be assessed an administrative fine in an amount not to exceed \$5000 for a violation of the healing arts act.

6. Grounds for discipline under the healing arts act include conviction of a felony or

class A misdemeanor, whether or not the crime is related to the practice of the healing arts. The sole legal issue in this case is whether Respondent's conviction by a general court martial of desertion with intent to avoid hazardous duty or to shirk important service constituted conviction of a felony or class A misdemeanor for purposes of discipline under the Kansas healing arts act.

7. The term "felony" is not defined in the healing arts acts act. The Board concludes that the term is subject to interpretation.

8. The healing arts act is to be construed broadly so that the intent and purpose may be carried out to its fullest. The well-established purpose of the act is to protect the public against unprofessional, improper, unauthorized and unqualified practice of the healing arts, and to secure to the public the services of competent, trustworthy practitioners.

9. For purposes of the Kansas Criminal Code, the term "felony" means a crime punishable by death or imprisonment in any state correctional institution. See K.S.A. 21-3105. A sentencing court may place a person in the custody of the secretary of corrections for the purpose of imprisonment in a state correctional institution if the term of confinement is one year or more. K.S.A. 21-4603. A class A misdemeanor is punishable by confinement up to one year in the county jail; in contrast, a class B misdemeanor is punishable by confinement up to six months in the county jail. K.S.A. 21-4502(a), (b). The Board concludes that conviction of a crime by another jurisdiction, including a general court martial, for which the authorized maximum punishment is confinement for more than six months in jail or one year in prison may be grounds for disciplinary action under K.S.A. 65-2836(c).

10. The authorized penalty for conviction of a class E felony under federal law is imprisonment for more than one year, and for a class A misdemeanor, imprisonment for six

months to one year. 18 U.S.C. § 3559(a)(5)(6). The punishment for the crime of desertion with intent to avoid hazardous duty or to shirk important service is confinement at hard labor not to exceed five years, dishonorable discharge, and forfeiture of all pay and allowances. 10 U.S.C. § 856, Table A. The Board concludes that the crime for which Respondent was convicted is punishable in a manner at least as severe as punishment for a felony under civilian federal criminal law.

11. The Board holds that Respondent was convicted of a crime for which the punishment is comparable to that for a felony in the State of Kansas, and that Respondent is subject to discipline under the healing arts act.

12. The Board acknowledges that some case law holds that a military conviction may not be used to invoke enhanced sentencing provisions under habitual criminal acts. Habitual criminal acts are to be strictly construed, and thus the conclusion that a conviction following a general court martial is not a felony for the purpose of enhancing a sentence is not applicable.

13. The Board is permitted wide discretion in determining what remedy, if any, is appropriate when a licensee violates the healing arts act. While some violations are so serious that life-long revocation is appropriate, it is doubtful that the legislature intended revocation for a single remissive act.

a. In mitigation against any suspension of the privilege to practice the healing arts, there is no allegation or evidence that Respondent is, by her continued practice, an immediate threat to the public health, safety or welfare. The Board is aware of no allegation of professional incompetence. Finally, the federal government has exacted its remedy for desertion, and the Board has no interest in seeking an additional remedy on behalf of the federal

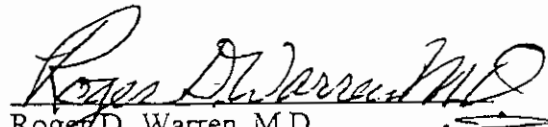
government.

b. Other factors weigh in favor of imposing discipline. Respondent voluntarily entered the military to practice medicine and surgery. She received the benefits of peace-time military service. When called upon to be ready to care for civilian and military wounded in a time of armed conflict, Respondent abandoned her role as a medical doctor for the army. Her actions directly involved professional duty. Whether Respondent agreed that the armed conflict was appropriate, she had accepted the duty to care for those who might be casualties in such a conflict. Respondent's actions were serious violations of the healing arts act which brought about dishonor upon the profession. By her testimony, Respondent does not demonstrate consciousness that her conduct was wrongful.

IT IS, THEREFORE, ORDERED that Respondent is hereby publicly censured. An administrative fine is imposed in the amount of \$5,000, to be paid within one calendar year following service of this order.

ENTERED this 3rd day of March, 1997.

THE KANSAS STATE BOARD OF
HEALING ARTS


Roger D. Warren, M.D.
Presiding Officer Chairman

Notice Regarding Relief From This Order

This is a Final Order of the Board. It is effective upon service. A party may seek relief from this order by filing a petition for judicial review within 30 days following the date of service of this order. A petition for reconsideration by the agency is not a prerequisite to seeking

judicial review. Service of a petition for judicial review may be served upon the Board's Executive Director, Lawrence T. Buening, Jr., and a copy sent to the Board's General Counsel, Mark W. Stafford, both at 235 S. Topeka Blvd., Topeka, Kansas 66603.

Certificate of Service

I certify that a copy of the foregoing Final Order was served this 4th day of March, 1997, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Yolanda Huet-Vaughn, M.D.
6801 Glenwood
Kansas City, Kansas 66204
Respondent

Donald G. Strole, Sally G. Kelsy
16 E. 13th Street
Lawrence, Kansas 66044-3502
Counsel for Respondent

and a copy was hand-delivered to the office of
Kevin K. LaChance
235 S. Topeka Blvd.
Topeka, Kansas 66603
Disciplinary Counsel

