

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED CAB
DEC 13 2007

KS State Board of Healing Arts

In the Matter of)
Martha Hurley)
)
Kansas License No. 04-19665) Docket No. 07-HA00071
_____)

FINAL ORDER

NOW ON THIS 8th day of December, 2007, this matter comes on for review of the Initial Order issued by Presiding Officer Roger Warren, M.D. and for hearing on Petitioner's motion for assessment of costs.

Respondent Martha Hurley does not appear. Respondent's Counsel has advised Board Counsel that there is no objection to adoption of the Initial Order as the Final Order of the Board, and no objection to Petitioner's motion for assessment of costs. Dan Riley, Associate Counsel to the Board, appears for Petitioner.

Having the agency record before it, the Board finds, concludes and orders as follows:

1. The material facts of this case are not in dispute. Respondent is licensed in this state to practice medicine and surgery, and has continuously held that license since originally issued in 1982.
2. Respondent applied for medical staff membership appointment and privileges in January, 2005 at the Surgicenter of Johnson County. This is an ambulatory surgical center, which is a medical care facility as defined by Kansas law.
3. Respondent testified that the medical review committee gave notice July 22, 2005 that her application was denied **(Confidential)**
(Confidential) Respondent exercised her right to a fair hearing before an ad hoc committee. Following the December 1, 2005 hearing, the ad hoc committee determined that the decision to deny the application was reasonable at the time it was made. The ad hoc committee also recommended that the medical review committee consider new or additional information that was presented at the fair hearing.
4. The governing body voted February 23, 2006 to deny the application for membership and privileges. **(Confidential)**
(Confidential)

(Confidential) There is no evidence in the agency record that further proceedings or applications followed notice of the decision.

5. (Confidential)
(Confidential)

(Confidential) See K.S.A. 65-2836(a), (w);
K.S.A. 2006 Supp. 65-2837(b)(17). (Confidential)
(Confidential)

(Confidential) A sanction by a health facility based upon conduct that would constitute grounds for disciplinary action under the healing arts act is grounds for disciplinary action by the Board. K.S.A. 65-2836(s).

6. In reviewing the record of the proceeding before the ad hoc committee, the Board cannot find that the proceeding was so flawed that the facility's findings and action must be ignored. As a result, the Board finds and concludes that Respondent has been sanctioned by a health care facility based upon findings that would constitute grounds for Board disciplinary action under the healing arts act.

7. The Board also finds that Respondent's actions were only slightly mitigated by the participation of another person in preparing the application for medical staff membership. While the evidence does not establish that Respondent acted purposefully (Confidential) Respondent is solely responsible for her representations made in the application process, and in the Board's determination, did not take adequate steps (Confidential)

8. The Board notes that Respondent's application for staff membership was based only in part (Confidential) Respondent could have avoided that ground for denial, but there is no practical method by which she can erase history and avoid future denials (Confidential) Further denials of privileges (Confidential) should not be seen as occasion for the Board to take additional disciplinary action.

9. The Board determines that, in light of Respondent's failure to take necessary steps to accurately report facts in her application, and based upon the denial of her application as a result of that failure (Confidential) Respondent should be censured, and that a fine of \$250 should be assessed.

10. Petitioner moves for assessment of costs as provided by K.S.A. 65-2846. The exhibits attached to the motion establish recoverable expenses in the amount of \$708.20. The Board finds that these costs should be assessed against Respondent.

IT IS, THEREFORE ORDERED that Martha Hurley, M.D. is hereby censured and ordered to pay a fine in the amount of \$250.00.

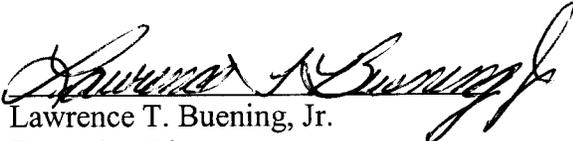
IT IS FURTHER ORDERED that Martha Hurley, M.D. is ordered to pay the costs of the proceeding in the amount of \$708.20.

IT IS FURTHER ORDERED that payment of the fine and costs shall be made according to terms agreed by Petitioner and Respondent, and if no agreement is made, payment shall be in six equal monthly installments, with the first payment made within 30 days following the effective date of this order.

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 the Board's Executive Director at 235 SW. Topeka Blvd., Topeka, KS 66603.

Dated this 13th day of December, 2007.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing Final Order was served this 14th day of December, 2007, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Martha Hurley, M.D.
8328 Mullen Rd
Lenexa, KS 66215

and

Christopher Lawson
Attorney at Law
6750 Antioch Road, Suite 301
Overland Park, KS 66204

And a copy was hand-delivered to the office of

Dan Riley
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603

A handwritten signature in black ink, appearing to read "Lawrence A. Burroughs". The signature is written in a cursive style and is positioned above a horizontal line.

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KS State Board of Healing Arts

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

In the Matter of)
Martha Hurley)
)
Kansas License No. 04-19665)
_____)

Docket No. 07-HA00071

INITIAL ORDER

NOW ON THIS 9th day of October, 2007, this matter comes on for hearing. Respondent Martha Hurley appears in person and through Christopher Lawson, Attorney at Law. Kathleen Selzler-Lippert, Associate Counsel, appears for the Board.

Having the agency record before him, the Presiding Officer finds, concludes and orders as follows:

1. The material facts of this case are not in dispute. Respondent is licensed in this state to practice medicine and surgery, and has continuously held that license since originally issued in 1982.

2. Respondent applied for medical staff membership appointment and privileges in January, 2005 at the Surgicenter of Johnson County. This is an ambulatory surgical center, which is a medical care facility as defined by Kansas law.

3. Respondent testified that the medical review committee gave notice July 22, 2005 that her application was denied **(Confidential)**
(Confidential) Respondent exercised her right to a fair hearing before an ad hoc committee. Following the December 1, 2005 hearing, the ad hoc committee determined that the decision to deny the application was reasonable at the time it was made. The ad hoc committee also recommended that the medical review committee consider new or additional information that was presented at the fair hearing.

4. The governing body voted February 23, 2006 to deny the application for membership and privileges. **(Confidential)**
(Confidential)

(Confidential) There is no evidence in the agency record that further proceedings or applications followed notice of the decision.

5. The Presiding Officer concludes that a licensee who is found to have an extensive history (**Confidential**) and to have failed to disclose that history on a credentialing application might face disciplinary action by the Board. See K.S.A. 65-2836(a), (w); K.S.A. 2006 Supp. 65-2837(b)(17). The Presiding Officer is not required to determine with finality the merits of (**Confidential**) (**Confidential**) A sanction by a health facility based upon conduct that would constitute grounds for disciplinary action under the healing arts act is grounds for disciplinary action by the Board. K.S.A. 65-2836(s).

6. In reviewing the record of the proceeding before the ad hoc committee, the Presiding Officer cannot find that the proceeding was so flawed that the facility's findings and action must be ignored. As a result, the Presiding Officer finds and concludes that Respondent has been sanctioned by a health care facility based upon findings that would constitute grounds for Board disciplinary action under the healing arts act.

7. The Presiding Officer also finds that Respondent's actions were only slightly mitigated by the participation of another person in preparing the application for medical staff membership. While the evidence does not establish that Respondent acted purposefully to hide information in the credentialing process, Respondent is solely responsible for her representations made in the application process, and in the Presiding Officer's determination, did not take adequate steps to avoid the nondisclosure.

8. The Presiding Officer notes that Respondent's application for staff membership was based only in part upon (**Confidential**) Respondent could have avoided that ground for denial, but there is no practical method by which she can erase history and avoid future denials based (**Confidential**) Further denials of privileges solely based upon that history, as it now exists, should not be seen as occasion for the Board to take additional disciplinary action.

9. The Presiding Officer determines that, in light of Respondent's failure to take necessary steps to accurately report facts in her application, and based upon the denial of her application as a result of (**Confidential**) Respondent should be censured, and that a fine of \$250 should be assessed.

IT IS, THEREFORE, ORDERED that Martha Hurley, M.D. is hereby censured.

IT IS FURTHER ORDERED that Martha Hurley, M.D. is hereby fined in the amount of \$250, payable within 30 days following the effective date of this order.

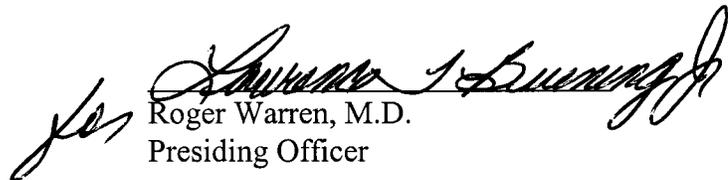
PLEASE TAKE NOTICE that this is an Initial Order. If reviewed by the agency head, an Initial Order does not become effective unless adopted as the Final Order. A party to an agency proceeding may request review of an Initial Order by filing a petition for review within 15 days following service of the Initial Order. Any such petition must be filed with the Executive

Director at 235 S. Topeka Blvd., Topeka, KS 66603.

PLEASE TAKE FURTHER NOTICE that Board will, on its own motion, review this Initial Order at its regularly scheduled meeting December 8, 2007 at 9:00 a.m., or as soon thereafter as the matter can be heard, and at the conclusion of the review issue a Final Order. Upon conducting review, the Board may exercise all of the decision making authority as if it had heard the matter itself. Except to the extent that a party has identified an issue for review in a timely petition for review, the Board generally limits its review to the disciplinary orders entered by the Presiding Officer based upon the findings of fact in the Initial Order. Any party may file a brief with the Boards Executive Director on or before November 16, 2007. No further notice of hearing will be given.

Dated this 11th day of October, 2007.

Kansas State Board of Healing Arts


Roger Warren, M.D.
Presiding Officer

Certificate of Service

I certify that the foregoing Initial Order was served this 11th day of October, 2007, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Martha Hurley, M.D.
8328 Mullen Rd
Lenexa, KS 66215

Christopher Lawson
Attorney at Law
6750 Antioch Road, Suite 301
Overland Park, KS 66204

and a copy was hand-delivered to the office of:

Kathleen Lippert
Litigation Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

