

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

NOV 20 2001

In the Matter of )  
the Application of )  
**David B. Kemp, M.D.** )  
\_\_\_\_\_ )

**KANSAS STATE BOARD OF  
HEALING ARTS**  
Docket No. 02-HA-03

**ORDER GRANTING RECONSIDERATION AND AGREED FINAL ORDER**

**NOW**, on this the 20<sup>th</sup> day of October, 2001, comes before the Kansas State Board of Healing Arts, the Petition of David B. Kemp, M.D. ("Applicant") for reconsideration of the Final Order of the Board of August 18, 2001, denying Applicant's application for a license to practice medicine and surgery in Kansas. Applicant appears in person and through his attorney Thomas E. Wright, of Wright, Somers, Sebelius, Clark & Baker, L.L.P. The Respondent Board of Healing Arts ("Board") appears by and through Kelli J. Benintendi, Associate Counsel.

After examining the agency record, hearing statements of counsel and being otherwise duly advised in the premises, the Board finds, concludes and orders as follows:

1. Applicant filed an Application for License to Practice Medicine and Surgery ("Application") in the State of Kansas on or about May 2, 2001.
2. An Answer in Opposition to the Application was filed by Respondent on July 19, 2001, alleging that Applicant's malpractice settlement history constituted grounds for denial pursuant to K.S.A. 65-2836(w).
3. A conference hearing was held on August 18, 2001, before the Board of Healing Arts, at which both Applicant and Respondent appeared and presented evidence.
4. On August 27, 2001, the Board issued a Final Order denying Applicant's application.

5. On or about September 11, 2001, Applicant timely filed a Petition for Reconsideration of the Board's Final Order.

6. The Board hereby grants Applicant's Petition for Reconsideration and considers Applicant's presentation of additional evidence, offer of settlement in this matter and the statements of each party. Upon deliberation, the Board further grants Applicant's application for licensure with conditions to be placed on the same.

7. Applicant is granted an unrestricted license to practice medicine and surgery, but the following conditions shall remain in place for a period of at least twenty-four (24) months:

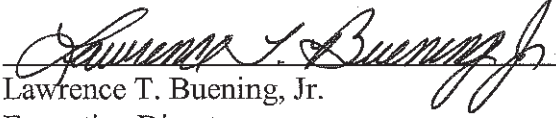
- i. Applicant shall have his surgical practice monitored by an independent physician monitor. Such monitor must be approved by the Board's designee, Howard Ellis, M.D.
- ii. The monitor will randomly choose five (5) patient surgical charts every four (4) months on which to perform chart reviews and submit monitoring reports to Board staff for those charts. The monitor's reports shall be on a form provided by Board staff and must include an assessment of each patient surgical chart reviewed as to whether Applicant's performance of surgery and associated treatment of each patient is within with that level of care, skill and treatment which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances;
- iii. The monitor must immediately notify Board staff if the monitor finds any patient case where he reasonably believes Applicant may have been negligent or otherwise acted outside the standard of care in the performance of surgery or other associated treatment of a patient.
- iv. Each monitoring report shall be due within thirty (30) days of the conclusion of each four-month period. Applicant shall be responsible for ensuring the timely submission of the monitor's reports to Board staff;
- v. Applicant shall obtain a second opinion on all patient cases in which a breast abnormality is discovered or suspected; and

- vi. All correspondence or communication between Applicant and the Board relating to the conditions contained in this Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

8. Applicant's failure to comply with the conditions set forth in this Order may result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act. At the conclusion of twenty-four months, Applicant may petition the Board for removal of the conditions.

**IT IS SO ORDERED** on this 20<sup>th</sup> day of November, 2001.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

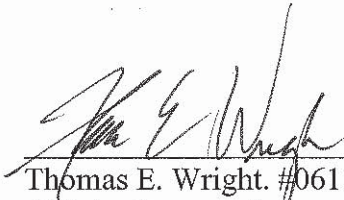
Nov 20, 2001  
Date

Prepared By:



Kelli J. Benintendi #16032  
Associate Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3065  
(785) 296-7413  
Attorney for Respondent

Approved by:



Thomas E. Wright. #06115  
Wright, Henson, Somers, Sebelius, Clark & Baker, LLP  
100 S.E.9th Street  
P.O. Box 3555  
Topeka, Kansas 66601-3555  
Attorney for Applicant

**CERTIFICATE OF SERVICE**

I, Kelli J. Benintendi, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **ORDER GRANTING RECONSIDERATION AND AGREED FINAL ORDER** by certified mail, on this 21<sup>st</sup> day of November, 2001, to:

Thomas E. Wright  
Wright, Henson, Somers, Sebelius, Clark & Baker, LLP  
100 S.E.9th Street, 2nd Floor  
P.O. Box 3555  
Topeka, Kansas 66601-3555

and the original was hand-delivered to:

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

  
\_\_\_\_\_  
Kelli J. Benintendi  
Associate Counsel