

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

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IN THE MATTER OF)
)
ROBERT C. LAHUE, D.O.)
Kansas License No. 05-16563)
_____)

Case No. 00-HA-17

KANSAS STATE BOARD OF
HEALING ARTS

FINAL ORDER

NOW ON THIS Twentieth Day of October, 2001, this matter comes before the Board for review of an Initial Order filed September 28, 2000. Stacy L. Cook, Litigation Counsel, appears for Petitioner. Respondent appears in person, and states that he now participates in the matter without counsel.

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

1. This matter was initiated by a Petition to Revoke, Suspend, or Otherwise Limit the license of Respondent. The petition alleged that Respondent was found guilty of seven felony counts in the United States District Court for the District of Kansas. The convictions involved violations of the Medicare Anti-Kickback Act, 42 U.S.C. § 1320a-7b.
2. The Initial Order included findings that Respondent had been convicted, but based upon mitigating factors and policy reasons, denied the petition. Petitioner requested review of the Initial Order.
3. Review of the Initial Order was stayed pending Respondent's appeal of the convictions to the Tenth Circuit Court of Appeals. Appeals to the Tenth Circuit have now been exhausted, with the appellate court upholding the convictions. Respondent intends to seek certiorari in the United States Supreme Court.
4. Respondent has filed a motion for another continuance of the review while his

request for a writ is considered by the Supreme Court. The Board concludes that granting the continuance lies within the Board's discretion. Further delay is not warranted, and the motion is denied.

5. The Board adopts the findings and conclusions stated in paragraphs 1-5 of the Initial Order.

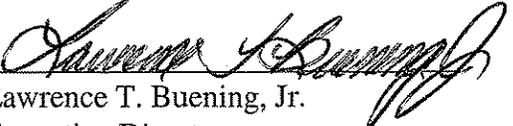
6. The Board finds and concludes that the mitigating circumstances stated in paragraph 6 of the Initial Order are not sufficiently compelling to warrant denial of the petition. The Board does not adopt the findings of paragraph 6.

7. The Board also finds that the policy reasons stated in paragraph 7 of the Initial Order are not supported by evidence in the record. The Board does not adopt the policy reasons stated in paragraph 7.

IT IS, THEREFORE, ORDERED that the license of Robert C. LaHue, D.O. is hereby revoked.

PLEASE TAKE NOTICE that this is a final order, and is effective upon service. A party may seek judicial review of a final order by filing a petition in the district court within 30 days following service of the order. Reconsideration is not a prerequisite to judicial review. A copy of any petition for judicial review must be served upon Lawrence T. Buening, Jr., Executive Director, 235 S. Topeka Blvd., Topeka, KS 66603.

DATED this 2nd day of November, 2001.


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a true copy of the foregoing Final Order was served this 2nd day of November, 2001, by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Robert C. LaHue, D.O.
6300 W. 181st St.
Stilwell, Kansas 66085

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

Stacy L. Cook
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603

A handwritten signature in cursive script, appearing to read "Cheryl Saylor", is written over a horizontal line.

F I L E D

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

SEP 28 2000

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
ROBERT C. LAHUE, D.O.)
Kansas License No. 05-16563)
_____)

Case No. 00-HA-17

INITIAL ORDER

NOW ON THIS Eleventh Day of August, 2000, this matter comes before the Presiding Officer for hearing. Stacy L. Cook, Litigation Counsel, appears for Petitioner. Respondent appears in person and through Bruce C. Houdek, appearing *pro hac vice*, and Mark L. Bennett, Attorney at Law. After hearing the arguments of counsel and having the agency record before him, the Presiding Officer makes the following finding of facts, conclusions of law and order:

1. Respondent has been licensed by the Board to practice osteopathic medicine and surgery since June 18, 1976.
2. On October 28, 1999 Respondent was found guilty by a jury of seven felony counts in the United States District Court for the District of Kansas. The jury specifically found that Respondent had violated provisions of 42 U.S.C. § 1320-7b.
3. Respondent has appealed the conviction to the United States Court of Appeals for the Tenth Circuit. That appeal is still pending.
4. K.S.A. 65-2836(c) provides that the Board may revoke, suspend, or limit a license, or a licensee may be censured, upon a finding that the licensee has been convicted of a felony, whether or not the conviction is related to the practice of the healing arts.
5. As a matter of law, the amendment made in the 2000 legislative session regarding

K.S.A. 65-2836(c), which requires the Board to revoke a license upon conviction of a felony unless there is a finding by clear and convincing evidence that the licensee is sufficiently rehabilitated to warrant the public trust, does not apply to the current proceeding. Thus, disposition of this matter is left to the sound discretion of the Board.

6. The presiding Officer specifically finds the following mitigating circumstances:

a. Respondent referred nursing home patients to various hospitals for needed medical service.

b. Such need for medical services was re-evaluated by another physician totally independent of Respondent before such services were provided.

c. No evidence was presented showing that such medical services provided to the referred patients raised a standard of care issue or an inappropriate billing issue for the medical services rendered.

d. The contracts Respondent had with various hospitals to which he referred patients for needed medical services resulted in a disease management protocol that, at the time, was seminal in origin, innovative in design and both medically efficient and cost-effective in its execution. Such disease management protocol became a forerunner of the current hospitalist program where one physician provides the necessary out-patient medical services and another physician provides the necessary in-patient services for any given patient. This protocol has proven itself to be both medically efficient for the patient and cost-effective for the payor. It is entirely appropriate that Respondent be compensated for his efforts.

7. Additionally, the Presiding Officer notes the following policy reasons for his decision:

a. Medicare is 35 years old and showing its age. There are 132,000 pages of regulations, three times as many pages than the U.S. tax code. Such regulations often being vague and subject to different interpretations in a complex healthcare delivery environment.

b. The federal government has criminalized Respondent's conduct because of the product of his efforts, which in fact, have been of benefit to those who have received it.

c. A pervasive aura of fear permeates the entire health care industry as a result of the Federal Government's attack on our teaching hospitals, community hospitals, nursing homes, physicians, pharmaceutical companies and other purveyors of medical services which is systematically destroying our healthcare delivery system.

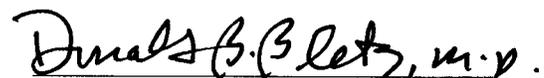
d. The guilt for the present state of affairs rests on the shoulders of those in authority who know what is being destroyed and fail to do anything about it.

e. This Presiding Officer, a physician, having worked extensively within the medical profession for 45 years and having full knowledge and understanding of its complexities finds in favor of Respondent.

IT IS, THEREFORE, ORDERED that the disciplinary petition is denied.

PLEASE TAKE NOTICE that this is an Initial Order. A party may seek review of an Initial Order by the agency head by filing a petition for review with the agency within 15 days following service of the Initial Order. An Initial Order becomes a Final Order either when the agency head determines not to conduct review, or after 30 days if no petition for review is filed.

Dated this 28th day of September, 2000.


Donald B. Bletz, M.D.
Presiding Officer

Certificate of Service

I certify that a true copy of the foregoing was served this 28th day of September, 2000 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Bruce C. Houdek
Attorney at Law
400 Scarritt Building
818 Grand Blvd.
Kansas City, MO 64106-1931

Mark L. Bennett, Jr.
1605 S.W. 37th St.
Topeka, KS 66611

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

Stacy L. Cook
235 S. Topeka Blvd.
Topeka, KS 66603

Donald B. Bletch, M.D.