

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

F I L E D

AUG 23 2001

In the Matter of)
JOHN B. LESTER, M.D. 14727)
Kansas License No. 04-12558 30)

Docket No. 01-HA-13

KANSAS STATE BOARD OF
HEALING ARTS

FINAL ORDER

NOW ON THIS Eighteenth Day of August, 2001, this matter comes before the Board for review of the Initial Order dated June 25, 2001. John B. Lester, Applicant, appears in person and through Reid Holbrook and Lynaia South. Kelli J. Benintendi, Associate Counsel, appears for Respondent.

After hearing the arguments of the parties, the Board orders as follows:

1. The findings and conclusions of the Presiding Officer as stated in the Initial Order are adopted as the findings and conclusions of the Board.
2. In addition, the Board concludes that K.S.A. 2000 Supp. 65-2836(c) was not erroneously applied to deny reinstatement. The current language in that section provides that if an applicant has been convicted of a felony and applies to reinstate a canceled license, the application must be denied unless the required findings are made by a two-thirds majority of the Board members present and voting. This portion of the statute is not, by its own language, limited to convictions occurring after July 1, 2000 as is the case for existing licenses. Applicant argues that the 2/3 vote and the degree of proof requirements do not apply because he had submitted his application prior to the effective date of the statute, and the statute being a substantive rather than a procedural statute may not be applied retroactively. This argument suggests that a simple majority of those voting in

favor of reinstatement would be sufficient. Even if that argument is conceded, no motion was made to find Applicant was sufficiently rehabilitated, though a request for such a motion was made by the Board's Chair, so Applicant failed to obtain even a simple majority in favor of reinstatement. The Board does conclude that if Applicant had obtained the support of a simple majority but not a 2/3 majority, the application would have been denied in light of K.S.A. 65-2844. That statute allows an application for reinstatement after three years following revocation, though the Board may, on its own motion stay the effectiveness of revocation. There is nothing in the record to indicate that the Board has done so. Since Applicant's license was revoked in December 1997, his application for reinstatement was not ripe until December 2000, and is subject to the 2000 amendments to K.S.A. 65-283^{b TO}(c).

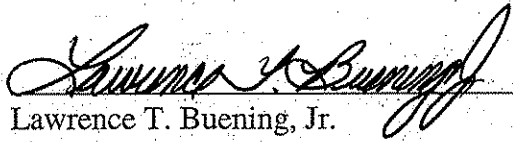
3. The Board further finds and concludes that the costs of this proceeding may be assessed against Applicant as provided by K.S.A. 65-2846. The Board does not assess costs in this matter.

IT IS, THEREFORE, ORDERED that the application for reinstatement of John B. Lester is denied.

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. A Petition for 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 23^d day of August, 2001

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order was served on the 24th day of August, 2001 by depositing same in the United States mail, first-class postage prepaid and addressed to:

John B. Lester, M.D.
2413 West 71st Street
Shawnee Mission, KS 66208

Reid Holbrook
Lynaia South
Holbrook, Heaven & Osborn, P.A.
PO Box 171927
Kansas City, KS 66117

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

Kelli J. Benintendi, Associate Counsel
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603


Betty J. Johnson