

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

FEB 20 1998

In the Matter of)
)
RANDALL A. MADISON, M.D.)
Kansas License No. 04-22230)
_____)

KANSAS STATE BOARD OF
HEALING ARTS
Case No. 97-00219

FINAL ORDER

NOW ON THIS Fourteenth Day of February, 1998, comes before the State Board of Healing Arts (Board) a Petition to Revoke, Suspend, or Otherwise Limit Licensure of Randall A. Madison, M.D. (Respondent). Kevin K. LaChance, Disciplinary Counsel, appears for Petitioner. Respondent appears in person and through Frank Saunders, Jr., of Wallace, Saunders, Austin, Brown & Enochs. After hearing testimony of Respondent, and having the exhibits and record before it, the Board makes the following findings of fact, conclusions of law and orders:

1. The Petition generally alleges Respondent committed professional incompetency, as defined at K.S.A. 1997 Supp. 65-2836(b). That phrase is defined at K.S.A. 1997 Supp. 65-2837(a), providing in relevant part that professional incompetency is either a single act of gross negligence, or repeated acts of ordinary negligence.

2. Count I of the Petition alleges Respondent engaged in one or more instances of gross negligence in his care of patient R.M. The conduct is stated to have occurred between September, 1991 and January, 1995. The Board concludes that to find gross negligence, there must be clear and convincing evidence that Respondent engaged in wanton conduct. Wanton conduct is that which is performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the conduct. The Board cannot find that Respondent had knowledge of an imminence of danger, and with that knowledge,

disregarded or acted with indifference to that imminence of danger. Even if one ultimately were to determine that Respondent's professional conduct was ill advised, the conduct was calculated to benefit the patient. As such, Respondent has not engaged in an act of gross negligence. Thus, Count I of the Petition is dismissed with prejudice.

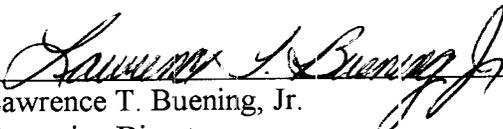
3. Count II of the Petition states in the alternative that the same conduct alleged in Count I constitutes repeated instances of ordinary negligence. The Board has reviewed the records offered and admitted as exhibits. There is no dispute that in April of 1994, Respondent surgically removed a lesion from the top of the patient's ear, that the specimen was lost or discarded, and that allowing the specimen to be lost or discarded would constitute a deviation from the standard of care. Assuming for the moment that a finding of negligence could be made regarding that conduct, since the Board is unable to find more than a single instance of ordinary negligence, Count II must be dismissed. The Board lacks jurisdiction to proceed further. A finding of one instance of ordinary negligence at this time would have no legal consequence as far as the Board is concerned. Dismissal of Count II is therefore without prejudice. The allegation may be raised at a later time if applicable.

IT IS, THEREFORE, ORDERED that Count I of the Petition to Revoke, Suspend or Otherwise Limit Licensure is dismissed with prejudice.

IT IS FURTHER ORDERED that Count II of the Petition to Revoke, Suspend or Otherwise Limit Licensure is dismissed without prejudice.

DATED THIS 20th DAY OF FEBRUARY, 1998.

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 20th day of February, 1998, by depositing the same in the United States Mail, first-class postage prepaid and addressed to:

Frank Saunders, Jr.
Attorney at Law
10111 West 87th Street
Overland Park, Kansas 66282-2290

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

Kevin K. LaChance
Disciplinary Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

