

5. Applicant was released from incarceration on April 14, 1997 and then served a five (5) year probationary-release term, supervised by Wyandotte County Community Corrections.

6. While previously licensed, Applicant had entered into four (4) Stipulation, Agreement and Enforcement Orders with the Board from 1989 through 1996.

7. Since approximately 1992, Applicant has had nine (9) malpractice claims settled against him which involved allegations of sexual misconduct in the course of the physician-patient relationship.

8. On or about August 20, 1998, and since the revocation of his Kansas medical license, Applicant was excluded by the United States Department of Health and Human Services from participation in Medicare/Medicaid programs for ten (10) years due to patient abuse.

9. In the documentation submitted with his application, Applicant included a printout of his Medscape CME log, which indicates Applicant has accumulated one-hundred sixty-four (164) CME credits from July 9, 2003 to July 17, 2003.

10. Applicant has not practiced medicine for at least six (6) years.

11. The legislative purpose that prompted adoption of the Healing Arts Act and creation of the Board is to protect the public health, safety and welfare. The enactment of such a law suggests a policy that the Board must be pro-active in protecting the public from those individuals who previously have been found unfit for licensure.

12. The Board concludes that as a matter of law, Applicant bears the burden to prove by clear and convincing evidence that he is sufficiently rehabilitated to warrant the public trust and that he will not pose a threat to the public in his capacity as a medical doctor. A majority of the Board members present and voting must find that Applicant has met that burden. If the application for reinstatement is denied, then Applicant is not eligible to submit another application until after three

(3) years following the effective date of the denial.

13. The Board concludes that in determining whether Applicant is sufficiently rehabilitated, the Board may consider the factors established in *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589 (1991). This does not require the Board to make specific findings on each of those factors, and an applicant does not have to achieve perfection with regard to all factors.

14. The Board finds that Applicant's misconduct was substantial and did not merely involve technical violations. Rather, the misconduct resulted in damage to the profession and to patients. The Board finds Applicant has not sufficiently demonstrated an appreciation for this harm to the profession and to patients, though he does exhibit remorse for his conduct.

15. The parties agree that Applicant has not practiced the healing arts for approximately six (6) years. The Board is not satisfied that Applicant has met his burden of demonstrating present competence to practice medicine and surgery.

16. Applicant has not yet shown by clear and convincing evidence that he is sufficiently rehabilitated to warrant the public trust and that he does not pose a threat to the public health, safety and welfare. Thus, the Board may not issue a license to practice the healing arts at this time, as provided by K.S.A. 65-2836(c).

IT IS THEREFORE ORDERED that Applicant's application for reinstatement be **DENIED**.

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. 77-610, *et seq.* Reconsideration of the 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 a petition for a judicial review must

