

CMB

SEP 19 2017

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
SUBIR RAY, M.D.)
)
Kansas License No. Pending)
_____)

KSBHA Docket No. 17-HA00052

FINAL ORDER GRANTING LICENSE WITH LIMITATIONS

NOW on this 11th day of August 2017, comes before the Kansas State Board of Healing Arts (“Board”) the application of Subir Ray M.D. (“Applicant”) for a license to practice medicine and surgery in the State of Kansas. Applicant appears in person and through counsel Carol Ruth Bonebrake and Megan Moseley. Anne Barker Hall, Associate Litigation Counsel, appears on behalf of the Respondent Board.

Pursuant to the authority granted to the Board by K.S.A. 65-2801 *et seq.*, and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 *et seq.*, the Board hereby enters this Final Order in the above-captioned matter. After reviewing the agency record, hearing the statements and arguments of the parties, receiving evidence, and being otherwise advised in the premises, the Board makes the following findings, conclusions and order:

1. On or about December 29, 2016, Applicant submitted an application to the Board for a license to practice medicine and surgery in the State of Kansas. Such application was complete and filed with the Board on April 19, 2017.
2. On May 5, 2017, Associate Litigation Counsel filed a Response in Opposition to Application for License to Practice Medicine and Surgery (“Response”).

3. In his application for licensure, Dr. Ray disclosed prior disciplinary action by another licensing authority; he had previously voluntarily surrendered a professional license; he previously had been a defendant in a malpractice action; and that he had been warned, censured, disciplined, had admissions monitored, had privileges limited or involuntarily or voluntarily resigned or withdrawn from a licensed hospital.

4. The Response alleged that Dr. Ray violated K.S.A. 65-2836(i) due to disciplinary action being taken by another licensing agency; K.S.A. 65-2836(s) due to sanctions or disciplinary action being taken against Dr. Ray by a peer review committee or health care facility; and K.S.A. 65-2836(w) due to two previous malpractice payouts on Dr. Ray's behalf.

5. The Response also requested that the Board find several aggravating factors in regards to Dr. Ray's application for licensure. The Response suggested that 1) Dr. Ray failed to take responsibility regarding the Pennsylvania Board action and Pinnacle investigations, 2) that Dr. Ray denies that [REDACTED] and that his failure to admit this compromises his ability to practice medicine and surgery, 3) that Dr. Ray did not submit current letters of recommendations to support his position that he is safe to practice, the letters of support submitted were dated in 2009; and 4) that Dr. Ray has not practiced medicine and surgery in the United States since 2013.

6. In mitigation, Dr. Ray submitted several exhibits.

- I. Exhibit 3: submitted by Dr. Ray shows that on or about December 22, 2016 he was recertified by The American Board of Surgery.
- II. Exhibit 5: letters of recommendation from colleagues which were mostly dated in 2012. These were contemporaneous with his last employment in the United States.
- III. Exhibit 6: CPEP evaluation dated November 21-22, 2013, [REDACTED]

IV.

V.

VI.

7. Counsel for Dr. Ray moves the Board for a protective order to protect any and all confidential information. Such request is granted by the Board.

8. The Board finds that the violations of the Healing Arts Act alleged in the Response all stem from an incident which began in 2007, when Dr. Ray's privileges were revoked and his application for reinstatement to Pinnacle Health Hospitals' ("Pinnacle") medical staff was denied.

9. The Board finds that subsequent to the action taken by Pinnacle, the Pennsylvania Board opened an investigation and on or about October 27, 2011, placed Dr. Ray on indefinite probation. The Board further finds that before completing the requirements of the Pennsylvania order issued on October 27, 2011, Dr. Ray began practicing in Iowa.

10. The Board finds that on or about October 25, 2013, Dr. Ray entered into a Settlement Agreement with the Iowa Board to resolve issues regarding his indefinite probation in the state of Pennsylvania. The Settlement Agreement required Dr. Ray to comply with all requirements of the Pennsylvania Order; that he pay a civil penalty of \$5,000; that he complete a CPEP clinical competency evaluation; [REDACTED] and that he complete the ProBe Course offered by CPEP. Additionally, Dr. Ray's license was placed on indefinite probation until he completed the following requirements: 1. Board monitoring program, 2. follow all CPEP recommendations, 3. [REDACTED] 4. [REDACTED] 5. practice monitoring plan, 6. worksite monitoring program, 7. submit quarterly reports, 8. appear before the board when requested, and 9. pay the required monitoring fee.

11. The Board finds that Dr. Ray is currently in compliance with the requirements of his Iowa Settlement Agreement.

12. [REDACTED]

13. The Board finds that the letters of recommendation submitted by Dr. Ray were written mostly in 2012 and were written contemporaneously in time to the witnesses' working relationship with Dr. Ray. Therefore, the Board finds that although the recommendations do not provide information as to Dr. Ray's current ability to practice medicine and surgery with reasonable skill and safety, they are persuasive in that at the time they were written, Dr. Ray was deemed by his colleagues to have the ability to practice with reasonable skill and safety.

14. The Board finds that although Dr. Ray has not practiced in the United States since 2013, that his 2013 CPEP evaluation and his current recertification by The American Board of

Surgery in December of 2016 is sufficient to show that he currently has the clinical skills to practice medicine and surgery.

15. The Board finds that the mitigating factors presented by Dr. Ray outweigh the aggravating factors set forth by the Response.

16. The Board concludes that Dr. Ray's medical malpractice settlement [REDACTED]
[REDACTED]
[REDACTED] in this case are too far removed in time to be a basis for denial of licensure.

17. The Board finds that although there is sufficient evidence before the Board to find that Dr. Ray violated K.S.A. 65-2836(j), by having disciplinary action taken by another licensing agency/board, that these disciplinary actions stem from a set of events that began in 2007 and subsequent evaluations and remediations have mitigated the violations. Therefore, the Board concludes that such violations, in this case, do not rise to the level of being grounds for denial of licensure.

18. The Board finds that there is sufficient evidence before the Board to find that Dr. Ray violated K.S.A. 65-2836(s), by having sanctions or disciplinary action taken against him by a peer review committee or health care facility. However, the Board concludes that subsequent evaluation and remediations have mitigated the violation such that it does not require denial of licensure.

19. The Board however, does conclude that such evidence of violations of K.S.A. 65-2836(j) and 65-2836(s), do rise to the level of requiring the Board to place limitations on Dr. Ray's license to practice medicine and surgery to ensure patient safety and public protection.

20. The Board further concludes, that as a condition of licensure, that Dr. Ray must comply with the remaining requirements of his Iowa Settlement Agreement.

IT IS THEREFORE ORDERED, that Applicant complete the CPEP ProBe course within 60 days of this order. Within ten (10) days of the filing of this Order, Applicant shall contact CPEP to enroll in the ProBe course. Upon enrolling in the ProBe course, Applicant shall notify the Compliance Coordinator in writing of such enrollment. Applicant shall provide proof of successful completion of the ProBe course within thirty (30) days of successfully completing the program.

IT IS THEREFORE ORDERED, that Applicant shall complete a [REDACTED] course as approved by the Board within 6 months of this order. On or before October 19, 2017, Applicant shall notify the Compliance Coordinator in writing of which course and date Applicant has registered to attend. Applicant shall provide proof of successful completion of the [REDACTED] [REDACTED] course within thirty (30) days of successfully completing the program.

IT IS THEREFORE ORDERED, that Applicant shall have a practice monitor to contemporaneously observe and review no less than ten (10) surgeries. Such review may be in person or by electronic means, to include telephonic or Skype type communication and shall include review of surgical indications and approach prior to surgery. Such practice monitor shall be a licensed Kansas physician approved by the Board. Such practice monitor shall submit to the Board a written report regarding Dr. Ray's surgical skills and approach prior to surgery no later than fourteen (14) days after the 10th surgery observed.

IT IS THEREFORE ORDERED that the Board shall maintain jurisdiction over this matter to conduct additional proceedings and issue further order(s) deemed necessary and appropriate in the circumstances.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS that Applicant is hereby GRANTED a license to practice medicine and surgery in the State of Kansas.

IT IS SO ORDERED THIS 19 DAY OF SEPTEMBER 2017, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.

KANSAS STATE BOARD OF HEALING ARTS


Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service, and service of a Final Order is complete upon mailing. Pursuant to K.S.A. 77-529, Licensee may petition the Board for Reconsideration of a Final Order within fifteen (15) days following service of the final order. Additionally, 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. 77-601, *et seq.* Reconsideration of a 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 any petition for judicial review must be served upon Kathleen Selzler Lippert, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing **FINAL ORDER GRANTING LICENSE** was served on this 19th day of September, 2017, by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Subir Ray, MD

[REDACTED]
Palm Beach Gardens, FL 33418

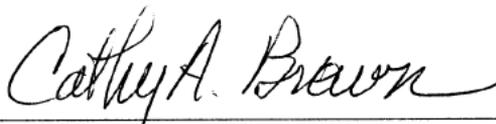
Carol Ruth Bonebrake
Megan Moseley
107 SW 6th Ave., Suite 210
Topeka, KS 66603

And a copy was hand-delivered to:

Anne Barker Hall, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

John Nichols, Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director



Cathy Brown, Executive Assistant