

**FILED**

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

**AUG 16 1999**

In the Matter of )  
 )  
Jack D. Reese, M.D. )  
Kansas License No. 04-11263 )  
\_\_\_\_\_ )

Case No. 98-00309

**KANSAS STATE BOARD OF  
HEALING ARTS**

**FINAL ORDER**

NOW ON THIS Fourteenth Day of August, 1999, comes before the Board of Healing Arts a Petition to Review the Initial Order filed on June 23, 1999. Petitioner appears through Stacy L. Cook, Litigation Counsel. Respondent appears through Thomas A. Wood, Attorney at Law.

Having heard the arguments of counsel, and with the agency record before it, the Board adopts the findings, conclusions and orders as stated in the Initial Order as follows:

**Findings of Fact**

1. Respondent Jack D. Reese, M.D. is licensed to engage in the practice of medicine and surgery in the State of Kansas. He has continued to practice his profession in the City of Liberal, Kansas since 1958.

2. J.S. is a male who is approximately 20 years old. On February 11, 1998, J.S. presented to Respondent's professional office. The purpose of the visit was to obtain the results of lab work Respondent ordered during a December 12, 1997 office visit. During the office visit, Respondent physically examined the patient. While performing the physical examination, Respondent initiated sexual activity by masturbating the patient. Respondent then performed oral sex on J.S. Respondent had J.S. perform oral sex on him. Respondent offered money to J.S. for the sexual favor, and instructed him to return to the office later to collect the money. The

patient left Respondent's office, and immediately reported the incident to the city police department.

3. As requested by the police, J.S. returned to Respondent's office on February 13, 1998 while under surveillance and wearing a hidden transmitting device. The purpose of the meeting was to discuss Respondent's offer of money for the sexual favor made in his office on February 11. During the February 13 visit, Respondent instructed J.S. to go to Respondent's house for the money. J.S. went to Respondent's house later that day, again under police surveillance and wearing a hidden transmitting device. The conversation between J.S. and Respondent occurring outside of Respondent's house is consistent with J.S.'s account of what happened in Respondent's office on February 11.

4. K.G. is now a 31-year old adult male. While K.G. was a minor between the ages of 11 and 13, Respondent engaged in several instances of sexual activity with K.G. On more than one occasion, K.G. went to Respondent's medical office and checked in as if he were a patient. The office nurse escorted K.G. to the examining room and took his temperature and vital signs, after which she would leave. While K.G. was in the examination room, Respondent performed oral sex on K.G. There was a physician-patient relationship between Respondent and K.G., as evidenced by Exhibit ZZ, which is a medical record of a visit by K.G. to Respondent's office.

5. Respondent denies that he engaged in any sexual act with J.S. or with K.G. There are no persons who have been identified as witnessing the sexual activity, other than the victims, and it is unlikely that there would be such witnesses. The Presiding Officer finds the testimony of J.S. credible and persuasive. The witness was distraught, and showed obvious embarrassment. The transcript shows J.S. to be a person who had difficulty answering questions.

This did not indicate to the Presiding Officer that J.S. did not recall the incident, or that the incident had been contrived. Rather, the Presiding Officer observed a witness who struggled to maintain his composure, and had extreme difficulty discussing his experience. Common understanding and experience in human nature suggests that the witness's demeanor while testifying was wholly consistent with being a victim of sexual assault.

6. There is evidence to corroborate the testimony of J.S. Specifically, the officer investigating J.S.'s report to the police verifies the return to Respondent's office and the conversation outside of Respondent's house. The DNA report by the Kansas Bureau of Investigation does not prove that Respondent committed the sexual misconduct, but the report does establish that a person other than J.S. and his girlfriend contributed to DNA types found on the genital swab and underwear stain taken from J.S. and his clothes. Respondent has not availed himself of the opportunity to prove that he is not that other person through the voluntary submission of a sample of his DNA for comparison.

7. The videotaped testimony of K.G. is likewise credible and persuasive. This witness was more composed than was J.S. However, K.G. was visibly upset during his testimony. Though the witness was unsure of the exact dates the sexual misconduct occurred, the fact of the sexual misconduct was not speculative. K.G.'s testified that he has tried to block these events out of his memory.

8. The written records of other alleged instances of sexual conduct with male adolescents has little impact on this case (i.e., Petitioner's Exhibits RR, SS, TT, and UU). After viewing the record, the Presiding Officer believes that these records are unnecessary for determining the issues in this case. These records may not be used to corroborate the testimony by J.S. and K.G. The evidence could have some value to suggest that Respondent selected less

affluent or troubled youth as his victims. This would explain why the more affluent members of the community did not believe the rumors about Respondent's sexual misconduct. However, the two witnesses' testimony was sufficiently credible and not negated by the character witnesses, thus the Presiding Officer is not required to rely upon this evidence to make findings of fact.

9. While Respondent has shown himself to be a charitable and popular person within the community, this does not disprove the testimony of J.S. or K.G. or of the supporting evidence. Additionally, the suggestion by Respondent that the witnesses unsuccessfully attempted to engage Respondent in sexual activity and then extort money lacks credible and persuasive evidence in the record. J.S.'s action of going to the police immediately after the February 11, 1998 incident in Respondent's office is more consistent with being a victim of a crime than with a plan to extort money from Respondent in order to keep the matter a secret.

#### **Conclusions of Law**

10. The Board has jurisdiction in this proceeding under K.S.A. 65-2838(a).

11. K.S.A. 1998 Supp. 65-2836(b) authorizes the Board to revoke, limit, suspend, or limit a license to practice the healing arts upon a finding of unprofessional or dishonorable conduct.

12. Unprofessional conduct is defined at K.S.A. 1998 Supp. 65-2837(b)(16) to include any act of sexual abuse, misconduct or exploitation related to the practice of the healing arts.

13. Dishonorable conduct is not defined by the healing arts act. The courts are in substantial accord, however, that the term is to be construed to mean that which, by common understanding and general opinion, is considered to be grossly immoral, dishonorable, or

disreputable in connection with the practice of medicine. A statutory definition is not necessary in order to allow the Presiding Officer to find that Respondent's conduct was dishonorable.

14. The Board as Petitioner has the burden of proving its case by clear and convincing evidence. The clear and convincing standard refers to the quality of proof rather than to the quantity of proof. The evidence must be certain and not speculative or ambiguous, and it must be sufficiently persuasive so that it may be believed. The Petitioner met this burden.

15. The Presiding Officer is not bound by formal rules of evidence in administrative hearings. This allows the agency to receive relevant, trustworthy testimony and exhibits rather than excluding such evidence based upon technical rules. The Presiding Officer is able to determine whether evidence, once received, has any value in proving the existence or non-existence of a fact.

16. Respondent's actions toward J.S. and K.G. constitute unprofessional and dishonorable conduct within the meaning of the healing arts act.

17. The practice of the healing arts is a privilege and is not a natural right of individuals. It is necessary as a matter of public policy that the public is to be protected from the unprofessional and improper practice of the healing arts. Respondent has engaged in the unprofessional and improper practice of the healing arts, and has committed one of the most egregious acts imaginable. The Presiding Officer concludes that revocation of Respondent's license is the appropriate remedy.

18. A protective order is an appropriate means to allow parties to offer statutorily confidential evidence and to then prevent the unauthorized disclosure of that evidence. In this case, law enforcement investigative records, records relating to minors in SRS custody, and records disclosing the names or treatments of patients is confidential and should not be disclosed

to the public.

**IT IS, THEREFORE, ORDERED** that the license of Jack D. Reese, M.D. is revoked.

**IT IS FURTHER ORDERED** that all other orders of the Presiding Officer are affirmed.

**THEREUPON**, Respondent moves the Board to stay the effectiveness of the Final Order pending judicial review or until such time as a petition for judicial would no longer be timely. The Board finds that there is a substantial threat to the public health, safety or welfare by Respondent's practice of the healing arts, justifying denial of Respondent's motion for a stay.

**IT IS, THEREFORE, ORDERED** that Respondent's motion for a stay of this Final Order pending judicial review is denied.

**IT IS FURTHER ORDERED** that the costs of this proceeding, as allowed by K.S.A. 65-2846, are assessed against Respondent, in an amount to be determined after hearing.


**PLEASE TAKE NOTICE** that a hearing to determine the amount of costs to be assessed will be held at the next regularly scheduled Board meeting, October 16, 1999, at 11:00 a.m. The hearing will occur in the Board office, 235 S. Topeka Blvd., Topeka, Kansas. No further notice of hearing will be given.

**PLEASE TAKE NOTICE** that this is a Final Order. A Final Order is effective when

served. A petition for judicial review is not timely unless filed with the District Court within 30 days following service of the Final Order. A petition for judicial review of a Final Order must be served upon the Executive Director of the Board. Reconsideration is not a prerequisite to judicial review.

ORDERED THIS 16<sup>th</sup> Day of August, 1999.

KANSAS STATE BOARD OF HEALING ARTS

  
Lawrence T. Buening, Jr.  
Executive Director

**Certificate of Service**

I certify that the foregoing order was served this 16<sup>th</sup> day of August, 1999 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Jack D. Reese, M.D.  
15 E. 11<sup>th</sup> Street  
Liberal, Kansas 67901

Thomas A. Wood  
105 S. Broadway, Ste. 540  
Wichita, Kansas 67202

and a copy was hand-delivered to the office of

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

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