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CRP

OCT 15 2010

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

KS State Board of Healing Arts

In the Matter of)	
)	
RUSSELL L. REITZ, M.D.)	Docket No. 09-HA-00189
Kansas License No. 04-26214)	
_____)	

AMENDED FINAL ORDER

NOW on this Eighth Day of October, 2010, the above-captioned matter comes before the Kansas State Board of Healing Arts (Board), following an order remanding the matter for further proceedings. The petitioner appears by and through Kelli J. Stevens, Litigation Counsel. The respondent appears by and through Mark W. Stafford of Holbrook and Osborn, P.A. There are no other appearances.

The Parties advise the Board that the following facts are stipulated in lieu of the findings of fact adopted by the Board on October 23, 2010, and the following conclusions of law are modified accordingly. Having the agency record before it, the Board finds, concludes and orders and supersedes its prior Final Order as follows:

FINDINGS OF FACT

1. Respondent was issued license number 04-26214 to practice medicine and surgery by the Board on April 27, 1996. Respondent last renewed his license on June 30, 2009.
2. Respondent is a radiation oncologist practicing in Manhattan, Kansas. (Tr. page 98, lines 19-25, page 99, lines 1-25, page 100, lines 1-14).
3. Respondent graduated from the University of Missouri School of Medicine-Columbia in 1994. (Tr. page 97, line 25, page 98, line 1, page 98, lines 11-13).

4. Following his medical school training, Respondent completed an internship in internal medicine at K.D. Medical Center, as well as at the Veteran's Administration in Leavenworth, Kansas. Respondent then completed a residency program in radiation oncology at K.D. Medical Center from 1994 through 1998. (Tr. page 98, lines 2-10, page 98, lines 14-18).

5. On May 17, 2008 an incident involving the Respondent and David Lehman occurred in Manhattan, Riley County, Kansas at the home of Renee Slick, Respondent's ex-wife. (Tr. Page 22, lines 3-6).

6. On June 20, 2008, a felony warrant for the arrest of Russell Reitz, M.D. was issued by the District Court, Riley County, Kansas Criminal Department. Respondent was arrested on the felony warrant and released after he posted a \$20,750 cash/surety bond in Riley County District Court case number 08-CR-514. The court ordered that conditions of bond include no contact with witnesses, no possession of fire arms and no use of alcohol or drugs. The court ordered bond conditions specifically directed Respondent not to engage in any of the following: (Petitioner's Exhibit 11)

- a. No contact directly or indirectly with any State's endorsed witnesses in the above captioned matter, except for police officers and the State's Investigators. Specifically the defendant is to have NO CONTACT with David Lehman, Renee \ Slick, Eric Slick or Jarrod Slick. **This includes intentionally putting yourself in a situation whereby contact with said individuals is reasonably likely. It also includes contact by telephone, letter, email, text messages or contact through a third person;** (Emphasis added by the court).
- b. Respondent shall not own or possess any FIREARMS OR AMMUNITION; and
- c. Respondent shall not use or consume any illegal DRUGS OR ALCOHOL.

7. The felony criminal case of *State of Kansas v. Russell Reitz*, went to trial on April 28, 2009 and ended on April 30, 2009.

8. On April 30, 2009, Respondent was found guilty by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony. (Petitioner's Exhibit 1). On April 30, 2009, the Court ordered a pre-sentence investigation (PSI) and scheduled sentencing for Monday, June 29, 2009 at 10:30 a.m. in Riley County felony criminal case 08-CR-514. (Petitioner's Exhibit 3).

9. On June 29, 2009, Respondent was sentenced to twelve (12) months in the custody of the Secretary of Corrections which was suspended and he was placed on twenty-four (24) months probation with specific terms and conditions. (Petitioner's Exhibit 4, Journal Entry of Judgment).

CONCLUSIONS OF LAW

1. Russell Reitz, M.D. was convicted by a jury of his peers for aggravated battery in a manner whereby great bodily harm, disfigurement or death can be inflicted. This is a severity level 7 person felony.

2. K.S.A. 65-2836(a) states in pertinent part: **Revocation, suspension, limitation or denial of licenses; censure of licensee; grounds; consent to submit to mental or physical examination or drug screen, or any combination thereof, implied.** A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

...

(c) The licensee has been convicted of a felony or class A misdemeanor, whether or not related to the practice of the healing arts. The board shall revoke a licensee's license following conviction of a felony occurring after July 1, 2000, unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

.....

3. The Board must prove by a preponderance of the evidence the licensee, in this case Russell Reitz, M.D., has been convicted of a felony.

4. In all civil actions, the party asserting the affirmative of an issue is entitled to prevail upon the production by him of a preponderance of evidence. This preponderance, however, need not be great; it is sufficient if it just barely preponderates." *People's Bank of Minneapolis v. Reid*, 86 Kan. 245, 120 P. 339 (1912).

5. The Board has met its burden of proof that Respondent has been convicted of a felony.

6. Once the Board has met its burden of proof the Board *shall revoke* the medical license of Russell Reitz *unless* Russell Reitz proves by a 2/3 majority of the Board members present and voting by clear and convincing evidence the "licensee will not pose a threat to the public in such person's capacity as a licensee *and* that such person has been sufficiently rehabilitated to warrant the public trust."

7. "To be clear and convincing, evidence must establish the truth of the facts asserted is 'highly probable.' *In re B.D.-Y*, 286 Kan. 686, Syl. Par. 3, 187 P.3d 594 (2008)." *In re Rost*, _ P.3d_, 2009 WL 2059441 (Kan., July 17, 2009).

8. The burden of proof is upon Russell Reitz to prove to a 2/3 majority of the

Board members present and voting that Russell Reitz will not pose a threat to the public in such person's capacity as a licensee. In addition, Russell Reitz must also prove to a 2/3 majority of the Board members present and voting that Russell Reitz has been sufficiently rehabilitated to warrant the public trust. K. S.A. 65-2836(c).

9. The Respondent has proven to the Board, by clear and convincing evidence, that he does not "pose a threat to the public in such person's capacity as a licensee."

10. The Board finds, by clear and convincing evidence, that Russell Reitz, M.D. will not pose a threat to the public in his capacity as a licensee and has been rehabilitated sufficiently to warrant the public trust pursuant to K.S.A. 65-2836(c).

11. The Respondent has committed a felony in violation of K.S.A. 65-2836(c). While Dr. Reitz's conviction of a felony does not warrant revocation of his license to practice medicine and surgery, it does warrant discipline of some kind which may allow the respondent to continue to practice medicine and surgery at a later time.

12. The Presiding Officer concludes the public interest will be furthered by the Board maintaining jurisdiction over the respondent.

13. The Presiding Officer finds the respondent's license to practice medicine and surgery shall be **SUSPENDED** for an indefinite period of time beginning October 16, 2009 with the Respondent ineligible to reapply for a license to practice medicine and surgery for a minimum of six months.

14. As a prerequisite for the Respondent to have the suspension of the license to practice medicine and surgery lifted, the Respondent shall:

a. (confidential)

(confidential)

b. (confidential)

(confidential)

c. (confidential)

(confidential)

d. Pay costs in this matter in the amount of \$2,371.20.

15. The lifting of the suspension to practice medicine and surgery is not self-executing. Dr. Russell Reitz is required to petition the Board to lift the suspension to practice medicine and surgery which has been placed on his license. If the Board finds Dr. Reitz has successfully followed the Board's order, the Board has the discretion to remove the suspension that has been placed upon Dr. Reitz license and to make any further orders that it deems necessary to protect the public interest.

16. The Respondent is immediately placed on **INDEFINITE PROBATION** by the Board, effective October 16, 2009. Any violation of any order of the Board or the laws of the State of Kansas will be grounds for immediate revocation of the Respondent's license to practice medicine and surgery.

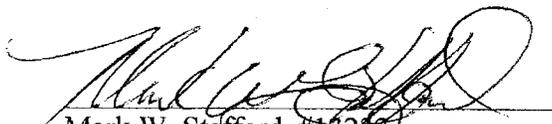
17. These findings of facts and conclusions of law constitute the Amended Final Order of the Board and they amend and supersede the findings of fact and conclusions of law stated in Final Order dated October 23, 2009.

IT IS SO ORDERED.

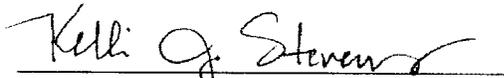
STATE BOARD OF HEALING ARTS


ON BEHALF OF THE
KANSAS STATE BD. OF HEALING ARTS

Approved by:



Mark W. Stafford, #15283
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CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing Amended Final Order was served this 15th day of OCTOBER, 2010 by depositing the same in the United States Mail, first-class postage prepaid and addressed to:

Mark W. Stafford
Holbrook & Osborn, P.A.
800 S.W. Jackson, Suite 900
Topeka, Kansas 66612

Dr. Russell Reitz
(confidential)
Topeka, Kansas 66615

And a copy was hand delivered to the office of:

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The original filed with:

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Zachary J.C. Anshutz
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