

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

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JAN 29 2008

KS State Board of Healing Arts

IN THE MATTER OF)
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STEPHEN J. SCHNEIDER, D.O.)
Kansas License No. 05-22385)
)

Docket No.: 06-HA00100

OAH No.: 07HA0001 BHA

Pursuant to K.S.A. Chapter 77

INITIAL ORDER

NOW, on this 15th day of January 2008, this matter comes on for hearing upon the petitioner's Motion for Emergency Order Temporarily Suspending Respondent's License. The petitioner, Kansas Board of Healing Arts, appears by and through Kelli J. Stevens. The respondent appears by and through Martha A. Ross.

Edward J. Gaschler was the duly appointed Presiding Officer appointed pursuant to Kansas Statutes Annotated (K.S.A.) 77-514.

Findings of Fact

1. The petitioner initiated disciplinary action against the respondent on May 30, 2006. Since that time, the petitioner has filed a First Amended Petition and a Second Amended Petition.
2. In each of the disciplinary petitions, the petitioner alleges that the respondent violated the healing arts act with respect to multiple patients by inappropriately prescribing medications, practicing below the applicable standard of care, and failing to adequately keep patient records.
3. There are currently pending 12 counts of alleged violations of the healing arts act. Included in these counts are allegations that five of the respondent's patients died due to drug overdoses. The drug overdoses involving medications prescribed by the respondent or under the respondent's direction.
4. On or about December 20, 2007, the respondent was criminally indicted by the federal grand jury for the United States District Court for the District of Kansas. The indictment includes 34 counts of felony crimes directly related to the respondent's practice of the healing arts. The indictment alleges that between 2002 and 2007, at least 56 of the respondent's patients died from

drug overdoses. The allegations of the indictment include at least five of those patients who are included in the petitioner's Second Amended Petition.

5. The respondent is currently detained pending trial on the federal indictment.
6. The Honorable Donald W. Bostwick, United States Magistrate Judge, issued an order dated December 26, 2007, ordering that the respondent be detained pending trial. In the order, Judge Bostwick found as follows:

"At the hearing, Defendant offered to surrender his DEA [*Drug Enforcement Administration*] Registration Number which he contends would preclude him from dispensing any prescription drugs. However, the court agrees with the Government's argument that Defendant could continue to issue such prescriptions with the help of other medical personnel working at his medical clinic. Also, Defendant agreed, if it was the only impediment to release, to surrender his medical license, arguing that this would assure that he would not dispense any further controlled substance. The Court has a concern, however, as to how the court could assure that Defendant was not continuing to dispense controlled substances through other medical personnel at the clinic thus enabling him to continue his practice in the same manner as in the past." [*Added.*]

7. Prior to the respondent's incarceration, he practiced the healing arts through Schneider Medical Clinic, LLC. Based upon the record before the Presiding Officer, the respondent is the only member of Schneider Medical Clinic, LLC.
8. As of the date of this hearing, Connie R. White, a physician's assistant, continued practicing at Schneider Medical Clinic. Ms. White is under the direction of Joseph Sack, MD, who is her responsible physician. The respondent is the designated physician, but because of his incarceration he is not currently functioning in that capacity.
9. Connie R. White, the physician's assistant, continues to practice at Schneider Medical Clinic in Haysville, Kansas. The supervision of Ms. White by Dr. Sack consists of Dr. Sack reviewing files of Ms. White's office notes in patient charts on a weekly basis. Dr. Sack is also available to Ms. White by telephone for consultation. Dr. Sack is at the Schneider Medical Clinic on weekends to review the charts.

Applicable Law

1. K.S.A. 65-2838 provides as follows:

Disciplinary action against licensee; procedure; stipulations; temporary suspension or limitation; emergency proceedings;

guidelines for use of controlled substances for treatment of pain; written advisory opinions. (a) The board shall have jurisdiction of proceedings to take disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

- (b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee entering into such stipulation.
- (c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto for disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.
- (d) The board shall adopt guidelines for the use of controlled substances for the treatment of pain.
- (e) Upon request of another regulatory or enforcement agency, or a licensee, the board may render a written advisory opinion indicating whether the licensee has prescribed, dispensed, administered or distributed controlled substances in accordance with the treatment of pain guidelines adopted by the board.

2. K.S.A. 77-536 provides as follows:

Emergency proceedings; use, when; procedure. (a) A state agency may use emergency proceedings: (1) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or (2) as otherwise provided by law.

- (b) The state agency may take only such action as is necessary: (1) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or (2) to remedy a situation for which use of emergency adjudication is otherwise provided by law.
- (c) The state agency shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the state agency's decision to take the specific action and the

determination of. (1) An immediate danger or (2) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

- (d) The state agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.
- (e) After issuing an order pursuant to this section, the state agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings under subsection (a).
- (f) The state agency record consists of any documents regarding the matter that were considered or prepared by the state agency. The state agency shall maintain these documents as its official record.
- (g) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for state agency action in emergency proceedings or for judicial review thereof.

3. K.S.A. 65-2801 provides as follows:

Purpose. Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

Conclusions of Law

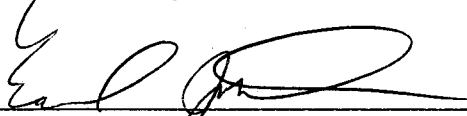
- 1. The Board's Second Amended Petition filed on November 13, 2007, alleges 12 counts of professional misconduct. Included in these 12 counts are allegations regarding five patients who died of drug overdoses while under the respondent's care and involved medications prescribed by the respondent or his agents.
- 2. The federal indictment concerning the respondent alleges that at least 56 patients of the respondent have died from drug overdoses between the years of 2002 and 2007.
- 3. The fact that at least 56 of the respondent's patients died of drug overdoses between the years of 2002 and 2007 involving medications prescribed by the respondent is shocking at best. The respondent's continuation of practice of the healing arts constitutes an imminent danger to public health and safety.

It further appears that there is "cause to believe" that there are grounds for disciplining the respondent under K.S.A. 65-2836. Further, that the only way to ensure that the respondent's continued practice of the healing arts does not constitute an immediate danger to public health and safety is to suspend the respondent's license to practice the healing arts.

4. The respondent argues that a mere limitation of his license could protect the public health and safety. This argument is rejected. First, even if the respondent's license was limited, he, as the sole member of Schneider Medical Clinic, would continue to be able to direct the operation of Schneider Medical Clinic. This, under the circumstances presented, would pose a serious risk to public health and safety.
5. Additionally, the respondent's argument that Schneider Medical Clinic could continue to operate under the auspices of Connie R. White ignores the provision of Kansas Administrative Regulation (K.A.R.) 100-28a-14. Ms. White's continued functioning in Schneider Medical Clinic appears to be in violation of K.A.R. 100-28a-14 since Dr. Sack, as Ms. White's responsible physician, does not regularly meet patients or receive calls at Schneider Medical Clinic nor is that clinic maintained and utilized by Dr. Sack. [See K.A.R. 100-28a-14.]
6. The respondent offered a large number of documents signed by individuals asking that Schneider Medical Clinic be allowed to remain open. The respondent argued that Schneider Medical Clinic was necessary for these patients and for Haysville. In reviewing these signatures, it appears that the vast number of people signing these pages were not residents of Haysville, but were primarily residents of Wichita or residents of other communities in or around Sedgwick County. Thus, the Presiding Officer concludes that these individuals would be able to obtain proper medical care in Sedgwick County if the respondent's clinic is no longer open.
7. The practice of the healing arts in the state of Kansas is a privilege, not a right. [K.S.A. 65-2801.] The purpose of the Board is to protect the public against improper practice of the healing arts. The respondent's practice of the healing arts poses an immediate danger to public health and safety and therefore the respondent's license is hereby suspended pending further action in this matter.
8. Pursuant to K.S.A. 77-536, this order is effective upon service.

IT IS SO ORDERED.

Pursuant to K.S.A. 77-527, either party may appeal this initial order. A petition for review must be filed within 15 days from date of this initial order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this initial order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: Lawrence T. Buening, Jr., Executive Director, Kansas Board of Healing Arts, 235 S. Topeka Blvd., Topeka, KS 66603.



Edward J. Gaschler
Presiding Officer

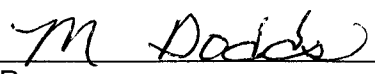
CERTIFICATE OF SERVICE

On Jan. 28, 2008, I mailed by U.S. mail, a copy of this initial order to:

Stephen J. Schneider, D.O.
7030 S. Broadway
Haysville, KS 67060

Martha A. Ross
Attorney at Law
10851 Mastin Blvd., Ste. 100
Overland Park, KS 66210

✓ Lawrence T. Buening, Jr., Executive Director
Kelli J. Stevens, Litigation Counsel
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603



Staff Person
1020 S. Kansas Ave.
Topeka, KS 66612