

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

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KS State Board of Healing Arts

In the Matter of
Chad E. Sharp, M.D.

Kansas License No. 04-24831 (Surrendered)

KSBHA Docket No.12-HA00032

ORDER DENYING PETITION FOR RECONSIDERATION
and PETITION FOR STAY OF EFFECTIVENESS OF FINAL ORDER

NOW on this 1st day of February, 2012, the Kansas State Board of Healing Arts ("Board"), by and through its Executive Director, Kathleen Selzler Lippert, a duly authorized Representative of the Board, in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*, and upon due consideration of the file and applicable statutes, and being otherwise duly advised in the premises makes the following determination upon Petitioner's Petition for Reconsideration Pursuant to K.S.A. 77-529(a)(1):

I. Factual Background

Petitioner was previously licensed to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-24831 on approximately October 9, 1993. Petitioner surrendered his Kansas medical license in KSBHA Docket No. 09-HA00123 pursuant to the terms of a Consent Order ("2009 Consent Order"). The 2009 Consent Order was entered to resolve allegations that Petitioner practiced below the standard of care with respect to three (3) patients; his violation of a previous Consent Order by prescribing and administering Nubian and Phenergan ^{confidential} and the termination of Petitioner's employment as a physician

^{confidential}

The 2009 Consent Order

provides, in part, that any application for reinstatement will be considered in accordance with

K.S.A. 65-2844 and will be governed by *Vakas v. The Kansas State Board of Healing Arts*, 248 Kan. 589, 808 P.2d 1355 (1991).

Prior to surrendering his license in 2009, Petitioner had been subject to multiple actions previously taken by the Board against his Kansas medical license. In April of 2000, Petitioner entered into a settlement with the Board in the form of a Stipulation and Agreement and Enforcement Order ("2000 Stipulation") to resolve allegations confidential confidential

confidential In October of 2006, Petitioner entered into a settlement with the Board in the form of a Consent Order ("2006 Consent Order") confidential confidential

and 2006. The 2006 Consent Order imposed a limitation on Petitioner's prescription authority; required five (5) years of confidential monitoring; and included a fine.

On approximately July 21, 2011, Petitioner submitted an application for reinstatement of his Kansas license with a designation of inactive status, which was filed with the Board on October 18, 2011. A conference hearing was held before the full Board on December 2, 2011. On December 29, 2011, the Board entered a Final Order which denied Petitioner's application.

The Board concluded that, as a matter of law, Petitioner had the burden to show by clear and convincing evidence that he was sufficiently rehabilitated to justify reinstatement of his Kansas medical license under the provisions of K.S.A. 65-2844 and the factors set forth for considering reinstatement after revocation which were set forth in *Vakas*.

In denying Petitioner's application for reinstatement, the Board concluded that Petitioner failed to meet his burden and specifically noted the egregious nature of Petitioner's prior actions

which included a lengthy history of repeated instances of unprofessional conduct, including acts which violated Board orders. In light of Petitioner's past conduct, his efforts toward rehabilitation were found to be insufficient to justify reinstatement based on the evidence presented.

The Board further concluded that Petitioner's present competence in medical skills was relevant to consider under *Vakas* and K.S.A. 65-2844 even though Petitioner only applied for an inactive license. This conclusion was based on Petitioner's testimony that his intention was to regain licensure in order to actively practice. The Board found that the evidence of Petitioner's continuing medical education and medical-related work history was insufficient to demonstrate his present competence.

On January 12, 2012, Petitioner filed a Petition for Reconsideration and a Petition for Stay of Effectiveness of Final Order. Petitioner asserts that the form for the reinstatement application does not reference the requirements set forth in K.S.A. 65-2809(e) which was cited in the Respondent Board's pleading in opposition to the application; that the Board has an unwritten, and therefore illegal, policy that all applicants who have been out of practice for two years are required to have a clinical skills assessment at the Center for Personalized Education for Physicians ("CPEP"); that the Board held Petitioner to a higher standard than necessary for an inactive license; and that Petitioner had further evidence to offer regarding his rehabilitation and clinical skills which would show he warrants the public trust.

II. Analysis

The Board finds there is no merit to Petitioner's claim that K.S.A. 65-2809(e) is not applicable because the reinstatement application form makes no mention of that specific statute. The application form is utilized to obtain required information. The statute sets forth a

discretionary standard to be applied by the Board in considering the application. There is no requirement for the statute to be referenced in the form.

Petitioner's second claim is that the Board has engaged in illegal rulemaking by having an unwritten policy requiring all applicants who have been out of practice for two years to have a clinical skills assessment at CPEP. The Board finds this claim to be without merit. The Board does not have such an unwritten policy. The Board considers each case on its own facts and has granted applications for reinstatement by individuals who have been out of practice for two years and longer without requiring a CPEP assessment. Furthermore, the Board did not find that Petitioner's insufficient proof of his present medical skills was based on the lack of an assessment by CPEP.

Petitioner's third claim is that the application for reinstatement requested only an inactive license and that Petitioner was held to a higher standard. The Board finds this argument to be without merit. Applicant's testimony during the conference hearing clearly demonstrated his intention to regain licensure in order to actively practice medicine and surgery. Further, even his Petition for Reconsideration asserts that he is capable of providing much needed medical services in Kansas; again demonstrating an intention to actively practice.

Lastly, Petitioner claims that he has further evidence of rehabilitation to offer to the Board and that he is scheduled to have a CPEP assessment. Petitioner suggests that a CPEP assessment will provide adequate evidence demonstrating that he is able to practice with reasonable skill and safety. Specifically, Petitioner proposes that the CPEP assessment will provide a reentry/professional development plan the Board could adopt for Petitioner to resume his practice. The Board finds this claim to be speculative and unpersuasive.

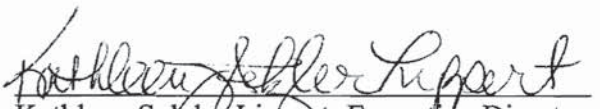
III. Conclusion

The Final Order Denying Reinstatement of Licensure and Protective Order (December 2011 Final Order) was issued based upon a review of all the evidence provided by Petitioner. The Board concluded that Petitioner failed to provide clear and convincing evidence that he was sufficiently rehabilitated to warrant public trust as provided by K.S.A. 65-2844 and *Vakas*. Further, the Board did not find evidence that Petitioner had the present ability to practice with reasonable skill and safety. Therefore his application for reinstatement was denied.

Based on the arguments presented by Petitioner in his Petition for Reconsideration, the Board finds insufficient cause to warrant reconsideration or the grant of a stay.

IT IS THEREFORE ORDERED BY THE KANSAS STATE BOARD OF HEALING ARTS that Petitioner's Petition for Reconsideration and Petition for Stay of Effectiveness of Final Order are hereby **DENIED**.

IT IS SO ORDERED THIS 1 DAY OF FEBRUARY, 2012, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


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. 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, the Board's Executive Director, at 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **ORDER DENYING PETITION FOR RECONSIDERATION** and **PETITION FOR STAY OF EFFECTIVENESS OF FINAL ORDER** was served this 1st day of February, 2012 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Chad E. Sharp, M.D.
confidential
Wichita, KS 67206

Carol Ruth Bonebrake
Holbrook & Osborn, PA
107 SW Sixth Avenue, Suite 210
Topeka, Kansas 66603

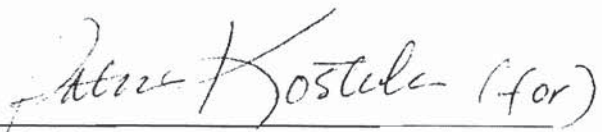
And a copy was hand-delivered to:

Stacy R. Bond, Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Katy Lenahan, 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:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612


Cathy Brown
Executive Assistant