

BEFORE THE KANSAS STATE BOARD OF HEALING ARTS

In the Matter of)
MICHAEL WAYNE SHUCK, D.O.)
_____)

FILED

MAY 14 1991

**KANSAS STATE BOARD OF
HEALING ARTS**

FINAL ORDER

NOW on this 13th day of April, 1991, comes on for hearing before the Kansas State Board of Healing Arts (hereafter "Board"), the request of Michael Wayne Shuck, D.O. (hereafter "Shuck") to review the Initial Order of Presiding Officer served and made on April 3, 1991 by Richard G. Gannon, Presiding Officer in the above-entitled case.

Administrative notice is taken that Shuck filed a Request to Review Initial Order of Presiding Officer in accordance with the Kansas Administrative Procedure Act. Thereafter, the Board issued a Notice of Intention to Exercise Review of Initial Order which was filed on April 3, 1991. Further, notice was served and filed, setting the matter for hearing at 9:00 on April 13, 1991.

Members present were: Franklin Bichlmeier, M.D., President; John P. White, D.O., Vice-President; Donald B. Bletz, M.D.; Jimmy V. Buller, D.O.; Edward J. Fitzgerald, M.D.; Harold Guldner; P. Tom Greene, Jr., D.C.; Mark Hatesohl, D.C.; Graciela Marion; John Petersen; Joseph Philipp, M.D.; Irwin Waxman, D.P.M. and Ron Zoeller, D.C. The Board appeared by and through Steve A. Schwarm, Litigation Counsel. Lawrence T. Buening, Jr., served as counsel to the Board. There were no other appearances.

Following the submission of arguments of Litigation Counsel for the Board, the Board went into a closed session for deliberation of quasi-judicial matters as authorized by K.S.A. 77-4318.

After considering the record, the arguments and statements of Litigation Counsel and being otherwise duly advised in the premises, the Board, upon motion duly made, seconded and carried, made the following findings of fact and conclusions of law:

FINDINGS OF FACT

Findings of Fact in paragraphs numbered one through seven inclusive of the Initial Order of Presiding Officer are adopted in their entirety and are hereby incorporated by reference as though set forth fully herein and hereby adopted by the Board as its Findings of Fact.

CONCLUSIONS OF LAW

Paragraphs numbered one through five inclusive of the Conclusions of Law set forth by the Initial Order of Presiding Officer are hereby adopted by the Board, incorporated herein by reference and made the Conclusions of Law of the Board.

ORDER AND ACTION

NOW, THEREFORE, based upon the aforementioned Findings of Fact and Conclusions of Law, the Board enters the following Order:

IT IS THEREFORE ORDERED that Temporary Permit No. T-45 is hereby cancelled as provided by K.S.A. 1990 Supp. 65-2811(a)(3).

IT IS SO ORDERED.

NOTICE REGARDING RELIEF FROM THIS ORDER

This Order is a Final Order. Any party may file a "Petition for Reconsideration" with the Board within 15 days of service of this Order. Such Petition shall be directed to the office of General Counsel with a copy to other parties referenced in the attached Certificate of Service. Such Petition is not a prerequisite for seeking judicial review.

Judicial review of this Order may be sought by filing a Petition For Judicial Review in the District Court in the State of Kansas, County of Shawnee, Third Judicial District, or in another district wherein venue is proper along with payment of the docket fee as required by K.S.A. 60-2201. Such Petition is timely if filed within 30 days of this Order, but such time is extended during the pendency of timely attempts to exhaust administrative remedies.

This Order is effective upon service, but may be stayed in accordance with K.S.A. 77-528 and K.S.A. 77-616.

DATED this 9 day of May, 1991.

KANSAS STATE BOARD OF HEALING ARTS

Franklin B. Bichlmeier MD
FRANKLIN BICHLMEIER, M.D.
President

CERTIFICATE OF SERVICE

I, Lawrence T. Buening, Jr., hereby certify that on the 14th day of May, 1991, a true and correct copy of the above and foregoing FINAL ORDER was deposited in the United States mail, postage prepaid, to the following:

Michael Wayne Shuck, D.O.
505 N. Tyler #1213
Wichita, Kansas 67212

and a copy hand-delivered to:

Steve A. Schwarm
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603


LAWRENCE T. BUENING, JR.

BEFORE THE KANSAS STATE BOARD OF HEALING ARTS

FILED

In the Matter of)
)
MICHAEL WAYNE SHUCK, D.O.)
)
_____)

APR 03 1991

**KANSAS STATE BOARD OF
HEALING ARTS**

INITIAL ORDER

NOW, on this 6th day of March, 1991, the above entitled matter comes on before Richard G. Gannon, the Presiding Officer duly designated by the Kansas State Board of Healing Arts, at 235 S. Topeka Blvd., Topeka, Kansas.

The Kansas State Board of Healing Arts (hereafter "Board") appeared by and through Steve A. Schwarm, Litigation Counsel. Michael Wayne Shuck, D.O., (hereafter "Shuck") appeared pro se. Lawrence T. Buening Jr., Board General Counsel, also appeared as counsel to the Presiding Officer.

NATURE OF CASE

The official agency record reflects that a Summary Order Cancelling Temporary Permit issued pursuant to summary proceedings was filed in the Board office and served on Shuck on December 13, 1990. In the Summary Order Cancelling Temporary Permit, it was found and determined that the Application for Postgraduate Training Program Temporary Permit dated June 18, 1989 submitted by Shuck met the qualifications for a Temporary Permit under the provisions of K.S.A. 1989 Supp. 65-2811(a)(3) and, as a result, Shuck was issued Temporary Permit No. T-45 effective July 1, 1989. Said Temporary

Permit No. T-45 issued to Shuck expired on June 30, 1990. In the Summary Order, it was further found that Shuck has not submitted evidence necessary to qualify for a Temporary Permit under K.S.A. 1989 Supp. 65-2811(a)(2), nor had Shuck met the requirements for a permanent license pursuant to K.S.A. 65-2873. On December 27, 1990, Shuck filed a timely Request for Hearing on the Summary Order Cancelling Temporary Permit. At its meeting February 9, 1991, the Board designated Richard G. Gannon as Presiding Officer to conduct the requested hearing. On February 18, 1991 an Order Appointing Presiding Officer was issued and filed in the Board office and served on Shuck. The file further reflects that a Notice of Prehearing Conference was filed and served on Shuck and the Board's Litigation Counsel providing notice of a prehearing conference to be held at 9:00 a.m. on March 6, 1991.

RECORD OF HEARING

The record of the hearing on this matter consists of 21 pages of transcript together with the following official documents:

- A. Summary Order Cancelling Temporary Permit filed on December 13, 1990.
- B. Request for Hearing filed on December 27, 1990.
- C. Notice of Prehearing Conference filed on February 18, 1991.
- D. Order Appointing Presiding Officer filed February 18, 1991.

In addition, the following exhibits were offered by Board Counsel, received and admitted:

Exhibit No. 1. Kansas State Board of Healing Arts Temporary Certificate No. T-45 issued to Michael Wayne Shuck, D.O. under the date of July 1, 1989.

Exhibit No. 2. Kansas State Board of Healing Arts Application for Postgraduate Training Program Temporary Permit of Michael Wayne Shuck dated June 28, 1989 originally submitted by Shuck for consideration of issuance of the Temporary Permit.

FINDINGS OF FACT

After reviewing the official agency record, the transcript made and the exhibits admitted and being otherwise duly advised in the premises, the Presiding Officer finds as follows:

1. Administrative notice is taken of K.S.A. 1989 Supp. 65-2811.

2. Shuck is currently the holder of Temporary Permit No. T-45 to practice medicine and surgery in the State of Kansas.

3. The following were submitted by the Board's Litigation Counsel and agreed by and between the parties to be undisputed facts:

(a) Michael Wayne Shuck, D.O., filed an Application For Postgraduate Training Program Temporary Permit with the Board dated June 28, 1989.

(b) As part of said Application, it was certified that Shuck had been accepted as an intern or resident in the University of Kansas School of Medicine at Wichita, Kansas, beginning July 1, 1989 in the department of family practice.

(c) At the time of submission of said Application, Shuck provided proof of passage of Part I of the examination given by the National Board of Osteopathic Medical Examiners.

(d) Both Parts I and II of the examination given by the National Board of Osteopathic Medical Examiners or Part I of the FLEX examination are necessary to meet the examination in the basic and clinical sciences which has been approved by the Board and which constitutes a requirement for qualifications for a Temporary Permit pursuant to K.S.A. 1989 Supp. 65-2811(a)(2).

(e) The Application submitted by Shuck did not qualify him for a Temporary Permit under the provisions of K.S.A. 1989 Supp. 65-2811(a)(2).

(f) The Application submitted by Shuck met the qualifications for a Temporary Permit under the provisions of K.S.A. 1989 Supp. 65-2811(a)(3) and, as a result, Shuck was issued a Temporary Permit No. T-45 effective July 1, 1989.

4. Pursuant to K.S.A. 1989 Supp. 65-2811(a)(3), a Temporary Permit issued thereunder is valid for a period of one-year following the date of issuance and no more than one Temporary Permit may be issued under said subsection (3) to any person.

5. Pursuant to the statutory provisions of K.S.A. 1989 Supp. 65-2811(a)(3), Temporary Permit No. T-45 issued to Shuck and effective July 1, 1989 expired on June 30, 1990.

6. There being no objection by the parties, it is appropriate to convert the prehearing conference to a conference hearing.

Proceeding with a conference hearing at this time would not substantially prejudice the rights of any party.

7. At the hearing, Shuck did not submit evidence necessary to meet the requirements to qualify for a Temporary Permit under K.S.A. 1989 Supp. 65-2811(a)(2), nor was any information or evidence submitted that Shuck has met the requirements for a permanent license pursuant to K.S.A. 65-2873.

CONCLUSIONS OF LAW

1. The Notice of Prehearing Conference was duly served and is in accordance with the Kansas Administrative Procedure Act as set forth in K.S.A. 77-517.

2. There being no disputed issues of material fact, this matter should be converted to a conference proceeding pursuant to K.S.A. 77-506.

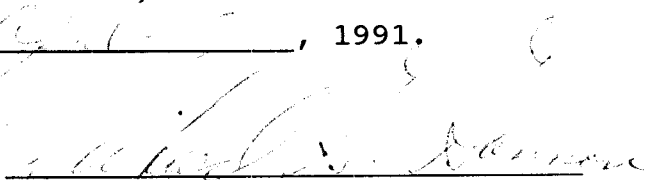
3. Shuck does not meet the requirements specified in K.S.A. 1990 Supp. 65-2811(a)(2) to qualify for a Temporary Permit.

4. Due to the statutory provisions of K.S.A. 1990 Supp. 65-2811(a)(3), Temporary Permit No. T-45 issued by the Board to Shuck effective July 1, 1989 should be cancelled and be of no further force or effect.

5. This order is an initial order. Any party may file a petition to review this order within fifteen days after service of this order. Such petition is not a prerequisite for seeking judicial review. If no party files a petition for review, this order shall become effective 30 days after service.

IT IS THEREFORE ORDERED, that the findings and facts and conclusions of law herein above made be and the same are hereby the order of the Presiding Officer.

DATED this April day of April, 1991.


RICHARD G. GANNON
Presiding Officer

Prepared by:

LAWRENCE T. BUENING, JR.
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603
913-296-7413


CERTIFICATE OF SERVICE

I, Lawrence T. Buening, Jr., hereby certify that on the _____ day of April, 1991, a true and correct copy of the above and foregoing INITIAL ORDER was deposited in the United States mail, postage prepaid, to the following:

Michael Wayne Shuck
505 N. Tyler #1213
Wichita, Kansas 67212

and a copy hand-delivered to:

Steve A. Schwarm
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Blvd.
Topeka, Kansas 66603


LAWRENCE T. BUENING, JR.