

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

FILED

APR 29 2003

In the Matter of)
)
DAVID STERNBERG, M.D.)
Application for Reinstatement)
_____)

Docket No. 03-HA-34

**KANSAS STATE BOARD OF
HEALING ARTS**

FINAL ORDER

NOW ON THIS Twenty Sixth Day of April 2003, this matter comes before the Board for review of the Initial Order issued by Howard D. Ellis, M.D. Applicant David Sternberg appears in person and through John Jenab, Attorney at Law. Kelli J. Benintendi, Associate Counsel, appears for the Board.

After hearing the statements of counsel, and having the agency record before it, the Board modifies the Initial Order so that upon the occurrence of specific events, Applicant may come before the Board to seek reinstatement of his license, and that such reinstatement is not automatic. The Board makes the following findings, conclusions and order:

1. Applicant was issued a license to practice medicine and surgery in June 1988. The Board revoked Applicant's license in a Final Order dated June 22, 1998.
2. The revocation of Applicant's license was based upon his conviction in the United States District Court for the District of Kansas for 13 counts of mail fraud, one count of interstate transportation in aid of racketeering, and 20 counts of money laundering. These crimes were felonies.
3. The federal court ordered Applicant to five years of incarceration, to three years of supervised release, and to pay restitution in the amount of \$926,940.

4. Applicant served three of the five years of incarceration, and is now serving the remainder of the time of incarceration in supervised release. That supervised release will terminate in January 2005.

5. Applicant has paid approximately one-third of the ordered restitution.

6. The legislative purpose that prompted adoption of the healing arts act and creation of the Board is to protect the public health, safety and welfare. The enactment of such a law suggests a policy that the Board must be proactive in protecting the public from those who previously have been found unfit for licensure.

7. The Board concludes that as a matter of law, Applicant bears the burden to prove by clear and convincing evidence that he is sufficiently rehabilitated to warrant the public trust and that he will not pose a threat to the public in his capacity as a medical doctor. See K.S.A. 65-2836(c) and 65-2844. Further, upon review of this Initial Order, two-thirds of the Board members present and voting must find that Applicant has met that burden. If the application for reinstatement is denied, then Applicant is not eligible to submit another application until after three years following the effective date of the denial.

8. The Board concludes that in determining whether Applicant is sufficiently rehabilitated, the Board may consider the factors established in *Vakas v. Kansas Board of Healing Arts*, 248 Kan. 589 (1991). This does not require the Board to make specific findings on each of those factors, and an applicant does not have to achieve perfection with regard to all factors. In considering the factors announced in *Vakas*, the Board finds that Applicant has made significant steps toward rehabilitation, and the likelihood that he will re-offend is not great. Had the misconduct, imprisonment, and addiction not occurred, Applicant would undoubtedly be qualified for licensure. But when seeking reinstatement, Applicant has a greater burden because he must

overcome the prior finding as to his fitness to practice the healing arts. Those factors that are relevant to Applicant are discussed in this Final Order.

9. **(Confidential)**

(Confidential)

10. The Board finds that Applicant's misconduct was substantial and did not merely involve technical billing violations. Rather, the misconduct resulted in damage to the profession and to patients. The argument that patients did not complain of the conduct is not persuasive. Based upon the Presiding Officer's own understanding of the health care system, he found that misuse of limited financial resources of patients, including those provided by federal and private insurance programs, deprives those and other patients of funds for health care. The Board adopts that finding. Applicant has not sufficiently demonstrated an appreciation for this harm to the profession and to patients, though he does exhibit remorse for his misconduct.

11. The parties agree that Applicant has not practiced the healing arts since immediately prior to his incarceration beginning in 1998. Applicant testified that he did read medical journals during incarceration. The Board is not satisfied that Applicant has met his burden of demonstrating present competence to practice medicine and surgery. Applicant may meet that burden by successfully completing the special purpose examination developed by the Federation of State Medical Boards of the United States, Inc., commonly known as SPEX.

12. **(Confidential)**

(Confidential)

13. The extent of rehabilitation regarding his criminal conviction is less remarkable. The Board concludes that there is a presumption that rehabilitation is not complete because Applicant is still in federal custody, albeit supervised release. Applicant's good behavior while in custody does little to prove rehabilitation, but his good behavior when he is no longer in custody and he is freer to re-offend will be a factor in determining the extent of his rehabilitation.

14. As indicated above, the Board is concerned that Applicant does not demonstrate an appreciation for the disrepute he has brought the profession and the harm he has caused to patients. Additionally, there is not sufficient proof that Applicant is currently competent to practice the healing arts. Finally, it appears that his rehabilitation from the criminal misconduct is in its early stages. Applicant has not yet shown by clear and convincing evidence that he is sufficiently rehabilitated to warrant the public trust and that he does not pose a threat to the public health, safety and welfare. Thus, the Board may not issue a license to practice the healing arts at this time, as provided by K.S.A. 65-2836(c).

15. The Board does find that upon successful completion of the SPEX, and upon release from custody, Applicant might have sufficiently met his burden, at least to the extent that a license with limitations is appropriate. Requiring that Applicant wait for three years to reapply for reinstatement is unduly burdensome. Upon a finding by the Board that those events have occurred, the Board might reconsider, on its own motion, this order and might issue a license subject to the following limitations:

(a) **(Confidential)**

(b) **(Confidential)**

(c) **(Confidential)**

(d) **(Confidential)**

(e) **(Confidential)**

(f) **(Confidential)**

(g) Applicant is prohibited from engaging in the solo practice of medicine. Applicant shall only practice in a group setting or on a contract-for-service basis.

(h) Applicant shall not engage in the practice of the healing arts except in a location or setting and involving a compensation arrangement approved by the Board or the Board's designee.

(i) Applicant shall inform each hospital, clinic, and institution in which he practices of restrictions the Board has placed upon his license. Applicant shall identify these

restrictions by producing a list of restrictions that either has been prepared or approved by Board staff.

- (j) Applicant shall at all times keep the Board informed of his current residential address and all practice location addresses.
- (k) Applicant is prohibited from having any involvement in billing patients, their representatives, or third parties for his or any other person's professional services rendered to patients.
- (l) Applicant shall perform at least ten (10) hours of community service each month in the form of providing free psychiatric or counseling services for a non-profit organization other than where Applicant is employed or contracts to perform services.
- (m) Applicant is prohibited from practicing for compensation for more than forty-five (45) hours per week. This limitation does not include any psychiatric practice or counseling that is done as community service.
- (n) **(Confidential)**

- (o) **(Confidential)**

- (p) The monitor must immediately notify Board staff if the monitor believes that Applicant is not in compliance with any of the Board's limitations on his license.
- (q) Applicant is responsible for ensuring the timely submission of the monitor's quarterly reports to Board staff. Board staff must receive at least twelve (12) reports. After twelve (12) reports have been submitted, Applicant may request termination of the monitoring limitation.
- (r) Any and all aspects of Applicant's practice may be subject to inspection or further investigation by Board staff.

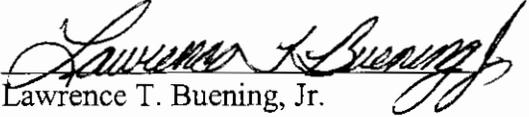
IT IS, THEREFORE, ORDERED that the application for reinstatement is denied.

IT IS FURTHER ORDERED that upon a Board finding that Applicant has completed supervised release and has successfully taken the SPEX, the Board might, on its own motion, reconsider its order and might grant reinstatement of Applicant's license, subject to the limitations stated in paragraph 15(a)-(r) of this order.

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. 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. 77-610, et seq. Reconsideration of the 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 the Board's executive director at 235 S. Topeka Blvd., Topeka, KS 66603.

Dated this 29th day of April 2003.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that a copy of the foregoing Final Order was served this 29th day of April 2003 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

David E. Sternberg, M.D.
4201 West 110th Street
Leawood, KS 66211

John Jenab
Jenab & Kuchar
110 South Cherry
Olathe, KS 66061

And a copy was hand-delivered to the office of:

Kelli J. Benintendi
Associate Counsel
235 S. Topeka Blvd.
Topeka, KS 66603

