

MAR 8 2002

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

**KANSAS STATE BOARD OF
HEALING ARTS**

In the Matter of)
)
ERIC SWANSON, M.D.)
Kansas License No. 4-23027)
_____)

Docket No. 01-HA-34

FINAL ORDER

NOW ON THIS Twenty-third Day of February, 2002, this matter comes before the Board upon a motion by Licensee Eric Swanson, M.D. to terminate the limitations on his license resulting from an order issued in April 1999, and upon a notice of intent to review an Initial Order issued December 2001. Licensee appears in person and through Richard E. McLeod, Attorney at Law. The Board appears through Stacy L. Cook, Litigation Counsel.

After hearing the arguments of counsel, and having the agency record before it, the Board finds, concludes, and orders as follows:

1. Licensee is licensed to practice medicine and surgery in the State of Kansas, having been originally licensed in December 1989. Licensee practices cosmetic and reconstructive surgery.
2. The Board commenced a disciplinary action against Licensee in July 1998. The petition alleged multiple counts of practice below the standard of care to a degree constituting ordinary negligence, with one count alternatively alleging gross negligence.
3. Licensee and the Board entered into a settlement resolving the disciplinary proceeding. The Board approved a Stipulation and Agreement and Enforcement Order, which became the Board's Final Order as of April 12, 1999.

4. The April 1999 agreement imposed several limitations upon Licensee's practice of the healing arts. These limitations include restrictions on performance of specific medical and surgical procedures, and monitoring of Licensee's professional practice. The agreement also publicly censured Licensee for misleading advertising in multiple publications.

5. The limitations were intended to remain in effect for a minimum of two years, after which Licensee was authorized to request termination of the limitations. The Board concludes that these limitations were not intended to expire at the conclusion of the two-year period, but rather their termination was to left to the sound discretion of the Board.

6. The Board finds that the purpose of the limitations on Licensee's license was to address concerns regarding Licensee's professional judgment. The Board concludes that Licensee has the burden to demonstrate that his judgment has improved.

7. Licensee states that of the patient charts that were reviewed by the monitor, none have demonstrated practice below the standard of care. But the number of charts that have been reviewed does not represent a significant number of patients so that the public can be assured of the competence of Licensee's judgment. Board counsel states that the actual number of charts reviewed under the agreement averages one or two a month over the three year period.

8. Licensee argues that his license is also limited by the State of Missouri, and that the same number of charts are being reviewed by the Missouri State Board of Registration of the Healing Arts. The Board does not find that chart review by another state satisfies the Board's concerns because this Board has not reviewed those charts, and the charts do not appear to have been reviewed by a person selected or approved by this Board.

9. The Board's disciplinary panel recommended to Board counsel that more cases

need to be reviewed, but a specific number of case reviews has not been suggested. While more specificity would be helpful, the Board lacks sufficient information to supply that in this order, and thus it is more appropriate for the parties to discuss the issue and attempt to reach a mutual understanding of what is expected.

10. In exercising discretion, the Board must balance Licensee's desire for an unrestricted license with the need to protect the public.

11. Licensee's counsel explained that Licensee does not intend to perform many of the services restricted by the limitation, but rather desires to avoid the impact of having limitations on his license. The Board notes that a limitation has negative impacts; for example, an individual with limitations may have to take extra measures to prove himself qualified when seeking to obtain a license in another state, or may have difficulty in obtaining hospital privileges, or may not be eligible for certification by prominent medical specialty boards.

12. The Board concludes that it does not have sufficient evidence to determine that the Board no longer should have concerns regarding Licensee's professional judgment.

13. The Board has reviewed the Initial Order and determines that the findings of fact, conclusions of law and recommended order are appropriate.

IT IS, THEREFORE, ORDERED that Licensee's motion to terminate the limitations on his license is denied.

IT IS FURTHER ORDERED that the findings, conclusions and recommendations of the Initial Order are adopted as the Board's Final Order, and Licensee is hereby publicly censured.

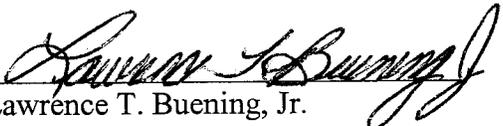
IT IS FURTHER ORDERED that Licensee's request to stay this order pending judicial

review is denied as necessary to protect the public health, safety and welfare.

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 8th Day of March, 2002.

Kansas State Board of Healing Arts


Lawrence T. Buening, Jr.
Executive Director

Certificate of Service

I certify that the foregoing Final Order was served this 8th day of March 2002 by depositing the same in the United States Mail, first-class postage prepaid, and addressed to:

Eric Swanson, M.D.
11413 Ash Drive
Leawood, Kansas 66211

Richard E. McLeod
Attorney at Law
1100 Main Street, Ste. 2900
Kansas City, Missouri 64105

and a copy was hand-delivered to:

Stacy L. Cook
Litigation Counsel
235 S. Topeka Blvd.
Topeka, Kansas 66603

A handwritten signature in cursive script, appearing to read "Lawrence A. Bump", written over a horizontal line.